



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

CASE OF MALHOUS v. THE CZECH REPUBLIC

(Application no. 33071/96)

JUDGMENT

STRASBOURG

12 July 2001

In the case of Malhous v. the Czech Republic,

The European Court of Human Rights, sitting as a Grand Chamber composed of the following judges:

Mr L. WILDHABER, *President*,
Mrs E. PALM,
Mr C.L. ROZAKIS,
Mr A. PASTOR RIDRUEJO,
Mr P. KŮRIS,
Mrs F. TULKENS,
Mrs V. STRÁŽNICKÁ,
Mr C. BÎRSAN,
Mr P. LORENZEN,
Mr K. JUNGWIERT,
Sir Nicolas BRATZA,
Mr J. CASADEVALL,
Mr M. PELLONPÄÄ,
Mrs H.S. GREVE,
Mr A.B. BAKA,
Mr R. MARUSTE,
Mrs S. BOTOCHAROVA, *judges*,

and also of Mr M. DE SALVIA, *Jurisconsult*, for the Registrar,

Having deliberated in private on 27 June 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 33071/96) 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 a Czech national, Mr Jan Malhous (“the applicant”), on 10 May 1996. The applicant having died on 1 May 1998, the Court accepted his nephew and designated heir, Mr Jan Bouček, as the person entitled to pursue the application.

2. The applicant and later Mr Bouček, who had been granted legal aid, were represented before the Court by Mr Tomáš Schönfeld, a lawyer practising in Prague. The Czech Government (“the Government”) were represented by their Agent, Mr Emerich Slavík, Ministry of Justice.

3. The applicant alleged that his property rights were violated in restitution proceedings and that he did not enjoy a public hearing before an independent and impartial tribunal in these proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 May 1999 a Chamber of that Section, composed of the following judges: Sir Nicolas Bratza, Messrs J.-P. Costa, L. Loucaides, P. Kūris, K. Jungwiert, Mrs H.S. Greve, Messrs W. Fuhrmann, K. Traja, and also of Mrs S. Dollé, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24 of the Rules of Court.

7. By a decision of 13 December 2000, following a hearing on admissibility and merits (Rule 54 § 4), the Grand Chamber declared the application partly admissible, insofar as it concerned the applicant's complaint under Article 6 § 1 of the Convention that he did not have a public hearing in the restitution proceedings at issue.

8. Mr Bouček and the Government each filed written observations on the merits. The Grand Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 2 *in fine*), the parties replied in writing to each other's observations. Mr Bouček filed claims for just satisfaction under Article 41 of the Convention, on which the Government submitted comments.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. In June 1949 plots of agricultural land owned by the applicant's father were expropriated by the former Doksy District National Council (*okresní národní výbor*) under the Czechoslovak New Land Reform Act No. 46/1948 ("the 1948 Act"). The applicant's father had never obtained any compensation. In 1957 some of these plots were transferred to the

ownership of natural persons in an assignment procedure under the 1948 Act. In 1977 the applicant's father died and the applicant's rights over his estate were confirmed.

10. After the fall of the communist regime in Czechoslovakia, the Act No. 229/1991 on Adjustment of Ownership Rights in respect of Land and Other Agricultural Property ("*zákon o půdě*", the "Land Ownership Act") entered into force on 24 June 1991. The Act provided that the 1948 Act was no longer applicable and that under certain conditions property confiscated pursuant to that Act without compensation could be returned to its former owners or their heirs if it was still in the possession of the State or of a legal person. However, if such property had been transferred into the possession of natural persons, the former owners or their heirs could – subject to certain exceptions – only claim the assignment of other equivalent property or financial compensation.

