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

SECOND SECTION

CASE OF MILATOVÁ AND OTHERS v. THE CZECH REPUBLIC

(Application no. 61811/00)

JUDGMENT

STRASBOURG

21 June 2005

FINAL

21/09/2005

In the case of Milatová 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 I. CABRAL BARRETO,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI,
Mrs D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 31 May 2005,

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

PROCEDURE

1. The case originated in an application (no. 61811/00) 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 four Czech nationals, Mrs Dana Milatová, Mr Lubomír Milata, Mr Dušan Milata and Mrs Danuše Nováková ("the applicants"), on 21 August 2000.

2. The applicants were represented by Mr A. Pejchal, a lawyer practising in Čelákovice. The Czech Government ("the Government") were represented by their Agent, Mr V.A. Schorm, of the Ministry of Justice.

3. The applicants alleged, under Article 6 § 1 of the Convention, that they had not had a fair hearing before the Constitutional Court, which had not allowed them an opportunity to comment on the written statements filed by the Regional Court and by the defendant that it had used in reaching its decision.

4. The application was allocated to the Second 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.

5. By a decision of 30 November 2004, the Chamber declared the application partly admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1929, 1952, 1950 and 1949 respectively and live in the Nový Jičín region.

8. On 18 December 1991 the first applicant and her husband claimed restitution of their real property – a house with land – under the Land Ownership Act, alleging that in May 1985 they had been forced to sell it to the State, represented by the former Federal Ministry of National Defence (*federální ministerstvo národní obrany*), on terms that had been imposed on them. At the date of the entry into force of the Land Ownership Act, the property was managed by the Military Repair Enterprise ("the defendant"), the authority that was obliged to return the property to them, pursuant to section 5(1) and (2) of the Act.

9. The restitution claim was dealt with by the Nový Jičín Land Office (*pozemkový úřad*).

10. On 18 September 1992 the Nový Jičín Geodesy Centre (*středisko geodézie*) issued a survey plan in respect of the land. The plan was, however, found to be incomplete by the Land Office.

11. On 26 September 1993 the first applicant's husband died, and their three children joined the proceedings as his legal successors. In a medical report of 29 March 1994 it was stated that the premature death of the first applicant's husband was directly linked to an illness which had started after he had been forced to leave the house and to abandon his property.

12. On 22 February 1994 the Nový Jičín Land Registry (*katastrální úřad*) issued a new comparative plan of the land. Four other documents issued on 15 May, 3 June and 8 June 1994 were also included in the file. Two survey plans, issued at the request of the defendant and the Land Office, were produced on 11 November 1994 and 26 January 1995 respectively.

13. On 12 September 1995 the Land Office, having assessed the material in the file and having heard evidence from five witnesses who had been involved in the negotiations for the sale of the applicants' property, including Mr R., who was the defendant's lawyer, declared that the applicants were the owners of a major part of the property. It found that the contract of sale had been concluded under duress on strikingly unfavourable terms, within the meaning of section 6(1)(k) of the Land Ownership Act.

14. The Land Office established, among other things, that, contrary to the law then in force, the first applicant and her husband had not been considered parties to administrative proceedings which had resulted in the adoption of a decision on 20 March 1984 on the location of a construction

site. It also established that the purchase price had been determined by an expert, in accordance with Decree no. 128/1984.

15. On 26 October 1995 the defendant, represented by Mr R., appealed against the administrative decision to the Ostrava Regional Court (*krajský soud*), which on 9 July 1996 carried out an inspection of the site.

16. In their observations on the defendant's appeal, the applicants challenged, *inter alia*, the statement by Mr R., who had legally represented the defendant in the past and was acting again as its lawyer in the restitution proceedings.

17. On 9 July 1996 a meeting took place at the site.

18. On 20 August 1996 the Regional Court quashed the decision and remitted the case to the Land Office for further consideration. It stated that the existence of grounds for restitution of the property under section 6(1)(k) of the Land Ownership Act had not been sufficiently established.

19. On 13 May 1997 the Land Office again decided, having taken into account further documentary evidence submitted by the first applicant and having re-examined two witnesses, that the applicants were the owners of the property. It examined in detail the circumstances of the sale of the property. It noted, *inter alia*, that the first applicant's husband had headed the defendant's personnel department and that the defendant had needed his property for the construction of a heating plant and, subsequently, a production unit. It further noted that the first applicant's husband had not been threatened with dismissal or the loss of his job in the event of his refusal to conclude the contract of sale.

