



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

THIRD SECTION

CASE OF KRČMÁŘ AND OTHERS v. THE CZECH REPUBLIC

(Application no. 35376/97)

JUDGMENT

STRASBOURG

3 March 2000

FINAL

03/06/2000

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

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

Sir Nicolas BRATZA, *President*,

Mr J.-P. COSTA,

Mr L. LOUCAIDES,

Mrs F. TULKENS,

Mr W. FUHRMANN,

Mr K. JUNGWIERT,

Mr K. TRAJA, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 1 February 2000,

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

PROCEDURE

1. The case originated in an application (no. 35376/97) against the Czech Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Czech nationals (“the applicants”) on 17 March 1997.

The first applicant, Mr Roman Krčmář, born in 1957, is resident in Prostějov, Czech Republic.

The second applicant, Mrs Marie Hanušová, born in 1922, is resident in Prague, Czech Republic.

The third applicant, Mrs Jaroslava Bartošová, born in 1923, is resident in Prague, Czech Republic.

The fourth applicant, Mrs Eduarda Ottová, born in 1931, is resident in Prague, Czech Republic.

The fifth applicant, Mrs Dagmar Rýdlová, born in 1932, is resident in Prague, Czech Republic.

The sixth applicant, Mrs Eva Kaňoková, born in 1935, is resident in Prague, Czech Republic.

The seventh applicant, Mrs Michaela Krčmářová, born in 1967, is resident in Speyer, Germany.

The applicants are represented by Mr A. Pejchal, a lawyer practising in Prague. The Government of the Czech Republic (“the Government”) are represented by their Agent, Mr E. Slavík, Ministry of Justice.

2. The application concerned restitution proceedings at the end of which the Constitutional Court made a decision basing its finding, in particular, on documents which had not been communicated to the parties. The applicants alleged a violation of Article 6 § 1 of the Convention.

3. On 4 March 1998 the Commission (Second Chamber) decided to give notice of the application to the Government and invited them to submit observations on its admissibility and merits. The Government submitted their observations on 13 May 1998, to which the applicants replied on 22 June 1998.

4. Following the entry into force of Protocol No. 11 to the Convention on 1 November 1998 and in accordance with the provisions of Article 5 § 2 thereof, the application falls to be examined by the Court.

In accordance with Rule 52 § 1 of the Rules of Court¹, the President of the Court, Mr L. Wildhaber, assigned the case to the Third Section. The Chamber constituted within the Section included *ex officio* Mr K. Jungwiert, the judge elected in respect of the Czech Republic (Article 27 § 2 of the Convention and Rule 26 § 1 (a)), and Sir Nicolas Bratza, the President of the Section (Rule 26 § 1 (a)). The other members designated by the latter to complete the Chamber were Mr J.-P. Costa, Mr L. Loucaides, Mrs F. Tulkens, Mr W. Fuhrmann and Mr K. Traja (Rule 26 § 1 (b)).

5. On 27 April 1999 the Chamber declared the application admissible².

6. On 22 June 1999 the applicants submitted their just satisfaction proposals under Article 41 of the Convention. On 27 June 1999 the Government presented their comments in this regard.

7. On 14 December 1999 the Chamber decided not to hold a hearing on the merits.

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicants are successors in title to “František Otta”, a company in Rakovník (“the Company”) which belonged to members of their family until it was nationalised by the former communist regime.

9. Pursuant to Article 1 § 1 (5) of Presidential Decree no. 101/1945 (*dekret presidenta republiky*) (“the Decree”), which entered into force on 27 October 1945, companies producing margarine which had more than 150 employees¹ were nationalised as from that date. The former Minister of

Notes by the Registry

1. The Rules of Court came into force on 1 November 1998.

2. The text of the Court’s decision is obtainable from the Registry.

Food (*ministr výživy*) was authorised to declare, with reference to Article 1 § 4 of the Decree, which companies had been nationalised, as recorded in the Official Register (*Úřední list*). On 2 June 1948 Act no. 115/1948, which amended the Decree, was published in the Official Gazette (*Sbírka zákonů a nařízení*). According to this Act, all enterprises nationalised before 22 February 1948, pursuant to Article 1 § 4 of the Decree, were considered nationalised as from 27 October 1945. The Act did not specify the number of employees in the nationalised enterprises.

