



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

FIFTH SECTION

**CASE OF RYBÁŘSTVÍ TŘEBOŇ A.S.
AND RYBÁŘSTVÍ TŘEBOŇ HLD. A.S.
v. THE CZECH REPUBLIC**

(Applications nos. 18037/19 and 33175/22)

JUDGMENT

Art 1 P1 • Deprivation of property • Annulment of applicant companies' ownership titles to privatised immovable property (fishponds and land) after over twenty years without compensation • Impugned legislation, as applied in applicants' cases, served fundamental public interest of restoration of justice and respect for rule of law • No legitimate expectation of continued enjoyment of disputed land as privatisation transfer was void *ab initio* and made in bad faith • Domestic courts' decisions not arbitrary or manifestly unreasonable • Wide margin of appreciation enjoyed by States in regulating complex property issues in transition from a communist regime to a democratic legal order and in restoring rule of law • In specific case-circumstances applicant companies did not bear an individual and excessive burden • Balance between competing interests not upset

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 November 2024

FINAL

07/02/2025

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

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**In the case of Rybářství Třeboň a.s. and Rybářství Třeboň Hld. a.s.
v. the Czech Republic,**

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

Mattias Guyomar, *President*,
Lado Chanturia,
Stéphanie Mourou-Vikström,
Stéphane Pisani,
Úna Ní Raifeartaigh,
Artūrs Kučs, *judges*,
Pavel Simon, *ad hoc judge*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the applications (nos. 18037/19 and 33175/22) 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 two companies registered in the Czech Republic, Rybářství Třeboň a.s. and Rybářství Třeboň Hld. a.s., on 29 March 2019 and 22 June 2022 respectively;

the decision to give notice to the Czech Government (“the Government”) of the applications;

the parties’ observations;

Having deliberated in private on 8 October 2024,

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

INTRODUCTION

1. The applications concern the annulment without compensation of two privatisations of immovable property (fishponds and land) after about 26 and 25 years respectively. The applicant companies raised complaints under Article 1 of Protocol No. 1 and Article 6 § 1 of the Convention.

THE FACTS

2. The applicant companies, Rybářství Třeboň a.s. (“the first applicant company”) and Rybářství Třeboň Hld. a.s. (“the second applicant company”), are registered under Czech law. They were represented by Ms M. Šerá, a lawyer practising in Prague.

3. The Government were represented by their Agent, Mr P. Konůpka, from the Ministry of Justice.

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

I. BACKGROUND TO THE CASE – PRIVATISATION PROCEEDINGS

5. The present case concerns immovable property located in Novosedly nad Nežárkou and Lutová with a total area of 232,312 m² (hereinafter “the land in question”), which had previously belonged to the legal predecessors of the Roman Catholic Parish of Lutová (hereinafter “the Lutová Parish”) and the Roman Catholic Parish of Novosedly nad Nežárkou (hereinafter “the Novosedly Parish”).

6. The Novosedly and Lutová Parishes were deprived of the land in question without compensation by the former Třeboň District National Committee (*okresní národní výbor*) on 3 March 1949 and 22 February 1949 respectively. It was subsequently managed by the State-owned enterprise Státní rybářství Třeboň (hereinafter “the State-owned enterprise”).

7. On 1 April 1992 the Transfer of State Property to Other Persons Act (Law no. 92/1991 - *zákon o převodu majetku státu na jiné osoby* – hereinafter “the Privatisation Act”) entered into force, allowing for the privatisation of State property following the transition from a communist to a market economy. The Act enabled the transfer of State property which had been under the administration of State enterprises, State monetary institutions and other State organisations, or under the administration of the Land Fund of the Czech Republic (*Pozemkový fond České republiky*), to Czech or foreign legal bodies and individuals. Section 3(1) of the Privatisation Act as in force before 31 December 2012 provided, *inter alia*, that property which had been transferred to the State after 25 February 1948 from the ownership of churches, religious orders, congregations and religious communities was not subject to this Act (“the blocking provision”; it was repealed by the Church Property Settlement Act with effect on 1 January 2013).

8. On 23 April 1992 the National Property Fund of the Czech Republic (*Fond národního majetku České republiky* – hereinafter “the NPF”) created the second applicant company in the form of private joint-stock company, based on a privatisation project approved on 8 April 1992 by the Ministry for the Administration and Privatisation of National Property (*Ministerstvo pro správu národního majetku a jeho privatizaci*, hereinafter “the MAPNP”). The land in question was included in the second applicant company’s registered capital (*základní kapitál*). The State-owned enterprise was dissolved without being liquidated and was removed from the Companies Register (*obchodní rejstřík*) on 31 May 1992.

9. The privatisation project was drawn up by the management of the State-owned enterprise under the direction of J.H., who subsequently became a member of the second applicant’s board of directors. It listed the plots of land that were to pass to the second applicant company. The method of acquisition of each specific plot of land was a vital element of the project and certain plots of land were stated to have belonged to the church prior to 1950. The record of the transfer and receipt of the property (*zápis o předání*

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a převzetí majetku) was signed by J.H. on behalf of the State-owned enterprise, which was transferring the land, and he also signed on behalf of the NPF, as the representative authorised to deal with the acquisition of the property, and subsequently J.H. signed again on behalf of the newly emerging second applicant company, as the representative of the party acquiring the property.

10. Between October 1994 and January 1995, the Supreme Audit Office (*Nejvyšší kontrolní úřad* – hereinafter “the SAO”) audited the privatisation in order to establish whether the assets had been transferred to the second applicant company lawfully. It found that the MAPNP should not have approved the privatisation project as it had included property that the State-owned enterprise did not have the right to manage (*právo hospodaření*) at the date of the privatisation or which had been subject to restitution. Under that project, State property worth at least 349,715,895 Czech korunas (CZK) (EUR 13,941,144 at that time) had been unlawfully transferred. The relevant parts of the SAO’s conclusions (*kontrolní závěr*) read as follows:

“The purpose of the audit was to examine the manner in which the privatisation of the [State enterprise] was carried out, and in particular whether the transfer of assets to [the second applicant] was carried out in accordance with the relevant legal provisions.

...

The entities that were audited were the Ministry of Agriculture, the [MANPP] ..., the [NPF], the Ministry of Culture and the Ministry of Environment.

The Land Fund ..., the relevant cadastral offices ... and the [second applicant company] provided the necessary documents and information to be used for the audit. No breaches of law were found in relation to these audited entities.

...

A. The Ministry of Agriculture

The Ministry ..., as the body responsible for drawing up and assessing the draft of privatisation project no. 490/91/PP-510 acted in breach of the following legislation:

...

4. section 2 of Law no. 92/1991

Reasons:

Ad A4

The [Ministry] admitted that the privatisation project had included plots of land which the [State enterprise] did not have the right to manage at the time of the privatisation or which was to be the subject of restitution. The size of these plots is at least 19,8552 ha.

...

B. The [MANPP]

[The MANPP], as the body responsible for approving the draft of privatisation project no. 1229, acted in breach of the following legislation:

...

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4. Section 2 of Law no. 92/1991

Reasons:

Ad B4

[The MANPP] approved [privatisation project] no. 1229, which included plots of land which the [State enterprise] did not have the right to manage at the time of the privatisation or which was to be the subject of restitution - reasons in Ad A 4 para. 1.

As a result of the [MANPP] following an unlawful procedure, State property with a minimum value of CZK 349,715,895 was unlawfully transferred to the [NPF] and subsequently to the [second applicant company].

...

C. The [NPF]

The [NPF], which was responsible for the implementation of privatisation project no. 1229, acted contrary to:

...

4. ... instruction ... no. V/1-30 452/1991 of 30 December 1991 ...

Reasons:

Ad C4

The [NPF] took over the assets of the [State enterprise] and transferred them to the [second applicant company] without checking that the description in the accounts of the assets being sold corresponded to reality, as can be seen from the record of the transfer and acquisition of the property of 27 May 1992. The record was signed on behalf of the [State enterprise] as the party transferring the property by Ing. [H.], its then director; on behalf of the [FNP] by Ing. H. as its authorised representative for the acquisition of the property; and subsequently by Ing. [H.] on behalf of the [second applicant company] as the recipient of the property from the NPF] ... It follows from the foregoing that Ing. [H.] signed the record on behalf of three legal entities, which made it impossible to verify the accuracy of the details of the transfer and acquisition of the property at that stage of the privatisation.

As a result of the above-mentioned shortcomings, the assets of the former [State enterprise] were not properly transferred to the [second applicant company].

...

Conclusions:

The results of the audit showed that in the course of the privatisation of the [State enterprise], the central entities of the State administration and the [FNP] did not proceed in accordance with the relevant regulations, resulting in an unlawful transfer of State property with a minimum value of CZK 349,715,895.

