



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

SECOND SECTION

CASE OF ZVOLSKÝ AND ZVOLSKÁ v. THE CZECH REPUBLIC

(Application no. 46129/99)

JUDGMENT

STRASBOURG

12 November 2002

FINAL

12/02/2003

In the case of Zvolský and Zvolská 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 22 October 2002,

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

PROCEDURE

1. The case originated in an application (no. 46129/99) 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, Mr Arnošt Zvolský and Mrs Jiřina Zvolská (“the applicants”), on 23 September 1998.

2. The applicants were represented before the Court by Mr Z. Koschin, of the Czech Bar, The Czech Government (“the Government”) were represented by their Agent, Mr V. Schorm.

3. In their application the applicants alleged, in particular, an infringement of their right of access to a court, enshrined in Article 6 § 1 of the Convention, and their rights of property, guaranteed by Article 1 of Protocol No. 1.

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).

6. 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). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

7. By a decision of 11 December 2001, the Chamber declared the application partly admissible.

8. 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.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. On 20 June 1967 the applicants executed a deed of sale and gift (*kupní a darovací smlouva*) under which M.R., as vendor, agreed to sell them a farmhouse in Srch and to transfer the adjoining agricultural land to them without consideration. At the time, the system for transferring agricultural holdings was by a sale of the house and gift of the adjoining land that was farmed by a socialist cooperative. The approval of the cooperative and the agreement of the competent national committee were required before the deed of sale and gift could be executed. Purchasers of land were required to give an undertaking that they would work for the cooperative.

According to the applicants, M.R. wished to secure his release from his obligation to work for the socialist cooperative and could only do so by transferring the land. It was he who had proposed the arrangement, as he wanted to sort out his domestic affairs. Under the statutory provisions then in force, the applicants were obliged, as a condition for purchasing the house, to give an undertaking to work for the cooperative as a replacement for M.R. They paid him 30,000 Czechoslovak korunas on top of the purchase price of the house, as compensation for the value of the transferred land.

10. In 1991 M.R. signed a declaration that he had transferred the land of his own free will. In the applicants' submission, that declaration constituted a rider to the deed confirming M.R.'s consent.

11. However on 1 July 1993 M.R. brought a civil action against the applicants seeking, *inter alia*, rescission under section 8(3) of the Land Act (Law no. 229/1991) of the part of the agreement that concerned the transfer of the agricultural land.

12. In a judgment of 30 September 1994, the Pardubice District Court (*okresní soud*) found in favour of M.R., holding, *inter alia*:

“[The applicants] have invited the Court to dismiss M.R.'s actions on the ground that he transferred his land of his own free will to sort out his domestic affairs and that in consideration [for that transfer] they had assumed his obligation to work for the agricultural cooperative. ...

Section 8(3) of the Land Act (Law no. 229/1991) provides that if a landowner has donated land to a private individual under duress or transferred it without consideration under a contract for the sale of an adjoining building and at the date this Act entered into force the land was still in that person's possession, the court shall, on application by a person with standing, either (a) order rescission of that part of the sale agreement by which the land was donated or transferred without consideration, or (b) order the current owner to reimburse the price of the land. ...

The Court ... finds that the aforementioned conditions were satisfied in the present case and therefore finds in favour of [M.R.]. It has been established that [M.R.] is the person with standing within the meaning of Law no. 229/1991, that is to say the person who gave [the applicants] – the obligees within the meaning of that Act – the agricultural land in connection with the sale of the building ... It has also been established that [the applicants] are currently in possession of the land. Consequently, the Court ... rescinds the section of the deed of sale and gift executed by the parties on 20 June 1967 that provides for the transfer of ownership of the land in question without consideration. ... It does not consider that the 'minuted rider to the deed' dated 6 April 1991 constitutes a valid rider to the deed of sale and gift. The statement in which [M.R.] expressly confirmed that he had sold his immovable property voluntarily and at the agreed price has no ... value in law, as it was made before the amendment to the legislation on land law that enabled him to seek restitution was passed. In fact, [M.R.] denies that he intended to sell the land [to the applicants] and the intentions of both parties are set out in the notary's minutes ... The Court finds that the [applicants'] argument that a decision in favour of [M.R.] would entail a violation of Article 11 of the Charter of Fundamental Rights and Freedoms is unfounded, as the latter was obliged to transfer ownership of the agricultural land used by the agricultural cooperative without consideration.”

13. In a judgment of 29 February 1996, the Hradec Králové Regional Court (*krajský soud*) upheld the District Court's judgment rescinding the relevant part of the deed of sale and gift. It found that M.R. had given, and thus *de facto* transferred without consideration, the agricultural land to the applicants as part of the agreement for the sale of the adjoining house. The Regional Court also noted that the terms “donate” and “transfer without consideration” were identical. At the same time, it dismissed an application by the applicants for leave to appeal on points of law (*dovolání*), holding that the request for a ruling on the construction of the words “transfer without consideration” in section 8(4) of the Land Act did not raise a question of crucial legal importance (*rozhodnutí po právní stránce zásadního významu*).

