



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

SECOND SECTION

BĚLEŠ AND OTHERS v. THE CZECH REPUBLIC

(Application no. 47273/99)

JUDGMENT

STRASBOURG

12 November 2002

FINAL

12/02/2003

In the case of Běleš and Others 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,

Ms 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. 47273/99) against the Czech Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Czech nationals, Mr Pavel Běleš, Ms Lenka Chvojková, Ms Galina Krejčová, Mr Josef Kreml, Mr Petr Pudil, Mr Zdeněk Procházka and Mr Radomír Růžicka (“the applicants”), on 7 December 1998.

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

3. The object 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 6 § 1 of the Convention, which guarantees the right to a fair trial and, in particular, to a court.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court).

5. 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.

6. By a decision of 11 December 2001 the Chamber declared the application 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 of the complaints 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

8. The applicants have been members of the Homeopathic Association (*Homeopatická společnost*) since 1991. The Homeopathic Association is in turn a member of the Czech Medical Society J.E. Purkyně (*Česká lékařská společnost J.E. Purkyně* – “the Medical Society”), an independent association made up of private individuals – doctors, chemists, and other people in the medical or paramedical profession – and companies. The Medical Society's objects include developing and disseminating knowledge obtained from the field of medical science and related spheres, using that knowledge in the public-health sector, improving the professional skills of its members, creating a suitable environment in which its members and other similar organisations and institutions in the Czech Republic and overseas can exchange information, and supporting the activity of professional partnerships, medical practices and other groups employed in the medical and paramedical sectors.

9. On 20 November 1996 the Medical Society resolved in congress to amend its internal rules (*stanovy*) by adding Rule 2 § 8, which provided: “The Czech Medical Society J.E. Purkyně shall ensure that its members only use diagnostic, preventive or curative methods that are based on currently recognised scientific evidence, as regards both their characteristics and their effects.” The congress made a recommendation to the executive board of the Medical Society for the Homeopathic Association to be expelled from its membership, on the ground that it did not satisfy the conditions laid down by Rule 2 § 8.

10. On 30 December 1996 the executive board of the Medical Society resolved to expel the Homeopathic Association from the Medical Society under Rule 2 § 8 with effect from 31 December 1996. It informed the applicants of that resolution in a letter of 30 December 1996.

11. On 20 January 1997 eleven members of the Homeopathic Association, including the applicants, brought an action against the Medical Society under section 15 of the Citizens' Associations Act (Law no. 83/1990) and Article 80 (c) of the Code of Civil Procedure. They sought declarations that the amendment of 20 November 1996 to the internal rules and, consequently, the decision to expel their association were nullities (*neplatnost*) and that the Homeopathic Association remained a

member of the Medical Society. They maintained that the Medical Society's decision had damaged the reputation of the Homeopathic Association and had caused patients to become wary of doctors practising homeopathy (a fact which they submitted gave them a relevant interest for the purposes of Article 80 (c) of the Code of Civil Procedure). They said that the decision had been arbitrary, unlawful and subjective, as it had been taken without the benefit of expert professional or scientific advice and was liable to cause unjustified discrimination against certain healing methods.

12. In a judgment of 2 October 1997, Prague 2 Municipal Court (*obvodní soud*) dismissed the applicants' action without examining the merits, holding:

“The Court finds that [the applicants] are not entitled [in their action for a declaration of nullity under Article 80 (c) of the Code of Civil Procedure] ... to an order negating the alleged illegality of the resolution adopted by the organ of the society or any inconsistency with the internal rules [of the Medical Society]. [Section 15(1) of Law no. 83/1990] only gives the court power to review an impugned decision, not to vary or uphold it. The review procedure is now set out in Chapters I and II of Part Five of the Code of Civil Procedure, which defines jurisdiction in administrative appeals on points of law and requires the review [of a decision] within the meaning of section 15 to be interpreted by analogy. Support for that view is also to be found in other provisions of Law no. 83/1990, which confer on the district court certain powers with respect to associations formed under that Act (see sections 11(2) and 13(3), it being understood that section 12(4) refers to the provisions of the Code of Civil Procedure governing the review of decisions by other authorities).”

