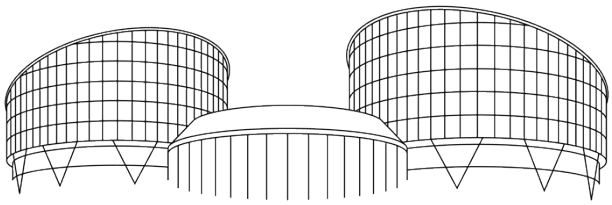

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KINSKÝ v. THE CZECH REPUBLIC

(Application no. 42856/06)

JUDGMENT

STRASBOURG

9 February 2012

FINAL

09/05/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kinský v. the Czech Republic,

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 17 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 42856/06) 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 an Austrian national, Mr František Oldřich Kinský ("the applicant"), on 18 October 2006.

2. The applicant was represented by Mr J. Čapek, a lawyer practising in Hradec Králové. The Czech Government ("the Government") were represented by their Agent, Mr Vít A. Schorm, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had not had a fair trial and that his property rights had thereby been breached

4. On 19 May 2009 the President of the Fifth Section decided to give notice of the application to the Czech Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1). The Government of Austria were invited to state whether they wished to submit written comments on the case (Article 36 of the Rules of Court). They did not avail themselves of that possibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1936 and died on 2 April 2009. On 30 April 2009 the applicant's son and heir, Mr Carlos Kinský, informed the

Court that he wished to pursue the application originally introduced by his father.

6. Through more than one hundred civil actions for determination of ownership lodged with Czech courts against the State, local municipalities and third persons, the applicant sought to recover property seized by Czechoslovakia after the Second World War. At that time, the applicant, an eight-year-old child, had allegedly been the owner of the property. During the confiscation his interests had allegedly not been protected by any representative despite the requirements of the law applicable at the time.

7. According to the Government, the total value of the property claimed by the applicant was estimated by the police at approximately 50-60 billion Czech korunas (approximately 2-2.4 billion euros).

A. Proceedings instituted before the Děčín District Court

8. On 9 October 2003 the Děčín District Court (*okresní soud*) dismissed the applicant's action against the State, represented by the Ministry of the Interior, to determine ownership of certain real estate, finding that the property had been duly confiscated in 1945 pursuant to Presidential Decree No. 12/1945. A large volume of archive documents was taken as evidence during the proceedings.

9. The applicant appealed, asserting, *inter alia*, that the District Court had omitted to take certain evidence.

10. On 27 January 2005 the Ústí nad Labem Regional Court (*krajský soud*) upheld the judgment of the court of first instance.

11. On 23 November 2005 Section no. 28 of the Supreme Court (*Nejvyšší soud*), which is responsible for restitution matters, rent cases and litigations concerning recognition of foreign decisions, dismissed as inadmissible the applicant's appeal on points of law (*dovolání*). It found that it had not been conclusively established that the applicant's property had been duly confiscated, but that in any case the property had been transferred to the State, which had used it since then. Applying its previous case-law, the court held that a property taken by a State before 1990 could not be claimed in civil proceedings but only under the restitution laws.

12. On 18 April 2006 the Constitutional Court (*Ústavní soud*) dismissed the applicant's constitutional appeal whereby it was contended that he had not had a fair trial and had been discriminated against. The court relied on its stance, enshrined particularly in its opinion no. Pl. ÚS-st. 21/05, according to which a civil action for determination of ownership could not be used to circumvent the restitution legislation, and consequently found that the detailed arguments challenging the merits of the decisions were irrelevant.

13. On 13 November 2007 the District Court dismissed the applicant's nullity action *(žaloba pro zmatečnost)* asserting bias on the part of the

District Court judge who had dealt with the civil proceedings. Referring to decision no. II. ÚS 71/06 of the Constitutional Court of 28 February 2006, it held that the activities of certain politicians in creating a negative atmosphere around the applicant's actions had been unacceptable in a system based on the rule of law. Similarly, it held that the obligation imposed on courts by the Ministry of Justice to report to it on the applicant's proceedings had been incompatible with the principle of separation of powers between the judicial and executive branches of government. Nevertheless, it did not find that these activities had compromised the impartiality of the particular judge at the Děčín District Court challenged by the applicant.

B. Statements of politicians regarding the cases brought by the applicant

14. At the relevant time various members of the Government and Parliament made public statements commenting on the proceedings instituted by the applicant. The media reported, *inter alia*, on the following statements.

15. The daily newspaper *Právo* published an article on 26 June 2003 entitled "Dostál [the Minister of Culture] wants to convene a meeting regarding restitutions" about the reaction of politicians to a court decision upholding one of the applicant's claims. The article quoted Mr Nečas, then an M.P. and vice-president of the second largest party in the Parliament, as saying:

> "I do not know how we as legislators can do anything about the absolutely insane rulings of judges that suggest that they are independent, but in this instance independent of common sense. Questioning the seizure of property of persons who were demonstrably Nazis simply on the basis of completely formal administrative details, such as that a document from 1946 lacks a stamp or that the stamp is square instead of round, gives rise to misgivings about the train of thought of the judge involved."

16. On 30 June 2003 the weekly newspaper *Týden* published an interview with the Minister of Culture, Mr Dostál, in which he said, *inter alia*:

> "I oppose attempts to return property to active Nazis or their children, as happened in the case of Mr Oldřich Kinský."

17. On 2 July 2003 the website *novinky.cz* published comments by several politicians regarding another of the applicant's cases where a court had ruled in his favour. Mr Nečas opined as follows:

> "I cannot understand what mental processes members of our judicial system could have gone through to reach such conclusions."

18. On 3 July 2003 *Právo* published another interview with the Minister of Culture, in which he disagreed with the courts' decisions upholding one of the applicant's claims:

> "[I]f other judges decide similarly, then they will have to bear full responsibility for the fact that the State will be obliged to surrender property acquired under the [Presidential] Decrees."