14. Article 239 § 2 of the Code of Civil Procedure provides that leave to appeal on points of law will be granted if the court hearing the appeal on points of law (*dovolací soud*) considers that the impugned decision gives rise to a question of crucial legal importance. In reliance on that provision, the applicants appealed to the Supreme Court on 14 June 1996, alleging that the ordinary courts had construed the Land Act erroneously by confusing two incompatible concepts: “donations” and “transfers without consideration”.

15. In a judgment of 29 July 1997, the Supreme Court (*Nejvyšší soud*) refused the applicants leave to appeal on points of law, holding that the Regional Court's judgment did not give rise to a question of crucial legal importance. It noted that it had considered the question of the definition of the terms “donations” and “transfers without consideration” in a number of previous decisions in which it had construed the Act as not requiring duress to have been used if the agricultural land had been transferred without consideration. The Supreme Court's judgment was served on the applicants at the earliest on 11 September 1997.

16. On 12 November 1997 the applicants lodged a constitutional appeal (*ústavní stížnost*) in which they alleged that the domestic courts' decisions had violated the constitutional guarantees embodied in Articles 1, 11 §§ 1 and 3 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), namely equality of rights for citizens and protection of property. They also sought an order abrogating section 8(4) of the Land Act.

17. On 4 August 1998 the Constitutional Court (*Ústavní soud*) declared their appeal inadmissible as being out of time. It held, *inter alia*:

“The Constitutional Court considers that litigants are not entitled to bring proceedings in the Supreme Court that do not qualify for leave under the statutory rules or to make an application in such proceedings for an order quashing decisions of the ordinary courts, unless a refusal to hear [the appeal on points of law] would constitute a denial of justice and, consequently, a breach of the right to a fair trial. The [Supreme Court's] judgment does not constitute a decision on the final statutory remedy for the protection of rights ... The constitutional appeal could only be brought against the appeal court's decision, which became enforceable on 15 May 1996. Since it was not lodged until 17 November 1997, it fails to satisfy the condition set out in section 72(2) of the Constitutional Court Act. For this reason, the Constitutional Court has no alternative but to declare the appeal inadmissible, as it was lodged after the expiry of the statutory time-limit.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional law

18. Article 10 of the Constitution of the Czech Republic (as worded at the material time) provided that treaties on human rights and fundamental freedoms that had been ratified and promulgated and were binding on the Czech Republic had immediate mandatory effect and prevailed over statute.

19. Article 11 §§ 1 and 2 of the Charter of Fundamental Rights and Freedoms provide, *inter alia*, that everyone has the right to property. It is for the legislature to identify property that is necessary for society's needs, the development of the national economy or the public interest that may be owned only by the State, local authorities or such legal entities as the

legislature may designate. It may also provide that certain property may be owned solely by citizens or legal entities domiciled in the Czech and Slovak Federal Republic. Article 11 § 3 prohibits any abuse of property that infringes the rights of others or conflicts with the general interest protected by law. The right to property must not be exercised in such a way as to cause an unlawful interference with human health, nature or the environment.

20. Article 36 § 1 of the Charter on Fundamental Rights and Freedoms provides that everyone has the right to seek justice under a set procedure from an independent and impartial court, or in specified cases, another authority.

B. Code of Civil Procedure (Law no. 99/1963)

21. Article 236 § 1 lays down that an appeal on points of law (*dovolání*) shall lie only against decisions (*rozhodnutí*) that have become enforceable, and solely as provided by law.

22. Article 239 § 1 provides that an appeal court that has upheld a decision of the court below must grant leave to appeal on points of law if it considers that its decision gives rise to a question of crucial legal importance justifying such leave (*rozhodnutí po právní stránce zásadního významu*). It may grant such leave on its own initiative.

Article 239 § 2 provides that if an appeal court refuses to grant an application for leave to appeal on points of law made by one of the parties before the decision upholding the decision at first instance was adopted, leave may only be obtained if the Supreme Court itself considers that the appeal court's decision gives rise to a question of crucial legal importance.

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

23. Section 72(1) provides that anyone claiming to be a victim of a violation by a “public authority” of a fundamental right or freedom recognised in a constitutional law or international treaty within the meaning of Article 10 of the Constitution shall have standing to bring a constitutional appeal.

Under section 72(2), constitutional appeals must be lodged within sixty days after the appellant has been served with the decision on the final statutory remedy available for the protection of his or her rights.

24. Section 75(1) provides that a constitutional appeal shall be inadmissible if the appellant has not used all available statutory remedies, other than an application to reopen proceedings. Section 75(2)(a) gives the Constitutional Court a discretion not to declare a constitutional appeal inadmissible for failure to exhaust statutory remedies if the issue at stake

goes significantly beyond the appellant's personal interest and the appeal was lodged within one year after the impugned decision or event.

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

25. Section 8(4) (formerly section 8(3)) confers on a person who has donated land to a private individual under duress or transferred it without consideration under a contract for the sale of an adjoining building the right (provided that at the date the Act came into force the land was still in that person's possession) to apply to the court, which must either (a) order rescission of the part of the contract by which the land was donated or transferred without consideration to a private individual, or (b) order the owner (or his or her estate) to pay the value of the land thus acquired, such value to be assessed by reference to the price regulations in force at 24 June 1991.

