CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF DRUŽSTEVNÍ ZÁLOŽNA PRIA AND OTHERS v. THE CZECH REPUBLIC

(Application no. 72034/01)

JUDGMENT
(merits)

STRASBOURG

31 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Družstevní záložna Pria and Others v. the Czech Republic,

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*
and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 8 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 72034/01) 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 Družstevní záložna Pria, a credit union, and eight other applicants, Mr Jiří Medek, Mr František Zoubek, Mr Vladimír Olšaník, Mr Karel Pospíšil, Mrs Dagmar Kousalová, Mr Josef Frommel, Mrs Ludmila Kramolišová and Mrs Jiřina Solaříková, members of the credit union and of its management and supervisory organs, on 26 March 2001. In the course of the proceedings before the Court, 633 individuals[1], members of the credit union, whose names have been submitted to the Court, joined the proceedings. The first applicant is a legal entity with registered seat in Brno (hereinafter "the applicant credit union") created under the Credit Unions Act (*zákon o spořitelních a uvěrních družstvech* – "the Act"). Its incorporation became effective on 23 August 1995. The individuals are Czech nationals.

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

3. The applicants complained under Article 1 of Protocol No. 1 and Articles 6 and 13 of the Convention of interference with their property rights and their right to an effective domestic remedy.

4. By a decision of 31 January 2006, the Court declared inadmissible the complaint of the individual applicants submitted under Article 6 § 1 of the Convention, and declared the rest of the applicants' complaints admissible,

[1] A list of the individual applicants is available from the Registry

deciding to join to the merits the question concerning the victim status of the individual applicants.

5. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On 11 January 2000 the Office for the Supervision of Credit Unions (*Úřad pro dohled nad družstevními záložnami*) ("the OSCU") placed the applicant credit union in receivership (*nucená správa*) for a period of six months under section 28(3)(c) of the Act, on the ground that it had contravened the legislation in question, having engaged in activities outside its remit without authorisation. A receiver (*nucený správce*) was appointed to replace the applicant credit union's decision-making bodies. The OSCU was acting under section 27(1) of the Act read in conjunction with section 26(2) of the Banks Act (*zákon o bankách*).

7. Referring to an audit of the applicant credit union's activities, the OSCU noted that the applicant credit union had on 6 May 1999 concluded three contracts with S7, a limited liability company, under the terms of which the latter had assigned to the applicant credit union receivables due to it from two debtor companies, amounting to CZK 126,235,132 (EUR 3,366,582[1]) in total, for an agreed price of CZK 14,431,000 (EUR 384,862). The OSCU ruled that the applicant credit union had thereby purchased the receivables of a third party by effectively covering the latter's debt. It qualified the transaction as a loan to a third party. Since section 3 of the Act prohibited credit unions from providing loans to non-members, the OSCU concluded that the applicant credit union had acted in flagrant breach of the Act.

8. The OSCU further noted that the auditors had discovered that the applicant credit union had entered into a contract on 2 and 5 August 1999 to grant a loan of CZK 22,000,000 (EUR 586,721) to a limited liability company, MLM Brno, and had signed two contracts on 25 June 1999 with OPES, a joint stock company, for the purchase of securities (*cenné papíry*) at a total price of CZK 41,200,056 (EUR 1,098,770). The OSCU ruled that these transactions were also illegal, as section 1(6) read in conjunction with section 3 of the Act did not allow credit unions to acquire securities other

[1] 1 EUR = 37.55 CZK at the relevant time

than public bonds (*dluhopisy*), municipal bonds (*komunální obligace*) or mortgage bonds (*hypoteční zástavní listy*).

9. The receivership became effective on 12 January 2000, when the applicant credit union was notified of the OSCU's decision.

10. On 26 March 2000 the applicant credit union lodged a constitutional appeal (*ústavní stížnost*) with the Constitutional Court (*Ústavní soud*) against the receivership order and applied at the same time for an order striking down certain provisions of the Act. It relied, *inter alia*, on section 75(2)(a) of the Constitutional Court Act, which enables the Constitutional Court to hear a constitutional appeal even if domestic remedies have not been exhausted, if it substantially affects the appellant's personal interests.

11. On 7 April 2000, following an administrative appeal by the applicant credit union, the Ministry of Finance upheld the receivership order of 11 January 2000.

12. On the same date a petition to adjudge the applicant credit union bankrupt (*konkusní řízení*) was filed with the Brno Regional Court (*krajský soud*). During 2001 a large number of creditors joined the proceedings.

13. On an unspecified date the applicant credit union applied for judicial review (*správní žaloba*) of the imposition of receivership under Article 247 et seq. of the Code of Civil Procedure, asserting that the statutory conditions for such a step on the part of the OSCU had not been met.

14. On 1 May 2000 Act no. 100/2000 entered into force, extensively amending the Act (hereinafter "the amended Act"). The powers of supervisory boards of credit unions were confined to the right to appeal decisions adopted by the OSCU.

15. On 21 June 2000 the OSCU granted the receiver permission to suspend withdrawals from deposit accounts held with the applicant credit union in view of its precarious financial situation. According to its findings, the sum owed by the applicant credit union on outstanding term deposits amounted to at least CZK 83,000,000 (EUR 2,213,539), while the cash available in its current accounts was only CZK 21,500,000 (EUR 573,386).

16. On 12 July 2000 the OSCU renewed the receivership order under the amended Act as the previously identified deficiencies remained. It referred, *inter alia*, to the first receivership order and to three decisions by which it had prohibited or restricted the applicant credit union's activities, including withdrawals from deposit accounts (decision nos. 322/2000/II of 20 January 2000, 1217/2000/II of 9 March 2000 and 2407/2000/II of 25 April 2000).

