



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

FIFTH SECTION

CASE OF ČADEK AND OTHERS v. THE CZECH REPUBLIC

*(Applications nos. 31933/08, 60084/08, 6185/09, 46696/09, 52792/09,
53518/09, 10185/10, 42151/10, 3167/11 and 20939/11)*

JUDGMENT

STRASBOURG

22 November 2012

FINAL

29/04/2013

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

In the case of Čadek and Others v. the Czech Republic,

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

Dean Spielmann, *President*,

Mark Villiger,

Karel Jungwiert,

Boštjan M. Zupančič,

Angelika Nußberger,

André Potocki,

Helena Jäderblom, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 23 October 2012,

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

PROCEDURE

1. The case originated in ten applications (see appended list) 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”). The applicants are five natural persons and two corporations whose particulars are specified in the appendix.

2. The names of the applicants’ representatives are also listed in the appendix. The Czech Government (“the Government”) were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.

3. The applicants alleged, in particular, that their right to property had been breached as a result of the enactment by the State of a law that repealed their right to receive substitute plots of land in exchange for their restitution claims.

4. On 27 September 2011 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background of the applicants' situation

5. Under the Land Ownership Act, restitution claimants were entitled to *restitutio in integrum* of land which had been confiscated from them before 1990. If it was not possible, for various reasons indicated in the Act, to restore a particular plot of land, they were entitled to receive compensatory land of equivalent value ("restitution claim"). The Land Fund (*pozemkový fond*), a public body under the Ministry of Agriculture (hereinafter "the Fund"), deals with these restitution claims. Some original restitution claimants transferred their claims to other persons, a practice which was allowed by law. The restitution claims had a nominal value, which was based on the price of the confiscated land in 1991.

6. Act no. 253/2003 amending the Land Ownership Act ("the Amendment Act") was passed on 6 August 2003 (see paragraph 41 below). It provided that if the Fund had not settled a claim for a substitute plot of land by 31 December 2005 – or within two years if the claim had been purchased after entry into force of the Amendment Act – the claim would be extinguished and the restitution claimant would retain only the right to financial compensation in the amount of the nominal value of the claim. By the end of 2005 many restitution claims were still outstanding.

7. On 7 June 2005 the board of directors of the Fund adopted a confidential internal directive in accordance with which the Fund would draw up contracts for the transfer of plots of land with persons who, like some of the applicants, had instituted proceedings against it. This practice was terminated on 1 July 2005. When the media discovered this month-long practice in autumn 2005, they portrayed it as scheming with restitution claims within the Fund. According to them, those who had profited from it had been mostly people who had known about the directive and instituted proceedings after 7 June 2005, including some friends of managers of the Fund. As a result of the disclosure of this practice, four managers of the Fund were dismissed and on 16 November 2005 the Minister of Agriculture resigned. Subsequently, the Fund started to institute proceedings in order to have those transfer contracts rendered null and void.

B. Applications lodged by Jaroslav Čadek

1. Application no. 31933/08

8. Between 7 March and 29 April 2005 the applicant purchased a number of restitution claims for substitute plots of land. On 30 June 2005 he instituted proceedings against the Fund, claiming the transfer of particular plots of land in settlement of his restitution claims.

9. On 6 October 2006 the Prague 8 District Court (*obvodní soud*) rejected his claim, holding that his restitution claims had expired on 31 December 2005 under the Amendment Act. On 28 March 2007 the Prague Municipal Court (*městský soud*) upheld the judgment but on a different ground. It found that the applicant was not entitled to settlement of his restitution claims through legal proceedings, as the Fund's priority was to settle the original restitution claims. On 10 August 2007 the Supreme Court (*Nejvyšší soud*) dismissed an appeal on points of law lodged by the applicant, thereby endorsing the opinion of the District Court. On 6 March 2008 the Constitutional Court (*Ústavní soud*) dismissed a constitutional appeal lodged by the applicant as manifestly ill-founded, referring to its judgment no. Pl. ÚS 6/05 (see paragraph 42 below).

2. Application no. 60084/08

10. Between 7 March and 29 April 2005 the applicant purchased several restitution claims for substitute plots of land. On 30 May 2005 he instituted proceedings against the Fund claiming the transfer of particular plots of land in settlement of his restitution claims.

11. On 22 September 2006 the Prague 10 District Court rejected his claims, holding that his restitution claims had expired on 31 December 2005 under the Amendment Act. On 12 April 2007 the Municipal Court upheld that judgment. On 28 August 2007 the Supreme Court dismissed an appeal on points of law lodged by the applicant. On 10 July 2008 the Constitutional Court dismissed a constitutional appeal lodged by the applicant as manifestly ill-founded, referring to its judgment no. Pl. ÚS 6/05 (see paragraph 42 below).

