



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

FIFTH SECTION

**CASE OF SUVERÉNNÍ ŘÁD MALTÉZSKÝCH RYTÍŘŮ - ČESKÉ
VELKOPŘEVORSTVÍ v. THE CZECH REPUBLIC**

(Application no. 15440/22)

JUDGMENT

Art 6 (civil) • Fair hearing • Disregarding of a newly established development of constitutional case-law by a chamber of the Constitutional Court without reasons in proceedings concerning church property restitution • Relevant chamber's failure to use domestic-law mechanism of submitting the matter to a plenary session of the Constitutional Court for ensuring consistency of practice between the different chambers • Principle of legal certainty breached

Prepared by the Registry. Does not bind the Court.

STRASBOURG

11 September 2025

FINAL

11/12/2025

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

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v. THE CZECH REPUBLIC JUDGMENT

In the case of Suverénní řád Maltézských rytířů - České velkopřevorství v. the Czech Republic,

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

María Elósegui, *President*,

Kateřina Šimáčková,

Georgios A. Serghides,

Andreas Zünd,

Diana Sârcu,

Mykola Gnatovskyy,

Vahe Grigoryan, *judges*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the application (no. 15440/22) 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 Suverénní řád Maltézských rytířů - České velkopřevorství (“the applicant”), on 23 March 2022;

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

the parties’ observations;

Having deliberated in private on 8 July 2025,

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

INTRODUCTION

1. The application concerns the applicant’s complaints that in proceedings instituted under the Church Property Settlement Act (Law no. 428/2012), the domestic courts had interpreted domestic law contrary to the principle of fairness and had not respected previous judgments of the Constitutional Court in analogous cases. The applicant relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto.

THE FACTS

2. The applicant is an ecclesiastical legal person forming an organisational unit of the Roman Catholic Church. It was represented by Mr O. Rathouský, a lawyer practising in Prague.

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

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

I. POST-WAR LEGISLATION IN CZECHOSLOVAKIA

5. The occupation of Czechoslovakia during the Second World War prevented the State's internationally recognised political authorities from exercising sovereign State power in Czechoslovak territory. The Government-in-exile based in London had to adapt to that situation. The exercise of legislative power was temporarily delegated, upon Constitutional Decree of the President of the Republic no. 2/1940 of 15 October 1940 on provisional exercise of legislative power (*ústavní dekret presidenta republiky o prozatímním výkonu moci zákonodárné*), to the President of the Republic, Mr Eduard Beneš, which resulted in the so called "Beneš Decrees". After the Second World War, all Presidential Decrees issued under Constitutional Decree no. 2/1940 were endorsed (*ratihabice*) by the Provisional National Assembly (*Prozatímní Národní shromáždění*) and enacted as laws (Constitutional Law no. 57/1946 of 28 March 1946).

6. On 21 June 1945 President Beneš signed Decree no. 12/1945 on the confiscation and expedited distribution of the agricultural property of Germans, Hungarians, and traitors and enemies of the Czech and Slovak nation (*Dekret č. 12/1945 o konfiskaci a urychleném rozdělení zemědělského jmajetku Němců, Maďarů, jakož i zrádců a nepřátel českého a slovenského národa*), which entered into force on 23 June 1945. The Decree confiscated, with immediate effect and without compensation, agricultural property owned, *inter alia*, by traitors and enemies of the Republic, irrespective of their nationality and citizenship, who had acted as such during the crisis and war between 1938 and 1945, or by public limited companies and other companies and corporations whose management had wilfully and intentionally served the German war machine or fascist or Nazi purposes. The Decree worked on the assumption that confiscation could be carried out even in the absence of a related administrative act because the Decree provided that the confiscation of property took place *ex lege* at its entry into force.

7. Persons whose property was to be confiscated were designated as such by a confiscation notice (*konfiskační vyhláška*) usually issued by a district national committee (*okresní národní výbor*), which was posted on official notice boards of the relevant local national committees (*úřední desky příslušných místních národních výborů*) in whose district the property to be confiscated was located. Persons designated by State authorities as persons whose property was subject to confiscation, which is to say persons "categorised" under section 3(2) of Decree no. 12/1945 by a competent county national committee (*zemský národní výbor*), were to have all their property confiscated, even if such categorisation applied only to part of their property¹. The owner of property that was set to be confiscated could apply for an exemption from confiscation, which was decided by a competent

¹ See also the Constitutional Court's decision no. IV. ÚS 89/94 of 10 November 1994

administrative authority; the Minister of Agriculture, in concert with the Minister of the Interior, decided on borderline cases.

8. On 12 August 1947 the Revision of the First Land Reform Act (*zákon o revizi první pozemkové reformy*) (Law no. 142/1947) entered into force. The Act made it possible to review all property that, for any reason, had been excluded or kept from seizure, whose seizure had not been decided upon, or which had been allocated as a “residual estate” under the interwar land reform (the first land reform).

II. BACKGROUND TO THE CASE

9. The present case concerns immovable property located in Dívčí Hrad (Bruntál district) with a total area of 506,784 sq. m (hereinafter “the land in question”).

10. On different dates between September and October 1945 the applicant’s property located in area of Dívčí Hrad, Hlinka, Sádek and Pitárné, including the land in question, was the subject of several confiscation notices (*konfiskační vyhlášky*) issued under Presidential Decree no. 12/1945 by the former Krnov District Administrative Commission (*okresní správní komise*) and by the former Opava District National Committee (*okresní národní výbor*).

11. On 11 October 1945 the former Česká Lípa District National Committee issued a confiscation notice indicating the names of various persons and entities as traitors and enemies of the Czech and Slovak nations; the notice included the applicant, whose property located in Horní Libchava was to be confiscated under Presidential Decree no. 12/1945. Several names, including that of the applicant, were crossed out.

12. On 13 May 1946 the former Ostrava Moravian-Silesian County National Committee (*Moravskoslezský zemský národní výbor*), on foot of objections by the applicant’s legal predecessor, annulled the confiscation notices issued by the former Krnov District Administrative Commission and the former Opava District National Committee (see paragraph 10 above), having found them unlawful.

13. From an inventory of property compiled on 14 January 1948 pursuant to Law No. 142/1947, it appears that on 12 August 1947 the applicant’s predecessor owned four agricultural communes (*komendy*), including the agricultural commune in Dívčí Hrad.

14. On 5 April 1948 the former Česká Lípa District National Committee issued a confiscation notice indicating the names of various persons and entities, including the applicant’s predecessor, whose property located in Horní Libchava was to be confiscated under Presidential Decree no. 12/1945.

15. On 1 October 1948 the Ministry of Agriculture (*ministerstvo zemědělství*) decided, under Law no. 142/1947, to assume ownership from the applicant’s predecessor of the forest and manor (*velkostatek*) of the Dívčí

Hrad estate in the cadastral area of Dívčí Hrad and also other areas with all their fixtures, in accordance with a confiscation notice of 15 May 1948 issued by the Ministry under Law no. 142/1947.

16. On 23 March 1949 the Ministry of Agriculture decided to leave the applicant's predecessor as owner of 50 hectares of each of the Dívčí Hrad, Hlinka, Vršovice and Malé Hostice estates (see also paragraph 13 above) pursuant to section 11 of Law no. 142/1947.

17. The expropriated land was subsequently managed by the body State Forests and Estates (*Státní lesy a statky*), then by the State enterprises *Státní zemědělský podnik Jindřichov, s.p.*, *Státní statek Osoblaha, s.p.* and *Ústřední dílny Bruntál*, before being transferred to the Land Fund of the Czech Republic (*Pozemkový fond České republiky*), which was responsible for the management of State-owned immovable property from January 1991 to December 2012.

