



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

FIFTH SECTION

**CASE OF BENET PRAHA, SPOL. S R.O. v. THE CZECH
REPUBLIC**

(Applications nos. 33908/04, 7937/05, 25249/05, 29402/05 and 33571/06)

JUDGMENT

STRASBOURG

24 February 2011

FINAL

24/05/2011

*This judgment has become final under Article 44 § 2 of the Convention. It
may be subject to editorial revision.*

In the case of BENet Praha, spol. s r.o. v. the Czech Republic,

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

Dean Spielmann, *President*,

Elisabet Fura,

Karel Jungwiert,

Boštjan M. Zupančič,

Ann Power,

Ganna Yudkivska,

Angelika Nußberger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 February 2011,

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

PROCEDURE

1. The case originated in five applications (nos. 33908/04, 7937/05, 25249/05, 29402/05 and 33571/06) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by BENet Praha, spol. s r.o. (“the applicant company”), on 17 September 2004, 1 March 2005, 11 July 2005, 11 August 2005 and 15 August 2006, respectively.

2. The applicant company was represented by Mr P. Klimeš, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V. A. Schorm, of the Ministry of Justice.

3. The applicant company alleged, in particular, violations of its right to property under Article 1 of Protocol No. 1 to the Convention and to a fair trial under Article 6 of the Convention.

4. On 10 September 2007 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as its admissibility (Article 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, BENet Praha, spol. s r.o., is a limited liability company incorporated under Czech law with its registered seat in Prague.

6. Between 1994 and 1997 the applicant company dealt in ferrous alloys.

7. In April 2001 customs authorities initiated a set of administrative proceedings against the applicant company in order to check the accuracy of the customs debt (concerning customs plus VAT) the company had paid during the aforementioned period of time.

8. Simultaneously, criminal proceedings were instituted against a person, who was a manager (*jednatel*) of the applicant company during that period of time, on suspicion of tax evasion while he was managing the applicant company. According to the Government the damage caused to the State exceeded 200,000,000 Czech korunas (CZK; 7,770,000 euros (EUR)).

9. Within the framework of the criminal proceedings a search of the applicant company's premises was carried out on 24 April 2001. Cash in several currencies in the total amount of approximately CZK 20,000,000 (EUR 770,000) and several documents such as financial files, books of accounts and business documents were seized. According to the applicant company these documents and most of the cash have not yet been returned to it.

10. On 25 and 27 April 2001 the prosecuting authorities seized all of the applicant company's assets deposited on its five bank accounts on the suspicion that they constituted profits from the criminal activities of the former manager. The applicant company's bank accounts contained at that time funds equivalent to CZK 98,458,516 (EUR 3,786,866). The seizure orders, which were notified to the applicant company on 8 October 2001, did not specify what assets had been seized, nor to what amount. This was remedied on 28 November 2001 by the Prague High Prosecutor (*vrchní státní zástupce*) who amended the original decisions by writing in the sums to be seized. While doing so, he froze all assets deposited on the applicant company's accounts on that day, which included payments which had come in after 25 April 2001 and 27 April 2001 respectively. The applicant company's assets amounting to CZK 101,909,105 (EUR 3,919,580) were thus seized.

11. Simultaneously with the criminal investigation, the customs and tax administrative proceedings resulted in the delivery of numerous payment orders assessing duty payable by the applicant company. With all of its assets frozen, the applicant company requested the prosecuting authorities on a number of occasions to lift the seizure in order to discharge these duties, but only few of these requests were granted. Its appeals did not suspend the effect of those orders payable within thirty days of delivery. Consequently, the company had to take out a loan, among other measures adopted to overcome this situation, and avoid insolvency, as it was obliged to pay under these orders a sum totalling CZK 55,000,000 (EUR 2,115,385).

12. Between 2004 and 2005, upon the applicant company's appeals, all of the payment orders and other decisions adopted by tax and customs authorities imposing the duties on the applicant company were quashed as

unlawful either by superior authorities or administrative courts. The tax proceedings were discontinued and sums paid by the applicant company upon the orders reimbursed accordingly.

13. The former manager has been prosecuted for acts committed in his capacity as the manager of the applicant company and in the context of its business activities. On 4 June 2009 the former manager was acquitted by Prague Municipal Court (*městský soud*) from some of the charges, and on 30 April 2010 Prague High Court (*vrchní soud*) upheld that judgment. The investigation concerning other charges is apparently still pending. During the investigation the prosecuting authorities, *inter alia*, collected over 100,000 pages of documentary evidence, interviewed several hundred witnesses, including homeless persons with unknown whereabouts whose names the accused had allegedly used in sham transactions to evade customs and other duties, and requested legal assistance from the competent authorities of sixteen countries.

Application no. 33908/04

14. In December 2001 the Frýdek-Místek Customs Office (*celní úřad*) ordered the applicant company to pay customs duties in the amount of CZK 280,672 (EUR 9,955).

15. In May and June 2002 the Prague 4 Customs Office ordered the applicant company to pay customs duties of CZK 3,361,940 (EUR 119,242).

16. On 6 June 2002 the High Prosecutor granted the applicant company's request for the seizure to be lifted for the sum of CZK 280,672.

17. On 5, 17 and 21 June 2002 respectively, the applicant company requested the High Prosecutor to lift the seizure in order to enable it to pay the customs duties ordered in May and June 2002.

18. On 11 July 2002 the High Prosecutor dismissed its requests, finding that the orders had not yet become final. According to the prosecutor, it was premature to lift the seizure under these circumstances, as such a step might have been contrary to the interests pursued by the prosecuting authorities.

19. The applicant company appealed to the High Court, which dismissed its appeal on 27 August 2002.

20. On 18 November 2002 the applicant company lodged a constitutional appeal (*ústavní stížnost*) maintaining that the customs authorities, together with the prosecuting authorities, had misused the law to its detriment and consequently had violated Article 4 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*) (hereinafter "the Charter").

21. In December 2002 the Constitutional Court (*Ústavní soud*) invited the respondent parties to the proceedings, the High Court and the High Prosecutor, to submit written observations on the applicant's constitutional appeal pursuant to section 42(4) of the Constitutional Court Act.

