CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 40057/98
by DES FOURS WALDERODE
against the Czech Republic

The European Court of Human Rights (Second Section), sitting on 4 March 2003 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr C. BÎRSAN,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs A. MULARONI, *judges*,

and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 14 December 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Karel Des Fours Walderode, was a Czech and Austrian national. He was born in 1904 and died on 6 February 2000.

On 25 February 2000 the applicant's widow, Mrs Johanna Kammerlander, informed the Court that she wished to pursue the application originally lodged by her husband, who had designated her as his universal heir. She is an Austrian national, born in 1947, and lives in Vienna, Austria. Having regard to its practice in similar cases, the Court accepted Mrs Johanna Kammerlander as the person entitled to pursue the application (see *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII, with further references).

A. The circumstances of the case

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

Gabrielle Des Fours Walderode, the applicant's stepmother, Maximilian and Louis Des Fours Walderode, his stepbrothers, all German nationals, owned real estate in former Czechoslovakia. In 1945 the property owned by the applicant's stepbrothers and part of the property owned by the applicant's stepmother was confiscated pursuant to Presidential Decree no. 12/1945 on the Confiscation and Expedited Allocation of the Agricultural Property of Germans, Hungarians, Traitors and Enemies of the Czech and Slovak nations *(dekret presidenta republiky ze dne 21. června 1945 konfiskaci a urychleném rozdělení zemědělského majetku Němců, Maďarů, jakož i zrádců a nepřátel českého a slovenského národa)*, which entered into force on 21 June 1945. The remainder of the property of the applicant's stepmother was confiscated pursuant to Presidential Decree no. 108/1945 on the Confiscation of Enemy Property and National Restoration Funds (*dekret presidenta republiky ze dne 25. října 1945 o konfiskaci nepřátelského majetku a Fondech národní obnovy*), on 22 September 1948, on the ground that she had been a Nazi and that her sons, Maximilian and Louis, had served in Hitler's SS troops.

Nikolaus Des Fours Walderode, the applicant's father, had sold his real estate to third persons on an unknown date before the Second World War.

Maximilian Des Fours Walderode died on 16 May 1945. Louis Des Fours Walderode served in the German Army during the Second World War and was declared to be presumed dead as from 30 June 1944 by the Schöneberg District Court *(Amtgericht)* on 27 May 1992. The applicant's stepmother died on 22 October 1955. She left her real estate to the applicant, conferring the succession rights of her deceased sons, Maximilian and Louis, on the applicant. She had never acquired Czechoslovak citizenship.

The applicant left Czechoslovakia in 1949, thereby forfeiting his Czechoslovak citizenship, and returned in 1991. Czech citizenship was granted him on 25 August 1992.

Restitution proceedings

On 14 July 1992 the applicant's legal representative lodged a claim for the restitution of the property confiscated from his stepmother and stepbrothers under Presidential Decree no. 12/1945 and which had been sold by his father before the Second World War. He referred to the Land Ownership Act of 1991 (see the "Relevant domestic law and practice" below), alleging that he had inherited the property.

On 6 February 1995 the Jablonec nad Nisou Land Office *(pozemkový úřad*) dismissed the applicant's claim in proceedings to which seven municipalities and seventeen other legal persons - the owners of the property at the material time - were parties. The Land Office held that the applicant's stepmother and stepbrothers had not been loyal to the Czechoslovak State during the German occupation (1938-45) and had not acquired Czechoslovak citizenship after the Second World War. It referred to the documentary evidence, including the decision of the Prague Central National Committee *(Ústřední národní výbor)* of 22 September 1948 confiscating the remainder of the stepmother's property under Presidential Decree no. 108/1945 on the ground that she had been a Nazi and that her sons, Maximilian and Louis, had served in Hitler's SS troops.

The Land Office found that the property at issue had been put under national administration in 1945, that it had subsequently been confiscated pursuant to Presidential Decree no. 12/1945, and that the real estate of the applicant's father had been transferred to third persons before the Second World War. It concluded, with reference to section 2(1) of the Restitution Act 1992, that the applicant was not the owner of the property as his stepmother and stepbrothers (the original owners of the property) had not satisfied the requirements for restitution set out in this Act, and that the applicant's claim in respect of his father's former property fell outside the scope of the restitution legislation.

