



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

FIFTH SECTION

CASE OF PÁLKA AND OTHERS v. THE CZECH REPUBLIC

(Application no. 30262/13)

JUDGMENT

Art 1 P1 • Deprivation of property • Unfair balance struck during court proceedings on property expropriation and compensation • Domestic courts' failure to assess consequences of expropriation and to comply with procedural requirements established by Court case-law

STRASBOURG

24 March 2022

FINAL

24/06/2022

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

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

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

Síofra O’Leary, *President*,
Mārtiņš Mits,
Stéphanie Mourou-Vikström,
Lətif Hüseynov,
Ivana Jelić,
Arnfinn Bårdsen,
Kateřina Šimáčková, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 30262/13) 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 Mr Václav Pálka, Mrs Marie Hochmanová, Mr Bohuslav Kučera and his son (of the same name) and Mr Josef Pálka, Czech nationals, (“the applicants”), on 2 May 2013;

the decision to give notice to the Czech Government (“the Government”) of the complaint under Article 1 of Protocol No. 1 and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 1 March 2022,

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

INTRODUCTION

1. The present case concerns the approach applied by the Czech authorities in fixing the compensation paid to the applicants for the expropriation of their property and the proportionality of its amount. The case raises an issue under Article 1 of Protocol No. 1.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicants were born in 1947 and 1969, 1941, 1972 and 1943 respectively, and live in Hradec Králové, Jinačovice and Brno. The applicants were represented by Mr L. Prudil, a lawyer practising in Brno.

3. The Government were represented by their Agent, V. A. Schorm, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

A. Expropriation proceedings

5. In 2000 the Czech Road and Motorway Directorate (*Ředitelství silnic a dálnic ČR*, hereinafter “the Motorway Directorate”), a quango (*příspěvková organizace*) established by the Ministry of Transport, entered into negotiations with the applicants, and the legal predecessors of some of them, regarding the future use of a part of their property – namely land in the cadastre of Tlumačov na Moravě zoned as arable land and protected as agricultural land – for the construction of motorway R55.

6. In 2003 the applicants were invited to sign a purchase agreement for plot no. 1233/6 with an area of 15,499 sq. m and plot no. 1233/13 with an area of 64 sq. m. The purchase agreement, without referring in detail to any legislative provision, indicated as the purchase price an amount of 778,149.80 Czech korunas (CZK) (EUR 24,607 at the relevant time). It also stipulated as follows:

“The participants acknowledge that this is an administrative price [*úřední cena*] determined in accordance with the relevant pricing regulation.”

Accordingly, the purchase price offered had been assessed at 50 CZK (EUR 1.58) per square metre.

7. On 21 April 2004 the applicants informed the Motorway Directorate that they were not in agreement with the purchase price offered. They stated, *inter alia*, as follows:

“As is indicated ... in the draft purchase agreement, the purchase price ... is the administrative price [*cena úřední*] calculated under the relevant pricing regulation. This regulation (regulations) [is] Decree no. 540/2002 implementing certain provisions of Law no. 151/1997 on the valuation of property, as amended. However, it does not appear from the draft purchase contract which precise provisions ... were used for calculation of the purchase price proposed”

The applicants further stated that the price of comparable parcels of land in that location and at that time was about CZK 100 per sq. m, which they considered to be appropriate compensation for their plots of land¹.

8. On 11 October 2004 the Motorway Directorate lodged an expropriation application with the Otrokovice Municipal Construction Office (*městský úřad – stavební úřad*, “the Construction Office”) on the basis of a compensation sum close to the purchase price that had been offered to the applicants, namely CZK 778,150 (EUR 25,647 at the relevant time).

9. On 13 January 2005 the Ministry of Finance – after a request was lodged by the Motorway Directorate for an exemption to be granted allowing it to agree to a price higher than the price determined, issued a decision

¹ In Czech law, the usual or market price is perceived as the price at which the same or comparable object can be sold or bought on the free market at a given place and time on normal terms. It is this price that needs to be used when settling real estate between private co-owners. On contrary, the administrative price is determined according to the pricing regulation without taking into account the price which can be achieved on the free market.

declaring that it declined to grant this request. It substantiated its decision, *inter alia*, by noting the fact that the Motorway Directorate had failed to submit a specific proposal as to (i) the higher purchase price to be agreed, and (ii) the determination of the amount of the agreed price. In its request, the Motorway Directorate had relied on the documents provided by the applicants, who had not provided any justification for the compensation of CZK 1,556,300 (EUR 51,229 at the relevant time) that they sought; neither had they provided any evidence (apart from the argument that CZK 100 per square metre was a price that they considered to be the usual price of comparable land in the vicinity and at the time in question, following a poll of real estate agencies in that area).

10. On 3 May 2005 the Construction Office issued a decision ordering the expropriation of the land in question in return for compensation of CZK 778,149.80 (EUR 25,647 at the relevant time) determined by an expert opinion under the applicable legislation – that is to say Law no. 151/1997, Decree no. 540/2002 and Decree no. 122/1984, issued by the former Federal Ministry of Finances, on Compensation for Expropriated Buildings, Land, Vegetation and the Rights thereto.

