



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

FOURTH SECTION

**CASE OF CREDIT AND INDUSTRIAL BANK
v. THE CZECH REPUBLIC**

(Application no. 29010/95)

JUDGMENT

STRASBOURG

21 October 2003

This judgment is final but it may be subject to editorial revision.

In the case of Credit and Industrial Bank v. the Czech Republic,

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

Sir Nicolas BRATZA, *President*,

Mr K. JUNGWIERT,

Mr M. FISCHBACH,

Mr J. CASADEVALL,

Mr S. PAVLOVSKI,

Mr J. BORRERO BORRERO,

Mrs E. FURA-SANDSTRÖM, *judges*,

and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 30 September 2003,

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

PROCEDURE

1. The case originated in an application (no. 29010/95) 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"). The application was introduced by Credit and Industrial Bank (the applicant bank) and Mr Antonín Moravec, the chairman of the bank's Board of Directors and a majority shareholder of the bank as at 4 May 1995.

2. The applicants were represented by Mr O. Choděra, a lawyer practising in Prague. The Czech Government ("the Government") were represented by their Agent, Mr Vít Schorm, of the Ministry of Justice.

3. The applicants complained that their rights had been violated in that they had had no remedy against the administrative decision concerning the imposition of compulsory administration on the applicant bank and the subsequent decisions by administrative and judicial bodies.

4. On 20 May 1998 the Commission declared Mr Moravec's complaints inadmissible and the applicant bank's complaints admissible. In its report of 25 October 1999 (former Article 31 of the Convention), the Commission expressed the unanimous opinion that there had been a violation of Article 6 § 1 of the Convention and that it was not necessary to examine the complaints under Article 1 of Protocol No. 1 to the Convention¹.

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

6. The applicant bank and the Government each filed observations on the merits (Rule 59 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a bank, a joint stock company with its registered office in Prague.

9. On 27 September 1993 the Czech National Bank (*Česká národní banka*) (“the CNB”), pursuant to section 26(1)(a) of the Banks Act (no. 21/1992) (*zákon o bankách*) (“the Act”), placed the applicant bank in compulsory administration with effect from 30 September 1993 to 31 March 1994, on the grounds that the financial situation and liquidity of the applicant bank had repeatedly been unsatisfactory and that the previous measures had not remedied the situation. A compulsory administrator (*nucený správce*) was appointed to replace the applicant bank's statutory body. The decision (*rozhodnutí*) contained a notice to the effect that the provisions of administrative procedure did not apply to it and that no appeal lay against it.

10. On 29 September 1993 the compulsory administration decision was published in the Commercial Bulletin (*obchodní věstník*).

11. In a ruling (*usnesení*) of 30 September 1993 the Prague 1 District Court (*obvodní soud*) (“the District Court”), upon the CNB's proposal, decided to allow an entry concerning the compulsory administration and the appointment of the compulsory administrator to be made in the Companies Register (*obchodní rejstřík*). The ruling fixed the date of 30 September 1993 as the date of the entry in the Companies Register and stated that the compulsory administrator represented the applicant bank. The ruling was not served on the applicant bank. On the same date, the compulsory administrator and a representative of the CNB came to the bank and informed all employees that the applicant bank had been placed in compulsory administration. The representative of the CNB served the CNB's decision of 27 September 1993 on Mr Moravec, the chairman of the bank's Board of Directors and its majority shareholder. On 4 October 1993 the District Court confirmed its ruling of 30 September 1993 by issuing a certificate of legal validity (*právní moc*).

12. On 18 March 1994 the CNB extended the compulsory administration until 30 June 1994.

13. On 22 March 1994 the applicant bank's legal representative, Mr Choděra, sent his power of attorney to the District Court, and requested that the proposal for an entry concerning the compulsory administration and the District Court's decision delivered in this regard be sent to his office. He noted that under Article 200(a) of the Code of Civil Procedure, the applicant bank was a party to the proceedings.

14. On 30 March 1994 notice of the extension was published in the Commercial Bulletin. In a ruling of 30 March 1994 the District Court, upon a proposal of the CNB, approved an entry concerning the extension in the Companies Register. The court did not hold a public hearing. On the same day it confirmed the ruling by a certificate of legal validity. The ruling was not served on the applicant bank.

15. On 1 and 6 April 1994 respectively, the applicant bank, represented by the chairman of its Board of Directors and Mr Choděra, its legal representative, having become aware of the existence of the rulings of 30 September 1993 and 30 March 1994, appealed against them to the Prague Municipal Court (*městský soud*) ("the Municipal Court"). It claimed that it should have been treated as a party to the proceedings in which the court had approved the entries concerning the compulsory administration and its extension in the Companies Register, and contended that the rulings had not been served on it. The applicant bank also claimed that the CNB's decision of 27 September 1993 had not been sufficiently reasoned and that it was therefore not able to say whether the compulsory administration had been imposed in accordance with the law or not, and that the decision contained an incorrect notice to the effect that no appeal lay against it. It added that when the rulings of the District Court were served on it, it would make more complete submissions.

16. In a ruling of 17 May 1994, rejecting the appeals against the rulings of 30 September 1993 and 30 March 1994 without holding a public hearing, the Municipal Court stated, *inter alia*:

"... the decisions of the [CNB] concerning the imposition of compulsory administration and its extension were fully within its competence under section 25 of [the Act]. ... In the light of the decision of 27 September 1993, compulsory administration was imposed because of the repeatedly unsatisfactory financial situation ... of the bank. Section 26(4) of [the Act] expressly states that administrative law applies to the procedure concerning the imposition of penalties ... Administrative law does not, therefore, apply to other decisions taken under section 26 of this Act ... It is true that the court of first instance acted incorrectly when it did not notify both rulings to the appellant. However, it is apparent from the appeals which the appellate court considered to have been lodged in time that [the appellant] has become familiar with both of them ... [Moreover], the entries in the Companies Register were made [by the court of first instance] in accordance with section 29 [of the Act]."

17. On 21 June 1994 the applicant bank, represented by the chairman of its Board of Directors and Mr Choděra, filed an appeal on points of law (*dovolání*) with the Prague High Court (*Vrchní soud*) against the Municipal Court's ruling of 17 May 1994, pursuant to Articles 237(f) and 241 § 2(d) of the Code of Civil Procedure.