If the owner of the land does not agree to pay the price in accordance with (b) above, the court will order rescission of the agreement in accordance with (a).

E. Case-law of the Constitutional Court

26. In its decision no. I ÚS 22/93 of 5 January 1995, the Constitutional Court considered, *inter alia*, the question of the admissibility of a constitutional appeal that had been lodged outside the statutory time-limit in a case in which the appellant was not sure whether he would be granted leave to appeal on points of law. The Constitutional Court held that when an appellant decides to appeal on points of law against a decision of the appeal court in circumstances in which it is unclear whether leave to appeal will be granted, he must lodge a constitutional appeal at the same time, in order to ensure that it is brought within the statutory time-limit.

27. In its decision no. 131/1994 of 24 May 1994, the Constitutional Court dismissed an application by forty-one members of Parliament for an order abrogating section 8(3) of the Land Act. In its reasons, it stated that section 8(3) allowed private individuals' land to be expropriated lawfully and restrictions to be imposed on the manner in which they exercised their right of property without payment of compensation, adding that the rule applied not only to rights of property that had been acquired by taking advantage of the socialist system but also to those acquired in good faith. It noted the legitimate aim pursued by the Land Act and the priority given to restoring land to original owners who had been deprived of it without compensation between 1948 and 1989. In the circumstances, it was both feasible and fair to ask those who had received property without consideration to return it without compensation to the original owner, who had been forced to donate it to them.

28. In its decision no. IV ÚS 146/96 of 30 July 1996, the Constitutional Court said that notwithstanding the fact that appeals on points of law had no suspensive effect and did not affect the enforceability of appeal court decisions, the initial target of a constitutional appeal had to be the Supreme Court's decision. If the constitutional appeal was directed only against the appeal court's judgment, the Supreme Court's decision would remain valid, so that the principle of legal certainty would be violated in the event of a conflict.

29. In its decision no. I ÚS 213/96 of 26 November 1996, the Constitutional Court said that if an appellant was unsure whether an application he had just lodged for leave to appeal on points of law would be granted, then, in order to avoid being out of time with his constitutional appeal, he should lodge it at the same time, without waiting for the decision on the application for leave, since, if leave was refused, the final decision in his case would be the appeal court decision.

30. In its decision no. II ÚS 113/97 of 8 October 1998, the Constitutional Court held that an appellant whose application for leave to appeal on points of law has been dismissed by the appeal court is nevertheless entitled to apply for leave to the Supreme Court under Article 239 § 2 of the Code of Civil Procedure. Unless he does so, he will not have exhausted the statutory remedies provided to protect his rights.

31. In its decision no. III ÚS 53/98 of 8 September 1998, the Constitutional Court found, *inter alia*, that, even though the applicants had been refused leave to appeal on points of law by the appeal court, they were still entitled to seek leave under Article 239 § 2 of the Code of Civil Procedure, as they satisfied the necessary conditions. Since they had not made use of that available remedy, their constitutional appeal could not be declared admissible.

32. In its decision no. IV ÚS 93/98 of 28 April 1998, the Constitutional Court declared a constitutional appeal inadmissible for failure to exhaust statutory remedies, on the ground that the appellant had failed to exercise his right to lodge an appeal on points of law under Article 239 § 2 of the Code of Civil Procedure.

33. In its reasoning in decision no. III ÚS 224/98 of 8 July 1999, the Constitutional Court stated, *inter alia*, that if a party to the proceedings is refused leave by the appeal court to appeal on points of law, he must apply to the Supreme Court for leave under Article 239 § 2 of the Code of Civil Procedure, otherwise his constitutional appeal will be inadmissible.

34. Decision no. IV ÚS 294/98 of 23 March 1999, which was adopted after the entry into force of an amendment to the Code of Civil Procedure on 1 January 1996 extending the right of appeal on points of law, makes it clear that an appellant may only be regarded as having exhausted available statutory remedies once the Supreme Court has delivered its decision. Any other solution would give rise to an undesirable situation with the

coexistence of two sets proceedings. In such cases, time for lodging a constitutional appeal will, therefore, only start to run after the Supreme Court's decision has been served on the appellant.

35. In its decision no. III ÚS 148/99 of 15 September 1999, the Constitutional Court declared a constitutional appeal inadmissible on the ground that if a party's application to the appeal court for leave to appeal on points of law was dismissed, he would still be regarded as having failed to exhaust statutory remedies unless he applied to the Supreme Court for leave, despite the fact that it was his application to the appeal court that had made the application to the Supreme Court necessary.