20. Nevertheless, the Land Office held that the lengthy negotiations for the sale of the applicants' property or its expropriation, which had started in 1977, had seriously interfered with the lives of the first applicant and her husband, and that the circumstances in which these negotiations had been carried out had undoubtedly affected the health and mental state of the first applicant's husband.

21. The Land Office noted lastly that, according to the record of the negotiations dated 2 February 1977, the first applicant and her husband had agreed to the sale on condition that, *inter alia*, they would be provided with two three-room flats with garages, and that a one-room apartment in a day-care home would be placed at the disposal of the first applicant's mother. However, in addition to the price to be paid for the applicants' property – which could have been, but had not been, increased by 20% as allowed by Decree no. 128/1984 – the first applicant and her husband had been granted a two-room flat in 1983. Furthermore, a three-room apartment had been made available to their son. In addition, it was noted that the first applicant and her late husband had lived in the house for thirty-four years and that the benefit they had derived from the adjacent land, which they had used for agricultural purposes, had considerably improved the family's economic and social situation.

22. On 16 June 1997 the defendant appealed against that decision. On 1 August and 1 September 1997 respectively the applicants and their legal representative submitted their observations on the defendant's appeal.

23. On 10 April 1998 a bench of the Regional Court, after holding a hearing on 6 April 1998 and receiving the applicants' further comments concerning the case on 8 April 1998, quashed the administrative decision, finding that the Land Office had not proved to its satisfaction that the sale had been carried out under duress. The court considered that it was not necessary to examine whether the contract of sale had been concluded on terms unfavourable to the applicants. It held that, although the Land Office had reached its decision on the basis of the fully established and accurate facts of the case, it did not share its legal opinion.

24. The court noted that from the witnesses' statements and from the documentary evidence which it had supplemented by means of the report of 12 December 1985 on the professional activities of the first applicant's husband, the first proposal for the purchase of the applicants' property had been made in 1977 at a time when the defendant had needed part of the land for the construction of a heating plant. The court observed that on 2 February 1977 the owners had provisionally agreed to the sale and had imposed certain conditions which had to be satisfied before the construction work could be started. Moreover, they had stipulated that the sale had to be completed before the end of 1978. At that time, both the former owners were employed; the first applicant's husband was employed by the defendant in a senior post and was politically active. Their economic and social situation was such that it did not create a basis for a state of duress.

Moreover, the negotiations carried out with a view to concluding the contract of sale had lasted eight years as a result of the owners' continuous disagreement as to the fulfilment of the conditions they had imposed and the purchase price, which had finally been increased by 86,000 Czech korunas (CZK) (2,867 euros (EUR)).

25. The court also noted that the purchaser had proved that it had made efforts to meet the owners' requirements when, for instance, it had urged that a telephone line be speedily installed in one of the new flats, had paid the telephone connection fees and had assigned the flats to them even before the contract of sale had been signed. The purchaser had only come up with the suggestion of expropriating the applicants' property after several years of unsuccessful negotiations.

26. Finally, the court did not find any causal link between the contract concluded in 1985 and the health problems of the first applicant's husband, which had begun in 1986 (a year after the contract had been signed), and his subsequent death in 1993.

27. The case was remitted to the Land Office, which issued a fresh decision on 15 June 1998. In accordance with the opinion of the Regional Court, by which it was bound by virtue of Article 250 (r) of the Code of

Civil Procedure, the Land Office ruled that the applicants were not the owners of the property because the contract of sale had not been concluded under duress, within the meaning of section 6(1)(k) of the Land Ownership Act. The Land Office considered that it was therefore unnecessary to examine whether the contract of sale had been concluded on strikingly unfavourable terms within the meaning of the same provision.

28. On 10 December 1998 that decision was upheld by the Regional Court.

29. On 15 February 1999 the applicants lodged a constitutional appeal (*ústavní stížnost*) against the Regional Court's judgments of 10 April and 10 December 1998 and the Land Office's decision of 15 June 1998. The applicants alleged a violation of Articles 11 (protection of property rights) and 36 § 1 (right to judicial protection) of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*). They challenged the assessment of the evidence and the Regional Court's incorrect interpretation of the notion of "duress". They also criticised the failure of the Regional Court to assess properly the notion of "strikingly unfavourable terms" in section 6(1)(k) of the Land Ownership Act.