17. On 9 November 2000 the Ministry of Finance upheld that decision.

18. On 12 December 2000 the Constitutional Court dismissed the applicant credit union's constitutional appeal for non-exhaustion of ordinary remedies under section 75(1) of the Constitutional Court Act. It reiterated that the principle requiring the exhaustion of ordinary remedies could be derogated from in exceptional circumstances if the effective protection of constitutionally guaranteed fundamental rights and freedoms was

endangered. It found that, contrary to section 72(1) of the Constitutional Court Act, which provides, *inter alia*, that "a constitutional appeal may be introduced by any natural person who claims to be the victim of a breach of the fundamental rights or freedoms recognised in a constitutional law or an international treaty by a valid decision taken in proceedings to which he was a party", the applicant credit union had lodged its constitutional appeal before the receivership order had become effective.

19. On 15 January 2001 the applicant credit union, represented by the president of its supervisory board, applied for judicial review, challenging the Ministry of Finance's decision of 9 November 2000.

20. On 10 and 25 January, 2 February, 4 April and 3 May 2001 respectively (decisions nos. 114/2001, 369/2001, 838/2001, 1645/2001 and 2134/2001), the OSCU allowed the receiver to suspend withdrawals from deposit accounts held with the applicant credit union.

21. According to the Government, on 6 June 2001 the OSCU granted the receiver permission to file on its own a petition with a court to adjudge the credit union bankrupt, which he did on 18 June 2001.

22. On 9 July 2001 the Regional Court appointed an interim trustee (*předběžný správce*).

23. On 12 July 2001 the OSCU again placed the applicant credit union in receivership. It based its decision on the applicant credit union's report of 3 July 2001 which included a statement of its outstanding debts and available funds. It was noted in the report that the applicant credit union was insolvent, as it had only CZK 59,257,000 (EUR 1,580,333) at its disposal, which was insufficient to enable it to honour its outstanding debts of at least CZK 218,000,000 (EUR 5,813,872). Moreover, because of its lack of liquid assets the applicant credit union had omitted to pay an annual contribution to the OSCU that had fallen due on 30 April 2001. The OSCU further noted that the applicant credit union's financial statements as of 31 December 2000 disclosed negative equity to the tune of CZK 222,949,000 (EUR 5,945,858).

24. On 4 October 2001 the Ministry of Finance upheld the third receivership order.

25. On 21 March 2002 the applicant credit union, represented by the president of its supervisory board, filed an application for judicial review of the Ministry's decision.

26. On 17 April 2002 the applicant credit union filed a claim for damages with the Ministry of Finance under the State Liability Act (Act no. 82/1998).

27. On 19 April 2002 the OSCU withdrew the applicant credit union's licence (*povolení působit jako družstevní a úvěrní záložna*). It found irregularities in the way the applicant credit union had conducted its affairs, as attested by its inability to meet its liabilities, and considered that no improvement could be expected. It observed that by 15 March 2002, the

applicant credit union had recorded overdue liabilities totalling at least CZK 200,000,000 (EUR 5,333,828), while having at its disposal only CZK 56,006,000 (EUR 1,493,632). The cumulative value of the ratios reflecting the balance between assets and liabilities was just under 28%, whereas section 7(1) of Ministry of Finance Decree no. 387/2001 on the liquidity and solvency requirements for credit unions required a cumulative value from 31 December 2001 onwards of at least 45%.

28. The OSCU found that as of 15 March 2002 the applicant credit union had disclosed a negative capital value of CZK 243,705,000 (EUR 6,499,403), whereas under section 10(1) of Ministry of Finance Decree no. 386/2001 on the capital adequacy requirements for credit unions, cooperative savings associations were obliged to have achieved by 31 December 2001, and to maintain thereafter, a capital adequacy of at least 0.1%. The OSCU further stated that on 17 April 2002 the applicant credit union had submitted a report on its financial management results which showed that the irregularities in the applicant credit union's affairs, including its failure to comply with the capital adequacy, liquidity and solvency requirements, were so serious that there was no reasonable prospect of their being remedied.

29. By a letter of 22 May 2002 the Ministry of Finance dismissed the applicant credit union's claim for damages. On 28 May 2002 the applicant credit union, through its legal representative empowered by the presidents of the board of directors and the supervisory board, brought an action for damages against the Ministry of Finance.

30. In a judgment of 21 June 2002 the Prague High Court (*Vrchní soud*) dismissed the applicant credit union's first request for judicial review as being unsubstantiated, finding that the applicant credit union had been placed in receivership in accordance with the national legislation then in force and that the OSCU had not decided outside its discretionary power (*volné uvážení*). The court held, *inter alia*, that:

> "Placing a credit union in receivership is one of the measures which the [OSCU] may apply in addition to or instead of other sanctions specified in section 28(2) of [the Act]. ...
>
> Admittedly, the [OSCU] chose the strictest measure. However, [it] did not breach the [Act] and did not proceed contrary to the [Act's] aims, which are the only grounds on which [the OSCU's] decision may be quashed (Article 245(2) of the Code of Civil Procedure)... If the [OSCU] found ... that the amount of available assets reserved for direct payments to members of [the applicant credit union] within three months had decreased to 6.77% of deposits (the Act lays down a minimum of 15%) ... as a consequence of ... a number of ... financial transactions entered into by the [applicant credit union], and if the [OSCU] discovered other breaches of the [Act] and the applicant credit union's articles of association, then there is no ground for this court to find that the OSCU, when imposing the receivership, decided outside its discretionary powers."

31. On 3 July 2002 the OSCU appointed its liquidator (*likvidátor*). On 31 October 2002, following an appeal by the applicant credit union, the Ministry of Finance upheld the appointment.

32. In the meantime, on 12 September 2002, the applicant credit union had lodged a constitutional appeal against the High Court's judgment, alleging a violation of Article 11 § 4 and Articles 36 and 38 of the Charter of Fundamental Rights and Freedoms (*Listina základních práv a svobod*), as well as Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1.

