TRANSLATION

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THE FACTS

The applicants, Mrs Jitka Zehnalová and her husband, Mr Otto Zehnal, are Czech nationals who were born in 1962 and 1958 respectively and live in Přerov. They were represented before the Court by Mr P. Šturma, of the Prague Bar. At the hearing on 19 February 2002 the applicants' representative was assisted by Mr J. Ondroušek and Ms A. Klírová, advisers. The respondent Government were represented by Mr A. Dvořák, the Czech Republic's representative before the European Court of Human Rights, assisted by Ms E. Vachovcová, Ms E. Petrová, Ms K. Sirotková, Mr J. Just and Ms E. Hašková, advisers.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The first applicant is physically disabled.

A large number of public buildings and buildings open to the public in the applicants' home town are not equipped with access facilities for people with disabilities (people with impaired mobility).

On 7 December 1994 the first applicant applied to the Přerov Municipal Office (*městský úřad*) under Article 65 of the Code of Administrative Procedure, complaining that a number of public buildings and buildings open to the public in Přerov did not comply with the technical requirements laid down in Decree no. 53/1985 (amended by Decree no. 174/1994) and in the Building Act (Law no. 50/1976, amended by Law no. 43/1994). On the same day she sent a letter to the same effect to the Přerov District Office (*okresní úřad*). On 19 December 1994 the head of the District Office informed her in reply that 219 certificates of approval issued in respect of the buildings concerned would be reviewed. On 29 December 1994 the Mayor of Přerov informed her that the Town Council had instructed a committee to contact disabled people's organisations in order to take the necessary measures to improve the situation regarding disabled access.

Following delays by the District Office in initiating the review procedure provided for in Article 49 § 2 of the Code of Administrative Procedure, the first applicant asked the Ministry of Economic Affairs (*ministerstvo hospodářství*) to conduct a review of its own motion. On 5 June 1995 she was informed that her case would be "dealt with by the District Office in accordance with the law". Nevertheless, the Ministry did not set any deadline and the District Office dismissed or took no action on most of the

complaints. Although some of the obstacles complained of have since been removed, the applicants maintain that that has not been the result of pressure from the authorities. The Government contend that the District Office, which had ordered an inspection, was gradually examining the 219 cases before it and that the Ministry had examined a large number of the first applicant's suggestions. In their submission, the situation could not be remedied immediately, regard being had to the technical features of the existing buildings and the considerable cost of renovations. However, the Government point out that some improvements have been made where possible, for example as a result of negotiations with the owners of the buildings.

On 21 November 1995 the applicants applied to the Ostrava Regional Court (*krajský soud*) under Article 138 of the Code of Civil Procedure for exemption from the payment of court fees. They also asked to have a lawyer assigned pursuant to Article 30 of the Code in order to prepare their applications for the review of the certificates of approval for 174 buildings, which they had learned had been issued by the Přerov Municipal Office's Building Department (*odbor výstavby městského úřadu*) before 7 December 1994. According to the Government, the complaints the applicants were intending to lodge concerned general matters of public interest and were accordingly not admissible in the administrative courts. The applicants dispute that assertion, maintaining that their complaints related solely to obstacles in their home town with which they were confronted on a daily basis.

On 7 February 1996 the Regional Court refused the applicants' application on the ground that it had no prospect of success within the meaning of Article 138 of the Code of Civil Procedure as it did not satisfy the requirements laid down in Article 249 of the Code and the applicants had not been parties to the proceedings before the administrative authorities which had resulted in the issuing of the certificates of approval.

On 19 February 1996 the applicants appealed to the High Court (*Vrchní soud*). They again asked to be exempted from the court fees and to have a lawyer assigned, relying, in particular, on Article 36 of the Charter of Fundamental Rights and Freedoms (*Listina základnich práv a svobod*) and on Article 13 of the European Convention on Human Rights. They also called on the High Court to stop discrimination against people with disabilities.

In a decision of 29 April 1996 the High Court declined jurisdiction on the ground that, pursuant to Article 250j § 4 of the Code of Civil Procedure, no appeal lay against the Regional Court's decision.