30. On 3 March 1999 a judge rapporteur (*soudce zpravodaj*) invited the Regional Court and the parties joined to the proceedings – the Land Office, the Military Repair Enterprise and the Land Fund (*Pozemkový fond*) – to submit written observations on the applicants' constitutional appeal.

31. In letters of 11 and 25 March 1999 respectively, the Land Fund and the Land Office waived their status as joined parties.

32. On 7 April 1999 the Military Repair Enterprise submitted its written observations, expressing the view that the applicants' constitutional appeal should be dismissed.

33. In its written observations of 9 April 1999, the Regional Court recapitulated the case-law to the effect that the Constitutional Court was not superior to the general courts and that it was not entitled to interfere with their decisions unless and in so far as they might have infringed rights and freedoms protected by the Constitution. It further referred to the reasoning in its judgment of 10 December 1998, and noted that the constitutional appeal had been lodged outside the sixty-day time-limit in so far as it was directed against the Regional Court's judgment of 10 April 1998.

34. On 16 April 1999 the judge rapporteur asked the Regional Court and the Land Office to forward their case files, which they did.

35. On 10 May 2000 the Constitutional Court (*Ústavní soud*), without holding a public hearing, declared that the constitutional appeal had been lodged outside the sixty-day time-limit in so far as it was directed against the Regional Court's judgment of 10 April 1998 and was unsubstantiated in so far as it concerned the same court's judgment of 10 December 1998. The Constitutional Court included the written observations of the defendant and the Regional Court on the applicants' constitutional appeal in its summary of

the facts. It stated, *inter alia*, that it was for the competent national authorities to examine whether there had been duress on the basis of all the relevant circumstances of the case. It observed in this connection that it could not examine issues falling within the jurisdiction of the ordinary courts. The court, recapitulating briefly the reasoning of the national authorities involved in the case, did not find unconstitutional the Regional Court's conclusion that the hypothesis that the applicants had been under duress during the contractual negotiations was excluded by the fact that they had imposed certain conditions on which they were willing to conclude the contract with the State, and that someone acting under duress would have concluded the contract on any terms.

36. According to the Government, it appears from the Constitutional Court's case file that on 27 June 2000 the first applicant inspected the documents included in the file and was provided with copies of the written observations submitted by the Regional Court and the Military Repair Enterprise.

II. RELEVANT DOMESTIC LAW

A. The Land Ownership Act

37. Section 4 of the Land Ownership Act provides for the restitution of real property to individuals from whom it was transferred to State ownership between 25 February 1948 and 1 January 1990 by means specified in section 6. Where such persons are no longer alive, their successors are entitled to restitution under the conditions specified in subsection (2) of section 4.

38. Section 6(1)(k) provides for the restitution of immovable property which was transferred to the State or another legal person on the basis of a contract concluded under duress, on strikingly unfavourable terms.

B. The Constitutional Court Act

39. Under section 28(1) and (2) of the Constitutional Court Act, the parties to proceedings are the appellant and those specified by the Act. Persons to whom the Act grants the status of joined parties may waive that status. They have the same rights and duties as other parties to the proceedings.

40. Section 32 provides that parties and joined parties are entitled to give their views on the constitutional appeal, make submissions to the Constitutional Court, examine the case file (with the exception of voting records), take excerpts from and copies of it, take part in any oral hearing in

the matter, put forward evidence, and be present during any taking of evidence.

41. Under section 40(2), if the request concerns a matter within the jurisdiction of a division, it is assigned to a judge rapporteur who is a permanent member of that division.

42. Under section 42(4), the judge rapporteur must, without delay, send the constitutional appeal to the other parties and, where appropriate, to the joined parties as well, with a request to submit their written observations on the appeal within time-limits fixed by him or her, or as provided by the Act.

43. Section 43(2)(a) provides that, without holding an oral hearing and without the parties being present, the division may dismiss the appeal if it is manifestly ill-founded.

44. Section 49(1) provides that any means which may serve to establish the facts of the case may be used in evidence, in particular the testimony of witnesses, expert opinions, reports and statements of State authorities and legal persons, documents, results of inquiries and the testimony of parties.

