



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

FIFTH SECTION

**CASE OF PEKÁŘNY A CUKRÁŘNY KLATOVY, A.S.
v. THE CZECH REPUBLIC**

(Applications nos. 12266/07, 40059/07, 36038/09 and 47155/09)

JUDGMENT

STRASBOURG

12 January 2012

FINAL

12/04/2012

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

In the case of Pekárny a cukrárny Klatovy, a.s. 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,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 29 November 2011,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in four applications (nos. 12266/07, 40059/07, 36038/09 and 47155/09) 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 Pekárny a cukrárny Klatovy a.s. (“the applicant company”) on 16 March 2007, 5 September 2007, 25 June 2009, and 28 August 2009 respectively.

2. The applicant company was represented by Mr J. Skácel and Mr P. Zima, lawyers practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr V. A. Schorm, and Deputy Agent, Mr J. Kmec, 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 30 August 2010 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. On 11 July 2005 company P. instituted proceedings against Mr Karel Blažek claiming to be the true owner of shares held by him constituting

a ninety percent share of the applicant company. Mr Karel Blažek is the chair of the board of directors of the applicant company and signed the powers of attorney accompanying the present applications. These proceedings (“share surrender proceedings”) are pending.

6. During these proceedings company P. asked the courts to order interim measures to prohibit the applicant company from holding scheduled general meetings. It argued that a general meeting would have irreversible negative effects on its rights, such as the payout of the company’s dividends amounting to approximately 40,000,000 Czech korunas (CZK) (approximately 1,667,000 euros (EUR)), and control being gained over the company through personnel changes in the board of directors. Such effects should be seen in the context of the existing situation where the ownership or holding of shares and the attached entitlement to exercise voting rights was controversial, or, rather, where a person other than the owner had the majority of shares at his unauthorised disposal.

7. The applicant company runs a bakery business in several cities in south-west Bohemia. Between 2006 and 2009 it generated annual profits of between CZK 19,000,000 and 34,000,000 (EUR 790,000 and 1,420,000).

A. Application no. 12266/07

8. On 1 November 2005 the Prague Municipal Court (*městský soud*) granted an interim measure and, without any reasoning, prohibited the applicant company from convening its general meeting scheduled for 9 November 2005. On 20 December 2006 and 21 February 2007 respectively, it ordered the same interim measures regarding general meetings scheduled for 15 January 2007 and 5 March 2007, respectively. Only the last decision was reasoned: the court stated that the aim of the interim measure was to preclude the adoption of fundamental decisions concerning the applicant company without the claimant, who claimed to be a majority shareholder, being able to influence those decisions.

9. The applicant company appealed against the original interim measure arguing that it was not a party to the main proceedings but that the court had nevertheless imposed obligations on it which had a negative effect on its business, that it had learnt about the interim measure only after it had been ordered, and that the decision had lacked any reasoning.

10. On 10 May 2006 the Prague High Court (*vrchní soud*) upheld the interim measure. It held that according to the law, decisions on interim measures did not need to be reasoned if the defendant had not raised any arguments against it, as in the present case. It further held that all the legal conditions for ordering the measure had been satisfied. Lastly, it opined that the law allowed for an interim measure to impose obligations on third parties under exceptional circumstances. This condition, the court held, had been satisfied in the present case, because the defendant controlled the

applicant company and the general meeting could have had serious negative and irreversible effects on the claimant's rights.

11. On 19 September 2006 the Constitutional Court (*Ústavní soud*) dismissed the applicant company's constitutional appeal holding that constitutional appeals against interim measures were not allowed.

B. Application no. 40059/07

12. On 16 June 2006 the Municipal Court, upon company P.'s request, granted another interim measure prohibiting the applicant company from convening another general meeting scheduled for 30 June 2006. It held that all the legal requirements for ordering the interim measure had been satisfied, including the existence of a danger of serious harm to the claimant's interests.

