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. 17120/04
by Josef BERGAUER and 89 Others
against the Czech Republic

The European Court of Human Rights (Second Section), sitting on 13 December 2005 as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr R. TÜRMEN,
Mr K. JUNGWIERT,
Mr M. UGREKHELIDZE,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application lodged on 4 May 2004,

Having deliberated, decides as follows:

THE FACTS

The applicants are 90 German, Austrian or American nationals[1], all of German ethnic origin. They or their ancestors were residing in former Czechoslovakia, from the territory of which they were expelled after the Second World War. Before the Court they are represented by Mr T. Gertner, a lawyer practising in Bad Ems (Germany).

[1] See the appendix

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

I. Period before and after the Second World War

The applicants or their ascendants lost their Czechoslovak citizenship as a consequence of the Munich Pact (*Mnichovská dohoda*) concluded between Germany, the United Kingdom, France and Italy on 29 September 1938[2]. In September 1938 border areas of Czechoslovak territory, termed by the applicants "Sudetenland", were annexed to Germany under the Pact, on the basis of which 800,000 Czechoslovak citizens were ordered to leave their property and move to the remaining territory of Czechoslovakia[3] known as the Second Republic. Their real estate was expropriated without compensation.

On 20 April 1939 the German Minister of the Interior adopted an Ordinance on the acquisition of German citizenship by former Czechoslovakian citizens of German ethnicity. These persons were collectively made German nationals without their consent.[4]

On 9 May 1945 the Czechoslovak territory was liberated and the Government, led by President Mr Edvard Beneš, returned from their exile in London to re-establish the rule of law after the war. A number of presidential decrees was adopted[5].

---

[2] The Munich Pact represents one of the milestones in the process of the German territorial aggression throughout Europe. The Pact contravened international law then in force and was subsequently declared null and void by all contracting parties thereto. The top German officials planning and executing since November 1937 the seizure of democratic Czechoslovakia, which the Munich Pact was a part of, were accused of crimes against peace, consisting of the planning, preparation and initiation of a war of aggression and of a war in violation of international treaties, agreements and assurances, and tried before the Nuremberg Tribunal.

[3] The Second Republic (*Druhá republika*) lasted from the date of the Munich Pact of 30 September 1938 to the date of proclamation of Hitler's Protectorate of Bohemia and Moravia (*Protektorát Čechy a Morava*), following the German occupation of the territory on 15 March 1939. Slovakian territory was simultaneously separated from Czechoslovakia, under the form of a quasi-sovereign Slovak State (*Slovenský štát*), loyal to the Third Reich (*Třetí říše*).

[4] Germany and Czechoslovakia concluded in November 1938 an agreement on State citizenship and option rights (*Smlouva mezi Česko-Slovenskou republikou a Německou říší o otázkách státního občanství a opce*) under which, *inter alia*, former Czechoslovak citizens of German ethnic origin, who acquired the citizenship of the Third Reich by virtue of that agreement, could have opted for Czechoslovak citizenship.

[5] The Czechoslovak Government in exile headed by President Beneš, and recognized by Allies, passed more than a hundred decrees providing a fundamental legal framework to be implemented in the territory of Czechoslovakia after its liberation. Each of the decrees was subject to the ratification by the Czechoslovak National Assembly when it reopened its session after the termination of the War in 1945, the ratification being a prerequisite for upholding the respective decrees in force. The decrees in question were ratified on 28 March 1946.

The applicants submit that, during the liberation of Czechoslovakia and after 9 May 1945, they and/or their family's predecessors became victims of severe and unjustified ill-treatment. This consisted of, *inter alia*, various unsubstantiated assaults, individual acts of violence and harassment allegedly committed by members of the Czech partisans' guards, forcible replacement and internment in inadequate conditions, obligatory labelling of German nationals with distinguishing arm bands, forcible evictions, confiscation of movable assets and valuables, and forced labour.