The applicant appealed to the Prague Municipal Court *(městský soud)*, through his counsel, against the administrative decision, alleging, *inter alia*, that the Land Office had not sufficiently established the facts of the case. He also argued that his stepmother had waived her deceased sons' succession rights in his favour, and that neither she nor his stepbrothers had been Nazis. He maintained that Presidential Decree no. 12/1945 should not have been applied to his stepbrothers because at the time of its entry into force (21 June 1945) his stepbrothers were dead. The applicant further claimed that, during the German occupation, the German legal system had been in force in the territory of former Czechoslovakia. He claimed that under the German Civil Code of 18 August 1896, an estate passed to the heirs upon

the death of a testator and that therefore half of Louis's property had passed to his stepmother, a quarter to Maximilian and another quarter to himself. In these circumstances, he had inherited one-quarter of Louis's property on 30 June 1944 and part of Maximilian's property on 16 May 1945 in the form of *hereditas iacens (ležící pozůstalost; "dormant" inheritance; ruhender Nachlaß)* (see page 9 below, the Civil Code 1881). He further claimed that, as his stepmother had conferred her deceased sons' succession rights on him, he had acquired the whole estate.

On 16 April 1996 the Municipal Court, after having assessed a substantial amount of documentary evidence and having heard the parties to the dispute, upheld the Land Office's decision. The court, refusing to grant the applicant leave to appeal, said in particular:

> "The court does not share the applicant's opinion that he was the owner of the property as at the time when the confiscation under Presidential Decree no. 12/1945 took place, Louis and Maximilian Des Fours Walderode were registered in the Land Register as the owners of the property.
>
> In its legal analysis, the court considered Presidential Decree no. 11/1944 on the Restoration of Legal Order, which expresses the principle of the legal continuity of the Czechoslovak legal order. The Decree provides that legal provisions enacted up to 29 September 1938 ... constituted part of the Czechoslovak legal order; those adopted during the German occupation (between 30 September 1938 and 4 May 1945) did not form part of the Czechoslovak legal order ... However, the Decree defined certain legal provisions enacted on Czechoslovak territory under the German occupation which could be applied during a transitional period, provided that they were not contrary to the Czechoslovak Constitution ...
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> Act no. 195/1946 on the Applicability of Legal Regulations from the Period of Occupation annulled the applicability of all legal provisions enacted during the German occupation ...
>
> By Article 1 of the Order on the Acquisition of German Citizenship by Czechoslovak Citizens of German Nationality of 20 April 1939, Czechoslovak citizens of German nationality living on the territory of former Czechoslovakia on 10 October 1938 acquired German citizenship with effect from 16 March 1939 ... at the latest.
>
> In order to determine the citizenship of Louis and Maximilian Des Fours Walderode, regard has to be had to the President Beneš Decree no. 33/1945 on the Czechoslovak citizenship of German and Hungarian nationals, under which German or Hungarian nationals lost their Czechoslovak citizenship by acquiring German or Hungarian citizenship. Czechoslovak citizens lost their citizenship on the date when they acquired the citizenship of the foreign occupying power: German nationals from the frontier territories of the Czech lands and Moravia *(Sudety; Sudetenland)* on 10 October 1938, and German nationals from other parts of the Czech lands and Moravia on 16 March 1939.
>
> In these circumstances, it is clear that the applicant's stepbrothers acquired German citizenship on 16 March 1939 at the latest ....
>
> In 1992 Louis Des Fours Walderode was declared to be presumed dead as from 30 June 1944, ... His estate, which has not yet been administered, could not have been administered by the national authorities before he was declared to be presumed dead

.... Presidential Decree no. 33/1945 recognised exclusively the foreign occupying power's measures on the acquisition of German citizenship by Czechoslovak citizens of German nationality. Louis Des Fours Walderode therefore died on 30 June 1944 as a German citizen. ...

Maximilian Des Fours Walderode died in Josefodol (former Czechoslovakia) on 16 May 1945. Having regard to Presidential Decree no. 33/1945, he died as a German citizen. His estate has not yet been administered by the national authorities. ...

The applicant's objection that civil cases brought by German citizens residing in the Sudetenland had to be dealt with under the German legal order, until Act no. 195/1946 came into force, is not correct. Actually, Act no. 195/1946 annulled only the applicability of those legal acts adopted during the German occupation which had been applicable, on a transitional basis, under Presidential Decree no. 11/1944 to the extent that they had not contravened the Czechoslovak Constitution ...

As Louis Des Fours Walderode lived in Prague and Maximilian Des Fours Walderode lived in Josefodol, they were, at the time of their respective deaths, subject to the Czech Civil Code 1811, which was in force in the Czech lands until the end of 1950 ...