13. On 19 December 1997 the applicants appealed against that judgment, arguing in particular that section 15 of Law no. 83/1990 did not specify under which provisions of the Code of Civil Procedure they should have brought their action and that, since the Medical Society was not an administrative authority, Part Five of the Code of Civil Procedure, which only applied to the judicial review of decisions of the administrative authorities, could not be applicable in their case. They further submitted that having found that it had no jurisdiction to decide the case on the basis of the pleaded provision, the court should have declined jurisdiction, not dismissed their claim. They were not required by the provisions of the Code of Civil Procedure governing the conditions of form applicable to actions to bring their claims under specific statutory provisions or to specify the procedure the court should follow, as the court was required first and foremost to consider the substance of their claim.

14. In a judgment of 16 April 1998, the Prague City Court (*městský soud*) upheld the Municipal Court's judgment. It found that the applicants should have brought an action for a review of the impugned resolutions. Had they done so, the Municipal Court would have decided the case in accordance with Article 250j § 1 of the Code of Civil Procedure, either dismissing the action if it considered that the resolutions were lawful or quashing the resolutions on one of the grounds set out in section 15(2), if

that was appropriate. The City Court also dismissed an application by the applicants for leave to appeal on points of law (*dovolání*) against its decision.

15. On 29 January 1998 the applicants lodged a constitutional appeal (*ústavní stížnost*) with the Constitutional Court (*Ústavní soud*). They filed a supplemental pleading on 9 July 1998. They submitted that, by an erroneous construction of section 15 of Law no. 83/1990, the Prague 2 City Court had restricted, and even deprived them of, their right to the protection of the courts, as guaranteed by Article 36 of the Charter on Fundamental Rights and Freedoms (*Listina základních práv a svobod*). They complained that the City Court had failed to respond to their arguments that Part Five of the Code of Civil Procedure was inapplicable in their case. They further submitted that the impugned decisions of the Medical Society had infringed their right to freedom of choice of their profession for the purposes of Article 26 of the charter and Article 8 of the Convention, to scientific freedom, as guaranteed by Article 25 of the charter, and to freedom of association, as guaranteed by Article 20 of the charter and Article 11 of the Convention. They added that the domestic courts' failure to examine the merits of their action meant that the alleged violations were continuing.

16. On 12 August 1998 the Constitutional Court declared the applicants' appeal inadmissible for failure to exhaust statutory remedies by appealing on points of law. It referred to Article 239 § 2 of the Code of Civil Procedure.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitutional law

17. 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.

18. Article 96 § 1 of the Constitution laid down that all parties to proceedings had equal rights before the courts.

19. 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.

20. Article 38 § 1 of the Charter provides that no one may be denied access to the judge with statutory jurisdiction to hear his or her case. The jurisdiction of the courts and judges shall be determined by statute.

B. Citizens' Associations Act (Law no. 83/1990)

21. Section 15(1) provides that if a member of an association considers that an unappealable decision of an organ of the association is unlawful or contrary to the rules of the association, he or she may, within thirty days after becoming aware thereof, but in any event no later than six months after the decision was taken, seek judicial review of the decision by a district court (*okresní soud*).

22. Section 15(2) provides that applications for judicial review have no suspensive effect. Nevertheless, the court may stay implementation of the impugned decision if appropriate.

C. Code of Civil Procedure (as worded at the material time)

23. Article 5 imposed a duty on the courts to inform the parties of their procedural rights and obligations.

24. Article 42 § 4, which set out the requirements regarding the form of legal actions, laid down, *inter alia*, that applications had to be dated and had to state the name of the applicants and the case, and the purpose of the application and the court to which it was made. In addition to those general requirements, Article 79 § 1 required the names, occupations and addresses of the parties (and the names and head offices of legal entities) and, if applicable, of their representatives, to be stated in the application, followed by a description of the relevant facts, the evidence relied on by the applicants and the relief sought.