3. Application no. 6185/09

12. On 11 May 2005 the applicant purchased several restitution claims for substitute plots of land. On 7 June 2005 he instituted proceedings against the Fund claiming the transfer of a particular plot of land in settlement of his restitution claims.

13. On 14 August 2006 the Prague 4 District Court rejected his claim, holding that his restitution claims had expired on 31 December 2005 under the Amendment Act. On 17 January 2007 the Municipal Court upheld that

judgment. On 30 June 2008 the Supreme Court dismissed an appeal on points of law lodged by the applicant. On 18 September 2008 the Constitutional Court dismissed a constitutional appeal lodged by the applicant as manifestly ill-founded, referring to its judgment no. Pl. ÚS 6/05 (see paragraph 42 below).

4. Application no. 52792/09

14. Between 11 and 19 May 2005 the applicant purchased a number of restitution claims for substitute plots of land. On 7 June 2005 he instituted proceedings against the Fund claiming the transfer of a particular plot of land in settlement of his restitution claims.

15. In a judgment of 27 November 2006 the Prague 9 District Court rejected his claim, holding that his restitution claims had expired on 31 December 2005 under the Amendment Act. On 11 July 2007 the Municipal Court upheld that judgment. On 30 June 2008 the Supreme Court dismissed an appeal on points of law lodged by the applicant. On 25 June 2009 the Constitutional Court dismissed a constitutional appeal lodged by the applicant as manifestly ill-founded, referring to its judgment no. Pl. ÚS6/05 (see paragraph 42 below).

5. Application no. 53518/09

16. On 11 May 2005 the applicant purchased several restitution claims for substitute plots of land. On 7 June 2005 he instituted proceedings against the Fund claiming the transfer of particular plots of land in settlement of his restitution claims.

17. In a judgment of 2 October 2007 the Prague 5 District Court rejected his claim, holding that his restitution claims had expired on 31 December 2005 under the Amendment Act. On 10 February 2008 the Prague Municipal Court upheld that judgment. On 5 March 2009 the Supreme Court dismissed an appeal on points of law lodged by the applicant. On 8 July 2009 the Constitutional Court dismissed a constitutional appeal lodged by the applicant as manifestly ill-founded, referring to its judgment no. Pl. ÚS 6/05 (see paragraph 42 below).

18. The restitution claims purchased by the applicant in the five applications cost a total of 12,184,153 Czech korunas (CZK) (487,366 euros (EUR)). The claims were settled by financial compensation of CZK 6,651,909 (EUR 266,076), which constituted their nominal value.

C. Application no. 46696/09 lodged by Hana Puchtová

19. The applicant has been a farmer since 2003. She purchased several restitution claims for substitute plots of land between 2004 and 2005, and one on 17 June 2003. The total nominal value was CZK 2,030,605

(EUR 81,224); but the applicant paid CZK 2,984,824 (EUR 119,393). On 14 July 2005 she instituted proceedings against the Fund claiming the transfer of particular plots of land in settlement of her restitution claims.

20. In a judgment of 31 July 2006 the Klatovy District Court rejected her claim, holding that her restitution claims had expired on 31 December 2005 under the Amendment Act. On 8 November 2006 the Plzeň Regional Court (*krajský soud*) upheld that judgment. On 23 August 2007 the Supreme Court dismissed an appeal on points of law lodged by the applicant. On 12 March 2009 the Constitutional Court dismissed a constitutional appeal lodged by the applicant as manifestly ill-founded, referring to its judgment no. Pl. ÚS6/05 (see paragraph 42 below).

21. The applicant received financial compensation of CZK 1,307,740 (EUR 52,310) for her restitution claims and she had the right to receive the rest of the nominal value of her restitution claims.

D. Application no. 10185/10 lodged by Ústav pro strukturální politiku v zemědělství, a.s.

22. The applicant is a corporation established under Czech law. On 19 April and 3 June 2005 respectively, the applicant company concluded two contracts by which it purchased for an unspecified amount restitution claims for substitute plots of land. On an unspecified date the applicant company instituted proceedings against the Fund claiming the transfer of a particular plot of land in settlement of its restitution claims. On the basis of a contract concluded on 1 July 2005, the Fund transferred to the applicant company the ownership of a plot of land valued at CZK 277,903 (EUR 11,579). Consequently, the court proceedings were terminated as the matter had been resolved.

23. On an unspecified date the Fund instituted proceedings against the applicant company for the determination of property rights to the transferred plot of land, claiming that the contract was null and void.