Under Article 819 of the Czech Civil Code 1811, an heir acquired an estate upon its distribution. The time of acquisition of the estate and death of a testator did not therefore fall within the same period. From the death of a testator until the time of distribution of the estate, the property was subject to *hereditas iacens*. Before its acquisition by an heir, property subject to *hereditas iacens* was considered to have been owned by the testator .... In order to assess whether the property subject to *hereditas iacens* was confiscated from the testator or his heirs, the stage of the inheritance proceedings concerning the property subject to *hereditas iacens* at the time of the confiscation is relevant ...

The property at issue was confiscated from Louis and Maximilian Des Fours Walderode, who were already dead, but were still the notional owners of the estate as it had not been acquired by an heir. The property in question was confiscated *ex lege* by Presidential Decree no. 12/1945. The court considers that the property could properly be confiscated in the period between the death of the testator and the time of acceptance of the estate by an heir.

On the basis of the aforementioned facts, the Municipal Court found, like the Land Office, that Gabrielle, Louis and Maximilian Des Fours Walderode had been the original owners of the property which had been confiscated under Presidential Decree no. 12/1945. They were German nationals, and therefore the confiscation under Decree no. 12/1945 had taken place in accordance with law, and the applicant's restitution claim falls to be considered under the Restitution Act 1992.

As the original owners did not reacquire Czech citizenship as provided for in section 2(1) of the Restitution Act 1992, the applicant cannot be considered to be entitled to restitution under this provision ... As to the remainder of the real property claimed by the applicant, it had been sold by his father before the Second World War to third persons and is, therefore excluded from restitution ... "

On 25 June 1996 the applicant lodged a constitutional appeal *(ústavní stížnost)* with the Constitutional Court *(Ústavní soud)*. He alleged, in particular, that the Municipal Court had breached Article 1 (freedom and equality regarding dignity and rights), Article 3 (non-discrimination), Article 4 § 3 (equal treatment), Article 36 § 2 (the right to judicial review)

and Article 11 § 1 (property rights) of the Charter of Fundamental Rights and Freedoms *(Listina základních práv a svobod)*. He also requested that section 2(2) of Act no. 30/96 and section 2(3) of the Restitution Act 1992 be repealed as unconstitutional, that section 9(3) of the Land Ownership Act and section 3(2) of the Restitution Act be modified, and finally that the latter be amended to apply to the restitution rights referred to in section 6(1) paragraphs (o), (p) and (r) of the Land Ownership Act. He submitted, *inter alia*, that his stepmother had overriden her deceased sons' succession rights in his favour and that he had been forced to leave Czechoslovakia after the Second World War. He maintained that, although he had lost his Czech citizenship in 1949, it had been restored to him in 1992. Lastly, he contested the Municipal Court's findings of fact and law.

On 5 June 1997 the Constitutional Court dismissed the applicant's appeal as unsubstantiated. It stated that, pursuant to Presidential Decree no. 11/1944, legal provisions which had been enacted during the German occupation had not formed part of the Czechoslovak legal order, save those that had not contravened the Czechoslovak Constitution. In any event, Act no. 195/1946 had annulled the applicability of all legal provisions enacted during the German occupation on Czech territory. The applicant's objection that civil cases brought by German citizens residing in the frontier territories of former Czechoslovakia had fallen within the German legal order until Act no. 195/1946 came into force, was irrelevant as the Sudetenland had been transferred to the German Reich by virtue of the Treaty of Munich, which had later been declared null and void *ex tunc*. The decision stated that, according to international law, the Sudetenland had not ceased to be part of Czechoslovak territory and that all legal relations on that territory had been governed by the Czech legal order.

The Constitutional Court found that, under the Civil Code 1811, Louis and Maximilian Des Fours Walderode had been subject to Czechoslovak law at the time of their deaths. According to the Civil Code, an heir acquired the estate upon its distribution. In the present case the time of acquisition of the estate and the death of the testator did not fall within the same period. In order to transfer the estate to an heir, special *ex officio* proceedings before the national courts had to be instituted of the court's own motion. If such proceedings were not instituted, the estate was *hereditas iacens* until delivery of a court judgment. Heirs who wished to acquire the estate had to submit an application within the framework of those proceedings. The estate was considered as being in the possession of a testator until acquired by an heir.

The Constitutional Court further held as follows:

> " ... in order to determine the persons from whom the *hereditas iacens* property was confiscated, it is necessary to establish at what stage of the inheritance proceedings the confiscation took place. In the present case the confiscation was carried out when Louis and Maximilian Des Fours Walderode were dead; however, the estate has not

yet been administered by the national authorities ... Therefore, ... the applicant has never acquired the property at issue."