25. Article 43 § 1 empowered the president of the division to invite applicants to correct or supplement an application that did not comply with the formal requirements, or was imprecise or incomprehensible. In such cases, the president was also required to inform the applicants of the procedure to be followed and to grant them time in which to remedy the defects in the application.

26. Under Article 80 (c) of the Code of Civil Procedure, a court hearing a civil action had power to determine whether or not a legal relationship or right existed, provided that an imminent legal interest (*naléhavý právní zájem*) had been shown.

27. Part Four of the Code of Civil Procedure concerned appeals and applications for judicial review: ordinary appeals, applications for proceedings to be reopened and appeals on points of law. Article 236 § 1 laid down that an appeal on points of law (*dovolání*) lay solely against immediately enforceable appeal court decisions (*rozhodnutí*), and then only if the statutory conditions were satisfied.

28. Article 239 § 1 provided that an appeal court that had upheld a decision of the court below must grant leave to appeal on points of law if it

considered that its decision gave rise to a question of crucial legal importance justifying such leave (*rozhodnutí po právní stránce zásadního významu*). It could grant such leave on its own initiative.

29. Article 239 § 2 provided that if an appeal court refused to grant an application for leave to appeal on points of law that had been made by one of the parties before the decision upholding the decision at first instance was adopted, leave to appeal could only be obtained if the Supreme Court itself considered that the appeal court's decision gave rise to a question of crucial legal importance.

30. Part Five of the Code of Civil Procedure concerned jurisdiction in administrative proceedings. Article 244 laid down that, as part of their administrative-law jurisdiction, the courts must, on application or appeal, review the lawfulness of decisions of the administrative authorities.

D. Constitutional Court Act (Law no. 182/1993)

31. Section 43(1)(e) lays down that, save as otherwise provided in the Act, the judge rapporteur shall dismiss a constitutional appeal without holding a hearing or requiring the parties to attend if, *inter alia*, it is inadmissible (*nepřípustný*).

32. 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.

33. 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 own interests and the appeal was lodged within one year after the impugned decision or event.

E. Case-law of the Constitutional Court relied on by the Government

34. 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 (see section 75(1) of the Constitutional Court Act – Law no. 182/1993) on the ground that an appellant whose case in a constitutional appeal was identical in substance to that he had pleaded in the ordinary courts and had been planning to plead in the Supreme Court was at

risk of not satisfying the exhaustion of remedies rule if he failed to exercise his right to lodge an appeal on points of law under Article 239 § 2 of the Code of Civil Procedure.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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 his constitutional appeal 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.

41. 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 appeals to the Supreme Court were still pending. 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

42. The applicants maintained that the ordinary domestic courts had denied them a fair trial by refusing to examine the merits of their action. They also submitted that their right of access to a court had been violated by the Constitutional Court's ruling that their constitutional appeals were inadmissible for failure to exhaust statutory remedies. 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 ...”

A. Whether Article 6 of the Convention is applicable

43. The Court considers that, although the applicants can in principle continue to practise medicine notwithstanding the expulsion of the Homeopathic Association – of which they are members – from the Medical Society, their ability to exercise that right has undoubtedly been adversely affected by the latter's decision.

44. Accordingly, the dispute over the decisions taken against the applicants has to be regarded as relating to their “civil rights and obligations” and the applicants were entitled to have their case examined by “a tribunal”, within the meaning of Article 6 § 1 of the Convention. Indeed, the parties do not contest the applicability of Article 6 § 1.

B. The merits of the complaints

1. Complaint of procedural unfairness in the proceedings in the ordinary courts

45. The applicants maintained, firstly, that they had been denied a fair trial by the ordinary domestic courts' refusal to examine the merits of their action. In fact, the ordinary courts found that the applicants should have set out their arguments in an application for judicial review brought under the provisions of the Code of Civil Procedure relating to administrative jurisdiction.