24. On 9 June 2006 the Cheb District Court decided that the Fund was the owner of the plot of land. It held that the contract was null and void because the Fund had not offered the sale of the land publicly before transferring it to the applicant company and had thereby unlawfully excluded other eligible persons from acquiring it. On 23 May 2007 the Plzeň Regional Court upheld the judgment, endorsing the District Court's ruling. On 7 May 2009 the Supreme Court dismissed an appeal on points of law lodged by the applicant company. On 6 August 2009 the Constitutional Court dismissed a constitutional appeal lodged by the applicant company as manifestly ill-founded, referring to its judgment no. Pl. ÚS 6/05 (see paragraph 42 below).

25. The applicant company has not requested financial compensation to settle its restitution claims.

E. Application no. 42151/10 lodged by Ivo Pastorek and Viktor Pavlíček

26. Between 2 February and 31 March 2005 the applicants purchased several restitution claims for substitute plots of land in order to acquire land in Prague to set up a health centre. The total nominal value of the restitution claims was CZK 5,084,404 (EUR 211,850); they paid CZK 14,092,500 (EUR 563,700). On 25 May 2005 they instituted proceedings against the Fund claiming the transfer of particular plots of land in settlement of their restitution claims.

27. In a judgment of 23 May 2007 the Prague 4 District Court rejected their restitution claims, holding that they had expired on 31 December 2005 under the Amendment Act. On 17 April 2008 the Prague Municipal Court upheld this judgment. On 18 November 2009 the Supreme Court dismissed an appeal on points of law lodged by the applicants. On 18 March 2010 the Constitutional Court dismissed a constitutional appeal lodged by them as manifestly ill-founded.

28. The first applicant received financial compensation of CZK 2,351,442 (EUR 94,050) and did not ask for financial compensation for his outstanding restitution claims. The second applicant did not ask for financial compensation.

F. Application no. 3167/11 lodged by Landštejn, s. r. o.

29. The applicant is an agricultural company. On 27 May 2005, it concluded a contract by which it purchased, for an unspecified amount, restitution claims for substitute plots of land, the nominal value of which was CZK 1,247,292 (EUR 51,971). On the basis of a contract concluded on 1 July 2005 the Fund transferred to the applicant company the ownership of plots of land valued at CZK 733,906 (EUR 29,356) in partial settlement of the claim. The application refers only to that part of the claim.

30. On 17 December 2005 the Fund instituted proceedings against the applicant company for determination of property rights to the transferred plot of land, claiming that the contract was null and void. On 30 October 2007 the Jindřichův Hradec District Court decided that the Fund was the owner of the plots of land. It held that the contract was null and void because the Fund had not offered the sale of the land publicly and had thereby unlawfully excluded other eligible persons from acquiring it. On 27 February 2008 the České Budějovice Regional Court upheld the judgment, endorsing the District Court's ruling. On 17 March 2010 the Supreme Court dismissed an appeal on points of law lodged by the applicant company. On 10 June 2010 the Constitutional Court dismissed a constitutional appeal lodged by them as manifestly ill-founded.

31. The applicant company received CZK 733,906 (EUR 29,356) as financial compensation for its restitution claim.

G. Application no. 20939/11 lodged by Jarmila Vorlíčková

32. On 17 September 1997 the applicant purchased a restitution claim for substitute plots of land for CZK 56,248 (EUR 2,344), corresponding to its nominal value. She intended to acquire a plot of land on which she could breed horses for private purposes.

33. On 21 January 1998 the Fund accepted the applicant's request for the transfer of a particular plot of land, but informed her that it could not carry out the transfer until it had all the necessary materials regarding the relevant zoning plan. On 2 February 1998 the applicant wrote to the Fund asking it to settle her claim without further delay.

34. On 8 November 2005 the applicant instituted proceedings against the Fund claiming the transfer of a particular plot of land in settlement of her restitution claim.

35. On 12 December 2005 the Fund transferred the ownership of the plot of land to the City of Tanvald. Consequently, the applicant brought proceedings against the Fund, claiming that the transfer contract should be declared null and void.

36. On 27 April 2007 the Jablonec nad Nisou District Court upheld her claim and declared the transfer contract null and void. In a judgment of 26 June 2008 the Ústí nad Labem Regional Court rejected the applicant's claim, however, holding that her restitution claim for the transfer of land had expired on 31 December 2005 under the Amendment Act and thus she had no interest in having the contract declared null and void. On 12 May 2010 the Supreme Court dismissed an appeal on points of law lodged by the applicant. On 14 September 2010 the Constitutional Court dismissed a constitutional appeal lodged by her as manifestly ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Act no. 229/1991 on Adjustment of Ownership Rights in respect of Land and Other Agricultural Property ("Land Ownership Act")

37. This Act provides, *inter alia*, for the restitution of certain agricultural and other properties, which were ceded or transferred to the State or other legal persons between 25 February 1948 and 1 January 1990.