11. On 20 September 2005, on appeal, the Zlín Regional Office (*krajský úřad*) upheld the Construction Office's decision. It stated that as the construction of the motorway was in the public interest, the conditions for expropriation were fulfilled. It further held that the Construction Office had proceeded in accordance with the law and that it had not found any other procedural errors. The expropriation decision became final on 26 September 2005. Accordingly, the applicants were paid compensation for the expropriated property within the sixty-day time-limit.

B. Court proceedings

12. The applicants lodged an application with the Brno Regional Court (*krajský soud*) for judicial review of the administrative decisions, arguing that the legal requirements for expropriation had not been met because a motorway of local importance should not have been considered to be a construction project “in the public interest” and could anyway be realised without interfering with their property rights. They also claimed that the title transfer negotiations had not taken place in compliance with the law and that the negotiated price (*cena vyjednávání*) in compensation for the expropriated property had been determined incorrectly and was for them unacceptable taking into account the locality of the expropriated land.

13. In a judgment of 27 September 2006 the Regional Court quashed the decision of the Regional Office, noting that it had not dealt adequately with the applicants' objection regarding the amount of the compensation. When determining the level of compensation, the Regional Office had merely referred to the expert opinion that had determined the compensation under

the generally binding regulation, disregarding the applicants' objection that the price determined by the expert opinion was significantly below the market price. The Regional Court stated, *inter alia*, as follows:

"The administrative authority cannot abrogate its duty [to deal with the appellate objection concerning the amount of compensation for the expropriated land] on the grounds that it merely [based its decision] on the expert opinion, [and had disregarded the fact that] the latter's conclusions had been challenged by the [applicants] ... [T]he question of whether the decision of the administrative authority as to the amount of compensation is based only on the price determined in accordance with the pricing regulation – without [taking into account] the price corresponding to supply and demand at a given place and time (in other words the price at which the object in question could be sold ...) – does not appear from the reasoning [of the administrative decision] and constitutes sufficient grounds ... that ... the administrative authority ... is obliged to address in the ensuing proceedings. It is necessary that ... [the administrative decision] be convincingly reasoned in respect of whether [the administrative authority] ascertained the amount of compensation on the basis of the market price [*cena tržní*], and thus on the price for which the land could have been sold at the moment of the beginning of the expropriation procedure.

Expropriation is such a serious interference with property rights, [which are constitutionally protected], that any restrictive interpretation of the conditions laid down in law for expropriation is not admissible; ... the same holds for the determination of compensation.

...

In this respect, the [court referred] to Constitutional Court Decision no. III ÚS 102/94 [stating that]: 'forced dispossession of property rights ... must meet the constitutional conditions laid down in Article 11 § 4 of the Charter of Fundamental Rights and Freedoms. These conditions include the obligation to provide compensation. 'Adequate compensation' [means] an equivalent sum [of money], or an amount [that is sufficient], under the local conditions, to purchase an object similar to a co-owner's share of a property that has been assigned to other co-owners' [*přisouzen ostatním spoluvlastníkům*].

...

As regards the [administrative authority]'s remark that the expert opinion was based on Decree no. 122/1984 and Law no. 151/1997 and that, therefore, [the administrative authority] had no reason to question its conclusions, [the court notes] that it follows from the above that prices of parcels of land should be based on the market price and that [the administrative authority] had [had a duty] to deal with the [applicants]' objection concerning the considerable disproportion between the price determined by the expert opinion and the market price."

14. On 26 June 2007, upon a cassation appeal (*kasační stížnost*) by the Regional Office, the Supreme Administrative Court (*Nejvyšší správní soud*), remitted the case to the Regional Court, finding that it was not empowered to review the expropriation compensation since it was a civil law matter that had to be reviewed under the fifth chapter of the Code of Civil Procedure (the "CCP") and not by the administrative judiciary. The court pointed out that rulings in decisions on expropriation and rulings on the compensation to be paid for expropriated property were distinct kinds of ruling and that the ways

in which they could be reviewed differed too. Whilst rulings on expropriation had to be challenged before an administrative court, rulings determining the compensation for the expropriated property were subject to review under the fifth chapter of the CCP.

15. On 15 November 2007 the Regional Court dismissed the applicants' action and informed them that they could initiate court proceedings under the fifth chapter of the CCP before a civil court within one month if they wished to challenge the decision of the administrative authorities on the expropriation compensation.

16. On 16 January 2008 the applicants brought an action under the fifth chapter of the CCP seeking to establish that the compensation payable for the expropriated real estate should have been the market price and to obtain payment of the difference between the compensation they had received and the estimated market price, which – according to their expert valuation – was CZK 385 per sq. m, resulting in a total of CZK 5,991,760 (EUR 240,385). Accordingly, the applicants sought the amount of CZK 5,213,610 (EUR 209,166 at the relevant time).