The Constitutional Court stated that as Louis and Maximilian Des Fours Walderode had not been entitled to claim restitution of the property under the Land Ownership Act and, since Gabrielle Des Fours Walderode was of a German origin and had never acquired Czechoslovak citizenship, the applicant himself could not be entitled to claim restitution pursuant to this Act.

The Constitutional Court also examined whether the applicant's right to a fair hearing had been violated in the restitution proceedings. It found no such violation.

It held lastly that, as the applicant's constitutional appeal was unsubstantiated, it was not possible to deal with his application to repeal, modify or amend the statutes specified by him. The Constitutional Court noted that it was not a legislative body, and was therefore not empowered to enact, modify or amend statutes.

Other proceedings

(a) In 1995 the applicant instituted inheritance proceedings before the Berlin-Schöneberg District Court (*Amtsgericht*) in respect of the property claimed in the above restitution proceedings. On 7 June 1995 the District Court issued two certificates of succession (*Erbschein*) to the effect that the applicant was the universal heir of his stepbrothers.

(b) On 3 March 1995 the relevant German authority (*Deutsche Dienststelle für die Benachrichtigung der nächsten Angehörigen von Gefallenen der ehemaligen deutschen Wehrmacht)* issued a document certifying that the applicant's stepbrothers had not served in the SS troops.

(c) The applicant was the owner of real estate in *Hrubý Rohožec.* This was confiscated from him pursuant to Presidential Decree no. 12/1945 on 21 June 1945. On 6 August 1945 the Turnov District National Committee (*Úřad okresního národního výboru v Turnově*) acknowledged the confiscation and granted him leave to appeal to the Prague Land National Committee (*Zemský národní výbor v Praze*).

(d) On 2 November 2001 the United Nations Human Rights Committee, considering the applicant's communication (no. 747/1997) concerning the *Hrubý Rohožec* real estate at its seventy-third session, held that Article 26 of the International Covenant on Civil and Political Rights, read in conjunction with Article 2 of the Covenant, had been violated by the Czech Republic. It referred to its Views in cases nos. 516/1993 (*Simunek et al.*), 586/1994 (*Josef Adam*) and 857/1999 (*Blažek et al*.) that a legal requirement of citizenship for restitution of property previously confiscated by the authorities made an arbitrary - and consequently discriminatory - distinction between individuals who were equal victims of prior State confiscation, and constituted a violation of Article 26 of the Covenant.

B. Relevant domestic law and practice

Land Ownership Act (Act no. 229/1991)

The Land Ownership Act regulates, *inter alia*, the restitution of certain agricultural and other property defined in section 1 which was assigned or transferred to the State or other legal persons between 25 February 1948 and 1 January 1990. Section 6(1) lists the acts giving rise to a restitution claim.

The persons entitled to claim restitution ("rightful claimants") are set out in section 4. Under section 4(1), any natural person who is a citizen of the Czech and Slovak Federal Republic and who lost property which once formed his or her agricultural homestead in the period from 25 February 1948 to 1 January 1990, in one of the ways set out in section 6(1), is entitled to claim restitution. The entitled persons are the original owners of the property or, where the original owner is dead or reported missing without trace, the owner's heirs or next of kin in a specified order (section 4(2)). By section 4(2) restitution can be claimed by natural persons who are citizens of the Czech and Slovak Federal Republic and are at the same time, in order of precedence, a) testamentary heirs who acquired the whole of the estate, b) testamentary heirs who acquired part of the estate, c) children and spouses, d) parents, or e) brothers and sisters or their spouses and children.

As regards the procedure to be followed, section 9(1) provides that a rightful claimant must lodge his or her claim with the appropriate Land Office and, at the same time, request restitution from the person or entity concerned.

Restitution Act 1992 (No. 243/1992)

This Act constitutes a *lex specialis* in relation to the Land Ownership Act.

Section 2(1) provides that any natural person who is a citizen of the Czech and Slovak Federal Republic and lost his or her property under Presidential Decrees nos. 12/1945 and 108/1945, and was loyal to the Czechoslovak State and reacquired (Czechoslovak) citizenship either under Acts nos. 245/1948, 194/1949 and 34/1953 or Act no. 33/1945, is entitled to claim restitution of any of his or her property which passed into State ownership in the circumstances referred to in the Land Ownership Act.