18. On 24 June 1991 the Land Ownership Act (Law no. 229/1991) entered into force. Section 29 of the Act, as in force until 31 December 2012, provided that property originally owned by churches, religious communities, orders or congregations could not be transferred to other persons until laws on church property were enacted ("the blocking provision" – see paragraph 39 below; it was repealed by the Church Property Settlement Act with effect on 1 January 2013 – see paragraph 21 below).

19. On 25 May 1999 the Conditions for the Transfer of Agricultural and Forest Land Act (Law no. 95/1999) entered into force. Section 2(1)(c) provided that agricultural or forestry land that was prevented from transfer by "the blocking provision" could not be transferred (see paragraph 36 below).

Subsequently, the Land Fund proceeded to check land under its management in order to determine which land was excluded from transfer (see paragraph 37 below). Thus, the transferability of the properties in the cadastral area of Dívčí Hrad, including the land in question, was examined. On 21 December 2000 the land registry reported that no documents from the land register or any previous records indicated that the land in question had been the property of a church, religious community, order or congregation as of 25 February 1948.

20. Title to the land in question was transferred to a private farmer, P.Š., under purchase contracts concluded between the Land Fund and P.Š. on 22 November 2006 and 17 December 2007, and also under a contract of exchange concluded between a private farmer, J.B., and P.Š. on 17 May 2012 in respect of land acquired by J.B. under a purchase contract concluded with the Land Fund of the Czech Republic on 11 December 2006. Those purchase contracts explicitly declared that the Land Fund had checked the transferability of the land in question and that it was not "blocked" under the above-mentioned law from being transferred.

21. On 1 January 2013 the Church Property Settlement Act (Law no. 428/2012) entered into force, enabling, *inter alia*, restitution of property

or parts of property that had originally belonged to certain churches, which had been unlawfully confiscated by the communist regime (see paragraphs 38-39 below). The law applied to property owned by the State but not to property owned by persons governed by private law. Churches also had standing under the Act to bring court proceedings for the restitution of property it had originally owned that had been transferred to private persons in breach of the blocking provision in the Land Ownership Act, given that the State was the actual owner of such property (see paragraph 45 above). However, property confiscated from churches on the basis of Presidential Decrees nos. 12/1945 and 108/1945 were excluded from restitution under the Act (see paragraph 44 below).

III. RESTITUTION PROCEEDINGS INITIATED BY THE APPLICANT

22. On 17 December 2013, on the basis of the Church Property Settlement Act, the applicant brought an action in the Bruntál District Court (*okresní soud*) against P.Š. and the State seeking a declaratory judgment that the State, rather than P.Š., was the owner of the land in question, given that the latter had acquired it in breach of the blocking provision (section 29 of the Land Ownership Act – see paragraphs 18 and 39 above). The applicant argued that the land in question had been subject to confiscation under Law no. 142/1947 and that P.Š. had acquired it in breach of the blocking provision. The applicant relied, *inter alia*, on the Ministry of Agriculture's decisions of 15 May 1948 and 23 March 1949 (see paragraphs 15-16 above). Consequently, the transfer had been void *ab initio*. Were the transfer of the land in question to be declared null and void, that would mean that the owner thereof was the Czech Republic and that the land could be the subject of proceedings by which the applicant, as the original owner of the church property, could seek restitution under the Church Property Settlement Act.

23. In a judgment of 20 December 2019, the District Court granted the applicant's action and declared that the State was the owner of the land in question. The relevant parts of its judgment read as follows:

“51. ... the court found that the [applicant] ... is a legal person under section 3(b) of the Church Property Settlement Act ...

52. The court also had to determine whether the [applicant] proved that it had suffered pecuniary loss during the relevant period as a result of circumstances referred to in section 5 of the Church Property Settlement Act, namely [that its property had been confiscated] without compensation [pursuant to] Law no. 142/1947. It appears from the Ministry of Agriculture's decision ... of 15 May 1948 that the decision was issued on the basis of [Law no. 142/1947] to expropriate the [applicant]'s property, including the Dívčí Hrad communes. The fact that [the confiscation was based on] Law no. 142/1947 is further evidenced by a decision of the Ministry of Agriculture of 1 October 1948 on taking over the forestry and manor in the Dívčí Hrad estate ..., which had been based on the decision of 15 May 1948. ... Last but not least, [the fact that the confiscation occurred according to the] procedure [outlined in Law no. 142/1947] is also proved by documents submitted by the archives containing a list of [the plots of] land that were

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subject to the procedure under Law no. 142/1947, [including] all the land that [is] the subject of the present action. In the light of the foregoing, the court concludes that the [applicant], as a legal person fulfilling the conditions of section 3(b) of the Church Property Settlement Act, suffered pecuniary loss during the relevant period [falling under] section 1 of that Act (25 February 1948 to 1 January 1990), in that the [land in question] was taken from it without compensation [pursuant to] Law no. 142/1947. That fact was recorded in the register on 16 June 1948 under entry no. 96 on the basis of a notification of the Ministry of Agriculture dated 31 May 1948.

53. The court also examined whether the property of the [applicant] or its predecessor in title had been confiscated on the basis of Decree ... no. 12/1945 ... in the light of the existence of the [confiscation] notices of the Česká Lípa District National Committee of 11 October 1945 and 5 April 1948. ... Property [confiscated under the Decree] was transferred to the State on the date of entry into force of the Decree, namely 23 June 1945. ... The confiscation notice, as a declaratory act ... [merely] specified which property was affected by the Decree. ...

54. It follows from the case-law of the Constitutional Court that the legal basis for [such a] confiscation was the [Presidential] Decree itself, but it is necessary to assess whether [the Decree] was abused in the relevant period. ... In order to establish [the existence of] material injustice in the ... relevant period, it is necessary to establish when the fulfilment of the conditions under the ... Presidential Decree was decided upon and whether they were [actually] fulfilled If the confiscation notice was issued in the relevant period, ... on the basis of the Presidential Decree, the court is obliged to examine whether that ... [notice] was issued in compliance with the law in force at the time, Administrative authorities and courts are not empowered to ... overturn final decisions taken in the [historical] past. With regard to administrative acts issued in the relevant period, [administrative authorities and courts] are entitled ... to assess the effects of such acts in the light of the restitution of titles governed by the restitution law ...

55. According to the Constitutional Court's judgment no. II. ÚS 405/98 of 20 October 1999, property confiscated under Decree no. 12/1945 passed [into the ownership] of the Czechoslovak State on the day of its entry into force. A confiscation notice [výměr], as a declaratory act, determined which properties were concerned by the Decree. It was only through the confiscation notice, as an administrative act, that the confiscation of property was completed. At the same time, it was possible for a competent authority to exclude part of the confiscated property [if doing so was justified]. If the property had been transferred to the State retroactively to the date on which Decree No. 12/1945 had entered into force, without ... the conditions for confiscating the property of the original owner having been met at that time, the administrative act (the confiscation notice) would be considered as an act of political persecution violating generally recognised human rights and freedoms and, as such, a legal act issued in violation of the regulations in force at the time. To hold otherwise would violate ... the right to a fair trial enshrined in Article 36 § 1 of the [Czech] Charter.

56. In order to prove their submission to the effect that the property in question had been confiscated pursuant to the Decree of the President of the Republic, the defendants submitted three confiscation notices [of the former district national committees dated 27 September 1945, 11 October 1945 and 5 April 1948]. The court does not consider that those three notices prove the confiscation of the [applicant]'s property: the confiscation could not have been effected by the confiscation notice of 11 October 1945, because although [the applicant] is indicated under no. 56, this number and this name are crossed out. The crossing-out leaves no doubt that it was made by the same district national committee. With regard to the confiscation notice of 5 April 1948, that

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notice was issued in the relevant period on the basis of Decree no. 12/1945 and lists the [applicant] as no. 15, but the document has no ... stamp and it is not clear whether it was signed by a competent authority Even the confiscation notice of 27 September 1945 did not prove that the confiscation process had been completed ..., since this notice ... was quashed by ... the Moravian-Silesian County National Committee in Ostrava on 13 May 1946. ...