17. In a judgment of 3 November 2008 the Prague Municipal Court (*městský soud*) rejected their action. It concluded that the expropriation decision had become final on 26 September 2005, a date when Law no. 50/1976 on Town and Country Planning and Building Regulations (“the Building Act”) – as in force until 30 June 2006 – still applied. Under that law, the amount of compensation payable in respect of the expropriation was to be calculated in accordance with the generally binding regulation, allowing the Municipal Construction Office no margin of discretion. It was only after an amendment to the Building Act came into force on 1 July 2006 that the administrative authorities were required to refer to the usual (market) price (*obvyklá cena*) when determining the compensation payable in cases of expropriation. The administrative authorities deciding on the expropriation had therefore proceeded in compliance with the law. The Municipal Court explicitly stated:

“The expropriation decision became final on 26.9.2005. Accordingly, compensation for expropriation was calculated under section 111 of Law no. 50/1976, as in force until 30.6.2006 – that is to say before the amendment introduced by Law no. 186/2006, which entered into force only on 1.7.2006.

Under section 111(2) of Law no. 50/1976, as in force until 30.6.2006, compensation for expropriation, the manner of such compensation, the party who was to pay the compensation and the party to whom that compensation was to be paid – as well as the maximum amount of such compensation – is regulated by the generally binding regulation, [which is] Decree no. 122/1984 (repealed by Law no. 184/2006 on 1.1.2007), which, in [its] section 2(1) ..., [stipulates that] the manner of determining the amount of the price amount [shall be governed] by the applicable pricing regulation – i.e. Law no. 151/1977 and implementing Decree no. 540/2002.

It follows ... that if the value [of the land in the present case was [indeed] assessed ... then under Decree no. 540/2002, it was done in accordance with section 111(2) of ...

the Building Act, as in force on 30.6.2006, because compensation was determined in accordance with the generally binding regulation.

In this regard, it is necessary to highlight the fact that [the applicants] do not ... dispute the incorrectness of the expert opinion, but rather the inaccurate mechanism by which the amount of compensation was determined, [which gave rise to a] discrepancy between the price determined by a generally binding regulation (taking into account the number of inhabitants of the municipality) [on the one hand, and the usual (market) price [on the other hand].

...

[T]he Building Act was repealed by Law no. 183/2006 as at the date of 1.1.2007.

During the period from 1.7.2006 until 1.1.2007, the sphere of expropriation, as regulated by Law no. 50/1976, was amended by Law no. 186/2006 revising certain acts related to the adoption of the Building Act by and the Expropriation Act.

Under section 111(1)(a) of Law no. 50/1976, as amended by Law no. 186/2006, [a person who has been deprived of his/her property] is entitled to compensation in the amount of the usual price of the land or building, including all parts and accessories ...

A comparison of section 111(2) of the former Building Act and section 111(1)(a) of the Building Act, as amended by Law no. 186/2006, reveals a significant change as to the determination of amounts in compensation [to be paid] for expropriated parcels of land. Since the entry into force of Law no. 186/2006, amounts paid in compensation have no longer been calculated in accordance with the generally binding regulations but as the usual price [for such land].

...

Accordingly, the calculation of compensation under the regulations in force since 1.7.2006 (Law no. 186/2006), on the basis of the usual price, is in clear contrast to the previous regulations, where the price was determined in accordance with the compensation decree and the [relevant] pricing regulation, and not according to the usual price.

Hence, if the authorities acting in the expropriation procedure did indeed proceed in accordance with section 111(2) of Law no. 50/1976, as in force until 30 June 2006, and calculated compensation for the expropriated land on the basis of the generally binding regulation, then they proceeded correctly.”

18. On 3 September 2009 the Prague High Court (*vrchní soud*) upheld the above judgment, noting that the administrative bodies had been right to rely on the legislation applicable at the material time and that a retroactive effect of a law that had come into force on 1 July 2006 could not be inferred. It stated, *inter alia*:

“Under Article 11 § 4 of the [Czech] Charter of Fundamental Rights and Freedoms ..., expropriation or some other mandatory limitation of property rights is permitted in the public interest, on the basis of law, and for compensation. This provision, which constitutes an exception to the principle of the intangibility of property rights guaranteed by Article 11 § 1 of the Charter, does not provide further criteria in respect of determining compensation for expropriated property. Pursuant to Protocol No. 1 to the European Convention on Human Rights, ... no one shall be deprived of his possessions except in the public interest, and subject to the conditions provided by law

and by the general principles of international law (Article 1, second sentence). [However], this principle does not address the issue of the amount of compensation for expropriation [of property] in more detail[.] [O]n the contrary, it refers to the legal (i.e. domestic) regulation and general principles of international law. Under Article 128 § 2 of the Civil Code, an object may be expropriated or ownership thereof may be restricted – unless the purpose [sought] can be achieved otherwise – only on the basis of law, in the public interest, [and] only for this purpose and for compensation. Although it does not follow from this provision that the expropriation should be based on law, it necessarily follows from section 111 of ... (the Building Act), as in force until 30.6.2006 ..., because the expropriation decision in question became final on 26.9.2005. ... It can therefore be concluded that in the present case, the price for the expropriated parcels of land was determined in the manner prescribed by law and that, in view of the above, this procedure was fully in compliance with the term of constitutionality and the requirement arising from the Convention [and] Protocols thereto.”