(a) The parties' submissions

46. The applicants alleged that the domestic courts should have examined the merits of their case by reference to the substance of their action rather than to the pleaded statutory provisions. They also accused the domestic courts of neglecting their duty to inform the parties of their procedural rights and obligations and to invite them to give further particulars about their cause of action to avoid all doubt.

47. The Government pointed out that litigants could only seek judicial protection of their rights if they followed the prescribed statutory procedure, in this case, that set out in the Code of Civil Procedure. The domestic courts had acted in accordance with the law and not neglected any of their obligations. The applicants' cause of action was clear and precise, so that there were no doubts that needed removing. The courts only had a duty to inform the parties to the proceedings of their procedural rights and obligations, it was not their role to provide information on substantive rights.

(b) The Court's assessment

48. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, the provisions of the Code of Civil Procedure referred to by the domestic courts only concern applications for the judicial review of administrative decisions and, consequently, do not appear to have been applicable, as the Medical Society is an independent professional association, not a State administrative authority. The Court notes that the applicants raised this point in the domestic proceedings, but neither the domestic courts nor the Government responded to it. It also notes that section 15(1) of the Citizens' Association Act does not specify under which provision of the Code of Civil Procedure the application to the relevant court must be made.

49. The Court has already stated on a number of occasions that the right to a fair trial, as guaranteed by Article 6 § 1 of the Convention, must be construed in the light of the rule of law, one of the fundamental aspects of which is the principle of legal certainty, which requires that all litigants should have an effective judicial remedy enabling them to assert their civil rights (see, among other authorities, *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII). It further reiterates that the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at ensuring the proper administration of justice and compliance, in particular, with the aforementioned principle of legal certainty. That being so, the rules in question, or the manner in which they are applied, should not prevent litigants from using an available remedy (see *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, §§ 33 and 36, ECHR 2000-I).

50. 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*, cited above, § 37).

51. In the light of the foregoing, the applicants cannot be said to have been at fault in relying on section 15 of Law no. 83/1990, taken together with Article 80 (c) of the Code of Civil Procedure, as their cause of action. Consequently, the Court finds that in deciding, on the basis of a particularly strict construction of a procedural rule, not to examine the merits of the case, the domestic courts undermined the very essence of the applicants' right to a court, which is part of their right to a fair trial guaranteed by Article 6 § 1 of the Convention.

52. There has therefore been a violation of Article 6 § 1 of the Convention.

2. Complaint regarding access to the Constitutional Court

53. The applicants also complained of a violation of their right of access to a court, arguing that the Constitutional Court had declared their constitutional appeal inadmissible for failure to lodge an appeal on points of law and thus to exhaust statutory remedies, despite the fact that their application for leave to bring such an appeal had previously been turned down by the appeal court. They said that they had thus been denied an effective remedy in the form of review of the legality of the appeal court's decision and that the prospects of their obtaining a judicial examination of their case on the merits had disappeared.

54. The Constitutional Court in fact referred to Article 239 § 2 of the Code of Civil Procedure, which provides: "If, before deciding to uphold a

decision of the court of first instance ..., an appellate court refuses to grant an application by one of the parties for leave to appeal on points of law, leave to bring such an appeal may only be obtained if the Supreme Court itself considers that the appellate court's decision gives rise to a question of crucial legal importance.” It held that the applicants' constitutional appeal was inadmissible, as the applicants had not made use of Article 239 § 2 of the Code of Civil Procedure to protect the rights which they now sought to assert before it.

(a) The parties' submissions

55. The applicants pointed out that bringing an appeal on points of law did not stop time running for the purposes of the sixty-day time-limit for lodging constitutional appeals. Since, under Czech law, an appeal on points of law was a special remedy leave for which was solely at the discretion of the Supreme Court, the risk was that they would have been out of time for bringing a constitutional appeal if they had lodged an appeal on points of law and subsequently been refused leave. In their submission, the Constitutional Court's refusal to distinguish between ordinary and special remedies and its requirement that appellants must have exercised all statutory remedies – including those for which leave was necessary and was within the discretion of a court (the Supreme Court in this instance) – before they could bring a constitutional appeal, did not assist the proper administration of justice or comply with the Court's case-law.