The minister also mentioned a meeting of politicians and lawyers regarding protection of the Presidential Decrees.

19. Several politicians, including the President and the Prime Minister, convened a series of meetings between themselves and lawyers on the issue of civil proceedings for the restitution of property acquired before 1948 in civil proceedings, like those brought by the applicant. According to media reports, the meetings resulted in several options for avoiding such decisions by courts, including requesting the Supreme Court to unify the divergent case-law, issuing new and perfect confiscation orders, adding an amendment to the Civil Code to prohibit actions for the determination of ownership of property acquired by the State before 1990, or amending the Constitution to the same effect.

20. On 25 September 2003 *Právo* reported on a hearing before Děčín District Court in the proceedings that are the subject of the present application. The hearing was also attended by the vice-governor of the Ústí nad Labem Region (*místohejtman Ústeckého kraje*) and a member of the governing party who said: "I am not here as a politician, but as the son of parents that Nazis deported to a camp. Today a counsel defends a descendant of the Nazis. I will do anything within my power so that these people do not achieve what they want".

21. On 14 December 2003 the weekly newspaper *Respekt* published an interview with a Member of Parliament and a member of the Committee on Constitutional and Legal Affairs who said that the applicant had no right to restitution of any property. When asked whether the resolution of these questions should not be left to independent courts she replied that in her view they had not influenced the courts but that some court decisions had been wrong and that the courts were so independent as to be independent of laws.

C. Ministry of Justice's requests for reports on the applicant's proceedings

22. On 12 January 2004 the Ministry of Justice sent letters to the presidents of regional courts asking them to provide it with information on a monthly basis on the developments in the proceedings brought by the applicant. It reasoned that it was requesting the information because of heightened interest of the media in these proceedings.

23. The Ústí nad Labem Regional Court, like the other regional courts, complied with this request and regularly forwarded to the Ministry information on the applicant's proceedings within its region, including reports from the Děčín District Court drawn up by the judge dealing with the actions brought by the applicant. The reports included information about the proceedings which are the subject matter of this application, in which, at that time, appellate proceedings were pending.

24. The reports from all the regional courts where proceedings brought by the applicant were being conducted included procedural steps taken in the proceedings, the names of the defendants, the subject matter of the proceedings and the name of the judges dealing with the cases.

25. On 8 July 2004 the Ministry informed the Regional Court that it no longer wished to receive the information on a monthly basis, but only once every three months.

26. On 7 November 2006 the Ministry informed the regional courts that it was no longer necessary to provide this information.

D. Police investigation of the applicant and his counsel

27. In 2004, by order of a deputy of the Police President, the police set up a special investigative team code-named "Property" for the purpose of carrying out tasks relating to the examination of a suspicion of unlawful surrender of the Czech Republic's property to natural or legal persons. The team's activities consisted of a comprehensive examination of the suspicion that such criminal acts (which in their view could lead to pecuniary loss amounting to tens of billions of Czech crowns) had been committed.

28. On 10 March 2004 the police started investigating the applicant and his counsel on suspicion of fraud. The police contended that the investigation was justified by the applicant's attempts to fraudulently claim in civil proceedings assets confiscated in 1945 under the Presidential Decrees as enemy property. They suspected that in the course of the civil proceedings the applicant had intentionally withheld relevant facts in order to support his action.

29. On an unspecified date in the course of the investigation, the police sent requests to the Děčín District Court and the competent department of the Ministry of the Interior for the purpose of quantifying the total value of the property claimed by the applicant and obtaining the applicant's submissions and decisions of the court in his case. Both authorities complied with the requests.

30. On 27 April 2004 the Praha-východ District Court, at the request of the police, ordered the production of the records of two phone lines belonging to the applicant's counsel from 26 January 2004 to 26 April 2004. According to the Government, only information on the telecommunications activity, namely, the times of calls, the numbers of incoming and outgoing

calls, and approximate mobile phone locations was produced; the content of the telephone conversations was neither recorded nor intercepted.

31. In a letter of 26 July 2004 the Deputy Director of the Office for Foreign Relations and Information *(Úřad pro zahraniční styky a informace)*, a Czech intelligence service, in reply to a request for cooperation, informed the police unit in charge of the investigation about the system of administration of church registers in Austria and ways of accessing them in order to locate the applicant's birth certificate. Having found that access to the registers was restricted, the Deputy Director considered and rejected the possibility of using secret agents to acquire the documents in question and advised the police unit on how the State should proceed in the civil proceedings against the applicant, recommending that they manoeuvre the applicant into a situation where he would himself be obliged to establish his Czech citizenship.

32. On 28 April 2006 the police suspended the investigation, stating that in civil proceedings the applicant was not obliged by the Code of Civil Procedure to disclose all relevant facts, but only those supporting his claims. They also stated that the applicant's counsel had not breached his duty under Article 101 § 1 of the Code to assert all important facts, because he was not obliged to assert facts favouring the opposing party. Thus, according to that decision, the applicant could not be regarded as having intentionally withheld certain information in a fraudulent attempt to recover the property by misleading the courts.

33. It appears from the decision that during their investigation the police tracked down enquiries the applicant's counsel had made with a number of archives and state institutions in order to find documents relevant for the civil proceedings. When questioning employees of those institutions, the police also noted the areas of interest of the applicant's counsel and the documents to which he had had access and had studied. The decision further shows that the investigation enabled the police to make a qualified assessment of the evidence which the applicant might use as the plaintiff in the civil proceedings against the State.

34. On 8 June 2006 the applicant and his counsel found out by chance that they had been under police investigation. Neither of them had ever been questioned during the investigation.

35. On 5 December 2006 the applicant's counsel lodged a constitutional appeal with the Constitutional Court. Invoking the right to confidentiality of communications with his client, he challenged the production of the records of his telephone communications as contrary to his right to respect for the confidentiality of telephone communications under Article 13 of the Czech Charter of Fundamental Rights and Freedoms. He requested that the order of the Praha-východ District Court of 27 April 2004 be quashed, the police case file disclosed and the records destroyed.