On 23 May 1945 Presidential Decree no. 5/1945 on the Invalidation of Certain Property Transactions during the period of Lack of Freedom and on the National Administration of the Values of Germans, Hungarians, Traitors and Collaborators, and Certain Organisations and Institutes (*dekret presidenta republiky o neplatnosti některých majetkově-právních jednání z doby nesvobody a o národní správě majetkových hodnot Němců, Maďarů, zrádců a kolaborantů a některých organisací a ústavů*) entered into force. It provided, *inter alia*, that "any form of property transfer and transaction affecting property rights, in terms of movable and immovable assets and public and private property, shall be invalidated if it was adopted after 29 September 1938 under pressure by the Nazi occupation forces or due to national, racial or political persecution". Moreover, "those persons who in any census held after 1929 declared themselves to be of German or Hungarian origin, or became members of national groups, formations or political parties, which functioned as associations for persons of German or Hungarian nationality, shall be deemed persons of German or Hungarian nationality".

On 23 June 1945 Presidential Decree no. 12/1945 on the Confiscation and Accelerated Allocation of the Agricultural Property of Germans, Hungarians, Traitors and Enemies of the Czech and Slovak nations (*dekret presidenta republiky o konfiskaci a urychleném rozdělení zemědělského majetku Němců, Maďarů, jakož i zrádců a nepřátel českého a slovenského národa*) entered into force. It provided for the expropriation, with immediate effect and without compensation, of agricultural property for the purposes of land reform. It concerned any agricultural property, with its attachments - buildings and movable goods - in the ownership of all persons of German and Hungarian origin, irrespective of their citizenship status.

On 10 August 1945 Presidential Decree no. 33/1945 on the Adjustment of the Czechoslovak Citizenship of Persons of German and Hungarian Nationality (*dekret presidenta republiky o úpravě československého státního občanství osob národnosti německé a maďarské*) entered into force. On the basis of this decree, the Czechoslovak State released from its citizenship those persons who, "in compliance with the regulations of the foreign occupation forces, had acquired German or Hungarian citizenship". Czechoslovak citizenship was retained by persons who had demonstrated "their loyalty to the Czechoslovak Republic, had never committed any

offence against Czech and Slovak nationals, and who had either actively participated in the struggle for the liberation of the country, or had suffered under Nazi or fascist terror". Citizenship was also retained by Germans and Hungarians who "in the period of the increased threat to the Republic, officially registered as Czech or Slovaks". A further category provided for people who could apply to recover citizenship within six months from the date of the publication of the relevant Interior Ministry regulation. This group included German "opponents of Nazism and Fascism". Applications for the recovery of Czechoslovak citizenship were to be filed with district national committees between 10 August 1945 and 10 February 1946[6].

Following the resolution adopted at the Potsdam Conference[7] with the unanimous consent of the Allied Powers, the German populations from the territories of Czechoslovakia, Poland and Hungary were moved to Germany. The actual performance and technical modalities of the move were subject to regulation by subordinate legislation; no particular laws or presidential decrees providing for the execution of the relocation were adopted.

Presidential Decree no. 108/1945 on the Confiscation of Enemy Property and the National Restoration Funds (*dekret presidenta republiky o konfiskaci nepřátelského majetku a Fondech národní obnovy*) entered into force on 30 October 1945. It provided for the confiscation of the property of Germans, Hungarians, traitors and collaborators, and persons with an unreliable attitude to the State. However, the property of the people, including Germans and Hungarians, who took an active part in the fight for the preservation of the territorial integrity and liberation of the Czechoslovak Republic was not confiscated.

On 21 December 1945 the Final Act of the Paris Conference on Reparation[8] (*Dohoda o reparacích od Německa, o zřízení Mezispojeneckého reparačního úřadu a o vrácení měnového zlata*) established, that:

> "Each of the signatory governments, through the form fixed on its own discretion, will keep German enemy property under its authority, or will dispose of it in such a way that it could not return under German ownership or control, and will subtract this property from its share of the reparations."