The report shows that the above-mentioned shortcomings were made possible by insufficient controls in the privatisation process (preparation, approval and implementation of the privatisation project) being exercised by the central entities of the State administration and the [NPF]. Deficiencies were found in the procedures used by the [Ministry of Agriculture] as the founder of the [State enterprise] responsible for the preparation of the privatisation project, the [MPNPP] as the body responsible for its approval and the [NPF] as the body responsible for its implementation. None of these bodies checked whether the description of the assets being transferred as indicated in

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the privatisation project corresponded to reality or whether all the assets being transferred were capable of being privatised. During the transfer of State property to the [second applicant company], the State ([the Ministry of Agriculture and the NPF]) and the [second applicant company] were represented by the same person for the purposes of signing the record [on handover and acceptance of the property], which did not allow for objective control over how the transfer of the property was carried out.”

11. The second applicant company was split up with effect from 1 January 2007 on the basis of an agreement to divide it up by creating a spin-off (*smlouva o rozdělení odštěpením*). Assets taken from the second applicant company, including the Novosedly land, were transferred to the first applicant company as the successor company, that successor company having been created by a merger with another commercial entity.

12. On 1 January 2013 the Church Property Settlement Act (Law no. 428/2012) entered into force, enabling, *inter alia*, restitution of part of the property that had originally belonged to certain churches, which had been unlawfully deprived of it by the communist regime. The persons liable to surrender property under this Act included the State but not persons governed by private law. Churches had standing under the Act to bring court proceedings for the termination of State ownership of what had originally been church property if ownership of that property had been transferred to private persons in breach of the blocking provision in the Privatisation Act (see paragraph 7 above).

II. PROCEEDINGS BROUGHT BY THE NOVOSEDLY PARISH

13. On 28 December 2015 the Novosedly Parish brought an action under the Church Property Settlement Act in the Jindřichův Hradec District Court (hereinafter “the District Court”) against the State and the first applicant company, seeking a declaration that the Novosedly land was owned not by the first applicant company but by the State. It claimed that the first applicant company had acquired the land in breach of the blocking provision and that the transfer was therefore void *ab initio*. Were the privatisation of the property to be declared null and void, that would mean that the owner was the State, which would mean the land was owned by a liable entity from which the original owner of the church property could seek restitution under the Church Property Settlement Act.

14. In a judgment of 30 November 2016, the District Court declared the privatisation of the land in question to have been void as it had been carried out in breach of the blocking provision. The court further held that because of its lack of good faith the first applicant company could not have become the owner of the Novosedly land by prescription over time as it must have known that the land in question had originally been church property. The District Court held, *inter alia*, that:

“The claimant’s legal predecessor ... was subjected to a property-related injustice after 25 February 1948 when it was deprived (pursuant to an order of the Třeboň District

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Council of 3 March 1949) of the land in question without compensation under Act no. 46/1948 on the new land reform.

The land in question passed from State ownership to the ownership of [the first applicant company] under a decision of the [MANPP] of 8 April 1992 [which] ... approved the project to privatise [the State-owned enterprise]. This project resulted in the [NPF] attributing the property in question, which had originally been church property, to the registered capital of [the first applicant company] in breach of the second sentence of section 3(1) of Act no. 92/1991. That is an ‘incurably void act *contra legem*’ [against the law] ...’, so the land in question did not pass into the ownership of [the first applicant company] but remained the property of the State.”

15. The District Court addressed the question of good faith as follows:

“The ... privatisation project was drawn up by the management of [the State-owned enterprise], with members of that management subsequently becoming members of [the first applicant company]’s governing bodies. The management of the State-owned enterprise ... was required to observe and respect the law, and in this case the ‘blocking’ section 3 of that Act. [J.H.], the State-owned enterprise’s executive officer (who subsequently became a member of the joint-stock company’s board of directors), and others who had prepared the privatisation project, were required to respect the blocking provision and not to include the land in question in any privatisation, as it could not be privatised. [J.H.] drew up a list of the plots of land belonging to the State-owned enterprise that were to pass to the joint-stock company, from which it can be inferred that he was aware that the privatisation included the plots of land that had been church property prior to 1950. It is evident from the foregoing that not even the customary caution which may be required of anyone was exercised when this property was included in the privatisation. [J.H.] knew that some of the property had been church property before 1950. However, despite this compromising knowledge, he did not investigate how or when the land had passed into the ownership of the State

... This finding is corroborated by the fact that, in 1994, the [SAO] had audited the privatisation of [the State-owned enterprise] under audit no. 46/94. Point A4 of the audit report explicitly states that the [Ministry of Agriculture] had allowed the privatisation project to include land that ought to have been subject to restitution. This same fact is repeated under point B4, where it is further stated that that incorrect procedure by the [MANPP] had resulted in the unlawful transfer of State property worth at least CZK 349,715,895. Such findings must have caused [the first applicant company] to have grave doubts as to the correctness of the privatisation of the property in question”

16. On 23 June 2017 the České Budějovice Regional Court (hereinafter “the Regional Court”), on appeal by the first applicant company, upheld the District Court’s judgment. As to the question of good faith, it stated specifically:

“The purpose of [section 3 of the Privatisation Act] was to protect property that had originally belonged to the church from dispositions that might jeopardise the long-term, well-considered elimination of property wrongs inflicted on the churches and religious communities by the undemocratic regime, pending the adoption of a special law to remedy those wrongs.

...

The appellate court, in agreement with the court of first instance, holds that the above facts, that is, the lack of good faith of those members of the [first applicant company]’s

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board of directors who had worked on the privatisation project and who must have become aware of the fact that the land in question which had been included in the privatisation project had originally been church property, cast doubt on the [first applicant company]'s good faith. The conclusion that [its] good faith could not have been compromised if an absolute majority of the board of directors at the time in question had not learned of the church origins of the property and of the fact that it had passed to the State after 25 February 1948 cannot be accepted. Therefore, the [first applicant company]'s objections as raised in the appeal in this respect are irrelevant, as are the objections relating to [SAO]'s audit report no. 46/94 and the [first applicant company]'s complaint ... that the [SAO]'s file on audit mission no. 46/94 was not produced in evidence.

While the appellate court is aware that confidence in the conformity of the State's actions with the law is a protected value ..., it also takes into account the fact that the transfer of the property was carried out by [J.H.] in his capacity as director of the State-owned enterprise when it was being privatised, and then as a representative of the [first applicant company], that is, the entity acquiring the property, and also as the authorised representative of the [NPF] (see the conclusions of the audit of the privatisation of [the State-owned enterprise], no. 46/94, published in the Gazette [*Věstník*] of the [SAO] release [*částka*] 2 of year 1995). The involvement of the [NPF] which, as the founder of the [first applicant company], attributed the disputed property to it as part of its registered capital, that is, [the involvement of the NPF as the State authority] in the unlawful transfer of the disputed property which had previously been church property, does not justify overriding the block on the disposal of property that was historically the church's. Any finding to the contrary would entirely nullify the blocking effects of ... 3(1) of Act no. 92/1991 and negate its meaning"

17. On 14 March 2018 the Supreme Court (*Nejvyšší soud*) dismissed an appeal on a point of law (*dovolání*) by the first applicant company. The court held that the disputed points of law had been resolved by the Regional Court in a manner consistent with the Supreme Court's established judicial practice and found no reason to depart from it in the present case. It pointed out, in particular, that restitution claims took precedence, stating:

"In this regard, it should also be underlined that case law has long treated restitution claims as overriding claims, the enforcement of which justifies interference even with property transfers that have already been legally completed, since a contrary interpretation would render the ... blocking provisions protecting persons entitled to restitution completely worthless"

18. As to the assessment of the good faith of members of the first applicant company's governing body, the Supreme Court further made the following observations:

"... Whether or not a possessor of property, taking into account all the circumstances, believes in good faith that a thing or right belongs to it must always be assessed objectively and not only from the subjective point of view (personal belief) of the party itself. When examining good faith, it is always necessary to take into account whether the possessor, acting with the ordinary (normal) caution that may be required of anyone in the circumstances and as appropriate to the nature of the case, did not have, or could not have had, any reasonable doubt, throughout the period of possession, that the thing or right belongs to it A possessor does not act in good faith 'in the light of all circumstances' if it is subjectively convinced that a thing or right belongs to it, but, had it exercised ordinary caution, would have known that it did not. Since good faith needs

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to be judged objectively, it is impossible to conclude that, in one and the same situation, one person would be acting in good faith thus described and another would not”

19. On 5 June 2018 the first applicant company filed a constitutional appeal, alleging a violation of its property right and its right to a fair trial. It argued, in particular, that the ordinary courts

(i) had not sufficiently considered the conflict between its property rights and those of the Novosedly Parish, which had been awarded lump sum financial compensation, including compensation for the land in question, under section 15 of the Church Property Settlement Act;

(ii) had erred in their assessment of the first applicant company’s good faith; and

(iii) had allowed the applications without having examined, as a preliminary question, whether the property could be transferred to the Novosedly Parish in subsequent restitution proceedings.