Section 2(3) provides that if such an entitled person died or was declared to be presumed dead before the time-limit set out in Section 11a, restitution can be claimed by natural persons who are citizens of the Czech and Slovak Federal Republic and are at the same time, in order of precedence, a) testamentary heirs who acquired the whole of the estate, b) testamentary heirs who acquired part of the estate, c) children or spouses, d) parents, or e) brothers or sisters or their children. Section 11a provides that a person who satisfied the requirements set out in this Act on 29 May 1992 could file

a restitution claim until 31 December 1992. His or her right lapsed if a claim was not lodged within this time-limit.

Act no. 30/1996 amending the Land Ownership Act 1991 and the Restitution Act 1992.

Under section 2(2), amending section 2(3) of the Restitution Act, any natural person satisfying the condition of section 2(1) of the latter can claim restitution provided that he or she was a Czech citizen on 31 January 1996 and acquired Czech citizenship either pursuant to Acts nos. 245/1948, 194/1949 or 34/1953, or pursuant to Presidential Decree no. 33/1945, and who did not lose Czech citizenship before 1 January 1990.

Civil Code 1811

Article 547 provides for the concept of *hereditas iacens*, which exists from the time of the deceased's death to the time when an heir accepts the estate. The principle of *hereditas iacens* is that, during this period, an estate is considered to be notionally owned by the deceased.

By Article 819, a person who has been declared an heir by a decision of a court of law on his or her application, and who has fulfilled his or her obligations, receives the estate, thus closing the inheritance proceedings.

The Civil Code 1811 was repealed at the end of 1950, whereupon the legal concept of *hereditas iacens* ceased to be valid in Czechoslovakia.

Presidential Decree no. 12/1945 on the Confiscation and Expedited Allocation of the Agricultural Property of Germans, Hungarians, traitors and enemies of the Czech and Slovak nations

The decree provides for expropriation, with immediate effect and without compensation, of agricultural property for the purposes of programmed land reform. It concerns agricultural property, including buildings and movable goods, owned by persons of German and Hungarian origin irrespective of their citizenship status.

For the purposes of the land reform, section 1(1) provides, with immediate effect and without compensation, that the property of the following persons shall be confiscated:

a) persons of German and Hungarian origin irrespective of their citizenship, and

b) traitors and enemies of the State.

Section 1(2) provides that the property of persons of German and Hungarian origin who were active in the battle for the liberation of Czechoslovakia is eligible for exemption from confiscation.

Section 1(3) provides that decisions as to whether the property referred to in section 1(2) is exempt from confiscation shall be taken by the District National Committees.

Section 2(1) defines persons of German or Hungarian origin as being those who, in any census after 1929, declared themselves to be of German or Hungarian origin, or who became members of national groups, formations or political parties made up of persons of German or Hungarian origin.

The President Beneš Decree no. 33/1945 (in force at the time when the confiscation took place)

By section 1 (1), Czechoslovak citizens of German or Hungarian origin lost their Czechoslovak citizenship on the day when they acquired German or Hungarian citizenship pursuant to the legislation enacted by the occupying power.

Section 1(2) provided that other Czechoslovak citizens of German or Hungarian origin lost their Czechoslovak citizenship on the day when the decree came into effect.

By section 1 (3), the decree was not applicable to Germans and Hungarians who applied for registration as Czechs or Slovaks during the German occupation.

By section 2 (1), the Czechoslovak citizenship of the persons referred to in section 1 of this Decree was retained, provided that they prove that they had been loyal to the Czechoslovak State and active in the battle for its liberation, or had suffered under Nazi or fascist terror, and that they had not done any wrong to the Czech and Slovak nations.

Section 2(2) provided that applications to retain Czechoslovak citizenship were to be submitted to the District National Committee or to the appropriate embassy abroad within six months.

Under section 3, persons who lost their Czechoslovak citizenship by virtue of section 1 of the Decree could claim its restoration by applying to the District National Committee or the appropriate embassy abroad.

Supreme Court judgment no. 33 Cdo 2398/98

Persons who may be entitled to property falling under a "dormant" inheritance (*hereditas iacens*) can be a party to judicial or administrative proceedings.

COMPLAINTS

1. The applicant complained under Article 6 § 1 of the Convention that his right to a fair hearing by an independent and impartial tribunal within a reasonable time had been violated in the restitution proceedings. He claimed, in particular, that the national courts had not established the facts of his case thoroughly and that they had not assessed the evidence

adequately. He also claimed that the national courts had not considered certain comments and evidence adduced by him, such as the certificates of succession issued by the Berlin-Schöneberg District Court and the document issued by the relevant German authority certifying that his stepbrothers had not served in the SS troops. He maintained that the effect of the courts' legal consideration of his case was to deny his property and succession rights.