10. By Decree (*vyhláška*) no. 26 of 9 January 1946, published in the Official Gazette, the former Minister of Food declared the Company nationalised. The nationalisation procedure was closed by an order (*výměr*) of the former Minister of Food on 11 January 1949 which determined the final extent of the nationalisation. The order was based on section 1(1)(6) of Act no. 115/1948.

11. On 25 March 1991 the Company was transformed into Rakona a.s. (*akciová společnost*) with the 100% property participation of the State. On 19 June 1991 Procter & Gamble, a foreign company, concluded a purchase contract with the National Property Foundation (*Fond národního majetku*), and on 22 July 1991 the Czech Government approved a privatisation plan (*privatizační projekt*) to sell the Company to Procter & Gamble.

12. In November 1991, pursuant to the Extra-Judicial Rehabilitations Act no. 87/1991 (*zákon o mimosoudních rehabilitacích*) (“the Restitution Act”) and the Transfer of the State’s Property to Other Persons Act no. 92/1991 (*zákon o převodu majetku státu na jiné osoby*) (“the Privatisation Act”), the applicants commenced an action for restitution of the Company against the Ministry for Administration of National Property and its Privatisation (*Ministerstvo pro správu národního majetku a jeho privatizaci*). They claimed that they were Czech nationals and successors in title to the original owners of the Company and, therefore, persons entitled to restitution under section 3(2)(c) of the Restitution Act. They also claimed that the Company had been nationalised in a way which violated generally recognised human rights and freedoms within the meaning of section 2(3) of the Act. They further submitted that the Decree had been wrongly applied to their family’s Company because the nationalisation conditions laid down in the Decree, in particular the condition that the company should have more than 150 employees, were not satisfied. The applicants argued that the Company had therefore been nationalised pursuant to Act no. 115/1948, that is after 25 February 1948, the decisive date for restitution under the Restitution Act.

13. On 29 June 1993 the Prague 1 District Court (*obvodní soud*) found against the applicants. The court held that ownership of the applicants’

1. *Note by the Registry.* The number was based on the average number of employees, calculated by adding the number of employees as at 1.1.1938, 1.1.1939 and 1.1.1940 and dividing the total by three.

property had passed to the State by the ministerial decree of 9 January 1946, i.e. before the decisive date of 25 February 1948 specified in the Restitution Act. Accordingly, this Act as well as the Privatisation Act did not apply to the applicants' case. The court noted that the order of the Minister of Food of 11 January 1949 had only a declaratory character. It stated that the fact that the Decree had been applied to the applicants' property *contra legem*, as the Company had less than 150 employees, could not influence its finding as to the decisive date of the nationalisation. The court considered in this regard certain documentary evidence, in particular a statement from the former owners of the Company, made in response to a request from the former Ministry of Food (*Ministerstvo výživy*), dated 24 November 1945, that the average number of employees between 1 January 1938 and 1 January 1940 was 117.3, and heard the husband of the fourth applicant (who died before the end of the restitution proceedings on 7 September 1995). He stated, *inter alia*, that the trade union council (*závodní rada*) had wrongly calculated the number of employees, having erroneously determined the ratio of administrative staff to workers: according to the trade union council's calculation, there had been 1.8 administrative staff members per 1 worker.

14. The applicants appealed to the Prague Municipal Court (*městský soud*). On 24 November 1993 the court dismissed their appeal stating that the Company had been nationalised under the Decree on the day of its entry into force, i.e. 27 October 1945. On 28 July 1995 the High Court (*Vrchní soud*), upon the applicants' appeal on points of law (*dovolání*), upheld this decision.

15. On 22 October 1995 the applicants lodged a constitutional appeal (*ústavní stížnost*). They alleged a violation of Articles 11 § 1 and 36 § 1 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*) and challenged the legal opinion of the ordinary courts.

