



## SECOND SECTION

### **CASE OF PINTAR AND OTHERS v. SLOVENIA**

*(Applications nos. 49969/14 and 4 others – see appended list)*

## JUDGMENT

Art 1 P1 • Control of the use of property • No reasonable opportunity to challenge or seek compensation for national bank's extraordinary measures cancelling shares and bonds • Measures not accompanied by sufficient procedural guarantees against arbitrariness

STRASBOURG

14 September 2021

*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 Pintar and Others v. Slovenia,**

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

Jon Fridrik Kjølbro, *President*,  
Carlo Ranzoni,  
Aleš Pejchal,  
Valeriu Grițco,  
Branko Lubarda,  
Marko Bošnjak,  
Saadet Yüksel, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the applications (see the appendix) 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 seven Slovenian nationals, on the various dates indicated in the appended table;

the decision to give notice to the Slovenian Government (“the Government”) of the complaints concerning Article 1 of Protocol No. 1 and Article 13 of the Convention in conjunction with the former provision;

the parties’ observations;

Having deliberated in private on 6 July 2021,

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

## INTRODUCTION

1. The case concerns the Bank of Slovenia’s extraordinary measures taken in 2013 and 2014 in respect of the major Slovenian banks and resulting in the cancellation of all shares or subordinated bonds held by the applicants, without any compensation. The applicants complained about, among other things, having no legal means to effectively challenge the measures due to the ongoing failure of the State to provide a remedy which would be effective and available in practice. There are thousands of individuals and entities in a similar situation to the applicants.

## THE FACTS

2. The applicants’ details are set out in the appendix.

3. The Government were represented by their Agents, Mrs B. Jovin Hrastnik and Mrs J. Morela.

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

5. The applicants were holders of shares or subordinated bonds (*podrejene obveznice*, hereinafter “bonds”) in three Slovenian banks, Nova Ljubljanska banka (“the NLB”), Nova Kreditna Banka, Maribor (“the

NKBM”), and the Celje Bank. While the shares represented a stake in the ownership of a bank, the bonds normally represented claims resulting from a loan agreement that the bank entered into with the investor. Subordinated bonds were, in the event of liquidation, given lower priority than other classes of bonds.

## I. BACKGROUND TO THE BANK OF SLOVENIA’S EXTRAORDINARY MEASURES

6. On 23 October 2012, the National Assembly adopted the Act Regulating Measures of the Republic of Slovenia to Strengthen the Stability of Banks (“the Stability of Banks Act”, see paragraph 54 below), which identified measures that allowed direct recapitalisation of banks through the use of public funds and the transfer of non-performing assets to a particular state-owned company – the Bank Asset Management Company.

7. On 28 November 2012 the European Commission (“the Commission”) issued its report on the Alert Mechanism Report 2013, in which it was noted that the situation in Slovenia regarding banking stability remained fragile, and suggested that an in-depth analysis be carried out. Subsequently, on 10 April 2013, the Commission published a report “Macroeconomic imbalances - Slovenia 2013”, which established, *inter alia*, that the banking sector was one of the main reasons for excessive macroeconomic imbalances in Slovenia. It noted that Slovenia had upgraded the legal framework for bank supervision, which provided the Bank of Slovenia (the national central bank) with new powers, including the power to increase share capital and the power to transfer the bank’s assets, as well as to take “extraordinary measures” (see paragraph 55 below). In this connection the Commission also emphasized the following:

“To regain credibility and stabilise the financial sector, a new, independent and transparent assessment could usefully form the basis for a comprehensive strategy. The strategic imperatives are regaining credibility and market access, improving banks’ governance and profitability, and right-sizing and strengthening banks’ balance sheets, while minimising fiscal cost and risk. A new third-party asset quality review [“the AQR”] and a new thorough stress test are needed to quantify the challenges and ensure that the strategy, the overall fiscal envelope and the selection of tools are appropriate. These assessments would ideally be conducted by internationally recognised consultants under the guidance of a steering committee comprising the relevant international financial institutions and the Slovenian authorities. The asset quality review and stress test should cover the entire banking system (with the systemically relevant banks constituting an absolute minimum) and would inform a system-wide viability assessment. Publishing the approaches used, with underlying assumptions and main findings, would help to maximise credibility.”

8. On 9 July 2013 the Council of the European Union (“the Council”) issued the Council Recommendation of 9 July 2013 on the National Reform Programme 2013 for Slovenia and delivering a Council opinion on the Stability Programme of Slovenia, 2012-2016, OJ C 217, 30.7.2013,

pp 75-80 (“the Council Recommendation”). In respect of the established macroeconomic imbalances it recommended that the Republic of Slovenia undertake various measures in order to ensure the stability of the banking sector, including measures related to public financial support to banks if necessary. It also referred to independent external advisers and a system-wide bank asset quality review. It pointed out that all measures should be implemented in full compliance with State aid rules if State aid was involved.

9. The Bank of Slovenia undertook to conduct AQR and stress tests. These were carried out by consulting firms which acted as independent advisers under the leadership of a steering committee, which included, in addition to the Bank of Slovenia and the Ministry of Finance, the Commission, the European Banking Authority (“the EBA”) and the European Central Bank (“the ECB”). The banks accounting for 70% of the banking sector were included in the asset quality review and stress tests, including the banks in which the applicants held shares or bonds.

10. On 30 July 2013 the Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (“the Banking Communication”) was published. It repeatedly indicated that State support should be granted on terms which represented an adequate burden-sharing by those who invested in the bank. Specific provisions concerning the burden sharing required for State aid to be granted are contained in points 40 to 46 of the Banking Communication. They provide, *inter alia*, that hybrid capital and subordinated debt holders should contribute to reducing the capital shortfall to the maximum extent (point 41). Furthermore, in cases where the bank could no longer meet the minimum regulatory capital requirements, the subordinated debt should be converted or written down, in principle before State aid is granted. State aid should not be granted before equity, hybrid capital and subordinated debt have fully contributed to offsetting any losses (point 44).

11. On 14 November 2013, the National Assembly adopted the Amendment to the Banking Act (see paragraph 55 below), which defined the conditions and powers of the Bank of Slovenia with regard to the application of extraordinary measures of cancelling the bank’s share capital and/or cancelling or converting subordinated instruments of the bank in order to prevent the bank’s failure and to preserve the stability of the financial system.

12. In the meantime, between May 2013 and September 2013, the NLB, the NKBM, and three other banks applied for State aid.

13. On 12 December 2013 the consulting firms submitted stress test results and their findings concerning the AQR on the level of further required impairments in the banks. Subsequently, the Bank of Slovenia established that the capital of all five banks that had applied for State aid

(see paragraph 12 above) would have been negative at the end of the financial year and that the conditions for the commencement of bankruptcy due to insolvency were met by all five banks, since the banks lacked the necessary assets to repay their liabilities.

14. On 18 December 2013 the Commission authorised the granting of State aid to the five banks concerned (see paragraph 12 above), prior notice of that aid having been given by the Slovenian authorities. It noted as a precondition that the burden-sharing between the State and the shareholders and holders of subordinated instruments of those banks should be ensured. For instance, in the decision on State aid for the NLB, issued on 18 December 2013, the Commission stated:

“In that respect, Slovenia committed that before any State aid is granted to [the] NLB (...), the latter will write-down in full its shareholders’ equity and outstanding subordinated debts so ensuring compliance with the requirements of 2013 Banking Communication. The Commission positively notes that the contribution of subordinated debt holders is achieved to the maximum extent possible, thus ensuring adequate burden-sharing. The State capital injections will only be implemented after the complete implementation of the wipe-out of the subordinated debt holders. That sequence ensures that all existing subordinated debt holders have to fully contribute to the restructuring costs of the bank prior to the State stepping in. The State will thereby own 100 % of the bank’s shares after the third recapitalisation compared to 33.1 % prior to the first capital injection by the State.”

15. As regards the Celje Bank, the Bank of Slovenia established on the basis of the AQR and the stress test exercise that it too did not comply with the minimum capital requirements. This bank on 12 March 2014 sent a request to the Ministry of Finance for the application of measures under the Stability of Banks Act (see paragraph 54 below). On 16 December 2014 the Commission approved State aid in favour of the Celje Bank.

