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

SECOND SECTION

CASE OF PINCOVÁ AND PINC v. THE CZECH REPUBLIC

(Application no. 36548/97)

FINAL

05/02/2003

JUDGMENT

STRASBOURG

5 November 2002

In the case of Pincová and Pinc v. the Czech Republic,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr GAUKUR JÖRUNDSSON,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs W. THOMASSEN,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 8 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 36548/97) 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 two Czech nationals, Mrs Blažena Pincová and her son Mr Jiři Pinc ("the applicants"), on 7 May 1997. The second applicant died on 10 April 2000 and the Court ruled that Mr Jiři Pinc, his son and one of his legal heirs, had standing to continue the proceedings.

2. The applicants, who were granted legal aid, were represented by Mrs J. Veselá, of the Czech Bar. The Czech Government ("the Government") were represented by their Agent, Mr V. Schorm.

3. The purpose of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 1 of Protocol No. 1. On 1 July 1998 the Commission (Second Chamber) decided to bring it to the attention of the Government, who were invited to submit observations in writing on its admissibility and merits.

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. It was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 6 June 2000, the Chamber declared the application partly admissible.

7. The applicants and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1) This case was assigned to the newly composed Second Section (Rule 52 § 1).

FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 29 December 1967 the first applicant and her husband purchased a forester's house with a barn and cowshed which they had been renting since 1953. The sale price – 14,703 Czechoslovak korunas (CSK) – was fixed by a surveyor appointed by the landlord, a State enterprise which was also the couple's employer and which had acquired the house without compensating the former owners, who had been dispossessed of their property in 1948 pursuant to Law no. 142/1947 on revision of the First Land Reform (*zákon o revizi první pozemkové reformy*).

10. On 30 June 1968 the first applicant and her husband paid the vendor CSK 2,030 under the terms of an agreement giving them the right to make personal use of the land attached to the house.

11. On 23 December 1992, after the entry into force of Law no. 229/1991 (*zákon o půdě* – "the Land Act"), the son of the persons to whom the forester's house had belonged until its confiscation in 1948 instituted proceedings in the Příbram District Court (*okresní soud*) seeking recovery of the property by virtue of section 8(1) of the Land Act. He alleged that the acquisition of the house by the first applicant and her husband had been vitiated by a breach of the regulations in force at the time and that they had enjoyed an unlawful advantage in that the price they had been required to pay had been lower than the property's real value. He argued that the valuation of the house had been neither objective nor compatible with the legislation then in force.

12. In their defence, filed with the District Court on 12 February 1993, the applicants submitted that the purchase price had been properly calculated in accordance with the provisions applicable at the material time, and pointed out that the contract of sale had been adjudged valid by the Příbram branch of the State notary service (*státní notářství*), which had registered it.

13. On 7 February 1994 the District Court commissioned an expert opinion to establish whether the 1967 valuation had complied with the regulations then in force. The expert's report was filed with the court on 30 March 1994. In it the expert stated that after studying the file and the 1967 valuation he had found that "this valuation was not entirely compatible with the legislation in force at the time" and that he had "in addition noted instances of underestimation of area". He had therefore decided to "carry out a complete revaluation, applying the legislation formerly applicable and taking as [his] basis the state of affairs as described in the course of the proceedings" in order to be able to compare the two valuations and quantify the difference between them. The expert report assessed (a) the inhabitable parts of the property and (b) the non-inhabitable parts, namely the barn and cowshed. With regard to the latter, the expert reported:

> "... the small barn and the adjoining cowshed were classified as 'small constructions', as they served only for the use of the occupier, not for any agricultural activity. That led to an essential difference between the valuation produced ... in 1967 and the present one. My valuation is justified by a written instruction of 1965 relating to Article 7, which provides: 'The purchase price may also be applied to small constructions used for animal husbandry, provided that this activity does not go beyond the personal needs of the owner and the members of his family.' The barn is currently used as a toolshed. ... My classification of the two buildings complied with Annex 5 to Decree no. 73/1964 ... I took the barn and cowshed to be possessions in personal ownership, as they were not used for agricultural activities but only for the needs of the owner. If they had been private property the legislation then in force would not have permitted their transfer. Public establishments could sell to individuals only buildings classifiable as properties in personal ownership ... The difference in price for these two buildings, in relation to the 1967 valuation, is nearly CSK 4,600 ..."