36. On 27 September 2007 the Constitutional Court allowed the appeal and quashed the order as unlawful, ordering the police to destroy all the records of the telephone communications. The court found:

> "... the State has the standing of defendant in a set of civil proceedings initiated by a client of the complainant [that is, the applicant]. It litigates with the claimant on an equal footing in such proceedings. To defend its interests there, it is equipped with staff and finances from the State budget. If criminal proceedings are brought simultaneously with these [civil] proceedings ... despite the fact that a reasonable suspicion of a crime, which is one of the legal requirements for the initiation of any criminal proceedings, does not exist, there is a logical presumption that the State may at least attempt to improve its legal position in the civil proceedings by acquiring information through the prosecuting authorities and its other security agencies, or even attempt to deter the other litigant. Such conduct by the State is absolutely unacceptable in a democratic society and deserves to be condemned ... Although the criminal proceedings were finally rightfully suspended in the instant case, it remains alarming for the democratic development of the country that the suspension took place only after massive, and probably extremely expensive and entirely superfluous, criminal proceedings which should have never been initiated.
>
> ...
>
> ... the police decision to suspend the investigation was based on a purely legal conclusion that could have been arrived at without evidence consisting of 4,384 pages ... including materials procured by means of legal assistance provided by third countries and information supplied by the intelligence service ... The police ... and the supervising prosecutor ... could have arrived at the same conclusion at the outset [of the investigation]."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Presidential Decrees

37. The relevant domestic law and practice regarding confiscation of property under the Presidential Decrees and its restitution are set out in the Court's decision *Des Fours Walderode v. the Czech Republic* (dec.), no. 40057/98, 4 March 2003.

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

38. Article 101 § 1 stipulates that in order to achieve the aim of proceedings, parties are obliged, *inter alia*, to assert all facts relevant to the case.

39. Article 119a provides for the principle of proceedings concentration; it stipulates that parties to proceedings must disclose all material facts and specify evidence prior to the court of first instance pronouncing its decision in the case, because facts and evidence claimed after that time can only

constitute a reason for lodging an appeal under the conditions exhaustively listed in Article 205a (for example, in the case of defects in the proceedings, in order to undermine the credibility of evidence forming a ground for the ruling of the court of first instance, or if the facts to be proved occurred only after the first-instance decision).

C. Act no. 201/2002 establishing the Office for the Representation of the State in Property Matters

40. Section 1(2) provides that the Office for the Representation of the State in Property Matters represents the State, *inter alia*, in proceedings before courts. Section 15(1) provides that the Office is supervised by the Ministry of Finance.

41. In March 2004 Parliament adopted Act no. 120/2004 amending this law. Under the newly added section 13a the Office may represent a municipality responding in civil proceedings to an action that seeks to determine the ownership of real estate, and/or its appurtenances, acquired from the State, or to an action for such real estate to be vacated. Such legal services are provided free of charge. According to section 13d the Office may intervene on behalf of and in the name of the State and alongside a municipality in such civil proceedings if the State has a legal interest in the outcome of the proceedings.

42. The Explanatory report to Act no. 120/2004 stated that it was in the State's interest that the assets of municipalities were not diminished. It noted that municipalities often faced complicated judicial proceedings, for example under the Presidential Decrees, but that they did not have the necessary expert capacity to conduct such proceedings. Consequently, using the services of the Office would be the only way for many municipalities to defend their property acquired from the State.

D. Code of Criminal Procedure (Act no. 141/1961)

43. Article 158 provides that at the stage prior to the initiation of a criminal prosecution the police are obliged, on the basis of their own findings, criminal complaints, or suggestions from other persons and authorities which may lead to the conclusion that there exists suspicion that a criminal offence has been committed, to carry out all the necessary examinations and take the required measures to detect the facts that indicate the commission of a criminal offence and to find the offender; they are also obliged to take the necessary measures to prevent criminal activities.

E. The Constitutional Court Act (Act no. 182/1993)

44. Section 72(1)(a) stipulates that a constitutional appeal may be submitted: a) under Article 87 § l (d) of the Constitution by a natural or legal person if he or she alleges that his or her fundamental rights and basic freedoms guaranteed in the constitutional order have been infringed as the result of a final decision in proceedings to which he or she was a party, or of a measure or some other encroachment by a public authority.

45. Under section 72(3) a constitutional appeal must be lodged within sixty days of the date on which a final decision on a last remedy is served on an applicant. If the law does not provide for any legal remedy, the time-limit is triggered by the date on which the applicant learns about an infringement. In such a case, a constitutional appeal may not be lodged later than one year from the date when the infringement occurred.

F. Act no. 6/2002 on Courts and Judges

46. Section 118 stipulates that the task of the State administration of courts, carried out by the Ministry of Justice, is to create conditions for the proper conduct of justice, especially in terms of personnel, organisational, economic, financial and educational affairs, and to supervise, in the manner and within the limits set by this law, the tasks entrusted to the courts in order to ensure that they are carried out properly. The State administration of courts cannot interfere with the independence of the courts.

47. Under section 123(2) the Ministry of Justice monitors and evaluates the conduct of proceedings by and decisions of high, regional and district courts solely in terms of the principles of the dignity of judicial conduct and ethics and whether the proceedings have suffered from unnecessary delays.

G. Opinion of the Constitutional Court no. Pl. ÚS – st. 21/05

48. The plenary of the Constitutional Court found that the restitution laws could not be circumvented by civil actions for determination of ownership. Nor could the protection of ownership rights extinguished before 25 February 1948 be triggered unless the restitution laws provided for redress in that respect.