## II. THE BANK OF SLOVENIA’S DECISIONS ON EXTRAORDINARY MEASURES

16. On 17 December 2013 the Bank of Slovenia, finding that the conditions under section 253a (1) of the Banking Act (see paragraph 55 below) were met, adopted decisions putting in place extraordinary measures with respect to the five banks which had initially applied for State aid (see paragraph 12 above). On 16 December 2014 the Bank of Slovenia issued a decision concerning extraordinary measures also with respect to the Celje Bank (see paragraph 15 above). Relying on the relevant provisions of the Banking Act (see paragraphs 56 to 58 below), these decisions cancelled all existing eligible liabilities (*kvalificirane obveznice* - for definition see section 261a (6) of the Banking Act, cited in paragraph 56 below), including the shares and bonds owned by the applicants. They referred to the Council Recommendation and the AQR and stress test results carried out by the consulting firms (see paragraphs 8, 9 and 13 above); identified increased

risks in the banks concerned, and their threat to the stability of the financial system; and noted that the extraordinary measures were a necessary condition for the granting of State aid. They furthermore provided that the share capital of the banks concerned be reduced to zero and at the same time increased by issuing new shares and that these provisions were to replace a decision by the shareholders' meeting. The increase in capital was done, in full, by monetary and in-kind contributions provided by the State. The holders of eligible liabilities ("former holders") were denied priority in obtaining new shares.

17. The decisions concerning the extraordinary measures were served on the banks, which were required to inform the respective holders thereof. The information about the extraordinary measures were published on the special online service of the Ljubljana Stock Exchange and the Bank of Slovenia's website.

18. Apart from certain information that was published, the content of the above decisions was classified as strictly confidential. It seems that it later became available, at least to some extent. However, several other documents including the material produced by the consulting firms (relating to the AQR and stress tests), which underpinned the impugned measures, appear to be treated as confidential and continue to be inaccessible to the former holders.

19. Several criminal complaints were lodged concerning actions of, *inter alios*, the members of the Governing Board of the Bank of Slovenia in connection with the above measures. In June and July 2016 the law enforcement authorities, acting on suspicion of abuse of power and of official functions, carried out wide-scale investigative measures, including police searches and seizure of documents and electronic data at the premises of the Bank of Slovenia, the NLB and the consulting firms that had conducted the AQR and stress tests. It would appear that the domestic investigation or proceedings concerning the above accusations are still pending. In this connection, on 17 December 2020 the Court of Justice of the European Union ("the CJEU") found in *Commission v Slovenia (ECB archives)*, C-316/19, EU:C:2020:1030, that by unilaterally seizing documents, which were considered to be part of the archives of the ECB, Slovenia had failed to fulfil its obligation to respect the principle of the inviolability of the archives of the EU.

20. The State was a major shareholder in the NLB and the NKBM at the time the extraordinary measures were taken. As regards the Celje Bank, State-owned shareholders controlled the bank's operations.

## III. THE APPLICANTS' PARTICULAR CIRCUMSTANCES

**A. Mr Pintar (application no. 49969/14)**

21. Mr Pintar owned 1,500 shares (symbol KBMR) of the NKBM, which were pursuant to the Bank of Slovenia's decision of 17 December 2013 (see paragraph 16 above) cancelled. He learned of this from media, on an unknown date. On 17 January 2014 he sent an email to the Bank of Slovenia asking for a formal document confirming that his shares had been cancelled. On 21 January 2014 he received a reply that no formal document could be issued to that effect and that his shares had been cancelled *ex lege* once the NKBM had been notified of the Bank of Slovenia's decision.

22. On 18 October 2017 Mr Pintar lodged a criminal complaint against, *inter alia*, the management and supervisory board of the NKBM, and the governor of the Bank of Slovenia, for fraud and abuse of position or trust in commercial activity, which was rejected by the Kranj Public Prosecutor on 24 January 2018.

**B. Mr Kotnik and Mr Peterlin (application no. 20530/16)**

23. Mr Peterlin owned 12 shares (symbol BCER) of the Celje Bank. Mr Kotnik owned 18 BCE11 bonds (subordinated bonds with non-fixed maturity, with the nature of an innovative financial instrument) and 3,347 BCE16 bonds (subordinated bonds with fixed maturity). Pursuant to the Bank of Slovenia's decision of 16 December 2014 (see paragraph 16 above), the shares owned by Mr Peterlin and the bonds owned by Mr Kotnik were cancelled.

24. On 16 December 2014 the Celje District Court, further to the Bank of Slovenia's request, entered in the Court Register a decision on the reduction of the share capital to zero and an increase in capital of the Celje Bank on the basis of the Bank of Slovenia's decision of 16 December 2014. It also accordingly modified certain provisions of the Statute of the Celje Bank. On 24 December 2014, Mr Kotnik and Mr Peterlin lodged an appeal against the district court's decision, which was rejected by the Celje Higher Court on 10 September 2015. The latter noted, *inter alia*, that it lacked power to review the legality and correctness of the Bank of Slovenia's decision but could only examine whether the request for changes in the Court Register was accompanied by the required documents and whether these were in line with the legal provisions on which they were based, and contained all the necessary data. It also noted that certain provisions which normally regulated the operation of companies could not have been applied in this case having regard to the provisions of the Banking Act, the public interest considerations and the required promptness.



25. On 7 December 2015, Mr Kotnik and Mr Peterlin, invoking the right to private property and judicial protection (see paragraph 53 below), lodged a constitutional complaint against the above court decisions. It was dismissed by the Constitutional Court on 25 January 2016, finding that the applicants lacked legal interest in the proceedings. Mr Kotnik also lodged a petition for the initiation of proceedings to review the constitutionality of certain provisions of the Banking Act (see paragraph 38 below).

**C. Mr Jukič (application no. 4713/17)**

26. Mr Jukič owned 4,850 shares of the NKBM (symbol KBMR), which were pursuant to the Bank of Slovenia's decision of 17 December 2013 (see paragraph 16 above) cancelled.

27. Mr Jukič brought an action against the Bank of Slovenia and the respondent State before the Administrative Court, seeking annulment of the Bank of Slovenia's decision or a finding that it interfered with his human rights. He relied on section 4 of the Administrative Dispute Act (see paragraph 61 below) and referred to, *inter alia*, the right to judicial protection and the right to private property (see paragraph 53 below). On 10 June 2014 the Administrative Court rejected the action, finding that the impugned decision was administrative in nature but subject to special regulation of the Banking Act which allowed only the banks to challenge it (section 347 of the Banking Act - see paragraph 59 below). Section 4 of the Administrative Dispute Act therefore did not apply to this case, as otherwise the claimants could bypass section 347 of the Banking Act. The court further referred to section 350a of the Banking Act and noted that Mr Jukič could lodge a compensation claim and that the question whether the Bank of Slovenia's decision was lawful – including whether the conditions for the bankruptcy proceedings had been met – could potentially be determined also within the compensation proceedings. This decision of the Administrative Court became final on 11 September 2014.

28. In the meantime, on 2 January 2014 Mr Jukič lodged a constitutional complaint against the above decision of the Bank of Slovenia, invoking, *inter alia*, the right to private property and judicial protection (see paragraph 53 below). He argued that he had no effective remedy at this disposal and that he had no access to the Bank of Slovenia's decision and had learned of it only from the media. It was rejected by the Constitutional Court on 16 December 2016 for failure to exhaust legal remedies. Mr Jukič also filed a petition for the initiation of proceedings for review of constitutionality of section 261a and 347 of the Banking Act (see paragraphs 38 below).

**D. Ms Logar (application no. 13244/18)**

29. Ms Logar owned 1,843 shares of the NLB (symbol NLB), which were pursuant to the Bank of Slovenia's decision of 17 December 2013 (see paragraph 16 above) cancelled.

30. On 14 February 2014 she brought an action under section 4 of the Administrative Dispute Act (see paragraph 61 below) against the Bank of Slovenia before the Administrative Court, relying on, among other things, the right to private property and judicial protection (see paragraph 53 below). On 10 June 2014 the court rejected her action, finding that the Bank of Slovenia's decision was of an administrative nature and section 4 of the Administrative Dispute Act therefore did not apply. An action in the Administrative Court could be lodged only by banks under section 347 of the Banking Act. The court further noted that the applicant had at her disposal a remedy under section 350a of the Banking Act. On 18 January 2017 the Supreme Court rejected her appeal. She subsequently lodged a constitutional complaint against the above court decisions and the Bank of Slovenia's decision of 17 December 2013 issued against the NLB. On 4 September 2017 the Constitutional Court decided not to accept her constitutional complaint for consideration. The decision was served on her on 12 September 2017.

31. On 20 December 2016 Ms Logar lodged with the Ljubljana District Court an action for damages against the Bank of Slovenia and the NLB concerning her shares that had been cancelled. She was seeking payment of EUR 117,214 together with the statutory default interest as from 18 December 2013 until the date of payment. She requested that the proceedings be stayed until the adoption of the legislation implementing the 2016 Decision. This request was upheld by the District Court on 24 April 2017.

32. The applicant also filed a criminal complaint for abuse of office against the Governor and Vice Governors of the Bank of Slovenia. This resulted in a criminal investigation which appears to be still pending.

**E. Mr Jesenko and Ms Jesenko (application no. 16311/18)**

33. Ms Jesenko owned 1,529 NLB26 bonds and Mr Jesenko owned 850 NLB26 bonds (subordinated bonds with a fixed maturity), which were pursuant to the Bank of Slovenia's decision of 17 December 2013 (see paragraph 16 above) cancelled. On 18 December 2013 the NLB informed Mr Jesenko and Ms Jesenko of the Bank of Slovenia's decision.