13. On 27 July 2006 the High Court, upon the applicant company's appeal in which it argued that the interim measure would be detrimental to its business and that the legal conditions for ordering it had not been met, upheld the decision of the Municipal Court noting that the applicant company was not being hindered in the ordinary day-to-day running of its business and that had the proposed agenda of the general meeting contained only issues not able to negatively affect company P.'s rights, such as only approving statements reports, there would have been no need to order the interim measure.

14. On 27 March 2007 the Constitutional Court dismissed the applicant company's constitutional appeal holding that that remedy was not allowed against interim measures.

C. Application no. 36038/09

15. On 19 January 2009 the Municipal Court granted a new interim measure and prohibited, without any reasoning, the applicant company from convening the general meeting scheduled for 30 January 2009.

16. On an unspecified date before 30 January 2009, the applicant company appealed, arguing that it was not a party to the main proceedings but the court had nevertheless imposed obligations on it which had a negative effect on its business, that the decision on the interim measure had not been reasoned and that the legal conditions for ordering the interim measure had not been met.

17. On 5 February 2009 the High Court dismissed the applicant company's appeal as inadmissible under Article 218 of the Code of Civil Procedure holding that since the interim measure had already lost effect (because it prohibited a meeting scheduled for 30 January 2009), any review of the measure would be immaterial. The court added that even assuming

that the appeal had been admissible it would have upheld the decision of the Municipal Court.

18. The applicant company lodged a constitutional appeal, which remains undecided.

D. Application no. 47155/09

19. On 10 March 2009 the Municipal Court granted another interim measure prohibiting the applicant company from convening two general meetings scheduled for 13 and 16 March 2009. The decision was not reasoned. On 5 May 2009 it further prohibited the company from convening general meetings scheduled for 11 and 18 May 2009. This decision was not reasoned either.

20. On 16 July 2009 the High Court dismissed the applicant company's appeals as inadmissible under Article 218 of the Code of Civil Procedure. It held that since the interim measures had already lost effect as they prohibited meetings in the past, their review would be immaterial.

21. The applicant company's constitutional appeal is pending before the Constitutional Court.

E. Additional information

22. It seems that the applicant company held several general meetings despite the interim measures prohibiting them. Subsequently, company P. instituted proceedings seeking the nullity of all decisions adopted at these meetings.

23. In one of these proceedings, on 20 December 2006, the Plzeň Regional Court (*krajský soud*) held that all decisions adopted at the general meeting of 9 November 2005 were null and void. The decision was upheld on appeal.

24. However, on 24 August 2010 the Supreme Court quashed these decisions holding that the meeting of shareholders on 9 November 2005 could not be considered as a general meeting, the holding of which had been prohibited by the court order. Consequently, it was not possible to pronounce its decisions null and void because anything adopted at that meeting could not have been legally considered as a decision of a general meeting. It also agreed with the High Court that it could not review the interim measures in these proceedings.

II. RELEVANT DOMESTIC LAW

A. Code of Civil Procedure (Act no. 99/1963)

25. Under Article 102 a court may impose an interim measure during ongoing proceedings if it is necessary to regulate the situation of the parties, or if there is a concern that the enforcement of the judgment would be threatened.

26. Article 76 § 2 provides that a court may impose, by means of an interim measure, an obligation upon a person who is not a party to the proceedings only if it can be reasonably required from that person.

27. Pursuant to Article 77a, if an interim measure was terminated or was quashed for any other reason than following a decision on the merits in favour of the claimant or that the claimant's right has been satisfied, the claimant is obliged to compensate any damage or other harm sustained by a person as a result of the interim measure.

28. Under Article 169 § 2, the written rendering of the decision to fully grant a request against which nobody has protested or which concerns the conduct of the proceedings, or of certain decisions on the court's jurisdiction, need not contain reasoning.

29. Pursuant to Article 218 an appellate court must dismiss an appeal as inadmissible if it has been lodged by a person not entitled to do so or if it has been lodged against a decision which is not subject to appeal.