18. On 22 June 1994 the bank lodged a constitutional appeal (*ústavní stížnost*) with the Constitutional Court (*Ústavní soud*) against the District Court's rulings of 30 September 1993 and 30 March 1994 and the Municipal Court's ruling of 17 May 1994, with a proposal to repeal sections 26(4) and 41(2) of the Act.

19. On 23 June 1994 the CNB extended the compulsory administration until 31 December 1994. On 29 June 1994 notice of the extension was published in the Commercial Bulletin. In a ruling of 30 June 1994 the District Court, upon a proposal by the CNB, approved an entry concerning the extension in the Companies Register. The court did not hold a public hearing. On the same day, it approved the ruling by issuing a certificate of legal validity. The ruling was sent to the office of Mr Choděra. On 21 July and 15 August 1994 the applicant bank, represented by Mr Choděra, appealed against the ruling to the Municipal Court.

20. In the meantime, on 29 June 1994, the Constitutional Court had declared the applicant bank's constitutional appeal inadmissible, finding, *inter alia*, that the ruling of 17 May 1994 had not been served on the parties to the proceedings and, therefore, had not become final.

21. On 29 July 1994 Act No. 156/1994, which amended the Act as regards, *inter alia*, the procedure on compulsory administration, came into force. Section IV provided that the Act was applicable in all cases where compulsory administration had been imposed before that date.

22. On 30 August 1994 the ruling of the Municipal Court of 17 May 1994 was served on the applicant bank and thereby became final.

23. On 31 August 1994 the applicant bank, represented by the chairman of its Board of Directors and Mr Choděra, renewed its appeal on points of law against the Municipal Court's ruling of 17 May 1994. The appeal contained the same arguments as in the previous appeal, which appeal had, however, been lodged before the notification of the ruling.

24. On the same day the applicant bank, represented by the chairman of its Board of Directors and Mr Choděra, lodged a second constitutional appeal against the Municipal Court's ruling of 17 May 1994. It pointed out that the ruling had become final by its notification and that, therefore, an appeal lay against it to the Constitutional Court. It submitted that it should have been a party to the proceedings on entries in the Companies Register and that all decisions relating to these proceedings should have been served on it. It further challenged an allegedly wrong interpretation of section 26(4) of the Act by the Municipal Court and suggested that this provision, together with section 41(2) of the Act, should be repealed.

25. On 13 October 1994 the Municipal Court dismissed the applicant bank's appeal against the District Court's ruling of 30 June 1994 as being lodged by an unauthorised person. The court found that the applicant bank's statutory body had, pursuant to section 29(2) of the Act as amended, been replaced by the compulsory administrator, who alone could represent the bank or authorise a legal representative, but who had not granted such authorisation to Mr Choděra.

26. On 1 December 1994 the CNB decided that the compulsory administration would not finish on 31 December 1994, but would be terminated for one of the reasons indicated in section 33 of the Act as amended. On 7 December 1994 that decision was entered in the Companies Register.

27. In the meantime, on 6 December 1994, the applicant bank, represented by the chairman of its Board of Directors and by Mr Choděra, had lodged a third constitutional appeal, this time against the Municipal Court's ruling of 13 October 1994. It complained, in particular, that the Municipal Court had violated the applicant bank's right to be protected by a court considering that its appeal had been lodged by an unauthorised person. It further suggested that section IV(3) of Act No. 156/1994 should be repealed.

28. On 13 December 1994 the Constitutional Court declared inadmissible the applicant bank's second constitutional appeal against the Municipal Court's ruling of 17 May 1994, holding in particular that when the constitutional appeal had been lodged, the Municipal Court had been dealing with the applicant bank's appeal and the appeal on points of law filed in the meantime had still been pending. Accordingly, no final decision had been given at that stage.

29. On 31 January 1995 the Constitutional Court dismissed the applicant bank's third constitutional appeal as being unsubstantiated and as being lodged by an unauthorised person. The court stated, in particular:

“... the Prague Municipal Court founded its decision expressly on section 29(2) of [the Act] ... according to which a compulsory administrator replaces the statutory body of a bank during compulsory administration. ... [The applicant bank's legal representative] was not authorised by the compulsory administrator of the bank to make an appeal or lodge a constitutional appeal.

... The Constitutional Court found from the case file of the Prague 1 District Court that the decision imposing compulsory administration ... was ordered by the [CNB] on 27 September 1993 ... The compulsory administration became effective, in accordance with section 29(1) of [the Act], by its registration in the Companies Register, pursuant to the Prague 1 District Court's ruling of 30 September 1993 which became final on 4 October 1993. ...

Moreover, according to [the Act], administrative law was not applicable to proceedings concerning compulsory administration, with the exception of cases explicitly referred to in this Act (sections 26(4) and 41). Administrative law became

applicable only after the entry into force of Act No. 156/1994 (section 26(4)). To that end, an administrative complaint could be lodged against a decision given by the [CNB] (section 26(8)). An administrative complaint could also be made under section 41(1) of [the Act]. However, only by section 26(7) of the [Act] as amended did the [CNB] become obliged to notify its decision on compulsory administration to [the bank]. In addition the administrative complaint does not have suspensive effect (section 8) ...”

30. On 15 June 1995, pursuant to section 33(1) of the Act as amended, the CNB withdrew the applicant bank's banking licence (*povolení působit jako banka*) and on 15 August 1995, on an appeal of the applicant bank, it confirmed that decision.

31. On 2 October 1995 the Commercial Court instituted bankruptcy proceedings against the applicant bank.

32. On 6 January 1997 the District Court stayed the proceedings instituted on 6 October 1995 by the applicant bank, represented by Mr Choděra, against the CNB and the compulsory administrator, requesting the latter to fulfil his obligation (*o splnění povinnosti nuceného správce*). It stated that the applicant bank had not submitted a power of attorney.

33. On 7 January 1997 the Commercial Court, to which the appeal on points of law against the Municipal Court's ruling of 17 May 1994 had been referred, stayed the proceedings on the ground that Mr Moravec had not paid the court fees despite having been ordered to do so by the court's ruling of 22 May 1995, which was modified on 10 July 1996 and served on him on 12 August 1996.