On 4 June 1946 Act No. 115/1946 on the Legality of Acts in connection with the Struggle to regain the Liberty of the Czechs and Slovaks (*zákon o právnosti jednání souvisících s bojem o znovunabytí svobody Čechů a Slováků*) entered into force. Under section 1, "Any act committed between

[6] The Decree was not signed by President Beneš until the conclusion of the Potsdam Conference to ensure that it was in line with the Allies' decision. It was repealed by the Acquisition and Loss of Czechoslovak Citizenship Act no. 194/1949 which entered into force on 1 October 1949.

[7] The conference took place from 17 July to 2 August 1945.

[8] No reparation whatsoever has been paid by Germany to Czechoslovakia under the Final Act.

30 September 1938 and 28 October 1945, the object of which was to contribute to the struggle for the liberty of Czechs and Slovaks, or which represented just reprisals for actions of the occupation forces and their accomplices, is not unlawful even if it would be punishable under the currently applicable laws."

Established in 1947, *ad hoc* parliamentary committees investigated the circumstances of acts of violence committed after the liberation in 1945, as a result of which a number of criminal proceedings had commenced and continued until February 1948, when the democratic constitution of Czechoslovakia was undermined again.

II. The period shortly before and after 18 March 1992, the date of the entry into force of the European Convention on Human Rights with regard to the Czech Republic

On 1 April 1991 the Extra-Judicial Rehabilitation Act no. 87/1991 entered into force. The act affirmed the intention to redress the consequences of certain infringements of property and other rights which had occurred between 1948 and 1989. Section 3(1), *inter alia*, provides that, in order to be entitled to the restitution of property, a claimant must be a natural person and a citizen of the Czech and Slovak Federal Republic.

On 24 June 1991 the Land Ownership Act no. 229/1991 entered into force. It 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 entity 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 are set out in section 4 which provides, *inter alia*, that 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.

On 15 April 1992 the Restitution Act no. 243/1992 entered into force. It established Czechoslovak (Czech) citizenship and permanent residence within the Czechoslovak territory as the prerequisite conditions for claiming expropriated real estate[9].

[9] 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, 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)

In a judgment of 12 July 1994 the Constitutional Court (*Ústavní soud*) abrogated the condition of permanent residence within the territory of the Czech Republic, laid down in the Extrajudicial Rehabilitation Act, for persons claiming restitution.

On 8 March 1995 the Constitutional Court dismissed a constitutional appeal (*ústavní stížnost*) filed by Mr R. Dreithaler who had sought to repeal Presidential Decree No. 108/1945. It stated in particular:

> "(...) since the enemy occupation of the Czechoslovak territory by the armed forces of the Reich had made it impossible to assert the sovereign State power which sprang from the Constitutional Charter of the Czechoslovak Republic, introduced by Constitutional Act no. 121/1920, as well as from the whole Czechoslovak legal order, the provisional Constitutional Order of the Czechoslovak Republic, set up in Great Britain, must be looked upon as the internationally recognised legitimate constitutional authority of the Czechoslovak State. In consequence thereof and as a result of their ratification by the Provisional National Assembly by Constitutional Act no. 57/1946 of 28 March 1946, all normative acts of the Provisional Constitutional Order of the Czechoslovak Republic are expressions of legal Czechoslovak (Czech) legislative power, so that as a result thereof the striving of the nations of Czechoslovakia to restore the constitutional and legal order of the Republic was achieved. (...)
>
> (...) it is true in principle that that which emerges from the past must, face to face with the present, pass muster in respect of values; nevertheless, this assessment of the past may not be merely the present passing judgment upon the past. In other words, the present order, which has been enlightened by subsequent events, draws upon those experiences, and looks upon and assesses a great many phenomena with the advantage of hindsight, may not sit in judgment upon the order which has prevailed in the past. (...)
>
> In view of the fact that [the Decree] has already accomplished its purposes and for a period of more than four decades has not created any further legal relations, so that it no longer has any constitutive character, in the given situation its inconsistency with constitutional acts or international treaties (...) cannot be reviewed today."

In a judgment of 13 December 1995 the Constitutional Court abrogated the condition of permanent residence within the territory of the Czech Republic, laid down in the Land Ownership Act and the Restitution Act, for persons claiming restitution.