34. They brought an action against the Bank of Slovenia before the Administrative Court, requesting that the decision on extraordinary measures against the NLB be served on them. This was refused by the Administrative Court in a decision that became final on 10 June 2014. The

Administrative Court found that the applicants had had no right to participate in the procedure leading to the Bank of Slovenia's impugned decision and that therefore they had no right to have this decision served on them.

35. Mr Jesenko and Ms Jesenko also lodged a constitutional complaint against the Bank of Slovenia's decision of 17 December 2013. On 16 December 2016 the Constitutional Court rejected their constitutional complaint finding that the legal remedies had not been exhausted.

36. On 27 September 2017 Mr Jesenko and Ms Jesenko lodged a new constitutional complaint. They invoked, *inter alia*, Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 and complained about the delay in the implementation of the 2016 Decision (see paragraph 44 below) and their continuous inability to challenge the interference with their property rights. They also argued that the passage of time would negatively effect their chances to prove the damage. On 1 December 2017 the Constitutional Court rejected their constitutional complaint due to non-exhaustion of legal remedies.

37. In the meantime, on an unspecified day in December 2016, Mr Jesenko and Ms Jesenko lodged legal actions under section 350a of the Banking Act against the Bank of Slovenia and the NLB. The proceedings were subsequently stayed pending the implementation of the 2016 Decision. On 6 January 2020 the Ljubljana District Court referred their cases to the Maribor District Court, which had acquired jurisdiction pursuant to the 2020 Remedy Act (see paragraph 47 below).

#### IV. THE CONSTITUTIONAL COURT'S DECISION No. U-I-295/13 OF 19 OCTOBER 2016 ("THE 2016 DECISION")

38. At the request of the National Council, the Ljubljana District Court and the Human Rights Ombudsman, and upon the petitions of several individual petitioners, including the applicants Mr Kotnik and Mr Jukič, the Constitutional Court reviewed the constitutionality of certain provisions of the Banking Act, the Act Amending the Banking Act and the Resolution and Compulsory Dissolution of Banks Act (see paragraphs 55 to 60 below). It was called upon to review the compliance of the impugned legislation concerning the extraordinary measures with, *inter alia*, the prohibition of retroactivity, the principle of the rule of law, the right to private property, and the right to judicial protection (see paragraph 53 below).

39. On 6 November 2014, considering that the objective of the impugned legal provisions was to transpose the Banking Communication (see paragraph 10 above) into national law in order to enable the national authorities to grant State aid, the Constitutional Court decided to stay the proceedings and to refer a number of questions to the CJEU for a preliminary ruling.

40. On 19 July 2016 the grand chamber of the CJEU delivered a judgement (*Kotnik and others*, C-526/14, EU:C:2016:570) in which it found, *inter alia*,

- that the Banking Communication should be interpreted as meaning that it was not binding on the Member State,

- that the principle of the protection of legitimate expectations and the right of property should be interpreted as not precluding points 40 to 46 of the Banking Communication in so far as those points laid down a condition of burden-sharing by shareholders and holders of subordinated rights as a prerequisite to the authorisation of State aid,

- and that the Banking Communication must be interpreted as meaning that the measures as provided for in point 44 of that communication should not exceed what was necessary to overcome the capital short-fall of the bank concerned.

41. On 19 October 2016 the Constitutional Court delivered, unanimously, its decision no. U-I-295/13, finding that section 350a of the Banking Act and section 265 of the Resolution and Compulsory Dissolution of Banks Act (see paragraphs 59 and 60 below) were inconsistent with the Constitution as regards the right to judicial protection. In respect of the remaining provisions under review, it decided that they were not inconsistent with the Constitution.

42. The Constitutional Court took account of the CJEU judgment but considered the Banking Communication was relevant to its assessment. As regards the right to private property the Constitutional Court noted that the imposition of the extraordinary measures prevented the initiation of bankruptcy proceedings against the banks. The State, providing aid, was under no obligation to reimburse creditors whose investment turned out to be unsuccessful. It referred to the “no creditor worse-off” principle, which required that individual creditors must not sustain a loss greater than the loss they would have sustained otherwise (in the absence of the impugned measure). Noting that the extraordinary measures had been conditioned on the bank not achieving the minimal capital requirements, the Constitutional Court found it reasonable that the assessments of the (possible) payment of the eligible liabilities from the bank’s assets be made in relation to the non-performing bank (that is an insolvent bank). In the Constitutional Court’s view, the imposition of the measure, the fundamental prerequisite of which was that after the cancellation or conversion the former holders of eligible liabilities (“former holders”) should always receive at least as much as they would retain after the bankruptcy proceedings, could not by its very nature lead to an interference with the right of private property. The Constitutional Court stressed that if those affected by the extraordinary measures

considered that the specific procedures for the imposition of such measures had been based on inaccurate assessments, they should pursue their claims in the relevant proceedings.

43. As regards the right to judicial protection, the Constitutional Court explained that under section 347 of the Banking Act (see paragraph 59 below) only the banks could challenge the Bank of Slovenia's decisions on extraordinary measures in (regular) proceedings before the Administrative Court. It noted that the Constitution did not require that the former holders had such a possibility but it was enough that they had a possibility to protect their rights by way of a compensation claim pursuant to section 350a of the Banking Act and Section 265 of the Resolution and Compulsory Dissolution of Banks Act (see paragraphs 59 and 60 below). In this connection it also observed that the situation could not be redressed by restitution (since the shares and bonds had already been cancelled) but could be redressed by full compensation of any pecuniary loss. Therefore, the regulation allowing the former holders to claim compensation could not be considered unreasonable. However, for a compensatory remedy to be in line with the Constitution it should also be effective. In this connection the Constitutional Court noted that in the proceedings under section 350a of the Banking Act the plaintiffs would have to demonstrate that their loss was higher than the loss they would have suffered in the absence of the impugned measures in view of the circumstances of which the Bank of Slovenia had been or should have been aware. It took note of the difficult situation of the former holders who could not be aware of specific economic and financial valuations that had underpinned the Bank of Slovenia's impugned measures. It also noted that the former holders had been denied access to information and data concerning the assessment of the value of bank assets and other documentation of the Bank of Slovenia which was crucial for the formulation of the grounds for damages. Moreover, the task of proving the grounds and the damages in these cases was particularly difficult and the Constitutional Court found it problematic that the former holders would have to act individually against the Bank of Slovenia. On the other hand, the Bank of Slovenia had significant expertise and resources. In the court's view such imbalance between the parties would need to be remedied by special procedural rules adapted to the nature of this particular dispute. In this connection the Constitutional Court noted the following:

- The proceedings could be effective only if the plaintiffs had full access to documents relating to the impugned measure which were available to the Bank of Slovenia and only if they were left sufficient time to prepare their civil action after having such access.
  
- The Bank of Slovenia should clearly demonstrate why the measures were necessary.

- Under the existing rules it was not possible for the plaintiffs to act collectively, though this would increase efficiency, speed and uniformity of decision-making.

44. In view of the foregoing the Constitutional Court concluded that the legal avenue under section 350a of the Banking Act, which failed to take account of the imbalance in the position of the former holders and the Bank of Slovenia, did not comply with the requirements of the right to effective judicial protection. It found that in view of the absence of special rules regulating the legal disputes between the former holders and the Bank of Slovenia there was an “unconstitutional legal lacuna”. It instructed the National Assembly to remedy the established unconstitutionality within six months following the publication of its decision in the Official Gazette. In the meantime – that is, until the unconstitutionality was removed – the Constitutional Court ordered that all proceedings instituted pursuant to Section 350a (1) of the Banking Act be stayed. It also decided that the statute of limitations regarding (new) claims for damages should start to run six months after the entry into force of the legislation adopted with a view to remedying the established unconstitutionality.

## V. DEVELOPMENTS CONCERNING THE IMPLEMENTATION OF THE 2016 DECISION

45. On 13 November 2017 the first draft law implementing the 2016 Decision entered the National Assembly’s legislative process but due to the dissolution of the parliament it has never been voted on.

46. Following the early elections of 3 June 2018, a new government was appointed on 13 September 2018. The Ministry of Finance prepared a new draft - the proposal of the Act on Judicial Protection Procedure for Former Holders of Eligible Liabilities of Banks. Following the Ministry of Finance’s request, the ECB, on 27 March 2019, issued an opinion on the draft, expressing certain concerns with respect to the prohibition of monetary financing, financial independence of the Bank of Slovenia and the obligation of professional secrecy imposed by EU Law, especially with regard to the stress test reports, the AQR and assets valuations concerning the individual banks.