22. The High Prosecutor did not submit any observations. The High Court submitted written observations, referring to the reasoning of its impugned decision. It expressed the view that the applicant's constitutional appeal should be dismissed. This submission was not communicated to the applicant company.

23. The Constitutional Court also requested the Prague High State Prosecutor's Office to send it the criminal file in the context of which the seizure had been carried out. The Constitutional Court made copies of the relevant documents, which were included in the case file of the Constitutional Court. Subsequently the criminal file was returned to the Prosecutor's Office on 29 May 2003.

24. On 22 May 2003 the applicant company's acting manager consulted the case file at the Constitutional Court. The next day he sent a letter to the court with the following text:

“On 22 May 2003, when consulting the case file, I found that it should also include nine files [covering the criminal proceedings] submitted by the Prague High Prosecutor ... [A]bout nine files annexed to the reply of the Prague High Prosecutor submitted upon the Constitutional Court's invitation of 5 December 2002 were dispatched on 8 January 2003 ... and delivered to the Constitutional Court on 9 January 2003.

At the time of my study of the case file these nine files had been sent somewhere for consultation. ... I kindly ask you to set another date on which consultation of the case file including the aforesaid documentary evidence, will be possible.”

25. In a letter of 29 May 2003 from the Constitutional Court judge, the applicant company's acting manager was told to make a direct approach to the High Prosecutor's Office to which the file in question had been returned. The same letter also informed the representative of the applicant company that he was free to inspect the Constitutional Court's file after arranging a visit to do this with the court's registry.

26. In a letter of 5 June 2003 the applicant company's acting manager asked the Constitutional Court judge to remedy the situation and ensure the applicant company had access to those criminal files. The latter replied, on 1 July 2003, that pursuant to section 30(1) of the Constitutional Court Act, a party to the proceedings must be legally represented. He further stated that the criminal case file was not a Constitutional Court file, but subject to the Code of Criminal Procedure, in particular Article 65, which governs access to criminal files.

On 11 March 2004 the Constitutional Court dismissed the applicant company's constitutional appeal (II. ÚS 708/02). It held in particular:

“As it appears from the decision refusing to lift the seizure of the assets, in the High Prosecutor's view, to lift it could jeopardise the purpose of the criminal proceedings. ... [The High Court] shared his opinion ... In its written observations, it found that there was no ground justifying the conclusion that the seizure of the [applicant company's] assets ... was no longer necessary.

In the present case, the Constitutional Court did not consider the conduct of the State authorities a misuse of law to the applicant company's detriment, contrary to the basic requirements of fairness and of Article 4 of the Charter. The mere fact that the applicant company was not successful in its request cannot be in itself considered as violating its right to a fair trial."

27. On 18 March 2004 the Constitutional Court dismissed as manifestly ill-founded another applicant company's constitutional appeal regarding a decision of the High Court to reject another applicant company's request to partially lift the seizure.

Application no. 7937/05

28. In May and June 2002 the Prague II Customs Office ordered the applicant company to pay customs duties in the amount of CZK 16,527,646 (EUR 584,724).

29. On 20 August 2002 the High Prosecutor dismissed the applicant company's request of 23 July 2002 for the seizure to be partially lifted in order to enable it to pay this amount.

30. At the applicant company's request the Customs Office postponed the time-limit for payment of the company's customs duties until 28 February 2003.

31. On 20 September 2002 the applicant company again requested the High Prosecutor to lift the seizure in order to enable the company to pay the customs duties ordered in May and June 2002. Its request was, however, refused by the prosecutor on 23 October 2002. This decision was approved by the High Court on 11 December 2002.

32. On 10 December 2002 and 10 February 2003, the High Prosecutor partly lifted the seizure covering the sum of CZK 16,527,645. The applicant company then discharged its customs debt. However, as it had not done so in time, the Customs Office ordered it to pay a penalty of CZK 232,423 (EUR 8,223).

33. On 10 October 2002 the High Court dismissed the applicant company's appeal against the High Prosecutor's decision of 20 August 2002.

34. On 16 December 2002 the applicant company lodged a constitutional appeal against the High Court's dismissal.

35. At the invitation of the Constitutional Court the High Court submitted written observations, referring to the reasoning of its impugned decision. It expressed the view that the applicant's constitutional appeal should be dismissed. This submission was not communicated to the applicant company.

36. The appeal was dismissed as manifestly ill-founded by the Constitutional Court on 24 August 2004 (I. ÚS 723/02).

Application no. 25249/05

37. On 4 November 2002 the Mladá Boleslav Customs Office ordered the applicant company to pay customs duties in the amount of CZK 14,371,989 (EUR 508,460).

38. On 12 and 29 November 2002 and 3 January 2003 respectively the Kladno Customs Office ordered the applicant company to pay customs duties amounting to CZK 1,219,922 (EUR 43,159).

39. On 12 November 2002 and 29 January 2003 the applicant company requested the High Prosecutor to lift the seizure in order to enable the company to pay its customs duties.

40. On 25 March 2003 the High Prosecutor decided not to grant the company's requests.

41. On 2 July 2003 the High Court dismissed an appeal by the applicant company of 2 April 2003 challenging the High Prosecutor's refusal to lift the seizure.

42. On 13 October 2003 the applicant company lodged a constitutional appeal alleging a violation of Article 4 of the Charter.

43. Upon the invitation of the Constitutional Court the High Court and the High Prosecutor submitted written observations. They expressed the view that the applicant's constitutional appeal should be dismissed. These submissions were not communicated to the applicant company.

44. On 15 December 2004 the Constitutional Court dismissed the applicant company's constitutional appeal as manifestly ill-founded (I. ÚS 538/03).

Application no. 29402/05

45. On 2 June 2003 the High Prosecutor decided not to grant the applicant company's request of 19 May 2003 to lift the seizure.

46. On 20 August 2003 the High Court, upon the applicant company's appeal of 9 June 2003, upheld the prosecutor's refusal.

47. On 11 November 2003 the applicant company introduced a constitutional appeal challenging the aforesaid decisions and alleging, *inter alia*, that its property rights continued to be limited contrary to the national law.

48. At the invitation of the Constitutional Court, the High Court submitted written observations, referring to the reasoning of its impugned decision. It expressed the view that the applicant's constitutional appeal should be dismissed. This submission was not communicated to the applicant company.