36. Furthermore, applications nos. 73577/01 and 73403/01 (*Vodárenská Akciová Společnost, A.S. v. the Czech Republic* and *Turek v. the Czech Republic*, respectively), which have been lodged with the Court and communicated to the respondent Government, show that the effectiveness of lodging an appeal on points of law simultaneously with a constitutional appeal may prove to be purely theoretical. In these cases, the applicants lodged both forms of appeal at the same time, but their constitutional appeals were declared inadmissible for failure to exhaust domestic remedies, as their appeals to the Supreme Court. They subsequently lodged fresh appeals with the Constitutional Court, once the Supreme Court had refused them leave to appeal. However, their constitutional appeals were again declared inadmissible, this time on the ground that they were out of time.

THE LAW

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

37. The applicants complained that the Constitutional Court had dismissed their appeal as being out of time, without considering it on the merits. They relied on Article 6 § 1 of the Convention, the relevant part of which provides:

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

They submitted that, since the decision whether or not to grant leave to appeal on points of law had been at the Supreme Court's sole discretion, they had had trouble identifying the decision that would start time running for the purposes of the sixty-day time-limit for lodging constitutional appeals.

38. In the instant case, the Constitutional Court declared the applicants' constitutional appeal inadmissible on the ground that it should have been

lodged within sixty days of the appeal court's decision, not of the Supreme Court's judgment refusing leave to appeal on points of law. The Constitutional Court held that the Supreme Court's judgment did not constitute the decision on the final statutory remedy available to protect the applicants' rights and, therefore, the constitutional appeal should have been directed against the appeal court's decision.

A. The parties' submissions

39. The Government submitted that the complaint was manifestly ill-founded. They noted that an appeal on points of law was a special form of appeal for which leave would be granted only if the statutory conditions were satisfied. They referred to the case-law of the Constitutional Court holding that an appeal on points of law under Article 239 § 2 of the Code of Civil Procedure constituted an accessible and effective remedy. Accordingly, a constitutional appeal would only be admissible if there had been a prior appeal on points of law. The Government maintained that, although the applicants had brought such an appeal, they should have lodged their constitutional appeal at the same time in order to avoid the risk of being outside the sixty-day time-limit if they were refused leave to appeal on points of law. Had they done so, the Constitutional Court would have registered the constitutional appeal within the statutory time-limit and deferred ruling on its admissibility until after the Supreme Court's decision on the appeal on points of law. The Government pointed out that setting a time-limit for bringing an appeal was an acceptable restriction on the right of access to a court under the Court's case-law and did not infringe the rule requiring a fair trial.

40. In the instant case, the applicants' application to the Supreme Court for leave to appeal on points of law under Article 239 § 2 of the Code of Civil Procedure after the appeal court had refused leave was dismissed on the ground that the appeal did not raise an issue of crucial legal importance. Relying on the view expressed by the Constitutional Court, the Government accordingly submitted that the Supreme Court's decision did not constitute the decision on the final statutory remedy, within the meaning of section 75(1) of the Constitutional Court Act. Since the applicants had not taken the precaution of bringing the two appeals simultaneously in order to avoid being outside the time-limit for lodging a constitutional appeal, they had, through their own negligence, deprived themselves of that accessible and effective domestic remedy.

41. The applicants disagreed with the Government: the case-law on which the Government relied was incomplete, as, in an attempt to have the application declared inadmissible, they had only cited the judgments of the Constitutional Court that supported their case. The applicants said that the various divisions of the Constitutional Court had expressed relatively

divergent opinions as to which decision started the sixty-day period running, a state of affairs which they considered was contrary to the principle of equality before the law and, consequently, infringed the right to a fair trial.

42. They relied on a series of judgments in which the Constitutional Court had held that an appeal on points of law was a remedy that had to be used before a constitutional appeal could be brought. In their view, the Constitutional Court was precluded from finding a failure to exhaust remedies if its view on what constituted the relevant remedy was not uniform and the appellant had followed one of the legal guidelines it had given.

43. The applicants said that the manner in which the Constitutional Court applied the provisions governing the time-limits and the exhaustion of remedies prevented litigants from bringing constitutional appeals. There were, in their submission, two possibilities: either the appellant lodged his constitutional appeal within sixty days after service of the appeal court's decision, in which case it would be declared inadmissible for failure to exhaust statutory remedies, or he lodged the constitutional appeal within sixty days after service of the Supreme Court's decision refusing leave to appeal on points of law and it was declared inadmissible as being out of time. Requiring the appeal on points of law and the constitutional appeal to be lodged simultaneously was unacceptable: there was no statutory basis for such a requirement and it undermined legal certainty.

44. In their supplementary observations, the applicants pointed out that an amendment to the Code of Civil Procedure extending the right to bring an appeal on points of law had come into force on 1 January 1996 (before the appeal court's decision in their case). Previously, only the appeal court had been able to grant leave to appeal on points of law against its own decision. Since 1 January 1996, notwithstanding a refusal by the appeal court to grant leave, the parties could apply on their own initiative to the Supreme Court, which would decide the issue of leave itself. The applicants observed that the Constitutional Court judgments relied on by the Government concerned cases that had been decided before that amendment and could under no circumstances be regarded as reflecting its current case-law. They noted that the Constitutional Court's recent judgments showed that it had departed from its earlier case-law and now considered that where an appellant had sought leave from the appeal court to appeal on points of law, the appeal on points of law was regarded as the final remedy requiring exhaustion, so that a constitutional appeal could only be brought once the Supreme Court had decided whether or not to grant leave. Time for lodging the constitutional appeal could, therefore, only start to run once the Supreme Court's decision had been served.