H. Decision of the Constitutional Court no. II. ÚS 71/06 of 28 February 2006

49. In this decision the Constitutional Court dismissed the applicant's constitutional appeal contesting the dismissal of his objection of bias in respect of a judge who had heard one of his civil actions. In his appeal the applicant alleged a violation of the right to a fair trial as a result of political

pressure reflected, *inter alia*, by amendments to legislation, such as Act no. 120/2004, the revisiting of case-law by the domestic courts, public statements by politicians to the applicant's detriment, and the reporting duties imposed on courts by the Ministry of Justice.

> "The Constitutional Court has already held in several decisions on constitutional appeals by the same applicant (for example ...) that the activities of some politicians referred to by the applicant, be they verbal expressions to the media or other, aimed at creating a negative atmosphere around the legal actions of the applicant, or constituting direct attempts to interfere in these proceedings, were unacceptable in a system based on the rule of law.
>
> This is even more valid for the activities of the Ministry of Justice that the Constitutional Court has had an opportunity to acquaint itself with from documents presented by the applicant ... The documents show that the Ministry of Justice imposed on the ordinary courts an obligation to provide information to such an extent that it was incompatible with the principle of separation of powers between the judicial and executive branches of government (from the documents adduced it does not appear that the Ministry pursued the aim of securing the proper administration of justice, especially in the personal, organisational, economic, financial and educational domains, or that it was motivated by efforts to prevent or eliminate delays in the proceedings or to ensure that these were conducted in a dignified manner and in accordance with judicial ethics – see section 118 in conjunction with section 123 of the Act on Courts and Judges)."

50. Nevertheless, it held that these activities alone could not cast doubts on the impartiality of individual judges. It found that the applicant had failed to substantiate his allegation that the particular judge whose partiality he challenged had not been impartial.

I. Decision of the Constitutional Court no. II.ÚS 99/09 of 21 January 2009

51. The Constitutional Court dismissed as manifestly ill-founded a constitutional appeal by the applicant arising from another set of civil proceedings for determination of ownership, referring only to its Opinion no. Pl. ÚS – st. 21/05. It did not consider in detail the arguments of the applicant, which concerned the criminal investigation against him and his counsel, stating that, in view of the Opinion, that would have been superfluous.

THE LAW

I. THE APPLICANT'S DEATH

52. The applicant died on 2 April 2009. On 30 April 2009 his son and only heir, Mr Carlos Kinský, informed the Court that he wished to pursue the application.

53. The Court reiterates that where an applicant dies during the examination of a case his heirs or next of kin may in principle pursue the application on his behalf. It considers that the applicant's son and only heir has a legitimate interest in pursuing the application in his stead (see *Ječius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX). The Court therefore accepts Mr Carlos Kinský as the person entitled to pursue the application.

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

54. The applicant complained that the civil proceedings for recovery of property had been conducted contrary to Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

55. The Government disagreed.

A. Admissibility

56. The Government maintained that the applicant had failed to raise his complaint regarding the criminal proceedings against him before the Constitutional Court. They argued that he could have lodged a new constitutional appeal after he became aware of the criminal investigation. They contended that the successful constitutional appeal lodged by his counsel (see § 35 above) showed the effectiveness of that legal avenue.

The Government further asserted that the applicant had not availed himself of the remedy provided for by the State Liability Act. That legal avenue constituted a means of claiming compensation for damage sustained by the order of the Praha-východ District Court of 27 April 2004 ordering the production of records of telephone communications, which had been quashed upon the constitutional appeal by the applicant's counsel.

57. The applicant disagreed.

58. The Court firstly notes that the applicant contested the fairness of the proceedings as a whole and not only the fact the he had been the subject of a criminal investigation. It observes that on 18 April 2006 the Constitutional Court dismissed the constitutional appeal in which he had complained of

unfairness in the proceedings, raising all the arguments contained in this application except for the criminal investigation against him. It was not disputed that the applicant had not found out about the police investigation until 8 June 2006. He could therefore not have included this complaint in his constitutional appeal lodged on 8 February 2006.

59. Yet, it is true, as contended by the Government, that the applicant could have lodged a new constitutional appeal under section 72(5) of the Constitutional Court Act, arguing that he found out about the criminal proceedings only in June 2006.

60. The Court, however, reiterates that applicants are required to exhaust only remedies that are sufficiently certain not only in theory but also in practice (see *T.W. v. Malta* [GC], no. 25644/94, § 34, 29 April 1999). It notes in this context that in its decision dismissing the present applicant's appeal the Constitutional Court relied to a considerable extent on its opinion no. Pl. ÚS-st. 21/05, according to which a civil action for determination of ownership could not be used to circumvent the restitution legislation, holding that the detailed arguments of the applicant challenging the merits of the decisions were thus irrelevant.

61. The Court does not consider, in view of the reasoning of the Constitutional Court, that a new constitutional appeal would have had the requisite effectiveness. This conclusion is further supported by the dismissal of a subsequent constitutional appeal by the applicant in which he did raise the issue of the criminal proceedings against him (see decision no. II.ÚS 99/09 at paragraph 51 above).

62. Regarding the reference by the Government to the judgment of the Constitutional Court of 27 September 2007, the Court observes that that case dealt not with the fairness of the trial but with a violation of the right to respect for the private life and correspondence of the applicant's counsel. The Court thus does not see any connection between this judgment and the applicant's constitutional appeal and the present complaint alleging violations of the right to a fair trial. The Constitutional Court seems to be of the same opinion, as demonstrated by its decision no. II.ÚS 99/09 (see paragraph 51 above).

63. As to the second limb of the Government's objection, regarding the claim for damages, the Court reiterates that an applicant who has exhausted a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *T.W. v. Malta* [GC], cited above, § 34).

64. It observes that the applicant lodged a constitutional appeal alleging a violation of his right to a fair trial, which if successful would have remedied the alleged deficiencies in the proceedings that the applicant complained of. Consequently, the Court does not consider that the applicant was obliged to exhaust any other remedy.