On 23 July 1996 the applicants appealed to the Constitutional Court. They complained, in particular, that although Decree no. 53/1985 laid down the general technical specifications for public buildings or buildings open to the public with a view to ensuring that people with impaired mobility could

have access to and make use of them, many buildings in Přerov did not comply with those requirements and were therefore not accessible to people with disabilities. They mentioned, in particular, the post office, the police stations, the customs office, the District Office, the district social-security office, cinemas, the District Court, various lawyers' offices, most specialist doctors' surgeries and the town swimming pool. They also submitted that their applications for a review of the certificates of approval had not been dealt with in a competent or satisfactory manner by the administrative authorities. They asked the court to review the constitutionality of section 59(1) of the Building Act, by which they were prevented from taking part in proceedings before the administrative authorities at the construction stage, and also to review the decisions by which the Regional Court and the High Court had refused to exempt them from the court fees and to assign a lawyer to present their case – decisions which, in their submission, amounted to a violation of Article 6 of the Convention. According to the Government, the purpose of their appeal was simply to ascertain whether the High Court's decision against them had precluded the possibility of judicial review of their case.

On 7 January 1997 the applicants applied for legal aid and asked to have a lawyer assigned to represent them in the Constitutional Court. On 31 January 1997 the Constitutional Court informed them that they satisfied the requirements for obtaining legal aid but would receive it only if their constitutional appeal was not dismissed on procedural grounds or as being unfounded, as provided in section 43 of the Constitutional Court Act.

In a decision of 10 March 1997 the Constitutional Court dismissed the applicants' appeal. It noted, firstly, that they were not entitled to challenge the constitutionality of section 59 of the Building Act since that provision had not been applied by the High Court, and, secondly, that the decisions complained of did not disclose any breach of constitutional law or of any other legal provisions or international treaties.

B. Relevant domestic law

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

By section 72, a constitutional appeal may be lodged by any natural or juristic person who claims that a final decision given in proceedings to which he or she was a party, or a measure or any other action taken by a public authority, has infringed his or her fundamental rights or freedoms as guaranteed by a constitutional law or an international treaty within the meaning of Article 10 of the Constitution. The appeal must be lodged within sixty days of the date on which the final decision was served in respect of the final remedy provided for by law or, if no such remedy exists, of the date of the event forming the subject matter of the constitutional appeal.

2. Building legislation

By section 59(1) of the Building Act (Law no. 50/1976), the parties to proceedings relating to building work are the builder and the natural and juristic persons with a right of property or other rights over the land or any adjacent buildings which might be affected by the issuing of a building permit. Section 78(1) provides that the parties to proceedings relating to the issuing of a certificate of approval are the builder and the user of the building, if his or her identity is already known.

Section 82(3) provides that the building authority should not issue a certificate of approval in respect of a public building if people with disabilities have no access to the areas open to the public and are therefore unable to use them.

Decree no. 53/1985 on the general technical specifications for the use of buildings by people with impaired mobility, subsequently replaced by Decree no. 174/1994 of the Ministry of Economic Affairs, which came into force on 1 October 1994, contains provisions designed to ensure proper disabled access to public buildings and buildings open to the public (such as: offices used for administrative or management purposes or for the provision of services; shops; catering facilities; sports facilities; cultural, health and welfare institutions; public communications facilities; and hotels and motels) and the elimination of all architectural barriers.

3. Code of Civil Procedure

By Article 30 § 1, a party to proceedings who satisfies the requirements for exemption from court fees may have a lawyer assigned where this is necessary for the protection of his or her rights.

By Article 138 § 1, the presiding judge may fully or partly exempt a party to the proceedings from the payment of court fees where this is justified by the party's circumstances, provided that the action brought is not arbitrary or manifestly devoid of any prospect of success.

Article 250b § 1 provides that an administrative appeal (*správní žaloba*) against a decision by an administrative authority must be lodged within two months of the decision in issue, except where the law provides otherwise.