14. The applicants pointed out that the expert's valuation of the inhabitable parts of the premises was practically identical to the 1967 valuation, the difference of CSK 4,600 being solely due to the valuation of the barn and cowshed. They challenged the valuation procedure because it had been based on Decree no. 73/1964, which did not specify the prices applicable in practice to buildings belonging to socialist organisations, and whose Article 7 § 2, they argued, excluded its application to their case. They further submitted that the price difference that had been noted was due in large part to a different assessment of the depreciation to be taken into account for the two buildings in question.

15. After the death of the first applicant's husband, her son, the second applicant, became the co-owner of the forester's house.

16. In a judgment of 12 September 1994 the District Court allowed the application by the son of the former owners and decided to transfer title to the disputed property to him, ruling as follows:

> "After assessing the evidence, particularly the depositions of the parties and the witnesses, the contract of sale registered by the Příbram State notary service on 3 February 1969, the agreement of 30 June 1968 conferring the right to make personal

use of the land, ..., the valuation of the house ... made on 20 December 1967 ..., the expert report of 15 December 1992, drawn up in accordance with instructions from [the first applicant] and admitted by the court in evidence, ..., and the expert report on the price of the buildings, drawn up by the court-appointed expert ..., the Court notes that ... the Land Act (Law no. 229/1991) applies, since the dispute concerns transfer of title to buildings intended for forestry production, within the meaning of section 1(1)(c) of the Land Act ...

The claimant ... is entitled to claim restitution under the restitution legislation ... The members of the defendants' family were not leading figures of the former communist regime but simple forestry workers who moved into the house as employees of the enterprise. They agreed to buy it when their employer gave them the opportunity to do so because they had no alternative accommodation. As for the purchase price, they accepted the amount fixed by [the surveyor], which they had no reason to challenge.

Nevertheless, it is incontestable that whereas the purchase price of the house should have been fixed at CSK 19,477, it cost them only CSK 14,703. Consequently, the conditions of section 8(1) of the Land Act are satisfied in the instant case because, in 1967, the defendants acquired the property at a price lower than the true value. The difference amounted to a quarter of the true value."

17. On 11 October 1994 the applicants appealed against the above judgment to the Prague Regional Court (*krajský soud*). They submitted that at the time when the proposal that they should purchase the house had been made to them they were under threat of eviction. They pointed out that both the surveyor's report and the contract of sale had been drawn up by the vendor, and that the transaction had been effected in accordance with the legislation then in force – indeed the Příbram State notary service had verified the purchase price before registering the contract. They alleged that the court expert's report did not constitute sufficient proof that the purchase price had been lower than the price required by the regulations at that time. They accordingly asked the Regional Court to order a new expert report.

18. On 4 January 1995 the Prague Regional Court upheld the first-instance judgment, ruling as follows:

"It emerges from the [1994] expert report ... that the valuation made [in 1967] did not comply with the rules in force at the time. ... The barn and the cowshed should have been valued as buildings in personal ownership, since they were not used for agricultural purposes but had been placed at the disposal of the owners of the house. ... According to Regulation 10/1964 of the Ministry of Economic Affairs ... only buildings in personal ownership could be sold to citizens by a socialist organisation. If the regulation then in force and Decree no. 73/1964 had been applied, the purchase price would have been fixed at CSK 19,477.

Consequently, the Regional Court upholds the District Court's finding that the question of the transfer of title must be considered under Law no. 229/1991 ... It has been established that the purchase price was determined by the vendor without the benefit of any expert report ... and that it was lower than the price required by the rules on prices then in force, which is apparent from the [court] expert's report.

> As to the appellants' objection that the contract of sale was registered by the State notary service ... which deemed the barn and cowshed to be buildings in private ownership, it should be noted that this classification was the result of a legal opinion which is not a binding precedent for adjudication of the case ... Moreover, regard being had to the fact that the claimant has already obtained the restitution of 50 hectares of woodland, it is desirable, in accordance with Law no. 229/1991 ..., for the forester's house to be used for its original purpose."