34. On 2 April 1998 the Municipal Court quashed the District Court's ruling of 6 January 1997, stating, *inter alia*:

“There is no doubt that the claim was made on 6 October 1995 and that a power of attorney issued by the applicant bank's statutory body was attached to it. There is also no doubt that on 2 October 1995 bankruptcy proceedings were instituted against the bank ... (By that date) the company that had been declared bankrupt had not lost its capacity to act in legal proceedings but only the right to dispose of property forming part of the estate of the company. By section 14(1)(h) of Bankruptcy and Equalisation Act No. 328/1991 [*zákon o konkurzu a vyrovnání*], powers of attorney relating to the property forming part of the estate of a company declared bankrupt lose their validity. However, that was not so in the present case ...”.

35. On 30 November 2000 the Supreme Court declared inadmissible the applicant bank's appeal on points of law against the Municipal Court's ruling of 17 May 1994. It held that pursuant to Article 237(f) of the Code of Civil Procedure, an appeal on points of law was admissible if a party to the proceedings could not act as a result of a procedural step taken by the court. According to the law then in force, compulsory administration became effective on the date on which the relevant entry was made in the Companies Register; the applicant bank's own statutory body was therefore empowered to act on its behalf until that date and to appeal against the ruling of the District Court on the registration of the compulsory

administration in the Companies Register. The District Court had then to notify its ruling to the applicant bank. However, in the present case the applicant bank had validly appealed against the ruling concerned to the Municipal Court, which had considered it on the merits. Seeing that the ruling was not reasoned, notification of it could not improve the procedural position of the applicant bank. The Supreme Court added that the fact that the applicant bank had not received the text of the CNB's proposal for the entry concerning the compulsory administration in the Companies Register did not remove the applicant bank's right to act in proceedings before the court as provided for in Article 237(f) of the Code of Civil Procedure.

In so far as the appeal on points of law concerned the entry of the first extension of the compulsory administration in the Companies Register, the Supreme Court pointed out that section 29 of the Act as in force at the time when compulsory administration had been imposed provided that compulsory administration became effective on the date on which the relevant entry was made in the Companies Register, the functions of the statutory body of the bank being suspended by the appointment of a compulsory administrator until the compulsory administration ended. In the present case, on 30 September 1993 the statutory body of the applicant bank had been replaced by the compulsory administrator, who alone was entitled to appeal in the proceedings concerning the proposal for an entry concerning the extension of compulsory administration to be made in the Companies Register. However, the appeal against the District Court's ruling of 30 March 1994 had been lodged by Mr Choděra who had acted on the basis of a power of attorney issued by Mr Moravec, chairman of the applicant bank's Board of Directors, on 9 February 1994.

36. On 30 November 2000 the Supreme Court likewise declared inadmissible the applicant bank's appeal on points of law against the Municipal Court's ruling of 13 October 1994. It stated, *inter alia*, that Article 237(b) of the Code of Civil Procedure provided that an appeal on points of law was admissible if the person who acted as a party to the proceedings lacked the capacity to be the party to those proceedings. The applicant bank claimed that the compulsory administrator had not had the capacity to be the party to the proceedings. The Supreme Court stated that in the present case the applicant bank had the capacity to be a party to the proceedings; another question was who could act on its behalf before the court.

The Supreme Court then examined the conditions of admissibility of the applicant bank's appeal on points of law under Article 237(f) of the Code of Civil Procedure. It stated that according to the law then in force, compulsory administration became effective on the date on which the relevant entry was made in the Companies Register; on that date the statutory body of the bank was replaced by the compulsory administrator. Article 200(b) § 2 of the Code of Civil Procedure provided that the court decided on the contents of

the entry in the Companies Register without holding a hearing. It specified the date of the entry in its decision. The entry had to be effected within one month after the decision had been taken. The Supreme Court underlined that the date of the entry in the Companies Register was not to be confused with the date on which the decision authorising the entry was delivered, with the date of its notification, or with the date on which the court approved the decision by issuing the certificate of legal validity. The court concluded that the compulsory administrator alone was entitled to appeal in the proceedings concerning the proposal to make an entry in the Companies Register of the second extension of the period of compulsory administration. However, the appeal against the District Court's ruling of 30 June 1994 had been lodged by Mr Choděra who had acted on the basis of a power of attorney issued by Mr Moravec, chairman of the applicant bank's Board of Directors, on 9 February 1994. Consequently, the applicant bank had not had the right to have its appeal examined on the merits by the appellate court.

37. On 19 March 2001 the applicant bank, represented by Mr Choděra, lodged a fourth constitutional appeal, this time against two decisions of the Supreme Court, alleging a violation of Article 6 § 1 of the Convention.

II. RELEVANT DOMESTIC LAW

38. Until 29 July 1994 compulsory administration proceedings were governed by the Banks Act (No. 21/1992) ("the Act"). Section 26(1)(a) of the Act provided that compulsory administration was a measure which the Czech National Bank ("the CNB"), as an administrative authority under section 1(3) of the Czech National Bank Act (No. 6/1993), could impose upon a bank if it did not comply with the conditions laid down in its banking licence and/or if it infringed the law. Under section 27, the CNB was empowered to impose compulsory administration on a bank if the bank's financial situation and liquidity failed considerably or repeatedly to satisfy the conditions laid down in the Act, and previous measures or sanctions had not remedied the situation. Under section 29(1), compulsory administration became effective on the date of the relevant entry in the Companies Register, the CNB not being required to notify the bank of its decision to place it in compulsory administration. Before registration, the decision to impose compulsory administration was published in the Commercial Bulletin. Section 29(2) provided that the functions of the bank's statutory body were suspended by the appointment of a compulsory administrator until the end of the compulsory administration. Under section 30, the compulsory administrator was entitled to take measures necessary to restore the stability and liquidity of the bank concerned, including closure of its branches or other administrative units. Under section 33, compulsory administration could be terminated by: (a) revocation, if there were no

longer any reasons for its continuance; (b) expiry of the period originally fixed by the CNB, if that period had not been extended; and (c) withdrawal of the bank's banking licence.

The Banks Act did not oblige the CNB to notify its decision concerning the imposition of compulsory administration to the bank concerned. It did not specify the maximum period of compulsory administration, did not contain any reference to the application of administrative law to compulsory administration proceedings, did not specify the parties to the proceedings and did not indicate any remedy against a decision imposing compulsory administration.