57. It must therefore be concluded that the confiscation of the [applicant]'s property was not completed by any confiscation notice referred to by the [defendants]. At the same time, there is no record in the available archives of the existence of an inventory that would define the list of properties affected by ... the ... Presidential Decrees. From this point of view, it is superfluous to deal with the [State]'s argument that even a single confiscation notice anywhere on the territory of the then Czechoslovakia acted *in personam* and meant a successful confiscation of the entire property of an individual [among the categories of the population] concerned (namely Germans, Hungarians, traitors, collaborators etc.), if the existence of any confiscation notice against the [applicant] has not been established. In the opinion of the court, the confiscation notice must always refer to the concrete property ... mentioned in the confiscation notice, as also follows from the above-mentioned decisions of the Constitutional Court, since [only] a specific confiscation measure relating to specific real estate can have the intended effects."

24. On 28 January 2021 the Ostrava Regional Court (*krajský soud*), upon appeals by both defendants, reversed the first-instance court's judgment and rejected the action. The court found that the applicant's property had been confiscated under Presidential Decree no. 12/1945, that the property-related injustice, if any, had been committed before the relevant period, and that the applicant therefore lacked standing to bring an action for a declaratory judgment under the Church Property Settlement Act:

"12. The [applicant's] property was confiscated under Decree ... no. 12/1945, as is evident from the confiscation notices issued by the Česká Lípa District National Committee on 11 October 1945 and 5 April 1948 and by the Opava District National Committee on 27 September 1945. Confiscation under the Decree was effective *ex lege* as of the date on which the Decree took effect, i.e. 23 June 1945, since the legal basis for the confiscation was the decree itself. Subsequent confiscation decisions, i.e. the district national committee's order and notice and the district administrative commission's notice, were only declaratory in nature. Confiscation was a statutory act usually taking place without administrative proceedings where the owner was designated by the State authorities as a person whose property was subject to confiscation. Any line of argument claiming that the confiscation notice was defective, substantively incorrect, or null and void is not legally relevant. The substantive correctness of an administrative act cannot be reviewed by the court in these proceedings."

25. On 21 May 2021 the applicant lodged an appeal on points of law (*dovolání*) against the Regional Court's judgment.

26. On 20 July 2021 the Supreme Court (*Nejvyšší soud*) dismissed the applicant's appeal on points of law in judgment no. 28 Cdo 1802/2021. Having summarised the settled findings of both the Constitutional Court and the Supreme Court regarding the effects of confiscation under Presidential Decree no. 12/1945, the Supreme Court pointed out that civil courts could not

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review the substantive correctness of administrative acts. Specifically, it observed, *inter alia*, that:

“In the case law of the Constitutional Court and the Supreme Court, there is no ... doubt that the legal basis for the confiscation of property under Decree no. 12/1945 was the decree itself; [the confiscation] therefore took place as of the date on which the Decree took effect (23 June 1945); as of that date, the confiscated items became the property of the State, as the subsequent confiscation decision (the notice or order issued by the district national committee or district administrative commission) was merely declaratory in nature (cf., for example, the opinion of the Constitutional Court sitting in plenary no. Pl. ÚS-st. 21/05 of 1 November 2005 ..., the Constitutional Court’s judgment no. II. ÚS 317/96 of 17 December 1997, the Constitutional Court’s judgment no. I. ÚS 129/99 of 13 June 2000, and the Supreme Court’s decisions nos. 22 Cdo 4716/2016 of 26 April 2017, 22 Cdo 5583/2016 of 27 June 2017, and 28 Cdo 4922/2016 of 9 May 2017).

Therefore, the effects of confiscation cannot be challenged by claiming that there were defects in the confiscation procedure (notice). Another factor rendering irrelevant the line of argument essentially disputing the substantive correctness of the confiscation notice is that it is not the court’s task to review the substantive correctness of an administrative act (outside the framework of the administrative courts or, under prescribed conditions, now also in proceedings pursuant to Part Five of the Code of Civil Procedure) ... [I]t can thus assess a historical administrative decision only from the point of view of the possibility that such a decision might have been void (null), and even then only if the decision contains defects so serious as to constitute a ‘negative quality’ [meaning] that the presumption of the correctness of the decision cannot be relied upon (which also applies to an act that is substantively defective or unlawful; cf. the Supreme Court’s decision no. 22 Cdo 1183/2000 of 24 April 2002) ...

Where persons whose property was subject to confiscation were so designated by the State authorities – even if only in relation to part of their property – which is to say that they were so categorised for the purposes of Decree no. 12/1945, all of their property was confiscated (cf. the Constitutional Court’s decision no. IV. ÚS 89/94 of 10 November 1994, the Supreme Court’s decision no. 28 Cdo 1012/2020 of 28 April 2020, or the Supreme Court’s decision no. 28 Cdo 1754/2019 of 16 July 2019), the argument that confiscation would have applied only to property specified in the confiscation notice or to property situated within the territorial jurisdiction of the authority which issued the confiscation notice cannot be accepted. In fact, for confiscation to be effected pursuant to Decree no. 12/1945, it did not even have to be preceded by a declaratory decision stating that the conditions for such confiscation had been satisfied in a particular case ...

These findings – which were fully respected by the court of appeal in its decision – were also upheld by the court hearing appeals on points of law in decisions rendered in similar cases brought by the applicant (see judgment of the Supreme Court no. 28 Cdo 2620/2019 of 7 January 2020, judgment of the Supreme Court no. 28 Cdo 1580/2020 of 7 July 2020, and decision of the Supreme Court no. 3087/2020 of 11 November 2020).”

27. The Supreme Court further explained why the fact that the applicant’s property had been affected by legal acts carried out in favour of the German Reich during the Nazi occupation did not influence the passage of title as a result of confiscation pursuant to Presidential Decree no. 12/1945:

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“The finding that title to the property passed to the State as a result of confiscation pursuant to Decree no. 12/1945 is also justified, notwithstanding the fact that, at the time the Decree took effect, such property was still affected by legal acts, dating from the period of the Nazi occupation, in favour of the German Reich and the entities it established. [There is even] case-law [to the effect that] that confiscation pursuant to Decree no. 12/1945 was also effected in respect of the property of persons aggrieved by the Nazi regime, [in cases where that property] had been transferred to the German Reich during the period of non-freedom (from 29 September 1938 to 8 May 1945), but had yet to be restituted to the entitled party within the meaning of post-war legislation ... ; the process of restoring the applicant’s title could not therefore be completed. This finding rests on the fundamental tenet that confiscation occurred *ex lege* as of the date on which the decree took effect and that confiscation notices were merely declaratory in nature; the court dealing with the appeal on points of law therefore finds that there is no leeway to depart from settled case-law ...”

28. Finally, the Supreme Court held that the fact that the applicant’s property had subsequently been subjected to the procedure under Law no. 142/1947 could not nullify the effects of the earlier confiscation pursuant to Presidential Decree no. 12/1945:

“In so far as the applicant’s property had already been confiscated pursuant to [Presidential] Decree no. 12/1945, it is irrelevant that the immovable property in question was subsequently also subjected to the procedure under Law no. 142/1947 ... Not even this circumstance alters the fact that the immovable property had been confiscated *ex lege* as of 23 June 1945 pursuant to the Presidential Decree. On the contrary, it is logical that even if there were two ‘concurring confiscations’, the later procedure would not have the effect of nullifying the earlier one. It is understandable that the incoming undemocratic regime wanted to ‘insure’ the passage of immovable property to the State. Although that approach might appear redundant in the context of the valid confiscation pursuant to the Presidential Decree, it cannot be regarded as precluding the 1945 confiscation *ex lege* or as meaning that the alleged property-related injustice occurred during the relevant period ...”