19. On 17 March 1995 the applicants appealed to the Constitutional Court (*Ústavni soud*), submitting that they had purchased the house in accordance with the rules then in force and without any unlawful advantage. They also relied on Article 399 § 2 of the Civil Code, under which a contract of sale could be declared void only when the purchase price was too high. They argued that the Regional Court had deprived them of their property and that accordingly their right to protection of their property under Article 11 § 1 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*) had been infringed. They further complained that they had been deprived of fair and appropriate compensation, contending that although by virtue of section 8(3) of the Land Act a natural person was entitled to reimbursement of the purchase price and the costs reasonably incurred for the upkeep of the property, the sum of 14,703 Czech korunas (CZK) for the purchase price and reimbursement of their costs could never make good the loss of the house. They had been deprived of their title to the property on account of the difference noted between two prices calculated according to two different methods. Moreover, in the judicial proceedings they had not been on an equal footing with the other party, particularly in view of the possibility the claimant enjoyed of consulting the relevant documents. In that connection they relied on Article 37 of the Charter.

20. The applicants also asked the Constitutional Court to stay execution of the Regional Court's judgment and declare null and void part of section 8(1) of the Land Act. They argued that in so far as the provision in question permitted restitution in the event of "the purchase of immovable property at a price lower than the price required by the regulations on prices then in force", thus threatening title acquired in accordance with the legislation applicable at the time of purchase, it gave former owners the possibility of challenging the valuation of properties made at the time of their transfer. They asserted that section 8(1) of the Land Act thus caused them prejudice identical to that caused between 1948 and 1989, which the Act was supposed to attenuate. They submitted that it was inadmissible to make natural persons who had acquired property in good faith and in accordance with the legislation applicable at the material time bear responsibility for unlawful decisions or incorrect procedures adopted by the State.

21. On 24 April 1995 the applicants asked the District Court to stay execution of the Prague Regional Court's judgment, to exempt them from

payment of the costs of the proceedings and to reopen the case. In the latter application they based their arguments on an opinion on the question of methodology delivered by the author of an exegesis of the relevant legislation published by the Czech Prices Authority (*Český cenový úřad*), which in their submission proved unequivocally that the court expert had made a mistake. They also submitted to the District Court documents from the State archives capable of proving what use the disputed property had been put to in the past.

22. On 21 April 1995 people living in the municipality of Hříměždice and other villages sent a petition to the President of the Republic and to Parliament expressing their belief that the human rights guaranteed by the Constitution had been infringed in the applicants' case. They pointed out that the son of the former owners had recovered possession of a large estate (40 hectares of woodland and 100 hectares of other land), whereas the applicants had lost nearly all their possessions, although they had acquired them in good faith.

23. On 20 June 1995, in response to the petition, an MP sent a written question to the Deputy Prime Minister, the Minister of Agriculture and the Director of the Legislation and Public Administration Office, saying that he wondered whether section 8(1) of the Land Act, which provided for the possibility of restitution in the event of "the purchase of immovable property at a price lower than the price required by the regulations on prices then in force", was not contrary to the principle of legal certainty, in so far as it made it possible to transfer the responsibility for unlawful acts by the State to individuals who had acted in good faith. He also considered problematical, from the point of view of equality between litigants, legal provisions such as section 21(a) of the Land Act, which guaranteed persons who could claim restitution the right to various forms of assistance or exemption from costs in the judicial proceedings.

24. The Deputy Prime Minister replied on 7 July 1995. He said the doubts expressed were unfounded and pointed out that the Land Act had been framed in such a way as to pose, in addition to the general conditions, three additional tests each designed to exclude the purchasers' good faith. The fact that the Land Act referred to the legislation in force at the time of purchase could not be considered to impair legal certainty on account of some retrospective effect.

25. On 23 August 1995 the District Court examined at a public hearing the applicants' application for the proceedings to be reopened. Despite a new expert report submitted by them and drawn up on their own initiative, it refused the application, noting, *inter alia*, that in the original proceedings neither party had called as a witness the expert appointed by the court and that it was only on appeal that the applicants had asked for the expert evidence to be reviewed. Consequently, the statutory conditions for a retrial had not been met in the instant case.

26. On 27 September 1995 the applicants appealed against the above decision, asserting that they had submitted evidence which it would have been objectively impossible for them to present during the original proceedings. On 26 February 1996 the Prague Regional Court upheld the decision of 23 August 1995, holding that there were no facts, decisions or evidence which it would have been impossible for the defendants to rely on in the initial proceedings. However, it gave leave for an appeal on points of law against its ruling.