11. On the basis of the Land Ownership Act, the applicant entered into restitution agreements with two legal persons (the Hradec Králové State Forest Enterprise and the Líny – Krásná Ves Agricultural Cooperative) on 10 December 1993 and 4 May 1994 respectively. By two decisions of 12 October 1994 the Mladá Boleslav Land Office (*pozemkový úřad*, "the Land Office") refused to approve the restitution agreements. Referring to section 32(3) of the Land Ownership Act, it found that some of the plots had been assigned to different owners pursuant to the 1948 Act, and that these owners, being natural persons, had proved their property rights by showing their deeds of assignment. The Land Office based its decisions on the following documents: the decision of the former Mladá Boleslav State Notary (*státní notářství*) of 26 May 1977 on the applicant's father's inheritance, the decision of the former Doksy District National Council of 7 June 1949 on the expropriation of the applicant's father's property, the record of the former Líny Local National Council (*místní národní výbor*) of 7 November 1949 on the proceedings on the applicant's father's appeal against the expropriation, the decision of the former Liberec Regional National Council (*krajský národní výbor*) of 29 November 1949 by which the decision of expropriation had been modified, and an extract (*výpis*) from the land register (*pozemková kniha*) relating to the Líny and Krásná Ves Districts. The Land Office had also at its disposal copies of the deeds of assignment made out by the Mladá Boleslav Land Register Office (*katastrální úřad*) on 23 September 1994.

12. It appears from the text of the invitation issued by the Land Office on 28 September 1994 that the latter scheduled a hearing for 12 October 1994 to which the applicant and his lawyer were invited, together with the representatives of the State Forest Enterprise, the agricultural cooperative and representatives of the Mladá Boleslav Land

Fund (*Pozemkový fond*). According to the record of the hearing, only the applicant and the representatives of the State Forest Enterprise and of the agricultural cooperative attended the hearing. The applicant refused to make any comments on the issue of the administrative proceedings and did not sign the record. The representatives of both legal persons left the hearing before the end.

13. On 11 November 1994 the applicant lodged appeals with the Prague Municipal Court (*městský soud*, “the Municipal Court”) against the two administrative decisions. He claimed the restitution of the entire property, contesting that the acquisition of part thereof had been proven by the natural persons concerned and requesting access to the respective deeds of assignment.

14. On 31 May 1995 the Municipal Court joined both appeals and upheld the administrative decisions of 12 October 1994. It held that the Land Office had correctly refused to approve the restitution agreements as a whole as they also covered property whose ownership had been transferred to natural persons and thus could not be returned to the original owner. This had been established on the basis of all relevant documents including the deeds of assignment, which were included in the administrative files. The applicant could have consulted them at any time during the administrative proceedings if he had wished to do so as provided for in section 23(1) of the Code of Administrative Procedure. The Municipal Court considered that no hearing was necessary in the applicant’s case, as the facts had been correctly established by the administrative authority and only points of law were in issue before it. In this respect, it referred to section 250(f) of the Code of Civil Procedure.

15. The case was referred back to the Land Office pursuant to section 9(3) of the Land Ownership Act (see paragraph 25 below) which gave a new decision on 25 July 1995. In accordance with the opinion of the Municipal Court, by which it was bound by virtue of section 250(r) of the Code of Civil Procedure, the Land Office confirmed the applicant’s property rights in respect of those plots which had not been transferred to natural persons under the 1948 Act. At the same time, it informed the applicant that he could seek compensation under section 11 or 16 of the Land Ownership Act for the plots which could not be returned to him.

16. On 14 September and 15 October 1995 the applicant lodged a constitutional appeal (*ústavní stížnost*) claiming *inter alia* that his property rights had been violated, that he had not been able to put forward further evidence and that the Municipal Court had not informed him about its decision to join both cases. He invoked *inter alia* Articles 36 and 38 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*).

17. On 29 November 1995 the Constitutional Court (*Ústavní soud*) rejected the applicant's appeal as manifestly ill-founded. It considered that the applicant's constitutional rights to a proper court procedure had not been violated by the manner in which the Municipal Court had dealt with his appeal. Having regard to the special nature of the judicial review of administrative decisions, the court's function was limited to a legal reassessment of the case on the basis of the facts established by the administrative authority. The applicant had not invoked evidence disregarded by the Land Office and, by merely articulating his discontent with the latter's decision, had not raised any valid objection to the facts as established by it. Furthermore, according to the Constitutional Court, the Municipal Court had not infringed constitutional law by deciding the case without a hearing as this was lawful under section 250(f) of the Code of Civil Procedure when the case involved only the assessment of points of law.

18. On 1 May 1998 the applicant died. Nevertheless, his lawyer introduced before the Land Office a request for compensation by the assignment of other plots pursuant to section 11(2) of the Land Ownership Act. According to the Government, this request is still pending before the Land Office.

19. On 29 October 1998 the judicial proceedings regarding the applicant's inheritance were terminated by a finding of the Prague 2 District Court that the applicant had not left any estate. Apparently, the court was not aware of the Land Office's decision of 25 July 1995.