By Article 250 § 2, an administrative appeal may be lodged by a natural or juristic person who, as a party to proceedings before an administrative authority, claims to have been adversely affected by a decision taken by that authority. An appeal may also be lodged by a natural or juristic person who was not treated as a party to the proceedings before the administrative authority but should have been.

4. Code of Administrative Procedure

Article 65 §§ 1 and 2 of the Code of Administrative Procedure provides that a final decision by an administrative authority may be reviewed by a

higher administrative authority acting of its own motion or otherwise. The administrative decision in issue must be quashed or varied where it is found to have breached the law.

C. Work by the Council of Europe

1. The European Social Charter

Article 13 guarantees the right to social and medical assistance. It provides that, with a view to ensuring the effective exercise of the right to social and medical assistance, the Contracting Parties are to undertake to: (1) ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social-security scheme, is granted adequate assistance, and, in case of sickness, the care necessitated by his condition; (2) ensure that persons receiving such assistance do not, for that reason, suffer from a diminution of their political or social rights; and (3) to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want.

2. Recommendations of the Committee of Ministers

Recommendation No. R (92) 6 of the Committee of Ministers on a coherent policy for people with disabilities, adopted on 9 April 1992, defines a handicap as

> "... a disadvantage, for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfilment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual".

The Recommendation urges member States of the Council of Europe to "guarantee the right of people with disabilities to an independent life and full integration into society, and recognise society's duty to make this possible" so as to ensure "equality of opportunity" for people with disabilities. The public authorities should aim, *inter alia*, to enable people with disabilities "to have as much mobility as possible, and access to buildings and means of transport" and "to play a full role in society and take part in economic, social, leisure, recreational and cultural activities".

As regards leisure time and cultural activities in particular, the Recommendation states:

> "All leisure, cultural and holiday activities should be made accessible to people with disabilities. ... Structural, technical, physical and attitudinal obstacles which limit the enjoyment of the above activities should be removed. In particular, access to cinemas, theatres, museums, art galleries, tourist venues and holiday centres should be

> improved... Cultural and leisure venues should be planned and equipped so that they are accessible and can be enjoyed by people with disabilities."

The Recommendation also states: "The exercise of basic legal rights of people with disabilities should be protected, including being free from discrimination."

In addition, Recommendation 1185 (1992) on rehabilitation policies for the disabled, adopted by the Parliamentary Assembly of the Council of Europe on 7 May 1992, emphasises: "Society has a duty to adapt its standards to the specific needs of disabled people in order to ensure that they can lead independent lives." In furtherance of that aim, it calls on the governments and agencies concerned "to strive for and encourage genuine active participation by disabled people ... in the community and society" and, to that end, to guarantee, amongst other things, "ease of access to buildings".

3. The revised European Social Charter

The revised European Social Charter, adopted by the Committee of Ministers on 1-4 April 1996 and opened for signature on 3 May 1996, provides in Article 15, entitled "The right of persons with disabilities to independence, social integration and participation in the life of the community":

> "With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:
>
> ...
>
> 3. to promote their full social integration and participation in the life of the community, in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

COMPLAINTS

1. Relying on Articles 1, 3, 8 and 14 of the Convention and Articles 12 and 13 of the European Social Charter, the applicants complained that they had suffered discrimination in the enjoyment of their rights on account of the first applicant's physical condition. They submitted that a large number of public buildings and buildings open to the public in their home town were not accessible to them and that the national authorities had failed to remedy the situation.

2. The applicants also alleged a violation of Articles 1, 6 and 13 of the Convention on the ground that they had not had an effective remedy before a national authority. They submitted in that connection that for a period of a year and a half the national courts had not assigned a lawyer to defend their rights.

THE LAW

A. Alleged violation of Article 8 of the Convention

The applicants complained, firstly, of a violation of their right to respect for their private life in that the Czech State had not removed the architectural barriers preventing disabled access to public buildings and buildings open to the public. They relied on Article 8 of the Convention, the relevant parts of which provide:

> "1. Everyone has the right to respect for his private and family life...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... the economic well-being of the country, ... for the protection of health or morals, or for the protection of the rights and freedoms of others."