16. On 2 October 1996 the Constitutional Court, after a public hearing, dismissed the applicants' appeal, finding no violation of the applicants' rights. The Constitutional Court recalled that, according to its case-law, nationalisation of property takes place by operation of law under a particular presidential decree if the conditions prescribed by the decree are complied with. Considering the question of the number of employees in the Company at the time of the nationalisation as a crucial point in order to establish whether the Decree had been applied *lege artis*, the Constitutional Court decided to complete the taking of evidence and asked the Rakovník District Records Office (*státní okresní archiv*), the Prague District Records Office (*státní oblastní archiv*), the Prague Central Records Office (*státní ústřední archiv*), the Ministry of Employment and Social Affairs (*Ministerstvo práce a sociálních věcí*) and the Ministry of Finance (*Ministerstvo financí*) to submit further documentary evidence.

The documents submitted to the Constitutional Court contained, in particular, information about the number of employees in the Company between 1936 and 1940 in different categories of production.

These documents included a letter from the former Ministry of Food, dated 24 November 1945, to the former owners of the Company and to the trade union council, asking them, *inter alia*, to specify the number of people employed in different sections of the Company. In answer to this letter, the former owners indicated that the average number of employees working in the production of margarine between 1938 and 1940 was 117.3. The trade union council and the national administration (*národní správa*) informed the former Ministry of Food that the average number of employees was 217.7, and, by letter of 8 December 1945, they specified that between 1938 and 1940 the average number of employees was 204.3.

17. The Constitutional Court, basing its finding particularly on these documents which had not been shown to the parties during the hearing, stated, contrary to the opinion of the lower courts, that the nationalisation had been effected in compliance with the nationalisation conditions established in the Decree, i.e. before 25 February 1948. Accordingly, the applicants were not entitled to the restitution of the Company under the Restitution Act.

II. RELEVANT DOMESTIC LAW

A. Extra-Judicial Rehabilitations Act no. 87/1991 of 23 March 1991 (“the Restitution Act”)

18. In the preamble to the Restitution Act, the Federal Assembly of the Czech and Slovak Federal Republic affirmed its intention to redress the consequences of certain infringements of property and other rights which occurred between 1948 and 1989.

19. Section 1(1) of the Act provides that its aim is to redress the consequences of certain violations of property and other rights caused by acts falling within the sphere of civil or labour law or by administrative acts incompatible with the principles of a democratic society respecting the rights of citizens, as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

20. According to section 2(1)(c) and (3), such redress consists in the surrender of property if the violation in question was caused by an act infringing generally recognised human rights and freedoms, that is, an act in contradiction with the principles referred to in section 1(1) of the Act. When an entitled person was deprived of his or her property rights under nationalisation laws adopted between 1945 and 1949 without appropriate

compensation, the entitled person has a claim under this Act, which he or she can raise under the Privatisation Act.

21. Section 3(1) provides that, in order to be entitled to restitution of his or her property, a claimant must be a natural person and a citizen of the Czech and Slovak Federal Republic whose property was ceded to the State in the circumstances listed in section 6 of the Act. According to section 3(2)(e), if the person whose property has been transferred to the State in cases specified in section 6 died before the expiry of the period specified in section 5(2), the entitled persons, provided they are citizens of the Czech and Slovak Federal Republic, are his or her spouse and children, or in the case of the latter's death, their children.

B. The Charter of Fundamental Rights and Freedoms

22. Article 11 § 1 of the Charter provides, *inter alia*, that everybody has the right to own property. The property rights of every owner are equal in the eyes of the law and benefit from the same legal protection.

23. According to Article 36 § 1, everybody may defend, in a way prescribed by law, his or her right before an independent and impartial tribunal and, in specified cases, before another authority.

C. Constitutional Court Act no. 182/93

24. According section 48 of the Act, the Constitutional Court must consider all the evidence necessary to establish the facts of the case. It decides what evidence submitted by the parties should be considered and may take into account other evidence which has not been proposed. It may assign a judge to consider evidence obtained otherwise than at an oral hearing or request another court to consider such evidence. At the request of the Constitutional Court, courts, public administrative authorities and other State institutions must assist it in its decision-making by procuring documentary evidence. A record is drawn up of all evidence which is obtained otherwise than at an oral hearing, this record being signed by a judge, a clerk and other persons taking part. The resulting evaluation of that evidence must always be communicated at the oral hearing.

25. Section 63 stipulates that the provisions of the Code of Civil Procedure apply to proceedings before the Constitutional Court, unless the Constitutional Court Act provides otherwise.