On 9 February 1996 Act No. 30/1996, amending the Land Ownership Act and the Restitution Act, entered into force. It amended the condition of permanent residence within the territory of the Czech Republic into the condition of lasting Czechoslovak (Czech) citizenship, and enabled the entitled persons, originally discriminated by the condition of residence, to re-introduce their restitution claim[10].

---

testamentary heirs who acquired a part of the estate, c) children or spouses, d) parents, or e) brothers or sisters or their children.

[10] Under section 2(2), amending section 2(3) of the Restitution Act, any natural person satisfying the condition of section 2(1) can claim restitution, provided that he or she was a Czech citizen on 31 January 1996 and acquired Czech citizenship either pursuant to Acts

In a judgment of 29 June 2000 the Supreme Court (*Nejvyšší soud*) referred to Presidential Decree No. 108/1945 as valid legislation.

According to the applicants, this state of law, whereby the Presidential Decrees of 1945 were considered a valid part of the national legal system and a condition of lasting citizenship was required for claiming restitution, prevented them from raising their restitution claims before the courts. Due to this discouragingly defined position, they did not attempt to seek either restitution or financial compensation before the national courts, nor did they lodge an appeal or a proposal to repeal particular acts with the Constitutional Court.

On 21 January 1997 the Czech-German Declaration regarding Mutual Relations and their Future Development (*Česko-německá deklarace o vzájemných vztazích a jejich budoucím rozvoji; Deutsch-tschechische Erklärung über die gegenseitigen Beziehungen und deren künftige Entwicklung*) was concluded by the respective governments expressing their regret for the grievances arising from the period of 1938–1945 and a determination to maintain good neighbourly relations[11].

On 22 April 2002 the Czech Parliament adopted a resolution providing, *inter alia*, that "the legal and property relations resulting therefore [from the post-war laws and presidential decrees] are incontestable, unimpeachable and unchangeable."

COMPLAINTS

1. The applicants first complain that, by means of the post-war confiscation and expulsion policy, they were discriminated against in the enjoyment of their rights guaranteed by the Convention, contrary to Article 14 read in conjunction with Article 1 of Protocol No. 1, particularly as regards the allegedly discriminatory character of Presidential Decrees Nos. 5/1945, 12/1945, 33/1945 and 108/1945, and Act No. 115/1946.

---

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.

[11] In the declaration, the German side acknowledged its responsibility for events leading to the Munich Pact, expulsion of inhabitants of Czechoslovak border regions and seizure of Czechoslovakia. It expressed regret over the injustice and suffering inflicted on the Czechoslovak people during the Second World War and acknowledged that the German National Socialist policy during the War contributed to the post-war transfer of the German population from Czechoslovak territory. The Czech side expressed regret for the excesses occurred during the post-war period committed against innocent people as well as for the legal framework provided by the Law No. 115/1946, which assisted in the creation of an environment, in which certain acts could have not been prosecuted by the competent authorities. The declaration is of political nature and does not have any legal implication.

In relation to acts occurring during the post-war period of 1945, the applicants contend, that they and/or their ancestors were subject to genocide allegedly carried out by the Czechoslovak Government against the ethnic German population after the Second World War by means of expulsion and confiscation. In this respect, they claim compensation in recognition of their non-pecuniary damage and suffering.

2. The applicants further manifest their disapproval of the political and legal criterion, standpoint and reasoning embodied in Czechoslovak (Czech) State policy, embracing issues arising from the historical event of the Second World War and its outcome. They challenge the idea of the constitutional continuity of Czechoslovakia between October 1938 and May 1945. They consider the Presidential Decrees as null and void allegedly due to the lack of any foundation for an existing State and, thus, a substantial source of democratic power. They criticise the fact that the Presidential Decrees remained as valid parts of the Czech legal order.

The applicants also allege the discriminatory character of national legislation adopted after 1990, referring in particular to the condition restricting restitution claims to persons possessing Czechoslovak (Czech) citizenship. In this respect, the applicants dispute the Czech Republic's failure to uphold the principle of the prevalence of natural law over statute law in the norms dealing with restitution of property.