The applicant asserted that neither the Prague Municipal Court nor the Constitutional Court gave his case sufficient consideration, especially as regards the issues arising from the *hereditas iacens* and the application of Presidential Decree no. 12/4945. He also claimed that his restitution claim had been considered at only one level of jurisdiction, the Municipal Court, as no appeal lay against that court's judgment. He complained that the courts had considered the confiscation of the property to have been lawful under Presidential Decrees nos. 12/1945 and 108/1945. He further asserted that the Constitutional Court had failed to weigh certain evidence produced by him and had rejected his constitutional appeal, upholding the Prague Municipal Court's expedient interpretation of Act no. 11/1994 and failing to address his allegations.

The applicant further complained that the Constitutional Court had departed from its case-law in holding that the confiscation had been lawful, notwithstanding that no proceedings concerning the relevant property had been held beforehand, and that he was thus denied the right to a fair hearing before an independent and impartial constitutional tribunal. The applicant complained, lastly, that the national courts had not sufficiently considered his claim regarding the alleged unconstitutionality of the Czech restitution laws and that the dismissal of his restitution claim had not been based on the domestic case-law.

2. The applicant complained under Article 1 of Protocol No. 1 that his restitution claim had been dismissed. He argued that his property and succession rights had not ceased to exist, and that he therefore had a legitimate expectation of obtaining the property claimed in the restitution proceedings. He contended that the confiscation amounted to a *de facto* deprivation of his property rights and that it constituted a continuous and unjustified interference with his ownership and succession rights.

3. The applicant complained that he had been discriminated against in the enjoyment of his rights under the Convention, contrary to Article 14 read in conjunction with Article 6 § 1 of the Convention and with Article 1 of Protocol No. 1. He submitted that the Czech restitution laws discriminated against persons not possessing Czech citizenship and that they also discriminated against foreigners. He referred to the conclusion of the United Nations Human Rights Committee of 2 November 2001. He further complained that the Restitution Act 1992 and section 2(2) of Act no. 30/1996 were discriminatory. He averred that his restitution claim had been

rejected and that his right to equal treatment before a court of law had been violated as he was a German speaker and had left Czechoslovakia in 1949.

THE LAW

1. The applicant first complained that his right to a fair hearing by an independent and impartial tribunal had been violated by the domestic courts. He relied on Article 6 § 1 of the Convention, which provides in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

(a) To the extent that the applicant alleged that the restitution proceedings had been unfair in that the national courts had failed to establish the facts thoroughly and had considered his case arbitrarily, the Court reiterates that, under Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, 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. It is primarily for the national authorities, notably the courts, to interpret and apply domestic law. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, *mutatis mutandis*, *Kopp v. Switzerland*, judgment of 25 March 1998, *Reports of Judgments and Decisions* 1998-II, p. 54, § 59).

In the present case the applicant based his restitution claim on the arguments that property subject to *hereditas iacens* could not be confiscated under Presidential Decree no. 12/1945; that the confiscation was invalid as there had not been any formal confiscation proceedings; and that he had inherited the property under the German law of succession. The Court observes that the national administrative and judicial authorities examined the applicant's case under the Land Ownership Act 1991 and the Restitution Act 1992. They found that part of the property had been confiscated by the State *ex lege*, pursuant to Presidential Decree no. 12/1945, and that another part of it had been transferred by the applicant's father to third persons before the Second World War. The national authorities, after a thorough examination of all the relevant evidence, considered that Presidential Decree no. 12/1945 had been correctly applied to the applicant's stepmother and stepbrothers.

The Court further observes that the national courts held that all the German legal provisions enacted within the territory of former

Czechoslovakia during the German occupation had been declared null and void by Act no. 195/1946, which provided for the continuity of the Czechoslovak legal order in the territory of former Czechoslovakia. The applicant therefore could not have acquired his deceased stepbrothers' estate upon their deaths as provided for by the German law in force at the material time. The courts also held that, under the Czechoslovak legislation in force at the material time, in order to acquire an estate a prospective heir had to file an inheritance application in inheritance proceedings instituted of the court's own motion. The courts considered that, accordingly, the applicant had never acquired his deceased stepbrothers' estate as there had been no inheritance proceedings, and that he had therefore never acquired the property before its confiscation by the State.

The national authorities considered that, although the original owners were already dead, the property subject to *hereditas iacens* could and had been confiscated under Presidential Decree no. 12/1945. They established that, as the original owners of the property at issue did not satisfy the conditions set out in the Restitution Act 1992, the applicant could not be considered to be entitled to claim restitution of the property concerned.