### A. Adoption of the 2020 Remedy Act

47. On 22 November 2019 the National Assembly adopted the Act on Judicial Protection Procedure for Former Holders of Eligible Liabilities of Banks (“the 2020 Remedy Act”). It was published on 4 December 2019 and came into force on 19 December 2019. The Act provides for the proceedings in which the former holders could seek judicial protection with respect to the extraordinary measures cancelling their shares or affecting

their other rights. Among other things, it sets out rules regarding access to documents and information, which were or should have been relied on by the Bank of Slovenia, the manner of providing documents and information related to the extraordinary measures (including the so-called “virtual data room” operated by the Ministry of Finance for each bank, in which relevant documents can be accessed), the publication of the decisions putting in place the extraordinary measures, the conditions for and the amount of lump sum compensation to be paid to individuals who were holders of certain eligible liabilities under specific conditions and the proceedings in which the former holders could seek access to information or documents and/or compensation for the loss resulting from the extraordinary measures. It provides for a possibility of collective litigation, a formation of a group of experts, and the resumption of the proceedings which were previously suspended. According to the 2020 Remedy Act former holders should be able to file actions within seven months of the publication of the notice of the establishment of the virtual data room in the Official Gazette. It envisages that the cases would be dealt with exclusively by the Maribor District Court.

48. The 2020 Remedy Act also provides for a reversed burden of proof and states that it is for the Bank of Slovenia to prove that the conditions set out in sections 253a and 261a (5) of the Banking Act were met (see paragraphs 55 and 56 below).

## **B. Subsequent events**

49. In its report concerning the opening of the new judicial year issued on 12 February 2020 the Supreme Court raised concerns about the ability of the Maribor District Court, as the only court with jurisdiction over claims under the 2020 Remedy Act, to deal with the potentially very high influx of cases. The number of plaintiffs was estimated at over 100,000. The Supreme Court noted that the proceedings as currently regulated would take at least sixty months to reach the decision concerning the grounds (which is a stage prior to the determination of the amount of compensation).

50. The Bank of Slovenia lodged a request for the review of constitutionality of almost all provisions of the 2020 Remedy Act and section 350a of the Banking Act (U-I-4/20), together with a motion to stay its implementation, a request for priority treatment and a motion to refer the case for a preliminary ruling to the CJEU. The Bank of Slovenia invoked several provisions of the Constitution and the principle of the autonomy of the ECB and national central banks referred to in Article 130 of the Treaty on the Functioning of the European Union (“the TFEU”) and the principle of the prohibition of monetary financing referred to in Article 123 of the TFEU. It also mentioned that there were 100,000 potential claimants

(former holders) and that the damage relating to the disclosure of otherwise confidential information would therefore be irreparable.

51. On 5 March 2020 the Constitutional Court suspended the implementation of the 2020 Remedy Act, pending the review of its constitutionality. Any proceedings instituted under the aforementioned act and the running of the relevant deadlines were suspended. The Constitutional Court noted that the deadline for the implementation of the 2016 Decision had expired on 15 May 2017 and that the concerns about the lack of an effective remedy available within a reasonable time could thus not be ignored. However, it considered it nevertheless necessary to suspend the implementation of the 2020 Remedy Act. It also decided that the case would be considered with absolute priority.

52. On 28 January 2021, the Constitutional Court referred eight questions with regard to the interpretation of EU law to the CJEU (*Banka Slovenije v Državni zbor Republike Slovenije*, C-45/21). They concerned, *inter alia*, the prohibition of monetary financing, the independence of the Bank of Slovenia and professional secrecy and confidentiality related to the supervision of banks. The Constitutional Court requested the CJEU to consider the questions in an expedited procedure. The proceedings before the Constitutional Court were suspended pending the CJEU's decision.

## RELEVANT LEGAL FRAMEWORK

### I. CONSTITUTION

53. The relevant parts of the Constitution of the Republic of Slovenia read as follows:

**“Article 23  
(Right to Judicial Protection)**

Everyone has the right to have any decision regarding his rights, duties, and any charges brought against him made without undue delay by an independent, impartial court constituted by law ...

...

**Article 33  
(Right to Private Property and Inheritance)**

The right to private property and inheritance shall be guaranteed.

...

**Article 157  
(Judicial Review of Administrative Acts)**

A court having jurisdiction to review administrative acts shall rule on the legality of final individual acts adopted by state authorities, local community authorities, and



bearers of public authority deciding on the rights or obligations and legal entitlements of individuals and organisations, if other legal protection is not provided by law for a particular matter.

The court having jurisdiction to review administrative acts shall also decide on the legality of individual actions and acts which interfere with the constitutional rights of the individual, if other legal protection is not provided.”

## II. DOMESTIC LEGISLATION

54. The Stability of Banks Act (*ZUKSB*) came into force on 28 December 2012. It specifies who can submit an initiative for the application of measures aimed at strengthening the stability of banks and the decision-making process as well as the enforcement of the measures. It sets out the conditions under which the measures can be adopted. It provides that the shareholders and holders of hybrid financial instruments should share the burden regarding the past losses.

55. The Banking Act (*ZBan-1*) was in force from 29 December 2006 until 13 May 2015, when it was replaced by the New Banking Act (*ZBan-2*). On 14 November 2013, the National Assembly amended the Banking Act (*ZBan-1L*) in order to introduce new extraordinary measures, i.e. the “cancellation or conversion of eligible liabilities”. The Bank of Slovenia was authorised to take the said measures with a view to preventing the collapse of a bank and maintaining the stability of the financial system. Section 253a of the Banking Act set out the grounds that justified the extraordinary measures in the interest of the stability of the financial system. It provided, as far as relevant, as follows:

“(1) The Bank of Slovenia issues a decision on extraordinary measures if:

1. an increased risk concerning that bank is demonstrated, and
2. there is an absence of circumstances which could indicate that the reasons for the increased risk [mentioned] in the previous point would cease in due time.
3. it is not likely that other measures of the Bank of Slovenia based on this law could ensure short- and long-term capital sufficiency and appropriate liquidity and
4. if the measures are in the public interest of preventing the threat to the stability of the financial system.

(2) For the purposes of the previous paragraph it should be considered that the increased risk is presented if the bank does not ensure or will during the next six months likely not ensure minimal capital requirements pursuant to ... or an appropriate liquidity pursuant to ... and the conditions for withdrawing the operational licence are or will likely be therefore fulfilled ...”

56. Section 261a set out details concerning the decisions by which the eligible liabilities could be cancelled or converted. It provided, *inter alia*, as follows:

“(1) By its decision requiring extraordinary measures, the Bank of Slovenia shall provide that:

1. eligible liabilities shall be cancelled in full or in part, or

2. a bank's eligible liabilities from points 2 to 4 from the sixth paragraph of this section shall be converted in full or in part into new ordinary shares in the bank following an increase of that bank's share capital by means of the payment of contribution in kind in the form of the claims of creditors, which represent eligible liabilities

...

(5) In cancelling or converting a bank's eligible liabilities, the Bank of Slovenia must satisfy itself that individual creditors do not incur, as a result of the cancellation or conversion of the bank's eligible liabilities, greater losses than they would have incurred in the event of the bank's insolvency.

(6) A bank's eligible liabilities are represented by:

1. the bank's share capital (Class I liabilities),

2. liabilities in relation to holders of hybrid capital ... (Class II liabilities),

3. liabilities in relation to holders of financial instruments, which, must be pursuant to ... taken into account in calculating the bank's additional capital, unless such liabilities are already included in the definitions set out in points 1 or 2 of this paragraph (Class III liabilities),

4. liabilities not included in the definitions set out in points 1, 2 or 3 of this paragraph, which, in the event of insolvency proceedings in respect of the bank, would be paid after the payment of ordinary debentures (Class IV liabilities)."

57. Section 261b provided that the measures of cancelling or converting eligible liabilities should be based on the assessment of the banks' assets. Such assessment should in principle be carried out by independent appraisers. Section 261c (1) provided:

"(1) In its decision concerning the cancellation of eligible liabilities ..., the Bank of Slovenia shall require the bank's eligible liabilities to be cancelled to the extent necessary to cover the bank's losses, in the light of the valuation of the net assets as referred to in the preceding section ..."

58. Section 261e (1) of the Banking Act provided that the creditors of eligible liabilities were not entitled to pursue claims against the bank relating to the breach or non-fulfilment of contractual duties when this was a consequence of the extraordinary measures envisaged in this law.

59. A commercial bank could challenge the Bank of Slovenia's extraordinary measure imposed on it by way of an action (section 347 of the Banking Act) lodged with the Administrative Court. This legal avenue was not available to the former holders. However, Section 350a of the Banking Act, which continued to be in force (see paragraph 60 below) provides for a compensatory remedy for shareholders, creditors or other persons whose rights have been affected by the Bank of Slovenia's decision imposing extraordinary measures. It provides, as far as relevant, as follows:

"(1) Shareholders, creditors or other persons whose rights have been affected by the Bank of Slovenia's decision on extraordinary measures, can claim from the Bank of

Slovenia compensation taking into account ... [the required due diligence on the part of the Bank of Slovenia and those acting under its power], if they prove that the damage incurred due to the effects of the extraordinary measure was greater than in the case the extraordinary measure had not been issued ...”