29. On 30 September 2021 the applicant lodged a constitutional complaint alleging, in particular, that the judgment of the Regional Court, which had overturned the judgment of the District Court, and the decision of the Supreme Court dismissing the applicant’s appeal on points of law against the Regional Court’s judgment, had violated its right to a fair trial and its property rights. It relied on judgments previously adopted by the Constitutional Court in similar restitution cases no. II. ÚS 1920/20 of 25 January 2021 and no. I. ÚS 1975/20 of 23 March 2021 (see paragraphs 50-51 below).

30. On 16 November 2021 the Constitutional Court, by judgment no. IV. ÚS 2662/21, dismissed the constitutional complaint as manifestly ill-founded. It held that, in the present case, the ordinary courts had correctly examined the conditions under which the applicant’s property had been confiscated and had dealt with the case in a constitutionally compliant manner; it referred, in particular, to the detailed reasoning of the Supreme Court’s decision. Similarly, the Constitutional Court did not find any reason to depart from the settled findings concerning the effectiveness of confiscation pursuant to Presidential Decree no. 12/1945, and thus found no

grounds to refer the case to the plenary court pursuant to section 23 of the Constitutional Court Act:

“16. ... The Constitutional Court holds that there is no reason to depart from the finding that the legal basis for the confiscation of property pursuant to [Presidential] Decree no. 12/1945 was the Decree itself, [and that] the confiscation thus took place as of the date on which the Decree took effect [which was the] date [on which] the confiscated assets became State property; hence, any subsequent confiscation decision was merely declaratory in nature (cf. opinion no. Pl. ÚS-st. 21/05 of 1 November 2005). This prompts other findings ([namely] the impossibility of challenging the effects of confiscation by claiming that there were defects in the confiscation proceedings, the fact that the scope of confiscation was not limited only to certain property, and the unfoundedness of the [notion that there was a] requirement for the State to physically take possession of the confiscated property in order to ‘execute the confiscation notice’ or to ‘give effect to the confiscation’). As the ordinary courts’ findings are consistent with the above-mentioned opinion, there is no reason to uphold the applicant’s petition to proceed in accordance with section 23 of the Constitutional Court Act.”

IV. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT IN THE APPLICANT’S OTHER RESTITUTION CASES

31. On 30 November 2021 the Constitutional Court, by judgment no. III. ÚS 361/21, granted a second constitutional complaint lodged by the applicant. That appeal was directed against the ordinary courts’ decisions in another case in which the applicant was seeking, pursuant to section 18(1) of the Church Property Settlement Act, a declaratory judgment that land in the cadastral area of Pitárné² was owned by the Czech Republic. The Constitutional Court found that the Supreme Court in its decision no. 28 Cdo 3087/2020 of 11 November 2020 (see paragraph 26 above) had breached the applicant’s right to judicial protection under Article 36 § 1 of the Czech Charter of Fundamental Rights and Freedoms (see paragraph 52 below).

32. On 14 February 2023 the Constitutional Court, by decision no. IV. ÚS 3238/22, dismissed a third constitutional complaint lodged by the applicant against the ordinary courts’ decisions on the determination of property title to other land in the cadastral area of Dívčí Hrad³. In that case the Constitutional Court held as follows:

“15. From the decision-making of the Constitutional Court ..., it appears that the Constitutional Court [repeatedly] ruled on the applicant’s constitutional complaints, which are identical in content and reasoning ... One of them was rejected as manifestly ill-founded by the Constitutional Court in its decision no. IV. ÚS 2662/21. That decision dealt with ... arguments which are identical to those in the constitutional complaint under consideration ..., and the Constitutional Court therefore refers to it, stating that there is no reason to depart from its conclusions. ...

² Located in the same district as the land in Dívčí Hrad at issue in the present case.

³ The Constitutional Court’s judgment constitutes a subject matter of case no. 23803/23 pending before the Court

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16. In the above-mentioned decision, the Constitutional Court expressly emphasised that the conclusions of the general courts are consistent with the plenary's opinion no. Pl.-st. 21/05, so that there is no reason to grant the applicant's motion to proceed under section 23 of the Constitutional Court Act ... This conclusion is not altered by judgments nos. III. ÚS 361/21 and I. ÚS 3918/19, since those judgments deviated from the previous case-law of the Constitutional Court and the above-mentioned [plenary] opinion, and thus the proceedings in those cases should have been conducted in accordance with section 23 of the Constitutional Court Act."

33. On 18 September 2024 the Constitutional Court, by decision no. IV. ÚS 1443/24, dismissed a constitutional complaint introduced by the State, challenging a decision of the Prague Regional Land Office (*krajský pozemkový úřad pro hl.m. Prahu*) to return a plot of land located in Březiněves⁴ to the applicant as a person entitled to restitution under the Church Property Settlement Act. The applicant joined the proceedings before the Constitutional Court as a third-party intervener (*vedlejší účastník*). The Constitutional Court held, in particular, that:

"6. The Constitutional Court recognises that, as a general rule, the confiscation of property took place at the moment of the entry into force of the Presidential Decree, ... (see judgment of the Constitutional Court no. Pl. ÚS 10/13 of 29 March 2013). However, as the ordinary courts correctly pointed out, with reference to the case-law of the Constitutional Court, it is necessary to assess whether there was actual confiscation before the relevant period.

7. As the Supreme Court points out, even before the relevant period, the former courts had decided to restore the ownership of the disputed property to the [applicant]'s predecessor in title. The [applicant] had not lost the property as a result of confiscation under the Presidential Decree, but precisely as a result of the revision of the first land reform after the 1948 coup d'état. The first real attempt to confiscate the property of the [applicant] was linked to the revision of the land reform (compare judgment of the Constitutional Court no. I. ÚS 1975/20, point 30). The general courts concluded that the authorities of the Czechoslovak state had not taken any (significant) steps to confiscate the disputed property. ... Therefore, the [State] could not legally argue that the restitution was excluded ..."

RELEVANT LEGAL FRAMEWORK

I. LEGAL PROVISIONS

A. The Land Ownership Act (Law no. 229/1991 on the ownership of land and other agricultural property)

34. Section 29 of the Act, as in effect until 31 December 2012, provided that property originally owned by churches, religious communities, orders or congregations could not be transferred to the ownership of other persons until laws regarding such property had been enacted.

⁴ In Prague region

B. The Constitutional Court Act (Law no. 182/1993)

35. Section 23 provides that a panel which, in the course of its decision-making, arrives at a legal opinion departing from a legal opinion of the Constitutional Court expressed in a judgment shall submit the matter to a plenary session of the Constitutional Court for consideration.

C. Law no. 95/1999 on conditions for the transfer of ownership of agricultural and forest land from the State to other persons

36. Section 2(1)(c) provided that agricultural or forestry land whose transfer was prevented by special legislation could not be transferred.

37. Section 3(3) provided that the competent land registry, at the request of the Land Fund of the Czech Republic, was to check its records within thirty days to verify that ownership of the land had not passed from nor had been transferred from a church or religious community, order or congregation to the State after 25 February 1948.

D. The Church Property Settlement Act (Law no. 428/2012 on property settlements with churches and religious communities)

38. Section 1 provides that the aim of the Act is to redress certain property-related injustices perpetrated by the Communist regime against registered churches and religious communities in the period from 25 February 1948 to 1 January 1990 (“the relevant period”) and to settle property relations between the State and such legal persons.