20. On 22 February 2000 the applicant's nephew, Mr Bouček, requested the district court to re-open the inheritance proceedings. He produced his uncle's last will of 22 March 1998 in which he was designated as a universal heir of the applicant's estate, while the applicant's two adult children were disinherited. The re-opening of the judicial proceedings concerning the inheritance was eventually granted on 21 August 2000. On 28 March 2001 the Prague 2 District Court approved an agreement concluded between Mr Bouček and the applicant's two children concerning the division of the applicant's estate on an equal basis.

II. RELEVANT DOMESTIC LAW

1. The land ownership act

21. The Land Ownership Act regulates, *inter alia*, the restitution of certain agricultural and other properties (defined in section 1), which have been ceded or transferred to the State or other legal persons between

25 February 1948 and 1 January 1990. Section 6(1) lists the acts giving rise to a restitution claim including, in sub-paragraph (b), confiscation without compensation pursuant to the 1948 Act.

22. According to section 5, those obliged to make restitution are, in principle, the State or any legal person possessing the real property at the date when the Act entered into force. Natural persons can be obliged to return real property to a rightful claimant only in the circumstances set out in section 8, that is if they or their relatives acquired it from the State or another legal person contrary to any law in force at the relevant time or for a price inferior to that specified in any applicable price regulations or on the basis of unlawful advantage. In such cases the restitution is ordered by a judicial decision upon the application of the rightful claimant which must be filed before 31 December 1992 or within six months from the date when the decision of the land office refusing the restitution of the real property in question has become final. In any other case, a plot assigned to a natural person who has established his property rights by producing his deed of assignment is not available for restitution (section 32(3), which was, however, repealed by a judgment of the Czech Constitutional Court (No. 166/1995) with effect from 15 August 1995).

23. Furthermore, no restitution shall take place in the cases listed in section 11(1) of the Act which include, *inter alia*, cases where a right of personal use of the property has been created for a natural person except in the circumstances mentioned in section 8. In such cases, the land office shall transfer other equivalent State property, preferably located in the same area and determined according to the principles of the agricultural land reallocation legislation, to the rightful claimant if the latter consents (section 11(2)).

24. If no restitution is provided for and the person entitled to restitution cannot be compensated by the assignment of other real property, he has a right to financial compensation according to specified conditions (section 16).

25. As regards the procedure to be followed, section 9(1) of the Act provides that a rightful claimant must lodge his claim with the appropriate land office and at the same time request restitution from the person or entity possessing the real property at issue. The latter is required to conclude, within 60 days, an agreement on the transfer of the property with the claimant (*restituční dohoda*, “restitution agreement”). According to section 9(2), any restitution agreement must be confirmed by the appropriate land office. If the land office does not approve the restitution agreement, the

entitled person can appeal to the court. If the court, too, refuses to approve the agreement, it refers the case back to the land office for a decision on the merits of the case (section 9(3)). This decision is again subject to judicial review (section 9(6)).

2. The code of administrative procedure

26. The proceedings before land offices are governed by Act No. 71/1967 (Code of Administrative Procedure).

27. Sections 3 and 4 regulate the basic principles of the proceedings before administrative authorities. The proceedings must be conducted in accordance with the law, and parties must always be given the opportunity to defend effectively their rights and interests, to challenge the facts of the case and to make proposals as to the proceedings. Furthermore, the parties enjoy equal rights and have the same obligations. The decisions of administrative authorities must be based on facts that have been established in a reliable manner.

28. Pursuant to section 21, the administrative authority shall order an oral hearing if this is required by the nature of the case, in particular where such a hearing will contribute to the clarification of the matter at issue. The parties to the proceedings must be summoned to attend the oral hearing and invited to express their comments and proposals in the course of the hearing. Oral hearings are not public unless a special legal rule provides otherwise or the administrative authority decides that the hearing shall be public.

29. According to section 23(1), the parties to the administrative proceedings and their representatives have the right to have access to documents and to make extracts therefrom, except for the records of voting.

30. According to section 32(1), administrative authorities are under the obligation to establish all facts accurately and comprehensively. For that purpose they have to obtain all necessary supporting documents and data.

3. The code of civil procedure

31. The lawfulness of decisions of the administrative authorities can be reviewed by the courts in accordance with Part V of the Code of Civil Procedure.