56. The Government contended that, in order to appeal to the Constitutional Court, appellants were required to have exercised all statutory remedies for the protection of their rights, including bringing an appeal on points of law. In that connection, they referred to the Constitutional Court's decisions making the admissibility of constitutional appeals conditional on a prior appeal on points of law. It was apparent from that case-law that an appellant who had been refused leave to appeal on points of law by the appeal court could nonetheless seek leave from the Supreme Court under Article 239 § 2 of the Code of Civil Procedure. Appellants who had been denied leave to appeal to the Supreme Court by the appeal court were nevertheless required to lodge an appeal on points of law in order to exhaust available remedies.

57. In the Government's submission, since the applicants had not taken that procedural step, they had failed to seek the protection of their right under the statutory procedure. Their complaint was therefore manifestly ill-founded.

58. In response to the applicants' fear that they would have been unable to comply with the sixty-day time-limit for bringing a constitutional appeal if they had lodged an appeal on points of law, the Government again referred to the Constitutional Court's case-law. In such situations, the Constitutional Court recommended lodging the constitutional appeal at the

same time as the appeal on points of law, thereby obviating any risk of its being declared inadmissible as out of time. In such circumstances, the Constitutional Court would put the constitutional appeal “on hold” and decide whether it was admissible once the Supreme Court had delivered its decision.

59. The applicants said that, on the contrary, there was no statutory basis for that procedure and it did not solve the problem, as there was a risk that the Supreme Court would allow the appeal on points of law and remit the case to a lower court for a retrial, while at the same time the Constitutional Court dismissed the constitutional appeal, thereby deciding the case on the merits. In such cases, there would then be a final decision that would nevertheless be re-examined by the ordinary courts. The applicants also said that most of the Constitutional Court's decisions relied on by the Government had only been adopted after the Constitutional Court's decision in their case and that the various divisions of the Constitutional Court were divided on the issue.

(b) The Court's assessment

60. 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. Litigants should normally expect those rules to be applied (see *Miragall Escolano and Others*, cited above, § 33).

61. 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).

62. The Court reiterates that “Article 6 does not ... compel the Contracting States to set up courts of appeal or of cassation. Nevertheless, a

State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6” (see *Khalfaoui v. France*, no. 34791/97, § 37, ECHR 1999-IX). In addition, the compatibility of the limitations permitted under domestic law with the right of access to a court set forth in that provision depends on the special features of the proceedings in issue, and it is necessary to take into account the whole of the trial conducted according to the rules of the domestic legal system and the role played in that trial by the highest court, since the conditions of admissibility of an appeal on points of law may be more rigorous than those for an ordinary appeal (*ibid.*).

63. In the present case, the decision whether or not to grant leave to appeal on points of law, within the meaning of Article 239 § 2 of the Code of Civil Procedure, was within the sole discretion of the Supreme Court, which had to decide whether the impugned decision concerned a point of “crucial legal importance”. In those circumstances, neither the applicants nor their lawyer were in a position to assess their prospects of obtaining leave from the Supreme Court, particularly it had been refused by the appeal court. In the event of leave to appeal on points of law being refused, there was a risk that the applicants' constitutional appeal would be dismissed as being out of time.

64. 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 uncertain and devoid of 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 that that created.

65. 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 rarely does. Furthermore, the judge rapporteur assigned to the present case could have applied section 75(2)(a) of the Constitutional Court Act, which lays down that the Constitutional Court will not declare a constitutional appeal inadmissible for failure to exhaust statutory remedies if the issue at stake in the appeal goes significantly beyond the appellant's own interests.