38. Section 11 provides that if the actual property cannot be restored to its rightful owner, for example because the land has been built on, the Fund

will transfer other equivalent State-owned property, preferably located in the same area, to the rightful claimant, if the latter consents.

39. In accordance with section 16, if property cannot be restored to its rightful owners and the latter cannot be compensated by the transfer of other property to them, they have a right to financial compensation under certain conditions.

40. Under section 28a, financial compensation is based on the value of the confiscated property on 24 June 1991, estimated in accordance with the regulations in force at that time.

41. Act no. 253/2003 amending the Land Ownership Act (“the Amendment Act”) entered into force on 6 August 2003, having been approved by the Lower Chamber of Parliament on 22 May 2003. It provided that any right to the transfer of substitute plots of land by the Fund under section 11 that had not been settled within two years from the date the restitution claim had been established would be extinguished, and claimants would be entitled only to financial compensation under section 28a. Concerning claims that were established before the Amendment Act entered into force, the right to substitute plots of land would be extinguished on 31 December 2005.

B. Judgment of the Constitutional Court of 13 December 2005 (Pl. ÚS 6/05)

42. The Constitutional Court repealed the time-limit introduced by the Amendment Act for settling the claims of the original restitution claimants by transferring a substitute plot of land on the basis that it breached Article 1 of Protocol No. 1. It held that given that the Fund had not been effectively settling outstanding claims – it had not been offering enough plots of land for transfer and there had been no effective legal remedy for enforcing those claims – the time-limit in effect deprived restitution claimants of their claims, which constituted legitimate expectations under Article 1 of Protocol No. 1. However, the court distinguished between original restitution claimants and persons who had acquired restitution claims from them by deed. It said that only the rights of the original restitution claimants had been breached, because the transferees must have been aware of the difficulties in settling restitution claims and of the risks that accompanied them, so they could not be said to have legitimate expectations.

C. Judgment of the Supreme Court of 30 November 2007 (28 Cdo 436/2007)

43. The Supreme Court, enlarging on the above decision of the Constitutional Court, held that the time-limit for settling claims for substitute plots of land did not apply to farmers who needed the land for

their own farming, even if they were not original restitution claimants. It held that the right to substitute plots of land constituted “possessions” under Article 1 of Protocol No. 1 and that the Amendment Act, which in practice had deprived farmers of this right, had not struck a fair balance between the competing interests. It distinguished between the situation of a farmer who needed the land for his or her own farming, which was in compliance with the object and purpose of the Land Ownership Act, and those dealing in property, whose commercial activities involved certain risks.

D. Report of the Supreme Audit Office of the Czech Republic no. 3/2003

44. In 2002 and 2003 the Supreme Audit Office conducted an audit of the Fund and found, *inter alia*, several irregularities in the way in which it dealt with restitution claims. It noted that the Fund’s offer of plots of land to settle restitution claims had been limited and that the Fund had favoured the sale of land before using it to settle the restitution claims. It found some further irregularities in the way in which the ownership of land had been transferred under the Land Ownership Act.

THE LAW

I. JOINDER OF THE APPLICATIONS

45. The Court considers that, given their common factual and legal background, the applications should be joined in accordance with Rule 42 § 1 of the Rules of Court.

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

46. The applicants complained that they had been deprived of their property, that is, the land or their claim for substitute plots of land, in violation of 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

47. The Government maintained that the applicants should have instituted proceedings for damages against the State and awaited their outcome.

48. The Court observes that in applications nos. 31933/08, 60084/08, 6185/09, 46696/09, 52792/09, 53518/09, 42151/10 and 20939/11 the applicants complain that the Amendment Act deprived them of their right to receive land from the State in exchange for their restitution claims. They all instituted proceedings appropriate to their individual circumstances in an attempt to enforce their right to substitute plots of land. In all instances their claims were eventually rejected by the Constitutional Court, which found that the Amendment Act was constitutional.

49. The Court therefore considers that these applications are materially different from the situation in *Lesní společnost Přimda, a.s. v. the Czech Republic* (dec.), no. 11997/05, 21 September 2010, referred to by the Government. In that case the applicant company acquired property from the State in the form of a deed which was later declared invalid by the courts. It was therefore appropriate that the applicant company should bring proceedings for damages against the State, which had transferred to the company property which it had not been allowed to transfer. In the present case, however, the transfers through which the applicants acquired their rights to substitute plots of land were valid and the alleged interference is the new legislation, which the applicants unsuccessfully challenged all the way up to the Constitutional Court. Having used this remedy, they were not required to have tried others that were available but probably no more likely to be successful (see *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010).

50. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies regarding these applications.