49. Its appeal was dismissed as unsubstantiated by the Constitutional Court on 9 February 2005 (IV. ÚS 585/03).

Application no. 33571/06

50. On 25 May 2004 the applicant company requested the High Prosecutor to lift the seizure of its assets, maintaining in particular that it had discharged all its customs duties.

51. On 16 December 2004 the prosecutor dismissed the request, holding that there was a reasonable suspicion that the assets represented profit from the criminal activities of the accused manager.

52. On 23 December 2004 the applicant company appealed to the High Court.

53. On 21 February 2005 the High Court accepted in principle that prolonged seizure of assets could constitute a disproportionate interference with property rights, but did not find such a disproportionality in the applicant company's case and thus rejected its appeal.

54. On 26 July 2005 the applicant company appealed to the Constitutional Court, complaining of excessive length of the seizure of its assets.

55. Upon the invitation of the Constitutional Court, the High Court and the High Prosecutor submitted its written observations. The High Court proposed that the applicant's constitutional appeal be dismissed. The High Prosecutor informed in detail on several aspects of the criminal proceedings. He also addressed the issue of the length of the seizure by stressing the extent and complexity of the investigation and the need for foreign cooperation. He also proposed to dismiss the appeal. These submissions were communicated to the applicant company in September 2005. The applicant company reacted by sending a letter it had received from the Ministry of Finance which contained an assurance that all money held by the customs authorities would be returned to the applicant company. The letter also contained an apology from the Ministry for problems arising in the complex case of the applicant company.

56. On 13 January 2006 the Constitutional Court again requested the High Prosecutor to inform it about the stage the investigation had reached and when it was expected to be finished. On 20 January 2006 the High Prosecutor submitted to the court a one-paragraph reply saying that almost all the sixteen States from whom assistance had been requested had responded and it was expected that they would send the required materials before April 2006. He further informed the court that he expected to conclude the investigation by mid-2006 and that it was highly likely that all the accused persons would be tried before a court. These submissions were not communicated to the applicant company.

57. On 9 February 2006 the Constitutional Court rejected the appeal as manifestly ill-founded (III. ÚS 394/05). It held that the seizure of the assets was still proportionate in view of the complexity of the investigation and in this context it considered important the assurance of the High Prosecutor that the investigation should be finished that year.

Subsequent developments

58. On 30 January 2008 the Constitutional Court found a violation of the right to property of a company, Benet Czech, spol. s r.o., which was in the same position as the applicant company. It held that the length of the seizure, over six years, was unreasonable, which thus disrupted the fair balance between the general interest of fighting serious crime and the protection of the rights of the applicant company. Consequently, the applicant company lodged another request for the seizure of its bank accounts to be lifted referring to this decision of the Constitutional Court.

59. On 6 March 2008 the High Prosecutor lifted the seizure of the applicant company's bank accounts, holding that the conclusions of the Constitutional Court also applied to the applicant company.

II. RELEVANT DOMESTIC LAW

Constitutional Court Act (no. 182/1993)

60. Section 30(1) provides that the applicant must be represented in the proceedings before the Constitutional Court by an attorney.

61. Section 32 provides that parties and joined parties are entitled to comment on a constitutional appeal, to make submissions to the Constitutional Court, to consult a case file (with the exception of records of voting), to make excerpts therefrom and copies thereof, to adduce any evidence, to take part in any oral hearing in the matter, and to assist at any taking of evidence.

62. Under section 48, the Constitutional Court must take all evidence necessary to establish the facts of the case. It decides what evidence submitted by parties should be accepted and may take evidence which has not been adduced by the parties. It may assign a judge to take evidence obtained otherwise than at an oral hearing, or request another court to take such evidence. At its request, courts, public administrative authorities and other State institutions must assist it in its decision-making by procuring documentary evidence. A record must be drawn up of all evidence taken outside an oral hearing, this record being signed by a judge, a clerk and other persons participating in that evidence session. The outcome of the taking of evidence must always be communicated at an oral hearing.

63. Section 49(1) provides that any means which may be instrumental to establish facts of a case may be used in evidence, in particular the testimony of witnesses, expert opinions, reports and statements of State authorities and legal persons, documents, outcomes of inquiries and the testimony of parties.

Code of Criminal Procedure (Act no. 141/1961 as in force at the material time)

64. Pursuant to Article 9, prosecuting authorities shall assess preliminary issues arising in course of proceedings; should a final and binding decision on such an issue have already been adopted by a court or another state authority, prosecuting authorities shall be bound by it unless it concerns an issue of the guilt of the accused.

65. Article 42 provides for the rights of a concerned person. It states that anyone whose property has been seized or is liable to be seized following an application for seizure must be provided with an opportunity to comment on the given case, may attend a hearing, raise its own requests, consult the case file within the meaning of Article 65, and lodge appeals as provided for by this law.

66. Article 65 concerns access to files. The first paragraph provides, *inter alia*, that the accused, injured and intervening parties, their counsel and guardians shall have the right of access to files except for records and those sections of records containing personal data of anonymous witnesses, to make excerpts and notes therefrom, and to have duplicates of the files and the parts thereof made at their own expense. Other persons may do so with the authorisation of a president of a chamber and a prosecutor, or with police authority at the pre-trial stage of proceedings if it is necessary for the exercise of their rights.

67. Article 79a § 1 provides for a seizure of financial instruments deposited on a bank account. If the given facts indicate that the financial instruments on a bank account are intended for the commission of a crime, or have already been used for such a purpose, or constitute profits from criminal activities, a president of a chamber and a prosecutor, or the police authority at the pre-trial stage of criminal proceedings, are empowered to seize them.

68. Pursuant to Article 79a § 3, the State authority listed in paragraph 1 lifts or reduces the seizure if such a measure is no longer necessary, or it is not necessary to maintain it at the given amount. A decision within the meaning of the previous sentence by police is subject to prior approval by a prosecutor.

69. Under Article 79a § 4 the owner of a bank account whose assets are seized, has the right to request that the seizure be lifted or reduced. A prosecutor has to decide on such a request without delay.