26. According to section 81, the Constitutional Court is not bound by the statements of fact established in the earlier proceedings.

D. The Code of Civil Procedure (Act no. 99/1963, as amended)

27. According to Article 121 of the Code, it is not necessary to prove facts which are generally known, or known to a court through the exercise of its functions. Nor is it necessary to prove generally binding legislative or regulatory instruments published or announced in the Official Gazette.

28. According to Article 129, the evaluation of documentary evidence is carried out by the President of the Chamber during the hearing. The President reads out the whole or part of the document, or informs the Chamber of its contents. He may also invite the holder of the document to submit the document to the court, or he may obtain it by himself from another court, authority or legal person.

AS TO THE LAW**I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION**

29. The applicants complained that they did not have a fair hearing in the proceedings before the Constitutional Court, as the court based its decision, in particular, on documents which were not considered at the hearing and were not shown to or discussed by the parties. They alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

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

30. The applicants submitted that no new documentary evidence had been considered by the Constitutional Court during the oral hearing. The court had only summed up the findings of the ordinary courts and the evidence considered by those courts, in particular, the evidence produced before the Prague 1 District Court on the basis of which that court had found that the nationalisation had taken place contrary to Decree no. 101/1945. In the proceedings before the Prague 1 District Court, the applicants had submitted observations concerning the number of employees of the Company, calculated, at the request of 24 November 1945 of the former Ministry of Food, by the former owners in accordance with the law then in force. They had found that in the production of margarine, which was the sole type of production covered by the Decree, an average of 117.3 persons had been employed in the Company between 1938 and 1940. At the same time, the former Ministry of Food had received the observations of the trade union council (*závodní rada*), which concluded

that the average number of employees during the said period had been 204.3.

31. The applicants also submitted that, after the hearing was closed, the Constitutional Court delivered a judgment based in particular on documents received from five institutions which had not been produced at the hearing, and upon which the applicants had not been able to comment.

32. The Government submitted that the Constitutional Court was entitled to be provided with documentary evidence which it considered relevant for its decision, and that the competent authorities were required to grant the court their assistance in procuring such evidence. The Constitutional Court was free to select the evidence on which it based its decision.

33. The Government stated that, at the oral hearing, the Constitutional Court had read out a report of the former Ministry of Food establishing the nationalisation conditions for the Company. The report concluded that the nationalisation conditions laid down in the Decree were satisfied because the average number of employees was 204, which was more than the minimum of 150 employees required by the Decree. The applicants did not object to those proceedings, nor did they make any suggestion in that regard. The Government referred to the record of the oral hearing before the Constitutional Court from which it appears that:

“The President of the Chamber gave the floor to the judge rapporteur ... who conveyed the contents of the constitutional appeal. He stated that there was no reason to declare the appeal inadmissible. He reproduced the contents of the observations of the High Court in Prague, the Prague Municipal Court, the Prague 1 District Court and the Ministry for Administration of National Property and its Privatisation.

Judge rapporteur: ‘From the papers in the file of the Prague 1 District Court the Constitutional Court ... established that in 1945 the Company had been put under national administration because of the suspicion of collaboration with Germans; the administration was not withdrawn after this suspicion had been rebutted. From the applicants’ observations submitted to the Prague 1 District Court it appears that in 1945 the Company did not satisfy the conditions prescribed by Decree no. 101/1945, i.e. it did not reach the necessary number of 150 employees. However, the Ministry of Food of the Czech Republic also presented the calculations of the former trade union council of the Company which was under national administration, from which it appears that the average number of employees was 204. According to the former owners, the production of soap, the perfumery, the production of glycerine, the production of crystal soda, the sawmill and the press workshop in Židovice should not have been nationalised because they were not inseparable from the margarine production business. The national enterprise Rakovník Margarine was therefore created contrary to Article 8 § 1 (c) of Decree no. 101/1945 because this decree did not permit the creation of a national enterprise except under Article 1 § 1 ...’

In answer to a query from the President of the Chamber, the applicants’ representative stated: ‘I do not have any submissions or complementary suggestions. I think that the material facts were contained in our constitutional appeal ...’.”