39. Section 3(b) provides that a legal person established or constituted as part of a registered church or religious community is an entitled person, provided that, in the relevant period, that person or its legal predecessor sustained a property-related injustice as a result of one of the facts referred to in section 5.

40. Section 4 provides that liable persons are the Land Fund of the Czech Republic, *Lesy České republiky* [Forests of the Czech Republic], the State, contributory State organisations, State funds, State enterprises, and other State organisations.

41. Section 5(a) provides that one of the facts leading to a property-related injustice is the deprivation of property without compensation by way of the procedure provided under Law no. 142/1947 on the revision of the First Land Reform.

42. Section 7 provides that a liable person shall surrender to an entitled person a State-owned immovable property which was originally the property of a registered church or religious community and which was the object of a property-related injustice sustained by the entitled person or a legal predecessor thereof during the relevant period as a result of one of the facts

referred to in section 5, provided that it was or is functionally linked to an immovable property which was owned by the entitled person or which is subject to surrender under the Act, or if it was used by the entitled person or a legal predecessor thereof during the relevant period for spiritual, pastoral, charitable, medical, educational or administrative purposes or as a dwelling for clergy.

43. Section 8(1) enumerates cases in which a property cannot be surrendered to an entitled person, such as if it is a plot of land on which a structure has been erected and is in use (section 8(1)(a)); or a part of a plot of land or a structure necessary for the realisation of a publicly beneficial structure within the scope of transport or technical infrastructure, as defined in the approved spatial planning documentation, for which rights to land and structures may be expropriated (section 8(1)(f)).

44. Section 8(1)(h) provides, further, that a property may not be surrendered if it is a property confiscated pursuant to Presidential Decrees nos. 12/1945 or 108/1945.

45. Section 18(1) provides that an entitled person may bring an action in a court seeking a declaration of State ownership on the grounds that an item originally the property of registered churches and religious communities had been transferred or passed from State ownership to the ownership of other persons in violation of the “blocking provision” provided for by the Land Ownership Act prior to the date on which the Church Property Settlement Act took effect.

II. RELEVANT LEGAL PRACTICE

46. In its judgment no. III. ÚS 107/04 of 16 December 2004, the Constitutional Court made the following findings regarding the passing of title to confiscated property to the State and the nature of confiscation notices in the relevant period:

“Confiscation or orders of forced administration under these regulations occurred *ex-lege* at the moment they took effect. Confiscation orders or notices were usually issued later, if at all, and were only declaratory in nature; they merely corroborated the Czechoslovak State’s acquisition of ownership or the imposition of national administration. The Czechoslovak State therefore assumed ownership ... of the property ... on 23 June 1945 (in so far as it was confiscated pursuant to Decree of the President of the Republic no. 12/1945).”

47. In its opinion (*stanovisko*) no. Pl. ÚS-st. 21/05 of 1 November 2005, the Constitutional Court confirmed that restitution of property could be claimed when the property had been confiscated by the former communist regime within the period beginning on 25 February 1948. It also stated that confiscation under Presidential Decrees nos. 12/1945 and 108/1945 was a legal act which could not be assessed in terms of defects of subsequent

administrative (declaratory) decisions unless expressly provided for by law. The Constitutional Court held, *inter alia*:

“Confiscation under Presidential Decrees nos. 12/1945 and 108/1945 was a legal act which [can]not be examined through [the prism of] possible defects of subsequent administrative (declaratory) decisions, unless expressly provided for by law. In fact, under Decree no. 12/1945, confiscation was generally effected directly by law ... if an owner of property had already been identified by the State authorities as a person whose property was subject to confiscation ... and if the owner himself had not proposed that a decision be taken in the administrative proceedings or if an administrative authority itself had not deemed it necessary to issue such a declaratory decision. A claim that a decision issued in confiscation proceedings was defective is not in itself capable of calling into question the effects of the confiscation, since the legal basis for the passage of title here is not the administrative act, but the Decree itself.”

48. The Constitutional Court confirmed the threshold of 25 February 1948 also in its judgment (*nález*) Pl. ÚS 10/13 of 29 May 2013, in which it reiterated that confiscation under Presidential Decree no. 12/1945 had taken place with immediate effect, irrespective of subsequent administrative decisions. At the same time, however, in the case of a confiscation notice (administrative decision) issued in the relevant period, the Constitutional Court stated that “a court is obliged to examine whether the administrative decision was issued in accordance with the legislation in force at the time, all the more so as this is a restitution case in which the common denominator is an attempt to mitigate the consequences of certain property injustices arising from the validity or special application of certain legislation”. It therefore obliged the ordinary courts to examine whether the administrative decision was not the result of political persecution. The Constitutional Court also took into account its previous case-law related to restitution which had required that the value principles of (church) property restitution be respected and taken into account when assessing individual cases (it referenced as examples judgment no. I. ÚS 597/92 of 21 December 1992; judgment no. I. ÚS 154/95 of 18 January 1996, judgment no. I. ÚS 754/01 of 23 October 2003, and judgment no. II. ÚS 2896/09 of 29 April 2010). It held that the principle *in favorem restitutionis* was a subsidiary criterion for the assessment of a restitution claim.

49. In its judgment no. IV. ÚS 2056/18 of 23 June 2020 involving the Cistercian Abbey of Osek (*Cisterciácké opatství - Osek*), the Constitutional Court addressed for the first time the question of when a confiscation becomes effective and whether the Revision of the First Land Reform Act (Law no. 142/1947) also comes into play. The Constitutional Court explained that the effects of a confiscation are not affected in a situation where a property already confiscated under Presidential Decree no. 12/1945 is subsequently subjected to procedures under the Act on the Revision of the First Land Reform:

“34. ... the subjecting of immovable property to the procedure laid down in Law no. 142/1947 on the revision of the First Land Reform does nothing to alter the fact that

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the property was confiscated *ex lege* as of 23 June 1945 pursuant to the Presidential Decree. On the contrary, it is logical that even if there were two ‘concurring confiscations’, the later procedure would not have the effect of nullifying the earlier one. Similarly, the finding that the incoming undemocratic regime wanted to ‘insure’ the passage of immovable property to the State is also constitutionally consistent and understandable. Although this approach may appear redundant in the context of the valid confiscation pursuant to the presidential decree, [the later confiscation] cannot be regarded as precluding the 1945 confiscation *ex lege* or as meaning that the alleged property-related injustice occurred during the relevant period. In other words, where courts have made constitutionally compliant findings that immovable property was confiscated *ex lege* and these are consistent with the content of the case file, a historical, concurring effort to seize the property cannot have the effect of invalidating the first confiscation. As the [process] necessary for the confiscation pursuant to the presidential decree to take effect occurred in keeping with the practice of the time, [its] rational non-exclusion from consideration by the courts [in preference for a] rigorous assessment of how the two confiscation efforts are related to each other does not constitute a violation of Article 36 § 1 of the [Czech] Charter.

...

40. In conclusion, it can be summarised that, in accordance with the plenary court’s opinion Pl. ÚS-st. 21/05 and the ensuing case-law, the alleged defects in administrative acts issued in administrative proceedings subsequent to the presidential decree are irrelevant to an assessment of claims, under the [Church] Property Settlement Act, seeking the restitution of title to property confiscated pursuant to the presidential decree, since confiscations pursuant to the decree took effect *ex lege* as of 23 June 1945. ... In assessments of the legitimacy of restitution claims brought under the [Church] Property Settlement Act, ... the finding that possible defects in administrative acts are irrelevant does not constitute a violation of the constitutionally guaranteed fundamental rights to judicial protection and the protection of property pursuant to Article 36 § 1 and Article 11 § 1 of the [Czech] Charter.”