33. On 5 December 2002 the High Court upheld the Regional Court's decision of 9 July 2001 concerning the appointment of the interim receiver.

34. On 30 January 2003 the Constitutional Court rejected the constitutional appeal of 12 September 2002 as manifestly unfounded.

35. On 10 April 2003 two shareholders of the applicant credit union joined the proceedings concerning its action for damages.

36. On 23 April 2003 the Prague 1 District Court (*obvodní soud*) dismissed the applicant credit union's action for damages on the ground that it had been lodged by an unauthorised person. It stated, *inter alia*, that members of the board of directors and of the supervisory board were not entitled to bring the action on behalf of the applicant credit union. At the same time, the court severed the two shareholders' claims, ruling that they should be heard separately.

37. On 20 May 2003 the applicant credit union appealed. However, on 5 September 2003 the District Court discontinued the proceedings, stating in particular:

> "Section 28(d)(1) of [the Act] grants the supervisory board of a credit union the right to challenge the conduct of receivership, but an action for damages sustained as a result of the receivership cannot be equated with the right of the supervisory board to appeal against decisions of [the OSCU] under section 28(d)(1) of [the Act]."

38. On 9 February 2004 the Supreme Administrative Court (*Nejvyšší správní soud*) rejected the second application for judicial review, lodged by the applicant credit union on 15 January 2001 against the Ministry of Finance's decision of 9 November 2000 upholding the second receivership order. The court, referring to section 28(d) of the amended Act, found that the application had been lodged by an unauthorised person, as only the receiver had authority to lodge such an appeal.

39. On 23 April 2004 the applicant credit union lodged a constitutional appeal against the decision of the Supreme Administrative Court.

40. On 26 April 2004 the Prague Municipal Court (*městský soud*) upheld the District Court's decision of 5 September 2003.

41. On 28 April 2004 the Regional Court, on a petition filed by 217 creditors, shareholders of the applicant credit union, declared the applicant credit union to be insolvent. A trustee (*správce konkurzní podstaty*) was appointed, accordingly.

42. On 13 October 2004 a creditors' meeting (*schůze věřitelů*) was held, at which the creditors' committee (*věřitelský výbor*) was elected. On 8 December 2004, 7 November 2005 and 18 January 2006 respectively, three review meetings took place.

43. In the meantime, on 7 March 2005, the Constitutional Court had dismissed the applicant credit union's latest constitutional appeal.

44. On 8 March 2006 the Regional Court received a list of the applicant credit union's assets. The realisation of the assets included in the list is, according to the Government, under way. In connection with this insolvency dispute, the Regional Court has registered 35 judicial disputes.

45. It would appear that the third application for judicial review filed by the applicant credit union is still pending before the Supreme Court.

According to the Commercial Register as it stands, the applicant credit union is still the subject of insolvency proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Charter of Fundamental Rights and Freedoms (Constitutional Act no. 2/1993)

46. Article 11 § 4 provides that expropriation or other forcible limitation of ownership rights is possible only in the public interest and on the basis of law, and against compensation.

47. Under Article 36 § 1 anyone may assert his or her rights under a set procedure before an independent and impartial tribunal, and in specified cases before another organ. Under paragraph 2, anybody who claims that his or her rights have been violated by a decision of a public administrative organ may apply to a court for a review of the legality of that decision, unless the law provides otherwise. However, the review of decisions affecting the fundamental rights and freedoms listed in the Charter may not be excluded from the jurisdiction of the courts. Paragraph 3 provides that everybody is entitled to compensation for damage caused to him or her by an unlawful decision of a court, another organ of the State or the public authorities, or by maladministration. Under paragraph 4, the conditions and detailed provisions in this respect are determined by statute.

48. Under Article 38 § 1 nobody may be denied access to his lawful judge. The jurisdiction of the court and the competence of the judge are determined by statute. Paragraph 2 provides that everybody is entitled to have his or her case considered in public without unnecessary delay and in his or her presence, and to comment on all submitted evidence. The public may be excluded only in cases specified by law.

B. The Credit Union Act (no. 87/1995) as in force until 30 April 2000

49. Section 1 provided that a credit union is a legal entity governed by the provisions of the Commercial Code on cooperatives unless the Act provides otherwise.

50. Section 3 stipulated, *inter alia*, that credit unions may provide loans to and receive deposits from their members, other credit unions and banks.

51. Section 24(1) and (2) provided that the head of the OSCU is appointed and removed from office by the Minister of Finance and that he is empowered, subject to the Minister's approval, to decide on the status, remit and policy of the OSCU.

52. Under section 27(1) the OSCU must have exercised its powers with due diligence and efficiently while respecting the interests of credit union shareholders.

53. In accordance with section 28(2) the OSCU may have imposed sanctions for any breach of the Act or other statute by a credit union or its organs or members.

54. Under section 28(3)(c) the OSCU was empowered, *inter alia*, to impose receivership for a period of six months instead of or together with the sanctions provided for in the preceding subsection.

55. In accordance with section 28(3) the OSCU may have issued repeated receivership orders.

56. Under section 28(6) receivership was governed by the Banks Act, which applies *mutatis mutandis*.

57. Section 28(10) provided that a decision on receivership may have been appealed before the Ministry of Finance within 15 days of its service.

58. Section 28(11) stipulated that proceedings before the OSCU are governed by the Code of Administrative Procedure unless the Act provides otherwise.

C. The Credit Union Act as amended by Act no. 100/2000, in force since 1 May 2000

59. The newly inserted section 28(d)(1) provides that the powers of all the organs of a credit union, with the exception of its supervisory board, are suspended on service of a receivership order and are assumed by the appointed receiver. The supervisory board is entitled to appeal the OSCU's decisions.