60. Section 265 of the Resolution and Compulsory Dissolution of Banks Act (*ZRPPB*) (in force since 25 June 2016) provides that judicial protection proceedings against the Bank of Slovenia’s decisions issued prior to its entry into force should be concluded in accordance with the provisions of the Banking Act.

61. The Administrative Dispute Act regulates proceedings in which administrative acts can be challenged before the Administrative Court. Its section 4 provides also for a possibility to challenge before the Administrative Court the legality of (other) decisions or actions interfering with human rights, if judicial protection is not provided by some other means.

### III. DOMESTIC CASE-LAW

62. In the decision of 22 June 2017 concerning cases nos. Up-317/17, Up-328/17, Up-330/17, Up-336/17 and Up-337/17, the Constitutional Court dealt with the question of available remedies during the non-implementation of its 2016 Decision. The cases originated in several sets of proceedings before the Administrative Court in which a number of companies had challenged the Bank of Slovenia’s decisions on cancellation of their eligible liabilities. The Administrative Court rejected their actions as inadmissible, finding that this remedy was not available to them. The Supreme Court endorsed that finding. Five sets of constitutional complaints were lodged in this connection by the unsuccessful plaintiffs, invoking, *inter alia*, Articles 6 and 13 of the Convention. They pointed out that none of the banks had challenged the measures, though they had had such possibility under the applicable legislation (see paragraph 59 above). They further argued that in the absence of an effective remedy under section 350a of the Banking Act they should have been able to avail themselves of the action under Article 157 (2) of the Constitution and section 4 of the Administrative Dispute Act (see paragraphs 53 and 61 above).

63. The Constitutional Court did not accept their constitutional complaints for consideration, noting that the complainants did not have a right to a particular type of proceedings. A remedy under section 350a of the Banking Act was in principle sufficient as it provided a full protection of the claimants’ pecuniary interests. The Constitutional Court acknowledged its previous finding concerning the shortcomings of the remedy under section 350a of the Banking Act (paragraphs 43 above). It nevertheless found that neither the expiry of the deadline for the implementation of the 2016 Decision (see paragraph 44 above) nor the fact that the complainants

had no effective remedy at that moment could lead to the conclusion that the right to judicial protection had been breached in the proceedings complained of. The Constitutional Court noted that the complainants' lack of standing to challenge the decision of the Bank of Slovenia in regular proceedings before the Administrative Court had been found to be compatible with the Constitution (see paragraph 43 above). As regards the complainants' reliance on section 4 of the Administrative Dispute Act (subsidiary protection), the Constitutional Court endorsed the lower courts' finding that this provision was not meant to be used to challenge administrative decisions. The Constitutional Court noted that there existed a valid, though non-implemented, duty to create an effective judicial avenue for the complainants and that the subsidiary protection under section 4 of the Administrative Act could not be used to replace such avenue in the circumstances at hand.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

64. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

### II. SCOPE OF EXAMINATION AS REGARDS APPLICATION No. 20530/16

65. The Government pointed out that the examination by the Court should be limited to the issues that were communicated to them. Mr Kotnik's and Mr Peterlin's complaints and arguments concerning the proceedings by which the changes following the extraordinary measures were entered in the Court Register (see paragraph 24 above) could not therefore form part of the present examination.

66. Mr Kotnik and Mr Peterlin emphasised that, unlike the remaining applicants, they complained about the court proceedings concerning the changes made in the Court Register, explaining that had the district court rejected the Bank of Slovenia's request for the changes, they would not have suffered any damage. They further argued that their shares and bonds had been expropriated unjustifiably, without any compensation and any effective remedy to challenge the impugned measure.

67. The Court observes that it communicated to the Government the questions concerning the Bank of Slovenia's extraordinary measures and the non-implementation of the 2016 Constitutional Court's decision under Article 1 of Protocol No. 1 alone and in connection with Article 13 of the Convention. The remainder of the applications, including the complaints under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 12

to the Convention relating to the conduct of the proceedings concerning the Court Register, was declared inadmissible at the earlier stage of the proceedings before the Court. The latter complaints cannot therefore form part of the present examination of the case. However, it remains for the Court to address the complaints relating to the Bank of Slovenia's impugned measures and the alleged lack of an effective legal avenue to challenge them.

### III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

68. The applicants complained about the lack of an effective procedure to challenge the Bank of Slovenia's extraordinary measures cancelling their shares or bonds. They were of the opinion that the extraordinary measures were unjustified. The applicants in cases nos. 49969/14 (Mr Pintar) 20530/16 (Mr Kotnik and Mr Peterlin) and 4713/17 (Mr Jukič) explicitly complained also about the extraordinary measures themselves being in breach of Article 1 of Protocol No. 1. Some of the applicants also raised Article 13 of the Convention in connection with Article 1 of Protocol No. 1.

69. Being the 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, § 126, 20 March 2018), the Court considers that the applicants' complaints should be examined from the standpoint of Article 1 of Protocol No. 1 to the Convention. This provision 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. Abuse of the right to petition

70. The Government argued that the applicants Ms Logar, Mr Jesenko and Ms Jesenko had abused their right to individual application. Ms Logar had failed to mention in her application form that she had filed an action for damages pursuant to section 350a of the Banking Act (see paragraph 31 above) which would have placed her application in a different light. As regards Mr Jesenko and Ms Jesenko, the Government argued that they had submitted a copy of one of their actions lodged under section 350a of the

Banking Act but that no such action had been registered at the Ljubljana District Court according to the information received from that court.

71. Ms Logar confirmed in her observations that she had lodged an action for damages against the Bank of Slovenia and the NLB which was pending before the Ljubljana District Court. She also argued that in any event she was not able to challenge the Bank of Slovenia's decision of 17 December 2013 as such. In their submissions to the Court Mr Jesenko and Ms Jesenko confirmed that they had lodged legal actions against the Bank of Slovenia and the NLB and submitted copies of the Ljubljana District Court's decisions by which jurisdiction had been relinquished to the Maribor District Court in their cases (see paragraph 37 above).

72. The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted, either where they were known from the outset or where new significant developments occurred during the procedure (see *Mitrović v. Serbia*, no. 52142/12, § 33, 21 March 2017 and the case-law cited there). However, not every omission of information will amount to abuse; the information in question must concern the very core of the case (ibid. §§ 33 and 34; and *Bestry v. Poland*, no. 57675/10, § 44, 3 November 2015).

73. Turning to the present case, the Court notes that Ms Logar did not submit with her application form a copy of the action she had lodged with the Ljubljana District Court (see paragraph 31 above). However, she essentially complained about not being able to effectively challenge the Bank of Slovenia's decision and about the lack of legislation which would have enabled her to successfully seek compensation. At the time she lodged the application the civil proceedings in question were suspended pending the implementation of the 2016 Decision, which remains the case also today. It cannot therefore be concluded that the information in question concerned the very core of the Ms Logar's complaints under the Convention. Furthermore, the Court does not have sufficient elements in its possession to establish with certainty Ms Logar's intention to mislead it (see, *mutatis mutandis*, *Alpeyeva and Dzhhalagoniya v. Russia*, nos. 7549/09 and 33330/11, § 100, 12 June 2018). It is noted in this connection that Ms Logar subsequently - in her observations - confirmed that she had indeed lodged the action in question. As regards Mr Jesenko and Ms Jesenko, the Court notes that it transpires from the domestic courts' decisions of 6 January 2020 (see paragraph 37 above) that these applicants had indeed lodged actions against the NLB and the Bank of Slovenia under section 350a of the Banking Act. The Court therefore does not find any grounds to conclude that they submitted false information.

74. The Court, accordingly, dismisses the Government's objection regarding the abuse of the right to individual application.

2. *Exhaustion of domestic remedies and compliance with the six-month time-limit*

75. The Government argued that it remained open to the applicants to lodge a claim under section 350a of the Banking Act and their applications were therefore either premature or inadmissible due to non-exhaustion of domestic remedies. The Constitutional Court confirmed that this remedy needed to be exhausted in its decision of 16 December 2016 rejecting complaints lodged by Mr Jukič, Mr Jesenko and Ms Jesenko (see paragraphs 28 and 35 above). The Government pointed out that further to the 2016 Decision any proceedings instituted under section 350a of the Banking Act were suspended pending the adoption of the new law. They furthermore argued that if the applicants considered that the remedy under section 350a of the Banking Act was not effective they should have lodged their applications within six months from the extraordinary measure, which, however, had been done only by Mr Pintar.