20. In a ruling (*usnesení*) of 2 October 2018 the Constitutional Court (II. ÚS 1953/18) (*Ústavní soud*) dismissed the first applicant company’s constitutional appeal as manifestly ill-founded. The court found that the ordinary courts had carefully considered the first applicant company’s allegations and had resolved the vast majority of them in a manner that could be referred to without further comment. It commented in more detail on the overriding of the blocking provision. Specifically, it made the following observations:

“[8] First of all, the ordinary courts examined whether there were any extraordinary circumstances that would justify the rejection of the action ..., but after taking evidence they reasonably and constitutionally concluded that no such circumstances existed. In this context, the Constitutional Court points out that, under the Supreme Court’s settled case law (accepted by the Constitutional Court), only circumstances of a truly exceptional nature and very strongly in favour of the granting of legal protection to persons to whom buildings originally belonging to churches have been transferred in breach of the law could justify the rejection of an action for a declaratory judgment, for example, the acquisition, in good faith, of property in respect of which the prerequisites for restitution *in rem* have clearly not been met (see, e.g. ... judgment of the Constitutional Court no. III. ÚS 1862/16 of 21 June 2017).”

21. The Constitutional Court was satisfied with the way in which the ordinary courts had assessed the issue of good faith. In this regard, it observed:

“[9] The Constitutional Court also considers the manner in which the ordinary courts treated the matter of the existence of the [first applicant company’s] good faith to be consistent with the constitutional order, in that their finding of an absence of good faith is largely premised on the argument that the author of the privatisation project (in the annexes to which the land in question was explicitly identified as church property prior to 1950, and therefore this specification was entirely clear to all then and subsequent members of the governing bodies of the legal persons involved) was [the State-owned enterprise] acting through its then director, [J.H.], who, at the time the land in question was transferred and for a long time thereafter, was also a member of the governing body of the [first applicant company]’s legal predecessor.”

22. As to the allegation that it was necessary to examine whether the conditions for the surrender of immovable property under the Church Property Settlement Act had been met, the Constitutional Court stated the following:

“[10] Finally, the Constitutional Court considers the claim concerning the interpretation and application of section 18(1) of the Church Property Settlement Act to be manifestly ill-founded. [It] agrees with the ordinary courts’ position ... that this provision lays down a special type of action for a declaratory judgment, in respect of which ‘legal interest’ is not the decisive factor and that it is possible to rule on an action for a declaratory judgment brought pursuant to this provision without examining whether conditions within the meaning of section 7(1) of the Church Property Settlement Act have been satisfied.

...

[12] In addition to what we have said above, the Constitutional Court makes the following observations. The [first applicant company] may justifiably say that the legal situation in which it finds itself is due, at least in part, to the State’s inertia in the privatisation process. The [first applicant company] submits that, even if the limitation period has expired, it has no claim against the State in damages or unjust enrichment or for any other remedy in connection with the declaration that the privatisation of the [land concerned] is null and void. However, even in this situation, the situation cannot be ‘put right’ by a decision that would be detrimental to a successful applicant under the Church Property Settlement Act. This is all the more true given that the case law of the Constitutional Court allows, in certain circumstances, for such an action to be successfully brought against the State without prejudice to the rights of parties claiming restitution. ...”

III. PROCEEDINGS BROUGHT BY THE LUTOVÁ PARISH

23. On 28 December 2015, pursuant to the Church Property Settlement Act, the Lutová Parish brought an action in the District Court (“the District Court”) against the State and the second applicant company seeking a declaration that the Lutová property was owned not by the second applicant company but by the State.

24. On 28 December 2016 the District Court decided in favour of the Lutová Parish, basing its decision on the same grounds as those of its judgment regarding the Novosedly property. It appears from the court’s judgment that the SAO, having been asked to produce the file from the audit of the privatisation of the State-owned enterprise informed the court that in 2012 the file had been passed to the national archives.

25. In a judgment of 29 August 2017, the Regional Court upheld the first instance judgment.

26. On 30 May 2018 the Supreme Court dismissed an appeal on points of law by the second applicant.

27. In a judgment (*nález*) of 30 November 2021 the Constitutional Court (I. ÚS 3179/18) dismissed a constitutional appeal by the second applicant company in which it had alleged a violation of its rights to property and right

to a fair trial. The Constitutional Court also examined the applicant company's complaints on the merits, which it had not done in the Novosedly Parish case, since in the meantime a judgment had been given in another of the second applicant company's cases which had to be considered in the present case. The Constitutional Court addressed that judgment as follows:

“[24] Article 89 § 2 of the Constitution makes enforceable decisions of the Constitutional Court binding upon all; bodies and persons. It is not only the operative part of the judgment that is binding, but also the reasoning, or, more precisely, those parts of it that contain the ‘substantive’ reasoning The binding nature of the decision ... not only has an effect on other bodies, but also has a definite bearing on the decision-making of the Constitutional Court itself

[25] The constitutional obligation to respect the binding nature of the substantive reasoning set out in its own case law (judgments) is also expressed in section 23 of the Constitutional Court Act, which provides that if a chamber ‘in the course of its decision-making activities arrives at a legal opinion deviating from the legal opinion of the Constitutional Court in a published judgment, it shall submit the question to the plenary of the Constitutional Court for consideration. The chamber shall be bound by the opinion of the plenary in further proceedings.’ If a chamber of the Constitutional Court, in a case with similar facts, were to decide other than as dictated by the substantive reasoning of a previous judgment of the Constitutional Court, it would be engaging in constitutionally prohibited arbitrariness.

[26] In this context, the Constitutional Court did not disregard the fact that, in another case, the [second applicant company's] constitutional appeal had been allowed by judgment III. ÚS 2707/18¹. As summarised above, the Constitutional Court's first chamber came to the conclusion in its decision-making process that in the present case the constitutional appeal should be dismissed. The question arises, however, as to whether the dismissal of the constitutional appeal is, strictly speaking, based on a ‘divergent legal opinion’ or whether the present case is distinguishable on its facts from the case heard under number III. ÚS 2707/18. Only if the dismissal were based on would the Constitutional Court be able (and obliged) to submit the case to the plenary for an opinion

[27] Accordingly, the Constitutional Court considered whether the facts of the present case are essentially similar to the facts of the case heard under number III. ÚS 2707/18

[31] However, the primary reason for upholding the appeal was clearly ... that the ordinary courts had not made a sufficient assessment of whether the land in question had actually passed to the State in the relevant period, that is, whether the transfer had been after 25 February 1948 or earlier. ... In other words, the operative part of judgment III. ÚS 2707/18 was based on very specific substantive reasons relating to particular facts. In that judgment, the Constitutional Court criticised the ordinary courts for their wholly inadequate assessment of whether the blocking provision applied to the property in question at all, and that assessment was then (again, inadmissibly, in the Constitutional Court's opinion) followed by the ordinary courts' purely perfunctory assessment of whether the parties had been in good faith and the importance of the principle of the protection of an individual's confidence in the actions of public authorities.

¹ See paragraph 61 below

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[32] The facts outlined above relating to the uncertainty surrounding the date on which the property passed to the State were not at issue in the present case. ... To that extent, the ordinary courts proceeded in a constitutionally compliant manner in establishing the facts of the case, and the Constitutional Court holds that it was established in the proceedings that the property in question had passed to the State during the relevant period (that is, after 25 February 1948).

[33] This fact alone establishes a fundamental distinction between the present case and the case addressed by judgment III. ÚS 2707/18

[35] ... In judgment III. ÚS 2707/18, the (alleged) good faith and confidence in the correctness of an action effected by the State did not stand ‘alone’, but were linked to significant doubt as to whether section 29 of the Land Ownership Act applied to the property in question at all. It was this combination which then resulted in a judgment being given in favour of the appeal”

28. The Constitutional Court then dismissed the second applicant company’s constitutional appeal on the following grounds:

“[36] Given the above-mentioned fact that the Constitutional Court finds it established that the transfer of property to the State (and the related application of the ‘blocking provision’) occurred after 25 February 1948, the decisive issue in assessing the constitutionality of the contested decisions was whether the possibility that there had been ‘genuinely exceptional circumstances’ affecting the [second applicant company] had been given appropriate weight and whether a fair balance had been struck between the interests of the [second applicant company] on the one hand and those of the [Lutová Parish] on the other.

[37] The Constitutional Court finds that the conclusion of the courts of first instance that there were no such exceptional circumstances is consistent with the constitution. It finds that no special circumstances had come to light in the course of the proceedings which would preclude the restitution *in rem* of the land in question, and that the [second applicant company] had not acquired the land in question in good faith, and only a combination of good faith and the impossibility of restitution *in rem* could be regarded as a truly exceptional circumstance.

[38] However, even if good faith on the part of the [second applicant company] had been established in the present case, that would not in itself have outweighed the legitimate expectation of a church entity to restitution of its historical property. Indeed, neither good faith alone nor good faith combined with reliance on an act of the State constitutes truly exceptional circumstances within the meaning of the judgments in case nos. III. ÚS 1862/16 and I. ÚS 349/17 Furthermore, in view of the doubts about the privatisation process and the personal link between the State and a member of the [second applicant company]’s governing body (which led the courts to conclude that the [second applicant company] was not in good faith), the scales tip even further against the [applicant company] in the search for a fair balance.