B. Commercial Code (Act no. 513/1991)

30. Article 125 § 1 provides that the general meeting of a company's shareholders is the highest body of the company. Its powers include:

(a) approval of transactions made in the name of the company under Article 64 prior to its incorporation;

(b) approval of the company's ordinary, extraordinary and consolidated financial statements and, in the instances stipulated by law, interim financial statements, distribution of its profit and settlement of any loss;

(c) approval of the articles of association statutes and changes to them;

(d) decision making on any change to the content of the deed of association, unless such change is based on another legal fact (Article 141);

(e) decision making on raising or lowering the share capital;

(f) appointment, dismissal and remuneration of the company's executive officers;

(g) appointment, dismissal and remuneration of the members of the supervisory board;

(h) forced transfer of shares of a member of the company in accordance with Articles 113 and 121;

(i) appointment, dismissal and remuneration of a liquidator, and decision making on whether to wind up the company, if the deed of association so permits;

(j) approval of contracts mentioned in Article 67a;

(k) decision making on mergers, transfer of business assets to a sole member, division, or conversion of legal form;

(l) approval of controlling agreements (Article 190b), contracts on profit transfers (Article 190a) and contracts with silent partners, and amendments to them;

(m) approval of contracts on performance of an office (Article 66 § 2);

(n) approval of financial assistance under Article 120a;

(o) any other matters entrusted to the general meeting by law or the deed of association.

31. Under Article 156 § 7 bearer shares (*akcie na majitele*) are fully negotiable without limitations. The rights attached to bearer shares in certificated form shall be exercised by the person who presents such shares or by the person who demonstrates, by way of furnishing a written statement by the person who performs custody or deposit under a separate legal regulation, that the shares are deposited for him under a separate legal regulation.

THE LAW

I. JOINDER OF THE APPLICATIONS

32. The Court notes that the subject matter of the applications (nos. 12266/07, 40059/07, 36038/09 and 47155/09) is similar and that they were submitted by the same applicant company. It is therefore appropriate to join them, in application of Rule 42 of the Rules of Court.

II. THE GOVERNMENT'S OBJECTIONS OF INCOMPATIBILITY *RATIONE PERSONAE* AND ALLEGED ABUSE OF THE RIGHT OF APPLICATION

A. Arguments of the parties

33. The Government maintained that the applications were incompatible *ratione personae* with the Convention as none of the persons who signed the powers of attorney was a member of the applicant company's governing body. At the same time, they contended that the applicant company had not

informed the Court of a number of sets of proceedings before the Plzeň Regional Court on the invalidity of the general meetings, to which the interim measures were related and that this fact was relevant for assessing the admissibility and merits of the application. Therefore, they held that if no reasonable explanation was provided for the applicant company's omission, it would be appropriate to declare the applications inadmissible for abuse of the right of application.

34. The applicant company disagreed.

B. The Court's assessment

1. Compatibility ratione personae

35. The Court notes that the powers of attorney in applications nos. 12266/07 and 40059/07 were signed by Mr Karel Robert Blažek and Ms Jiřina Alexandrová on 16 March and 5 September 2007 respectively, and in applications nos. 36038/09 and 47155/09 by Mr Karel Blažek and Ms Lenka Tučková on 22 June and 20 August 2009 respectively.

36. According to an extract from the Companies Register (*výpis z obchodního rejstříku*) on the applicant company submitted by the Government, Mr Karel Blažek, born in 1967, together with another member of the board of directors is entitled to act on behalf of the applicant company. The extract also lists Mr Karel Robert Blažek, with the same personal identification number as the above-mentioned Mr Karel Blažek, as a member of the board of directors until 25 July 2008.

37. The Court notes that the powers of attorney signed by Mr Karel Robert Blažek and Mr Karel Blažek contain the same signature. It considers therefore that Mr Karel Blažek and Mr Karel Robert Blažek are the same person, a person entitled to act on behalf of the applicant company together with another member of the board of directors. Moreover, the extract also lists Ms Jiřina Alexandrová as a member of the board of directors from 9 November 2005 to 25 July 2008 and Ms Lenka Tučková since 2 June 2006. Accordingly, at the time they signed the powers of attorney they were both members of the board of directors of the applicant company.

38. Consequently, the Court finds that the powers of attorney in all four applications were duly signed by the authorised persons. It therefore dismisses the Government's objection.