50. In its judgment no. II. ÚS 1920/20 of 25 January 2021 (published on 3 February 2021), involving the Roman Catholic Parish - Prelature of Český Krumlov, the Constitutional Court held, for the first time, that in an exceptional case involving a conflict between a restitution exclusion (*restituční výlučka*) and a restitution claim (*restituční titul*), if it is not proven that the land under consideration had been confiscated effectively, the ordinary courts should be bound to apply the principle *in favorem restitutionis* and to respect the restitution claim:

“59. The applicant cannot expect the ordinary courts to be in a position to assess the confiscation notice ... in itself as a legal act that is void *ab initio*, to expressly find its content defective, or to judge it to have been issued by an administrative authority that lacks competence. They are prevented from doing so by the doctrine of the essential inviolability of relevant legislation and administrative acts issued before the relevant date of 25 February 1948. These legal facts are irreversibly complete even in a situation where the statutory provision on the restitution exclusion under section 8(1)(h) of Law no. 428/2012 is directed, in its temporal consequences, to a point before the limit defining the relevant period. Nevertheless, the appellant can legitimately expect the ordinary courts to consider its claims in the light of whether ... the immovable property in question was ‘confiscated effectively’. When an exceptional conflict arises between

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a restitution exclusion and a restitution claim, the ordinary courts are bound to respect the restitution claim.”

51. In its judgment no. I. ÚS 1975/20 of 23 March 2021 (published on 30 March 2021), involving the Roman Catholic Parish of Rožmberk nad Vltavou (*Římskokatolická farnost Rožmberk nad Vltavou*), the Constitutional Court explained that public authorities’ obligation to assess the effect of confiscation must be treated as an exception to the general rule that a subsequent confiscation decision is merely declaratory, whereby the effects of confiscation are tied to the effect of the relevant decree:

“30. Thus, if, on the one hand ... the evidence includes a confiscation notice standing in isolation, and that isolation is compounded by the (otherwise separately inapplicable) finding that it is void *ab initio* in relation to the appellant’s legal predecessor, and, on the other hand, there is a wealth of evidence to show that the procedure followed by the State authorities pursuant to the New Land Reform Act was not motivated by a desire to ‘insure’ the passage of immovable property in case, for various reasons, its earlier confiscation pursuant to Presidential Decree no. 12/1945 failed, but suggests, instead, that this was a first attempt to deprive the appellant’s legal predecessor of its property, it is appropriate, when assessing the appellant’s restitution claim, to incorporate the principle of *in favorem restitutionis*, as referred to above, into the court’s decision-making. However, the courts have not been consistent in adhering to this principle; in their decisions, they have marginalised the issue of whether confiscation of the land in question was effective prior to the relevant period, i.e. they have failed to take into account the stance and conduct of the State after the relevant date of 25 February 1948, even though this is an issue for which an answer appears to be absolutely crucial in order to resolve the potential conflict between the two confiscations under consideration.”

52. In its judgment no. III. ÚS 361/21 of 30 November 2021 (published on 4 January 2022) the Constitutional Court granted a separate constitutional complaint brought by the applicant. In that case, the Constitutional Court dealt again with the competition between the restitution claim and the restitution exclusion as a result of the “double” confiscation (under Presidential Decree no. 12/1945 and Law no. 142/1947) in relation to the applicant’s right to bring an action to establish the State’s ownership right to a plot of land in the cadastral community of Pitárné. Despite certain differences between judgments nos. II. ÚS 1920/20 and I. ÚS 1975/20 (see paragraphs 50-51 above), the Constitutional Court considered the decisive aspect in that case to be whether the land confiscated under the Presidential Decree had been effectively confiscated before 25 February 1948. It found that there had been no final act of confiscation under Presidential Decree no. 12/1945 before 25 February 1948; on the contrary, at the relevant time, the property had been confiscated under Law no. 142/1947. Moreover, there had been no attempt to “secure” the transfer of the property by the State. The Constitutional Court noted, *inter alia*, that:

“58. The Constitutional Court is ... aware ... that ‘the mere establishment of this fact [namely the issuance of a confiscation notice by an administrative authority lacking jurisdiction *ratione materiae*] would, in itself, have no effect on the contested findings

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of the courts, assuming that the State had seized the land in question prior to the beginning of the relevant period. The legal opinion ... that a confiscation under Presidential Decree no. 12/1945 was deemed to have occurred with immediate effect, i.e. that the legal basis for confiscation was the Presidential Decree itself and not a (subsequent) administrative act, would apply to such a case.' Aside from this fact, a finding that confiscation notices issued by district national committees were null and void or otherwise defective would be entirely irrelevant for the purposes of the restitution dispute under consideration.

...

65. For the sake of completeness, the Constitutional Court adds that it did not overlook the decision, rendered in the meantime, whereby a constitutional complaint lodged by the applicant in a different – but factually and legally identical – case was dismissed as manifestly ill-founded (see decision [*usnesení*] IV. ÚS 2662/21 of 16 November 2021). The Constitutional Court points out that it is not bound by the finding of law expressed in the cited decision [see judgment no. IV. ÚS 301/05 of 13 November 2007 ..., paragraphs 88–89]”

53. In its judgment no. I. ÚS 3918/19 of 21 December 2021, involving the Cistercian Abbey - Vyšší Brod (*Cisterciácké opatství - Vyšší Brod*), the Constitutional Court stated, *inter alia*, that:

34. ... the fulfilment of the aim and purpose of the restitution laws requires that all public authorities, when assessing the claims of persons whose property was transferred to the State or other legal entities, base themselves on the given special regulation and interpret the circumstances leading to the transfer of property in this spirit. The application of the restitution laws must not be too restrictive and formalistic, but [rather] sensitive, always taking into account the circumstances of the individual case. ... In order to fulfil the purpose of restitution, it is also necessary for the ordinary courts to interpret the restitution laws as sympathetically as possible towards the claimants, since a democratic constitutional State must not create further injustices, even by means of an apparently adequate interpretation of the law, which, however, is unnecessarily sophisticated and leads to conclusions which the restitution claimants rightly consider to be unjust. The court is not unconditionally bound by the literal wording of a statutory provision, but can and must depart from it if this is required by compelling reasons, the purpose of the statute, the history of its creation or a principle based on a constitutionally compliant legal system as a whole. Possible legal inconsistencies of various kinds, as well as unpredictability in the actions of various state bodies or persons acting on behalf of the state, shall not be interpreted to the detriment of entitled persons, but in relation to the specific case with regard to the applicable constitutional values and principles of the democratic rule of law as expressed in the constitutional order of the Czech Republic.”

54. The above-mentioned case-law was recently relied on by the Constitutional Court in its judgment no. I. ÚS 806/23 of 15 October 2024, involving the Cistercian Abbey - Vyšší Brod (*Cisterciácké opatství - Vyšší Brod*). The court held, *inter alia*, that:

“52. ... when several possibilities of expropriation exist side by side, it is not possible to stop the algorithm of review and decide, without due examination, that the property was confiscated solely on the basis of the [Presidential] Decrees. ...

53. The fact that, during the period of unfreedom, State authorities or persons acting on behalf of the State did not respect applicable norms or acted inconsistently and

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unpredictably cannot be interpreted against the claimants. Above all, in restitution proceedings the ordinary courts must take into account the values and principles of the rule of law; otherwise, the claimant may feel a new sense of injustice and lawlessness – unless the possibility that he or she was affected [one or both of] the two totalitarian powers (the Nazi occupation [that began] in 1938 and the communist regime after 1948) can be safely excluded.