51. Regarding applications nos. 10185/10 and 3167/11, the applicant companies primarily complained that the contracts by which they had acquired land from the State had been declared null and void. The Court does not need to decide whether the applicant companies exhausted all effective domestic remedies for this complaint, as it is in any case manifestly ill-founded for the following reasons.

52. The applicant companies concluded contracts with the Fund by which they acquired ownership of particular plots of land. However, the contracts were later declared null and void. The Court reiterates that it has only limited power to deal with alleged errors of fact or law committed by the national courts and it cannot substitute its view for that of the domestic courts on the applicant companies' ownership of the plots of land (see *Jantner v. Slovakia*, no. 39050/97, § 32, 4 March 2003). Accordingly, even assuming that the judgments of the domestic courts interfered with the

applicant companies' right to property, they were based on the law and proportionate to the public interest of protecting the rights of the real owners. These complaints are thus manifestly ill-founded.

53. The Court further observes that the applicant companies retained their restitution claims even after the requisite contracts had been declared null and void, but that as a result of the Amendment Act, they lost their right to substitute plots of land. To the extent that the Government's objection also concerns the applicant companies' complaint that their rights had been violated by the Amendment Act, the Court notes that in 2009 it was already well established in the Constitutional Court's case-law that the Amendment Act was constitutional. In these circumstances, the Court does not consider that claiming damages from the State would have offered the applicant companies reasonable prospects of success. Moreover, the Government failed to produce any evidence to the contrary. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies regarding this complaint.

54. Lastly, regarding application no. 20939/11 the Government maintained that the applicant had not suffered a significant disadvantage as the value of the restitution claim that had not yet been settled was only CZK 13,859.40 (EUR 550).

55. The applicant disagreed, stating that that was the nominal value of the claim calculated on the basis of the price of land in 1991. Her outstanding claim was for EUR 23,210, which according to an expert report was the current value of the land.

56. The Court observes that what the applicant is complaining of is not the non-payment of the outstanding claim in its nominal amount, to which she was still entitled under the domestic law after 2005, but the loss of her entitlement to substitute plots of land, the real value of which was considerably higher than the nominal value of the restitution claim. In these circumstances, the Court considers that the current value of the land at issue is not insignificant. It accordingly dismisses the Government's objection.

57. The Court notes that the complaint that the revocation of the right to acquire substitute plots of land for their restitution claims violated the applicants' right to property 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. Arguments of the parties

58. The applicants argued that by enacting the Amendment Act, the Government had violated their right to property because after 2005 they had no longer been entitled to substitute plots of land. In their view, the right to

acquire substitute plots of land constituted “possessions” under Article 1 of Protocol No. 1 and the Amendment Act had deprived them of those possessions without any public interest grounds. At the same time they had been unable to acquire substitute plots before the end of 2005 because of the inertia of the Fund, which had not offered enough plots of land under the transfer scheme. Moreover, the financial compensation to which they were still entitled after 2005 constituted only a fraction of the value of the land to which they had been entitled.

59. The Government maintained that there had been no interference with the applicants’ right to property because the Amendment Act had abolished only one of the possibilities by which the restitution claims could be settled but the claims themselves had been left intact. In any case the alleged interference had been lawful and had pursued a public interest. The aim of the Amendment Act had been to put an end to the process of settling restitution claims that had been going on for years. One of the reasons that the process had been taking so long was that the restitution claimants had not been willing to apply for the land offered by the Fund, preferring to wait for offers of better land.

60. On the issue of proportionality, the Government emphasised that the applicants were not original restitution claimants. They had known about the expiry of their claims for substitute plots of land when they had purchased the claims. They had still been entitled to financial compensation, the value of which could not be regarded as only symbolic as it had often been millions of Czech korunas. Moreover, most of the applicants’ other restitution claims had been settled by a transfer of substitute plots of land.

2. The Court’s assessment

(a) General considerations

61. At the outset the Court considers – and this has not been disputed by the parties – that the applicants’ restitution claims constitute “possessions” within the meaning of Article 1 of Protocol No. 1. The Government, however, argued that there had been no interference with these possessions as a result of the Amendment Act.

62. The Court observes that before 2005, under the Land Ownership Act, restitution claimants were primarily entitled to have their confiscated property returned to them. If that was not possible, they were entitled to the transfer of an equivalent plot of land. They had the right to financial compensation only if their claim could not be settled by the assignment of other property. Manifestly, the Land Ownership Act favoured the allocation of substitute plots of land before financial compensation, but the right to this transfer of land was subsequently abolished by the Amendment Act.

63. The Court therefore considers that the Amendment Act constituted an interference with the applicants’ possessions, namely their restitution

claims, which after its enactment could only be settled by financial compensation.

64. On the other hand, the Court does not consider that the Amendment Act deprived the applicants of any property. Their restitution claims were still valid and their nominal value was left intact. Consequently, the second sentence of Article 1 of Protocol No. 1 is not applicable in the present case.