27. On 11 April 1996, therefore, the applicants appealed on a point of law to the Supreme Court (*Nejvyšší soud*). They argued that in the proceedings on their appeal against the judgment which had transferred title they had proposed in vain the commissioning of a second expert report and that the Regional Court's attitude had prompted them to have a new expert report drawn up on their own initiative.

28. On 13 January 1997 the Constitutional Court dismissed the applicants' constitutional appeal as manifestly ill-founded, ruling as follows:

> "The alleged violation of Article 11 § 1 of the Charter of Fundamental Rights and Freedoms must be examined not just from the appellants' point of view but also from that of the person claiming restitution... The Court refers in that connection to its judgment published under file no. 131/1994 ..., in which it noted that the purpose of restitution was to attenuate infringements of the rights of real-property owners by making reparation for the unlawful act committed at the time of the transfer of the property and by giving priority to the restitution of properties in their original condition. Consequently, the Court cannot find a violation of Article 11 § 1 unless the statutory conditions for restitution are satisfied. ...
>
> The annulment sought by the applicants, of part of section 8(1) of the Land Act (Law no. 229/1991), would have limited the right to restitution and would have harmed the interests of a large number of restitution claimants ... The laws on restitution must establish the conditions for redressing wrongs, it being understood that it is for the national courts to examine all the circumstances in the light of the purport and general object of those laws.
>
> The reporting judge has established, in the light of all the documents submitted, that the ordinary courts correctly applied the law to the case in allowing the claim for restitution and in deciding that title should be transferred to the claimant ..., as the appellant and her husband had bought the house at a price lower than the price resulting from application of the rules on prices then in force.
>
> As regards violation of Article 37 of the Charter, which enshrines the principle of equality between litigants, the Court notes that during the judicial proceedings the courts scrupulously examined both the evidence adduced by the person claiming restitution and the evidence adduced by the defendants. ...
>
> Having regard to the circumstances of the case, the reporting judge did not deem it necessary to stay execution of the Regional Court's judgment, bearing in mind the fact that if the appellants were to be evicted they would be allocated alternative accommodation."

29. On 24 March 1997 the applicants submitted further grounds for their appeal on points of law (*dovolání*), observing that all the courts dealing with their case, including the Constitutional Court, had proceeded on the assumption that the report of the court-appointed expert was correct, whereas, among other defects, it had been established on the basis of a directive from the Ministry of Economic Affairs which had no legal validity, and that Decree no. 73/1964 was not applicable to the case. They also drew attention to the fact that, according to the second expert report drawn up at their request, the purchase price they had paid in 1967 was not lower but higher than the price required by the legislation in force at the time of the sale.

30. On 28 April 1997 the Supreme Court declared the applicants' appeal on points of law inadmissible, pointing out that it could have been admitted in the initial proceedings but could not be in proceedings brought by means of an application for a retrial.

31. The applicants were reimbursed by the Ministry of Agriculture the purchase price they had paid in 1967 and the sum they had paid for the right to make personal use of the land. They thus received altogether CZK 16,733. On the other hand, reimbursement of the costs they had reasonably incurred for the upkeep of the house was put off on account of a disagreement between the applicants and the State over the applicable rate. According to the applicants, the State had announced that it was prepared to pay them CZK 156,646 but had never made the slightest payment, in spite of their request that it do so. The amount must therefore be fixed by the District Court, the applicants having brought an action against the Ministry of Agriculture in April 2000 seeking payment in the sum of CZK 364,430.

32. According to the information supplied by the parties, the new owner of the property has not to date offered the applicants alternative accommodation and they still live in the house. They contended that the new owner had refused to sign a tenancy agreement with them in order to regularise the situation but had brought an action in the District Court seeking payment of arrears of rent in the sum of CZK 28,072 (corresponding to more than CZK 900 per month), plus default interest. Apparently this action led on 31 March 2000 to an order to pay being made against them. When they appealed, two hearings were seemingly held on 27 April and 26 June 2000, and the owner, it would appear, is now seeking a still higher sum, corresponding to a rent of CZK 1,200 per month. The applicants observe that the proceedings they brought in April 2000 in order to determine how much they should be reimbursed for the costs they incurred for the upkeep of the property are still pending. They therefore consider that their position *vis-à-vis* the public authorities is less favourable than that of the new owner.