19. On 9 November 2011 the Supreme Court (*Nejvyšší soud*) dismissed the applicants’ appeal on points of law (*dovolání*), affirming that the authorities had proceeded in accordance with the applicable law.

20. On 1 November 2012 the Constitutional Court (*Ústavní soud*) dismissed the constitutional complaint (*ústavní stížnost*) by the applicants, holding that the impugned decisions had been adopted in accordance with the law applicable at the material time. It held, *inter alia*:

“The judgment of the Supreme Court complies with Supreme Court Decision no. 30 Cdo 730/2008 of 18 March 2010 ...; with the conclusions [contained therein] regarding that legal issue the Constitutional Court fully concurs. [I]n that decision, [which concerned] the similar question of interpretation, the Supreme Court held that: ‘[T]he legislation in force at the time when the administrative authorities decided on the expropriation was decisive for the determination of the amount of compensation ... Since the claimant was already entitled to compensation for expropriation at that time, the principle that the situation existing at the time of its pronouncement is decisive cannot be applied in respect of the amount of compensation (Article 154 § 1 of the Code of Civil Procedure). Section 31 of Law no. 184/2006 cannot be applied because [this law] entered into force on 1 January 2007 – that is to say only after the expropriation proceedings had been terminated.”

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Law applicable at the material time

1. *The Charter of Fundamental Rights and Freedoms*

21. Article 11 § 1 guarantees everyone the right to own property. Each owner’s property has the same statutory content and enjoys the same protection. Under paragraph 4, expropriation or any other mandatory limitation of property rights may be permitted if in the public interest, to be exercised on the basis of the law and in return for compensation.

2. *The Civil Code (Law no. 40/1964) (as in force until 31 December 2013)*

22. In the public interest, an object may be expropriated or ownership thereof may be restricted unless the purpose [sought] can be achieved otherwise; the expropriation or restriction [in question] may be imposed only on the basis of law, only for this purpose and [only] for compensation.

3. *The Code of Civil Procedure (Law no. 99/1963)*

23. Under Article 154 § 1 a judgment must be delivered on the basis of the situation existing at the time of its pronouncement.

The fifth chapter concerns jurisdiction in administrative proceedings. Article 244 thereof lays down that, as part of their administrative-law jurisdiction, the civil courts must review the lawfulness of decisions of the administrative authorities on application or appeal.

4. *Law no. 50/1976 on Town and Country Planning and Building Regulations (the Building Act) (in force until 30 June 2006)*

24. Under section 111(2) a generally applicable regulation provided for compensation for expropriation, the manner of such compensation, the party who was to pay the compensation and the party to whom compensation was to be paid, and the maximum amount of such compensation, if applicable.

5. *Decree no. 122/1984 on compensation for expropriated buildings, land, vegetation and the rights thereto (in force until 31 December 2006)*

25. Under section 2, compensation for buildings, land, and vegetation payable to citizens and organisations other than “socialist organisations” was to be fixed at the amount stated in the applicable pricing regulations. As at the date of the expropriation, Law no. 151/1997 on the valuation of property was the applicable pricing regulation.

6. *Law no. 151/1997 on the valuation of property*

26. Under section 2(1) the valuation of assets or services must be based on the usual price, unless a different method of valuation is provided for. For the purposes of the law, “price” means the price that would have been obtained when selling an identical or similar asset or when rendering an identical or similar service in accordance with the “arm’s length principle” in the Czech Republic on the date of the valuation. At the same time, all the circumstances influencing the price must be taken into account. However, the effects of extraordinary market circumstances, the personal situation of the seller or buyer and any special preferential factors must be disregarded. “Extraordinary market circumstances” may mean, for instance, the seller’s or

the buyer's duress, or the consequences of a natural or other disaster. "Personal situation" may include, without limitation, property, family and other personal relations between the seller and the buyer. "Special preference" may include a special value attributed to an asset or service arising from a personal relationship thereto.

27. Under section 10(1), the value of a construction plot is to be calculated by multiplying the area of the plot by the price per square metre stated in the pricing map issued by the municipality. If a plot's value is not indicated on the pricing map, it should be calculated by multiplying the area of the plot by the basic price per square metre – adjusted to take account of the location and of such other factors influencing, in particular, the use of the plot for construction – or by a price established using another valuation method under section 2, as set out in the applicable decree.

28. The method of computing the amount of compensation is laid down in Decree no. 540/2002 Implementing Certain Provisions of Law no. 151/1997 on the valuation of property.

B. Law applicable after 1 July 2006

Law no. 50/1976 on Town and Country Planning and Building Regulations (the Building Act) (as amended by Law no. 186/2006, in force after 1 July 2006)

29. Under section 111(1)(a), compensation equivalent to the usual price of the land or building, including all components thereof and appurtenances thereto, was payable in return for expropriation if the land in question was being expropriated.

30. Section 111(3) provided that compensation was to be determined in a manner and at an amount corresponding to the pecuniary damage incurred by the expropriated person as a result of the expropriation. Where the usual price under subsection 1(a) was lower than the price found under the pricing regulation, compensation equalling the price found was payable to the owner of the expropriated property.