76. The Government further maintained that an action before the Administrative Court and a complaint against the decision concerning the changes made in the Court Register were not appropriate remedies and should therefore not be taken into account when assessing the compliance with the six-month time-limit. As regards the former it was confirmed by the Constitutional Court in its decision of 22 June 2017 that the former holders should have used compensation proceedings, not the proceedings before the Administrative Court (see paragraph 63 above). Mr Jukič, Mr Jesenko and Ms Jesenko in any event had lodged their applications after six months from the final decisions in the proceedings before the Administrative Court (see paragraphs 27 and 34 above).

77. As regards Mr Jesenko and Ms Jesenko's second constitutional complaint (see paragraph 36 above) the Government argued that it should not be taken into account when assessing the compliance with the six-month time-limit because it had been merely a repeated complaint rejected for the same reasons as the first one (see paragraph 75 above).

78. The applicants either disputed the Government's arguments or provided no comments.

79. The Court notes that the continuous lack of effective remedy to obtain a determination of whether the shares or subordinate bonds had been justifiably cancelled, and, if appropriate, to seek compensation is at the heart of the applicants' complaints (see paragraphs 68 and 83 above). Considering that the above objections are closely linked to this issue, the Court finds it appropriate to join them to the examination of the merits of the complaints.

### 3. *Conclusion*

80. Since these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, they must be declared admissible.

## **B. Merits**

### 1. *The parties' submissions*

#### (a) **The applicants**

81. The applicants disputed that their shares or bonds were without any value. Some of them specifically pointed out that the appraised value of the eligible liabilities could not be taken as the correct assessment as they had no means of challenging it. Mr Jesenko and Ms Jesenko argued that even bonds of an insolvent company had economic value and constituted possessions. Ms Logar argued that the instant case could not be compared to cases where the assessment of the value of the assets had been examined by the courts.

82. Most applicants argued that the impugned measures were unjustified and that they as well as other former holders had never been informed of or had access to the documents concerning the financial assessments underpinning the extraordinary measures. Mr Jesenko and Ms Jesenko were critical of the Government's argument that the owners had had enough time to provide sufficient capital, observing that the State was the major shareholder in the NLB. In their view, the State should have been responsible for any losses incurred by the applicants because of its double responsibility: as a major shareholder and as a regulator. Furthermore, Ms Logar argued that the cancellation of eligible liabilities was not a mandatory requirement for the approval of State aid under EU law. Ms Logar, Mr Kotnik and Mr Peterlin referred to the criminal investigations carried out in relation to the extraordinary measures taken against the NLB.

83. The applicants' main arguments point to the continuous lack of an effective legal avenue to challenge the cancellation of their shares or bonds and to seek compensation. Some of them raised specific arguments concerning the type of remedy that would be appropriate. For instance, Mr Jukič alleged that compensation alone was insufficient because the former holders should have had a possibility to challenge the Bank of Slovenia's decisions, presumably before the Administrative Court. Ms Logar likewise argued that she should have been able to challenge the legality of the Bank of Slovenia's extraordinary measures.

84. Some of the applicants expressed dissatisfaction about the 2020 Remedy Act. In this connection, Mr Kotnik and Mr Peterlin referred to the limits imposed on the amount of compensation and the problems with the Act's implementation. They also raised concerns about the domestic courts'



alleged lack of power to verify the correctness of the valuation of banks' assets. Together with Mr Jesenko and Ms Jesenko they argued that the 2020 Remedy Act did not provide for an effective remedy, referring to the concerns raised by the Supreme Court (see paragraph 49 above).

85. Finally, Mr Jesenko and Ms Jesenko argued that the unlawful situation was ongoing, and they continued to be unable to claim compensation for allegedly unjustified cancellation of their bonds due to the lack of implementation of the 2016 Decision.

**(b) The Government**

86. In the first place, the Government, referring, by contrast, to *Olczak v. Poland* (dec.), no. 30417/96, § 60, ECHR 2002-X (extracts) and *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 91, ECHR 2002-VII, argued that shares without economic value could not be considered as possessions within the meaning of Article 1 of Protocol No. 1. In the Government's opinion the same applied to other financial instruments, including the bonds that were owned by some of the applicants. The Government observed that in the absence of extraordinary measures the banks would have undergone bankruptcy proceedings. As determined by the consulting firms, the losses in the case of bankruptcy would be such that the eligible liabilities would not be repaid, even in part. The applicants could thus not have a legitimate expectation to maintain their investment and the impugned measures could not be said to interfere with their possessions.

87. In the second place, the Government argued that the banks in which the applicants held shares or bonds as well as certain other banks had been insolvent, which had required urgent measures to be taken to secure the stability of the banking system in Slovenia and the EU. These measures had been justified in the public interest and the applicants had not been made to carry an excessive burden for the following reasons. Firstly, the banks and their owners had had enough time to ensure sufficient capital, but they had failed to do so. Secondly, the loss suffered by the applicants was the same as it would have been in the case of bankruptcy, which would have occurred had State aid not been granted. In this connection the Government maintained that the leading international consulting firms had carried out the review of the banks in line with the proven methods and practices used also in some other EU member States and within the framework of the Single Supervisory Mechanism. Thirdly, State aid would not have been in compliance with EU law had the shareholders and holders of the bonds not contributed to overcome the capital shortfall. This also meant complying with the principles set out in the Banking Communication.

88. As regards the references made by some of the applicants to the criminal proceedings instituted against the members of the governing body of the Bank of Slovenia, the Government argued that the allegations remained unproved at this stage.

89. In the third place, the Government argued that those whose rights had been affected by the extraordinary measures in question could lodge a claim under section 350a of the Banking Act, which would allow for an assessment of whether the decisions applying the extraordinary measures were correct. In the Government's view, the action for compensation was an appropriate remedy for safeguarding what should be considered a typically pecuniary interest. Under domestic law, the legislator continues to be under the obligation to provide for an effective compensatory remedy in line with the 2016 Decision, which implementation has been delayed due to objective reasons.

## 2. *The Court's assessment*

### (a) **Existence of "possessions" and interference with the right to property**

90. The Court reiterates that the concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 to the Convention has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law. 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 *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I). In certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law (*ibid.*, § 65).

91. The Government raised the question of whether the applicants' shares and bonds could be considered a "possession" within the meaning of Article 1 of Protocol No. 1 since, in their view, they had no economic value. The Court notes in this connection that it has previously held that the shares of a company which was placed in compulsory administration for being insolvent and unable to meet its liabilities undoubtedly had an economic value and constituted possessions within the meaning of Article 1 of Protocol No. 1 (see *Vefa Holding Sh.p.k. and Alimuçaj v. Albania* (dec.), no. 24096/05, § 93, 14 June 2011). In *Lekić v. Slovenia* ([GC], no. 36480/07, 11 December 2018) the Court accepted that the mere possession of a share created interests of a proprietary nature and that the lack of, *inter alia*, assets did not take the applicant's share out of the ambit of Article 1 of Protocol No. 1 (*ibid.*, § 71). The Court accordingly finds that Article 1 of Protocol No. 1 applied to the cancellation of the applicants' shares even on the assumption that the Government's objection concerning their questionable economic value is valid.

92. As regards the bonds, the Court observes that the bondholders in principle had a “legitimate expectation” to have their claims met in accordance with the contractual clauses (see, *mutatis mutandis*, *Mamatas and Others v. Greece*, nos. 63066/14 and 2 others, § 91, 21 July 2016). The Court takes note of the Government’s suggestion that due to their financial situation the banks would not be able to honour their obligations towards the bondholders to any degree. However, in the absence of any domestic judicial ruling on that point and having regard to the limited information in its possession, the Court is not in a position to conclude that the bonds in question had no economic value. It points out that the Constitutional Court left this question open, referring those affected by the extraordinary measures to pursue their claims in the relevant proceedings (see paragraph 42 above). However, any such proceedings continue to be suspended to date.

93. The Court therefore concludes that Article 1 of Protocol No. 1 is applicable to the present case and that the cancellation of the applicants’ shares or bonds amounted to an interference with their right guaranteed by this provision.

**(b) Compliance with Article 1 of Protocol No. 1 to the Convention**

94. As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated in the second paragraph, recognises that the States are entitled, among other things, to control the use of property in accordance with the general interest. The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 98, ECHR 2014).

95. As regards the issue of which of the three rules contained in Article 1 of Protocol No. 1 applies in the instant case, the Court observes that the impugned decisions of the Bank of Slovenia were clearly taken with the aim of controlling the banking sector in the country. It is true that they might have involved a deprivation of property, but in the circumstances, the deprivation formed a constituent element of a scheme for controlling the banking industry. The measure in question therefore constituted control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 76, 19 November 2020). It will be assessed in the light of the general principle

of the peaceful enjoyment of property, with which it is connected (see paragraph 94 above).

96. The Court notes that the Bank of Slovenia's decisions of 17 December 2013 and 16 December of 2014 had a basis in domestic law, in particular the relevant provisions of the Banking Act (see paragraphs 55 to 58 above), which were found by the Constitutional Court to be compatible with the Constitution (see paragraphs 38, 41 and 42 above). The Court also considers that the legislation in question met the qualitative requirements of accessibility and foreseeability.