32. At the relevant time section 250(f) (repealed by a judgment of the Czech Constitutional Court No. 269/96 with effect from 1 May 1997) entitled the courts to deliver a judgment without an oral hearing in simple cases, in particular when there was no doubt as to whether the administrative authority had established the facts correctly, and only points of law were at issue.

33. Pursuant to section 250(i)(1), the courts, when reviewing administrative authorities' decisions, take into consideration the facts as they existed at the moment when the administrative decision was taken.

34. In accordance with section 250(m)(3), the parties to the proceedings before the court are the parties in the proceedings before the administrative authority and the administrative authority whose decision is to be reviewed.

35. Pursuant to section 250(q), when the court reviewing an administrative authority's decision does not decide without an oral hearing pursuant to section 250(f), it may take such evidence as is necessary for reviewing the decision at issue.

36. Pursuant to section 250(r), if the court quashes the decision of the administrative authority, the latter, when taking a new decision, is bound by the legal opinion expressed by the court.

37. In accordance with section 250(s), a court decision reviewing an administrative decision is not subject to a remedy except in the cases listed in sub-paragraph 2 (which are not pertinent in the present case).

38. According to section 156, a judgment must be pronounced publicly. In accordance with the established practice, the public delivery of the judgment must be recorded in the minutes also in those cases where the judgment was delivered without an oral hearing.

4. The land adjustment and land offices act no. 284/1991

39. According to section 11(1), district land offices are autonomous departments (*samostatné referáty*) of district offices.

5. The district offices act

40. At the relevant time, the status and competence of district offices was governed by Act No. 425/1990. This Act was repealed on 12 November 2000 when a new Act on District Offices (No. 147/2000) entered into force.

41. Section 2 describes district offices as administrative organs, which carry out local state administration on their respective territories. The law can empower district offices to carry out local state administration on other territories. According to section 14, the exercise of the activities of district offices is directed and controlled by the Government.

42. Pursuant to section 8(1), the head (*přednosta*) of a district office is appointed and dismissed by the Government on the proposal of the Minister of the Interior.

43. According to section 8(5), the officers of district offices are subordinated to the heads of those offices.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

44. The applicant complains that he did not have a public hearing by an independent and impartial tribunal in the restitution proceedings.

45. Article 6 § 1 of the Convention, in so far as relevant, provides:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal ... Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

A. Submissions of the parties

1. The Government

46. The Government emphasised that there are two types of decisions which a land office can adopt in restitution proceedings: first, a decision under sections 9(2) and 9(3) of the Land Ownership Act granting or refusing approval of a restitution agreement, and secondly, a decision under section 9(4) of the Act determining the property rights of a rightful claimant if approval of the agreement has been refused.

47. In the present case, in the first type of proceedings the Land Office, acting under section 21 of the Code of Administrative Procedure, held an oral hearing on 12 October 1994. According to the record of this hearing, the applicant and representatives of the two legal persons concerned were present. However, the applicant did not in the course of the proceedings submit any relevant objection concerning the ownership of the lands in dispute. According to the Government, the deeds of assignment of these lands to individual persons had since the beginning of the proceedings been included in the administrative files, to which the applicant had access. The Government claim that at the hearing of 12 October 1994 the applicant indeed declared that he withdrew from the restitution agreements when he learnt that certain lands could not be returned to him.

48. In the subsequent judicial review proceedings, the Municipal Court only examined the circumstances on which the Land Office had based its decisions and which had been apparent from the administrative file as there was no doubt about the ownership rights of the natural persons over the lands in question. In these circumstances, the holding of a public hearing could not in the Government's opinion have had any real significance for the consideration of the applicant's case. Although the Municipal Court did not hold a public hearing, its judgment of 31 May 1995, by which it upheld the two decisions of the Land Office to refuse approval of the restitution agreements, was delivered publicly, as provided for in section 156 of the Code of Civil Procedure.

49. The Government added that this judgment was not the final decision in the case, the determination of the scope of the applicant's property rights to the lands in question being the subject of the subsequent proceedings before the Land Office. In this context, they emphasised, as they had already done at the admissibility stage, that the applicant could have lodged a remedy against the Land Office's decision of 25 July 1995, as provided for in section 9(6) of the Land Ownership Act. If he had done so, he could have requested the Municipal Court to re-examine this administrative decision at a public hearing. Furthermore, the applicant could have brought a civil action before a competent district court, pursuant to section 8(1) of the Land Ownership Act, thereby disputing the validity of the transfer of his father's property to the natural persons concerned.