II. RELEVANT DOMESTIC LAW

A. The Constitutional law

33. Article 11 §§ 1 and 2 of the Charter of Fundamental Rights and Freedoms provide, among other matters, that everyone enjoys the right of property. Statute law must specify which goods necessary for society's needs, development of the national economy and the public interest may be possessed exclusively by the State, by municipalities or by legal persons designated therein; it may also make provision for certain goods to be possessed exclusively by citizens or natural persons resident in the Czech and Slovak Federal Republic. Under Article 11 § 3, any abuse of property to the detriment of the rights of others or in conflict with the general interest protected by law is forbidden. Article 11 § 4 provides that expropriation or enforced restriction of the right of property is possible only in the public interest, in accordance with the law and in return for compensation.

34. Under Article 37 § 2 of the Charter everyone is entitled to legal assistance in proceedings before the judicial authorities, other State authorities or the administrative authorities. Article 32 § 1 provides that all parties to judicial proceedings must have the same rights.

B. The Land Act (Law no. 229/1991)

35. Section 1(1)(c) of the Land Act provides that the Act is applicable to inhabitable and farm buildings and to constructions, including the land on which they have been built, used for agricultural or forestry production, or for water management linked with such production.

36. Section 4(1) provides that claims for restitution may be lodged only by a national of the Czech and Slovak Federal Republic whose lands, buildings and/or constructions which had formerly been part of an agricultural undertaking were transferred to the State or other legal persons under the conditions set out in section 6(1) between 25 February 1948 and 1 January 1990. Section 4(2)(c) provides that where such a person dies or is declared deceased before expiry of the time-limit laid down in section 13, his or her right to restitution is transferred, on condition of citizenship of the Czech and Slovak Federal Republic, to the following natural persons: in equal shares to the children and spouse of the person referred to in section 4(1); where a child dies before expiry of the time-limit laid down in section 13, his or her children succeed to the right to claim, and if one of them dies the right passes to his or her children.

37. Section 6(b) provides for the return, to persons entitled to claim its restitution, of immovable property transferred to the State or a legal person

by confiscation without compensation under Law no. 142/1947 on revision of the First Land Reform or Law no. 46/1948 on the New Land Reform.

38. Section 8, amended by Law no. 195/1993, provides in particular that it is for the courts to decide whether to return a property in the possession of a natural person who acquired it from the State or another legal person in breach of the rules then in force or at a price lower than the price required by the regulations on prices applicable at the material time, or who enjoyed an unlawful advantage at the time of purchase. Section 8(3) provides that the person who is obliged to return a property pursuant to section 8(1) is entitled to reimbursement of the purchase price and the costs reasonably incurred for its upkeep.

39. Section 21(a) provides for exemption from the payment of administrative fees in connection with restitution, exchange of properties or compensation. A person entitled to claim restitution who seeks to assert his right against a person required to return the property concerned does not have to pay court fees. That exemption also applies to persons who seek to assert their rights under section 8. Costs for valuations and for identifying and surveying plots of land are borne by the State.

40. Under section 28(a), and except where otherwise provided, the amount of compensation awarded under the Land Act is fixed in relation to the prices valid on 24 June 1991, as Decree no. 182/1988 applies to the prices of real property.

C. The Civil Code

41. Under Article 712 of the Civil Code, alternative accommodation may take the form of either a compensatory flat or compensatory housing. A compensatory flat means a flat whose dimensions and facilities are such as to guarantee that the tenant and his household can be housed in a manner consistent with respect for human dignity. Compensatory housing means a bed-sitting-room or a room in a hostel for young unmarried persons, or a sublet part, whether furnished or unfurnished, of a flat rented by another tenant. If the tenant is entitled to alternative accommodation, he is not obliged to vacate the flat from which his eviction is sought until he has received appropriate compensation; co-tenants are entitled to only one offer of alternative accommodation.

THE LAW

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

42. The applicants complained that they had been deprived of possessions they had acquired in good faith and in accordance with domestic legislation, alleging that they had not received adequate compensation. They relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

43. According to the Court's case-law, Article 1 of Protocol No. 1 comprises three distinct rules. The first, which is expressed in the first sentence of the first paragraph and is of a general nature, lays down the principle of peaceful enjoyment of property. The second rule, in the second sentence of the same paragraph, covers deprivation of possessions and subjects it to certain conditions. The third, contained in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. These rules are not "distinct" in the sense of being unconnected: the second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, are to be construed in the light of the principle laid down in the first rule.