60. Section 28c(1) provides that a receiver is appointed, removed and employed by the OSCU, which decides on his or her remuneration.

E. The Banks Act (Act no. 21/1992) as in force at the relevant time

61. Section 26(2) provided that a bank may be placed in receivership by the Czech National Bank without any prior notice or invitation to remedy deficiencies identified in its business.

62. Section 26(3) stipulated, *inter alia*, that business transactions to the detriment of a bank's clients or transactions which constitute a risk to the stability and security of the banking sector of the financial market; infringements of the Banks Act or other statutes or secondary legislation adopted by the Czech National Bank; and a situation where the total volume of reserves and provisions set aside by the bank is not sufficient to cover the risks arising from the volume of classified assets recorded by it, are considered to be deficiencies within the meaning of the Act.

63. Under section 26(4) proceedings on receivership were governed by the administrative procedure legislation unless the Banks Act provides otherwise.

64. According to section 30 the Czech National Bank may have imposed receivership where deficiencies in a bank's activities endangered the stability of the banking system and the shareholders had not taken the necessary steps to eliminate them.

E. The Code of Civil Procedure (Act no. 99/1963), as in force at the relevant time

65. Article 245(2) provided that a court, while reviewing a decision adopted by an administrative authority within its discretionary power granted by a statute, may have examined only whether such a decision had been taken in conformity with rules laid down by a statute.

66. Article 247 et seq. entitled individuals or legal entities claiming that their rights had been curtailed by a decision of an administrative authority to apply for judicial review to determine the legality of that decision.

67. Under Article 250i § 1 the court, when reviewing the legality of the decision, must have relied on the facts as they stood at the time of delivery of the impugned decision; no evidence was taken.

F. Code of Administrative Court Procedure (Act no. 150/2002)

68. The Code entered into force on 1 January 2003, replacing Part V of the Code of Civil Procedure.

69. Article 71 § 1(d) and (e) provides that a plaintiff is obliged to substantiate the relevant factual and legal grounds on which the action is based and to identify evidence in its support.

70. Under Article 75 § 2 the administrative court bases its decision on the facts and the law as they stood at the time of the impugned ruling. It may take evidence in this respect under Article 77 § 1.

G. Code of Administrative Procedure (Act no. 71/1967)

71. Under Article 59 § 1 an appellate authority has full jurisdiction to examine a contested decision. If need be, it may complete the proceedings in question and remedy any shortcomings identified.

H. Commercial Code (Act no. 513/1991)

72. Article 244 § 6 provides that the supervisory board of a cooperative is entitled to request from the board of directors any information concerning the financial situation of the cooperative. The board of directors is obliged to inform the supervisory board without delay of any fact which might have serious consequences for the financial situation of the cooperative or the status of the cooperative or its shareholders.

I. State Control Act

Section 17 provides that an audit made by a controlling authority may be contested by objections which have to be raised within five days from the service of the audit on a controlled person.

Under Section 18 an employee of a controlling authority is empowered to decide on raised objections. A controlled person may appeal that decision before the head of that authority within 15 days from that decision. The decision on the appeal is irrevocable.

According to Section 26 the Code of Administrative Procedure is not applicable on proceedings under Section 18.

J. Judgment of the Constitutional Court's Plenary of 27 June 2001 (no. 276/2001)

73. Articles 244 – 250s [Part V] of the Code of Civil Procedure, in so far as they governed procedure of administrative courts, were repealed as of 31 December 2002 by this ruling. In its reasoning the Constitutional Court found these provisions contrary to Article 6 of the Convention as they, *inter alia*, limited jurisdiction of administrative courts to review administrative acts to issues of legality. It found that that the legislation in question empowered administrative courts to quash merely illegal decisions, not those embodying errors in fact. In other words, as the Constitutional Court

put it, deliberation of administrative authorities could not be replaced, according to those provisions, by that of independent courts.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 IN RESPECT OF THE APPLICANT CREDIT UNION

74. The applicant credit union alleged a violation of Article 1 of Protocol No. 1, which reads 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 for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

1. The applicant credit union

75. The applicant credit union asserted that, in terms of its financial situation, the statutory requirements permitting the State to impose receivership had not been met. It alleged that its situation had not constituted a threat to the stability of the financial system of credit unions. At the time of the first receivership order, the applicant credit union had managed CZK 328,000,000 (EUR 13,105,835) in members' deposits in fixed-term accounts and CZK 16,000,000 (EUR 639,309) in deposits in their current accounts, while the whole sector of that industry had in 1999 accumulated as much as 10,814,000,000,000 (EUR 432,092,993,892) in deposits. The share of the applicant credit union had thus amounted to only 3.07%. It followed that the receivership order could not be justified by concerns about the stability of the credit union industry as such. Moreover, under section 3(1) of the Act, the applicant credit union had provided its services only to its members and not to the public, unlike the national banks.

76. The applicant credit union also denied the illegality of the three business transactions the OSCU had relied on in imposing the receivership. It argued that the OSCU's findings had been insufficiently established and

had been misinterpreted. The receivership order had failed to explain why these transactions would have jeopardised the stability of the applicant credit union or its members' interests.

77. Moreover, section 28(6) of the Act as then in force, together with section 30 of the Banks Act, excluded any possibility of placing the applicant credit union in receivership on the grounds relied on in the OSCU's decision of 11 January 2000. Since 1 September 1998 receivership could only be ordered, under section 30 of the Banks Act if deficiencies established under section 26 thereof threatened the stability of the banking sector as a whole and if, at the same time, the shareholders of the bank had not undertaken the necessary steps to remedy the situation on their own.