[39] The Constitutional Court cannot agree with the [second applicant company]’s objection that the historical claims of the church are not at issue at all since the Czech Republic has no interest in owning the land concerned and is probably incapable of managing it properly and its attitude to date suggests that it will not hand it over to the [Lutová Parish]. These considerations are entirely speculative and cannot be determinative of the outcome of the proceedings on the action under section 18 of the Church Property Settlement Act.”

IV. PROCEEDINGS ON THE SURRENDER OF THE PROPERTY CONCERNED TO THE CHURCH

29. After the Novosedly Parish and the Lutová Parish had obtained a declaration that the State was the owner of the property in question, they made a formal request to the State for its transfer to them under the Church Property Settlement Act. The Office for Government Representation in Property Affairs (*Úřad pro zastupování státu ve věcech majetkových*) did not grant that request. In the case of the Novosedly Parish, it found that the condition that there should be a functional link between the property in question and other church property within the meaning of section 7(1) of the Church Property Settlement Act had not been met.

30. On 6 June 2019 the Novosedly Parish made an application to the appropriate land office to initiate administrative proceedings for the surrender of the Novosedly land pursuant to section 9(6) of the Church Property Settlement Act. The South Bohemia Regional Land Office (*krajský pozemkový úřad pro Jihočeský kraj*) (“the Land Office”) granted the application and on 2 June 2020 it ordered the State, represented by the Office for Government Representation in Property Affairs, to surrender the Novosedly land to the Novosedly Parish. It stated, in particular:

“The formal request for transfer of the property ... was notified on 12 June 2018 to the State Land Office, which forwarded it to the Office for Government Representation in Property Affairs on 9 August 2018, because the property in question was registered as [deed of ownership] 60000 [which vested the power to manage the property in the Office for Government Representation in Property Affairs], despite the fact that it was agricultural property.

The legislator, when defining the scope of property to be subject to restitution, made a clear distinction between State property administered by the Land Fund of the Czech Republic (now the State Land Office) or by the State Forestry of the Czech Republic, and property administered by other entities, that is, other State bodies ... Although property which had originally belonged to the church before passing into the ownership of the State and under the management of the legal persons obliged to make restitution as listed in section 4 a) and b) [of the Church Property Settlement Act] will be surrendered when the general restitution conditions are fulfilled, that is, without further examination of the purpose for which the property will be used, other State property is surrendered only as an exception and to a limited extent, on the fulfilment of certain other conditions laid down by law and relating to the nature of the ... land concerned.

...

The Office for Government Representation in Property Affairs is a legal person obliged to make restitution under section 4 c) of the Church Property Settlement Act: therefore, when surrendering its property, it is required to proceed according to section 7 and ... [to examine] whether the conditions mentioned in section 7(1)(a) have been fulfilled.

...

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The legal person entitled has proved its right to the restitution of the property in question. All the conditions for restitution provided for in the Church Property Settlement Act have been met. ...”

31. On 18 September 2019 the Lutová Parish also made an application to initiate administrative proceedings for the surrender of the Lutová land. On 18 July 2022 the Land Office ordered the State, represented by the Office for Government Representation in Property Affairs, to surrender the Lutová land to the legal successor of the Lutová Parish.

32. In both cases, it was proved that the original owner of the land was the legal predecessor of the Lutová Parish or the Novosedly Parish, and that a property-related injustice had been committed. The Land Office found that all the statutory conditions for the surrender of the land had been met, including the condition of a functional link. On the basis of these decisions, the church, or its legal successor, was recorded in the land register as the owner of the land in question.

33. On 28 July 2020 the State, represented by the Office for Government Representation in Property Affairs, brought an action under the Fifth Part of the Code of Civil Procedure (which governs court procedure in cases decided by the administrative authorities) against the decision in the Novosedly Parish case, seeking to have the Land Office’s decision set aside. The State’s case was that the Land Office had wrongly assessed whether the functional link required by section 7(1) of the Church Property Settlement Act had been fulfilled, which in the State’s opinion it had not. The legal successor of the Novosedly Parish was a party to the proceedings.

34. On 15 August 2022 the Regional Court dismissed that action, stating, *inter alia*:

“...

28. The court concluded that the disputed land was agricultural in nature at the date of 24 June 1991, since it was being used by the formerly State-owned company for fishing and fishery purposes and formed a unified parcel consisting of the pond and the adjoining land...

29. Agricultural land under section 2 of the Church Property Settlement Act is administered by the Land Fund of the Czech Republic.

30. The Land Fund of the Czech Republic is a legal person obliged to make restitution under section 4(a) of the Church Property Settlement Act, for which no functional link within the meaning of section 7(1) of the Act is required.

31. For these reasons, evidence brought by the claimant and the parties to the proceedings [regarding] the functional link between the land concerned and other properties owned by the [Novosedly Parish] was ... not admitted.

...

39. The court concluded that ... the legal person entitled to restitution under section 3(b) of the Church Property Settlement Act had asserted its claim for restitution against the legal person obliged to make restitution under section 4(a) of the Church Property Settlement Act for the return of agricultural land which had originally been

the property of the [Novosedly Parish] within the meaning of section 2 of the Church Property Settlement Act and whose seizure by the State during the relevant period ... without compensation [had caused] material damage within the meaning of section 5 of the Church Property Settlement Act. Section 7(1), which requires proof of the functional link of the land in question with other immovable property owned by the [Novosedly Parish], did not apply, as explained above. ... [T]he court [therefore] dismissed the action ... having concluded that the decision of the administrative authority was materially correct.”

35. On 23 November 2023 the Prague High Court, on an appeal by the Office for Government Representation in Property Affairs, upheld the Regional Court’s judgment. On 17 September 2024 the Supreme Court dismissed the Office’s appeal on points of law.

36. No similar action was brought in respect of the Lutová land.

RELEVANT LEGAL FRAMEWORK

I. LEGAL PROVISIONS

A. Privatisation Act (Law no. 92/1991) as in force until 31 December 2012

37. Section 3(1) of the Privatisation Act provided that its provisions did not apply to the former property of churches, orders, congregations and religious communities that had passed to the State after 25 February 1948.

B. Church Property Settlement Act (Law no. 428/2012)

38. Section 1 of the Church Property Settlement Act of 2012 provides that the purpose of the Act is, *inter alia*, to redress certain property-related injustices perpetrated by the communist regime against churches and religious communities.

39. Section 4 provides that the following bodies are under an obligation to make restitution of relevant property: (a) the Land Fund of the Czech Republic, (b) the Forestry of the Czech Republic (*Lesy České republiky*), (c) the State, through the body with power to represent it, and (d) a State organisation, partly funded from the public purse, State funds, State enterprises, and other State organisation.

40. Under section 5, one of the facts that may lead to a property-related injustice is the deprivation of property without compensation by way of the procedure under the New Land Reform Act (Law no. 46/1948).

41. Under section 6, the bodies referred to in section 4 (a) and (b) must surrender to an entitled person or body State-owned immovable property which was originally the property of a registered church and which became the subject of a property-related injustice suffered by the entitled person or

by a legal predecessor thereof during the relevant period, as a result of one of the facts listed in section 5.

42. Under section 7, a body obliged to make restitution under section 4 (c) and (d) must surrender to an entitled person State-owned immovable property which was originally the property of a registered church and which became the subject of a property-related injustice sustained by the entitled person or a legal predecessor of that person during the relevant period as a result of one of the facts listed in section 5, provided that it was or is functionally linked to immovable property owned by the entitled person or subject to surrender under this Act, or if it was used by the entitled person or a legal predecessor of that person during the relevant period for spiritual, pastoral, charitable, medical, educational or administrative purposes or as a dwelling for clergy.

43. Section 8 lists the cases in which immovable property cannot be returned for reasons of the public interest.

44. Section 9(1) provides that an entitled person must submit a written claim to the person obliged to surrender agricultural land within 12 months of the date on which the Church Property Settlement Act takes effect, otherwise the claim will lapse. Under sub-section 6, if no agreement on the surrender of agricultural land is concluded between an entitled person and a liable body, the relevant land office must decide on the surrender of the agricultural land on the application by the entitled person. Under sub-section 10, where a land authority takes a decision under the Act, the matter may be subject to proceedings pursuant to the Fifth Part of the Code of Civil Procedure.

45. Section 18 provides that an entitled person may bring an action before a court seeking a declaration of State ownership of property on the grounds that it was originally the property of a registered church or religious community and had been transferred from State ownership to the ownership of other persons in breach of section 3 of the Privatisation Act (Law no. 92/1991) (“the blocking provision”) or section 29 of the Land Ownership Act (Law 229/1991) prior to the date on which the present Act entered into force.

C. Civil Code (Law no. 40/1964), as in force until 31 December 2013

46. Article 42 of the Civil Code provided that if damage was caused as a result of the invalidity of a legal act, liability for that damage would be governed by the provisions of this Code on liability for damage.