65. The Court notes that the present situation is not a typical case of control of the use of property either within the meaning of the third sentence of Article 1 of Protocol No. 1. It will therefore examine the case under the first rule set out in the first sentence of the first paragraph, which is of a general nature and enunciates the principle of the peaceful enjoyment of property (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II). Regardless of whether the case is examined under the third or first sentence, any interference must be lawful, pursue a legitimate aim and strike a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim pursued (see *Herrmann v. Germany* [GC], no. 9300/07, § 74, 26 June 2012, and *Bruncrona v. Finland*, no. 41673/98, §§ 66-67, 16 November 2004).

66. The Court considers that the interference was clearly based on law, namely the Amendment Act.

67. As to the legitimate aim pursued by the Amendment Act, the Court reiterates that the notion of “public interest” is necessarily extensive (see *Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06, § 166, 12 October 2010) and it therefore accepts the aim stated by the Government as legitimate, namely to put an end to the process, which had given rise to speculation in the past. On the other hand, it cannot be considered as a particularly pressing aim, especially given the lack of explanation as to precisely how the length of the restitution process before the Amendment Act had been detrimental to the public interest. The length of the process seems to have been primarily detrimental to restitution claimants such as the applicants, as evidenced by application no. 20939/11.

68. It remains to be assessed whether the means employed in pursuing this aim were proportionate. In assessing the proportionality in individual applications the Court is guided by the following principles.

69. The Court reiterates its established case-law in which it has dealt in detail with the issue of the considerably wide margin of appreciation afforded to domestic authorities in restitution cases and held that it would respect the legislature’s judgment as to what is proportionate in the public interest, unless that judgment is manifestly without reasonable foundation (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, § 91, 30 June 2005; *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99,

60036/00, 73465/01 and 194/02, § 168-69 and 180, 15 March 2007; *Maria Atanasiu and Others*, cited above, § 172; and *Kroutilikovi and Others v. the Czech Republic* (dec.), no. 14256/05, 28 June 2011).

70. The Court observes that most of the applicants in the present case bought the restitution claims after the Amendment Act had been enacted and knew that their claims to substitute plots of land were precarious and would expire by the end of 2005 (see *Almeida Ferreira and Melo Ferreira v. Portugal*, no. 41696/07, § 34, 21 December 2010). Accordingly, they would have accepted the element of risk that is inherent in business activities such as dealing in property (see, *mutatis mutandis*, *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 59, Series A no. 222). The Court adds that for farmers, the negative consequences of the Amendment Act were attenuated by the decision of the Supreme Court (see paragraph 43 above), which held that the Amendment Act was not applicable to farmers who needed the land for their own farming.

71. On the other hand, the Court notes that the Fund was taking a considerable time to offer land to settle the restitution claims, and the irregularities in the process (see paragraphs 42 and 44 above). The applicants were left in an ambiguous situation, uncertain for a considerable time whether they would indeed acquire substitute plots of land. This could have placed an excessive burden on them. The Court has found such a burden excessive when the uncertainty has lasted for several years (see, amongst other authorities, *Lyubomir Popov v. Bulgaria*, no. 69855/01, § 123, 7 January 2010, where the applicant waited 12 years, and *Ramadhi and Others v. Albania*, no. 38222/02, § 83, 13 November 2007, where the applicant waited 11 years). The Court will therefore take into account the period from the applicants' acquisition of the restitution claims to the expiry of their entitlement to substitute plots of land, namely in most cases the end of 2005.

72. It is also crucial to note that the applicants were not deprived of their possessions as they were still entitled to financial compensation (see, conversely, *Maria Atanasiu and Others*, cited above, § 193). The compensation in question was the value of the restitution claim – the “possession” in the sense of Article 1 of Protocol No. 1 – in accordance with the Land Ownership Act 1991. The amount of compensation which the State guaranteed to pay was based on the price of land in 1991. The Court reiterates that Article 1 of Protocol No. 1 does not impose any restrictions on the Contracting States' freedom to determine the scope and conditions of property restitution for possessions taken before they ratified the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). It is true that the applicants claimed, and it might well be the case, that the substitute plots of land had a much higher value, but the Court observes that the discrepancy between the two possible ways of settling restitution claims arose only because of the rise in the price of land after

1991 as a result of market forces for which the State generally cannot be held responsible.