78. The applicant credit union further maintained that even the need to protect its shareholders' pecuniary interests could not justify the imposition of receivership. The possibility of placing a credit union in receivership contradicted the principles of Article 1 of Protocol No. 1, as there had been no public interest justifying such interference with the applicant credit union's rights. Shareholders had the right to take part in the management of the credit union and in the composition of its statutory and supervisory bodies and therefore had the means to influence the credit union's activities and its financial results, whereas the customers of banks, at whom the provisions on receivership in the Banks Act were primarily directed, did not.

79. The applicant credit union considered the duration of the receivership to have been illegal: under section 28(f)(1)(c) of the Act it should not have lasted more than twelve months, but in the present case it had remained in force for 30 months.

80. Furthermore, the applicant credit union had not had any legal instrument at its disposal by which to contest the receivership order and the fact that its supervisory board had been denied access by the receiver to those of its business and accountancy documents necessary for any challenge against such an order, at least until May 2000. Even after that date, access had been limited due to a lack of cooperation on the part of the receiver.

81. In respect of the second receivership ordered by the OSCU on 12 July 2000, the applicant credit union alleged that the data relied on by the OSCU had not reflected the situation as established by the applicant credit union's supervisory board and subsequent expert opinions. It had considered itself able to honour its outstanding debts in respect of shareholders' terminated deposits. The applicant credit union's current accounts had amounted to CZK 31,500,000 (EUR 840,078) and its funds available within two months had represented CZK 45,000,000 (EUR 1,200,111). Moreover, this balance had not included CZK 22,000,000 (EUR 586,721) in the form of an investment in the non-share capital of MLM which could be immediately repaid, the receiver having assumed the

powers of the executive director of the latter company. In sum, the applicant credit union's available funds had been at least CZK 98,500,000 (EUR 2,626,910). According to an audit report drawn up by a third party, the applicant credit union had not recorded a loss of 57,500,000 (EUR 1,533,476), but had shown a profit of 14,236,524 (EUR 379,676).

82. Having disputed the data assessed and relied on by the OSCU, the applicant credit union argued that the statutory conditions for extending the receivership for the second time had not been met. It asserted that it could not be held responsible for any acts, including illegal acts, committed after the first receivership order, as these had been carried out by the receiver, without its participation and contrary to its will.

83. Furthermore, the persons acting on its behalf had not taken all legal steps to defend the applicant credit union's rights and those of its members. In its view, the receiver had artificially created – with the tacit approval of the OSCU – the preconditions for extension of the receivership and at the same time had deliberately created the conditions for the credit union's financial collapse. It also claimed to have lost part of its property as a result of the receiver's management.

2. The Government

84. The Government conceded that the imposition of receivership constituted an infringement of the applicant credit union's property rights. Nevertheless, they contended that the receivership had been imposed on the applicant credit union in order to protect the stability of the relevant financial market and, in particular, the interests of its shareholders. It therefore amounted to control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. Given the serious crisis in the credit union sector at the relevant time and the large-scale, illegal deficiencies and irregularities in the management of the applicant credit union, consisting mainly of providing loans and dealing in securities contrary to the Act, and the instability of the vast majority of credit unions at the material time, the Government further asserted that the impairment of the applicant credit union's rights had been proportionate to the legitimate aim of stabilising the relevant financial market, the system of insurance of deposits and the protection of depositors' interests. They maintained that for the above-mentioned reasons the receivership order had had to be issued immediately and hence without giving the applicant credit union an opportunity to remedy its financial situation. Relying on section 26(2) of the Banks Act, the Government contested the applicant credit union's assertion that this step had been illegal.

85. As regards the second and third receivership orders, the Government maintained, referring to the findings of the OSCU, that the statutory condition for issuing repeated receivership orders had been met, as the applicant credit union had been insolvent and thus in breach of its

obligations under section 11(3) of the Act. They referred to other breaches of the Act and of the capital adequacy, liquidity and solvency requirements found in the impugned decisions of the OSCU. The Government finally asserted that the poor financial situation of the applicant credit union had been caused by the unprofessional and illegal conduct of its management, some of whose members had been prosecuted for these acts. Therefore, for the reasons outlined above, the State had had to replace the management with a receiver.

B. The Court's assessment

86. The gist of the applicant credit union's complaint consists in the allegation that it was placed in receivership contrary to Article 1 of Protocol No. 1, losing control of its business during the intervention by the receiver. The Court therefore considers that it is the second paragraph of Article 1 of Protocol No. 1 which is applicable (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 86, ECHR 2005-XII (extracts), with further reference to, *mutatis mutandis*, *AGOSI v. the United Kingdom*, judgment of 24 October 1986, Series A no. 108, § 51; and *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, §§ 153-154, ECHR 2005-VI). This finding is not altered by the fact that the applicant credit union alleged that its financial losses had been due to the unprofessional conduct of the receiver, as this matter shall be taken into consideration in the assessment of the claims submitted under Article 41 of the Convention.

87. The Court reiterates that its power to review compliance of impugned acts with national law is limited and it is not its task to take the place of the domestic courts (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 95, ECHR 2002-VII). However, that does not dispense with the need for the Court to determine whether the interference in issue complied with the requirements of Article 1 of Protocol No. 1 (ibid.).

88. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Capital Bank AD v. Bulgaria*, cited above, with further reference to *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

89. The requirement of lawfulness, within the meaning of the Convention, presupposes, among other things, that domestic law must provide a measure of legal protection against arbitrary interferences by the

public authorities with the rights safeguarded by the Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). Furthermore, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental rights be, in certain cases, subject to some form of adversarial proceedings before an independent body competent to review the reasons for the measures and the relevant evidence (see, *mutatis mutandis*, *Al-Nashif v. Bulgaria*, no. 50963/99, § 123, 20 June 2002). It is true that Article 1 of Protocol No. 1 contains no explicit procedural requirements and the absence of judicial review does not amount, in itself, to a violation of that provision (see *Fredin v. Sweden (no. 1)*, judgment of 18 February 1991, Series A no. 192, § 50). Nevertheless, it implies that any interference with the peaceful enjoyment of possessions must be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by this provision. In ascertaining whether this condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures (see *Jokela v. Finland*, no. 28856/95, § 45, ECHR 2002-IV with further references).