The Court notes that the applicant's restitution claim was considered by the national courts at a public hearing; that the applicant and his counsel were present at those hearings; and that the applicant was provided with ample opportunities to present his arguments and challenge the submissions of his adversary in the proceedings. The Municipal Court endorsed and extended the establishment of the facts and the legal reasoning set out in the decision of the Land Office, and the Constitutional Court thereafter considered the constitutional aspects of the case.

As to the applicant's complaint that the courts failed to assess the evidence sufficiently and to consider certain evidence adduced by him, the Court reiterates that Article 6 of the Convention does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In the light of the foregoing considerations, the Court finds that the reasons on which the national courts based their conclusions are sufficient to exclude any doubt that the way in which they established and assessed the evidence in the applicant's case was unfair or arbitrary.

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

(b) As to the applicant's claim that his case was considered at only one judicial level as no appeal lay against the Municipal Court's judgment, the Court reiterates that Article 6 § 1 of the Convention does not require the Contracting States to set up courts of appeal and that Article 6 § 1 does not guarantee an appeal against court judgments (see *Zarouali v. Belgium*, no.

20664/92, Commission decision of 29 June 1994, Decisions and Reports 78, p. 97).

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

(c) As regards the applicant's challenge to the impartiality of the national courts, the Court notes that there is nothing to cast doubt on the impartiality of the domestic courts which heard the applicant's case. Moreover, the applicant did not lodge a complaint with the national courts in this respect.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

(d) The applicant further complained that the length of the proceedings in his case had clearly exceeded a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

The Court reiterates that, according to its case-law, the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the particular case. Regard must be had to the conduct of both the applicant and the competent authorities, the complexity of the case, what is at stake in the proceedings for the applicant and the period of delay itself (see *Pauger v. Austria*, no. 16717/90, Commission Decision of 9 January 1995, DR 80, p. 24; *Laino v. Italy*, no. 33158/96, § 18, ECHR 1999-I, and *Paulsen-Medalen v. Sweden*, judgment of 19 February 1998, *Reports* 1998-I, p. 142, § 39).

Only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement.

The Court observes that the restitution proceedings commenced on 14 July 1992, when the applicant filed his claim. That claim was examined by three national authorities successively; the Jablonec nad Nisou Land Office, the Prague Municipal Court and the Constitutional Court, which on 5 June 1997 gave the final decision in the case. The period to be taken into consideration is therefore 4 years, 10 months and 22 days.

The Court finds that the proceedings were complex. They concerned a substantive amount of real estate claimed by the applicant, and many parties that owned the property at the material time were involved in the administrative proceedings before the Land Office: seven municipalities and seventeen legal persons. A considerable amount of evidence had to be taken.

Having regard to the proceedings as whole, the Court finds that they did not exceed a "reasonable time" within the meaning of Article 6 § 1 of the Convention.

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

(e) As regards the applicant's submission that the national courts did not sufficiently consider his claim regarding the alleged unconstitutionality of the Czech restitution laws, the Court observes that Article 6 § 1 of the

Convention neither guarantees a specific result for the proceedings in question, nor a right of access to a court with competence to invalidate or override a law (see *Pauger v. Austria*, cited above).

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

2. The applicant claimed that, by reason of the continuing deprivation of his property, both his property and succession rights have been violated. He submitted that he had a legitimate expectation of obtaining the property claimed in the restitution proceedings. He relied on Article 1 of Protocol No. 1, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

In the present case the applicant brought proceedings before the Czech authorities claiming restitution of property which had once belonged to his family. He challenged the validity of the confiscation carried out by the national authorities of former Czechoslovakia, his main arguments being that the confiscation had been effected contrary to the terms of Decree no. 12/1945 in that no formal confiscation proceedings had been held, and that he had inherited the property claimed pursuant to German law.

The Court observes that following its confiscation in 1945 the property in question was assigned to and used by different legal persons and that the members of the applicant's family had no practical possibility of exercising any rights in respect of that property. Thus the applicant's family was deprived of the property in question long before 18 March 1992, which was the date of entry into force of the Convention and its protocols with respect to the Czech Republic, and there is no question of a continuing violation of the Convention which could be imputable to the Czech Republic and could have effects on the temporal limitations of the competence of the Court (see, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 85 ECHR 2001-VIII).

Accordingly, the Court is not competent *ratione temporis* to examine the circumstances under which the applicant's family was deprived of the property (see *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XI).