34. The Government added that, according to section 81 of the Constitutional Court Act, the Constitutional Court is not bound by the statements of fact established in the earlier proceedings.

A. Applicability of Article 6 § 1

35. The Court notes that the Government only disputed the applicability of Article 6 § 1 of the Convention in their observations in reply to the applicants' claims for just satisfaction and that they did not raise this issue in their observations on the merits.

36. The Court considers that Article 6 § 1 applies in the present case. The applicants had a right to claim restitution, a right which was of a pecuniary nature (see the *Editions Périscope v. France* judgment of 26 March 1992, Series A no. 234-B, pp. 65-66, §§ 39 and 40), and there was a serious dispute about whether they were actually entitled to restitution. Moreover, according to the Court's case-law, Article 6 § 1 applies to proceedings before Constitutional Courts (see the *Ruiz-Mateos v. Spain* judgment of 23 June 1993, Series A no. 262, p. 18, §§ 31-32; the *Süßmann v. Germany* judgment of 16 September 1996, *Reports of Judgments and Decisions*, 1996-IV, p. 1172, §§ 43-45; the *Pammel v. Germany* judgment of 1 July 1997, *Reports* 1997-IV, pp. 1109-10, §§ 53-57; and the *Probstmeier v. Germany* judgment of 1 July 1997, *Reports* 1997-IV, pp. 1135-36, § 48-53).

37. In sum, Article 6 § 1 is applicable in the present case.

B. Compliance with Article 6 § 1

38. The Court considers that, in itself, the gathering of additional evidence by a court, as in the present case by the Constitutional Court, is not incompatible with the requirements of a fair hearing. In the present case, only the fact that the documentary evidence collected by the Constitutional Court on its own initiative from the Rakovník District Records Office, the Prague District Records Office, the Prague Central Records Office, the Ministry of Employment and Social Affairs and the Ministry of Finance was not communicated to the applicants raises a problem.

39. The principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires each party to be given a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage *vis-à-vis* its opponent (see the *Ankerl v. Switzerland* judgment of 23 October 1996, *Reports* 1996-V, pp. 1567-68, § 38, and the *Helle v. Finland* judgment of 19 December 1997, *Reports* 1997-VIII, p. 2928, § 53).

In the present case the documentary evidence in issue was not communicated to either of the parties to the dispute before the

Constitutional Court. Accordingly, no infringement of equality of arms has been established.

40. However, the concept of a fair hearing also implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to make known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision (see the *Nideröst-Huber v. Switzerland* judgment of 18 February 1997, *Reports* 1997-I, p. 108, § 24, and the *Mantovanelli v. France* judgment of 18 March 1997, *Reports* 1997-II, p. 436, § 33).

41. The Court notes that the documentary evidence in issue which was produced at the request of the Constitutional Court was manifestly aimed at influencing the Constitutional Court's decision.

The applicants maintained before the Constitutional Court that the nationalisation of the Company under Decree no. 101/1945, which entered into force on 27 October 1945, that is before 25 February 1948, had been unlawful because the Company had had at that time less than 150 employees – the number of employees required by the Decree – and that the Company had been nationalised pursuant to Act no. 115/1948, that is within the period which entitled them to restitution. It was therefore of paramount importance to give the applicants an opportunity to comment on the documentary evidence concerning the number of employees if they wished to do so.

42. From the record of the oral hearing before the Constitutional Court, it does not appear that the documentary evidence in issue was read out. The Court considers, however, that even if such evidence was submitted and read during the oral hearing, this would not have satisfied the right of the applicants to adversarial proceedings, given the character and importance of this evidence. A party to the proceedings must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time, if need be, in a written form and in advance.

43. It is of little consequence that, at the oral hearing, the Constitutional Court mentioned the calculations of the trade union council of the Company, according to which the average number of employees was 204, and that this information also appeared in one of the documents which the Constitutional Court had obtained from the national authorities. The Court considers that the parties to a dispute may legitimately expect to be consulted as to whether a specific document calls for their comments. What is particularly at stake here is the applicants' confidence in the workings of constitutional justice, which is based on, *inter alia*, the assumption that they are afforded the opportunity to express their views on every document in the file concerning their constitutional appeal.