2. Abuse of the right of application

39. The Court reiterates that under Rule 47 § 6 of the Rules of Court applicants shall keep it informed of all circumstances relevant to the application. Moreover, an application may be rejected as abusive under Article 35 § 3 (a) of the Convention, among other reasons, if an applicant

submits incomplete and therefore misleading information, especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information (see *Hadrabová v. the Czech Republic* (dec.), no. 42165/02, 25 September 2007).

40. The Court does not consider that the proceedings referred to by the Government relate to the very core of the cases concerning the impact of the interim measures. The applicant company was an unsuccessful defendant in these proceedings. If anything, their outcome supports the arguments of the applicant company that they had no remedy against the interim measures (see also paragraph 78 below). Therefore, the Court dismisses the objection raised by the Government.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

41. The applicant company complained that the interim measures had interfered with its peaceful enjoyment of possessions. It relied on Article 1 of Protocol No. 1, which reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

42. 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. They must therefore be declared admissible.

B. Merits

1. *Arguments of the parties*

43. The applicant company maintained that the interim measures, which had not complied with the law, had prohibited it from holding general meetings since November 2005 and, therefore, deprived it of the ability to properly conduct its business activities. No public interest had been pursued by the measures because only a private entity had been their beneficiary.

44. The Government acknowledged that the interim measures constituted control of the use of property under the second paragraph of Article 1 of Protocol No. 1. Yet, they maintained that the interference had been legal, had a legitimate aim and was proportionate. Actually, the interim measures had prevented considerable and irreversible prejudice to the rights of company P., specifically the potential considerable payout of the company's dividends and the potential gaining of control over the company through personnel changes in the board of directors.

45. They further maintained that any interference with the rights of the applicant company had been only marginal. Holding general meetings was not necessary from the perspective of a well-established company's day-to-day operations or its business. The applicant company had not shown in any detail what specific consequences the interference with its property rights had allegedly caused. In addition, the interference had been largely caused by a fundamental lack of clarity as to the ownership of the majority of its shares. The dispute over this issue had arisen purely between private entities, without any influence from the State. The State could not be fairly required to assume overall responsibility for the impact of the interference, which it did not cause.

2. The Court's assessment

46. With reference to its established case-law (see *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V), the Court notes that the interim measures had the effect of denying the applicant company the full use and enjoyment of its property, such as distributing its profits among shareholders or concluding certain contracts (see paragraph 30 above). Consequently, the interim measures constituted control of the use of property and paragraph 2 of Article 1 of Protocol No. 1 is applicable.

47. The Court notes that the applicant company disputed the legality of the interim measures without further elaboration. On the other hand, the domestic courts found them to be legal. The Court, mindful of the fact that it has limited power to review compliance with domestic law (see *Beyeler v. Italy* [GC], no. 33202/96, § 108, ECHR 2000-I), is therefore unable to reach a conclusion that the interim measures would be contrary to the domestic law.

48. In respect to a legitimate aim in the general interest pursued by the interim measures (see *Immobiliare Saffi*, cited above, § 48), the Court notes that they were adopted in the context of the dispute between two private parties on the ownership of over ninety percent of the applicant company's shares aiming to prevent what could have caused irreparable damage to the rights of one of the parties to the proceedings.

49. The imposition of an interim measure is a standard means across States Parties of securing the effectiveness of court decisions on the merits. The Court itself recognises the importance of interim measures for ensuring

that proceedings remain effective in practice (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 100-129, ECHR 2005-I). Accordingly, the interim measures in the present case fell within the general interest under Article 1 of Protocol No. 1. This finding is not altered by the fact they were to the benefit of company P. alone. The mere fact that a measure benefits a private person does not mean that it cannot have pursued a public interest and a legitimate aim (see, *mutatis mutandis*, *Kohlhofer and Minarik v. the Czech Republic*, nos. 32921/03, 28464/04 and 5344/05, § 98, 15 October 2009).