The applicants finally maintain that the regret expressed in the Czech-German Declaration of 1997 constituted the basis for an obligation on the part of the Czech Republic to pay compensation for pecuniary damage sustained after the Second World War which, however, has never been granted.

THE LAW

The applicants complain that, after the Second World War, they were expelled from their homeland in genocidal circumstances, and that their property was confiscated by the former Czechoslovak authorities. They reproach the Czech Republic for failing to suspend the Presidential Decrees and laws adopted after the Second World War, which legalised the genocide. They further complain that the Czech Republic has not compensated them or recognised the grave injustices, in order to avoid having to make reparations for the legal and financial consequences. They rely on Article 1 of Protocol No. 1 and Article 14 of the Convention.

Article 1 of Protocol No. 1 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."

Article 14 of the Convention 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."

The Court considers it appropriate first to determine whether the applicant has complied with the admissibility requirements defined in Article 35 § 1 of the Convention, which stipulates:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

The Court points out that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges those seeking to bring their case against the State before an international judicial or arbitral organ to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering to an international body for their acts before they have had an opportunity to put matters right through their own legal system (see *Ilhan v. Turkey*, judgment of 27 June 2000, ECHR-2000-VI, §§ 58-59).

The Court observes that the requirements contained in Article 35 § 1 concerning the exhaustion of domestic remedies and the six-month period are closely interrelated. Thus, the six-month time-limit runs from the date of the final decision or, in the absence of a domestic remedy, from the date of the act of which the applicant complains.

Lastly, the Court observes that the purpose of the six-month rule is to promote security of the law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it protects the authorities and other persons concerned from prolonged uncertainty and ensures the possibility of ascertaining the facts of the case before the evidence fades away, which would make the fair examination of the application next to impossible (see *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

In the present case none of the applicants pursued his or her individual restitution claim before the competent national authorities although the applicants could have been expected to file a petition, seeking either a remedy or compensation before the domestic courts, and challenge before higher Czech courts, including the Constitutional Court, decisions or/and provisions of law which they considered contrary to the Convention. The Court notes that the case-law of the Czech judiciary is rather complex and not entirely settled yet.

Therefore, the Court could not anticipate the outcome of proceedings brought by the applicants before the Czech courts had such proceedings been pursued. Thus, the assertion of the absence of domestic remedies is unsubstantiated.

Nevertheless, even assuming that the applicants have complied with the criteria of the exhaustion of domestic remedies, their application is still inadmissible for the following reasons.

The Court reiterates that, according to its case-law, "possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48) or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realized (see *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332, p. 21, § 31).

The Court notes that the expropriation of the applicants' or their predecessors' property occurred shortly after the Second World War almost fifty years ago, long before the entry into force of the Convention with respect to the Czech Republic. Moreover, according to the Convention case-law, a deprivation of ownership or other rights *in rem* is in principle an instantaneous act and does not produce a continuing situation of the "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references). Therefore, the Court is of the opinion that the applicants had no "existing possessions" within the meaning of Article 1 of Protocol No. 1 at the time of the entry into force of the Convention with respect to the Czech Republic, or when they lodged their application with the Court. The fact that the confiscation of the applicants' property was carried out under the Presidential Decrees which continue to be part of the national legal system does not alter this position.

The Court reiterates that Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele*, cited above, § 48). Nor can it be interpreted as creating any general obligation for the Contracting States to restore property which had been expropriated before they ratified the Convention, or as imposing any restrictions on their freedom to determine the scope and conditions of any property restitution to former owners (see, *mutatis mutandis*, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

However, once a Contracting State has enacted legislation for the restitution or compensation of property expropriated under the previous regime, and it has remained in force after the State ratified the Convention, including Protocol No. 1, that legislation may be regarded as having created a new property right protected by Article 1 of Protocol No. 1 for those

persons satisfying the legislative conditions (see *Broniowski v. Poland* [GC], no. 31443/96, § 125, ECHR 2004-V).