70. Article 79a § 5 provides that decisions adopted pursuant to paragraphs 1, 3 and 4 may be appealed by a complaint.

71. According to Article 145 § 2 a complainant may rely on new facts and evidence.

72. Pursuant to Article 149 § 4, if a decision is erroneous due to the fact that a part of its operative section is missing, an appellate authority is empowered either to amend the impugned decision, remit the case to the

authority of first instance whose decision is challenged, for it to decide on the missing part of the decision or to amend it.

*Code of Administrative Proceedings on Taxes and Other Fees
(No. 337/1992)*

73. Article 48 § 12 provides that an appeal shall not suspend the entry into force of a decision adopted in administrative proceedings on tax and other fees unless a special law provides otherwise.

THE LAW

I. JOINDER OF APPLICATIONS

74. The Court notes that the subject matter of the applications nos. 33908/04, 7937/05, 25249/05, 29402/05 and 33571/06 is identical and they were submitted by the same applicant company. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

75. The applicant company complained that the seizure of its bank accounts, its business documents and cash had infringed its property rights, in breach of Article 1 of Protocol No. 1, which states:

“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.”

76. The Government contested that argument.

A. Admissibility

1. Exhaustion of domestic remedies

(a) Seizure of the business documents and cash

77. The Court notes that the domestic proceedings which are part of the present applications and which also gave rise to the impugned decisions of the Constitutional Court concerned solely the seizure of the applicant company's bank accounts. Regarding the seizure of the business documents and cash the applicant company did not pursue all the remedies that were available to it, in particular it did not bring this complaint before the Constitutional Court. It follows that this part of the applications is inadmissible for non-exhaustion of all domestic remedies within the meaning of Article 35 § 1 of the Convention and must be declared inadmissible pursuant to Article 35 § 4 of the Convention.

(b) Seizure of the bank accounts

78. The Government submitted that the complaint was premature since at the time of lodging it there was a constitutional appeal of the applicant company regarding the seizure pending before the Constitutional Court.

79. The applicant company disputed this argument.

80. The Court reiterates that the only remedies which an applicant is required to exhaust are those that relate to the breaches alleged and which are at the same time available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. Moreover, an applicant who has availed himself of a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999).

81. The Court notes that as regards the seizure and its length up to 9 February 2006, the date of the last impugned decision of the Constitutional Court in the present applications, the applicant company pursued the natural remedies in respect of a seizure, namely, it asked for the seizure to be lifted, and pursued the subsequent refusals through the courts, in accordance with the rules of domestic law, up to the Constitutional Court. To that extent, the applicant company has exhausted domestic remedies (see *Benet Czech, spol. s r.o. v. the Czech Republic*, no. 31555/05, § 25, 21 October 2010). As regards the continuing seizure beyond that date, the Court notes that the applicant company again requested the prosecutor to lift the seizure, and again pursued refusals through the courts. The applicant company's complaints in respect of that period have been registered under

application no. 38354/06, and do not fall to be considered in the present applications.

82. The Court therefore rejects the Government's contention that the applicant company has not exhausted domestic remedies.

2. The six-month rule

83. The Government submitted that applications nos. 33908/04 and 7937/05 were submitted out of time. The applicant company disputed this argument.

84. Regarding the application no. 33908/04 the Court observes that this application contains complaints against two Constitutional Court decisions, handed down on 11 March and 18 March 2004 respectively. The former was delivered to the applicant company's lawyer on 19 March 2004, the latter on 24 March 2004. The application form containing complaints regarding the former decision was submitted to the Court by fax on 17 September 2004 and sent by regular mail on 20 September 2004. The application form containing complaints regarding the latter decision was submitted by fax on 23 September 2004 and subsequently sent by regular mail, which the Court received on 27 September 2004.

85. The Court reiterates that the running of the six-month time-limit imposed by Article 35 § 1 of the Convention is, as a general rule, interrupted by the first letter from the applicants indicating an intention to lodge an application and giving some indication of the nature of the complaints made. The first letter can be sent by means of a fax provided that the original is then submitted by post (for example, *Manitaras and Others v. Turkey* (dec.), no. 54591/00, § 35, 3 June 2008). The date of the submissions by fax must thus be considered the date of introduction. Consequently, the applicant company complied with the six-month time-limit.

86. Regarding application no. 7937/05 the Court observes that the Constitutional Court decision of 24 August 2004 was delivered to the applicant company's lawyer on 2 September 2004. The application was submitted by fax on 1 March 2005. Subsequently, the Court received the original application form sent by regular post on 2 March 2005. The Court thus concludes that this application was also submitted within the six-month time-limit.

87. The Court notes that the complaints relating to the seizure of the bank accounts under Article 1 of Protocol no. 1 in all five applications are not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

88. The applicant company claimed in the present applications that the seizure of its assets deposited in its bank accounts had lasted an unreasonably long time, that there had been unreasonable delays in the investigation by the authorities and that the authorities had not presented any evidence justifying the seizure.

89. The Government accepted that there had been an interference with the applicant company's property rights but maintained that it was necessary for an efficient fight against organised crime and was proportionate to that aim. The Government referred particularly to the opportunity the applicant company had at any time to make requests to the authorities and courts for the seizure to be terminated, and maintained that the length of the seizure had been necessitated by the complexity and extensiveness of the investigation.

90. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right to property, comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions. The third, contained in the second paragraph, recognises that the Contracting 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 construed in the light of the general principle laid down in the first rule (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V).

91. The applicant company did not specify which rule should be used. The Government maintained that the seizure was justified under the third rule.

92. The Court notes that the seizure had the effect that the applicant company could not dispose of the relevant parts of its bank accounts. Consequently, the Court agrees with the Government that the seizure constituted control of the use of property and that paragraph 2 of Article 1 of Protocol No. 1 is applicable (see *Atanasov and Ovcharov v. Bulgaria*, no. 61596/00, § 74, 17 January 2008).

93. The Court reiterates that any control of the use of property by a public authority should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

94. The applicant company disputed the legality of the seizure, arguing that Czech law allowed the prosecuting authorities to seize only specified amounts of funds and thus the seizure orders of 25 April 2001 and 27 April 2001 were unlawful. The Government contested that argument, arguing that

the original deficiency of the seizure orders had been remedied by the High Prosecutor on 28 November 2001, who was allowed to do so under Article 149 § 4 of the Code of Criminal Procedure. The applicant company replied that the High Prosecutor could have used this method to seize only the funds on the accounts on 25 and 27 April 2001 respectively, and regarding the funds which had come in later, the prosecutor had been obliged to issue a new decision.