73. Even if the Court were to assume that, given the complexity of the case, the financial compensation must be reasonably related to the value of the substitute plots of land to which the applicants were entitled before the enactment of the Amendment Act, the amount on offer could not be considered so manifestly unreasonable as to make the interference disproportionate in view of the considerably wide margin of appreciation of the State. In the context of restitution the Court has accepted that even cases where the applicants were not compensated at all for confiscated property complied with the Convention, provided that they still retained some of it (see *Šimonová v. the Czech Republic* (dec.), no. 73516/01, 26 April 2005, and *Haškovcová and Věříšová v. the Czech Republic* (dec.), no. 43905/04, 7 December 2010). The Court considers that that reasoning is fully applicable to the present case where, even though the applicants lost the possibility to acquire substitute plots of land, their restitution claims were not extinguished completely as they retained the right to financial compensation in the nominal amount of the restitution claims.

(b) Application of the above-mentioned principles to the individual applications

(i) Applications nos. 31933/08, 60084/08, 6185/09, 52792/09 and 53518/09 lodged by Mr Čadek

74. The applicant purchased the restitution claims between March and May 2005 for approximately double their nominal value. Knowing that his right to substitute plots of land would expire only a few months later, he took a considerable risk. Instead of acquiring high-value plots of land, he received only financial compensation from the State in the amount of the nominal value of his restitution claims. The Court considers that the loss he suffered falls within the business risk he took. Moreover, the uncertainty as to whether he would acquire a substitute plot of land or only financial compensation did not last very long.

75. The Court also takes note of the Government's submission that in June, July and August 2005 the Fund had publicly offered substitute plots of land in various parts of Prague with a nominal value of millions of Czech korunas. Therefore, it could not be alleged that the applicant's claims had not been settled because of the inactivity of the Fund. The applicant may not have considered those plots suitable. However, the Court observes that the domestic legislation did not guarantee the acquisition of a particular plot of land in exchange for restitution claims. Nor can such a guarantee be based on the Convention.

76. These considerations are sufficient to enable the Court to conclude that the applicant suffered only a minor interference with his right to

property. Consequently, the domestic authorities did not overstep their wide margin of appreciation and did not act manifestly unreasonably by terminating the possibility of obtaining substitute plots of land in exchange for purchased restitution claims.

77. There has accordingly been no violation of Article 1 of Protocol No. 1 in these applications.

(ii) Application no. 46696/09 lodged by Ms Puchtová

78. The applicant purchased most of the restitution claims between 2004 and 2005, that is, after the Amendment Act was enacted. She undertook a business risk in that she paid about one and a half times the nominal value of the claims. The Court does not consider the length of time in which the applicant was uncertain whether she would acquire a substitute plot of land or only financial compensation – which was less than two years, or equivalent to two years in the case of the claims that expired after 31 December 2005 – to be so long as to place an excessive burden on her.

79. Regarding the purchase of a restitution claim by the applicant on 17 June 2003, the Court notes that on that date the Amendment Act had already been passed by the Lower Chamber of Parliament and thus the applicant should have been aware of it. The Court does not consider that even two and a half years of uncertainty as to whether this restitution claim would be fulfilled by the transfer of substitute plots of land placed an excessive burden on the applicant.

80. The applicant received compensation from the State in the amount of the nominal value of the claims. Thus the loss she sustained falls within the business risk that she took.

81. Consequently, the domestic authorities did not overstep their wide margin of appreciation and did not act manifestly unreasonably by terminating the possibility of obtaining substitute plots of land in exchange for purchased restitution claims. There has therefore been no violation of Article 1 of Protocol No. 1.

(iii) Applications nos. 10185/10 and 3167/11 lodged by Ústav pro strukturální politiku v zemědělství, a.s. and Landštejn, s. r. o.

82. The applicant companies purchased the restitution claims for unknown amounts between February and June 2005. Thus they knew that their right to substitute plots of land would expire a few months later and that they were taking a considerable risk. Any loss they sustained fell within this business risk.

83. Both the applicant companies were entitled to receive financial compensation in the amount of the nominal value of their claims, but only the applicant company Landštejn, s.r.o. did so.

84. Consequently, the domestic authorities did not overstep their wide margin of appreciation and did not act manifestly unreasonably by

terminating the possibility of obtaining substitute plots of land in exchange for purchased restitution claims. There has therefore been no violation of Article 1 of Protocol No. 1 in respect of these two applications either.

(iv) Application no. 42151/10 lodged by Mr Pastorek and Mr Pavlíček

85. The applicants bought their restitution claims in February and March 2005 for approximately three times their nominal value. They knew that their right to substitute plots of land would expire a few months later, but they expressly hoped to acquire concrete plots of land on which they could conduct their health-care business. The loss they sustained thus comes within the business risk they undertook. The uncertainty as to whether they would acquire substitute plots of land lasted only a few months.

86. Moreover, both of the applicants were entitled to receive financial compensation in the nominal amount of their claims, but only the first applicant pursued this possibility.