47. Article 106 § 1 provided that the right to compensation for damage was time-barred two years from the date on which the injured party became aware of the damage and of the identity of the person liable for the damage.

48. Article 107 § 3 provided that if the parties to a void or avoided contract were obliged to return to each other everything they had received under that

contract, a court should only take a plea of limitation into account if the other party could also plead limitation.

49. Under Article 134 § 1, a person in lawful possession of immovable property became its owner if he held it continuously for ten years.

50. Article 420 provided that all persons would be liable for damage caused by a breach of a legal obligation, but could be exonerated from liability if they proved that they were not at fault in relation to the damage.

51. Article 457 provided that if a contract was found void or was avoided, each party had to return everything it has received under that contract to the other party.

52. Article 130 § 3 entitled a person in lawful possession of property to compensation from the owner for costs properly incurred in respect of the property during the period of lawful possession to the extent of the improvement of the property as at the date of its restitution. However, ordinary costs associated with maintenance and operation would not be reimbursed.

53. Article 131 required a person unlawfully in possession of property to surrender it to the owner together with all profits and to compensate for damage caused by the unlawful possession. The unlawful possessor could deduct the cost of the maintenance and upkeep of the property and could remove improvements installed at his or her own expense, insofar as this was possible without damaging the property.

II. RELEVANT LEGAL PRACTICE

54. In its judgments nos. II. ÚS 528/02 of 2 February 2005; I. ÚS 663/06 of 24 June 2009; II. ÚS 2326/07 of 31 March 2011; I. ÚS 562/09 of 31 August 2011; and Pl. ÚS 9/07 of 1 July 2010, the Constitutional Court held that the purpose of section 3 of the Privatisation Act (“the blocking provision”) was primarily to protect the original property of the churches against acts that could frustrate the long-planned redress of the property wrongs inflicted on the churches by the undemocratic regime, pending the adoption of the special law that would govern the procedure for redress. In its judgments and decisions nos. 28 Cdo 5036/2016 of 25 October 2017; 28 Cdo 4748/2016 of 28 November 2017; 28 Cdo 777/2012 of 25 April 2012; and 28 Cdo 4721/2016 of 6 February 2018, the Supreme Court ruled similarly.

55. In its judgments nos. III. ÚS 1862/16 of 21 June 2017 and I. ÚS 349/17 of 22 June 2017, the Constitutional Court ruled that to accept that the mere involvement of the State in the process of property transfer, for example in the context of privatisation, in itself justified overriding the ban on dealings with the historical property of the church under section 29 of the Land Ownership Act or section 3 of the Privatisation Act 1991 would lead to a complete nullification of the blocking effect of those

provisions. The Supreme Court ruled similarly in its decisions nos. 28 Cdo 4041/2015 of 3 March 2016 and 28 Cdo 2497/2016 of 3 November 2016.

56. In its judgment no. III. ÚS 1862/16 the Constitutional Court also referred to the legitimate expectation, based on law, of religious entities to recover their historical property (see judgment no. II. ÚS 528/02 of 2 February 2005). It observed that the long-standing inaction of Parliament, which had failed to pass any special regulation dealing with the historical property of churches and religious entities, was unconstitutional and violated, *inter alia*, Article 11 § 1 of the Czech Charter of Fundamental Rights and Freedoms (“the Charter”) and Article 1 of Protocol No. 1 to the Convention (see judgment no. Pl. ÚS 9/07 of 1 July 2010).

57. In its judgment no. I. ÚS 349/17 the Constitutional Court also held that under section 29 of the Land Ownership Act all transfers of historic property of the Church were void *ab initio*. This meant that, despite the conclusion of a contract, ownership of the property was not transferred to a third party, not even by the subsequent registration of that party as owner in the Land Register.

58. In its judgment no. I. ÚS 2166/10 of 22 February 2011 the Constitutional Court held that only in exceptional cases, where there were strong and convincing reasons for doing so, was it possible to override the blocking provision (under section 29 of the Land Ownership Act and section 3 of the Privatisation Act), when the conclusion as to the invalidity of the disposition of property subject to the blocking provisions had to be justified by circumstances of a truly exceptional nature. That would be most likely to be found in order to extend legal protection to persons to whom property that had historically belonged to the church had been unlawfully transferred, for example where a person had acquired property in good faith and restitution of the property *in rem* was impossible. The Supreme Court expressed a similar opinion in its judgments and decisions nos. 28 Cdo 4546/2015 of 1 August 2016; 28 Cdo 4082/2017 of 27 September 2017; and 28 Cdo 2497/2016 of 3 November 2016.

59. In its ruling no. II. ÚS 1533/19 of 6 August 2019, the Constitutional Court referred to, *inter alia*, its judgments no. III. ÚS 1862/16 and I. ÚS 349/17 (see paragraphs 54 and 57 above) and held that the acquisition of property in good faith was not sufficient to overcome the blocking effect of section 29 of the Land Ownership Act. Extraordinary circumstances must be established, and would only justify a cassation review by the Constitutional Court on the application of a person who had acquired such property.

60. In its judgments nos. IV. ÚS 195/97 of 11 December 1997, II. ÚS 6/01 of 9 January 2002, I. ÚS 2758/10 of 4 April 2012, I. ÚS 1703/09 of 27 November 2012, the Constitutional Court ruled that restitution claims must be regarded as primary claims, the implementation of which also

justified the review of property transfers that had already taken place, since a different interpretation would render the blocking provisions protecting restitution claimants completely worthless. The Supreme Court expressed a similar opinion in its decisions nos. 28 Cdo 374/2007 of 22 February 2007; 28 Cdo 720/2009 of 14 October 2009; and 28 Cdo 1158/2016 of 13 June 2017.

61. In its judgment no. III. ÚS 2707/18 of 15 June 2020, the Constitutional Court found a violation of the second applicant company's rights under Article 11 § 1 (property rights) and a violation of Article 36 § 1 (fair trial) of the Charter in proceedings initiated under section 18 of the Church Property Settlement Act by the Parish authorities of Český Krumlov, which involved other parcels of land which had been included in the privatisation project prepared by the former State-owned enterprise. The relevant parts of the judgment read as follows:

“Confidence in the actions of the State and legitimate expectation

...

[42] The applicant [company] succeeds, in that the determination of the ownership of the property should have been accompanied by an assessment of good faith that took into account its legitimate expectation of the fairness of the State's conduct in the privatisation. The act in question in the present case was the decision of the Ministry for the Administration of State Property and its Privatisation of 8 April 1992 approving the State-owned company's privatisation project. In the context of the inconsistent assessment of whether the property was subject to the blocking provision ..., it is clear that the courts were unable to take sufficient account of the applicant [company]'s legitimate expectations arising from the actions of the State. The approval of the privatisation by the State authorities was pointed out by the appellant [in its] appeal and ... appeal on points of law, but the courts did not deal with it further.

[43] The Constitutional Court tends to agree with the applicant [company]'s argument, based on the judgment of the Constitutional Court no. I. ÚS 2216/09 of 31 May 2011 ..., concerning the principle of the public's trust in the decision-making activities of State authorities in the context of the so-called large privatisation. If a privatisation was approved by a State authority, it is inappropriate to conclude, in the light of this principle, that the property concerned should be returned to the State.

[44] It is unreasonable to require the applicant [company] to have actively investigated the possible incorrectness of the privatisation project on the grounds that it 'should have known and could have known' the alleged origin of the property, when the approval of the privatisation project assured the applicant [company] of the correctness of the project. This doubt cannot be dispelled by referring to the personal links between the bodies involved in the privatisation; the decision of the [MAPNP] to approve the privatisation project of the State-owned company did not depend on them.

[45] The courts *de facto* held the applicant [company] responsible for believing that the privatisation project had been duly and properly approved by the public authorities. The applicant [company]'s predecessor had acquired the property in a large-scale and undoubtedly complex privatisation. In such a situation, the general courts' demand ... that [the applicant company] could or should have known the nature of each individual plot of land, the total size of which was in the order of thousands of hectares, was unacceptable. Even if the transfer of the property to the State after February 1948

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(and only during that period ...) was actually confirmed, it could also be considered that the State was at fault in approving the privatisation project. Despite the State's delay in adopting the Church Property Settlement Act, such a hypothetical fault cannot be attributed to the applicant [company]. This is all the more so in the context of the lack of clarity about the time of the initial transfer of the property to the State, the actual form of the privatisation and the good faith in the legal ownership of the property [of the applicant company].

[46] When assessing the good faith in the legitimacy of the ownership of the property acquired by an individual in a so-called large privatisation, one must not lose sight of the individual's trust in the correctness of the action of the State authorities, which derives from the principle of a democratic state governed by the rule of law, especially given the actual course of large privatisations and their personal and organisational fragmentation.