45. In reply to those supplementary observations, the Government provided the Court with a list of the Constitutional Court's recent judgments on the role of the appeal on points of law as the final statutory remedy for

the protection of rights. The applicants submitted that those judgments supported their view and that their case had been decided on the basis of the logic applied before the amendment to the Code of Civil Procedure referred to above and in a manner that was inconsistent with the new case-law.

B. The Court's assessment

46. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is limited to verifying whether the effects of such interpretation are compatible with the Convention. This applies in particular to the interpretation by courts of procedural rules such as time-limits for filing documents or lodging appeals (see, *mutatis mutandis*, *Tejedor García v. Spain*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2796, § 31). The rules on the procedure and time-limits for appeals are designed to ensure the proper administration of justice and, in particular, legal certainty. This principle of legal certainty, which is one of the fundamental aspects of the rule of law, requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

47. Furthermore, the “right to a court”, of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (see *García Manibardo v. Spain*, no. 38695/97, § 36, ECHR 2000-II, and *Mortier v. France*, no. 42195/98, § 33, 31 July 2001). Nonetheless, the limitations applied must not restrict or reduce the individual's access in such a way or to such an extent as to impair the very essence of the right. Furthermore, limitations will only be compatible with Article 6 § 1 if they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued (see *Guérin v. France*, judgment of 29 July 1998, *Reports* 1998-V, p. 1867, § 37).

48. In the instant case, the applicants say that they have been denied a fair trial, as the Constitutional Court declared their constitutional appeal inadmissible as being out of time after finding that, since they had been refused leave to appeal on points of law, the sixty-day period for lodging the constitutional appeal had started to run on the date of the appeal court's decision. In their submission, the Constitutional Court's restrictive determination of the starting-point for calculating that period has deprived them of access to a domestic remedy.

49. The Court notes that the decision whether or not to grant leave to appeal on points of law was within the sole discretion of the Supreme Court,

which had to decide whether the impugned decision gave rise to a question of “crucial legal importance”. In those circumstances, it accepts the applicants' submission that neither they, nor their lawyer, were in a position to assess their prospects of obtaining leave from the Supreme Court. Notwithstanding the fact that they had been refused leave by the appeal court to appeal on points of law, the applicants nonetheless decided, in accordance with the Constitutional Court's case-law, to lodge an appeal with the Supreme Court under Article 239 § 2 of the Code of Civil Procedure. Believing the appeal on points of law to be a final remedy within the meaning of section 72(2) of the Constitutional Court Act, they considered in good faith that the start of the sixty-day period for lodging the constitutional appeal was the date of service of the Supreme Court's decision.

50. The Court must therefore examine whether, in the circumstances of the case, the decision taken by the Constitutional Court on its own initiative to declare the applicants' constitutional appeal inadmissible infringed their right of access to a court. It observes that, under section 72(2) of the Constitutional Court Act, constitutional appeals must be lodged within sixty days from the date of service on the appellant of the decision on the final statutory remedy for the protection of his or her rights. Section 75(1) of that Act provides that a constitutional appeal will be inadmissible if the appellant has not used all remedies, other than an application to reopen the proceedings. Furthermore, Article 239 § 2 of the Code of Civil Procedure provides that the decision whether or not to grant leave to appeal on points of law is within the sole discretion of the Supreme Court, which must decide whether the impugned decision gives rise to a question of “crucial legal importance”.

51. The Court observes that rules setting time-limits for bringing appeals must not be applied in a way which prevents litigants from using an available remedy. The issue raised in the present case is legal certainty. The problem is not simply one of interpretation of substantive rules, but that a procedural rule has been construed in such a way as to prevent the applicants' action being examined on the merits, with the attendant risk that their right to the effective protection of the courts would be infringed (see, *mutatis mutandis*, *Miragall Escolano and Others v. Spain*, nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41787/98 and 41509/98, § 37, ECHR 2000-I). In deciding to lodge an application for leave with the Supreme Court, the applicants were merely making use of a procedure available to them under Article 239 § 2 of the Code of Civil Procedure and should not be prejudiced as a result. Nor can they be said to have been at fault in not lodging their constitutional appeal before 12 November 1997, as the issue of the starting-point was unresolved.

52. Furthermore, it is clear from section 75(1) of the Constitutional Court Act that no distinction is made between ordinary and special remedies, with litigants being required to exhaust all remedies (other than

applications to reopen proceedings, which are expressly excluded). Since the applicants were thus obliged to appeal on points of law to prevent their constitutional appeal being declared inadmissible, the Court considers that time for lodging the latter should only have started to run from the Supreme Court's decision or at least should have stopped running once it had been lodged.