65. In view of the above considerations, the Court dismisses the Government's preliminary objection.

66. The Court notes that this part of the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant

67. The applicant contended that he had not had a fair trial as the State, the defendant in the civil proceedings, had subjected him and his counsel to a police investigation, including phone-tapping. In this way the police had been able to obtain a complete overview of his counsel's contacts and the content of his consultations with his clients and other experts in the field. They had also obtained an overview of his argumentation, which the State could have made use of in the civil proceedings. The police had never informed the applicant or his counsel about the investigation.

68. The applicant further alleged that in 2004 the respondent State had set up a special police task force code-named "Property" for the purpose of incriminating him, his counsel and other individuals of aristocratic origin in order to prevent them from succeeding in attempts to recover property they had previously owned. The police had also been assisted in its task by the Office for Foreign Relations and Information, a Czech intelligence service.

69. He further maintained that the State had enacted a law under which the Office for the Representation of the State in Property Matters had been entitled to intervene in the proceedings brought by the applicant against local municipalities.

70. The applicant further complained that none of the domestic courts had been independent and impartial on account of unacceptable interventions by the executive and legislative branches of the Government in the proceedings. Moreover, the Supreme Court had violated his right to a lawful judge as his cases had been allocated to a section of the Supreme Court other than the one competent under that court's rules. According to the applicant, the competent section would have been presided over or attended by a judge who had publicly disagreed with a leading Constitutional Court judgment according to which restitution law precluded the right to seek restitution of property through civil proceedings.

2. The Government

71. The Government firstly noted that the properties – valued at about two billion euros – claimed by the applicant in all his civil proceedings for determination of ownership rights, were mostly owned by the State and

municipalities, and included historical properties that formed part of the Czech Republic's cultural heritage. There was popular concern in the country that the reversal of the Presidential Decrees would have immense implications resulting in the complete disruption of the system of ownership rights and involving dozens, if not hundreds, of thousands of people who had acquired property in good faith, as well as unbearable costs for the State budget. In the present case, the situation was even more delicate because the applicant's father had been an apparent sympathiser of the Nazi regime.

72. Therefore in their view it was only natural that the applicant's actions had prompted increased media attention and comments from politicians and public officials. They stressed, however, that the reactions of politicians had not reached an intensity that would really have been capable of negatively influencing the independence of the courts and judges and the fairness of the proceedings. Regarding the statement of the Minister of Culture of 3 July 2003 (see paragraph 18 above), the Government stressed that it must be understood at most as an appeal concerning the political or moral responsibility of the judiciary for the consequences for Czech society, and in no way as an assertion of, for example, any judge's liability for damages or to disciplinary or administrative sanctions.

73. Regarding the reporting request by the Ministry of Justice, the Government maintained that it had been prompted by the extent of the applicant's claims, which had led to substantive media and public attention and therefore the Ministry had considered it appropriate to keep itself informed about procedural developments in those cases. They held that the Ministry had only collected information such as the current phase of the proceedings, the list of submissions lodged by the parties, the list of judicial decisions and their content, and information on the movement of the case files between the courts. The supervisory role of the Ministry had thus not resulted in the collection of data that could have been, even potentially, misused against the applicant, and there was no indication that the Ministry would have tried to influence the judges in any way.

74. Regarding the criminal investigation, the Government argued that even though it could hypothetically have compromised the principles of equality of arms, adversarial proceedings, impartiality and independence, none of those situations had come into being in the instant case. They stressed that no information gathered in the criminal proceedings had ever been used in the civil proceedings concerning the applicant and they could therefore have had no effect on them.

75. In respect of the alleged phone-tapping, the Government emphasised that only the data relating to the telephone calls had been intercepted, not the content, maintaining that that would have been impossible because the warrant had been given for a period of three months preceding it .

76. As to the Constitutional Court's finding on the criminal proceedings, embodied in its judgment delivered following the appeal by the applicant's

counsel, the Government considered that it had been rather marginal and based only on a general analysis without taking into consideration the details of the criminal proceedings. Moreover, the Constitutional Court had not found that the fairness of the civil proceedings had been compromised thereby. Moreover, the judgment itself showed that all errors committed during the criminal proceedings had been remedied by the Constitutional Court.

77. Furthermore, the criminal proceedings had been justified by the obligation of the prosecuting authorities to investigate suspected serious crimes and by the complexity of the case in terms of facts and law. They pointed out in this regard that even high-ranking prosecutors could not agree whether the applicant had committed fraud by misleading the courts.

78. The Government further contended that the criminal proceedings had never progressed further than the initial stage, as neither the applicant nor his counsel had been charged. Whilst the prosecution had allowed for more severe measures of investigation to be taken, the initial stage of investigation had consisted merely of the gathering of information, a preliminary examination and clarification. Mainly official documents issued by State authorities dozens of years earlier had been gathered. The majority of these documents had been known to the parties to the civil proceedings conducted by the applicant and to the courts, as many of the documents had been retrieved from publicly accessible archives. It was therefore evident that the information in the police file had not been of a nature capable of altering the courts' opinions.

79. The Government further maintained that the activities of the Office for Foreign Relations and Information, justified by the gravity of the suspected crime, could not have had any influence on the outcome of the civil proceedings because it had provided the police merely with information from public sources and that information had not been used in the civil proceedings. The birth certificate of the applicant had been submitted to the civil court by the applicant himself. The recommendations by the Office for Foreign Relations and Information concerning the tactics the State should use in the civil proceedings against the applicant had been an initiative of that intelligence service to which the police had not responded.

80. The Government further alleged that, although there had been challenges to the assessment of the facts throughout the civil proceedings, only the court of first instance had taken evidence relevant to the merits. Importantly, it had done so before the criminal investigation had commenced and the State had, therefore, had no occasion to influence the outcome of the civil litigation. The taking of evidence after the delivery of the judgment by the court of first instance had been reduced to a considerable extent by Article 119a of the Code of Civil Procedure, which enshrined the principle of concentration of proceedings.