44. In the present case it is not disputed that the applicants suffered an interference with their right of property which amounted to a "deprivation" of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The Court must therefore examine the justification for that interference in the light of the requirements of Article 1 of Protocol No. 1.

45. It reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that the States have the right to control the use of property by enforcing

"laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, pp. 850-51, § 50; *The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII; and *Malama v. Greece*, no. 43622/98, § 43, ECHR 2001-II).

46. In the present case it is not in dispute between the parties that the deprivation of the applicants' possessions was based on the Land Act (Law no. 229/1991), which made it possible for persons who satisfied the relevant conditions to recover certain types of property and therefore authorised the dispossession of the persons in possession of the property concerned. The Court notes that the requirement of lawfulness was met.

47. The Court must now ascertain whether this deprivation of possessions pursued a legitimate aim, that is, whether there was a "public interest" within the meaning of the second rule set forth in Article 1 of Protocol No. 1. It considers in that connection that, because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment of the existence of a problem of public concern warranting measures of deprivation of property. They accordingly enjoy in this sphere a certain margin of appreciation, as in other areas to which the Convention guarantees extend.

48. Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment be manifestly without reasonable foundation (see *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 32, § 46, and *Malama*, cited above, § 46).

49. In the instant case the Government asserted that the objective of the Land Act was to "attenuate the consequences of certain infringements of property rights suffered by the owners of real property used in agriculture and forestry between 1948 and 1989". The legal instrument chosen to attain that objective was "restitution"; the system was aimed at providing reparation for the unlawful act committed at the time of the property's transfer and gave priority to the restitution of properties in their original state.

Restitution was intended to provide redress for the illegality of a transfer of title, or other unlawful interference with the right of property, by the handover of the property in its original legal condition, with retrospective

effects. Restitution was therefore not an enforced deprivation of property, but an obligation to reconstitute the original legal situation.

50. The applicants did not dispute that the Land Act's objective was as represented by the Government, but submitted that it was still necessary to respect the essential principles of fairness, which should govern both substantive law and its application. Those principles had not been respected in the instant case, since although the State had attenuated the effects of the earlier infringements of property rights it had done nothing to lessen those of the new interference committed to their detriment.

51. The Court notes that the aim pursued by the Land Act is to attenuate the effects of the infringements of property rights that occurred under the communist regime and understands why the Czech State should have considered it necessary to resolve this problem, which it considered damaging to its democratic regime. The general purpose of the Act cannot therefore be regarded as illegitimate, as it is indeed "in the public interest" (see, *mutatis mutandis*, *Zvolský and Zvolská v. the Czech Republic* (dec.), no. 46129/99, 11 December 2001).

52. The Court observes that any measure which interferes with the right to peaceful enjoyment of possessions must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38, and *The former King of Greece and Others*, cited above, § 89). Thus the balance to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has had to bear a "disproportionate burden" (see, among many other authorities, *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, pp. 34-35, §§ 70-71).

53. Consequently, the Court has held that the person deprived of his property must in principle obtain compensation "reasonably related to its value", even though "legitimate objectives of 'public interest' may call for less than reimbursement of the full market value" (ibid.). It follows that the balance mentioned above is generally achieved where the compensation paid to the person whose property has been taken is reasonably related to its "market" value, as determined at the time of the expropriation.

54. In the present case, the Government asserted that the Land Act maintained a reasonably proportionate relationship between the means employed and the aim pursued, since it required, in addition to the illegal transfer of the property concerned to the State, a further element of illegality vitiating the transfer of the same property from the State to a natural person. At the same time, it entitled the latter to reimbursement of the purchase price and the costs reasonably incurred for the upkeep of the property.

In addition, the law prohibited the eviction of the former owner from the returned property before appropriate alternative accommodation had been made available to him. The Government pointed out, however, that although an offer of alternative accommodation from the new owner was not excluded *a priori*, there was no requirement under Czech law for him or her to make such an offer. In that respect, therefore, the evicted person could not press any claim through the courts. Further, regard being had to the general provisions of the Civil Code, persons obliged to return a property (like the applicants) were not required to vacate it until alternative accommodation had been allocated to them.

55. The Government accordingly considered that the burden to be borne by natural persons required to return a property was not excessive and that the means employed were not disproportionate in relation to the interest to be protected.