95. Firstly, the Court notes that it is not called upon to examine the legality of the seizure before 28 November 2001, because the current applications arise from events which happened after this date.

96. The Court observes that by virtue of Article 149 § 4 of the Code of Criminal Procedure the High Prosecutor was clearly entitled to remedy any deficiency of the original seizure order. The seizure of the bank accounts as they stood on 25 and 27 April 2001 was thus clearly in accordance with the law from 28 November 2001 at the latest. The question remains if the prosecutor, making its decision on 28 November 2001, was also entitled under Czech law to seize the additional funds that came in between 25 April and 28 November 2001.

97. In this context, the Court reiterates that it has limited power to review compliance with domestic law, and it examines only whether it was applied manifestly erroneously or so as to reach arbitrary conclusions (see *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I).

98. The Court firstly observes that under Article 79a of the Code of Criminal Procedure a prosecutor was empowered to seize assets at the pre-trial stage of criminal proceedings. Further, an appellate authority, in this case a superior prosecutor, decides on an appeal on the basis of the facts at the time of its decision, which means including new developments since the time of the challenged decision, and it has a full power of review. Under these circumstances the Court considers that the fact that the prosecutor did not issue a separate decision regarding the funds that came in between 25 April and 28 November 2001 but chose to amend the original seizure order by writing in the sums as they were on the date of its decision does not make that decision an arbitrary or manifestly erroneous application of domestic law. The Court is thus unable to conclude that the seizure of the applicant company's assets after 28 November 2001, that is the date when the Prague High Prosecutor amended the original seizure decisions, was contrary to the law.

99. It further observes that any interference with property rights must pursue a legitimate aim in the general interest (see *Immobiliare Saffi*, cited above, § 48). The impugned measure was taken in the context of a criminal investigation, on the suspicion that the assets constituted profits from the criminal activities of the accused manager. The purpose of fighting crime undoubtedly falls within the general interest as envisaged in Article 1 of

Protocol No. 1 (see *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 58, 1 April 2010).

100. Lastly, the Court reiterates that an interference must strike a “fair balance” between the demands of the general interest and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, and therefore also in its second paragraph. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see, for example, *Immobiliare Saffi*, cited above; *Allan Jacobsson v. Sweden* (no. 1), 25 October 1989, § 55, Series A no. 163; and *AGOSI v. the United Kingdom*, 24 October 1986, § 52, Series A no. 108).

101. In cases where there is a wide margin of appreciation the Court will respect the State authorities' judgment as to what is in the general interest, unless that judgment is manifestly without reasonable foundation (see *Immobiliare Saffi*, cited above, § 49, and *Antonopoulou and Others v. Greece*, no. 49000/06, § 57, 16 April 2009), or unless it is devoid of reasonable foundation (see “*Bulves*” *AD v. Bulgaria*, no. 3991/03, § 63, 22 January 2009, and *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports* 1997-VII).

102. The applicant company maintained that the seizure of its bank accounts was disproportionate because of its unreasonable duration.

103. The Government maintained that the interference was necessary as there was a reasonable suspicion that the assets originated in criminal activities of the former manager of the applicant company and that it was proportionate even considering its length due to the importance of the general interest at stake and the very complex and extensive nature of the crime that had to be investigated. The Government further argued that a violation should be found only where the procedure was manifestly arbitrary or the duration of the seizure manifestly unreasonable.

104. The Court notes that the interference had an origin in a measure taken by the prosecuting authorities in the context of investigating a serious crime in the area of customs duty and tax evasion involving millions of euros. The crux of the interference concerns the continuing assessment of a reasonable suspicion that the seized funds originated in criminal activities. The national authorities are clearly in a better position than the Court to evaluate these issues, because they have direct access to the available evidence, which in the present case included thousands of pages of documentary evidence, hundreds of witnesses and transactions of several

companies including foreign and offshore companies. Faced with such a complex investigation it is up to the national authorities in the first place to decide whether, and if so what, further investigatory measures are necessary in order to effectively fight this type of serious and carefully premeditated crime.

105. Thus, the Court considers that the above-mentioned principles in its case-law are fully applicable to the present case. The State should in the present circumstances enjoy a wide margin of appreciation and the Court must respect its judgment as to what is necessary in the general interest unless that judgment is manifestly unreasonable. Consequently, it is not the Court's task to conduct anew a full analysis of whether the interference was proportionate, considering that the national authorities, especially the Constitutional Court itself, performed an analysis of proportionality. The nature and scope of the Court's supervision, mindful of its subsidiary role, is thus to assess whether the interference with the applicant company's property rights was manifestly unreasonable (see *Benet Czech, spol. s r.o. v. the Czech Republic*, no. 31555/05, § 40, 21 October 2010).

106. The Court notes in this regard that the accused was at the material time an acting manager of the applicant company and that the suspected crime happened in the context of its business activities. It was not thus *prima facie* unreasonable for the prosecutor to assume that the bank accounts of the applicant company would have contained funds from these activities, even in 2001. The Government argued that the investigation so far had led to a conclusion that the accused used the applicant company's bank accounts to save the funds generated by his criminal activities. In view of the submissions of the parties, the Court has no reason to hold that the prosecuting authorities' suspicion about the origin of the seized funds was manifestly unreasonable.

107. The applicant company argued that once the customs authorities had ascertained that the applicant company had no customs or tax debt there had been no reason to continue the seizure. The Court, however, notes that the decisions on the seizure made clear that the funds had been seized on the suspicion that they came from the criminal activities of the former manager and other persons and not to secure payment of any custom or tax debt by the applicant company. Consequently, the seizure was made in the context of criminal proceedings and it was only in these proceedings that the continuing justification of the seizure should have been maintained. Any decision of administrative authorities concerning a debt of the applicant company was thus not directly relevant to the issue whether the funds originated in criminal activities of the applicant company's former manager, and in any case those decisions were not binding on the prosecuting authorities. The Court thus considers that the decisions of the administrative authorities could not have made the seizure *ipso facto* unjustified.