Given the absence of any general obligation to restore property which was expropriated before ratification of the Convention (see *Kopecký*, cited above, § 35), it cannot be argued that the Czech Republic is obliged under the Convention to restore the property confiscated under the Presidential Decrees to the former owners. Notwithstanding this conclusion, it should be further noted that the case-law of the Czech courts made the restitution of property available even to persons expropriated contrary to the Presidential Decrees, thus providing for the reparation of acts which contravened the law then in force. The Czech judiciary thus provides protection extending beyond the standards of the Convention.

The Court reiterates that the expropriations in the present case took place almost fifty years ago. The Court refers in this connection to its judgment in the case of *Prince Hans-Adam II of Liechtenstein v. Germany* (§§ 84-86, ECHR 2002-VII) in which it held as follows:

> "85. As regards this preliminary issue, the Court observes that the expropriation [of paintings belonging to the applicant's father] had been carried out by authorities of the former Czechoslovakia in 1946, as confirmed by the Bratislava Administrative Court in 1951, that is before 3 September 1953, the date of entry into force of the Convention, and before 18 May 1954, the date of entry into force of Protocol No. 1. Accordingly, the Court is not competent *ratione temporis* to examine the circumstances of the expropriation or the continuing effects produced by it up to the present date (see *Malhous*, cited above, and the Commission's case-law, for example, *Mayer and Others v. Germany*, nos. 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92, Commission decision of 4 March 1996, DR 85-A, p. 5).
>
> The Court would add that in these circumstances there is no question of a continuing violation of the Convention which could be imputable to the Federal Republic of Germany and which could have effects as to the temporal limitations of the competence of the Court (see, *a contrario*, *Loizidou* (merits), cited above, p. 2230, § 41). Subsequent to this measure, the applicant's father and the applicant himself had not been able to exercise any owner's rights in respect of the painting, which was kept by the Brno Historical Monuments Office in the Czech Republic.
>
> In these circumstances, the applicant as his father's heir cannot, for the purposes of Article 1 of Protocol No. 1, be deemed to have retained a title to property nor a claim to restitution against the Federal Republic of Germany amounting to a "legitimate expectation" in the sense of the Court's case-law.
>
> This being so, the German court decisions and the subsequent return of the painting to the Czech Republic cannot be considered as an interference with the applicant's "possessions" within the meaning of Article 1 of Protocol No. 1 ..."

In the present case, the Court would repeat that the Czech Republic did not have any general obligation to restore property which had been expropriated instantaneously before they ratified the Convention. Moreover, it is clear that, under the applicable legislation, the applicants neither had a right nor a claim amounting to a legitimate expectation, as understood in

the Court's case-law, to obtain such restitution and, therefore, they had no "possession" within the meaning of Article 1 of Protocol No. 1.

Accordingly, this aspect of the case may be deemed to be incompatible *ratione materiae* with the provisions of the Convention (Article 35 §§ 3 and 4).

As to the applicants' allegation of genocide, the Court has examined the matter under Articles 2 or 3 of the Convention. It observes that the alleged acts of violence took place shortly after the Second World War, long before the entry into force of the Convention with regard to the Czech Republic. Moreover, the context is not one of a continuing situation: The applicants' complaints originate from a specific events, i.e. individual acts of expulsion and confiscation which occurred shortly after the Second World War and which cannot be regarded as entailing the continued responsibility of the successor State – the Czech Republic.

Accordingly, this aspect of the case may be deemed to be incompatible *ratione temporis* with the provisions of the Convention (Article 35 §§ 3 and 4).

As to the applicants' allegation of discrimination on the grounds of their foreign nationality and citizenship, the Court recalls 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 the Convention; there can be no room for its application unless the facts in issue fall within the ambit of one or more of its provisions.

Having regard to its above conclusions that the applicants' other complaints are essentially incompatible, the Court considers that Article 14 of the Convention cannot apply in the instant case.