81. Moreover, neither the applicant nor the District Court, the Supreme Court or the Constitutional Court had been aware of the criminal proceedings when these courts had been deciding on the case and, therefore, they could not have been intimidated, manipulated or discouraged. Finally, the applicant had had no prospect of success with his claims as he had relied on a civil action in matters covered by the restitution law, and this was a legal avenue that was impermissible under the Czech law.

3. The Court's assessment

82. The Court firstly reiterates that the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 § 1 restrictively (see *Perez v. France* [GC], no. 47287/99, § 64, ECHR 2004-I).

83. In cases under Article 6 of the Convention the Court often examines individual aspects of a fair trial that the applicant complains of, and a breach of such a specific right may result in a breach of the right to a fair trial. Nevertheless, in many instances it takes into account the "proceedings as a whole". Thus the Court may find a breach of Article 6 § 1 of the Convention if the proceedings taken as a whole did not satisfy the requirements of a fair hearing even if each procedural defect, taken alone, would not have convinced the Court that the proceedings were "unfair" (see *Barberà, Messegué and Jabardo v. Spain*, 6 December 1988, § 89, Series A no. 146, and *Mirilashvili v. Russia*, no. 6293/04, § 165, 11 December 2008).

84. The Court considers that this is an appropriate approach to be taken in the present case, where the applicant complains that he did not have a fair trial before the domestic courts and supports his allegations by several mutually reinforcing arguments touching on various aspects of the right to a fair trial.

85. Therefore, in order to determine whether there has been a breach of Article 6 § 1 of the Convention, the Court must examine separately each limb of the applicant's complaints and then make an overall assessment (see *Mirilashvili v. Russia*, cited above, § 165).

(a) Statements of Politicians and Supervision by the Ministry of Justice

86. The Court reiterates that Article 6 of the Convention requires courts to be independent and impartial. The existence of impartiality for the purposes of Article 6 § 1 must be determined according to a subjective test, that is, on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is, ascertaining whether the tribunal offered guarantees sufficient to exclude any legitimate doubt in this respect (see *Hauschildt v. Denmark*, 24 May 1989, § 46, Series A no. 154). In the present case the objective test is at issue as the applicant did not complain of personal bias against him on the part of the judges.

87. As to the objective test, it must be determined whether, quite apart from the judges' conduct, there are ascertainable facts which may raise doubts as to their impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified. In this respect even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Micallef v. Malta* [GC], no. 17056/06, §§ 96-98, ECHR 2009-...).

88. In *Sovtransavto Holding v. Ukraine*, no. 48553/99, ECHR 2002-VII, several politicians, including the President of Ukraine, urged the courts to "defend the interests of Ukrainian nationals". The Court found a violation of the right of the applicant company to have a fair and public hearing of its case by an independent and impartial tribunal, having regard, *inter alia*, to interventions by the executive branch of the State in the court proceedings. It stated as follows:

> "... the Ukrainian authorities acting at the highest level intervened in the proceedings on a number of occasions. Whatever the reasons advanced by the Government to justify such interventions, the Court considers that, in view of their content and the manner in which they were made ..., they were *ipso facto* incompatible with the notion of an 'independent and impartial tribunal' within the meaning of Article 6 § 1 of the Convention." (§ 80).

89. Turning to the present case, it is clear from the applicant's submissions that in his mind the impartiality of the judges was compromised. However, it needs to be decided whether these doubts were objectively justified.

90. The Court understands that the media and politicians were interested in the issue of returning property confiscated before 1990 through general actions for determination of ownership. Success of these actions could have resulted in the returning of property worth billions not only to the applicant but also to many other people who had lost property before 1990 and to whom the restitution laws did not apply. Consequently, the Court agrees with the Government that the interest of politicians in the issue and their meetings to find solutions to the situation was legitimate and can as such raise no issue under the Convention.

91. On the other hand, several politicians made strong negative statements regarding decisions in the type of cases brought by the applicant, including the applicant's own cases, and also about the judges deciding them. They unequivocally expressed the opinion that the courts' decisions upholding the applicant's claims were wrong and undesirable.

92. The Court is prepared to accept the Government's contention that the statement of the Minister of Culture regarding the responsibility of judges

(see § 18 above) did not refer to their disciplinary responsibility. Yet it still clearly showed his stance in respect of decisions in these types of cases. The Court is particularly worried by the fact that a high-ranking politician attended the District Court's hearing in the present case and made a public statement afterwards linking the applicant to Nazis and stating that he would do "anything within [his] power" in order that the action of the applicant and those in a similar position should not succeed.

93. The Court further notes that these statements were directly aimed at the judges (contrast *Mosteanu and Others v. Romania*, no. 33176/96, § 42, 26 November 2002, where the President's public statement that restitution judgments should not be enforced was considered by the Court to be directed primarily at the administration charged with enforcing the decisions).

94. The Government stressed that the remarks had no influence on the judges in the proceedings in the present case. The Court, however, sees no reason to speculate on what effect such interventions may have had on the course of the proceedings in issue (see *Sovtransavto Holding v. Ukraine,* cited above, § 80). It nevertheless observes that these statements were made before the first-instance decision in the present case and also that after 2003 none of the applicant's actions was successful. It considers that in the circumstances of the present case the applicant's concerns as to the independence and impartiality of the tribunals were not unreasonable

95. Moreover, the Court cannot but agree with the Constitutional Court that "the activities of certain politicians referred to by the applicant, be they verbal expressions to the media or other, aimed at creating a negative atmosphere around the legal actions of the applicant or constituting direct attempts to interfere in these proceedings, [were] unacceptable in a system based on the rule of law." The Constitutional Court expressed a similar opinion regarding the activities of the Ministry of Justice in imposing on the ordinary courts an obligation to provide information on the proceedings regarding the applicant.