C. Law currently applicable

Law no. 184/2006 on the Expropriation or Restriction of the Ownership Right to a Plot of Land or a Building (the Expropriation Act) (which entered into force on 1 January 2007)

31. Under section 10(1)(a) the owner of the expropriated property is entitled to compensation amounting to the usual price of the land or building, including appurtenances if they are also being expropriated.

32. Under section 10(3), compensation under sub-sections 1 and 2 is to be determined in a manner and at an amount proportionate to the pecuniary

damage that the owner of the expropriated property incurs as a result of the expropriation.

33. Section 10(5) states that the price of the land or building for the purposes of determining the compensation must be determined on the basis of the “as-is” condition thereof, and the purpose of use at the date of filing the expropriation application. Such valuation should not take into account any decrease or increase in value in connection with the proposed purpose of the expropriation.

D. Relevant judgments of the Constitutional Court

1. Judgment No. II. ÚS 1135/14 of 30 June 2015

34. In this judgment the Constitutional Court considered the issue of violation of the right to protection of possessions in the context of the amount of compensation payable for expropriation of land other than that belonging to the applicants, and held:

“10. The Constitutional Court notes at the outset that this case concerns the application of section 111(2) of the Building Act, as in force until 30 June 2006, which provided that compensation for expropriation, the manner of compensation, the party who was to pay the compensation and the party to whom compensation was to be paid – and, [where applicable,] the maximum amount of such compensation – was to be determined by a generally binding legal regulation. This regulation was Decree no. 122/1984 on compensation for expropriated buildings, land, vegetation and the rights thereto[.] [U]nder its section 2(1), compensation for buildings, land and vegetation paid to citizens and non-Socialist organisations was to be set at the amount specified in the applicable pricing regulations. The valid price regulations were Law no. 151/1997 on Property Valuation and on Amendments to Certain Acts (the Property Valuation Act), as amended, and Decree no. 540/2002, which [together] implemented certain provisions of Law no. 151/1997 ..., as amended by Decree no. 452/2003. The cited legal regulation, which was in force until 30 June 2006, was based on the fact that compensation was established as the ‘administrative’ price[.] [I]t was only on the basis of Law no. 186/2006 on the amendment of certain acts related to the adoption of the Building Act and of the Expropriation Act (which took effect on 1 July 2006) that the usual (market) price could be granted for expropriated real estate.

...

12. The Constitutional Court is aware that at the material time (until 30 June 2006) the then applicable Building Act and the associated pricing regulations provided that compensation for expropriated property should be set at the administrative price rather than the market price. Nevertheless, in its settled case-law the Constitutional Court has reiterated many times that it would not tolerate a formalistic approach on the part of the public authorities and, in particular, the ordinary courts applying essentially sophisticated reasoning for obvious injustice.

...

16. In the instant case, the second chamber of the Constitutional Court reached conclusions that differed from those stated in the decision quoted above. Such an approach is not contrary to Article 89 § 2 of the Constitution – which provides that enforceable judgments of the Constitutional Court are binding on all bodies and persons

and is therefore reflected in the decision-making regime of the Constitutional Court itself – but does not apply to decisions that are not of such a generally binding nature. The Constitutional Court notes that in the decision quoted above it had not considered at all the conflict between the appellants’ right to fair compensation for the expropriated property and the rights enshrined in the Charter, the Constitution, the Convention, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and the Charter of Fundamental Rights of the European Union. By contrast, in the present case the alleged breach of the applicants’ rights – as laid down in the sources of law referred to – constitutes the main reason for the Constitutional Court’s finding that the constitutional complaint was well-founded. In addition to that, there are different factual circumstances consisting of the length of the proceedings, as in the present case – unlike in case no. IV. ÚS 1163/12 – the Regional Court in Brno decided on the amount of compensation for the expropriation almost ten years after it had originally been determined by the Otrokovice Municipal Construction Office. The issue of time plays a crucial role in the awarding of compensation for expropriated property because, as time passes, the disparity grows between the price as set out in Decree no. 122/1984 and fair compensation corresponding to the market value.

...

24. In the case at hand, the court of first instance proceeded in the manner described above when it concluded, on the above grounds, that payment of the administrative price for the land did not satisfy the constitutional and legal condition that compensation provided in respect of expropriation must be reasonable and fair in order to fulfil its meaning and purpose. The court of first instance inferred that only the market price satisfies those requirements, being the price at which the expropriated property could be sold at the respective time and place, and which relies on the fair value of the expropriated property and provides adequate compensation for the pecuniary damage caused by the loss of ownership. The court of first instance therefore concluded that the administrative authority had erred in setting the expropriation compensation at CZK 1,482,000 based on the administrative price and should instead have determined financial compensation based on the market price of CZK 11,139,700.

...