90. Turning to the specific facts of the case, the Court observes that the receiver, exercising the powers of the statutory organ of the applicant credit union during the receivership, was in full control of all of its business and accountancy documents showing its overall financial situation. Whilst exercising those powers he was the sole person entitled to grant access to those documents. He was nevertheless not obliged to do so under the law then in force. According to the applicant credit union, he denied its supervisory board access to the documents in question. The Government did not dispute that allegation.

91. The Court notes that the financial situation of a given entity is one of the decisive factors in the decision to impose receivership. Accordingly, it plays a central role in any subsequent review of such a decision and is often determinative of its outcome. Therefore, it is indispensable, in the Court's view, for any entity intending to contest a decision to place it in receivership to have access to all of its documents and other materials which may be of assistance in substantiating and establishing its appeal against such a decision. Business and accountancy documents fall within that category. It is true that the right to such access is not an absolute one, as there may be competing interest at stake. However, any limitation must not impair the very essence of that right. Otherwise the right to appeal decisions on receivership would be somewhat illusory, as an appellant would not have any reasonable opportunity of contesting those rulings and adducing evidence in support of its allegations. This is particularly so in proceedings where the decision whether to grant access to business and accountancy

documents rests with a receiver, an employee of a regulatory authority who is appointed under the decision imposing receivership. In such cases, whether or not an entity has a reasonable opportunity of challenging the receivership to which it is made subject is determined by a receiver appointed, removed from office and employed by the State authority whose decision the entity intends to contest. In this situation, the executive branch of the State can frustrate any reasonable attempt to contest the imposition of receivership by means of a decision denying access to indispensable documents, which is not amenable to review. Taking into account the gravity of a decision to impose receivership and its consequences for an entity operating on the financial market, such denials must be, in the Court's view, subject to judicial scrutiny by an independent tribunal and not just by an employee of the executive branch of the State. Applying these principles in the instant case, the Court finds that none of the above-mentioned requirements regarding the denial of access to the applicant credit union's documents was met in respect of the review of the decision of 11 January 2000 imposing the receivership. It follows that the applicant credit union was deprived of the procedural guarantees affording it a reasonable opportunity of presenting its case to the responsible authorities with a view to effectively challenging the decision to place it in receivership.

92. The Court notes that the applicant credit union did not allege that the denial of access continued when it challenged the decisions of 12 July 2000 and 12 July 2001 extending the receivership. However, the only legal avenue by which the applicant credit union could dispute the receivership had ceased to exist by that time, as its supervisory board lost its standing to appeal with the entry into force of the amendment to the Act on 1 May 2000. The Court's conclusion with regard to the decision adopted on 11 January 2000 therefore also applies *mutatis mutandis* to those two decisions.

93. It is true that in such a sensitive economic area as the stability of the financial market the Contracting States enjoy a wide margin of appreciation (see *Olczak v. Poland* (dec.), no. 30417/96, § 85, ECHR 2002-X (extracts)) and that in certain situations – especially in the context of a credit union crisis such as the one facing the Czech Republic at the relevant time – there may be a paramount need for the State to act in order to avoid irreparable harm to a credit union, its depositors and other creditors, or credit unions and the financial system as a whole. Nevertheless, if such margin were limitless, the rights embodied in Article 1 of Protocol No. 1 would become illusory. Therefore, it has to be construed so as to guarantee to individuals that the essence of their rights is protected.

94. Applying this principle to the instant case, the Court considers that the taking of control of the applicant credit union's business by the receiver could in itself be regarded as falling within that margin of appreciation, as it

was not established by the applicant credit union that the responsible State authorities had lacked a reasonable suspicion that its financial situation required them to impose receivership. However, on the facts of the present case, in which the applicant credit union was denied access to its business documents (see paragraph 90) and was unable subsequently to challenge that denial before a court, this aspect of the imposition of the receivership under Article 1 of Protocol No. 1 remains subject to the Court's review for the purposes of Article 1 of Protocol No. 1. Once the State was in full control of the applicant credit union's business, thus substantially reducing the threat constituting the reason for placing it in receivership, the Court, having regard to the fact that the Government did not put forward any arguments to justify the denial in question, sees no reason which would dispense the State from affording the applicant credit union a reasonable opportunity to have access its business documents or to contest the denial before a court.

95. In the light of the foregoing, the Court concludes that the interference with the applicant credit union's possessions was not surrounded by sufficient guarantees against arbitrariness and was thus not lawful within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *H.L. v. the United Kingdom*, no. 45508/99, § 124, ECHR 2004-IX). This conclusion makes it unnecessary to ascertain whether the other requirements of that provision have been complied with (see *Iatridis*, cited above, § 62). The Court thus expresses no opinion on the question whether the statutory requirements for the imposition of receivership were met in the instant case or on the issue of whether the impairment struck a fair balance between the applicant credit union's rights and the demands of the general interest of the community.

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 IN RESPECT OF 641 MEMBERS OF THE APPLICANT CREDIT UNION

A. The parties' submissions

1. The applicants

97. The applicants complained of the decision to place the credit union in receivership and its effect on their shares and deposits. They alleged that neither they nor the credit union had had any effective remedy at their disposal in that regard and that their property rights had been impaired as

they could not dispose of their property due to the receivership. They raised in essence the same arguments as the applicant credit union.

2. The Government

98. The Government maintained, referring to the case of *Agrotexim and Others v. Greece* (judgment of 24 October 1995, Series A no. 330-A), that their application should be declared inadmissible as the applicants had failed to establish with sufficient certainty that it was impossible for the applicant credit union to lodge an application with the Court. They further contended that the applicants had eventually been paid compensation amounting to 90% of their insured deposits.