[47] If the State's actions are trusted by people who acquire property believing in the correctness of the acts of privatisation, it is not appropriate or constitutionally acceptable to assess the complainant's good faith at the expense of the necessary considerations of her trust in the validity of the State's actions of privatisation within the meaning of Article 11 of the [Czech] Charter of Fundamental Rights and Freedoms and Article 1 of Protocol No. 1. Since the courts did not take into account the [applicant company]'s long-standing expectations after the relevant objections had been raised, the applicant [company]'s right to judicial protection and, logically, the right to the protection of property were violated by a procedure that disregarded one of the fundamental principles of a democratic rule of law.

V.c Good faith in context of privatisation

[48] ... [I]t was not disputed that the applicant [company] had been in possession of the land for the required period of ten years, but whether the possession of the land was justified.

...

[61] Although the [SAO]'s conclusion was published, it was not followed by further legal steps (which would have called into question the good faith of the legitimate state after a successful privatisation), nor was it taken into account that, from the applicant [company]'s point of view, the State authority had come to two different conclusions which were opposed to each other. However, only one of them was legally binding: while the acts of privatisation established ownership by the applicant [company]'s legal predecessor, the conclusion of the [SAO] only established the transfer of what was apparently also originally church property ...

[62] ... [T]he courts approached the complex issue of the large-scale privatisation that had taken place almost thirty years earlier in an overly simplistic manner. The applicant [company] relied on the rightness of the State's actions, including the acts of privatisation, which had been approved by legitimate authorities. In accordance with the constitutional order, the general courts had held that good faith, as a subjective category, must be assessed objectively. However, it should not be forgotten that the constitutionally guaranteed right to judicial protection also requires a consistent determination of the facts. ...

[63] The Constitutional Court concluded that the general courts had acted arbitrarily in assessing the applicant [company]'s good faith in isolation from the other facts alleged. The particular circumstances of the privatisation are not ... excluded from the assessment of the existence of good faith as a subjective category. An objective assessment of good faith cannot lead to a 'mechanical' adherence to the almost always

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possible presence of theoretical doubts as to the ability of the property to be the subject of privatisation, as a result of which the good faith of the holder would inadmissibly fall outside the protection of constitutionally guaranteed fundamental rights and freedoms. The question of whether the relevant knowledge should and could have been acquired does not preclude the taking of evidence and the consideration of all particulars in order to come as close as possible to a conclusion as to whether it was really known that the privatised property was subject to the blocking provision. ... the ordinary courts had not reached the conclusions in question by means of the ‘established’ procedure. The general courts’ unconstitutional assessment of rightful possession, which led to a negative conclusion regarding [the applicant company’s acquisition of the title to property by prescription], resulted in a violation of its rights ... under Article 36 § 1 and Article 11 § 1 of the Charter.

...

[70] The Constitutional Court did not overlook the fact that in a similar case, order no. II. ÚS 1953/18, the constitutional complaint of the [first applicant company] was dismissed. The Constitutional Court is not bound by decisions in the form of a ruling ... Moreover, in the ruling in question, no greater attention was paid to the substance of the [first applicant company]’s legitimate expectations and other related circumstances ...”

62. In its ruling no. III. ÚS 3398/20 of 23 February 2021, the Constitutional Court relied on its judgment no. II. ÚS 2640/17 of 22 May 2018, in which it had emphasised that the mere good faith of the holder of property is not sufficient to override the effect of section 29 of the Land Ownership Act and that there must be other specific circumstances of exceptional importance to justify the protection of a possessor’s fundamental right to property, so that the ensuing decision can be regarded as achieving a fair balance in protecting the fundamental rights of the person concerned. Moreover, with reference also to its judgment no. III. ÚS 2707/18, it held that where there was a conflict between two property rights, rights based on a transfer of property in breach of section 3 of the Privatisation Act or section 29 of the Land Ownership Act would generally take priority except in exceptional circumstances. At the same time, the Constitutional Court consistently held that the mere good faith of the holder of property is not sufficient, and there must also be exceptional circumstances, to be assessed by the ordinary courts, whether those circumstances concern the type of title acquired, the person claiming the rights, his or her relationship to the property held, the previous length of use of the property or the circumstances in which the church originally lost the property.

63. In its judgment no. III. ÚS 2269/20 of 9 June 2021, the Constitutional Court referred to its findings in its judgment no. III. ÚS 1862/16 (see paragraph 54 above) and its ruling no. II. ÚS 1953/18 (see paragraphs 20-22 above). It held, *inter alia*, that the legitimate expectation of original owners that they could dispose of their historical property as they wished was recognised as a constitutionally protected value, and that “the blocking provision”, which prohibited the transfer of property with the aim of privatising it, was the means of protecting it.

THE LAW

I. JOINDER OF THE APPLICATIONS

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

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

65. The applicants complained that they had been deprived of the property concerned without compensation and in violation of Article 1 of Protocol No. 1. They complained further, relying on Article 6 § 1 of the Convention, that the general courts had departed from the superior courts' settled case-law without proper reasoning, thereby infringing the principle of legal certainty, and that they had not admitted all the evidence produced, thereby infringing the principles of equality of arms and adversarial proceedings.

66. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that the applicant companies' complaints fall to be examined solely under Article 1 of Protocol No. 1 to the Convention, which provides:

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

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

A. Admissibility

1. *Applicability of Article 1 of Protocol No. 1*

67. The Government did not dispute the applicability of Article 1 of Protocol No. 1 to the Convention. It is true that the domestic courts held that the applicant companies' titles to the land concerned were void *ab initio* (see paragraphs 14-16, 18, 24-26 above and paragraph 76 below), which meant that they were considered never to have owned them. However, the Court, observing that the applicant companies had been in possession of the properties in question and were considered their owners for all legal purposes prior to the events complained of, considers that they had had "possessions" within the meaning of Article 1 of Protocol No. 1, even if their titles were declared void *ab initio*. (compare *Gashi v. Croatia*, no. 32457/05, § 38,

13 December 2007; *Vukušić v. Croatia*, no. 69735/11, § 48, 31 May 2016; and *Imbrahimbeynov and Others v. Azerbaijan*, no. 32380/13, § 40, 16 February 2023).

2. The Government's preliminary objection

68. The Government claimed that the applicant companies had failed to exhaust domestic remedies available to them in respect of the harm they had allegedly suffered. In particular, the applicant companies should have sued the State for compensation for the damage they had suffered as a result of the void transfer of the property in question on the basis of the provisions of the Civil Code in force at the relevant time.

69. The applicant companies disputed the Government's arguments.

70. The Court observes that the applicant companies appealed against the decisions depriving them of their property all the way up to the highest courts, raising the issues that they now bring before the Court, including the alleged unavailability of compensation. In these circumstances, in the Court's view, the parties' arguments concerning the exhaustion of domestic remedies in fact reflect their diverging views on the availability of compensation, which is an inherent part of the proportionality assessment of an interference, to be examined on the merits of the applicant companies' complaints.

3. Conclusion as to admissibility

71. Lastly, the Court finds that the applicant companies' complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. The complaints must therefore be declared admissible.

B. Merits

1. The parties' submissions

72. The applicant companies argued that the domestic courts had failed to strike a fair balance between the conflicting interests: as a result of court decisions, the applicant companies had borne an unreasonable burden, while the Church had essentially received double compensation. According to the applicant companies, the State had had opportunities to achieve the objective of restitution by other means which would not have affected the applicant companies' rights as guaranteed by the Convention. In their view, the objective of blocking Church property from privatisation could have been achieved by means other than restitution *in rem*, namely financial compensation. They referred, in this connection, to section 15 of the Church Property Settlement Act, under which a registered church that did not refuse to enter into a settlement agreement with the State under the Act received financial compensation by way of a lump sum which, in the case of the

Roman Catholic Church, was CZK 47,200,000,000 (equivalent to EUR 1,877,757,600 at the date of the entry into force of the Church Property Settlement Act), payable in thirty consecutive annual instalments. It was clarified in the explanatory report to the Church Property Settlement Act that the financial compensation represented the value of the registered churches' original property which could not be returned to the bodies entitled under that law because the statutory conditions for restitution had not been met. Relying further on documents issued by the Ministry of Culture, the applicant companies submitted that the lump sum also covered compensation for the land in question.

73. The applicant companies asserted that the people who had worked on the complex privatisation project in 1992 and who later became members of the board of directors of the second applicant company had not had any information that would have compromised the position of the second applicant company. Although the annexes to the privatisation project contained the information that some of the land had been owned by the Church before 1950, they did not indicate the exact date on which the State had acquired ownership of the land – particularly whether it was after 25 February 1948 or before that date, under the first land reform (*první pozemková reforma*). The applicant companies emphasised that J.H. had acted on the authority of the National Property Fund when he had signed, in 1992, the deed of transfer and acquisition of the privatised property on behalf of the former State-owned company, the newly established second applicant company and the National Property Fund.