39. Compulsory administration proceedings were modified by Act No. 156/1994 (“the Act as amended”) which entered into force on 29 July 1994. It was applied to all cases in which compulsory administration had been imposed before that date. Pursuant to the new section 26(4), administrative law applies, *inter alia*, to proceedings concerning the imposition and withdrawal of compulsory administration, unless the Banks Act provides otherwise. The bank is the sole party to the proceedings (section 26(5)) which can also be institute by the notification of the decision (section 26(6)). Pursuant to the new section 26(7), the CNB shall notify a member of the bank's Board of Directors (*představenstvo*) or a member of its Supervisory Board (*dozorčí rada*) or a person empowered to direct the bank of its decision imposing compulsory administration on the bank. The bank can lodge an administrative complaint (*rozklad*) against such a decision. The complaint does not have suspensive effect (section 26(8)). Pursuant to section 29(1), the functions of all organs of the bank are suspended upon the notification of the compulsory administration decision. The compulsory administrator assumes the functions of the statutory organ. Section 33(c) limits the maximum period of compulsory administration to twenty-four months.

40. Article 14 of the Code of Administrative Procedure (Act No. 71/1967) recognises as a party to proceedings any person whose rights, obligations or interests protected by law are to be dealt with, or whose rights, obligations or interests protected by law may be directly affected by an administrative decision. Article 61 provides that any administrative decision taken by a central State administrative authority at first instance may be contested by an administrative complaint lodged within 15 days from the date on which the administrative decision was served.

41. Certain provisions of the Code of Civil Procedure were also applied in the present case.

Article 167 provides, *inter alia*, that “unless otherwise provided by law, the court shall decide in the form of a ruling (*usnesení*)”.

Article 168 § 2 provides, *inter alia*, that “the court shall serve a ruling on the parties if such ruling may be appealed against or an appeal on points of law is filed ...”

Article 171 § 2 provides, *inter alia*, that “if the ruling does not impose a duty of performance, it becomes enforceable (*vykonatelný*) as soon as it is served”.

Article 200(b) provides that

“(1) In proceedings concerning an entry in the Companies Register, the court shall examine whether all the conditions required by the statutory provisions for making such entry are met.

(2) The court decides on the content of a particular entry by a ruling without holding a hearing. The verdict in the ruling shall state the date of the entry. The entry is to be made within one month of issuing the decision on the content of such entry.

(3) The provisions on disciplinary fines shall apply if a company fails to comply with the court's request to notify the court of the facts, or to submit the documents, required for making an entry under Article 200(a) § 2.”

Article 237 provides that

“An appeal on points of law (*dovolání*) is admissible against a decision of an appellate court if:

...

(b) a person who acted as a party in the proceedings lacked the capacity to be such party;

...

(f) a party to the proceedings was deprived from acting before the court through a faulty procedure applied by the court.”

Article 241 § 2(d) provides that an appeal on points of law may be filed “if a decision was based on incorrect legal consideration of the case.”

Chapter II of the Code governs the conditions for the review of decisions of administrative authorities (*správní žaloba*).

Article 247 provides:

“(1) The provisions of this Chapter shall apply to cases when an individual or a legal entity claims that his or its rights were curtailed by a decision of an administrative authority and a request for review is filed with the court seeking a review of that decision from the viewpoint of its legality.

(2) Regarding a decision issued as part of administrative proceedings by an administrative organ, the provisions of this Chapter shall only apply to a review of that decision in respect of which all ordinary legal remedies admitted by law have been made use of and the decision in question has become final.

Article 250(b) § 1 provides that the request for review shall be filed within two months of the notification of the decision of the administrative authority in the last instance, unless the law provides otherwise.

Under Article 250(i) § 1, the facts at the time when the decision in question was given are decisive. No examination of evidence takes place.

Article 250(j) § 1 provides, *inter alia*, that the court, upon finding that the decision in question has been made in accordance with law, shall reject the request for review.

Article 250(j) § 2 provides, *inter alia*, that the court, upon finding that the administrative authority did not consider the matter correctly from the legal point of view or that the facts on which it founded its decision were contrary to the content of the file, shall quash the decision and may return the matter to the indicated administrative authority for further proceedings. The court shall also quash a decision when it emerges during a hearing that the decision cannot be reviewed because it is incomprehensible or because of lack of reasons.

42. Finally, Article 27 § 2 of the Commercial Code (Act No. 513/1991) provides that the facts entered in the Companies Register become effective with respect to everyone from the date on which the entry is made.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

43. The Government submitted that the application had not been validly lodged on behalf of the bank for the purposes of Article 34 (formerly Article 25) of the Convention. They contended that the statements of the Commission in its Article 31 Report to the respect that “the applicant is a bank, a joint stock company with a registered office in Prague”, represented by Mr Choděra (paragraph 2), and that “the application was introduced by two applicants: the bank (first applicant) and Mr Antonín Moravec, President of the bank's Board of Directors and its majority shareholder (second applicant)” (paragraph 5) did not correspond to reality. In fact, the bank had never been in the position of an applicant because it was entitled to be represented only by the compulsory administrator, who had never empowered Mr Moravec or Mr Choděra to act on the applicant bank's behalf and to lodge an application with the Commission. Moreover, the application form included only one applicant, Mr Moravec, acting in his capacity as a businessman but not as chairman of the board of directors, and was signed only by Mr Choděra. The Government challenged the Commission's finding in its decision on admissibility of 20 May 1998 that “the bank wished to introduce an application through Mr Moravec” or through Mr Choděra. They also criticised the Commission's statement in its Article 31 Report (paragraph 19) that the ruling of 30 September 1993 had not been served on the applicant bank. In their submission, the Act provided

for the transfer of the functions of the original statutory body to the compulsory administrator by the date of the latter's appointment.

44. The Government further submitted that the applicant bank had not exhausted domestic remedies as required by Article 35 of the Convention as it had failed to institute proceedings under Article 247 of the Code of Civil Procedure or to lodge an administrative appeal against the CNB's original decision by which the compulsory administration had been imposed on it. Mr Moravec had not used that remedy either.

45. The Government also submitted that the applicant bank had not validly lodged any constitutional appeals seeing that neither Mr Moravec nor his legal representative Mr Choděra had been authorised to act on behalf of the applicant bank. The Government further stated that Mr Moravec himself had not lodged a constitutional appeal and that, in fact, he had not been entitled to lodge constitutional appeals on behalf of the bank during the period of compulsory administration.