53. As to the Government's suggestion that an appeal on points of law should have been lodged simultaneously with the constitutional appeal, the Court accepts the applicants' submission that that course of action would have been both uncertain and without statutory basis, and did not offer an adequate solution, as required by the principle of legal certainty. It does not accept the Government's contention that the applicants should have lodged appeals with both the Supreme Court and the Constitutional Court on the same grounds. Even if they had done so, they – and indeed the Constitutional Court – would have been unaware before the Supreme Court's decision whether leave to appeal on points of law would be granted. There was thus a risk of two different decisions being delivered in the same case, with the potential for legal uncertainty which that created. For this reason, the Court considers that the start of the sixty-day period for lodging the constitutional appeal should have been the date of service of the Supreme Court's decision refusing leave. In addition, the Court considers it unlikely that litigants are aware of the simultaneous appeals procedure, as decisions of the judge rapporteurs of the Constitutional Court dismissing constitutional appeals are only published if the court in plenary session so decides, which it only does very rarely.

54. Lastly, the Court considers that the requirement in sections 72(2) and 75(1) of the Constitutional Court Act for “all remedies” to be exercised, without any distinction being made between ordinary and special remedies (apart from applications to reopen proceedings), coupled with the unpredictability of applications for leave to appeal on points of law as a result of the way Article 239 § 2 of the Code of Civil Procedure is applied, undermines the very essence of the right of recourse by imposing on appellants a disproportionate burden that upsets the fair balance that has to be struck between the legitimate concern to ensure that the formal procedure for appealing to the Constitutional Court is complied with and the right of access to that court.

55. Consequently, the Court finds that the Constitutional Court's particularly strict construction of the procedural rule in issue deprived the applicants of their right of access to a court.

Accordingly, there has been a violation of Article 6 § 1 of the Convention.

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

56. The applicants also alleged that their right to the peaceful enjoyment of their possessions had been infringed by the obligation imposed on them by the domestic courts to return the land that had been transferred to them without consideration in 1967 to the former owner. They relied on Article 1 of Protocol No. 1, the relevant part of 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.”

57. The Court notes that in 1967 the system for transferring agricultural holdings was by the sale of the farmhouse and donation of the adjoining land farmed by a socialist cooperative. The deed of sale and gift could only be executed with the approval of the cooperative that farmed the land and the agreement of the competent national committee. The purchasers of the land had to give an undertaking to work for the cooperative.

The Court further notes that, by virtue of section 8(4) of the Land Act, if a landowner has donated land to a private individual under duress or transferred it without consideration under a contract for the sale of an adjoining building, then, provided the land remains in that person's possession, the court may, on application by a person with authority to act, either rescind the part of the contract effecting the donation or transfer without consideration or order the current owner to pay the value of the land. In the present case, the domestic courts decided to rescind the part of the deed providing for the donation of the land.

A. The parties' submissions

58. The Government accepted that the State had interfered with the applicants' right of property, but argued that the requirements of Article 1 of Protocol No. 1 had been complied with. They called, firstly, for a distinction to be drawn between the notions of “restitution”, which entailed remedying an unlawful transfer or breach of property rights by restoring the original legal position with retrospective effect, and “expropriation”, which referred to the compulsory deprivation of a right of property on statutory grounds in the public interest with prospective effect in exchange for compensation.

59. They pointed out that in the present case the domestic courts had relied on section 8(4) of the Land Act in their decisions. The aim of that Act was to “provide owners of agricultural and forestry land some redress for certain breaches of their rights of property between 1948 and 1989 and to restore so far as possible the former proprietary interests in that land”. In the Government's submission, that meant that although the restitution of agricultural land pursuant to section 8(4) of the Land Act interfered with rights of property, it pursued a legitimate aim under the Czech Constitution. They referred to the Constitutional Court's findings that landowners'

freedom of contract had been unduly restricted under the communist regime in that, in order to be able to sell their houses, landowners were obliged to transfer the adjoining agricultural and forestry land to the purchaser without consideration, on pain of nullity. Such transfers could be regarded as unlawful acts of compulsory expropriation without compensation that now required remedying; as a result, the courts were entitled to order the restitution of the land concerned. In the light of those observations, the Government submitted that the obligation imposed on the applicants to return the property they had obtained free of charge was legitimate and in the general interest.

Further, since the order for rescission did not apply to the deed of sale and gift in its entirety, but only to the transfer of land without consideration, the interference was reasonably proportionate to the legitimate aim pursued. Lastly, since the applicants had obtained the land free of charge, they were not entitled to claim any compensation.

60. The applicants said that section 8(4)(a) of the Land Act empowered the court to rescind part of a contract if the landowner had given the land to a private individual under duress or had transferred the land without consideration under a contract for the sale of an adjoining building.

That showed that the existence of duress was relevant only under the first limb, the question of vitiated consent not being pertinent to the second. As a result, any transfer of land made without consideration under a contract for the sale of a building entitled the former owner to seek either rescission of part of the contract or financial compensation. The applicants accepted that such a solution was right and proper in cases in which the transfer had been made against the owner's will. However, they argued that it should only be used on condition that the true content of the deed was established in each case. The courts should avoid applying the rule to voluntary transfers, and seek to establish in every case whether there was evidence of consent or duress, or of a payment of compensation to the former owner, notwithstanding the contractual stipulation for the transfer to be made without consideration.