The first applicant asserted that she was unable to enjoy a normal social life allowing her to deal with her everyday problems in a dignified manner and to practise her profession, not because of any interference by the State but on account of its failure to discharge its positive obligations to adopt measures and to monitor compliance with domestic legislation on public buildings.

In amending the Building Act by means of the enactment of Law no. 43/1994 of 16 February 1994 and Decree no. 174/1994 of 15 August 1994 (which was repealed on 15 December 2001 by Decree no. 369/2001), the Czech State had taken on the obligation to ensure that people with impaired mobility (on account as such factors as a physical disability, whether sensory or motor, or their age) enjoyed adequate access to and use of public buildings. The State also imposed those obligations on third parties (the buildings' owners) and had a duty to enforce the law. It therefore had positive obligations falling within the scope of Article 8 of the Convention.

The Government maintained that the applicants' interpretation of domestic legislation had been incorrect and that their allegations were unfounded and false. They pointed out that the provisions in issue applied only to buildings that had been built and had obtained a certificate of

approval after the relevant legislation had come into force, whereas the application concerned numerous buildings which had been built and approved before that time and had not subsequently undergone any alterations requiring a further certificate of approval. The Government further noted that Law no. 43/1994 made provision for disabled access to all public buildings except where there was a particular impediment, in which case other arrangements, such as portable ramps and bells, had to be put in place.

In reply to a number of additional questions, the Government asserted that the applicants had not given a clear indication of the number of buildings concerned by their application; accordingly, the application was somewhat vague and a thorough investigation was impossible. They further submitted that in almost every case, the applicants had failed to specify how the alleged situation had interfered with their private life. Consequently, relying on the *Botta v. Italy* judgment (24 February 1998*, Reports of Judgments and Decisions* 1998-I), they considered that the present application concerned social relations of such broad and indeterminate scope that no direct link was conceivable between the applicants' private life and the measures the State had been urged to take in order to remedy the failure to provide barrier-free access to public buildings. In support of that argument, the Government relied on the fact that the first applicant worked in a different town from the one referred to in the application and that she could not possibly require access to all the buildings concerned in order to satisfy the everyday needs of her private life.

In the Government's submission, only thirty-eight buildings could be properly identified in the application. The District Office had systematically dealt with all the complaints lodged by the first applicant and had informed her of its findings. In twenty-two cases the District Office had found that shops were being run without a licence from the Building Department and had asked the Department to enforce the relevant legislation. In 184 cases the applicants' complaints had not been dealt with as they had not been lodged within three years of the date on which the certificate of approval had been issued (Article 68 § 1 of the Code of Administrative Procedure). In eight cases the review proceedings had been terminated because the applicants' allegations had been unfounded. In the remaining six cases the District Office had upheld the applicants' complaints and revoked the certificate of approval.

As regards the financing of the necessary alterations, there were no budgetary implications for the State as the costs were borne by the owner. However, people with disabilities were granted allowances to help them overcome the problems they faced. The first applicant, for example, had been provided with an assistant and had received a payment towards the purchase of a special car. In the Government's submission, such measures

should compensate for the fact that barrier-free access to all public buildings could not be provided immediately.

In those circumstances, the Government denied that there had been any violation of Articles 8 and 14 of the Convention. They argued that Article 8 of the Convention was not applicable in the instant case as the rights claimed by the applicants were social rights, the scope of which went beyond the legal obligation inherent in the concept of "respect" for "private life" within the meaning of paragraph 1 of Article 8 of the Convention. With regard to the situation in the town of Přerov, the Government acknowledged that, in spite of the measures that had been taken, people with disabilities might encounter certain difficulties. However, that did not amount to a violation of Article 8 of the Convention, since the right to respect for private and family life had a different meaning from that attached to it by the applicants. Relying on the *Botta* judgment cited above and on the broad margin of appreciation enjoyed by States with regard to the obligations laid down in the relevant legislation, the respondent Government asked the Court to declare the application inadmissible as being incompatible *ratione materiae* with the provisions of the Convention.

