

**APPLICATION N° 23548/94**

**F E D /CZECH REPUBLIC**

**DECISION** of 29 June 1994 on the admissibility of the application

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**Article 6, paragraph 1 of the Convention** *Does this provision apply to proceedings before the administrative authorities for the restitution of land on the basis of Law No. 229/1991 on land (Czech Republic)? (Question unresolved)*

**Article 26 of the Convention** *If there exists mere doubt as to the chances of success of a domestic remedy, it must be tried*

*In respect of a claim for the restitution of land on the basis of Law No. 229/1991 on land, an appeal to the ordinary courts following failure before the administrative authorities is a remedy which must be pursued*

*In the Czech Republic, an appeal to the Constitutional Court must be brought by an applicant who complains about the length of administrative proceedings*

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**THE FACTS**

The applicant, who was born in 1916 and is of Czech nationality, is resident at Prague. She is a retired schoolteacher.

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

A *Particular circumstances of the case*

The applicant inherited real estate at Jihlava (Czech Republic)

Pursuant to Presidential Decree No. 12, which entered into force in 1945, on the confiscation and distribution of the agricultural property of traitors and enemies of the Czech and Slovak nations and also of Germans and Hungarians, this real estate was confiscated by the State. In accordance with the provisions of the applicable legislation (see applicable domestic law) the administrative authorities and, where appropriate, the courts including the Constitutional Court, have jurisdiction to deal with claims for the restitution of property.

On 17 June 1992 the applicant submitted a claim to an administrative authority (Pozemkový úřad) at Jihlava for the restitution of the real estate in question. She also submitted claims to the entities currently in possession of the property with a view to concluding agreements in respect of her claim within 60 days.

On 13 January 1993 the Ministry of Agriculture made an order extending by 18 months the period within which the agreements in respect of her claims were to be concluded. During this period the entities were not entitled to dispose of the property.

By decision of 12 February 1993 the Jihlava administrative authority suspended the proceedings and referred to the Jihlava District Court a question on a preliminary point of law regarding the date of death of the applicant's father.

On 26 February 1993 the administrative authority withdrew the question to the court as the applicant had submitted her father's death certificate.

On 2 March 1993 the applicant informed the authority that the agreements with the entities in respect of her claims had not been concluded.

On 15 March 1993 the authority asked the applicant to provide proof of her father's nationality as at 11 February 1942: evidence that he had re-acquired Czech nationality and a certificate concerning succession proceedings. The authority also suspended the proceedings and referred to the Jihlava district office and the Prague 1 regional office a preliminary question regarding the applicant's father's Czech nationality.

The proceedings for the restoration of the property are still pending before the Jihlava administrative authority.

B *Applicable domestic law*

Code of Administrative Procedure [translation]

Art 29

1 The administrative authority shall suspend proceedings relating to a preliminary question on a point of law or where a party has been requested to correct errors in his application [ ]

3 There shall be no appeal against decisions to suspend the proceedings '

Law No 229/1991 on land as amended by Law No 195/1993 [translation]

Art 4

1 Everyone who seeks the restitution of his property must be a national of the Czech and Slovak Federal Republic permanently resident in its territory [ ] whose real estate was ceded to the State between 25 February 1948 and 1 January 1990 [ ]

2 Where the above mentioned person [ ] is deceased [ ] or is reported missing without trace, the other persons empowered to seek restitution are

a) an heir appointed by will where probate has been granted in the succession proceedings [ ], [ ]

Art 7

[ ]

2 The Czech National Council is empowered to regulate the restitution of the property of Czech citizens permanently resident in the territory of the Czech Republic whose property had been confiscated on the basis of Presidential Decrees No 12/1945 'on the confiscation and distribution of the agricultural property of traitors and enemies of the Czech and Slovak nations and also of Germans and Hungarians' and No 108/1945 [ ]

Law No 243/1992 of the Czech National Council on questions associated with Law No 229/1991 [translation]

Art 2

1 Everyone who seeks the restitution of his property must be a national of the Czech and Slovak Federal Republic permanently resident in the territory of the Czech Republic whose property was confiscated on the basis of Presidential Decrees

No 12/1945 [ ] and 108/1945 [ ] provided that he has not committed any offence against the Czechoslovak State and that he has re-acquired Czechoslovak nationality [ ]

2 Where the above-mentioned person [ ] is deceased or is reported missing without trace, other natural persons may be entitled to seek restitution of the property where they are citizens of the Czech and Slovak Federal Republic and permanently resident in the territory of the Czech Republic. These persons are, in descending order

a) an heir appointed by will where probate has been granted in the succession proceedings [ ]

Constitution of the Czech Republic [translation]