27. The Regional Court there proceeded correctly when, in deciding the amount of the compensation for the expropriation, it delivered a judgment based on the legislation in force at the time of its pronouncement. The fifth chapter of the Code of Civil Procedure concerning judicial review of administrative authorities’ decisions does not contain a comprehensive legal regulation for the renegotiation of a private lawsuit or other legal matters decided by an administrative authority. For cases where the fifth chapter does not provide legal regulation of a particular procedural issue, Article 245 of the Code of Civil Procedure stipulates that the general provisions of Chapters 1 to 4 of this Code are to apply, namely Articles 153 and 154, according to which the Regional Court proceeded in the aforementioned case.

28. To summarise, although the Olomouc High Court and the Supreme Court came to the conclusion that the amount of compensation in cases of expropriation should be decided according to the legislation in force at the time of the expropriation – which is to say that the administrative price would be awarded – that conclusion was not in compliance with Article 154 of the Code of Civil Procedure and the international obligations of the Czech Republic (Article 1 § 1 of the Constitution).”

2. Judgment No. I. ÚS 1904/14 of 11 August 2015

35. The Constitutional Court reiterated its conclusions in its subsequent judgment I. ÚS 1135/14 of 30 June 2015 on the matter of fair compensation for expropriated property.

THE LAW

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

36. The applicants complained that their right to the peaceful enjoyment of their possessions had been violated because the compensation they were paid for the expropriated land was determined under a rigid approach and amounted to only 13% of the market price of the expropriated property, which could not therefore be regarded as compensation proportionate to the market price of the property. They 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

37. The Government maintained that the complaint was inadmissible due to the non-exhaustion of domestic remedies as the applicants had lodged an action with the civil courts under the fifth chapter of the CCP challenging only the ruling on the expropriation compensation. They had failed to continue the proceedings before the administrative courts, in which they could have challenged the ruling on the expropriation of the land, and the fact that it had not been executed in the public interest and in accordance with the conditions provided for by law.

38. The applicants submitted that they were not claiming a violation of their right to peaceful enjoyment of possessions because they had been deprived of their property. Their application was directed solely against the fact that they had been provided with compensation that did not correspond to the market price of the expropriated property.

39. In the present case, the focus of the applicants’ complaint is on the fact that the authorities had provided them with compensation that was allegedly not at all proportionate to the market value of the expropriated property. For these particular purposes, the applicants instituted proceedings before the civil courts under the fifth chapter of the CCP (see

paragraphs 16-20 above). In their submissions to the domestic courts, expressing profound disagreement with the compensation provided, they clearly challenged the financial proposition at issue, relying on the constitutional protection of the right to the peaceful enjoyment of their possessions.

40. The Court considers that in raising this plea before the domestic courts, the applicants made normal use of the remedies which were accessible to them and which related, in substance, to the facts complained of at European level (see, *mutatis mutandis*, *Zarb Adami v. Malta* (dec.), no. 17209/02, 24 May 2005, and *Sammut and Visa Investments Ltd v. Malta* (dec.), no. 27023/03, 28 June 2005). Therefore, the remedy referred to by the Government concerning the possibility of complaining against the decision on the expropriation itself is not relevant to the present case.

41. In the light of the above, the Court finds that the Government's preliminary objection must be dismissed. It notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

42. The applicants maintained that the compensation for the expropriation of their property had not corresponded to its market value and that the courts had not addressed this argument, failing to deal with the conflict between the earlier expropriation legislation and the Court's case-law.

43. They furthermore insisted that the unfairness of the legal regulation applicable at the time of the expropriation was demonstrated by the fact that only one year after the expropriation of the land, an amendment to the legislation was adopted which meant that the compensation paid for the expropriated land was the market price rather than the administrative price. In addition, there was a fundamental change in the case-law of the Constitutional Court – which occurred two years after termination of the court proceedings concerning the applicants – resulting in the conclusion that awards of the administrative price for expropriated land made during the same timeframe as the applicants' case had violated the right to the protection of property under Article 11 § 1 of the Charter of Fundamental Rights and Freedoms.

44. The Government argued that the compensation paid to the applicants for the expropriated land had been entirely proportionate to its market value. The expert valuation submitted by the applicants ignored the fact that before the issuance of the planning decision on the siting of motorway R55, the land in question had been arable land. The nature of the land would therefore never have allowed the construction of family homes. That being said, according to

the Government, it would be erroneous and self-serving to have determined the alleged market price on the basis of sales of land intended for the construction of family homes.

45. The Government further noted that, according to the Land Status Report and Outlook 2006 published by the Ministry of Agriculture, the average market price for agricultural land in excess of 5 ha which was suitable for agricultural use was CZK 3.58 per sq. m in the Czech Republic in 2005. The average market price of all agricultural land over the period 1993-2005 stood at CZK 18.43 per sq. m. As stated in the Report on the Land Market by Farmy.cz, in 2016 the price of agricultural land stood at approximately CZK 20.41 per sq. m and the price of arable land averaged 21.7 per sq. m. Thus, as compensation of CZK 50 per sq. m had been paid to the applicants, they received a significantly higher payment than the average price paid for agricultural land in the Czech Republic in 2005.