As regards the proceedings which the applicant brought before the Czech authorities in 1992, they related to his claims for the restitution of his family's property. Those claims fell to be examined under the Restitution

Act 1992, which is a *lex specialis* in relation to the Land Ownership Act 1991.

To the extent that the applicant complained about a violation of his ownership rights in the context of those proceedings, the Court reiterates that a person complaining of an interference with his or her right to property under Article 1 of Protocol No. 1 to the Convention must show that such a right existed. Furthermore, Article 1 of Protocol No. 1 to the Convention aims at securing the peaceful enjoyment of existing possessions and does not guarantee, in general, a right to acquire property.

The Convention institutions have consistently held that "possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised (see the recapitulation of the relevant case-law in, for example, *Brežny v. the Slovak Republic*, cited above; *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48; *Malhous*, cited above; *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31; and *Ouzounis and Others v. Greece*, no. 49144/99, § 24, 18 April 2002, unreported, with further references).

In the present case the national authorities established that the applicant had neither possessed nor owned the property in question. They held, for reasons clearly set out in their decisions, that the property subject to *hereditas iacens* was able to be and had been confiscated pursuant to the relevant decree in 1945.

The Restitution Act 1992 afforded the opportunity of claiming restitution of property only to persons who were citizens of the Czech and Slovak Federal Republic who had lost their property under Presidential Decrees nos. 12/1945 and 108/1945, had reacquired citizenship either under Acts nos. 245/1948, 194/1949 and 34/1953, or under Act no. 33/1945, and whose property passed into State ownership in the circumstances referred to in the Land Ownership Act. If such a person died, restitution of property could subsequently be claimed by natural persons who were citizens of the Czech and Slovak Federal Republic and were a) testamentary heirs acquiring the whole estate, b) testamentary heirs acquiring part of the estate, c) children and spouses, d) parents, or e) brothers or sisters or their children.

The national courts held that the applicant's stepmother and stepbrothers did not fulfil the condition of Czechoslovak citizenship laid down in the relevant law. They concluded that the applicant was therefore not entitled to have the property restored under the relevant law.

The Court has found above that the reasons given by the domestic authorities determining the applicant's claim were sufficient and relevant,

that the decisions reached were not arbitrary, and that the proceedings leading to their delivery were not unfair.

In these circumstances, the Court is not satisfied that the applicant's claim related to "existing possessions" within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, 10 July 2002) or that the applicant had at least a "legitimate expectation" of having his restoration claim upheld and enforced in the context of the proceedings complained of.

The applicant therefore cannot argue that he had a "possession" within the meaning of Article 1 of Protocol No. 1. Consequently, neither the judgments of the national courts nor the application of the Restitution Act 1992 in his case amounted to interference with the peaceful enjoyment of his possessions, and the facts of the case do not fall within the ambit of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Polacek and Polackova v. the Czech Republic* (dec.) [GC], no. 38645/97, 10 July 2002).

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.

3. The applicant complained that, as a former German citizen, he was discriminated against in the enjoyment of his rights under Article 6 § 1 of the Convention and under Article 1 of Protocol No. 1. He relied on Article 14 of the Convention, which provides:

> "The enjoyment of the rights and freedoms set forth in this 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."

(a) The Court notes that the applicant's allegation that he had been discriminated against because he was a German speaker and had left Czechoslovakia in 1949 is not supported by the facts of the case. In particular, the fact that his claim for restitution was dismissed does not in itself constitute discrimination contrary to Article 14 of the Convention.

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

(b) In so far as the applicant complained that the Restitution Act 1992 and section 2(2) of Act no. 30/1996 were discriminatory in that they prevented him from recovering his relatives' property, the Court reiterates that Article 6 of the Convention does not in itself guarantee any particular content for civil rights and obligations in the substantive law of the Contracting States (see *Pires Neno v. Portugal*, no. 23784/94, Commission decision of 10 January 1995, DR 80, p. 154), and that Article 1 of Protocol No. 1 does not guarantee, as such, a right to acquire property (see *Slivenko and Others v. Latvia*, cited above).

The Court further points out that Article 14 of the Convention 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 this extent it is autonomous - there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see *Jewish liturgical association Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 86, ECHR 2000-VII). Having held above that the applicant's property claim is incompatible *ratione materiae* with the provisions of the Convention, so too is his claim under Article 14. It follows that this complaint must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(c) A similar conclusion is called for regarding the applicant's complaint that he had been discriminated against in the enjoyment of his property rights and because his action had been dismissed.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President