66. The Court further considers that even though the applicants did not lodge an appeal on points of law, the Constitutional Court could have

assessed what the prospects of their obtaining leave for such an appeal were and afforded them the benefit of the doubt by declaring the constitutional appeal admissible if that assessment proved difficult.

67. In any event, the Court finds that the procedure described in the sections of the rules governing the admissibility of constitutional appeals does not facilitate the proper administration of justice, as it prevents litigants from using an available remedy.

68. The Court also finds 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. Since, under Czech law, an appeal on points of law is a special remedy that is not automatically available and for which leave at the discretion of the Supreme Court is required, it cannot be regarded as an effective remedy that required exhaustion in the instant case (see, *mutatis mutandis*, *Esposito v. Italy*, no. 20855/92, Commission decision of 16 October 1996, unreported).

69. Once again, the issue in the present case is not simply a problem of the interpretation of substantive rules, but of a procedural rule that 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*, cited above, § 37). Having regard to the circumstances taken as a whole, the Court finds that the Constitutional Court's decision deprived the applicants of the right of access to a court and, consequently, of their right to a fair trial, within the meaning of Article 6 § 1 of the Convention.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Under Article 41 of the Convention,

“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

72. The applicants claimed 10,000,000 Czech korunas (CZK), that is to say 344,828 euros (EUR), for pecuniary damage. They maintained that the Medical Society's decision had adversely affected their financial interests as it had cost them patients, thus putting the very existence of their profession at risk.

73. For the non-pecuniary damage sustained as a result of the discrediting of homeopathic treatment, the applicants said that a finding of a violation and its publication in the national press by the Government would afford them sufficient just satisfaction.

74. The Government contended that the applicants had not proved a causal link between the pecuniary damage they claimed to have suffered and the alleged violation. Nor had they shown that they had actually suffered damage to their financial interests in the amount claimed. Accordingly, they submitted that that claim should be dismissed.

75. As to the reparation sought by the applicants for non-pecuniary damage, the Government agreed with the applicants that the finding of a violation would afford sufficient just satisfaction. With regard to the request for publication of the finding in the national press, the Government argued that it could not be proved that it would have any impact on the applicants' reputation as practitioners of homeopathic medicine. They also pointed out that all the Court's judgments against the Czech Republic were published in the Czech language on the Ministry of Justice's Internet site.

76. The Court considers that the basis for an award of just satisfaction in the present case must be the denial of access to the applicants to a court, which is part of the right to a fair trial, within the meaning of Article 6 § 1 of the Convention. It finds no causal link between the pecuniary damage alleged by the applicants and its finding of a violation of Article 6. Nor can it speculate on what the outcome would have been if the Constitutional Court had declared the applicants' appeal admissible and proceeded to hear it. Accordingly, the Court makes no award under this head.

77. The Court agrees with the parties that the finding of a violation constitutes sufficient reparation for the non-pecuniary damage sustained by the applicants.

B. Costs and expenses

78. Relying on Decree no. 177/1996 setting out the scale rates for lawyers' fees, the applicants also claimed CZK 9,674 (EUR 334) for their costs and expenses incurred in the proceedings before the domestic courts and the Court. They have not produced an invoice, as they say that they made an oral agreement with their lawyer to pay all her fees at the end of the proceedings before the Court.

79. The Government left this issue to the discretion of the Court.

80. The Court reiterates that an applicant may recover his costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V). Ruling on an equitable basis and having regard to the material before it and the aforementioned criteria, the Court awards the applicants EUR 330 for their costs and expenses.

C. Default interest

81. The Court considers it appropriate to base the default interest 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 as regards the fairness of the proceedings in the ordinary courts;
2. *Holds* that there has been a breach of Article 6 § 1 of the Convention as regards access to the Constitutional Court;
3. *Holds* that the finding of a violation 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, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 330 (three hundred and thirty euros) to the applicants for costs and expenses, to be converted into the national currency of the

respondent State at the rate applicable on the date of settlement, together with any tax that may be chargeable;

(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 applicants' claims 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