46. As regards the Constitutional Court judgments Nos. II. ÚS 1135/14 and I. ÚS 1904/14, the Government admitted that the domestic courts had assessed the market price of the plots in question differently, not referring to the administrative price as had been the case in the impugned expropriation proceedings. However, the Government disagreed with the applicants' contention that these two cases were identical with the instant case. Furthermore, the Government were not convinced that the final compensation provided in respect of the plots in those cases had been equal to their market price at the material time.

2. *The Court's assessment*

(a) **General principles**

47. According to the Court's case-law, any deprivation of property for the purposes of the second sentence of Article 1 of Protocol No. 1 must comply with the principle of lawfulness, must be in the public interest and must pursue a legitimate aim by means reasonably proportionate to the aim sought (see, for example, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005).

48. In particular, as regards the requirement of proportionality, the Court has repeatedly stated that a "fair balance" must be struck between the demands of the public or the general interest of the community and the requirements of the protection of the individual's fundamental rights. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicants (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 110 with further references, 25 October 2012, ECHR 2012, and *Urbárska obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 114, 27 November 2007).

49. While it is true that in many cases of lawful expropriation it is only full compensation that can be regarded as being “reasonably related” to the value of the property, Article 1 of Protocol No. 1 does not guarantee the right to full compensation in all circumstances. Legitimate objectives in the “public interest”, such as those pursued in economic reform measures or measures designed to achieve greater social justice, may call for reimbursement of less than the full market value (see the exhaustive outline of the Court’s case-law on this issue in *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 95-98, ECHR 2006-V, with further references).

50. Moreover, the Court reiterates that, where an individual’s property has been expropriated, there should be a procedure ensuring an overall assessment of the consequences of the expropriation, including the award of an amount of compensation maintaining the reasonable relation between this amount and the value of the expropriated property. Such a procedure should also include the determination of the holders of the right to compensation and any other issue relating to the expropriation, as well as the costs of the proceedings (see *Alfa Glass Anonymi Emboriki Etairia Yalopinakon v. Greece*, no. 74515/13, § 36, 28 January 2021).

51. In determining whether these requirements were met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III). Nevertheless, the Court cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants’ right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1 (see *Jahn*, cited above, § 93).

(b) Application of the relevant principles to the present case

(i) Whether there was any interference

52. Having accepted that the property in question belonged to the applicants before the expropriation decision, the Court considers that there was an interference with the applicants’ right to the peaceful enjoyment of their possessions amounting to a “deprivation” of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore examine whether the interference complained of can be justified under that provision.

(ii) Compliance with the principle of lawfulness

53. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with

the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that States have the right to control the use of property by enforcing “laws”. Moreover, the law upon which the interference is based should be in accordance with the domestic law of the Contracting State, including the relevant provisions of the Constitution (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII).

54. The principle of lawfulness also presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable (see *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, pp. 19-20, § 42, and *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 47, § 110).

55. In the present case, the Court observes that in certain respects the national legislation lacked clarity as to the question of whether the judgment of the Prague Municipal Court on the amount of compensation should have been based on the legislation in force at the time of its pronouncement or on that in force at the time of the administrative decision on the expropriation of the applicants’ property. However, as the decisions of the domestic courts on the applicable law in the applicants’ case were duly reasoned and seem to have been supported by the relevant case-law at the material time, it cannot lead to the conclusion that the interference in question was unforeseeable or arbitrary and therefore incompatible with the principle of lawfulness.

56. The Court reiterates in that connection that it is first and foremost for the domestic authorities, especially the courts, to interpret and apply the domestic law (see, for example, *Witteck v. Germany*, no. 37290/97, § 49, ECHR 2002-X; *Forrer-Niedenthal v. Germany*, no. 47316/99, § 39, 20 February 2003; and *Former King of Greece and Others*, cited above, § 82). The Court therefore concludes that the deprivation of property was provided for by law, as required by Article 1 of Protocol No. 1.

57. However, the Court is required to verify that the manner in which domestic law was interpreted and applied – even where the requirements have been complied with – does not entail consequences at variance with the Convention standards. From that standpoint, the element of uncertainty in a statute and the considerable latitude it affords authorities are material considerations to be taken into account in determining whether a particular measure struck a fair balance.

(iii) The aim of the interference

58. The applicants did not dispute that the interference was in the public interest and the Court finds no reason to hold otherwise.

(iv) *Whether there was a fair balance*

59. In the present case, the Court observes that the expropriation decision became final on 26 September 2005, when the Building Act, as in force until 30 June 2006, provided that the amount of compensation payable in respect of expropriation was to be calculated in accordance with the generally binding regulation (see paragraphs 17 and 24 above). The Court further observes that the compensation awarded to the applicants was calculated on the basis of the criteria laid down in the Valuation of Property Act and in Decrees Nos. 122/1984 and 540/2002 (see paragraphs 10, 17, 28 and 33 above). The Court notes in this regard that the applicable legislation (in particular the Valuation of Property Act) provided that the “usual price” was to be paid in compensation for expropriated property (see paragraph 26 above). The Court further notes that the same wording was used both in the legislation that came into force on 1 July 2006 and in the currently applicable legislation (see paragraphs 29-30 and 31-33 above). However, while this wording remained identical before and after 30 June 2006, the legislation that was in force until 30 June 2006 strictly tied the calculation of the “usual price” to the pricing regulations, allowing the administrative authorities no or little margin of discretion (see the detailed explanation of the matter contained in the judgment of the Prague Municipal Court of 3 November 2008 in the applicant’s case detailed in paragraph 17 above), whereas all legislation in force after 30 June 2006 has taken into account the pecuniary damage incurred as a result of expropriation (see paragraphs 30 and 32 above and the Constitutional Court’s judgment of 30 June 2015 cited in paragraph 34 above).