The applicants disagreed with the Government's incomplete and selective interpretation of the facts. They contested the *actio popularis* argument and pointed out that their complaints related solely to buildings in their home town and to obstacles with which the first applicant was confronted on a daily basis and which prevented her from enjoying her private life within the meaning of Article 8 of the Convention.

In reply to the additional questions from the Court, the applicants reaffirmed that they had asked for a review of 220 buildings that had contained an architectural barrier. In their submission, only two of those complaints had been unfounded and thirty-four buildings had in the meantime been made accessible. In sixty-six cases their complaints had been lodged with the District Office after the three-year period within which certificates of approval could be reviewed, and in twenty-three other cases the District Office had delayed its review until that period had elapsed. In thirty-three cases the District Office had terminated its review without making any alterations to the buildings concerned. In fifteen cases the documents relating to the construction of the buildings had not been found and the buildings had been left untouched. In several cases the certificate of approval had been found to be unlawful but the necessary improvements had not been made. In a very small number of cases the problem had been rectified after a finding by the District Office that the legislation had not been complied with. Consequently, most of the public buildings concerned – a total of at least 150 (including most of the District Office's departments, part of the post office, the District Court, the customs office, the police station, a large number of doctors' surgeries and the indoor swimming pool) – were still inaccessible to people with disabilities, a fact

that had an adverse effect on the first applicant's private life and compelled her to rely on assistance from other people, in particular her husband. Although they acknowledged that there had been a noticeable improvement in Přerov since they had lodged their application, the applicants observed that Law no. 43/1994 and Decree no. 147/1994 were still being infringed on account of the continuing presence of architectural barriers in renovated buildings and even in new ones (where barrier-free access was often possible to the ground floor but not to the upper floors).

As regards the buildings where architectural alterations were impossible, the applicants submitted that no measures had been taken to facilitate disabled access. They referred, in particular, to the buildings where it was technically possible to eliminate barriers without any difficulty but where the owner had not done so as the responsibility rested with the Municipal Office's Building Department. They criticised practices such as dismantling bells that had stopped working or hiring a stairlift solely for the duration of proceedings for the award of a certificate of approval.

The applicants agreed with the Government that alterations to buildings were financed by the owner, but pointed out that the State bore the cost of altering buildings used by the public authorities. However, in adopting the above-mentioned legislation, the State had opted to make disabled access a priority without any reference to the budgetary implications. In the applicants' submission, the Government could not therefore advance economic grounds to justify the national authorities' inability to implement the relevant legislation.

The applicants disputed the Government's argument that the rights they were claiming were social ones. In their submission, what was at stake in the instant case was the first applicant's right under the Convention to respect for her private life in that, despite her disability, she wished to lead an active life while retaining her independence and dignity, an aspiration which they considered to be one of the aims of the Convention and of Article 8. They referred to the *Airey v. Ireland* judgment (9 October 1979, Series A no. 32, p.15, § 26), in which the Court had observed: "Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature." The applicants therefore contended that Article 8 was applicable and submitted that, as the Court had previously held (in *López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, p. 55, § 51, and *Guerra and Others v. Italy*, judgment of 19 February 1998, *Reports* 1998-I, p. 227, § 58), that provision also entailed positive obligations on the State that were inherent in effective respect for private or family life. They noted that, unlike Mr Botta, they were complaining about their lack of access to facilities providing for their everyday needs in the town in which they were permanently resident. Accordingly, in the instant case there was a direct, immediate and

permanent link between the national authorities' inability to implement the legislation in force and the quality of the applicants' private life.

The Court reiterates that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference since it may also give rise to positive obligations inherent in effective "respect" for private and family life. While the boundaries between the State's positive and negative obligations under this provision do not always lend themselves to precise definition, the applicable principles are similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole, and in both contexts the State enjoys a certain margin of appreciation (see, for example, *Nuutinen v. Finland*, no. 32842/96, § 127, ECHR 2000-VIII, and *Kutzner v. Germany*, no. 46544/99, §§ 61-62, ECHR 2002-I).