74. The applicant companies acknowledged that there had been certain legal avenues through which they could have sought reimbursement from the State for some of the costs incurred in relation to the land concerned over the period of some 26 years. However, as the domestic courts had not considered the applicant companies to be the rightful owners of the land, even if they had been able to substantiate their claims they could only have obtained compensation for the costs of preserving the substance of the land and not their investment in the land. The outcome of any court proceedings would therefore most likely not have been favourable to the applicant companies and would not realistically have provided them with any compensation.

75. The applicant companies argued that “although, as a result of the court decisions, [they] had indeed lost their property, which they had peacefully enjoyed for many years and had treated as their own, and in which they had invested many millions of Czech crowns, they [could] not - from a legal point of view - claim that this property had been confiscated from them and that they had suffered a *prima facie* loss in the form of the value of this property. However, there [wa]s no doubt that the applicant companies' rights in respect of their property interests had been breached in Convention terms”. According to them, although the removal of the land did not mean that they

had to be wound up, the interference could not be mitigated by the fact that they continued to own other property or that they remained financially viable.

76. The Government submitted that the context of the present case did not involve a deprivation of property strictly speaking, since it was clear from the domestic courts' decisions that the property in question had never been owned by the applicant companies, given that the transfer of title was incurably void *ab initio* as unlawful.

77. The Government further maintained that the interference had been based on the relevant provisions of the Church Property Settlement Act and had pursued a legitimate aim in the public interest, namely to redress, by means of the restitution legislation, some of the property wrongs committed by the communist regime. Moreover, the interference had struck a fair balance between the general interest in the protection of the property rights of claimants in restitution and the rights of the applicant companies and had not imposed an excessive burden on them.

78. The Government referred to the facts established by the domestic courts and maintained that during the preparation of the privatisation project and its implementation it had been known that the property to be privatised had been church property prior to 1950 and that "the blocking provision" applied to it. They asserted that the applicant companies had knowingly acquired the property in question in breach of the blocking provision and therefore could not lawfully retain it. The then director of the State-owned enterprise, J.H., had signed the privatisation project not only on behalf of the State-owned enterprise but also on behalf of the second applicant company to which the property had been transferred and also as a representative of the National Property Fund: he had not studied the manner and time in which the land in question had come into the ownership of the State, although this was an essential factor in determining the legality of the privatisation. Moreover, upon completion of the privatisation, J.H. had been and continued to be active in the bodies of the newly established second applicant company and, until December 2012, he had been active in the bodies of the first applicant company. The applicant companies therefore could not claim to have been acting in good faith in the rightful acquisition of the land concerned, which could not been acquired by adverse possession over the years either.

79. The Government acknowledged that no compensation had been awarded to the applicant companies for the deprivation of the land. They emphasised, however, that the applicant companies had not paid any purchase price for the property concerned and that they did not provide any evidence of their alleged investment in the land, which therefore remained a mere allegation. At the same time, the Government maintained that even if the applicant companies were to subsequently prove that they had invested in the land, the Czech legal system offered them several avenues to claim compensation, either on the grounds of unjust enrichment or in compensation for damage under the Civil Code in force at the relevant time. According to

the Government, the applicant companies could similarly have used those remedies to claim compensation for any other damage they might claim to have suffered. The Government maintained, however, that the applicant companies did not avail themselves of any of those options.

80. The Government added that the applicant companies continued to own hundreds of other immovable properties and continued to pursue their economic activities after having been deprived of the land concerned. Their most recent accounts showed that, in the accounting year from 1 October 2020 to 30 September 2021, the first applicant company made a profit of CZK 10,997,000 (EUR 431,273 at that time) and the second applicant company made CZK 85,422,000 (EUR 3,350,020 at that time). They therefore could not be said to have been placed in a difficult financial situation.

81. The Government concluded that a fair balance had been maintained and no disproportionate burden had been imposed on the applicant companies when the domestic authorities had held that the transfer of ownership of the land in question to the first and then the second applicant had been void *ab initio*, determined that the Czech Republic was the owner of the land in question, and subsequently surrendered it to the legal successors of the original church owners from whom it had been unlawfully seized by the communist regime.

2. The Court's assessment

(a) Whether there was an interference

82. The Court notes that the applicant companies were deprived of their property as a consequence of the passing of the Church Property Settlement Act of 2012 and the findings of the domestic courts in proceedings initiated by the Novosedly Parish and the Lutová Parish under that Act. By virtue of the judicial decisions, the applicant companies' ownership titles were nullified.

83. The Court finds, therefore, that there was an interference with the applicant companies' rights under Article 1 of Protocol No. 1 to the Convention which amounted to a deprivation of property within the meaning of the second sentence of that Article (see *Pincová and Pinc v. the Czech Republic*, no. 36548/97, § 45, 5 November 2002; *Bečvář a Bečvářová v. the Czech Republic*, no. 58358/00, § 64, 14 December 2004; *Padalevičius v. Lithuania*, no. 12278/03, § 60, 7 July 2009; and *Ibrahimbeynov*, cited above, § 45 with further references).

(b) Whether the interference was justified

84. The Court reiterates that in order for any interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, in the general interest and proportionate: that is, it must 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 (see, for example, *Tomov and Nikolova v. Bulgaria*, no. 50506/09, § 44, 21 July 2018). The Court will examine these three steps in turn.

(i) *Whether the interference was provided for by law*

85. In the present case, the applicant companies' ownership titles were nullified by virtue of the Church Property Settlement Act of 2012, as interpreted and applied by the domestic courts, which made it possible for churches and other religious communities to apply to a court for the determination of State ownership of property which had originally belonged to them, but which was transferred from State ownership to third parties prior to the entry into force of the Church Property Settlement Act, in breach of section 3 of the Privatisation Act (see paragraphs 7 and 45 above). The Church Property Settlement Act had therefore authorised the dispossession of the persons then in possession of the property concerned.

86. The Court considers that the requirement of lawfulness was met and observes that no issue regarding the "quality of the law" has been raised by the applicant companies.

(ii) *Whether the interference was "in accordance with the general interest"*

87. The Court reiterates that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than an international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is therefore for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right to hold property. Where the legislature has made a choice by enacting laws which it considers to be in the general interest, the possible existence of alternative solutions does not in itself nullify the justification for the contested legislation. Accordingly, States enjoy a certain margin of appreciation in this sphere. It is not for the Court to say whether the legislation represented the best solution, provided that the authorities remain within the bounds of that margin (see *Padalevičius*, cited above, § 64 with further references).

88. The Court has stated in its case-law that the general objective of restitution laws in former communist countries, namely to attenuate the consequences of certain violations of property rights by the communist regime, pursued an important aim that was in the public interest and, more specifically, was conducive to the restoration of the rule of law (see *Velikovi and Others v Bulgaria*, no. 43278/98 and 8 others, § 170, 15 March 2007). Even where restitution legislation allowed persons whose property had been expropriated by the State without compensation in the 1940s to claim it back

not only from the State but also from private individuals, the Court has accepted under certain conditions that such an approach, in the specific context of the transition from a totalitarian to a democratic society and in view of the wide margin of appreciation enjoyed by a State concerned in that situation, should not be considered to be illegitimate or not in the public interest, despite the fact that it consists in providing private property by way of compensation for wrongs committed by the State decades earlier (*ibid.*, §§ 171 and 172, see also *Pincová and Pinc*, cited above, § 51).

89. The Court notes that the aim pursued by the Church Property Settlement Act was to redress certain property-related injustices perpetrated by the communist regime against churches and religious communities (see paragraph 38 above). To this end, Section 18 empowered entitled persons to bring a court action seeking a declaration of State ownership of the relevant property on the grounds that it had originally been the property of a registered church or religious community and had been transferred from State ownership to the ownership of other persons in breach of, *inter alia*, the blocking provision (section 3 of the Privatisation Act). If successful, the entitled persons could then claim restitution and thus the correction of an injustice committed during the communist regime.

90. Having regard to its case-law cited above and in the light of the parties' submissions and the domestic courts' rulings clarifying the purpose of the impugned legislation, the Court considers that the Church Property Settlement Act of 2012, as applied in the case of the applicant companies, served the fundamental public interest of the restoration of justice and respect for the rule of law, even where, as in the present case, it interfered with the long-standing property rights of third parties.

(iii) *Whether the interference was proportionate*

91. Even if it has taken place "subject to the conditions provided for by law" – implying the absence of arbitrariness – and in the public interest, an interference with the right to the peaceful enjoyment of possessions must always 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 sought to be realised by any measure depriving a person of his possessions. In determining whether this requirement is met, the Court recognises that a 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 *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 108-109, 25 October 2012). The balance to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has had

to bear a “disproportionate burden” (see *Pincová and Pinc*, cited above, §§ 52-53).

92. In order to assess the burden borne by the applicant, the Court must assess the particular circumstances of each case, namely the conditions under which the disputed property was acquired, and the compensation received by the applicant and the applicant’s personal and social situation (see, *mutatis mutandis*, *Mohylová v. the Czech Republic* (dec.), no. 75115/01, 6 September 2005).