(i) Article 34 of the Convention

46. The Court notes that, in its decision of 20 May 1998 on the admissibility of the complaint, the Commission held that the bank was affected by the compulsory administration in that the measure had prevented the bank from administering its affairs and that it was therefore clear that the bank had an interest in the subject-matter of the application. The Commission further found that, even though the application form was formally completed in Mr Moravec's name only, it appeared that the bank through Mr Moravec wished to introduce an application and that the forms of authority submitted by Mr Moravec could be accepted as sufficient to introduce the application on behalf of the bank. Accordingly, the Commission had competence under former Article 25 of the Convention to examine the application which had been validly lodged by the bank.

47. The Government contested the finding of the Commission and submitted that, as from 30 September 1993 when the bank was put into compulsory administration, the authority to act on behalf of the bank and to bring a valid application in its name vested in the compulsory administrator alone.

48. The Court reiterates that the Convention and its Protocols must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory (see *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, p. 36, § 99). It endorses the Commission's opinion in its decision on admissibility of 20 March 1998 that this principle is also applicable to Article 34 (former Article 25) of the Convention, which confers upon individuals and non-governmental organisations a right of a procedural nature.

49. The Court notes that when the application was lodged with the Commission in May 1995, the applicant bank, although under compulsory administration, had not ceased to exist as a legal person. It was at that time represented by its compulsory administrator, who, according to section 29(2) of the Banks Act, had replaced the statutory body with effect from 30 September 1993, when the entry concerning the compulsory administration was made in the Companies Register, and who had legal capacity to defend the rights of the applicant bank, and, consequently, to apply to the Convention institutions if he considered it appropriate. The question is raised whether in these circumstances the compulsory administrator alone was authorised to lodge an application under Article 25 on behalf of the bank.

50. The Court recalls that in its *Agrotexim and Others v. Greece*, judgment of 24 October 1995 (Series A no. 330, p. 23, § 68), which concerned a company in the process of liquidation, the Court held that shareholders in the company could not be regarded as entitled to apply to the Convention institutions to complain of an interference with the company's property under Article 1 of Protocol No. 1. The Court observed that the disregarding of a company's legal personality would be justified only in exceptional circumstances, in particular where it was clearly established that it was impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators. Although the subject company was in the process of liquidation, it had not ceased to exist as a legal person at the time the shareholders lodged their application with the Commission and was at that time represented by its two liquidators, who had legal capacity to defend its rights and therefore to apply to the Convention institutions, if they considered it appropriate. There was, in the view of the Court, no reason to believe that the liquidators had not performed their duties satisfactorily and there was, on the contrary, sufficient evidence to show that they had taken all the measures which they considered to be in the interests of the insolvent company's assets. In these circumstances, the Court concluded that it had not been clearly established that at the time the application was lodged with the Commission it was not possible for the company to apply through the liquidators to the Convention institutions in respect of the alleged violation of Article 1 of Protocol No. 1.

51. The Court observes that, in contrast to the situation in the *Agrotexim* case, the complaint under the Convention which is made in the present case relates not to an alleged interference with the property rights of the bank which the compulsory administrator had been appointed to protect and manage and in respect of which the administrator could apply on the bank's behalf to the Convention institutions. On the contrary, the complaint made relates to the very fact that a compulsory administrator was appointed at the instance of the CNB without a proper opportunity being granted to the bank

which was the subject of the administration order to oppose it. Where, as in the present case, the essence of the complaint is the denial of effective access to court to oppose or appeal against the appointment of a compulsory administrator, to hold that the administrator alone was authorised to represent the bank in lodging an application with the Convention institutions would be to render the right of individual petition conferred by Article 34 theoretical and illusory.

52. The Court accordingly finds that, having regard to the particular nature of the complaints made, there were exceptional circumstances which entitled Mr Moravec, as the former President of the bank's Board of Directors and its majority shareholder, to lodge a valid application on the bank's behalf. Accordingly, the Government's preliminary objection in this respect must be rejected.

(ii) Article 35 of the Convention

53. The Court finds that the question whether the requirement of the exhaustion of domestic remedies has been satisfied in the present case raises issues which are closely related to the substantive Convention issues to which the application gives rise and that both issues should be examined together. Accordingly, the Court considers that the determination of this aspect of the Government's Preliminary Objections should be joined to the merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

54. The applicant bank complained that its rights under Article 6 of the Convention had been violated in that it had no remedy in respect of the administrative decision of the CNB to place it in compulsory administration or in respect of the subsequent decisions of administrative and judicial organs. It submitted that, during the compulsory administration, its statutory organ should have retained limited competence regarding the acts of the CNB as a public authority, but that it was not notified about the registration of the compulsory administration or of its first extension and that its appeal against the registration of the second extension of the compulsory administration was dismissed as having been introduced by an unauthorised person. The statutory organ of the bank was therefore deprived of any means of redress in breach of the requirements of Article 6.

55. Article 6 of the Convention provides, so far as material, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing... by an independent and impartial tribunal. ...”

(a) The Commission's Report

56. The Commission observed that it had not been disputed by the parties that Article 6 § 1 of the Convention applied to the present case. The Commission considered that the proceedings on the compulsory administration and its entry in the Companies Register concerned a civil right in that it involved a restriction upon the applicant bank's ability to administer its possessions. It accordingly found that the proceedings fell within the scope of Article 6 § 1 of the Convention.

57. The Commission noted that four sets of proceedings were in issue, namely those relating to (i) the original decision of the CNB of 27 September 1993; (ii) the original registration of the compulsory administration by the Prague 1 District Court on 30 September 1993; (iii) the first extension of the compulsory administration of 18 March 1994 registered in the Companies' Register by the District Court on 30 March 1994; and (iv) the second extension of 23 June 1994 registered in the Companies Register by the District Court on 30 June 1994.

58. As to the first set of proceedings, the Commission noted that the compulsory administration was imposed on the applicant bank by the decision of the CNB of 27 September 1993 and that the applicant bank was notified of this decision on 30 September 1993, on which date the compulsory administration was entered in the Companies Register and became effective. The functions of the bank's statutory organ were thereupon suspended and were assumed by the compulsory administrator, who was appointed at the same time and who alone could represent the applicant bank or authorise a legal representative. Accordingly, the Commission found that, even assuming that it was open to a court, in proceedings of review of decisions of administrative organs under Article 247 of the Code of Civil Procedure, to review the reasons for which the compulsory administration had been imposed, it was not reasonably possible for the bank (through its statutory organ) to lodge such a request for review since it would risk its rejection as having been introduced by an unauthorised person.