The positive obligations under Article 8 of the Convention may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Stjerna v. Finland*, judgment of 25 November 1994, Series A no. 299-B, p. 61, § 38, and *Botta*, cited above, p. 422, § 33). Since the concept of respect is not precisely defined, States have a wide margin of appreciation regarding the choice of the means to be employed to discharge the obligations set forth in the relevant legislation.

The Court has held that a State has obligations of this type where it has found a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life (see the following judgments: *Airey*, cited above, p. 17, § 32; *X and Y v. the Netherlands*, 26 March 1985, Series A no. 91, p. 11, § 23; *López Ostra*, cited above, p. 55, § 55; and *Guerra and Others*, cited above, p. 227, § 58). It points out that in the *Botta* judgment it held that Article 8 of the Convention was not applicable to situations concerning interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was urged to take and the applicant's private life.

The Court notes that there are similarities between the instant case and *Botta*. Its task here is to determine the limits to the applicability of Article 8 and the boundary between the rights set forth in the Convention and the social rights guaranteed by the European Social Charter. The Court acknowledges that the constant changes taking place in European society call for increasingly serious effort and commitment on the part of national governments in order to remedy certain shortcomings, and that the State is therefore intervening more and more in individuals' private lives. However, the sphere of State intervention and the evolutive concept of private life do not always coincide with the more limited scope of the State's positive obligations.

The Court considers that Article 8 of the Convention cannot be taken to be generally applicable each time the first applicant's everyday life is disrupted; it applies only in exceptional cases where her lack of access to public buildings and buildings open to the public affects her life in such a way as to interfere with her right to personal development and her right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). In such circumstances, the State might have a positive obligation to ensure access to the buildings in question. In the instant case, however, the rights relied on are too broad and indeterminate as the applicants have failed to give precise details of the alleged obstacles and have not adduced persuasive evidence of any interference with their private life. In the Court's view, the first applicant has not demonstrated the existence of a special link between the lack of access to the buildings in question and the particular needs of her private life. In view of the large number of buildings complained of, doubts remain as to whether the first applicant needs to use them on a daily basis and whether there is a direct and immediate link between the measures the State is being urged to take and the applicants' private life; the applicants have done nothing to dispel those doubts. The Court further observes – without, however, attaching decisive importance to the matter – that the national authorities have not remained inactive and that, as the applicants themselves have admitted, the situation in their home town has improved in the past few years.

In the light of the foregoing considerations, the Court considers that Article 8 of the Convention is not applicable in the instant case and that the complaints relating to an alleged violation of that Article must be rejected as being incompatible *ratione materiae* with the provisions of the Convention, in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Alleged violation of Articles 12 and 13 of the European Social Charter

The Court observes that the applicants raised the same complaints under Articles 12 and 13 of the European Social Charter.

It notes that their allegations do not disclose any appearance of a violation of the rights and freedoms guaranteed by the Convention and its Protocols. It would also point out that it is not its task to review governments' compliance with instruments other than the European Convention on Human Rights and its Protocols, even if, like other international treaties, the European Social Charter (which, like the Convention itself, was drawn up within the Council of Europe) may provide it with a source of inspiration.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

C. Alleged violation of Article 14 of the Convention taken together with Article 8

Relying on Article 14 of the Convention taken together with Article 8, the first applicant submitted that she had been discriminated against, as a person with disabilities, in the enjoyment of fundamental rights secured to all.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government contested that allegation and argued that Article 14 of the Convention was not applicable.

The Court reiterates that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to the enjoyment of the rights and freedoms safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to that extent it is autonomous – there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter (see, *mutatis mutandis*, *Botta*, cited above, p. 424, § 39).

As the Court has held that Article 8 is not applicable, Article 14 cannot apply in the instant case.