97. Having said that, the Court reiterates that the requirement of lawfulness, within the meaning of the Convention, presupposes also that domestic law must provide a measure of legal protection against arbitrary interferences by the public authorities with the rights safeguarded by the Convention. As the Court has emphasised on previous occasions, any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 134, ECHR 2005-XII (extracts), and *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV). In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable procedures (*ibid.*).

98. In the present case, the Court notes that in its 2016 Decision the Constitutional Court assessed the legal provisions on which the extraordinary measures were based and found that they were not as such incompatible with the right to private property, because they were conditioned on the principle that the former holders did not sustain a loss greater than the loss they would have sustained in the absence of the impugned measures (so-called "no creditor worse-off" principle). However, the Constitutional Court did not assess whether the impugned measures were in fact justified in the circumstances pertaining at the relevant time with respect to each of the banks in questions (see paragraph 42 above).

99. According to the Government the only way for the applicants to challenge the decisions interfering with their possessions was to lodge a compensation claim against the Bank of Slovenia under section 350a of the Banking Act (see paragraphs 59, 75 - 77 and 89 above). However, as found by the Constitutional Court, the former holders were not in a position to effectively dispute the grounds on which the Bank of Slovenia's decisions were based as they lacked access to crucial information, such as the reports of the AQR and the stress tests (see paragraph 9, 13, 15 and 43 above). The Constitutional Court found several further shortcomings relating to the imbalance in the position of the former holders and the Bank of Slovenia in the proceedings under the then applicable legislation and

concluded that the latter did not provide the former holders with an effective judicial protection. It ruled that a specific legislation would need to be adopted in order to provide an effective remedy (see paragraphs 43 and 44 above).

100. The Court sees no reasons to depart from the Constitutional Court's finding that section 350a of the Banking Act without further appropriate regulation of the proceedings did not provide the applicants with a legal avenue to effectively challenge the measures in question. It further observes that though the Constitutional Court gave the legislator a deadline of six months to bring about the appropriate legislation (see paragraph 44 above), the law implementing the 2016 Decision - namely the 2020 Remedy Act - was adopted only in November 2019. That is more than three years from the 2016 Decision. It is true that this law provides detailed provisions regarding the compensation proceedings concerning the impugned measures, including the former holders' right of access to classified information relevant to their claims, and places on the Bank of Slovenia the burden of proving that the impugned measures were in fact necessary and that they respected the "no creditor worse-off" principle (see paragraphs 47, 48 and 56 above). However, the 2020 Remedy Act, while representing an important development, has so far had no real consequences for the former holders, including the applicants. This is so because further to the petition lodged by the Bank of Slovenia, the Constitutional Court suspended its implementation in March 2020 (see paragraph 51 above).

101. The Court is mindful of the fact that the provision of an effective remedy has in the present case been bound up with complex questions regarding the respect for various principles under EU law. It also notes that the CJEU had provided a preliminary ruling within the proceedings leading to the 2016 Decision (see paragraphs 39 and 40 above) and was again requested to do so in the proceedings concerning the review of the constitutionality of the 2020 Remedy Act (see paragraph 52 above). However, the Court cannot lose sight of the fact that the respondent State remained responsible for securing the former holders' rights under Article 1 of Protocol No. 1. That obligation, including its procedural aspect, was triggered when the Bank of Slovenia's extraordinary measures were being envisaged, and yet these measures were not accompanied by sufficient procedural guarantees against arbitrariness. The former holders, who lost their shares or bonds in 2013 or 2014, have so far had no effective access to a meaningful legal avenue to dispute the grounds for such measures and claim compensation, let alone obtain a final determination of their claims.

102. Having regard to the above considerations, Mr Pintar, Mr Kotnik, Mr Peterlin and Mr Jukič cannot be reproached for not lodging the compensatory remedy – a possibility which remains open to them in view of the 2016 Decision and the provisions of the 2020 Remedy Act. Indeed, access to such a remedy has thus far been theoretical at most.

103. As regards the Government's objection concerning the applicants' compliance with the six-month time-limit, the Court notes that this question is closely interrelated to that of exhaustion of domestic remedies (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 130, 19 December 2017), which is why they were both joined to the merits in the present case (see paragraph 79 above). It reiterates that as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or after the date of knowledge of that act or its effect on or prejudice toward the applicant. At the same time, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate, for the purposes of Article 35 § 1, to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, § 101, 7 November 2017, and *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 157, ECHR 2009).

104. Turning to the facts before it the Court notes that Mr Pintar seems not to have been notified about the cancellation of his shares by the bank in question (see paragraph 17 above) but learned of this via the media (see paragraph 21 above). Having regard to the date of his correspondence with the Bank of Slovenia (*ibid.*), his argument that he had no effective remedy at his disposal and the Court's finding as regards the lack of effectiveness of the compensatory remedy (see paragraphs 100-102 above), the Court sees no reason to disagree with the Government who acknowledged that his application had been lodged within the six-month time-limit (see paragraph 75 above).

105. As regards the remaining applicants, the Government argued that apart from the claim under section 350a of the Banking Act, no other remedy could have potentially offered any redress to the former holders (see paragraphs 75, 76 and 89 above). The Court must therefore ascertain whether the applicants by introducing their applications with the Court within six months from when they exhausted other remedies, which proved to be ineffective, complied with the requirements of Article 35 § 1.

106. Mr Kotnik, Mr Peterlin and Mr Jukič turned to the Court within six months of the Constitutional Court's decisions in their respective cases (see paragraphs 25 and 28 above). Having regard to the particular nature of the measures taken against the applicants, the Court does not find it established

that at the material time they could have foreseen that the remedies they used, namely the appeal concerning the changes made in the Court Register (see paragraph 24 above) and the direct constitutional complaint (see paragraph 28 above), would be to no avail. It further notes that the proceedings the respective applicants pursued led to the Constitutional Court's 2016 Decision in which Mr Jukič and Mr Kotnik were among the petitioners (see paragraphs 25, 28, and 38 above). Ms Logar likewise lodged her application within six months from when she learned of the Constitutional Court's decision of 4 September 2017 (see paragraph 30 above). The latter represented a final decision in the proceedings she had initiated in 2014 under section 4 of the Administrative Dispute Act (see paragraph 30 above). The Court notes in this connection that Ms Logar was far from being the only former holder who considered the remedy under section 4 of the Administrative Dispute Act to have some prospect of success (see paragraphs 27, 62 and 63 above). It is true that the Constitutional Court's decision issued in other similar cases, to which the Government referred (see paragraph 76 above), explicitly endorsed the Supreme Court's finding to the effect that section 4 of the Administrative Dispute Act was inapplicable in the cases brought by the former holders. However, this decision of the Constitutional Court was issued more than three years after Ms Logar had initiated her proceedings and while her constitutional complaint was pending before the Constitutional Court (see paragraphs 30 and 63 above).

107. Having regard to the lack of an effective alternative (see paragraphs 100-102 above), the Court considers that none of the sets of proceedings instituted by Mr Kotnik, Mr Peterlin, Mr Jukič and Ms Logar can be regarded as inappropriate or misconceived avenues which could at the material time be considered as bound to fail from the outset and hence should not be taken into account for the calculation of the six-month period (see, for example, *Lopes de Sousa Fernandes*, cited above, § 138; and by contrast, *Musayeva and Others v. Russia* (dec.), no. 74239/01, 1 June 2006; and *Rezgui v. France* (dec.), no. 49859/99, ECHR 2000-XI). Moreover, the Court cannot ignore the fact that the confidential nature of the Bank of Slovenia's decisions and the documents on which they were based prevented the applicants from understanding the circumstances in which the interference with their property rights had taken place and the grounds on which it was based. It cannot therefore be regarded as unreasonable for the applicants to wait until they received court decisions which they could legitimately considered essential for an application to the Court before introducing such an application (see, *mutatis mutandis*, *Zubkov and Others*, cited above, § 108).

108. The remaining applicants - Mr Jesenko and Ms Jesenko - lodged their applications within the six months from the Constitutional Court's decision of 1 December 2017. The Court notes that Mr Jesenko and

Ms Jesenko raised before the Constitutional Court precisely the issues they subsequently raised before the Court, namely the lack of implementation of the 2016 Decision and the resultant inability to effectively challenge the Bank of Slovenia's extraordinary measure (see paragraph 36 above). Their complaint was, however, rejected for non-exhaustion of domestic remedies without any indication being given by the Constitutional Court as to which remedy the applicants had failed to exhaust. The Court notes that at the time they lodged their constitutional complaint, their claim for compensation, which according to the Government was the only potentially effective remedy in the situation at stake (see paragraphs 75-77 above), continued to be suspended pending the implementation of the Constitutional Court's decision (see paragraphs 44 and 75 above). The deadline for implementation of the 2016 Decision given to the legislator by the Constitutional Court had expired on 15 May 2017 (see paragraph 51 above) and Mr Jesenko and Ms Jesenko lodged their complaint with the Constitutional Court several months later (see paragraph 36 above). As the Government asserted, the legislator continued to be bound by the obligation established in the 2016 Decision (see paragraph 89 above) and Mr Jesenko and Ms Jesenko could not be therefore reproached for waiting for the situation to be resolved at the domestic level and for introducing their application once it was apparent that there was no realistic prospect of a favourable outcome or progress for their complaints domestically (see *Sokolov and Others v. Serbia* (dec.), no. 30859/10 and 6 other applications, 14 January 2014).