60. In the light of the Court’s case-law under Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Papachelas v. Greece*, [GC], no. 31423/96, §§ 48-49 and 53-55, ECHR 1999-II, and *Platakou v. Greece*, no. 38460/97, § 54, ECHR 2001-I), it is evident that domestic law that provides a rigid system of determining compensation which disregards factors other than administratively fixed prices risks upsetting the fair balance required by that provision. The Court observes that the Czech Constitutional Court, in its judgments of 30 June and 11 August 2015, reasoned in a similar manner (applying the national law, the Convention and other international law instruments), and found that the application of the relevant legislation (as in force until 30 June 2006) on the amount of compensation to be paid for expropriation could have a result that conflicted with, *inter alia*, international law binding on the Czech Republic (see paragraphs 34 and 35 above).

61. It appears that the above-noted developments marked a change in the Constitutional Court’s case-law on the matter; however, that change came too late for the applicants, as their case had been examined and decided earlier. It is clear that in the proceedings in the applicants’ case, which ended in 2012, the domestic courts failed to rely on the Court’s relevant case-law and refused to examine any issue of proportionality and fairness in respect of the

compensation awarded to the applicants, rigidly sticking to the position that only prices fixed by regulation were of any relevance to the calculation of the compensation to be paid for the expropriation of their property (see paragraphs 16-20 above).

62. The pricing regulations, in force at the relevant time, prescribed the specific binding amounts to be awarded in compensation for expropriation, not allowing the national authorities to make an assessment which would take into account the specific circumstances of the case. While it cannot be said that a system of compensation using tables and rates issued by the administration is as such problematic under Article 1 of Protocol No. 1 to the Convention, in the present case the legislation in force at the relevant time did not provide for “a procedure ensuring an overall assessment of the consequences of the expropriation” (see *Efstathiou and Michailidis & Co. Motel Amerika v. Greece*, no. 55794/00, § 29, ECHR 2003-IX). In particular, the domestic courts ruled that only the prices fixed in regulations were to be applied and they thus, on that basis, refused to examine any other evidence concerning the expropriated property.

63. A direct consequence of the above is the dispute between the parties to the proceedings before the Court on the relationship between the compensation paid and the value of the expropriated property. While the applicants claim that they were paid compensation amounting to 13% of the market price of the expropriated land (see paragraph 36 above), the Government submit that the compensation had been entirely proportionate to the market value of the land concerned (see paragraph 44 above). However, in the absence of proper assessment by the national courts, the Court cannot speculate what compensation would or could have been offered to the applicants; it can only evaluate whether, at the relevant time, the domestic law provided for a suitable procedure – administrative or judicial – in the expropriation cases, such as the case of the present applicants. It follows that in the present case the key problem lies not in the amount that was determined as compensation for the expropriation, but in the relevant legislation and its interpretation by the national courts prior to the change in case-law of the Constitutional Court.

64. In that regard, the domestic proceedings in the applicants’ case were conducted on the basis of a flawed approach, not ensuring an overall assessment of the consequences of the expropriation. Such an approach was recognised later by the Constitutional Court to be incompatible with Article 1 of Protocol No. 1 – a conclusion to which the Court subscribes.

65. Against this background, the Court finds that the fair balance under Article 1 of Protocol No. 1 was upset in that the rigid approach applied by the domestic courts did not comply with the procedural requirements established by the Court’s relevant case-law under that provision (see paragraphs 50-51 above).

66. In the light of the foregoing, the Court finds there has been a violation of the applicants' right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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."

68. The applicants claimed just satisfaction in the amount of CZK 1,000,000 for each applicant, namely 5,000,000 Czech korunas (CZK - EUR 164,586) in total, in respect of non-pecuniary damage. As regards costs and expenses, the applicants claimed CZK 24,006 for the expenses they incurred in the proceedings before the Court and the translation of their written observations into English.

69. The Government considered the amount of non-pecuniary damage excessive.

Given the nature of the applicants' complaint, the reasons for which it has found a violation of Article 1 of Protocol No. 1 and the fact that the applicants are free to lodge an application for the reopening the proceedings before the Constitutional Court (sections 119-119b) of the Constitutional Court Act (Law no. 182/1993)), the Court considers that the finding of a violation constitutes sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants.

70. As regards costs and expenses, the Court's reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 790 covering costs under all heads.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage suffered by the applicants;

- (b) that the respondent State pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 790 (seven hundred and ninety euros), plus any tax that may be chargeable, in respect of costs and expenses, to be converted into Czech korunas at the rate applicable at the date of the settlement;
- (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O’Leary
President