108. However, a reasonable suspicion at the beginning of the investigation cannot justify an indefinite interference with the applicant company's rights. The Court agrees with the applicant company that the ensuing investigation must be sufficiently diligent and speedy, so that the interference lasts only a limited time. Thus it is the Court's task to evaluate whether in view of the conduct of the prosecuting authorities the length of the seizure, namely four years and nine and a half months (see paragraph 81 above), was manifestly unreasonable.

109. The Court notes that the Government referred to several objective factors that complicated the investigation. According to the Government it was first of all the nature and extent of the alleged crime, covering a total of 809 transactions involving the import of ferrous alloys into the Czech Republic. The Government further referred to the amount of evidence that the prosecuting authorities had to collect and evaluate, in particular over 100,000 pages of documentary evidence, including several hundred purchase agreements, and the need to examine several hundred witnesses, including persons of unknown whereabouts. Moreover, the alleged criminal activities had been conducted using over a dozen companies, some of which were foreign and offshore, and the police had requested legal assistance from the competent authorities of sixteen countries.

110. The applicant company maintained that the prosecuting authorities had not shown a maximum diligence in their investigation which was full of unnecessary delays and argued that some of the above-mentioned evidence-taking, including interviewing homeless persons, was unnecessary and irrelevant to the charges of the accused manager.

111. The Court reiterates (see paragraph 105 above) that it is not its role to evaluate whether the Czech prosecuting authorities conducted the investigation with maximum possible diligence, but only to assess whether the length of the investigation was so unreasonable as not to be compatible with Article 1 of Protocol no. 1. Similarly it is not its task to assess whether some of the evidence-gathering by the national authorities was irrelevant to the case, unless the irrelevance was manifest.

112. In this regard the Court is satisfied that the extent of the investigation was indeed considerable. As the above information suggests, the prosecuting authorities were faced with an alleged crime that was highly sophisticated and extensive. It was suspected that the alleged perpetrators used an international network of numerous companies in several countries to conduct their financial operations and cover their crimes. The Court notes that faced with this level of complexity the prosecuting authorities, far from remaining passive, actually collected extensive evidence, heard dozens of witnesses and contacted many countries with requests for assistance in the matter.

113. The Court is unable to reach the conclusion that interviewing the homeless persons was manifestly irrelevant to the case. The Government

argued that the accused paid them to conclude fictitious sale agreements. The Court accepts that the prosecuting authorities could have reasonably assumed that the statements thus obtained were important to prove the guilt of the accused.

114. The Court is of the same opinion regarding the applicant company's argument that it should have been enough for the prosecuting authorities to review the financial documents of the applicant company in order to determine whether the seized funds originated in criminal activities. The Court reiterates that it is primarily for the national authorities to choose the best way of conducting a criminal investigation. As pointed out by the Government, the amount of documentary evidence to be assessed was vast. Moreover, the Government maintained that the crux of the alleged criminal activities lay in falsifying accounting and customs documents, and thus it was necessary first to check the authenticity and validity of all the seized documents and the data included therein.

115. The Court further notes that at any given time the applicant company had available to it an effective remedy, which included access to courts, by which it could challenge the continuing seizure of its bank accounts. Thus the present case is materially different from such cases as *Immobiliare Saffi* or *Denisova and Moiseyeva*, where the Court found a violation of Article 1 of Protocol No. 1 on the ground, *inter alia*, that the applicants did not have access to an effective remedy regarding the interference with their property rights (see *Immobiliare Saffi*, cited above, § 56 and *Denisova and Moiseyeva*, cited above, § 64).

116. Thus, in view of the complexity and extent of the investigation and the fact that the alleged crime should have been committed in the context of the business activities of the applicant company, the Court does not consider that the length of the investigation into the former manager of the applicant company, and thus the seizure of the applicant company's assets until 9 February 2006, was manifestly unreasonable. For the same reasons the judgment of the Constitutional Court of 9 February 2006 that the interference was still proportionate cannot be held to be manifestly unreasonable.

117. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

118. The applicant company complained under Article 6 § 1 of the Convention that (i) in the proceedings before the Constitutional Court, it had been denied access to certain documentary evidence in the case file, (ii) the length of the seizure was excessive, (iii) the Constitutional Court had wrongly assessed the company's constitutional appeals and (iv) the

Constitutional Court had not communicated to it the observations of the other parties. The relevant part of Article 6 states:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

119. The Government contested those arguments.

A. Admissibility

1. Denial of access to certain documentary evidence in the case file of the Constitutional Court

120. The applicant company complained that it had not been allowed access to the criminal files that the Constitutional Court had requested in the proceedings that resulted in its 11 March 2004 decision (II. ÚS 708/02) and that it had been told that only its legal representative could consult the file at the Constitutional Court.

121. The Government argued that the applicant company's manager had consulted the case file on 22 May 2003. Moreover, the applicant company had misinterpreted the Constitutional Court's reference in its 1 July 2003 letter of the Constitutional Court that only its lawyer would have been allowed to inspect the file, there being only the general reference to the compulsory legal representation before the Constitutional Court. The Government further argued that the criminal file did not consist of observations of the parties to the proceedings, and the criminal file had never become part of the Constitutional Court's case file. The documents which the court had copied had been freely available for the applicant company to consult directly at the Constitutional Court; only these documents had been quoted in the factual part of the decision. The Government added that in any case the applicant company could have consulted the rest of the criminal file held by the prosecuting authorities under the rules of the Code of Criminal Procedure.

122. The Court reiterates that the right to an adversarial trial means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations submitted, even by an independent member of the national legal service, with a view to influencing the court's decision (see *Vermeulen v. Belgium*, 20 February 1996, § 33, *Reports* 1996-I).

123. The Court notes that only certain parts of the criminal file were included in the Constitutional Court's file and later mentioned in its decision. The decision of the Constitutional Court did not contain any reference to and was not based on those other parts of the criminal file, which were returned to the High Prosecutor.