109. In view of the foregoing, the Court finds that neither the compensatory remedy nor any of the other remedies which were tried by some applicants have provided for a reasonable opportunity to challenge the Bank of Slovenia's impugned decisions and/or seek compensation. Given this finding, the Court will not address specific elements of the remedy provided by 2020 Remedy Act (see paragraphs 83 and 84 above), even more so since the review of this Act is currently pending before the Constitutional Court.

110. In the light of the foregoing, the Court concludes that the interference with the applicants' possessions was not accompanied by sufficient procedural guarantees against arbitrariness and was thus not lawful within the meaning of Article 1 of Protocol No. 1. It is thus neither necessary nor, due to the lack of relevant information, possible for the Court to ascertain whether the other requirements of that provision have been complied with. The Court accordingly refrains from expressing any opinion as to whether the extraordinary measures as a result of which the applicants' shares and bonds were cancelled were in the general interest and, if so, whether a fair balance has been struck between the demands of the general interest of the community, and the protection of the applicants' right to peaceful enjoyment of their possessions (see, *mutatis mutandis*, *Project-Trade d.o.o.*, cited above, § 87).



111. Therefore the Court dismisses the Government's preliminary objections that were joined to the merits (see paragraph 79 above) and finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

#### IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

112. The relevant parts of Article 46 of the Convention read as follows:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution ...”

113. The Court reiterates that Article 46 of the Convention, as interpreted in the light of Article 1, imposes on the respondent States a legal obligation to apply, under the supervision of the Committee of Ministers, appropriate general and/or individual measures to secure the applicants' rights which the Court found to be violated. Such measures must also be taken in respect of other persons in the applicants' position, notably by solving the problems that have led to the Court's findings (see *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X, and *Ališić and Others*, cited above, § 96).

114. The violation which the Court has found in this case affects many people and entities, namely thousands of former holders of the cancelled shares and bonds (see paragraphs 49 and 50 above). It is therefore essential that they have access to a legal avenue enabling them to effectively challenge the interference with their right of property. Such access must be provided in practice as soon as this becomes possible. Having regard to the time that has elapsed since the impugned measures were taken it is particularly important that the appropriate arrangements are made in order to ensure that the proceedings, once initiated or resumed, are conducted without any further unnecessary delays.

#### V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

115. 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**

116. As regards the pecuniary damage the applicants formulated their claims as follows:

- Mr Pintar claimed 40,500 euros (EUR) which allegedly corresponded to the purchase price of all his cancelled shares.

- Mr Kotnik claimed EUR 352,700 with respect to the value of the cancelled bonds and EUR 107,104 with respect to unpaid contractual interest. Mr Peterlin claimed EUR 987 with respect to the value of the cancelled shares.

- Mr Jukič claimed EUR 26,044 allegedly corresponding to the last known book value of the cancelled shares together with the default interest from 18 December 2013 on that amount.

- Ms Logar claimed EUR 117,214 with respect to the cancelled shares together with the default interest from 18 December 2013 on that amount.

- Mr Jesenko and Ms Jesenko claimed EUR 85,000 and EUR 152,900 allegedly corresponding to the value of their bonds, respectively, and EUR 21,250 and EUR 38,225 on account of unpaid contractual interest, respectively.

117. The Government argued that the applicants had failed to substantiate their claims for pecuniary damage, as the shares or bonds in question were devoid of economic value. Moreover, some of the applicants had not provided proper evidence of the purchase price as regards their shares or bonds.

118. While the applicants' shares or bonds were indeed cancelled as a result of the Bank of Slovenia's impugned decisions, the Court cannot speculate as to what the eventual result might have been if the applicants had been able to effectively challenge these decisions in proceedings that complied with the requirements of the State's procedural obligations under Article 1 of Protocol No. 1 thereto (see, *mutatis mutandis*, *Project-Trade*, cited above, § 110, and *Capital Bank AD*, cited above, § 144). In these circumstances and in view of the State's obligation to enable the applicants to effectively challenge the measures in question and seek redress, (see paragraphs 110 and 114 above, and *Ališić and Others*, cited above, § 103), the Court makes no award under this head.

119. As regards non-pecuniary damage, the applicants made the following claims:

- Mr Pintar claimed EUR 150,000.
- Mr Kotnik and Mr Peterlin claimed EUR 5,000 each.
- Mr Jukič claimed EUR 3,000.
- Mr Jesenko and Ms Jesenko claimed EUR 8,000 each.
- Ms Logar made no claim under this head.

120. The Government argued that the claims were unjustified.

121. The Court notes that Ms Logar submitted no claim as regards non-pecuniary damage and therefore no award could be made with respect to her under this head. It further accepts that the remaining applicants' prolonged inability to claim damages for the cancellation of their shares or bonds and the uncertainties regarding the remedy which would enable them

to do so must have caused them some distress and frustration. Therefore, making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards Mr Pintar, Mr Kotnik, Mr Jukič, Mr Jesenko and Ms Jesenko each EUR 3,000 and Mr Peterlin EUR 1,000 under this head.

### **B. Costs and expenses**

122. The applicants made the following claims for the costs and expenses incurred before the Court

- Mr Pintar claimed EUR 915.
- Mr Kotnik and Mr Peterlin claimed EUR 1,868 jointly.
- Ms Logar claimed EUR 2,964.
- Mr Jesenko and Ms Jesenko claimed EUR 1,200 jointly.
- Mr Jukič did not make any claim under this head.

123. Referring to the domestic Attorneys' Tariff, the Government argued that the claims for costs and expenses were excessive.

124. 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, the Court notes that Mr Jukič made no claim and therefore it makes no award with respect to him. As regards the remaining applicants, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sums claimed by the applicants in full, plus any tax that may be chargeable to the applicants.

### **C. Default interest**

125. 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. *Decides* to join the applications;
2. *Decides* to join to the merits the Government's preliminary objections concerning non-exhaustion of domestic remedies and compliance with the six-month time-limit and dismisses them;
3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicants, 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 3,000 (three thousand euros) to each of the following applicants: Mr Pintar (application no. 49969/14), Mr Kotnik (application no. 20530/16), Mr Jukič (application no. 4713/17), Mr Jesenko (application no. 16311/18) and Ms Jesenko (application no. 16311/18), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 1,000 (one thousand euros) to Mr Peterlin (application no. 20530/16), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) the amounts indicated in the appended table, plus any tax that may be chargeable to the applicants, 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;
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 14 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature\_p\_2}

Stanley Naismith  
Registrar

Jon Fridrik Kjølbro  
President

## APPENDIX

List of cases:

| No. | Application no.                         | Applicant<br>Date of birth<br>Place of residence  | Representative   | Amount awarded for costs and expenses per application |
|-----|---|---|--|---|
| 1.  | 49969/14<br><br>Lodged on<br>07/07/2014 | <b>Jože PINTAR</b><br>03/01/1967<br>Škofja Loka   | Odvetniška družba<br>SIBINČIČ<br>KRIŽANEC<br>Ljubljana | EUR 915   |
| 2.  | 20530/16<br><br>Lodged on<br>08/04/2016 | <b>Tadej KOTNIK</b><br>26/02/1972<br>Ljubljana<br><br><b>Jožko PETERLIN</b><br>06/06/1966<br>Portorož | Aleš KALUŽA<br>Ljubljana                               | EUR 1,868   |
| 3.  | 4713/17<br><br>Lodged on<br>10/01/2017  | <b>Luka JUKIČ</b><br>13/07/1974<br>Črnomelj   | Self-representation                                    | /   |
| 4.  | 13244/18<br><br>Lodged on<br>12/03/2018 | <b>Milena LOGAR</b><br>07/10/1953<br>Trebnje  | Miha KUNIČ<br>Ljubljana                                | EUR 2,964   |

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| No. | Application no.                         | Applicant<br>Date of birth<br>Place of residence  | Representative           | Amount awarded for costs and expenses per application |
|-----|---|---|--------------------------|---|
| 5.  | 16311/18<br><br>Lodged on<br>04/04/2018 | <b>Andrej JESENKO</b><br>13/01/1953<br>Ljubljana<br><br><b>Irena JESENKO</b><br>18/12/1956<br>Ljubljana | Tjaša VALIČ<br>Ljubljana | EUR 1,200   |