87. Consequently, the domestic authorities did not overstep their wide margin of appreciation and did not act manifestly unreasonably by terminating the possibility of obtaining substitute plots of land in exchange for purchased restitution claims. There has therefore been no violation of Article 1 of Protocol No. 1 in respect of this application either.

(v) Application no. 20939/11 lodged by Ms Vorlíčková

88. The applicant bought the restitution claim for its nominal value in 1997 in the expectation that she would acquire a particular plot of land. At that time she could not have foreseen that her right to receive substitute plots of land of equivalent value from the State would be revoked. The Court further notes that the applicant had requested a substitute plot of land as early as 1997. She was thus left in a state of uncertainty as to whether she would acquire the land for more than eight years, which is a considerable period of time.

89. On the other hand, the Court observes that between 1998 and 2005 the applicant did not undertake any action to enforce her claim. Not even the enactment of the Amendment Act in 2003 motivated her to make any effort to settle her claim. It was only on 8 November 2005 – less than two months before the expiry of her claim – that she instituted proceedings against the Fund claiming the transfer of a particular plot of land. The Court finds that the applicant's lack of interest indicates that the Amendment Act interfered with her right to property in a relatively minor way.

90. The Court must also take into account the purchase price paid by the applicant, because she was not an original holder of the restitution claim but purchased it. Given that she acquired the restitution claim for its nominal value, the applicant did not suffer any loss as she was entitled to financial compensation in that amount. This aspect is pertinent in considering whether a certain “threshold of hardship” was crossed in the applicant's

case (see *Velikovi and Others*, cited above, § 192). The Court does not conclude that the threshold was crossed in the present application, given that the applicant is entitled to receive her purchase price for the claim.

91. Consequently, the domestic authorities did not overstep their wide margin of appreciation and did not act manifestly unreasonably by terminating the possibility of obtaining substitute plots of land in exchange for purchased restitution claims. There has therefore been no violation of Article 1 of Protocol No. 1 in this application.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

92. The applicants further complained that the distinction drawn by the Constitutional Court in its judgment no. Pl. ÚS 6/05 between original restitution claimants and persons who had acquired the claims by deeds had not been justifiable. They relied on Article 14 of the Convention.

93. The Government maintained that the difference at issue was not a relevant discrimination ground covered by “other status” and that, in any case, the difference in treatment had been justifiable.

94. The Court considers that the different treatment established by the Constitutional Court was not based on any personal choice in so far as this choice should be respected as elements of someone’s personality, such as religion, political opinion, sexual orientation and gender identity, or on grounds of personal features in respect of which no choice at all can be made, such as sex, race, disability and age. Different treatment based on whether someone is an original restitution claimant or bought a restitution claim is not a relevant ground for the purposes of Article 14 of the Convention (see *Peterka v. the Czech Republic* (dec.), no. 21990/08, 4 May 2010).

95. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

96. Relying on Articles 6 and 13 of the Convention, the applicants disagreed on various grounds with the domestic decisions and complained that they had had no access to any remedy to protect their right to obtain compensatory land.

97. Having examined the complaints submitted by the applicants, the Court, having regard to all the material in its possession and in so far as the complaints fall within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the complaints must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaint concerning Article 1 of Protocol No. 1 so far as it concerns the removal of the right to acquire substitute plots of land for the restitution claims admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been no violation of Article 1 of Protocol No. 1.

Done in English, and notified in writing on 22 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Dean Spielmann
President

APPENDIX

Application no.	Lodged on	Applicant name date of birth place of residence	Represented by
31933/08	23/06/2008	Jaroslav ČADEK 27/02/1949 Prague	Ondrej VODAK
60084/08	28/11/2008	Jaroslav ČADEK 27/02/1949 Prague	Ondrej VODAK
6185/09	22/01/2009	Jaroslav ČADEK 27/02/1949 Prague	Ondrej VODAK
46696/09	14/08/2009	Hana PUCHTOVÁ 12/08/1954 Cachrov	Martin VOVSÍK
52792/09	24/09/2009	Jaroslav ČADEK 27/02/1949 Prague	Ondrej VODAK
53518/09	24/09/2009	Jaroslav ČADEK 27/02/1949 Prague	Ondrej VODAK
10185/10	12/02/2010	ÚSTAV PRO STRUKTURÁLNÍ POLITIKU V ZEMĚDĚLSTVÍ, A.S.	Milos JIRMAN
42151/10	13/07/2010	Ivo PASTOREK 26/03/1964 Prague Viktor PAVLÍČEK 01/11/1947 Brno	Radek JONAS
3167/11	03/01/2011	LANDŠTEJN S.R.O.	Milos JIRMAN
20939/11	29/03/2011	Jarmila VORLÍČKOVÁ 06/02/1953 Prague	Zdeněk KUBICA