In the light of all circumstances of the present case, the Court finds that the application must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ	J.-P.COSTA
Registrar	President

APENDIX

List of the applicants

1. Josef Bergauer, born in 1928
2. Brunhilde Biehal, born in 1931
3. Günther Biehal, born in 1932
4. Friedebert Volk, born in 1935
5. Reingard Chahbazian, born in 1942
6. Gerald Glasauer, born in 1969
7. Ernst Proksch, born in 1940
8. Johann Liebl, born in 1937
9. Gerhard Mucha, born in 1927
10. Rudolf Putz, born in 1936
11. Marianne Schillai, born in 1926
12. Hella Hermine Dory, born in 1929
13. Walter Stoppel, born in 1933
14. Gerolf Fritsche, born in 1940
15. Ilse Edeltraud Wiesner, born in 1920
16. Erika Endisch, born in 1928
17. Otto Höfner, born in 1930
18. Walter Frey, born in 1945
19. Herwig Dittrich, born in 1929
20. Richard Blaschke, born in 1923
21. Berthold Theimer, born in 1930
22. Ingobert Franz Stiebitz, born in 1928
23. Rosa Saller, born in 1927
24. Herta Rösel, born in 1922
25. Frant Rösel, born in 1957
26. Franz Penka, born in 1926
27. Richard Linhart, born in 1929
28. Adolf Linhard, born in 1941
29. Herlinde Lindner, born in 1928
30. Aloisia Leier, born in 1932
31. Walter Larisch, born in 1930
32. Dr. Herbert Küttner, born in 1928
33. Guido Bernt, born in 1920
34. Johann Fina, born in 1930
35. Emma Hammerl, born in 1929
36. Karl Hausner, born in 1929
37. Erich Klimesch, born in 1927
38. Rudolf Franz Pueschel, born in 1934
39. Alois Reitmeier, born in 1925
40. Albin Schüch, born in 1939

41. Siegmund Schüch, born in 1941
42. Manfred Fridrich Kurt Threimer, born in 1933
43. Dr. Walter Staffa, born in 1917
44. Johann Zeidler, born in 1934
45. Rüdiger Stöhr, born in 1941
46. Erich Titze, born in 1930
47. Walter Titze, born in 1942
48. Hans-Rainer Petsch, born in 1931
49. Edmund Liepold, born in 1927
50. Rotraua Wilsch-Binsteiner, born in 1931
51. Dr. Karl Röttel, born in 1939
52. Hans Pöchmann, born in 1934
53. Jutta Ammer, born in 1940
54. Franz Weiser, born in 1919
55. Erika Titze, born in 1933
56. Wolfgang Kromer, born in 1936
57. Roland Kauler, born in 1928
58. Johann Beschta, born in 1933
59. Helmut Binder, born in 1927
60. Kurt Peschke, born in 1931
61. Wenzel Pöhnl, born in 1932
62. Franz Löhnert, born in 1937
63. Erhard Hübl, born in 1938
64. Else Mackert, born in 1939
65. Horst Hübl, born in 1942
66. Walter Hübl, born in 1947
67. Josef Peter Hübl, born in 1950
68. Erhard Lug, born in 1931
69. Edgar Hornischer, born in 1935
70. Marianne Scharf, born in 1930
71. Dr. Herbert Vonach, born in 1931
72. Heinrich W. Brditschka, born in 1930
73. Elisabeth Ruckenbauer, born in 1929
74. Ralf Enzmann, born in 1958
75. Rosa Förster, born in 1927
76. Irmgard Siegl, born in 1926
77. Wenzel Valta, born in 1936
78. Dr. Adolf Frank, born in 1933
79. Anna Philipp, born in 1934
80. Ferdinand Hausmann, born in 1923
81. Marianne Schieβl, born in 1935
82. Peter Bönisch, born in 1971
83. Karl Peter Spörl, born in 1932
84. Ing. Herta Haunschmied, born in 1940

85. Franz Rudolf Drachsler, born in 1924
86. Elisabeth Teicher, born in 1932
87. Margit Bayer, born in 1942
88. Klaus Weiβhäupll, born in 1939
89. Inge Walleczek, born in 1942
90. Herbert Skala, born in 1933