61. As regards the circumstances in which they had entered into the agreement with the former owner, the applicants said that at the time he wished to be released from his obligation to work for the agricultural cooperative, something he could only achieve by transferring ownership. He had thus been acting in his own interests when he agreed to transfer the land to the applicants. Under the statutory provisions applicable at the material time, the vendor was obliged to enter into a contract for the sale of the farmhouse and to transfer the adjoining agricultural land without consideration, while the purchaser was required to give an undertaking to work for the cooperative. In the instant case, the applicants had also paid the former owner 30,000 Czechoslovak korunas on top of the purchase price as compensation for the value of the land, as indeed had been confirmed by the

former owner in the domestic proceedings. In 1997 he had also made a declaration stating that he had assigned his rights of property, including his rights of property in the agricultural land farmed by the cooperative, of his own free will.

62. The applicants thus submitted that the transfer had not, in fact, been made gratuitously, as they had paid financial consideration to the former owner and given an undertaking to work for the cooperative as his replacement, thus forgoing the chance to follow their own chosen career. Since they had performed their obligations, they considered that they had been adversely affected by the rescission of the deed of gift and that section 8(4) of the Land Act was unjust and contravened Article 1 of Protocol No. 1.

B. The Court's assessment

63. The Court reiterates that Article 1 of Protocol No. 1 guarantees in substance the right of property and 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. The Court has to ensure that the last two rules are applicable before determining whether the first one has been complied with. The three rules are not, however, “distinct” in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property; accordingly, they must be construed in the light of the general principle laid down in the first rule (see *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II, and *Elia S.r.l. v. Italy*, no. 37710/97, § 51, ECHR 2001-IX).

64. In the instant case, the Court notes that it is common ground that the applicants' right to the peaceful enjoyment of their possessions has been interfered with. It must therefore go on to consider whether or not that interference was in breach of Article 1 of Protocol No. 1.

1. Interference prescribed by law

65. The Court notes that Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful. 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* 1996-III, pp. 850-51, § 50).

The law upon which the interference is based should be in accordance with the internal law of the Contracting State, including the relevant provisions of the Constitution. It is in the first place for the domestic authorities to interpret and apply the domestic law and to decide on issues of constitutionality.

66. In the present case, the statutory basis for the interference complained of was the Land Act. The Court finds that there is no reason to doubt that the deprivation was in accordance with law, as required by Article 1 of Protocol No. 1.

2. In the public interest

67. As to whether the deprivation of property in issue pursued a legitimate aim, in other words whether there was a “public interest” within the meaning of the second rule set out in Article 1 of Protocol No. 1, the Court notes that because of their direct knowledge of their society and its needs, the national authorities are in principle better placed 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. Here, as in other fields to which the safeguards of the Convention extend, the national authorities enjoy a certain margin of appreciation (see *Malama v. Greece*, no. 43622/98, § 46, ECHR 2001-II).

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 finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and will respect the legislature's judgment as to what is “in the public interest” unless that judgment is manifestly without reasonable foundation. This necessarily applies, and perhaps to a greater extent, in the event of changes to a country's political system (see, *mutatis mutandis*, *The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII).

68. In the present case, the Court notes that the aim pursued by the Land Act is to redress infringements of property rights that occurred under the communist regime and accepts that the Czech State may have considered it necessary to resolve this problem, which it considered damaging to its democratic regime. The general purpose of the Act cannot be regarded as illegitimate, as it is indeed “in the public interest”.

3. Proportionality of the interference

69. The Court notes that it is well-established case-law that the second paragraph of Article 1 of Protocol No. 1 must be construed in the light of

the principle laid down in the first sentence of the Article. Consequently, an interference with the right to the peaceful enjoyment of possessions must achieve a “fair balance” between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see, among other authorities, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 23, § 38, and *Malama*, cited above, § 48). In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing how the measures are to be implemented and to ascertaining whether the consequences of implementation are justified in the general interest for the purpose of achieving the object of the law in question (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 75, ECHR 1999-III). Nevertheless, the Court cannot fail to exercise its power of review which requires it to determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1.

70. Under the Court's case-law, compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. A total lack of compensation can be considered justifiable under Article 1 only in exceptional circumstances (see *The Holy Monasteries v. Greece*, judgment of 9 December 1994, Series A no. 301-A, p. 35, § 71, and *Malama*, cited above, § 48).

71. In the instant case, the Court observes that the Land Act does not afford any means of obtaining compensation in the event of rescission of the deed of gift. As it has already been established that the interference in issue satisfied the requirement of lawfulness and was not arbitrary, the lack of compensation does not make the taking of the applicants' property *eo ipso* wrongful (see, *mutatis mutandis*, *The former King of Greece and Others*, cited above, § 90). It remains therefore to be examined whether in the context of a lawful expropriation the applicants had to bear a disproportionate and excessive burden.