50. Lastly, 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 Court notes that in the present case, there is a dispute over the ownership of more than ninety percent of the applicant company’s shares. The domestic courts adopted a series of interim measures resulting in the inability of the applicant company to hold general meetings since November 2005. According to the domestic courts, the interim measures were aimed at preventing the adoption of fundamental decisions concerning the applicant company without the claimant, who alleged to be a majority shareholder, being able to influence those decisions. Bearing in mind that the domestic courts are certainly in a better position than the Court to assess the necessity of imposing such an interim measure, the Court must only ascertain whether the interference complained of is not manifestly unreasonable (see, *mutatis mutandis*, *BENet Praha, spol. s r.o.*, cited above, § 105).

51. The Court notes that the dispute is over a considerable portion of the applicant company. The rights of the claimant could therefore be seriously hampered if a general meeting took place and some irreversible decisions were taken in its absence. At the same time, the action brought by the claimant does not appear arbitrary and the domestic courts could have legitimate doubts about the ownership of the shares.

52. At the same time the applicant company is not in any way limited in its day-to-day business activities. It has not specified in any detail how the running of its business was negatively affected but only recited the powers of a general meeting from the Commercial Code. No difficulties are apparent from the documents in the case file and the applicant company has generated profit in the years 2006 to 2009. Moreover, the applicant company’s argument that it could be wound up at any time is wholly unsubstantiated because this type of proceedings have never been instituted. The threat is thus only hypothetical.

53. The Court finally adds that the length of the interference is an important factor in assessing the proportionality (see, e.g., *Forminster Enterprises Limited v. the Czech Republic*, no. 38238/04, § 77, 9 October 2008). It finds that the period of five and a half years during which the applicant company has been unable to hold general meetings cannot be

considered as a manifestly unreasonable length of time, especially as it has received no information as to why the proceedings to determine ownership of the shares have not yet been concluded.

54. In light of these considerations, the Court finds that the balance between the competing interests is not manifestly unreasonable.

55. Consequently, there has been no violation of Article 1 of Protocol No. 1 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

56. The applicant company complained that the interim measures had been ordered in proceedings to which it was not a party and was, therefore, unable to challenge them and had no effective remedies against them. It relied on Articles 6, 8 and 13 of the Convention.

57. The Court considers it appropriate to examine the present complaints under Article 6 of the Convention only (see *De Geouffre de la Pradelle v. France*, 16 December 1992, § 37, Series A no. 253-B), which, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

1. Arguments of the parties

58. The Government considered that because of the many differences between the present case and that of *Micallef v. Malta* ([GC], no. 17056/06, ECHR 2009-...), it could not reach a clear-cut conclusion on the applicability of Article 6 § 1 of the Convention and left the decision to the Court. They noted that unlike in *Micallef*, the interim measure proceedings in the present case concerned the prohibition of general meetings, while the share surrender proceedings related to the dispute over the ownership and disposal of the majority shareholding. The outcome of the interim measure proceedings did not predetermine or resolve, on an interim basis, the questions that were raised in the share surrender proceedings. In addition, the parties to these proceedings were different.

59. As regards the importance of the object of the interim measure proceedings and its impact on the applicant company's property rights, the Government referred to their submissions under Article 1 of Protocol No. 1 that the impact had been limited. Moreover, the applicant company had also failed to prove that the interim measures had caused it irreversible

consequences that could not be redressed in the proceedings on the merits, or following the conclusion of these proceedings.

60. The Government further maintained that even though the applicant company was not a party to the share surrender proceedings, it was considered a party in the following stages of the proceedings concerning the interim measures. It could have lodged an appeal upon learning of the existence of the interim measure, and these proceedings could have resulted in the quashing of the interim measure. At the appellate stage, the applicant company's complaint was therefore heard by a court under circumstances that met the standards of Article 6 of the Convention in all respects.

61. Another relevant factor according to the Government was the fact that certain aspects of the imposition of interim measures were or had been the subject matter of proceedings before the Plzeň Regional Court, which is a fact that should also be taken into account in assessing whether the applicant company's case had been duly heard before a court.