56. The applicants submitted that it was unfair that the only compensation they could secure was reimbursement of the price they had paid for the purchase in the 1960s, which represented approximately one fiftieth of the present market value, and the costs they had reasonably incurred for the upkeep of the property, the amount under the latter head being fixed according to the tariff in force on 24 June 1991. They also considered unfair the obligation they were under to move out and rent alternative accommodation, or pay rent in order to be able to occupy the building they had looked after for most of their lives. They complained that they had been deprived of their title to the house, which they had allegedly acquired in breach of the rules in force at the time, but also of their title to the land, which they had acquired in accordance with those rules.

57. The applicants therefore submitted that the requirement of proportionality between the means employed and the aim pursued had not been satisfied in their case. They considered that they had had to bear an individual and excessive burden, aggravated by the long periods of mental distress which the first applicant, who was nearly 80 years of age, and the original applicant, who had been afflicted by illness, had had to endure.

They further asserted that neither the first applicant nor her late husband knew when they bought the house in 1967 that it had not previously belonged to the State, which had acquired it by confiscation. In that context they pointed out that in 1967 only persons who could show that they had a legitimate interest were permitted to consult the land register. Taking into

account the fact that they were forestry workers, it would be unreasonable to criticise them for not making any effort to ascertain, at a time when everything was in principle owned by the State, whether or not the house had belonged at some time in the past to a different owner.

58. The Court accepts that the general objective of the restitution laws, namely to attenuate the consequences of certain infringements of property rights caused by the communist regime, is a legitimate aim and a means of safeguarding the lawfulness of legal transactions and protecting the country's socio-economic development. However, it considers it necessary to ensure that the attenuation of those old injuries does not create disproportionate new wrongs. To that end, the legislation should make it possible to take into account the particular circumstances of each case, so that persons who acquired their possessions in good faith are not made to bear the burden of responsibility which is rightfully that of the State which once confiscated those possessions.

59. In the present case the Court accepts the applicants' argument that they had acquired their possessions in good faith, without knowing that they had previously been confiscated and without being able to influence the terms of the transaction or the purchase price. Moreover, it seems that the Czech courts' finding that the applicants had acquired the property at a price lower than that required by the regulations was due above all to a different valuation of the barn and cowshed, that is, of the non-inhabitable parts of the building.

60. On the question of the burden borne by the applicants in the case, the Court considers that it is not required to decide on what basis the domestic courts should have assessed the amount of compensation payable; it cannot take the place of the Czech authorities in determining the year that should have been taken into consideration for the valuation of the house and for the assessment of the costs reasonably incurred for its upkeep (see, *mutatis mutandis*, *Malama*, cited above, § 51).

61. However, the Court cannot fail to observe that the purchase price paid in 1967, which was given back to the applicants, could not be reasonably related to its value thirty years later.

In addition, the house in question was for the applicants the only housing available. At the time of the restitution decision, in 1995, they had lived there for forty-two years, and twenty-eight of those as its owners.

62. It should also be noted that the applicants are in an uncertain, and indeed difficult, social situation. With the reimbursed purchase price they are unable to buy somewhere else to live. It is true that to date they have not been compelled to leave the house and that, according to Article 712 of the Civil Code, they must be offered alternative accommodation. Nevertheless, the Government themselves accept that it is impossible to assert that right in the courts. Moreover, the new owner of the property seems to be taking advantage of his position of strength *vis-à-vis* the applicants, whom he has

asked to pay a monthly rent even though they have no tenancy agreement. As the applicants refused to pay rent in those circumstances, the new owner has brought proceedings which are still pending.

63. The Court accordingly notes that the "compensation" awarded to the applicants did not take account of their personal and social situation and that they were not awarded any sum for the non-pecuniary damage they sustained as a result of being deprived of their only property. In addition, they have still not obtained reimbursement of the costs reasonably incurred for the upkeep of the house, even though a period of seven and a half years has elapsed since 23 January 1995, the day when the judgment of the Prague Regional Court confirming the transfer of title to the son of the former owners became final.