96. The Court observes that under the domestic law the Ministry of Justice is entitled to collect information necessary for the State administration of courts but only in order to monitor and evaluate the conduct of proceedings in terms of the principles of the dignity of judicial conduct and ethics and whether the proceedings suffer from unnecessary delays. Yet, the Ministry itself reasoned that it required the information because of heightened interest of the media in these proceedings. In any case the Court observes that the Constitutional Court found that the extent of the information requested went beyond these powers of the Ministry.

97. As a consequence, the Ministry regularly received information on the development of the proceedings instituted by the applicant, including the names of the judges, for a period of over two years. In this context, the

Court cannot overlook the fact that the Minister of Justice has a right to institute disciplinary proceedings against judges.

98. The Court notes the assertion of the Government that the Ministry only received general administrative information that could be obtained from any case-file summary and that there is no indication that it misused the information in any way or even intended to do so. Nevertheless, the Court reiterates that what is at stake here is not actual proof of influence or pressure on judges but the importance of the appearance of impartiality. It considers that these activities undoubtedly alerted the judges that their steps in the applicant's proceedings were being closely monitored. This is particularly worrying when considered in connection with some of the statements by politicians about the responsibilities of judges and their mental processes, and their assertions that they would do anything within their power to prevent the success of the applicant in the proceedings.

99. The Court accordingly finds that the doubts of the applicant about the impartiality of the judges were not simply subjective and unjustified.

(b) Criminal Investigation

100. The Court reiterates that a trial would not be regarded as fair if a "fair balance" between the parties was not observed (*Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274) or if it took place in circumstances that placed one party at a substantial disadvantage vis-à-vis the other. This rudimentary maxim of the principle of equality of arms also covers the aspects of a fair trial which provide a litigant with an advantageous standing in comparison with the procedural position of his opponent (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 46, Series A no. 301-B, where the Court found a violation of Article 6 of the Convention on the ground that the State had interfered by legislation with pending proceedings to which it was a party).

101. Turning to the present case, the Court notes that a special police task force code-named "Property" was set up in 2004 for the purpose of investigating the question of returning of property to persons like the applicant. A criminal investigation of the applicant and his counsel was instituted on the basis of the suspicion that they had tried to commit fraud by intentionally withholding certain facts and information in the civil proceedings in order to prevail in the dispute. According to the findings of the Constitutional Court's judgment which allowed the applicant's counsel's constitutional appeal, the police case file consisted of more than 4,300 pages of material gathered over more than two years by means of various investigation techniques including phone monitoring or the commissioning of the cooperation of an intelligence service.

102. In the course of the criminal proceedings, the police examined the research activities conducted by the applicant's counsel in the national archives and other institutions where he had looked for evidence in support

of the applicant's civil action. The police also, on its own initiative, gathered data and information to verify information found by the applicant. These facts show that the investigation enabled the police to find out what evidence and information was at the applicant's disposal for the purposes of the civil proceedings. Moreover, the police took steps to find other evidence that could be used against the applicant in the civil litigation, as is shown by the request to find the applicant's birth certificate addressed to the Office for Foreign Relations and Information.

103. The Court considers that as a result of these activities the police possessed information as to what evidence was in the applicant's hands. This permitted the police to analyse the applicant's position in the litigation and to anticipate the applicant's course of action, including possible options of legal argumentation and procedural motions, with a degree of accuracy that would have otherwise been unattainable.

104. In the Court's view, the way the criminal proceedings were brought and conducted was manifestly abusive. This is so since a claimant in a civil litigation is not obliged under Czech law to adduce to a court all the evidence in his possession, or to provide it with all the information at his disposal. As the Constitutional Court held (see paragraph 36 above), this fundamental principle of Czech civil procedure must have been known to the police officials carrying out the criminal proceedings and to the supervising prosecutors. There was no need for the criminal proceedings to have expanded to the extent indicated above. The Court considers that any attempts to criminalise the exercise of the rights of a litigant in civil law disputes, especially in proceedings where the State acts as the adverse party, run counter to the right to a fair trial, which is the paramount pillar of any State based on the principle of the rule of law.

105. As regards the Government's argument that there was no causal link between the criminal proceedings and the civil litigation, the Court concedes that the stage of the litigation carried out prior to the criminal proceedings could not have been affected by the police investigation. However, although no evidence was taken after the first-instance judgment, the Court is unable, unlike the Government, to conclude that the fairness of the proceedings could not have been compromised. Even though limited by Article 205a of the Code of Civil Procedure, parties may still propose evidence to the appellate court, for instance, in order to undermine the credibility of evidence forming a ground for the ruling of the court of first instance. It follows that the taking of evidence could not have been excluded *a priori* in the subsequent course of the civil proceedings.

106. The Court has found above that the information gathered during the criminal proceedings could have been of assistance not only in respect of the evidence taken during the litigation but also for other important issues such as questions of law, procedural tactics and so on.

107. Moreover, the Court is not convinced by the Government's argument that the investigation could not have had any effect at all on the proceedings that are the subject of the present application. During the investigation, the police also requested information directly from the Děčín District Court, which had dealt with the applicant's case. Even though, admittedly, this must have happened after the District Court's decisions in the applicant's case, which preceded the opening of the investigation, the fact remains that the appellate proceedings were still pending.

108. Consequently, even though from the documents in its possession the Court cannot conclude that the police investigation had any effect on the current proceedings, it cannot lose sight of the fact that importance in this case is attached to appearances as well as to the increased sensitivity to the fair administration of justice (see *Bulut v. Austria*, 22 February 1996, § 47, *Reports of Judgments and Decisions* 1996-II). The Court is asked to decide on a two-year police investigation carried out on a considerable scale, employing particularly intense investigative techniques, and brought against the applicant on spurious grounds merely because he exercised his right of access to a court. Nor can it overlook the decision of the Constitutional Court that expressed concern about the effect of the investigation on the fairness of the trial and found that "[s]uch conduct by the State is absolutely inacceptable in a democratic society".