2. *The applicant*

50. The applicant contested the arguments of the Government. He challenged *inter alia* the Government's contention that the deeds of assignment issued on the names of the natural persons owning the lands in dispute had already been included in the administrative file at the beginning of the administrative proceedings in 1991. He submitted that they had been produced by the Land Office on 23 September 1994 and could not, therefore, have been attached to the administrative file before that date, which was itself long after the restitution agreements had been concluded on 10 December 1993 and 4 May 1994, respectively.

51. The applicant also submitted that the Land Office or the Municipal Court had not considered the fact that although the lands in issue had been expropriated in 1949 and assigned to the natural persons in 1957, they had remained under the control of the State Forest Enterprise or agricultural cooperative. The natural persons had thus formally owned the lands but had never used them. The applicant argued that the administrative file had not contained any documents which would have given any detail concerning the owners of the lands. In these circumstances, it could not be said that the facts of the case had correctly been established by the Land Office.

However, as it applied section 250(f) of the Code of Civil Procedure, the Municipal Court deprived the applicant of the possibility of raising these objections at a public hearing.

52. The applicant observed that, at the relevant time, the Constitutional Court in several restitution cases quashed judgments which had been adopted without a public hearing pursuant to section 250(f) of the Code of Civil Procedure. Invoking Article 38 of the Charter of Fundamental Rights and Freedoms and Article 6 of the Convention, the Constitutional Court found that cases involving controversial arguments could not be considered to be simple cases. Thus in decision No. II. ÚS 269/95, the Constitutional Court expressly stated that “restitution cases cannot be re-examined without a public hearing taking into account their complexity and the fact that former acts of deprivation of property rights had taken place a long time before”. Similarly, on 29 November 1994 the Constitutional Court quashed a judgment of the Prague Municipal Court given without a public hearing in another restitution case (decision No. Pl. ÚS 41/94) holding that “the simple cases mentioned in section 250(f) of the Code of Civil Procedure are, according to the legislator, cases in which the necessary evidence has been obtained and the cases themselves are quite clear and only points of law are really at issue”.

53. The applicant further submitted that he had not been invited to the public pronouncement of the judgment of the Municipal Court of 31 May 1995.

54. Finally, the applicant contended that the Land Office’s decision of 25 July 1995 could not be further challenged in the Municipal Court as the matter would have been treated as *res iudicata*. The fact that at the time of the introduction of his constitutional appeal all available remedies had been used was also confirmed by the Constitutional Court, which did not dismiss his appeal under the provisions of the Constitutional Court Act requiring the prior exhaustion of all those remedies.

B. The Court’s assessment

55. The Court reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6. This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, for example, the *Diennet v. France* judgment of 26 September 1995, Series A no. 325-A, pp. 14–15, § 33).

56. In the present case the applicant was in principle entitled to a public hearing as none of the exceptions laid down in the second sentence of Article 6 § 1 applied (see the Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171-A, p. 20, § 64). These exceptions were not invoked in the domestic proceedings. In particular, the Constitutional Court which *inter alia* examined the question of the lack of a public hearing in the present case did not refer to the exceptions. Nor did the Government invoke the second sentence of Article 6 § 1 of the Convention.

57. The Court notes that the only hearing held in the case took place on 12 October 1994 before the Mladá Boleslav Land Office. According to the record of that hearing, the applicant's restitution claims were considered in his presence and in the presence of representatives of both legal persons who had been asked to restore to the applicant the confiscated property which had earlier belonged to his father. However, the Land Office cannot be considered as an authority which satisfies the requirements of independence necessary for a tribunal within the meaning of Article 6 § 1 of the Convention. The Court observes that the Land Office is an autonomous department of the District Office which is charged with carrying out local state administration under the control of the Government (see paragraphs 40-43). The appointment of the head of the District Office is controlled by the executive and its officers are subordinated to him (see also the Kadubec v. Slovakia judgment of 2 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2531, § 57). In any event, the hearing before this administrative authority was not public, being open only to the parties and their representatives.