59. As to the second and third sets of proceedings, the Commission noted that the applicant bank was able to challenge before the Prague Municipal Court the rulings of the District Court by which the imposition of the compulsory administration and its first extension were entered in the Companies Register. However, the Commission observed that, even though the Municipal Court, as an appellate court, was in principle competent to consider matters of fact and law, it only determined (under Article 200(b) of the Code of Civil Procedure) whether the entries in the Companies Register complied with the requirements of the Banks Act. It did not examine the reasons for which the compulsory administration had been imposed on the applicant bank and subsequently extended. Accordingly, the review by the

Municipal Court of the rulings which were being challenged did not satisfy the requirements of Article 6 of the Convention.

60. As to the last set of proceedings, the Commission noted that the applicant bank's appeal against the ruling of the District Court, by which the second extension was entered in the Companies Register, was dismissed by the Municipal Court without a decision on the merits, on the ground that it had been lodged by an unauthorised person. The Commission observed that the imposition on the applicant bank of the compulsory administration, and each successive extension of it, were measures which determined the bank's civil rights for the purposes of Article 6 of the Convention and therefore gave rise to the latter's right of access to a court to challenge the reasons for the measures in question. The refusal of the Municipal Court to examine the merits of the applicant bank's appeal amounted, in the view of the Commission, to an unjustified limitation on the bank's effective access to court in breach of the requirements of Article 6 of the Convention.

(b) The submissions of the parties

61. The applicant bank supported the findings and reasoning in the Commission's Report, according to which it had not at any stage of the proceedings had access to a tribunal to have reviewed the reasons for which the compulsory administration had been imposed and extended.

62. The Government submitted that Article 6 of the Convention was inapplicable to the imposition of compulsory administration on the applicant bank and to any extension thereof since neither involved the determination by a tribunal of a dispute ("*contestation*") concerning civil rights and obligations. The Prague Municipal Court did not determine such a dispute and neither Mr Moravec nor the applicant bank itself were capable of being parties to the proceedings before that court. To criticise the Municipal Court, as the Commission did in the course of finding a violation of Article 6 of the Convention, for not having used its competence to examine the reasons for which the compulsory administration had been imposed and extended, as if it were determining a dispute between the CNB on the one hand and Mr Moravec and the applicant bank on the other, is to reproach that court for something which formed no part of the proceedings before it. The essential function of the court under Article 200(b) of the Code of Civil Procedure, when deciding on matters relating to entries in the Companies Register, is not to determine a dispute concerning civil rights and obligations but to verify whether the conditions laid down in the relevant legislation for making an entry in the Register have been fulfilled. In matters relating to the Companies Register, the court does not deliver a judgment or decision. Since the procedure is exclusively a written procedure and is in private, in the sense that there is no hearing, the final ruling of the court is not published. However, the ruling must be reduced to writing and notified to the party applying for registration, from which

moment it becomes binding. While it is true that there exists a possibility of appeal from rulings of the court relating to the Companies Register, if by the ruling the application is granted in all respects, no appeal lies since an appeal can only be lodged by the party in whose favour the court has ruled. Subject to the conditions provided by Article 236 et suiv. of the Code of Civil Procedure an appeal of points of law possible even in respect of proceedings relating to the Companies Register.

63. The ruling of the court in relation to the Companies Register, on an application of the CNB, decides only that the compulsory administration is registered. Just as in the case of a judicial decision designating a receiver in bankruptcy, the ruling constitutes merely a pre-condition for the exercise by the administrator of his functions, in place of the existing management of the bank.

(c) The Court's assessment

64. The Court notes at the outset that, before the Commission, there was no dispute that Article 6 of the Convention was applicable in the present case. The Commission found that the proceedings relating to the compulsory administration imposed on the applicant bank and the subsequent entry in the Companies Register concerned the civil rights of the bank, in that it involved a restriction on the bank's ability to administer its possessions and that the proceedings accordingly fell within the scope of Article 6. Before the Court that view was for the first time contested by the respondent Government, which argued that neither the decision to place the bank in compulsory administration nor the decision to extend the period of such administration involved a determination of the bank's civil rights and obligations.

65. The Court, like the Commission, considers that the decision to place the applicant bank in compulsory administration had a clear and decisive impact on the right of the bank to continue to manage its own financial affairs, including its ability to administer its own property and assets, through its statutorily appointed Board of Directors. It is true, as pointed out by the Government, that the decision of the CNB to place a bank in compulsory administration does not require those made responsible for administering the bank to use the bank's property in any different manner than before and that such a decision is designed only to prevent the existing management of the bank from improperly dissipating the assets of the bank concerned. Nevertheless, the Court is unable to accept the Government's argument that the decision of the CNB thereby affected only the rights of the existing management of the bank rather than the bank itself.

66. The Government submitted that Article 6 was inapplicable since neither the decision of the CNB to impose the compulsory administration nor that of the Prague Municipal Court rejecting the appeals against the rulings of the District Court involved the determination by a tribunal of

a dispute (“*contestation*”) concerning the civil rights and obligations of the applicant bank. The Court recalls in this regard that conformity with the spirit of the Convention requires that the word “*contestation*” in the French text, which has no counterpart in the English text, should not be construed too technically and should be given a substantive rather than a formal meaning (see e.g., *Le Compte, Van Leuven and De Meyere v. Belgium*, judgment of 1 October 1980, Series A no. 43, § 45). Moreover, even if the use of the French term “*contestation*” implies the existence of a disagreement, the Court finds that such a disagreement clearly existed in the present case, the applicant bank having sought to contest, through its former management, the decision to impose and extend the compulsory administration when it became aware of the rulings of the District Court.

67. The Court, accordingly, finds that Article 6 of the Convention was applicable to the decisions to impose on the applicant bank, and to extend, the compulsory administration.

68. The Court recalls that where, as here, decisions taken by administrative authorities which determine civil rights and obligations do not themselves satisfy the requirements of Article 6 of the Convention, it is necessary that such decisions be subject to subsequent control by a “judicial body that has full jurisdiction” and that provides the guarantees of that Article (see e.g., *Albert and Le Compte v. Belgium*, judgment of 10 February 1983, Series A no. 58, § 29; *Ortenberg v. Austria*, judgment of 25 November 1994, Series A no. 295-B, § 31; *Bryan v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-A, § 40).