54. Pursuant to Article 89 § 2 of the Constitution, judgments of the Constitutional Court are binding on all persons and authorities, including the Constitutional Court itself, which is bound to apply the main lines [of reasoning contained therein] in similar cases (see judgment no. Pl. ÚS 11/02 of 11 June 2003 ...), and therefore the general courts must [also] respect them. [In the present case], the general courts did not respect the conclusions expressed in judgment no. I. ÚS 3918/19, which concerned property taken from the applicant in the same procedure (by the same declaratory acts). ... [Thereby, the courts] violated Article 89 § 2 of the Constitution.

55. By failing to take into account the relevant case-law and by stopping the algorithm of review on the basis of the alleged exclusion from restitution without a thorough assessment of the restitution claim itself, [the courts violated] the applicant's fundamental right to judicial protection (Article 36 § 1 of the [Czech] Charter) and to a fair hearing (Article 6 § 1 of the Convention)."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE FAIRNESS OF THE PROCEEDINGS

55. The applicant complained that its case had not been decided in line with domestic courts' case-law as established in similar restitution cases and that its constitutional complaint had not been heard by a properly constituted Constitutional Court. The applicant relied on Article 6 § 1 of the Convention which reads as follows:

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

A. Admissibility

56. The Government did not object to the admissibility of the complaint. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties' observations*

57. The applicant complained that in the decisions adopted in the domestic proceedings, the courts had ruled arbitrarily, had interpreted the national law in blatant contradiction to the principle of legal certainty and had

disregarded previous judgments that the Constitutional Court had adopted in identical cases. The fact that the conclusions of those judgments should have been applied was also apparent from judgment of the Constitutional Court no. III. ÚS 361/21 (see paragraphs 31 and 52 above), which had been handed down shortly after the constitutional decision in the present case in a parallel case that had also been brought by the applicant based on the same historical circumstances and the same historical documents concerning the confiscation of the applicant's property.

58. In that judgment no. III. ÚS 361/21, the Constitutional Court had expressly adopted the legal reasoning expressed in the above-mentioned case-law (see paragraph 52 above), namely that no conclusion on the confiscation of property could be drawn if (i) the applicant's property had effectively been transferred to the State under Law no. 142/1947, and (ii) no circumstances had been established in the proceedings which would have demonstrated that the confiscation notices issued under Presidential Decree no. 12/1945 had actually resulted in the applicant having been deprived of its property.

59. According to the applicant, the relevant judgments of the Constitutional Court (see paragraphs 50-51) did not constitute an anomaly because the legal opinion expressed in those judgments was subsequently confirmed by the Constitutional Court in its further judgments (see paragraphs 52-53 above).

60. The Government maintained that the case-law of the highest domestic courts concerning the effect of confiscations under Presidential Decree no. 12/1945 was settled. The judgments referred to by the applicant demonstrated the case-law dynamically evolving by means of "distinguishing", a method that responds to the need to mitigate some of the harshness of a general approach where the facts of certain cases are objectively novel in significant respects. They thus represented only a specific branch of the relevant case-law or the supplementation thereof, which was applied to a very narrow field of cases – factually different from the case at hand – which were based on exceptional circumstances involving instances where there had been concurring confiscations under the Presidential Decrees and subsequent deprivations of property under Law no. 142/1947, and where there were doubts as to the effectiveness of the confiscations under Presidential Decree no. 12/1945.

61. The Government argued that the decision whether to apply the general and long-settled case-law or the modified form of it in any given case depended on an assessment of the factual circumstances of each case by the ordinary courts. The Court, in keeping with the principle of subsidiarity, should not, as a rule, reassess their findings and substitute its own conclusions for their ones.

62. As for the Constitutional Court's judgments nos. II. ÚS 1920/20 of 25 January 2021 and I. ÚS 1975/20 of 23 March 2021 (see paragraphs 50-51 above), the Government maintained that the domestic courts in the present

case had adequately explained why, given the factual circumstances of the case, they had applied the general case-law rather than the modified case-law contained in those judgments when deciding the applicant's case. As to the judgment rendered in other proceedings brought by the applicant (see paragraph 30 above), that had not been handed down until almost two weeks after the decision on the applicant's constitutional appeal in the present case. The Constitutional Court had thus not been able to react to it or to consider it in its decision in the present case. For the same reason, the reference by the applicant to the Constitutional Court's judgment no. I. ÚS 3918/19 of 21 December 2021 (see paragraph 53 above) was also irrelevant.

63. In the alternative, the Government submitted that, even if the Court were to find that the two lines of case-law were inconsistent in certain respects, that did not automatically mean that there had been a violation of the applicant's rights under Article 6 § 1 of the Convention, since that provision does not guarantee the right to consistent case-law *per se*. The Government considered it of central importance that the present case does not involve a profound and long-standing inconsistency, that is to say conflicting decisions which could create a state of legal uncertainty. Indeed, the Constitutional Court's judgments nos. II. ÚS 1920/20 of 25 January 2021 and I. ÚS 1975/20 of 23 March 2021 (see paragraphs 50-51 above) had been handed down just a few months before the Constitutional Court's decision in the instant case.

2. The Court's assessment

64. The Court reiterates at the outset that the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to their ratification of the Convention (see, *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004-IX).

65. However, where States decide to enact legislation to compensate victims of past injustices, it must be implemented with reasonable clarity and coherence in order to avoid, in so far as possible, legal uncertainty and ambiguity for the legal persons concerned. The Court stresses, in that context, that uncertainty – be it legislative, administrative or judicial – is an important factor to be taken into account in assessing a State's conduct (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 151, ECHR 2004-V; *Păduraru v. Romania*, no. 63252/00, § 92, ECHR 2005-XII; and *Beian v. Romania* (no. 1), no. 30658/05, § 33, ECHR 2007-V (extracts)).

66. The Court further reiterates that it is not its function to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I), for instance where they can be said to amount to "unfairness" in breach of Article 6 of the Convention. The Court should not act as a fourth-instance body and will not therefore question under Article 6 § 1 of the Convention

the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see, for example, *Dulaurans v. France*, no. 34553/97, §§ 33-34 and 38, 21 March 2000; *Khamidov v. Russia*, no. 72118/01, § 170, 15 November 2007; *Andelković v. Serbia*, no. 1401/08, § 24, 9 April 2013; and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 64-65, ECHR 2015). A domestic judicial decision cannot be characterised as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 85, 11 July 2017).

67. The Court notes that the present case reflects the development of domestic constitutional case-law regarding the interpretation of the legal effects of considering the confiscation of property under Presidential Decree no. 12/1945 as excluding the possibility of restitution under section 8(h) of the Church Property Settlement Act (see paragraph 44 above), whereas confiscation under the Revision of the First Land Reform Act (Law no. 142/1947) is considered to constitute an entitlement to restitution under section 5(a) of the Church Property Settlement Act (see paragraph 41 above).

68. Legislation on property restitution in the Czech legal system reflects the State's will to mitigate certain property-related injustices that occurred, in principle, during the relevant period from 25 February 1948 to 1 January 1990 (see paragraph 38 above). The case-law of the domestic courts, and in particular of the Constitutional Court, developed in the 1990s, prior to the entry into force of the Church Property Settlement Act of 2012, followed the principle that nationalisation or confiscation of property that had occurred before the relevant period (1948 – 1990), together with their legal consequences, should be considered completed facts provided that they did not fall within the remit of a special restitution provision for specified cases. In this vein, the Constitutional Court made it clear that confiscation under Presidential Decrees nos. 12/1945 and 108/1945 was a legal act whose validity could not be judged in terms of the deficiencies of subsequent administrative (declaratory) decisions, unless expressly provided for by law. That was so because the legal basis for the transfer of property rights (confiscation) to the State was the Presidential Decree itself (see paragraphs 47-49 above).