62. The applicant company in its turn first argued that the consequences of the interim measures had been more serious than in *Micallef*.

63. It also maintained that even though the appellate court had at first upheld the decisions on interim measures it had later adopted a practice of dismissing the appeals. As a consequence, the proceedings had in effect only been dealt with at one level of jurisdiction and the applicant company had not been a party to those proceedings.

2. The Court's assessment

64. The Court reiterates that Article 6 of the Convention in its civil "limb" applies only to proceedings determining civil rights or obligations. It notes that in the *Micallef* judgment (§§ 79-80), the Court held that the exclusion of interim measures from the ambit of Article 6 was no longer justified by the fact that they do not in principle determine civil rights and obligations. However, it considered that not all interim measures determined such rights and obligations and the applicability of Article 6 would depend on whether certain conditions were fulfilled. First, the right at stake in both the main and the injunction proceedings should be "civil" within the autonomous meaning of that notion under Article 6 of the Convention. Second, the nature of the interim measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure could be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 was applicable (§§ 84-85). The Court found that Article 6 was applicable because the purpose of the injunction was to determine, albeit for a limited period, the same right as the one being contested in the main proceedings, and which was immediately enforceable (§ 87).

65. Subsequently, the Court also applied Article 6 of the Convention to proceedings, considered preliminary, not related to any main proceedings,

because the outcome of the preliminary proceedings was determinative of civil rights (*Udorovic v. Italy*, no. 38532/02, § 37, 18 May 2010), and to an interim measure that did not provisionally rule on the merits of the main proceedings but which had “a direct effect on the civil right at stake” (*Kübler v. Germany*, no. 32715/06, § 48, 13 January 2011). Accordingly, the “right at stake” referred to in the *Micallef* judgment does not necessarily imply that the interim measure must determine the same right as is the subject of the main proceedings.

66. Turning to the present case the Court firstly notes that the applicant company was not a party to the main proceedings in which the interim measures were ordered, nevertheless, the Court has already found above that these measures interfered with the applicant company’s right to property, which is a civil right for the purposes of Article 6 (see, e.g., *Credit and Industrial Bank v. the Czech Republic*, no. 29010/95, § 67, ECHR 2003-XI (extracts), where the concerned decisions affected the applicant bank’s ability to administer its property and assets). Therefore the first *Micallef* criterion has been met in the present case.

67. Regarding the second criterion, the Court notes that as a result of the interim measures the applicant company was not permitted to hold general meetings for several years. The consecutive interim measures effectively determined the applicant company’s ability to administer its own property by prohibiting it from taking certain decisions concerning it (see § 30 above).

68. The Court notes that it has found under Article 1 of Protocol No. 1 that the impact of the measures on the day-to-day business of the applicant company has been limited. Yet the fact still remains that the applicant company has been prevented from taking some strategic decisions. In any case, the Court considers that the seriousness of an interference with a civil right plays no role in determining the applicability of Article 6 of the Convention.

69. The Court further considers that the present case differs from the cases of *Štokalo and Others v. Croatia* ((dec.), no. 22632/07, 3 May 2011) and *Imobilije Marketing d.o.o. and Ivan Debelić v. Croatia* ((dec.), no. 23060/07, 3 May 2011) where Article 6 was not applicable because the provisional measures were only of a protective nature. Their purpose was to safeguard the future satisfaction of a creditor’s claim but they led to neither the complete nor the partial satisfaction of the creditor’s claim. It is true that the present interim measures also had a certain protective aim in the sense of safeguarding rights of the claimant in the main proceedings. However, the effects of the interim measures in the present case are much broader in scope and cannot be considered to have the sole aim of protecting the possible satisfaction of the claim in the main proceedings. Even if the applicant company were allowed to convene a general meeting and adopt decisions in it, it would not have any bearing on the claimant’s chances of

having its claim for surrender of the shares satisfied in the main proceedings. It could merely have a negative impact on the value of the shares or other interests of the shareholder.