124. Regarding those documents that the Constitutional Court copied and relied on in its decision, the Court firstly observes that they did not have the nature of observations constituting reasoned opinion on the merits of the applicants' constitutional appeal and neither did they manifestly aim to influence the decision of the Constitutional Court by calling for the appeal to be dismissed (see, *a contrario*, *Milatová and Others v. the Czech Republic*, no. 61811/00, § 65, ECHR 2005-V). They were objective pieces of evidence, requested by the Constitutional Court itself, constituting the facts of the case and decisions of the authorities containing reasons why the applicant company's assets were seized and why its requests for termination of the seizure were rejected.

125. The Court notes that the applicant company must have been aware of these decisions and possessed them because they directly concerned the seizure of the applicant company's assets. There is thus no issue that it would not be informed of these documents or would have no knowledge of them (see, *a contrario*, *Nideröst-Huber v. Switzerland*, 18 February 1997, § 31, *Reports* 1997-I). Further, it is obvious from the Constitutional Court's letter of 29 May 2003 that the applicant company was free to inspect the Constitutional Court's case file, including these documents, at any time after arranging a visit with the court registry. Moreover the Court agrees with the Government that the reference by the Constitutional Court to compulsory legal representation did not in any way imply that only the applicant company's lawyer would be allowed to consult the case file.

126. In view of these considerations, the Court concludes that there is no appearance of a violation of the applicant company's right to a fair trial by the Constitutional Court in this respect. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 3(a) of the Convention.

2. The length of the seizure

127. The Court considered this issue under Article 1 of Protocol No. 1. Having regard to the conclusion above the Court considers that no separate issue arises under Article 6 of the Convention.

3. Fairness of the proceedings before the Constitutional Court

128. The applicant company maintained that the Constitutional Court had wrongly assessed the company's constitutional appeals. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). The decisions of the Constitutional Court do not appear arbitrary or manifestly unreasonable.

129. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 3(a) of the Convention.

4. Non-communication of the observations of the other parties by the Constitutional Court to the applicant company

130. The Court reiterates that the running of the six-month time-limit under Article 35 § 1 of the Convention is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. As regards complaints not included in the initial application, the running of the six-month time-limit is not interrupted until the date when the complaint is first submitted to a Convention organ. The mere fact that the applicant had relied on Article 6 is not sufficient to constitute introduction of all subsequent complaints made under that provision (see *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001).

131. In the present case, the pertinent part of the first application form from 16 September 2004 (application no. 33908/04), where the applicant company set out for the first time its complaints, reads: “The applicant company further complains of a violation of its right to a fair trial under Article 6 of the Convention also in the proceedings before the Constitutional Court, because it was denied access to the file that the Constitutional Court had itself requested from the High Prosecutor”. Given that there were no submissions by the High Prosecutor in that case before the Constitutional Court, this complaint clearly referred only to the alleged denial of access to the criminal file that the Constitutional Court had requested from the High Prosecutor (see paragraph 120 above). This text was reproduced verbatim in the subsequent application forms (applications nos. 7937/05, 25249/05 and 29402/05) with an additional reference to the first proceedings before the Constitutional Court (II. ÚS 708/02) and thus clearly referring to the alleged denial of access to the criminal file. In view of these wordings of its complaints, the Court finds that these submissions cannot qualify as a succinct statement, as required by Rule 47 §1(e) of the Rules of Court (see *Eule v. Germany* (dec.), no. 781/06, ECHR 10 March 2009), of an alleged violation of the applicant's right to a fair trial on the account of non-communication of the submissions of the opposing parties. The original complaints, submitted to the Court within the six-month time-limit, thus do not contain any reference, express or implied, to the alleged fact that the Constitutional Court had failed to communicate observations of the other parties to the applicant company.

132. The Court notes that the applicant company in its submissions of 22 March 2010 purported to argue that the present complaint was only an elaboration of the complaint raised in the original application forms. The Court reiterates that if the new complaint could be considered as a particular aspect of any of the initial complaints it would have been considered to have

been introduced in time (see *Paroisse Greco Catholique Sâmbata Bihor v. Romania* (dec.), no. 48107/99, 25 May 2004). In view of the above, the Court, however, considers that this was an entirely distinct and separate complaint from those included in the original applications.

133. Consequently, the Court finds that this complaint in applications nos. 33908/04, 7937/05, 25249/05 and 29402/05 has been introduced out of time and must be rejected pursuant to Article 35 § 1 of the Convention.

134. On the contrary the application no. 33571/06 unequivocally contained a complaint that the Constitutional Court failed to communicate to the applicant company the submissions of the High Prosecutor of 20 January 2006. This complaint has thus been introduced in time.

135. The Court will first distinguish this complaint from *Holub v. Czech Republic* (dec.) no. 24880/05, 14 December 2010, where a similar complaint was declared inadmissible because the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. In the present case, the submissions of the High Prosecutor contained new information not included in its impugned decision. Moreover, the Constitutional Court expressly relied on this submission in its reasoning. In these circumstances, the Court cannot conclude that the applicant has not suffered a “significant disadvantage” in exercising its right to adversarial proceedings before the Constitutional Court.

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

B. Merits

137. The applicant company complained in application no. 33571/06 that the Constitutional Court had violated its right to a fair trial by failing to communicate to it the submissions of the High Prosecutor of 20 January 2006, which the court itself requested and which were crucial for its decision. It opined that the information submitted by the High Prosecutor had been untrue and that it had been obvious to all authorities that the investigation could not have finished in mid-2006.

138. The Government contested that argument and maintained that the interpretation by the Court of the right to adversarial proceedings before the highest domestic courts has been in some cases too formalistic and that the Court should rather confirm the more flexible position adopted in *Verdú Verdú v. Spain*, no. 43432/02, 15 February 2007. They further argued that an overly strict and formalistic rule requiring the communication of all observations would have negative effect on the practical functioning of the highest courts, such as the Czech Constitutional Court. They added that the nature of the 20 January 2006 observations of the High Prosecutor was such

that the information in it was not and could not have been contentious between the parties, so that the applicant company was not in a position reasonably to challenge this information.

139. The Court reiterates its established case-law that the concept of a fair hearing also implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to make known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations submitted, with a view to influencing a court's decision (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 40, 3 March 2000). What is particularly at stake here is litigants' confidence in the workings of justice, which is based on, *inter alia*, the knowledge that they have had the opportunity to express their views on every document in the file (see *Nideröst-Huber*, cited above, § 29).