69. The Government argued before the Commission that the necessary judicial control was afforded in the present case by the possibility for the applicant bank to lodge a request for review (*správní žaloba*) under Article 247 of the Code of Civil Procedure against the original decision of the CNB to place the bank in compulsory administration. The Court however observes that the original decision, which was taken on 27 September 1993 and published in the Commercial Bulletin on 29 September 1993, contained a notice to the effect that administrative procedural provisions were not applicable and that no appeal lay against the CNB's decision. Moreover, as noted by the Commission, the decision became effective on 30 September 1993 when it was entered in the Companies Register pursuant to the ruling of the Prague 1 District Court. As from that date, the powers and functions of the statutory organ of management of the bank were suspended and transferred to the compulsory administrator, who alone was authorised to represent the bank and to appoint a legal representative to conduct proceedings on the bank's behalf. The Court observes that, in its judgment of 30 November 2000, the Supreme Court held that, until the date of entry in the Register, the applicant bank's own statutory body remained empowered to act on the bank's behalf (see paragraph 35 above). However, the Court notes that the entry was in

fact made on the day after publication of the CNB's original decision in the Commercial Bulletin. In these circumstances, even assuming that the decision of the CNB was liable to be judicially reviewed and that in any such proceedings the civil courts would have had jurisdiction to review the grounds on which the compulsory administration had been imposed, the Court finds that the applicant bank had no practical possibility of bringing or pursuing such review proceedings through its statutory management body.

70. The Court further finds that the requisite degree of judicial control of the decision to impose or extend the period of compulsory administration was not afforded under Article 200(b) of the Code of Civil Procedure by the rulings of the District Court. As the Government themselves averred, the essential function of the national courts when deciding on matters relating to entries in the Companies Register is to verify that the formal conditions laid down in the relevant legislation for making such entries have been fulfilled. It is not the role of the courts to examine the substantive reasons for which the compulsory administration has been imposed or subsequently extended. Moreover, consistently with this limited role, the procedure before the court is exclusively written and takes place in private, without a hearing and without the possibility of opposition from the management of the bank.

71. It is true that, despite the fact that the powers of the former management of the bank were suspended, the bank was able through Mr Moravec and Mr Choděra to lodge an appeal against the rulings of the District Court of 30 September 1993 and 30 March 1994 with the Prague Municipal Court. However, as appears from the decision of the Municipal Court of 17 May 1994 rejecting the bank's appeal, that court similarly did not examine the substantive reasons for the decision to impose or extend the compulsory administration, its role being confined to establishing that the entries in the Companies Register had complied with the requirements of the Banks Act.

72. As to the appeal lodged against the ruling authorising the entry in the Companies Register of the second extension of the compulsory administration, the Court notes that the appeal was dismissed by the Prague Municipal Court on 13 October 1994 without any examination of the merits of the appeal, the court holding that the appeal had been lodged by an unauthorised person, the compulsory administrator alone being authorised to act on behalf of the bank in any such appeal. The Court, like the Commission, finds that, even assuming the scope of review in such an appeal would have been wide enough to satisfy the requirements of Article 6 of the Convention, the applicant bank had no effective access to court to obtain such a review.

73. In the light of the above, the Court finds that, in the determination of its civil rights and obligations, the applicant bank had no effective access to

a judicial tribunal satisfying the requirements of Article 6 § 1 of the Convention and that there has accordingly been a violation of that Article.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

74. The applicant bank submitted that compulsory administration constituted a limitation on property rights in the public interest. However, when as in the present case compulsory administration was imposed in a procedurally erroneous way, the rights of persons affected thereby were themselves breached, irrespective of whether there existed good reasons for the imposition of the measure. It was contended that the applicant bank had been given no opportunity to express itself concerning the reasons for the limitation on its property rights, as it had been unable to present its case to an appellate authority for the reasons to be examined. There was accordingly a breach of the applicant bank's rights under Article 1 of Protocol No. 1.

75. Article 1 of Protocol No. 1 provides as follows:

“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 by law and by the general principles of international law.

The preceding paragraph shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

(a) The Commission's Report

76. The Commission noted that the applicant bank's complaints under Article 1 of Protocol No. 1 presented in fact financial aspects of its complaints concerning access to a court which had already been examined by the Commission under Article 6 of the Convention. The Commission considered that it was accordingly unnecessary also to examine the complaints under Article 1 of Protocol No. 1.

(b) The submissions of the parties.

77. Although stating that it respected the opinion of the Commission and conceding that a finding of a violation of Article 1 of the Protocol would not be as vital for the applicant bank in the event that a violation of Article 6 of the Convention were found by the Court, the applicant bank maintained that the case should also be examined under the Protocol in relation to its property aspects.

78. The bank submitted that the compulsory administration had been immediately followed by the bankruptcy proceedings, the court's bankruptcy ruling coming into effect on the same day as the compulsory administration ended. This showed that the relevant authorities had decided not to give the applicant bank the opportunity to administer its own property and to be restored to the market. It was the compulsory administration which had led the bank into bankruptcy. The applicant bank had had very limited access to the results of the work of the compulsory administrator or the bankruptcy administrator but there were at least signs of negligence on the part of the administrators in recovering the bank's debts. The consequences of the interference with the applicant bank's property rights were too wide to consider the complaint under Article 1 of Protocol No. 1 as presenting merely the financial aspects of the complaint under Article 6 of the Convention.

79. While not opposing the conclusion reached by the Commission, the Government noted that it had consistently refuted the complaint of the applicant bank under Article 1 of Protocol No. 1, arguing that the bank had been placed in compulsory administration in accordance with the law and that the measure had been justified in the general interest of the proper functioning and stability of the banking system, including the safeguard of the interests of the bank's clients. The compulsory administration of the bank had been preceded by numerous measures designed to remedy the poor management of the bank's affairs. The question posed was whether the placing of the bank in compulsory administration could be considered as an interference with the peaceful enjoyment by the bank of its possessions, when it in fact represented a final attempt to avert its bankruptcy, in the interests of the bank itself. The measure was one intended to avoid the total collapse of the bank, by isolating the persons responsible for its management and thereby preventing further losses and violations of the laws and regulations.