109. Accordingly, the Court considers that the police investigation gives rise to concerns about the fairness of the proceedings brought by the applicant.

(c) Conclusion

110. The Court reiterates that States have freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore the property rights of former owners. In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement (see, for example, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

111. Admittedly, the extent and value of the property claimed by the applicant through civil actions was substantial and therefore it attracted the attention of politicians, state authorities and the general public. Nevertheless, even though in certain circumstances the guarantees of Article 6 of the Convention might apply differently based on the nature of the proceedings (see, for example, *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 64, ECHR 2007-II, and *Micallef v. Malta* [GC], no. 17056/06, § 86, 15 October 2009), the Court does not consider that any such distinction can be made in the present case. In particular, lower standards of guarantees cannot apply simply because the proceedings concern restitution or a high-value claim.

112. The Court notes that the Government stressed throughout their submissions that the applicant had failed to prove any causal link between the alleged activities at the political and administrative level on the one hand and the decision in his case on the other. Yet, Article 6 is not concerned with the outcome of proceedings but guarantees fairness in the proceedings themselves. The Court also observes that the applicant's action was in fact dismissed by the domestic courts. It is not for the Court to speculate whether the applicant's lack of success before the domestic courts was a direct consequence of the deficiencies complained of.

113. Having regard to the above considerations, namely, the statements of the politicians, the activities of the Ministry of Justice, and the criminal investigation brought against the applicant, and without expressing any opinion on the outcome of the proceedings, the Court concludes that the proceedings in question, taken as a whole, did not satisfy the requirements of a fair hearing.

114. It follows that there has been a violation of Article 6 § 1 in the present case.

115. Consequently, the Court finds it unnecessary to consider the other complaints of the applicant under this provision.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

116. The applicant complained that the domestic law had been applied wrongly and that as a result he had been unable to recover property of which he was the rightful owner. He relied on Article 1 of Protocol No. 1, which reads:

> "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."

117. The Court observes that the applicant failed to raise this complaint before the Constitutional Court, which thus did not examine it. Accordingly, it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

118. The applicant further complained that he had been discriminated against on the basis of his origins because the Constitutional Court had

dismissed his constitutional appeal without considering its merits with a simple reference to its Opinion no. Pl. ÚS-st. 21/05. He relied on Article 14 of the Convention in conjunction with Article 6 of the Convention and Article 1 of Protocol No. 1.

119. The Court considers that the applicant's complaint is in essence a disagreement with the decision of the Constitutional Court. The Court, however, reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

120. The Court considers that there is no appearance of discrimination against the applicant by the Constitutional Court. The Constitutional Court has consistently applied Opinion no. Pl. ÚS-st. 21/05 in all cases raising the same issue as that of the applicant. The decision in the present case followed this case-law. There is thus no appearance of arbitrariness, manifest unreasonableness or different treatment.

121. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

122. 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

123. The applicant claimed 204,899 euros (EUR) in respect of pecuniary damage, consisting of the value of the property claimed in the domestic proceedings. He also claimed EUR 38,880 in respect of non-pecuniary damage.

124. The Government argued that there was no causal link between the alleged violation of Article 6 of the Convention and the pecuniary damage claimed. Regarding the non-pecuniary damage, the Government considered that an eventual finding of a violation of the Convention itself would represent sufficient redress.

125. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see paragraphs 112 and 113 above); it therefore rejects this claim. On the other hand, it considers that the applicant undoubtedly suffered feelings of frustration and anxiety, which

cannot be compensated solely by the finding of a violation. Having regard to the circumstances of the case, and ruling on an equitable basis, as required by Article 41, it awards him EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

126. The applicant also claimed EUR 3,806 for the costs and expenses incurred before the domestic courts and EUR 3,078 for those incurred before the Court.

127. The Government opined that reimbursement of cost and expenses should be granted in a reasonable amount and in accordance with the Court's case-law.

128. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Furthermore, legal costs are only recoverable in so far as they relate to the violation found (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 283, ECHR 2006-V). Also, to be awarded costs and expenses for proceedings before domestic courts an applicant must have incurred them in order to seek to prevent or rectify a violation of the Convention which has been established by the Court (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 52, 3 March 2000).

129. In the present case, the Court notes that only in his constitutional appeal did the applicant complain that his right to a fair trial had been violated. Accordingly, only in this part of the domestic proceedings was the applicant trying to prevent the violation found in this application from occurring.

130. Consequently, regard being had to the information in its possession, the Court considers it reasonable to award the sum of EUR 830 to cover the costs and expenses incurred before the Constitutional Court.

131. Regarding the costs and expenses before the Court, the Court does not consider that the amount corresponding to the expert evaluation of the value of the property claimed in the domestic proceedings was necessarily incurred since the Court did not communicate any issue under Article 1 of Protocol No. 1 to the parties and it is its established case-law that finding a violation of Article 6 does not normally establish any causal link to the loss of property in such proceedings (see, for example, *Milatová and Others v. the Czech Republic*, no. 61811/00, § 70, ECHR 2005-V).

132. At the same time, the Court recognises that the applicant incurred further costs before the Court after 20 October 2009, when he made his just satisfaction claim, because on 3 December 2010 the Court communicated an additional question to the parties (see *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 154, 24 February 2011).

133. Regard being had to the above criteria and the information in its possession, the Court considers it reasonable to award the applicant EUR 3,000 for costs and expenses before the Court

134. Overall, the Court awards the applicant EUR 3,830 under this head.

C. Default interest

135. 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 the applicant's son has standing to continue the present proceedings in his stead;

2. *Declares* the complaint concerning Article 6 of the Convention admissible and the remainder of the application inadmissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention;
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,830 (three thousand eight hundred and thirty euros), plus any tax that may be chargeable to the applicant, for costs and expenses;
      to be converted into Czech korunas at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President