THE LAW

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

45. The applicants complained that they had not been granted a public hearing before the Constitutional Court at which they could have produced documents proving violations of the national law and the unfairness of the legal measures taken by the Regional Court. Nor had they been able to make comments on the written observations submitted by the Regional Court and the defendant which had been used in the decision of the Constitutional Court.

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 and public hearing ... by an independent and impartial tribunal established by law. ..."

A. The parties' submissions

1. The applicants

46. In their observations on the admissibility and merits of the application, the applicants noted at the outset that their constitutional appeal

had, in fact, been directed against both the Regional Court's judgments of 10 April 1998 and 10 December 1998. They disputed the Government's argument that their constitutional appeal could have been declared manifestly ill-founded immediately. They argued that the principle of "equality of arms" could not be ensured by merely giving the parties access to a Constitutional Court case file.

47. They pointed out that in *Krčmář and Others v. the Czech Republic* (no. 35376/97, 3 March 2000) the Court had held that the parties to proceedings should have the opportunity to have made known any evidence needed for their claims to succeed, and also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision. Moreover, the parties should also have the possibility of familiarising themselves with the evidence before the court, as well as the opportunity to comment on its content and authenticity in an appropriate form and within an appropriate time, if need be in writing and in advance.

48. The applicants also disputed the Government's argument that the written observations in question could not have influenced the decision of the Constitutional Court. They emphasised that the written observations of the Military Repair Enterprise had contained a number of half-truths and untrue allegations which they had not had the opportunity to contest by means of relevant supporting documentation.

49. The applicants submitted two memorials on the merits of the case dated 13 January and 1 March 2005. They firstly expressed disagreement with the Court's decision on the admissibility of the application, in which their complaints concerning the length of the restitution proceedings and the alleged breach of their property rights had been declared inadmissible. They further reiterated the arguments they had submitted in their observations on the admissibility and the merits of the application.

50. In reply to the Government's argument that they could have inspected the file in the constitutional proceedings, the applicants argued that they would have had to spend more than two hours travelling every day from their place of residence to the Constitutional Court in Brno. This would have vastly increased the costs of their legal representation, taking into account the fact that a legal representative in proceedings before the Constitutional Court must represent his or her clients in person.

2. The Government

51. In their observations on the admissibility and merits of the application, the Government noted that, in their constitutional appeal, the applicants had merely repeated the arguments submitted in the proceedings before the Land Office and the Regional Court.

52. They explained that, once a constitutional appeal was lodged, the judge rapporteur to whom it had been assigned sent it to the other parties

and the parties joined to the proceedings, inviting them to submit their observations. The constitutional appeal was then ready for deliberation unless it was immediately dismissed as being out of time, inadmissible, defective or ill-founded.

In the present case, having invited the parties to the proceedings to submit their observations, despite the fact that the case had later been dismissed as being manifestly ill-founded, the judge rapporteur had actually been acting above and beyond his statutory duties, because the applicants' constitutional appeal could have been dismissed immediately on the basis of their notice of appeal. Moreover, it had not been necessary to send the written observations of the Regional Court and the Military Repair Enterprise to the applicants, as those observations had not contained any new facts, and the first applicant had inspected the Constitutional Court's case file on 27 June 2000, after the court's decision had been adopted, and had been provided with the copies of any documents she had wished to have. The Government did not have any proof that the applicants or their legal representative had inspected the case file before the decision was taken. Had they done so, they would have gained prior knowledge of the written observations in question.

53. The Government added that the parties' written observations were always sent to the appellant if a constitutional appeal was to be examined on the merits.

In the instant case, the observations of the Regional Court and the Military Repair Enterprise had not been capable of influencing the Constitutional Court's decision, although the text of the decision had mentioned these observations (in contrast to the situation in *Krčmář and Others*, cited above). Furthermore, the observations of the Military Repair Enterprise contained statements which had already been submitted beforehand.

54. To the extent that the applicants complained that their constitutional appeal of 15 February 1999 had in part been dismissed as having been lodged outside the sixty-day time-limit, the Government pointed out that the Regional Court had delivered its judgment on 10 April 1998 and the applicants' legal representative had received it on 13 May 1998. The time-limit for lodging the constitutional appeal had therefore expired in mid-July 1998. In the Government's submission, the Constitutional Court would have reached the same conclusion even if the Regional Court had not raised the point in its written observations.