72. The Court considers that the legislature's decision to deal with infringements of property rights under the communist regime globally, with the occasional distinction, where necessary for analytical purposes, is reasonable. It is conscious of the legislature's concern to afford some redress for the infringements and accepts that the exceptional circumstances – the manner in which land was generally acquired at the time – justify the lack of compensation. However, it fails to comprehend why the Czech legislation precluded any possibility of re-examination of individual cases involving

transfers of land in special circumstances. It considers that in a case such as the present one the courts should seek clearly to establish whether the land was transferred against the former owner's will – which, in the light of his declaration, does not appear to have been the position – and whether, in view of the consideration provided, the transfer genuinely infringed his rights of property.

73. The Court finds that the fact that the domestic courts were able to rescind the deed of gift without taking into consideration the compensation paid at the time by the current owners or the former owner's declaration that he had fully consented to the arrangement created a situation in which the fair balance required between the protection of private property and the demands of the general interest was upset, to the applicants' detriment.

74. In conclusion, notwithstanding the fact that the aim pursued by the Land Act on its enactment in 1991 was legitimate, the Court finds that the obligation imposed on the applicants to return, without compensation, the land they had acquired in good faith under a deed of gift that was freely entered into in exchange for equivalent consideration amounts to a disproportionate burden that cannot be justified under the second paragraph of Article 1 of Protocol No. 1.

There has, therefore, been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicants sought 12,833,000 Czech korunas (CZK), that is 442,517 euros (EUR), for the pecuniary damage resulting from the expropriation of their land. They arrived at that result by adding the loss sustained (*damnum emergens*), that is to say the market value of the land, which, relying on a comparative table of land values in member States of the European Union, came to CZK 4,216,000 (EUR 145,379), to the loss of profit (*lucrum cessans*) resulting from their inability to farm the land and the loss of agricultural production between 1993 and 2001, which a valuer they had instructed assessed at CZK 7,050,086, but which they put at CZK 8,617,000 (EUR 297,138), arguing that they could have carried on farming the land for another ten years before going into retirement.

77. As regards non-pecuniary damage in the form of damage to their reputation among their neighbours, the applicants submitted that a finding of a violation would provide sufficient just satisfaction.

78. The Government contended that the claim for compensation for pecuniary damage was unfounded. They further submitted that only a violation of Article 1 of Protocol No. 1, not of Article 6 § 1 of the Convention, could create a causal link with the alleged pecuniary damage. They said that the applicants had not adduced any evidence of the nature of the land in question, in particular as to its surface area, and contested the method the applicants had used to calculate their loss. They also observed that there was no expert evidence supporting the market value the applicants had put on the land, which appeared highly unreliable. As to the loss of profits, the Government said they had wrongly been calculated from 1993 when the final domestic decision in the case had been delivered on 29 February 1996.

As regards the quantum of the pecuniary damage, the Government said that it should be deducted not from the value of the expropriated land, but from the amount of compensation which the applicants should have received. The amount of any such compensation would depend on the actual circumstances of the individual case and could be less than the market value of the land, provided that it was not unreasonable or manifestly disproportionate. The Government referred, in that connection, to *James and Others v. the United Kingdom* (judgment of 21 February 1986, Series A no. 98, p. 36, § 54).

79. Concerning the claim for non-pecuniary damage, the Government agreed with the applicants that a finding of a violation would constitute sufficient just satisfaction.

80. The Court notes that the claims for pecuniary damage stem from the deprivation of property. It is indisputable that the applicants sustained pecuniary damage that was directly linked to the violation of Article 1 of Protocol No. 1.

81. The Court observes that the only expert evidence before it concerns the applicants' loss of profits. It notes that the parties have used very different methods of calculation to quantify the amount of compensation.

Accordingly, ruling on an equitable basis and in the light of its case-law, the Court considers it appropriate to award the applicants EUR 50,000 for pecuniary damage. This amount shall be converted into Czech korunas at the rate applicable on the date of settlement.

82. In agreement with the parties, the Court holds that the finding of a violation constitutes sufficient reparation for the applicants' non-pecuniary damage.

B. Costs and expenses

83. The applicants also claimed CZK 63,510 (EUR 2,190) for the costs and expenses incurred before the domestic courts and CZK 209,457 (EUR 7,223) for those incurred before the Commission and Court. Those sums included non-contractual fees of their successive representatives, calculated on the basis of Decree no. 177/1996, which sets out the scale rates for lawyers' fees, and of the value of the property in issue, together with the costs of the translations and the valuer's report.

84. The Government submitted that the amount claimed by the applicants was largely unjustified and exaggerated. The applicants had not produced vouchers for most of the alleged costs and the method used to calculate the lawyers' fees by reference to the value of the property in issue was not credible.

85. In the light of the evidence before it and the principles established in its case-law, the Court, ruling on an equitable basis, awards the applicants EUR 3,000 for their costs and expenses.

C. Default interest

86. 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 there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that the finding of the above violations constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 on the date of settlement:
 - (i) EUR 50,000 (fifty thousand euros) in respect of pecuniary damage;

(ii) EUR 3,000 (three thousand euros) 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;

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

Done in French, and notified in writing on 12 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President