58. It is true that the Land Office's decisions of 12 October 1994 were subject to judicial review and that the applicant appealed to the Municipal Court and to the Constitutional Court. However, neither of these tribunals held a public hearing. As far as the proceedings before the Municipal Court are concerned, the Court observes that the applicant did not expressly ask for a public hearing to be held. The question therefore arises whether the applicant should be regarded as having waived his right to a hearing (see the Håkansson and Sturesson judgment, previously cited, pp. 20-21, § 67; Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, pp. 19-20, § 58; Zumtobel v. Austria judgment of 21 September 1993, Series A no. 268-A, p. 14, § 34).

59. The Court notes that the Municipal Court did not base its decision not to hold a hearing on the applicant's failure to request one. It rather examined *ex officio* whether the conditions set forth in section 250(f) of the Code of Civil Procedure for dispensing with a hearing were met, concluding that this indeed was the case (see paragraph 14). The Constitutional Court confirmed the Municipal Court's conclusion. In these circumstances, the Court cannot attach decisive importance to the applicant's failure explicitly

to request a hearing, but has to proceed to an independent evaluation of the question, having the requirements of Article 6 as the point of reference.

60. In this respect the Court notes that the Municipal Court's jurisdiction was not strictly limited to matters of law, but also extended to the assessment of whether the facts had been correctly established by the administrative authority. The Municipal Court could, if necessary, also take evidence (see paragraph 35). The submissions of the applicant to the Municipal Court in turn (see paragraph 13) indicate that his appeal was capable of raising also factual issues (see the *Fredin v. Sweden* judgment of 23 February 1994, Series A no. 283, p. 11, § 22). Without questioning the Municipal Court's conclusion that the facts had been correctly established by the administrative authority, the Court concludes, taking into account also what was at stake for the applicant, that in these circumstances Article 6 § 1 required an oral hearing before a tribunal.

61. The Court further notes that in the subsequent administrative proceedings the Land Office, which was bound by the judgment of the Municipal Court of 31 May 1995, did not hold a further hearing with the parties of the case. The Court considers that although the applicant could have requested a judicial review of the Land Office's decision of 25 July 1995, it is unrealistic to assume that in such review proceedings, concerning an administrative decision based on the Municipal Court's earlier findings, the court would have granted an oral hearing for the purpose of examining essentially the same questions which it had previously found to fall within the scope of application of section 250(f). Moreover, the Constitutional Court in its above decision, which was adopted in full knowledge of the Land Office's decision of 25 July 1995, did not suggest that different considerations might apply as regards a possible judicial review of that latter decision. In these circumstances, the Court cannot attach weight to the allegedly different character of the two administrative decisions of the Land Office underlined by the Government (see paragraph 46). It recalls that section 250(f) of the Code of Civil Procedure was still in force at the relevant time and the Constitutional Court indeed found its application in the applicant's case to be unobjectionable.

62. The Court further observes that the proceedings before the Constitutional Court were also conducted without a public hearing. However, these proceedings, limited to the examination of questions of constitutionality, did not involve a direct and full determination of the applicant's civil rights in the restitution proceedings. A public hearing in those proceedings could not, therefore, have remedied the lack of a hearing at the decisive stage of the proceedings where the merits of the applicant's restitution claims were determined. Finally, the Court finds that the applicant was not obliged to introduce judicial proceedings under section 8

of the Land Ownership Act, the Court being concerned in the present case only with the proceedings under section 9 of the Act which were actually pursued.

63. Consequently, the Court holds that there has been a breach of Article 6 § 1 on account of the lack of a public hearing before an independent and impartial tribunal in the restitution proceedings complained of by the applicant.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. In respect of pecuniary damage the applicant's nephew, Mr Bouček, claimed 1,489,051 korunas (CZK) in compensation for the value of the lands which could not be returned to the applicant, and CZK 588,852 in compensation for loss of profits from 4 May 1994, the date on which the Líny – Krásná Ves Agricultural Co-operative entered into the restitution agreement with the applicant (see paragraph 11), to 2001.

66. The Government asserted that there was no causal link between the sums claimed by the applicant's nephew and the alleged violation of Article 6 § 1 of the Convention in the restitution proceedings.

67. The Court first recalls that in the decision as to the admissibility of the present application, it recognised the *locus standi* of Mr Bouček to pursue the application after the applicant's death on 1 May 1998 (see paragraph 7). The Court pointed out that this recognition of Mr Bouček's entitlement to pursue the application in no way affected the scope of the case as originally submitted by the applicant. The Court considers that in such circumstances the person entitled to pursue the application after the applicant's death may also take the applicant's place as regards claims for just satisfaction under Article 41 of the Convention and Rule 60 of the Rules of Court.