"Art. 3

The Charter of Fundamental Rights and Freedoms shall form part of the constitutional order of the Czech Republic

Art. 4

The judicial power shall guarantee the fundamental rights and freedoms [ ]

Charter of Fundamental Rights and Freedoms [translation]

Art. 36

[ ]

2 Everyone who claims to be the victim of a violation of his rights by a decision of an administrative organ of the State may apply for judicial review of the legality of such decision, provided that the law does not provide otherwise. However, the courts shall always have jurisdiction to review whether the fundamental rights and freedoms within the meaning of this Charter have been violated

3 Everyone shall be entitled to have his case heard in public, within a reasonable time and in his presence. Everyone shall also have the right to discuss all the evidence adduced before the court [ ]

Law No 182/1993 on the Constitutional Court entered into force on 1 July 1993  
[translation]

Art 72

1 A constitutional appeal may be introduced by

a) any natural person [ ] who claims to be the victim of a breach by 'a public organ' of the fundamental rights or freedoms recognised in a constitutional law or an international treaty [ ]

Art 146

1 A constitutional appeal [ ] within the meaning of Article 72 may also be introduced against any 'interference' by the public organs committed after 1 January 1993 [ ]

2 [ ] where, for the purpose of introducing [an appeal], time would have begun to run prior to the date of entry into force of this Law it shall not begin to run until that date

Code of Civil Procedure [translation]

Art 248

1 The civil courts shall not examine a decision of the administrative authorities which is in the nature of a decision on a right or obligation of a natural person [ ]

2 The civil courts shall not examine [ ]

e) a decision of the administrative authorities which is in the nature of a decision to refer a preliminary question on a point of law or which is procedural [ ]

## COMPLAINTS

Before the Commission the applicant complains of the length of the proceedings before the administrative authorities and of the violation of the right of succession and the right to the peaceful enjoyment of her possessions and also of discrimination against her. She also complains that she did not have available an administrative appeal in Czech law. As regards the possibility of an appeal to the ordinary courts, she has no confidence in being given a fair hearing before the national courts. She claims that there has been a violation of Article 6 para 1 and Article 14 of the Convention and also of Article 1 of Protocol No 1.

## THE LAW

The applicant complains of the length of the proceedings for the examination of her claim for the restitution of her property before the Czech administrative authorities, of the violation of the right of succession and the right to the peaceful enjoyment of her possessions, and also of discrimination. In that regard she relies on Article 6 para. 1 and Article 14 of the Convention and also on Article 1 of Protocol No. 1.

Article 6 para. 1 of the Convention recognises that everyone is entitled to have his case heard within a 'reasonable time'. Article 14 of the Convention guarantees the enjoyment of the rights and freedoms set forth in the Convention without discrimination on any ground and Article 1 of Protocol No. 1 guarantees everyone the right to the peaceful enjoyment of his possessions.

Even assuming that Article 6 para. 1 of the Convention is applicable in the present case, the Commission is not required to determine whether the facts submitted by the applicant disclose the appearance of a violation of those provisions. Article 26 of the Convention provides that the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law.

In the present case, it is true that there is neither an administrative appeal within the meaning of Article 29 para. 3 of the Code of Administrative Procedure nor an appeal to the civil courts under Article 248 para. 2 (e) of the Code of Civil Procedure against decisions by the administrative authorities to suspend the proceedings. Nonetheless, the Commission observes that, pursuant to Article 72 para. 1 of Law No. 182/1993 on the Constitutional Court, the applicant could bring the complaints raised before the Constitutional Court in the context of a constitutional appeal. In this appeal, the applicant can raise the complaints relating to the merits of her case and those relating to the length of the proceedings, by relying on the violation of Article 36 para. 3 of the Charter of Fundamental Rights and Freedoms, which guarantees the right to be heard within a reasonable time.

The Commission considers that such an appeal must be pursued in order to exhaust the domestic remedies available in Czech law, and that the fact that the applicant has no confidence in being given a fair hearing before the national courts cannot dispense her from exhausting domestic remedies. The same applies with regard to the fact that there was doubt as to the chances of success of a domestic remedy, in so far as this is a question on which the national court, namely the Constitutional Court, should have had the opportunity to rule itself before the matter was referred to the Commission (cf. No. 9559/81, Dec. 9/5/83, D.R. 33 p. 158, Eur. Court H.R., Van Oosterwijk judgment of 6 November 1980, Series A no. 40, p. 19, para. 40).

It follows that the applicant has not satisfied the condition regarding the exhaustion of domestic remedies and that her application must be rejected in accordance with Article 27 para. 3 of the Convention.

For these reasons, the Commission, unanimously,

**DECLARES THE APPLICATION INADMISSIBLE**