69. This latter principle subsequently became one of the cornerstones of the domestic courts' legal practice in restitution cases. That was confirmed in cases involving the restitution of church property under the Church Property Settlement Act of 2012 which, in contrast to the previous restitution legislation, expressly excluded the restitution of property confiscated on the basis of Presidential Decrees nos. 12/1945 and 108/1945 (see paragraph 44 above). Until the end of 2020, the jurisprudence of the domestic courts was based on the view that the confiscations under the Presidential Decrees, the

effects of which had taken place *ex lege* on the dates of their respective entries into force, were excluded from restitution (see paragraphs 46-49 above).

70. Starting in 2021 the first and second chambers of the Constitutional Court, having taken into account particular circumstances of fact in a case before it, elaborated on its case-law regarding the concurrence of confiscations of property under the Presidential Decrees of 1945 (in which case restitution was excluded under the Church Property Settlement Act) and pursuant to the Revision of the First Land Reform Act of 1947 (in which case, on the contrary, restitution under the Church Property Settlement Act could occur) (see paragraphs 41, 44 and 50-54 above). That newly developed case-law has continued to rely on previous findings concerning the effects of the Presidential Decrees, the legal nature and relevance of ensuing confiscation notices, and the non-reviewability of any substantive incorrectness of administrative acts issued prior to 25 February 1948.

Beyond that, however, the Constitutional Court has established an exception to the general rule with respect to the conflict between a restitution exclusion (*restituční výlučka*) and a restitution claim (*restituční titul*) where there is doubt as to whether the property which is the subject of a dispute had actually been confiscated prior to the relevant date.

In those cases, the Constitutional Court considered it appropriate to examine whether the confiscation allegedly based on the Presidential Decrees had been effective and, in the event of doubt as to the legitimacy of the procedure followed by State authorities before February 1948 to rule in favour of persons seeking restitution. The Constitutional Court expressed the view that a lack of compliance with the norms that had to be applied and any inconsistency or unpredictability in the procedure followed by State authorities or persons acting on behalf of the State during the “historical period of unfreedom” (i.e. between 1938 and 1945) could not be interpreted to the detriment of persons entitled to restitution (see paragraphs 50-54 above).

71. The Court reiterates that the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to consistency of case-law and that case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see *Episcopo and Bassani v. Italy*, nos. 47284/16 and 84604/17, §§ 92-93 with further references, 19 December 2024). Divergences in case-law may also arise within the same court which, in itself, cannot be considered contrary to the Convention (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 51, 20 October 2011). At the same time, the Court has emphasised on many occasions that the role of a supreme court is precisely to resolve such conflicts. In consequence, if diverging practice develops within one of the highest judicial authorities in a country, that court itself becomes a source of legal uncertainty, thereby undermining the

principle of legal certainty and weakening public confidence in the judicial system (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 123, 29 November 2016).

72. In the present case, unlike in cases where there were divergences between the various authorities (see *Blücher v. the Czech Republic*, no. 58580/00, §§ 41 & 55-57, 11 January 2005, and *O.B. Heller, A.S. v. the Czech Republic* (dec.), no. 55631/00, 9 November 2004), it was the Constitutional Court in particular that was the source of the divergent development in the judicial practice.

73. The Court notes that the development in the constitutional case-law concerning concurrent property confiscations under the Presidential Decrees of 1945 and under the Revision of the First Land Reform Act (Law no. 142/1947), which was at the heart of the present restitution case, took place in January 2021 while the judicial proceedings in the applicant's case were still underway, several months before the Supreme Court dealt with the applicant's appeal on points of law and more than half a year before the fourth chamber of the Constitutional Court decided on the applicant's constitutional complaint (compare paragraphs 26-28 and 30 above).

74. Furthermore, although the applicant had referred to the new development in the case-law in its constitutional complaint, the fourth chamber of the Constitutional Court merely ruled that there was no reason to depart from the established finding that the basis for the confiscation of property under Presidential Decree no. 12/1945 was the Decree itself, so that the confiscation had taken place at the date of its entry into force, which led to other conclusions, such as that it was not necessary to examine whether there had been an actual taking over of the confiscated property by the State at the time and thereby an "implementation of the confiscation order" implying the "effectiveness of the confiscation". In this connection the Court cannot but note that the fourth chamber of the Constitutional Court disregarded the newly established development of the constitutional case-law without explaining its reasons for doing so (see paragraph 30 above). The Court reiterates that its well-established case-law imposes a duty on the authorities to make a more substantial statement of reasons to justify such a departure from a previous ruling (see *Naskov and Others v. North Macedonia*, nos. 31620/15 and 2 others, § 74 with further references, 12 December 2023).

75. The Court further notes that the Constitutional Court Act provides in section 23 thereof for a mechanism to ensure consistency of practice within the different chambers of the Constitutional Court (see paragraph 35 above) giving a possibility to a chamber which, in the course of its decision-making, arrives at a legal opinion departing from a legal opinion of the Constitutional Court previously expressed in a judgment to submit the matter to a plenary session of the Constitutional Court for consideration. However, the fourth chamber of the Constitutional Court decided not to make use of that mechanism, even though it must have been aware that the first and second

chambers of the Constitutional Court had developed since 2021 different case law on the concurrence of property confiscations under Presidential Decrees and under the Revision of the First Land Reform Act – an issue that was at the heart of the applicant's restitution case they examined, in their publicly pronounced and therefore binding judgments.

76. Owing to the fourth chamber's disregarding of the above-mentioned development of constitutional case-law, which was established prior to their decision of 16 November 2021 in the present case and continued to be applied in similar restitution cases afterwards, and its coming to a decision without taking account of or commenting on and distinguishing from that new line in the case-law, together with its failure to use the appropriate mechanism provided by law in such cases – namely having the issue examined in the plenary of the Constitutional Court – the principle of legal certainty has been violated.

77. In the light of these circumstances, the Court considers that the applicant was deprived of a fair hearing.

78. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

79. The applicant argued that the procedure and decision of the Constitutional Court, which were contrary to the right to a fair hearing, had as a consequence interfered with its property rights within the meaning of Article 1 of Protocol No. 1.

80. The Court observes that the applicant essentially alleges that as a consequence of the violation of Article 6 § 1 of the Convention, its right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 should automatically be considered to have been breached as well, without providing any details as to what this violation consists of. The Court, having ruled on the essence of the complaint at issue under Article 6 § 1 of the Convention, finds that the applicant did not substantiate its complaint under Article 1 of Protocol No. 1.

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

III. OTHER COMPLAINTS

82. The applicant further complained under Article 6 § 1 of the Convention and also under Article 1 of Protocol No. 1 thereto that it had been denied the right to a lawful judge. That was so because the question of whether the property in question fell under the restitution exception should have been examined in separate restitution proceedings rather than in the

proceedings on its action under section 18 of the Church Property Settlement Act. The applicant pointed out that until 2019, the Supreme Court had held the view that issues to be assessed in the restitution proceedings could not be examined in the proceedings under section 18 of the Church Property Settlement Act. However, it had subsequently changed its view and had expressly allowed the examination of the restitution exception in the proceedings under section 18 of the Church Property Settlement Act. Such a deviation was, according to the applicant, contrary to the principle of predictability of judicial decisions and incompatible with the right to a fair hearing.

Furthermore, relying on the same provisions of the Convention, the applicant alleged that the assignment of restitution cases at the Supreme Court did not guarantee the right to a fair hearing, in that all cases involving disputes over restitution of property were assigned to the same chamber, meaning the same judges always ruled on such matters.

83. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the remainder of the application is manifestly ill founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

85. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award the applicant any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention concerning the fairness of the proceedings admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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3. *Declares* the remainder of the application inadmissible.

Done in English, and notified in writing on 11 September 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

María Elósegui
President