55. The Government further submitted that, when examining the applicants' allegations of violations of Article 11 § 1 and Article 36 § 1 of the Charter of Fundamental Rights and Freedoms, the Constitutional Court had based its findings on the files forwarded by the Land Office and the Regional Court. Originally these two authorities had expressed different legal opinions on the questions raised by section 6(1)(k) of the Land

Ownership Act. However, in its decision of 15 June 1998 the Land Office had agreed with the legal opinion of the Regional Court, which had later been approved by the Constitutional Court. The latter had not, therefore, relied on the parties' written observations. In the light of the content of the constitutional appeal and of the written observations of the parties in question, the judge rapporteur, having carefully examined them, had rightly considered it unnecessary to forward them to the applicants.

56. Following the adoption of the decision on admissibility in the present case on 30 November 2004, the Government submitted a memorial on the merits in which they stressed that the quotation of comments by the parties and joined parties to the constitutional proceedings had appeared merely in the narrative part of the Constitutional Court's decision of 10 May 2000, in which the course of the proceedings had been summarised. Moreover, in the legal reasoning of that decision the Constitutional Court had not challenged these comments.

57. The Government further pointed out that the Constitutional Court had received the last comments on the applicants' constitutional appeal in April 1999, whereas the court had adopted its decision on 10 May 2000. During that time, the applicants or their lawyer could have, but had not, inspected the file although they must have known that constitutional appeals were sent, without delay, to the other parties and joined parties to the proceedings, with a request to submit their written comments.

B. The Court's assessment

58. The Court notes at the outset that the applicants' complaints relating to the length of the restitution proceedings and the alleged violation of their property rights were declared inadmissible on 30 November 2004. It therefore has no jurisdiction to examine them on the merits.

59. The Court further reiterates that the concept of a fair hearing implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to have made known any evidence needed for their claims to succeed, but also to have knowledge of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision (see *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 108, § 24, and *K.S. v. Finland*, no. 29346/95, § 21, 31 May 2001).

60. The Court observes that, pursuant to section 42(4) of the Constitutional Court Act, the judge rapporteur must send a constitutional appeal lodged by an appellant to the other parties and, where appropriate, the joined parties, inviting them to submit written observations on the appeal. The Act does not oblige the judge rapporteur to transmit any such observations to the appellant, and they were not sent in the present case.

61. As to consulting the case file at the Constitutional Court and obtaining a copy of any written observations, the Court is of the view that this is not in itself a sufficient safeguard to secure the applicants' right to an adversarial procedure. In its view, and as a matter of fairness, it was incumbent on the Constitutional Court to inform the applicants that the observations had been filed and that they could, if they so wished, comment on them in writing. It appears that this requirement is not secured in domestic law (see *Göç v. Turkey* [GC], no. 36590/97, § 57, ECHR 2002-V).

62. It is true that the Regional Court examined the applicants' appeal against the Land Office's decisions at a public hearing at which the factual and legal issues of the applicants' case were examined, enabling the applicants to submit the evidence which they considered useful or necessary in support of their case. Admittedly, the proceedings in the Constitutional Court were conducted without a public hearing. However, since those proceedings were limited to an examination of constitutional issues, they entailed an assessment not of points of fact but of points of law. The Court accordingly considers that the fact that no public hearing was held in the proceedings in the Constitutional Court was sufficiently compensated for by the public hearings held at the decisive stage of the proceedings, when the merits of the applicants' restitution claims were determined (see *Constantinescu v. Romania*, no. 28871/95, § 53, ECHR 2000-VIII).

63. The Court shares the Government's view that the present case differs from that of *Krčmář and Others*, in which the Constitutional Court based its final findings on new documentary evidence on which the applicants were not given the opportunity to comment (see *Krčmář and Others*, cited above, §§ 16-17 and 41-44). In the instant case, the Constitutional Court did not expressly rely on documentary evidence which had not previously been adduced by the Military Repair Enterprise or the applicants in support of their arguments in the proceedings before the Land Office and the Regional Court.