70. Moreover, in contrast to *Štokalo and Others*, where the applicants were both parties to the main proceedings and requested the provisional measure, for the applicant company the property rights interfered with by the interim measures is the “right at stake” because for it there are no main proceedings to which the interim measures could relate. It cannot, therefore, be said that the applicant company would not be prejudiced by the interim measures which, on the contrary as found above, did interfere with its property rights.

71. In sum, the interim measures decided a civil right of the applicant company and Article 6 of the Convention is therefore applicable in the present case.

72. The Court, referring to its well established case-law (*Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18; *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93; *Mercieca and Others v. Malta*, no. 21974/07, § 35, 14 June 2011, and *RTBF v. Belgium*, no. 50084/06, § 74, 29 March 2011), observes that the applicant company’s complaints arise from the fact that the interim measures were imposed on it in the proceedings to which it was not a party. It tried to have them reviewed on appeal but allegedly without success. There is therefore an issue of the right of access to court.

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

B. Merits

1. Applications nos. 12266/07 and 40059/07

74. The Court notes that the applicant company’s appeals were reviewed by the High Court, which upheld the imposition of the interim measures. Its decisions were substantively reasoned on the merits of the case.

75. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

2. Applications nos. 36038/09 and 47155/09

76. The Court observes that the appellate court dismissed the applicant company’s appeals without deciding on the merits. It held that since the interim measures had already lost any effect because the date of the prohibited general meeting had passed, any review of them would have been

immaterial. These appeal proceedings did not therefore fulfil the applicant company's right of access to a court that would hear their civil claim.

77. Admittedly, in application no. 36038/09 the High Court noted *obiter dictum* that even assuming that the appeal had been admissible it would have had to uphold the interim measure. Yet, the Court does not consider this fact decisive because the operative part of the decision declared the appeal as inadmissible (see paragraph 17 above).

78. Regarding the proceedings before the Plzeň Regional Court on the nullity of the decisions of the general meetings held in spite of the interim measures prohibiting them (see paragraph 23 above), the Court notes that these were not instituted by the applicant company. Moreover, this avenue of achieving access to a court regarding the interim measure essentially means that the applicant company must first act illegally and conduct a prohibited general meeting. Lastly, the Supreme Court ruled that the courts could not decide on the merits in these proceedings, holding that the general meetings held in spite of being prohibited could not have been legally considered as general meetings and thus courts could not have decided on their legality. It also explicitly agreed with the High Court that it could not review the interim measures adopted in these proceedings. Accordingly, these proceedings cannot be considered as satisfying the applicant company's right of access to court in respect of the interim measures.

79. Accordingly, there has been a violation of Article 6 § 1 of the Convention on account of lack of access to court.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

80. In applications nos. 12266/07 and 40059/07 the applicant company also complained that its constitutional appeals had been wrongly dismissed. In applications nos. 40059/07, 36038/09 and 47155/09 it complained that it had doubts about the impartiality of the judges of the Prague Municipal Court and Prague High Court. In application no. 12266/07 it complained that decisions of the Municipal Court had not been reasoned. It relied on Article 6 of the Convention.

81. Having regard to all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

82. This part of the applications is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant company claimed 100,000 euros (EUR) in respect of non-pecuniary damage. It argued that the prohibition on holding general meetings had damaged its reputation and caused it difficulties in dealing with its customers, business partners, authorities and local government. It added that its reputation *vis-à-vis* the domestic courts had also been damaged owing to the numerous sets of proceedings arising from the interim measures.

85. The Government maintained that the finding of a violation would constitute in itself sufficient just satisfaction.

86. The Court has already held that a commercial company may be awarded pecuniary compensation for non-pecuniary damage. In this context account should be taken of the company’s reputation, uncertainty in decision making, disruption to the management of the company (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (*Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 35, ECHR 2000-IV; *Forminster Enterprises Limited v. the Czech Republic* (just satisfaction), no. 38238/04, § 25, 10 March 2011).

87. The Court notes that the applicant company based its claim on its loss of reputation arising out of its inability to convene general meetings. It observes, however, that it has found only partly a violation of Article 6 of the Convention, not having considered the interim measures as violating the Convention. There is therefore no causal link between the alleged damage to the applicant’s company’s reputation and the violation found.