80. The Government observed that the Banks Act did not provide, even indirectly, that a decision to place a bank in compulsory administration would require those administering the bank to use the bank's property in any different manner than before. The decision affected only the rights of the management of the bank, so as to prevent the management from disposing of the property of the bank in a way calculated to lead to its bankruptcy.

81. The Government was, accordingly, of the view that Article 1 of Protocol No. 1 had no application in the circumstances of the present case since the compulsory administration was not a measure "to control the use of property" within the meaning of the second paragraph of the provision. Even assuming that the measure could be seen as an interference with the bank's peaceful enjoyment of its possessions, such measure had a legal basis and was in accordance with the general interest and clearly justified.

(c) *The Court's assessment*

82. The Court has already examined above the applicant bank's complaint that it did not have effective access to a court with the power to review the merits of the decision to impose on it, and to extend, the compulsory administration. The Court notes that the applicant bank's complaint of an unjustified interference with its right to peaceful enjoyment of its possessions under Article 1 of Protocol No. 1 is essentially based on the same lack of procedural protection which has already been found to give rise to a violation of Article 6 (see, *mutatis mutandis*, *British-American Tobacco Company Ltd. v. the Netherlands*, judgment of 20 November 1995, Series A no. 331, p. 29, § 91). In these circumstances, the Court, like the Commission, considers that it is not necessary separately to examine the complaint under Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant bank requested the Court, in the first place, to oblige the respondent State to restore its banking licence. In addition, the applicant bank submitted that, although it was not possible to fully verify the exact amount of the damage caused to the bank as a direct consequence of the imposition of the compulsory administration and the subsequent steps taken in the bankruptcy proceedings, it was clear that the bank's property had been thereby devaluated. The applicant bank estimated the cost of restoring the bank to the market at CZK 5,000,000,000.

85. The applicant bank additionally claimed non-pecuniary damage, estimated at CZK 1,500,000,000 in respect of the damage to the goodwill of the bank and its credibility in the banking market.

86. The Government argued that Article 41 of the Convention conferred no power on the Court to order the State to restore the bank's licence. As to the applicant bank's claim for pecuniary damage, the Government noted that the applicant bank had itself admitted that it was impossible to verify the damage alleged to have been sustained and submitted that the claim of CZK 5,000,000,000 should in any event be rejected as without foundation. Similarly, the claim of CZK 1,500,000,000 in respect of moral damage, which was also accepted by the applicant bank to be an estimate, should be

rejected. The Government further submitted that the sums claimed – being the equivalent of USD 200,000,000 – were in any event grossly excessive, corresponding to many years of profits of an average bank. In the submission of the Government, the applicant bank had failed to show that it had suffered any damage; still less had it shown any causal connection between the damage claimed and violation of Article 6 of the Convention alleged. The bankruptcy of the applicant bank had resulted from the activities of its former management and not from any act of the Prague Municipal Court.

87. The Court recalls at the outset that it has no jurisdiction under the Convention to make consequential orders requiring the respondent State to restore to the applicant bank its banking licence.

88. As to the applicant bank's claim in respect of pecuniary damage, the Court finds that no causal link has been established between the alleged pecuniary damage suffered and the violation of Article 6 of the Convention found by the Court in its judgment. While the placing of the applicant bank in compulsory administration might well have had adverse financial consequences for the bank, the Court cannot speculate as to what the result of proceedings might have been if the applicant bank had been able to bring the imposition of this measure before a court with full jurisdiction. No award can therefore be made in respect of pecuniary damage.

89. As to the claim in respect of non-pecuniary damage, the Court is of the opinion that in the particular circumstances of the case the finding of a violation of Article 6 of the Convention constitutes sufficient just satisfaction.

B. Costs and expenses

90. The applicant bank claimed the sum of CZK 10,536,860 in respect of costs and expenses incurred in the domestic proceedings (CZK 6,416,800) and later before the Convention institutions (CZK 4,120,060). The costs claimed were said to be calculated in accordance with the official Lawyers' Tariff (Decree of the Ministry of Justice No. 177/1996; prior to 1 July 1996 Decree No. 270/1990).

91. The Government submitted that Mr Choděra never had the authority to act or incur costs and expenses on behalf of the applicant bank and that the bankruptcy administrator of the bank had consistently maintained that the proceedings before the Convention institutions were ill-founded and that the bank had no financial claim against the State. As to the sums claimed, the Government considered that the applicant bank had incorrectly interpreted and applied the Decree of the Ministry of Justice and that the costs claimed were wholly excessive. In particular, it was pointed out that there was no basis for asserting that the value of the claim in issue (by

reference to which the fees sought had been fixed) was CZK 800,000,000, corresponding to the authorised capital of the bank.

92. The Court observes that, according to its constant case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek to prevent or rectify a violation of the Convention, to have the same established by the Court and to obtain redress therefore. It must also be shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, among other authorities, *Krčmář and Others v. the Czech Republic* [Section III], no. 35376/97, 3 March 2000, § 52). The Court further recalls that in assessing the reasonableness of the sums claimed in respect of costs and expenses, it does not regard itself as bound by domestic scales and practices, although it may derive some assistance from them (*ibid.*).

93. The Court finds the sums claimed by the applicant bank in respect of costs and expenses to be excessive. The Court further notes that no documentary evidence was submitted by the applicant bank to establish that the costs and expenses claimed by it were actually incurred. Deciding on an equitable basis, the Court awards the applicant bank a total of EUR 10,000 in respect of the costs and expenses incurred in the domestic proceedings and before the Convention institutions, such sum to be converted into Czech crowns and paid into the bank account of the applicant bank's representative in the Czech Republic.

C. Default interest

94. 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 (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 124, ECHR 2002).

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that it has jurisdiction to examine the merits of the case;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to examine separately the applicant bank's complaint under Article 1 of Protocol No. 1 to the Convention;
4. *Holds* that the finding of a violation constitutes sufficient just satisfaction in respect of any non-pecuniary damage;

5. *Holds*

(a) that the respondent State is to pay the applicant bank, within three months, EUR 10,000 (ten thousand euros) in respect of costs and expenses to be converted into Czech crowns at the rate applicable at the date of payment of settlement and paid to the bank account of the applicant bank's representative in the Czech Republic;

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

6. *Dismisses* the remainder of the applicant bank's claim for just satisfaction.

Done in English, and notified in writing on 21 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President