64. The applicants have thus had to bear an individual and excessive burden which has upset the fair balance that should be maintained between the demands of the general interest on the one hand and protection of the right to the peaceful enjoyment of possessions on the other. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. In respect of pecuniary damage the applicants claimed a total of 1,277,903 Czech korunas (CZK), which sum, they asserted, was made up of the difference (CZK 743,547) between the value of the house at the time when they lost possession of it (CZK 760,280) and the price (CZK 16,733) they paid to purchase it in 1967, together with a personal right to use the adjoining land, minus the sum of CZK 156,646 which the State had said it was prepared to reimburse them in respect of the costs reasonably incurred by them for the upkeep of the house, plus default interest from 1 April 2000 (CZK 631,549) and CZK 60,000 for work done to the property by the applicants.

The applicants further claimed CZK 2,500,000 for non-pecuniary damage caused by the long periods of mental distress they had endured.

67. The Government submitted that there had been no breach of the Convention and that the conditions for awarding the applicants just satisfaction had not been satisfied. They observed that the purchase price of

CZK 16,733 had been reimbursed to the applicants with all due diligence. On the question of the costs reasonably incurred for the upkeep of the house, the Government asserted that it had not been possible to reach an agreement, the applicants having requested an amount calculated in accordance with the rate currently in force, which the Land Act did not permit. They did not however contest the principle of that claim and were prepared to meet it as soon as the District Court had determined the amount. As to the sum of CZK 60,000 which the applicants had claimed for work on the house, the Government objected that this money was already included in the costs reasonably incurred for the upkeep of the house.

The Government did not deny that judicial proceedings could be a difficult mental ordeal, but submitted that the State was not responsible.

68. The Court notes that the applicants' claims are intended to secure reparation for both pecuniary and non-pecuniary damage. On the question of pecuniary damage, it observes that the applicants did not submit any survey or other document attesting to the current value of the house in issue. However, the Government seem not to wish to contest the figure of CZK 760,280 put forward by the applicants. The Court therefore considers that it can accept that sum.

Ruling on an equitable basis and in the light of its case-law on the matter, the Court decides to award the applicants 35,000 euros (EUR) for the pecuniary and non-pecuniary damage they sustained. That amount is to be converted into Czech korunas at the rate applicable on the date of settlement.

B. Costs and expenses

69. The applicants claimed reimbursement of CZK 302,793 for the costs and expenses they had incurred before the Czech courts and the Convention institutions. The costs of their legal representation were based on Decree no. 270/1990 governing lawyers' fees (in force until 1 July 1996) and on Decree no. 177/1996, which sets out the scale rates for lawyers' fees. Their lawyer stated that her usual contractual fees amounted to CZK 1,500 per hour of work. Out of regard for the applicants' financial situation she had borne the full cost on the understanding that the applicants would settle her bill once the case was decided.

70. The Government submitted that only the costs incurred in the Regional Court and the Constitutional Court and those linked to the application to reopen the proceedings should be taken into account, as the remaining costs had not been incurred with the aim of complaining of a violation of the Convention. In addition, they drew attention to the fact that although the applicants' lawyer had applied the lawyers' scale rates for the domestic proceedings, she had requested for the proceedings before the

Court contractual fees which they considered much too high, like the number of hours (150) said to have been spent working on the application.

71. The Court reiterates that where it finds a violation of the Convention it may award the applicants the costs and expenses they have incurred before the national courts for the prevention or redress of the violation (see, among other authorities, *Zimmermann and Steiner v. Switzerland*, judgment of 13 July 1983, Series A no. 66, p. 14, § 36, and *Hertel v. Switzerland*, judgment of 25 August 1998, *Reports* 1998-VI, p. 2334, § 63). In the present case what was at issue in the domestic courts was the applicants' right to the peaceful enjoyment of their possessions, a right which the Court has found to have been infringed. It accordingly concludes that the applicants are entitled to claim reimbursement of the costs and expenses they incurred in those courts.

72. The Court notes that the applicants have not produced any vouchers in support of their claim. However, it is obvious that they incurred costs and expenses for the above purpose and that their lawyer calculated them in accordance with the national legislation in force. Ruling on an equitable basis, the Court awards the applicants the sum of EUR 10,000, from which should be deducted EUR 772.72 they have already received in legal aid.

C. Default interest

73. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that the second applicant's son has standing to continue the present proceedings in his stead;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

3. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 35,000 (thirty-five thousand euros) in respect of pecuniary and non-pecuniary damage;

(ii) EUR 9,227.28 (nine thousand two hundred and twenty-seven euros twenty-eight cents) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 5 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President