88. The Court, deciding in equity, considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage that the applicant company may have suffered.

B. Costs and expenses

89. The applicant company also claimed 158,297 Czech korunas (CZK) for the costs and expenses incurred in relation with convening and holding general meetings and CZK 310,000 for those incurred before the domestic

courts and the Court in respect of applications nos. 40059/07, 36038/09 and 47155/09.

90. The Government argued that only claims for services connected with the Convention claims could be reimbursed and that the amounts claimed were generally rather excessive.

91. 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. Regarding the costs and expenses incurred in domestic proceedings, only those that were essentially aimed at remedying the violations of the Convention found before the Court may be taken into account (*Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 283-284, ECHR 2006-V).

92. In the present case, regard being had to the violation found, the Court considers that the applicant company did not incur any domestic expenses that were aimed at remedying the lack of access to court, namely the dismissal of its appeals by the High Court.

93. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 for the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT

1. *Decides* unanimously to join the applications;
2. *Declares* unanimously the complaint under Article 1 of Protocol No. 1 and complaints under Article 6 § 1 of the Convention relating to the lack of access to court admissible;
3. *Declares* unanimously the remainder of the complaints inadmissible;
4. *Holds* unanimously that there has been no violation of Article 1 of Protocol No. 1;
5. *Holds* unanimously that there has been no violation of Article 6 of the Convention in applications nos. 12266/07 and 40059/07;

6. *Holds* by six votes to one that there has been a violation of Article 6 of the Convention in applications nos. 36038/09 and 47155/09;
7. *Holds* unanimously that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant company;
8. *Holds* by six votes to one
 - (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 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant company, 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* unanimously the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 12 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Angelika Nußberger is annexed to this judgment.

D.S.
C.W.

DISSENTING OPINION OF JUDGE NUSSBERGER

The majority of the Chamber has found a violation of Article 6 § 1 of the Convention in applications nos. 36038/09 and 47155/09 on account of lack of access to court, as the appellate court dismissed the applicant company's appeals without deciding the case on the merits.

I doubt very much whether the findings in the *Micallef* judgment, as developed further in *Udorovic v. Italy* and *Kübler v. Germany*, apply in the present case. The interim measure cannot be considered “to determine effectively a civil right”. In the main proceedings the “civil right” at issue is the ownership of the shares. It is clear that the injunction does not have any bearing on that issue. The subject of the injunction is the right to hold meetings, which can hardly be considered as a “civil right” *per se*; it is rather an intermediary step or a prerequisite for determining other civil rights. The injunction therefore has rather to be considered as a protective measure, in line with the reasoning in *Stokalo v. Croatia* and *Imobilije Marketing v. Croatia*: it is meant to prevent the adoption of decisions which might have a negative impact on the ownership rights that are the subject of the main proceedings.

But even assuming Article 6 were applicable, the specificities of interim measures have to be taken into account (see *Micallef*, § 86).

According to the majority, the appellate High Court's decisions rendered on 5 February 2009 and 16 July 2009 violated the applicant company's right of access to court. Two aspects are to be distinguished in this context. First, the High Court's decisions came too late, as they were rendered only after the date on which the meeting had been scheduled. Second, the High Court refused to decide on the merits *ex post facto*.

Concerning the first aspect, regard must be had to the fact that the appeals were almost certainly lodged a very short time before the date of the meeting. The exact dates are not known to the Court (see paragraph 16: “on an unspecified date before 30 January 2009”). On the basis of the *ad impossibilia nemo tenetur* principle, courts cannot be expected to always be in a position to decide immediately. They must be afforded some discretion in prioritising important issues and postponing less important ones. The applicant company's appeals did not concern a matter of utmost urgency, as the right to hold a meeting was not lost but could still be exercised at a future point in time.

Concerning the second aspect, it is important to note that the High Court did consider the legality of the injunction, even if only in an *obiter dictum*. In the context of interim measures this approach should be acceptable.

I would therefore argue that there has been no violation of Article 6 § 1 in the present case.