44. The Court further considers that granting the applicants the possibility to discuss all the documentary evidence submitted to the Constitutional Court was all the more necessary because the evidence which was reiterated by the Constitutional Court at the oral hearing had formed part of the basis on which the Prague 1 District Court had found that the nationalisation of the Company had been carried out *contra legem*. In addition, the documents did not contain facts which were generally known or known to the Constitutional Court through the exercise of its functions, nor did they constitute generally binding legislative or regulatory instruments published or announced in the Official Gazette, none of which, according to Article 121 of the Code of Civil Procedure, would have been necessary to prove.

45. The Court finds therefore that, in the present case, respect for the right to a fair hearing, guaranteed by Article 6 § 1, required that the applicants be given the opportunity to comment on the documentary evidence produced at the request of the Constitutional Court by the national authorities.

46. There has accordingly been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. Article 41 of the Convention provides:

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

A. Damage

48. In respect of pecuniary damage the applicants claimed 1,851,000,000 korunas (CZK) in compensation for the market value of the Company on 1 July 1991, the date of the sale of the Company by the State to Procter & Gamble, and CZK 1,525,000,000 in compensation for loss of profits between 1 July 1991 and 30 June 1999.

49. The Government failed to see any causal link between the sums claimed by the applicants and the alleged violation of Article 6 § 1 of the Convention in the proceedings before the Constitutional Court.

50. The Court notes that the sums claimed in respect of pecuniary damage relate to the market value of the Company on 1 July 1991 and to the loss of profits from that date until 30 June 1999. The Court observes that thereby the applicants are in effect claiming compensation for a nationalisation which, according to them, was unlawful. This, however, was

not the complaint before the Court, which was only called upon to determine whether the applicants had a fair hearing within the meaning of Article 6 § 1 of the Convention. Moreover, the Court cannot speculate as to the outcome of the hearing had the position been otherwise, but it does not find it unreasonable to regard the applicants as having suffered a loss of real opportunities (see the *Colozza v. Italy* judgment of 12 February 1985, Series A no. 89, p. 17, § 38, and the *Zielinski and Pradal & Gonzales and Others v. France* judgment of 28 October 1999, to be published in the Court's official reports, § 79). Making its assessment on an equitable basis, as required by Article 41, the Court awards CZK 1,350,000 to each of the applicants, in respect of all heads of damage taken together.

B. Costs and expenses

51. The applicants sought CZK 12,274,230 in respect of the costs and expenses they had incurred in the proceedings before the national courts (CZK 9,658,755) and later before the Convention institutions (CZK 2,615,475), calculated on the basis of domestic law rates. They also requested CZK 84,000 in respect of the preparation of the expert report with regard to their just satisfaction claims.

52. The Court observes that, according to its case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek to prevent or rectify a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, the *Philis v. Greece* (no. 1) judgment of 27 August 1991, Series A no. 209, p. 25, § 74, and the *Nikolova v. Bulgaria* judgment of 25 March 1999, to be published in the Court's official reports, § 79).

It notes that the costs relating to the proceedings in the domestic courts, including the Constitutional Court, could not have been incurred in order to prevent or rectify a violation affecting the proceedings in the latter court. It considers therefore that it should reject this part of the claim.

With regard to the costs of the applicants' representation in Strasbourg, the Court recalls that it does not regard itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, the *Tolstoy Miloslavsky v. the United Kingdom* judgment of 13 July 1995, Series A no. 316, p. 83, § 77, and the *Baskaya and Okçuoglu v. Turkey* judgment of 8 July 1999, to be published in the Court's official reports, § 98). Deciding on an equitable basis, the Court awards each of the applicants CZK 80,000 by way of costs and expenses.

C. Default interest

53. According to the information available to the Court, the statutory rate of interest applicable in the Czech Republic at the date of the adoption of the present judgment is 10% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that Article 6 § 1 of the Convention is applicable in this case;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final, to each of the applicants, 1,350,000 (one million three hundred and fifty thousand) korunas for all heads of damage taken together, and, within the same time-limit, to each of the applicants, 80,000 (eighty thousand) korunas for costs and expenses;
 - (b) that simple interest at an annual rate of 10% shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 3 March 2000.

S. DOLLÉ
Registrar

N. BRATZA
President