64. Nevertheless, the defendant's written observations of 7 April 1999 and those of the Regional Court of 9 April 1999 were submitted in reply to the applicants' constitutional appeal and therefore related directly to the grounds of the appeal, namely the assessment of the evidence, the Regional Court's allegedly incorrect interpretation of the notion of “duress” and its failure to assess properly the notion of “strikingly unfavourable terms” in section 6(1)(k) of the Land Ownership Act. The role of the Constitutional Court was to assess whether these allegations constituted a violation of the applicants' rights guaranteed by Article 11 and Article 36 § 1 of the Charter (see paragraphs 29 and 32-33 above).

65. The Court notes that the observations in question constituted reasoned opinions on the merits of the applicants' constitutional appeal, manifestly aiming to influence the decision of the Constitutional Court by calling for the appeal to be dismissed. Thus, having regard to the nature of

the issues to be decided by the Constitutional Court, it can be assumed that the applicants had a legitimate interest in receiving a copy of the written observations of the defendant and the Regional Court. The Court does not need to determine whether the omission to communicate these documents caused the applicants prejudice; the existence of a violation is conceivable even in the absence of prejudice (see *Adolf v. Austria*, judgment of 26 March 1982, Series A no. 49, p. 17, § 37). It is for the applicants to judge whether or not a document calls for their comments (see *Nideröst-Huber*, cited above, p. 108, § 29). The onus was therefore on the Constitutional Court to afford the applicants an opportunity to comment on the written observations prior to its decision.

66. Accordingly, the procedure followed did not enable the applicants to participate properly in the proceedings before the Constitutional Court and thus deprived them of a fair hearing within the meaning of Article 6 § 1 of the Convention. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. In respect of pecuniary damage, the applicants claimed 743,946.80 Czech korunas (CZK), broken down as follows:

(a) CZK 43,126.80 (approximately 1,437 euros (EUR)) – the difference between the sale price of the property which they were paid in 1985 and the price which had been calculated by the expert in the restitution proceedings;

(b) CZK 211,420 (approximately EUR 7,047) – the difference between the price of the land calculated by the expert and the real price; and

(c) CZK 489,400 (approximately EUR 16,313) – the profits from the garden, in which the applicants had invested.

As to non-pecuniary damage, the applicants claimed CZK 1,000,000 (EUR 33,333).

69. The Government maintained that there was no causal link between a possible violation of Article 6 § 1 of the Convention in the proceedings before the Constitutional Court and the pecuniary and non-pecuniary damage alleged by the applicants. They further found their claim for non-pecuniary damage excessive. They argued that the finding of a violation

would constitute sufficient just satisfaction for any non-pecuniary damage the applicants might have sustained.

70. The Court agrees with the Government that there is no causal link between the violation of the Convention found and the applicants' claim in respect of pecuniary damage. In particular, it is not for the Court to speculate as to what the outcome of the proceedings would have been if they had been in conformity with the requirements of Article 6 § 1 of the Convention. Contrary to the circumstances in *Krčmář and Others*, those of the present case do not allow the Court to regard the applicants as having suffered a loss of real opportunities (see paragraph 63 above). Accordingly, it dismisses the claim under this head (see *Demir and Others v. Turkey*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2660, § 63).

71. Further, the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage the applicants may have sustained in the present case (see, for example, *Bakker v. Austria*, no. 43454/98, § 36, 10 April 2003, with further references).

B. Costs and expenses

72. The applicants sought CZK 193,401.80 (EUR 6,447) for the reimbursement of costs incurred in the domestic proceedings and CZK 33,480 (EUR 1,116) for the costs of the Convention proceedings, calculated on the basis of statutory domestic rates.

73. With regard to the costs claimed in respect of the domestic proceedings, the Government submitted that only those costs incurred in an attempt to prevent the violation found could possibly be reimbursed. As regards the costs claimed in respect of the Convention proceedings, the Government considered that a sum of EUR 800 would be sufficient given the fact that, when submitting the case, the applicants had not been legally represented.

74. As to the costs claimed concerning the domestic proceedings, the Court agrees with the Government that these costs were not incurred to prevent or rectify the Convention violation. It accordingly dismisses this claim.

75. With regard to the applicant's Convention costs, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many other authorities, *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, p. 83, § 77, and *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 98, ECHR 1999-IV). Deciding on an equitable basis, the Court awards the applicants, jointly, the sum claimed for costs and expenses, namely EUR 1,116.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

3. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,116 (one thousand one hundred and sixteen euros) 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 June 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ
Registrar

J.-P. COSTA
President