It follows that this complaint is likewise incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

D. Alleged violation of Article 3 of the Convention

The applicants complained that they had been subjected to inhuman and degrading treatment on account of the first applicant's physical condition. They relied on Article 3 of the Convention, which provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Court reiterates that in examining complaints under Article 3 of the Convention, it must take into account all the circumstances of the case. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention (see *B. v. France*, judgment of

25 March 1992, Series A no. 232-C, opinion of the Commission, p. 87, § 83). Before the Court, allegations of ill-treatment must be supported by appropriate evidence, to the standard of proof "beyond reasonable doubt" (see *Labita v. Italy*, no. 26772/95, § 121, ECHR 2000-IV), but such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

In the instant case the applicants have adduced no evidence of any severe or long-lasting effects as a result of the ill-treatment complained of. The Court notes that treatment which does not produce such effects may fall within the ambit of Article 3 if it may be said to have reached the minimum threshold of severity. That was not so in the instant case, although the Court is aware of the first applicant's predicament.

It follows that the complaint under Article 3 of the Convention must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

E. Alleged violation of Article 6 § 1 of the Convention

Relying on Article 6 § 1 of the Convention, the applicants complained that for a period of a year and a half the national courts had not assigned a lawyer to defend their rights. The relevant part of Article 6 § 1 of the Convention provides:

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

The Court reiterates that it has consistently stressed the autonomy of the concept of "civil rights and obligations" (see, among other authorities, *König v. Germany*, judgment of 28 June 1978, Series A no. 27, p. 29, § 88). It further notes that Article 6 § 1 of the Convention is not aimed at creating new substantive rights which have no legal basis in the State concerned, but at providing procedural protection of rights already recognised in domestic law. In the *W. v. the United Kingdom* judgment (8 July 1987, Series A no 121, pp. 22-23, § 73) the Court pointed out: "Article 6 § 1 extends only to '*contestations*' (disputes) over (civil) 'rights and obligations' which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for (civil) 'rights and obligations' in the substantive law of the Contracting States."

The Court observes that in the instant case, after the statutory two-month period had expired, the applicants asked the national courts to assign a lawyer to draft their application for a review of the certificates of approval issued in the context of proceedings before the administrative authorities – proceedings in which they had not taken part. However, no such right is set forth in Czech law (see "Relevant domestic law" above).

Consequently, Article 6 § 1 of the Convention is not applicable in the instant case.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

F. Alleged violation of Article 13 of the Convention

The applicants argued that they had not had an effective remedy before a national authority in respect of the breaches of the Convention complained of and alleged a violation of Article 13, 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."

As the Court has consistently held (see, among other authorities, *Powell and Rayner v. the United Kingdom*, judgment of 12 February 1990, Series A no. 172, pp. 14-15, § 33, and *Abdurrahman Orak v. Turkey*, no. 31889/96, § 97, 14 February 2002), Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. Its effect is thus to require the provision of a domestic remedy allowing the competent national authority both to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. Article 13 is therefore applicable only in respect of grievances which can be regarded as arguable in terms of the Convention.

However, the applicants have not raised any arguable grievances in the instant case as the Court has held that all their complaints are either incompatible *ratione materiae* with the provisions of the Convention or inadmissible as being manifestly ill-founded (see above).

It follows that this complaint must be rejected in accordance with Article 35 §§3 and 4 of the Convention.

G. Alleged violation of Article 1 of the Convention

Lastly, the applicants relied on Article 1 of the Convention, which provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

The Court reiterates that Article 1 of the Convention "is drafted by reference to the provisions contained in Section I and thus comes into operation only when taken in conjunction with them; a violation of Article 1 follows automatically from, but adds nothing to, a breach of those

provisions" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 90, § 238).

Accordingly, in the present case the applicants' complaint cannot be raised under Article 1 of the Convention, which is a framework provision that cannot be breached on its own (see, *mutatis mutandis*, *K.-H.W. v. Germany*, no. 37201/97, § 118, ECHR 2001-II). As the application has to be declared inadmissible, the Court considers that a separate finding under Article 1 of the Convention would serve no legal purpose.

It follows that this part of the application must likewise be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.