B. The Court's assessment

99. The Court reiterates that the piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances, in particular where it is clearly established that it is 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 (see *Agrotexim and Others v. Greece*, cited above, § 66). In assessing those circumstances, the Court takes into consideration in the first place the nature of the complaint and the conflict of interests between the parties involved.

100. Turning to the present case, the Court notes that the applicants' complaints are essentially the same as those raised by the applicant credit union. Having regard to its finding of a violation of Article 1 of Protocol No. 1 in respect of the applicant credit union (see paragraph 96), the Court considers that the applicant credit union, acting through its supervisory board, successfully raised before the Court the claims asserted by its members. In these circumstances and with regard to the criteria established by the Court's case-law, the applicants cannot be regarded as having standing to apply to the Court (see *Agrotexim and Others v. Greece*, cited above, §§ 66 and 71, and *Minda and Others v. Hungary*, (dec.), no. 6690/02, 13 September 2005). The Government's objection in this regard must therefore be upheld.

101. The Court recalls that Article 35 § 4 of the Convention *in fine* enables it to dismiss an application it considers inadmissible "at any stage of the proceedings". Thus, even at the merits stage the Court may reconsider a decision to declare an application admissible if it concludes that it should be declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see, *mutatis mutandis*, *Blečić v. Croatia* [GC], no. 59532/00, § 65, ECHR 2006).

In the light of the foregoing, the Court declares this part of the application incompatible *ratione personae* with the provisions of the

Convention within the meaning of Article 35 § 3 and rejects it under Article 35 § 4 of the Convention.

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

102. The applicant credit union complained that the decisions concerning its receivership could not be contested before independent and impartial national authorities with full jurisdiction to examine its case. It also maintained that it had been deprived of access to a court while seeking to challenge the decisions extending the receivership.

103. In its decision on admissibility adopted on 31 January 2006 the Court decided to examine these complaints under Article 6 § 1 of the Convention which, in so far as material, 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. ..."

A. The parties' submissions

1. The applicant credit union

104. The applicant credit union maintained that its appeals against the OSCU's decisions imposing and extending the receivership had been dealt with by the Ministry of Finance, which was the State authority to which the OSCU was answerable and was thus not independent. The judicial review of those administrative proceedings had been conducted by courts which had been empowered only to examine their legality. It further asserted that it could not efficiently contest the facts of the case assessed by the OSCU.

2. The Government

105. The Government conceded that the rules in force before 31 December 2002 had not allowed for the review of administrative decisions by judicial bodies with full jurisdiction. The administrative courts could review only the legality of administrative decisions and not the merits. However, to rectify this unsatisfactory situation, the new Code of Administrative Court Procedure had been adopted and had come into force on 1 January 2003.

106. The Government recalled in this regard that the Supreme Administrative Court, when dealing with the applicant credit union's application for judicial review of the first receivership order, had applied the new rules under that Code. Moreover, as demonstrated by its judgment adopted on 21 June 2002, the Prague High Court had carried out a full review in the instant case despite the applicable law then in force, reflecting the occasional practice of the domestic courts.

B. The Court's assessment

107. The Court reiterates that for the determination of civil rights and obligations by a tribunal to satisfy Article 6 § 1 of the Convention, the tribunal in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Terra Woningen B.V. v. the Netherlands*, judgment of 17 December 1996, *Reports* 1996-VI, § 52; *Chevrol v. France* [GC], no. 49636/99, § 77, ECHR 2003-III; and *I.D. v. Bulgaria*, no. 43578/98, § 45, 28 April 2005). It is to be therefore examined whether the imposition of receivership by the OSCU was subject to direct review by a court with full jurisdiction (see *British-American Tobacco Company Ltd v. the Netherlands*, judgment of 20 November 1995, Series A no. 331, §§ 84-87, and *I.D.*, cited above, § 53). In doing so, the Court should confine itself as far as possible to examining the question raised by the case before it. Accordingly, it should only decide whether, in the circumstances of the case, the relevant national authorities had jurisdiction required by Article 6 § 1 of the Convention (*Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, § 33). The Court recalls in this regard that the lack of full jurisdiction by a court might be found, in the particular circumstances of a given case, to be compatible with Article 6 of the Convention. In assessing the sufficiency of a judicial review available to an applicant, it is necessary to have regard to matters such as the subject-matter of the decision appealed against, the manner in which that decision was arrived at and the content of the dispute, including the desired and actual grounds of appeal (see *Bryan v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-A, § 45).

108. The Court observes that the OSCU carried out the audit of the applicant company's economic standings on its own motion. The gathering of evidence and its assessment, i.e. establishing the facts of the case, was thus exclusively reserved for the OSCU. The audit was made accessible to applicant credit union on 10 January 2000, thus triggering the five-day limit under Section 17 of the State Control Act for the latter to contest it by raising objections. Pursuant to Section 18 thereof the objections raised by the applicant credit union were dealt with by an employee of the OSCU. His/her decision may have been contested before the head of the OSCU within 15 days of its service on the applicant credit union. Application of the Code of Administrative Procedure in that procedure was expressly excluded by Section 26 of the Act, however. There was no other administrative remedy against the finding of the audit. Whilst it is true that the decision imposing the receivership based on the aforementioned finding could, and indeed was, appealed before the Ministry of Finance, the audit, i.e. the finding as to the facts, was not reviewed as the Ministry found that it had been taken by the OSCU under the State Control Act and the former was therefore bound by it. The facts as assessed by the OSCU were not

reviewable in administrative proceedings by any other administrative authority.