93. The Court has already dealt with the question of the annulment of contracts of sale concluded during the communist regime in the Czech Republic under which applicants had bought the land they occupied (see *Pincová and Pinc*, cited above; *Bečvář and Bečvářová*, cited above; *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, 12 November 2002; *Netolický and Netolická v. the Czech Republic* (dec.), no. 55727/00, 25 May 2004; and *Mohylová*, cited above). In these cases, the Court assessed specific situations in which restitution laws were enacted with the aim of making good injustices dating back decades and inherited from the communist regime.

94. It should be emphasised, however, that in the present case, unlike in the cases mentioned above, the acquisition of the disputed property by the second applicant company, the legal predecessor of the first applicant company, took place in 1992, that is after the re-establishment of democracy in the country, and not during the communist regime. The transfer of the titles to the Novosedly land and the Lutová land, both of which were subsequently invalidated by the domestic courts under the Church Property Settlement Act of 2012, was initiated after the passing of the 1992 Privatisation Act.

95. The Court observes that the domestic courts’ findings which led to the applicant companies’ ownership titles to the disputed land being declared null and void focused on two main grounds. First, the land had been transferred to the State after 25 February 1948 and was therefore excluded from privatisation by the blocking provision of the Privatisation Act (see paragraphs 14 and 37 above). Secondly, the applicant companies were not considered by the domestic courts to have acquired the property in good faith, which made it impossible for them to subsequently acquire ownership of the property by adverse possession (see paragraphs 15-16 and 18 above). The domestic courts placed emphasis on the fact that the former State-owned enterprise, as the drafter of the privatisation project, and the second applicant company (the legal predecessor of the first applicant company), as the acquirer of the property, must have known that some of the property included in the privatisation project had belonged to the church prior to 1950, but they had made no further enquiry as to how or when the land had passed into the State ownership. The domestic courts had however paid special attention to the links between the management personnel of the former State-owned enterprise and the board of directors of the second applicant company, and

the fact that at the time of the transfer and acquisition of the land concerned the director of the former State-owned enterprise represented not only the first applicant company but also the second applicant company and, at the same time, the NPF, the founder of the second applicant company (see paragraphs 8-9, 15-16 and 18 above). The domestic courts further relied on the SAO's audit conclusions, published in 1995, three years after the privatisation, which must have put the applicant companies on notice as to the invalidity of the 1992 privatisation and of their title to the land at issue (see paragraphs 10 and 15 above).

96. In this context, the Court does not lose sight of the fact that the 1992 privatisation was approved by the appropriate State authorities. Given that they could and should have been aware of the substantive and procedural irregularities that had occurred in the privatisation process, it could be considered that at that point an error or possibly a failure to comply with a duty to act lawfully had occurred and that this could be imputed to the State (see *Seregin and Others v. Russia*, no. 31686/16 and 4 others, §§ 94 and 103, 16 March 2021, and *Kurban v. Turkey*, no. 75414/10, §§ 82-87, 24 November 2020). Moreover, although the State put in place a mechanism of later checks by means of the SAO audit, it was apparently negligent in failing to act on the SAO's conclusions regarding the various errors in the privatisation process, despite the fact that these conclusions had been made public only three years after the privatisation of the State-owned company had been completed (see paragraphs 8 and 10 above). That being said, the Court considers that the above does not alter the fundamental facts firstly that the 1992 transfer of the land at issue to the second applicant company was void *ab initio*, as later established by the courts, and secondly that there had been bad faith on the part of the second applicant company (see *Vukušić v. Croatia*, no. 37522/16, § 66, 14 November 2023).

97. The Court observes that two decades elapsed between the enactment of the 1992 Privatisation Act and that of the 2012 Church Property Settlement Act. However, already in 1992, section 3 of the Privatisation Act (the blocking provision) specifically excluded historical church property which had been transferred to the State after 25 February 1948 from future privatisation. It is apparent from the Supreme Court and the Constitutional Court's case-law that the purpose of the blocking provision was to provide a material basis for future legislative solutions for the settlement of historical church property. While such solutions were put in place in 2012, with a significant delay which arguably generated a degree of uncertainty, the Court reiterates that the Czech State enjoyed a wide margin of appreciation in such matters and observes again that, importantly, the applicant companies must have been aware of the unlawfulness of the transfer of the land at issue to them. It can be deduced from the relevant domestic law and its consistent interpretation by the domestic courts that in the circumstances of the case the applicant companies could not at any point in time have harboured

an expectation that they would remain the owners of the land at issue, having obtained it through a transfer that was void *ab initio* (see paragraphs 15-16, 18 and 21 above).

98. In other words, while the unlawfulness of the transfers of the disputed land was validly established by the domestic courts only in June and August 2017, the applicant companies could not have properly relied on the legal act by which they had acquired the property not being retrospectively invalidated to their detriment. As a result, the applicant companies could not have a “legitimate expectation” of being able to continue to enjoy their possessions (see, *a contrario*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 47, ECHR 2004-IX, and *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222).

99. The Court further observes that the original intention of the legislator to mitigate the wrongs caused to the church entities was reflected in the jurisprudential principles established and further developed by the Supreme Court and the Constitutional Court, in particular that restitution claims were to be regarded as primary claims, the implementation of which justified even interference with property transfers that had already taken place, since any other interpretation would render the blocking provisions protecting restitution completely worthless. Those courts had held that only strong and compelling reasons would, in exceptional cases, justify the overriding of the blocking provisions (see paragraphs 58-60 and 62 above).

100. The Court, reiterating that it is not its task to take the place of the domestic courts, which are in the best position to assess the evidence before them and to establish the facts, and reiterating too that it will not, in principle, intervene unless the decisions reached by the domestic courts appear arbitrary or manifestly unreasonable (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 589, 20 September 2011), considers that in the present case, the domestic courts seem to have taken into account all the material available in evidence and to have examined in detail all aspects of the case. They assessed those aspects from the perspective of the relevant national jurisprudential practice, including the case-law of the Constitutional Court and the Supreme Court, and reached coherent conclusions. They held that the law and the doctrine of legitimate expectations entitled the Novosedly Parish and the Lutová Parish to have their historical property returned to them and strongly prevailed over any of the rights over the disputed land claimed by the applicant companies. The Court sees no reason to consider the findings of the domestic courts arbitrary or manifestly unreasonable.

101. Furthermore, in the present case, the applicant companies were not deprived of their property as a result of expropriation – a situation in which, had it occurred, the availability of compensation would have been central to the assessment of proportionality (see, in contrast, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, 25 October 2012) – but as a consequence of the declaration that the privatisation decision under which they had acquired this

property had been void *ab initio*, and because they had acted in bad faith. The Court notes in this connection that in civil law, the consequences of a transaction being declared void *ab initio* are generally limited to an obligation to return the possession concerned or purchase price paid. It observes, however, that the applicant companies in the present case had acquired the land in question for no consideration (see paragraphs 8-9 above). In those circumstances, it cannot be considered that there was anything that the State needed to “return” as a consequence of the privatisation transfer having been declared void *ab initio*. The Court finally observes that the applicant companies have not provided any evidence of them having invested in the land concerned, for example by way of construction or landscaping. Moreover, while they must inevitably have had some maintenance expenses, it must also be borne in mind that they had enjoyed the possession of the land for more than twenty years.

102. Having regard to all the foregoing considerations, the Court considers that it is not necessary to examine the parties’ submissions about whether the applicant companies might have obtained some compensation had they brought the proceedings referred to by the Government or other proceedings (see paragraphs 47 and 52 above). This is so because the Court, emphasising above all the wide margin of appreciation that a State enjoys in regulating complex property issues in the transition from a communist regime to a democratic legal order and in the restoration of the rule of law, considers that in the specific circumstances of the present case the applicant companies did not bear an individual and excessive burden even if it were to be accepted, as the applicant companies claim it should be, that they had had no realistic chance of obtaining compensation in separate civil proceedings. Accordingly, in the specific circumstances of the present case, the balance between the interests of the community and those of the applicant companies was not upset.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

RYBÁŘSTVÍ TŘEBOŇ A.S. AND RYBÁŘSTVÍ TŘEBOŇ HLD. A.S.
v. THE CZECH REPUBLIC JUDGMENT

Done in English, and notified in writing on 7 November 2024, pursuant to
Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Mattias Guyomar
President

RYBÁŘSTVÍ TŘEBOŇ A.S. AND RYBÁŘSTVÍ TŘEBOŇ HLD. A.S.
v. THE CZECH REPUBLIC JUDGMENT

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Registration Place of Residence Nationality	Represented by
1.	18037/19	Rybářství Třeboň a.s. v. the Czech Republic	29/03/2019	RYBÁŘSTVÍ TŘEBOŇ A.S. 1994 Třeboň Czech	Michaela ŠERÁ
2.	33175/22	Rybářství Třeboň Hld. a.s. v. the Czech Republic	27/06/2022	RYBÁŘSTVÍ TŘEBOŇ HLD. A.S. 1992 Třeboň Czech	Michaela ŠERÁ