68. The Court notes that the sums claimed in respect of pecuniary damage relate to the value of the lands which were not returned to the applicant and to the loss of profits connected with the use of these lands. The applicant's nephew is in effect claiming compensation for an expropriation of his uncle's property which, according to him, was unlawful. However, the applicant's complaint under Article 1 of

Protocol No. 1 to the Convention was declared inadmissible. The only complaint which remained before the Court for the determination of the merits was the complaint concerning the lack of a public hearing before an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention. In this regard, the Court cannot speculate as to the outcome of the restitution proceedings had the position been otherwise, i.e. if a public hearing had taken place before the national courts.

69. Moreover, the Court observes that on 3 July 1998, the applicant's lawyer introduced before the Land Office a request for compensation by the assignment of other plots pursuant to section 11(2) of the Land Ownership Act and that this request is still pending before the Land Office (see paragraph 18) and is not the subject of the present complaint.

70. The Court considers therefore that the applicant's nephew has not shown that there exists a causal link between the pecuniary damages claimed by him and the violation of Article 6 § 1 of the Convention established by the Court. Accordingly, his claim for pecuniary damages must be rejected.

71. The Court notes that the applicant's nephew has not claimed compensation for non-pecuniary damage in respect of the violation of Article 6 § 1. In any event, the application of section 250(f) of the Code of Civil Procedure underlying this violation did not affect Mr Bouček personally as this provision had already been repealed by the time he took over his uncle's case. In these circumstances the Court considers that its finding of a violation of Article 6 § 1 constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage which the applicant may have suffered as a result of this violation.

B. Costs and expenses

72. The applicant's nephew requested the Court to award him the sum of CZK 340,420.50, calculated on the basis of domestic law rates, in respect of costs and expenses which he had incurred in the proceedings before both the domestic authorities and the Convention organs. Mr Bouček further indicated that the applicant's expenses were covered by the legal aid granted to the applicant by the Commission (see paragraph 2).

73. The Government argued that the sums claimed were excessive and that the applicant's nephew had not shown that all the costs and expenses claimed had been necessarily incurred. They also pointed out that the applicant and his nephew had benefited from legal aid before the Convention organs.

74. 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, *Reports of Judgments and Decisions* 1997-II, p. 227, § 79). The Court notes that Mr Bouček confirmed that his uncle's expenses relating to the proceedings before the Convention institutions were covered by the legal aid which had been awarded to him by the Commission. It also notes that the costs in the inheritance proceedings could not have been incurred in order to prevent or rectify a violation affecting the restitution proceedings. It considers therefore that it should reject this part of the claim. With regard to the costs of Mr Bouček's representation before the Convention organs, 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 Okçuoğlu v. Turkey* judgment of 8 July 1999, *Reports of Judgments and Decisions* 1999-IV, § 98). Noting that the application has been only partly successful and deciding on an equitable basis, the Court awards the applicant's nephew in aggregate the sum of CZK 85,000^[1] in legal costs and expenses for the proceedings before the Commission and the Court, less the 4,100 French francs received by way of legal aid from the Council of Europe, such sum to be paid, according to the wish expressed by the applicant's nephew, into his lawyer's bank account in the Czech Republic.

C. Default interest

75. According to the information available to the Court, the statutory rate of interest applicable in the Czech Republic at the date of adoption of the present judgment is 8% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

¹ [The equivalent of approximately 17,000 FRF]

2. *Holds*

(a) that the finding of a violation constitutes in itself sufficient just satisfaction in respect of any non-pecuniary damage which the applicant may have suffered as a result of this violation;

(b) that the respondent State is to pay, within three months, to the applicant's nephew CZK 85,000 (eighty-five thousand) for costs and expenses, less the 4,100 (four thousand one hundred) French francs already paid by the Council of Europe by way of legal aid;

(b) that simple interest at an annual rate of 8% shall be payable from the expiry of the above-mentioned three months until settlement;

3. *Dismisses* the remainder of the claims for just satisfaction lodged by the applicant's nephew.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 July 2001.

L. WILDHABER
President

M. DE SALVIA
For the Registrar