Moreover, according to section 24(1) and (2) of the Act, the OSCU was managed by a director appointed and removed from office by the Minister of Finance, who also exercised the power to approve in detail the OSCU's status, remit and policy. Hence, the OSCU was an authority subordinated to and dependent on the Ministry, which forms part of the executive branch and cannot therefore be deemed to be an independent and impartial tribunal conforming to the requirements of Article 6 § 1 of the Convention.

In the light of the foregoing, this case must be distinguished from the case of Bryan v. the United Kingdom (cited above) where there was no dispute as to the primary facts and where the safeguards available to the applicant in the administrative proceedings were uncontested.

109. As regards the judicial review of the case, the Court observes that until 31 December 2002 the Czech administrative courts did not have full jurisdiction to review administrative acts, their scrutiny being limited under Part V of the Code of Civil Procedure to the examination of issues of legality. It further notes that the application of that legislation by administrative courts was found by the Constitutional Court in 2001 incompatible with Article 6 of the Convention, as, in that court's view, administrative courts were not empowered to quash unlawful decisions but merely those which were illegal. The Court further notes that the newly adopted Code of Administrative Court Procedure, providing for full scrutiny of the law and the facts, entered into force on 1 January 2003. The impugned proceedings were conducted by the administrative courts under the latter Code on its entry into force. Accordingly, the impugned judicial decisions adopted after the above-mentioned date were delivered by courts which had full jurisdiction.

110. The Court considers, however, that the same conclusion does not apply to the judgment of the Prague High Court of 21 June 2002. The Government nonetheless argued that the procedural law as applied at the relevant time did not prevent the courts from exercising full judicial review of administrative decisions. They asserted that the administrative courts also occasionally reviewed factual aspects of a given case. The examination of the applicant union's case by the High Court prior to delivery of the judgment of 21 June 2002, consisting in detailed scrutiny of the objections raised by the applicant union against the decision of the OSCU imposing the first receivership order, proved that such a practice by the national courts was possible. It followed, in the Government's view, that the proceedings before the High Court had been in conformity with Article 6 § 1 of the Convention.

111. The Court reiterates that, in a given case where full jurisdiction is contested, proceedings might still satisfy requirements of Article 6 § 1 of the Convention if the court deciding on the matter considered all applicant's

submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or ascertaining facts (see *Zumtobel v. Austria*, judgment of 21 September 1993, Series A no. 268-A, § 31-32 and *Fischer v. Austria,* cited above, § 34). By way of contrast, the Court found violations of Article 6 § 1 of the Convention in other cases where the domestic courts had considered themselves bound by the prior findings of administrative bodies which were decisive for the outcome of the cases before them, without examining the relevant issues independently (see *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, pp. 22-23, §§ 69-70; *Terra Woningen B.V.*, cited above, pp. 2122-23, §§ 52-55; *I.D.*, cited above, §§ 46 and 50-55; and *Capital Bank AD v. Bulgaria*, cited above §§ 99-108). The Court found a violation of the right to access to a court where the applicant could not challenge before a court an assessment of facts in a decision adopted by an administrative authority acting within its discretionary power (see *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 74). It that case, the judicial review never led to a full scrutiny of the factual basis of such a decision.

112. In the present case, the applicant credit union's appeal to the Prague High Court against the decision of the OSCU and the Ministry of Finance imposing the receivership was twofold. Firstly, the applicant credit union contested the legal assessment of the OSCU declaring the transactions entered into by the applicant credit union contrary to the Act. Secondly, it was asserted in the appeal that the OSCU, deciding entirely within its discretion provided for by the Act, imposed on the applicant credit union a disproportionate measure when opting for receivership, although other less strict measures were available under the Act. According to the applicant credit union, that decision was partly due to an erroneous assessment of the facts, namely of its economic standings, by the OSCU.

The Court notes that due to its jurisdiction limited to review of legality, the Prague High Court when dealing with the second limb of the appeal, abstained, as it is apparent from its reasoning, from conducting its own examination of whether the applicant credit union was in fact in a situation justifying the imposition of receivership. Admitting that receivership was the strictest measure available under the Act, it held that that legislation reserved for the OSCU acting within its discretionary power the decision as to what measure to adopt in case of breach of the Act's provisions. Instead of ruling on the question of proportionality of the receivership, it only confined itself to the verification whether the OSCU did not act beyond its discretionary power as reserved by the Act when imposing the receivership. That finding was made on the assumption, not verification, by the High Court that the economic standing of the applicant credit union as assessed by the OSCU was accurate.

113. It ensues that the High Court, prevented from assessing whether there was indeed any factual basis for imposing the receivership, and limited to reviewing whether the impugned decision was adopted within the OSCU's discretionary power instead of examining lawfulness of that decision, did not exercise full judicial review.

114. The Court therefore finds that the OSCU's determination of the applicant company's civil rights in the case at hand was not subject to judicial scrutiny of the scope required by Article 6 § 1

115. It follows that there has been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

116. In the view of the applicant credit union, the facts underlying its complaints under Article 6 § 1 of the Convention also gave rise to a violation of Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

117. The Court does not consider it necessary to rule on this submission, because the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6 § 1 (see *British-American Tobacco Company Ltd*, cited above, p. 29, § 89, and, more recently, *Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98, § 43, ECHR 2004-IX).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

118. 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."

119. The Court considers that the question of the application of Article 41 is not ready for decision. The question must accordingly be reserved and the further procedure fixed with due regard to the possibility of agreement being reached between the Czech Government and the applicant credit union.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of the applicant credit union;

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

3. *Holds* that it is not necessary to rule on the allegation of a violation of Article 13 of the Convention;

4. *Declares* inadmissible the complaint of the individual applicants submitted under Article 1 of Protocol No. 1;

5. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
(a) *reserves* the said question;
(b) *invites* the Czech Government and the applicant credit union to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Peer Lorenzen
Deputy Registrar	President