140. The Court notes that in *Verdú Verdú*, cited above, it seemed to adopt a less strict approach by examining whether the applicant's response could have had any influence on the impugned decision (§§ 27-28). The Court, however, firstly takes note of the special circumstances of that case and the explicit reference to those special circumstances in that case (see *Verdú Verdú*, cited above, § 28). It further observes that in its subsequent decisions it has confirmed its established case-law mentioned above (see, for example, *Felicinao Bichão v. Portugal*, no. 40225/04, 20 November 2007; *Vokoun v. the Czech Republic*, no. 20728/05, § 29, 3 July 2008; and *Salduz v. Turkey* [GC], no. 36391/02, § 67, 27 November 2008).

141. The Court cannot accept the Government's contention that too strict an interpretation of the rule could contravene the principle of procedural economy and that it would place a disproportionate burden on the functioning of the Constitutional Court. In this particular context all that the right to adversarial proceedings requires is for the parties to have the opportunity to have knowledge of and comment on all observations submitted, with a view to influencing the court's decision. In practice it is just a matter of forwarding the observations of one party to the other party and setting a deadline for possible comments. This is a straightforward administrative act which will prolong the proceedings for several weeks at most. In this context the Court reiterates that the obligation to complete a trial within a reasonable time cannot be interpreted in such a way as would violate other procedural rights under Article 6 of the Convention.

142. Turning to the circumstances of the present case, the Court firstly notes that the observations in question contained information on the length of the investigation and therefore related directly to the grounds of the appeal, namely the proportionality of the seizure of the applicant company's assets. The information submitted by the High Prosecutor aimed to influence the decision of the Constitutional Court by giving it assurances of speedy conclusion of the investigation and thus in effect the length of the

seizure of the assets, which was a decisive element in the proportionality analysis. The Constitutional Court explicitly considered the assurance of the High Prosecutor important for its decision. Thus, having regard to the nature of the issues to be decided by the Constitutional Court, it can be seen that the applicants had a legitimate interest in receiving a copy of the observations of the High Prosecutor.

143. This piece of information was not, in view of the Court, an undisputable fact that the applicant company could not have challenged. On the contrary this was a prediction made by the High Prosecutor and predictions by their very nature are contestable. It is not for the Court to speculate whether the applicant company possessed any information or evidence that could convincingly refute that prediction and eventually persuade the Constitutional Court. The applicant company should however have had the opportunity to voice its arguments why such a prediction was in its view unreasonable.

144. The Government further contended that the applicant company had not responded to the previous observations of the High Prosecutor which were forwarded to it in September 2005 and thus it was hard to understand why it would have any valid reasons to comment on the subsequent observations including roughly the same information. The Court however observes that the September 2005 observations did not contain the information about the predicted time of conclusion of the investigation. Moreover the applicant company did not remain completely passive in respect of those observations but in response submitted a letter from the Ministry of Finance. Thus it can not be inferred that the applicant company wished to waive its right to be informed about the submissions of the other parties to the proceedings before the Constitutional Court.

145. Lastly the Government pointed to the brief, one-page length of the observations. The Court however considers that the length of the opinion itself is immaterial in this context (see *Nideröst-Huber*, cited above, § 26).

146. The Court finds therefore that, in the present case, respect for the right to a fair hearing, as guaranteed by Article 6 § 1, required that the applicant company be given the opportunity to comment on the documentary evidence produced at the request of the Constitutional Court by the High Prosecutor on 20 January 2006. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

147. 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

148. In respect of pecuniary damage the applicant company claimed CZK 32,968,038.85, 67,004.85 United States dollars (USD), EUR 124,274.99, 6,821.69 pounds sterling (GBP), and 170,425.61 Slovakian korunas (SKK) in interest on late payments and CZK 38,740,000 as loss of profit. As to non-pecuniary damage, the applicant company claimed CZK 50,000,000 altogether for damage to goodwill, loss of market, business contacts and employees.

149. The Government maintained that there was no causal link between the damage claimed and alleged violations of the Convention and that finding a violation would constitute sufficient just satisfaction for any non-pecuniary damage the applicants might have sustained.

150. The Court notes that there is clearly no causal link between the violation of the Convention found and the applicant company's claims in respect of pecuniary and non-pecuniary damage. In particular, it is not for the Court to speculate as to what the outcome of the proceedings before the Constitutional Court would have been if they had been in conformity with the requirements of Article 6 § 1 of the Convention (see *Milatová and Others v. the Czech Republic*, no. 61811/00, § 70, ECHR 2005-V).

151. Accordingly, the Court dismisses the claim for pecuniary damage and considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicants may have sustained regarding the found violation.

B. Costs and expenses

152. The applicant company also claimed CZK 39,661,843.42 for costs and expenses. The applicant company did not break down the costs and expenses incurred before the domestic courts and those incurred before the Court. In the submitted documents the costs incurred before the Court specifically linked with the application no. 33571/06 constitute CZK 30,257.70 in legal services and postal charges incurred before end of 2007.

153. The Government maintained that a large proportion of items claimed by the applicant company could not be considered to have been

necessarily and reasonably incurred in connection with the alleged violations of the Convention, and that the amount of legal services seemed excessive. The Government considered that the Court should award only a reasonable sum under this head.

154. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case regarding the costs claimed concerning the domestic proceedings, the Court holds that these costs were not incurred to prevent or rectify the Convention violation found. It accordingly dismisses this claim. Considering that the applicant company incurred further costs in the present application after end of 2007, the Court considers it reasonable to award the sum of EUR 1,500 to cover costs for the proceedings before the Court.

C. Default interest

155. The Court considers it appropriate that the default interest 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. *Declares* the complaints concerning the seizure of the applicant company's bank accounts admissible and the remainder of complaints under Article 1 of Protocol No. 1 inadmissible;
3. *Declares* the complaint concerning the right to adversarial proceedings before the Constitutional Court in the application no. 33571/06 admissible and the remainder of the complaints under Article 6 inadmissible;
4. *Holds* that there has been no violation of Article 1 of Protocol No. 1;
5. *Holds* that there has been a violation of Article 6 of the Convention in the application no. 33571/06;
6. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company;

7. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into Czech korunas at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 24 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President