(TRANSLATION)

THE FACTS

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

The application was introduced by Mr. Fritz Schlumpf and Mr. Hans Schlumpf, manufacturers, of Swiss nationality, born in Omegna (Italy) and resident in Basle (Switzerland). The applicants are represented before the Commission by Mr. Leopold Wachsmann, a lawyer in Strasbourg.

On 28 October 1976 two companies managed by the applicants, "Filature de Laine Peignée de Malmerspach" and "Filature de Laine Peignée Gluck et Compagnie", with their registered offices in France, were declared to be bankrupt (en règlement judiciaire) by the Mulhouse Regional Court and Mr. D. and Mr. T. were appointed as official administrators. The bankruptcy of the two companies was subsequently converted into a sequestration, with Mr. D. and Mr. T. remaining as administrators.

On 2 March 1977 the Mulhouse Regional Court extended the collective bankruptcy proceedings to the applicants in person, pursuant to Article 101 of the Act of 13 July 1967, which provides:

> "In the case of bankruptcy or liquidation of property of a body corporate, any director (....) may be declared personally bankrupt or under sequestration if he has
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> -- carried out business transactions in his own interest using the body corporate as a cover for his activities;
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> -- disposed of company property as if it were his own;
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> -- improperly carried on at a loss, for his own personal gain, operations which could only lead to the cessation of payments by the body corporate."

By this judgment the company's liabilities were added to the applicants' personal liabilities and Mr. D. and Mr. T. were appointed administrators.

On 14 March 1979 the Colmar Court of Appeal upheld this judgment. It further dismissed the applicants' request that the court reserve judgment until the end of criminal proceedings then pending against them for misuse of company property.

The Court of Appeal held that "a court before which a request has been brought under Article 101 of the Act of 13 July 1967, against a director who is at the same time subject to a criminal prosecution, is not required to reserve judgment until the criminal court has made its decision, since the cases brought before the two types of court are separate, do not view the facts in the same way, do not permit the same

consequences to be drawn from those facts and do not have the same purpose". It further considered that in the present case it was in possession of sufficient information to give a ruling.

The applicants' appeal against the judgment of the Court of Appeal was dismissed by the Court of Cassation on 15 October 1980.

Chief among the applicants' assets was a collection of almost 550 old motor cars, collected by the applicants over 45 years, situated in Mulhouse and mostly classified as "historic monuments" by decree of the Conseil d'Etat of 14 April 1978.

On 23 December 1980 the administrators submitted to the Mulhouse Regional Court a proposal for the sale of the applicants' collection, seeking authorisation under Article 88 of the Act of 13 July 1967 which lays down that "the court may authorise the administrator at his request, to deal with all or part of the moveable or immoveable assets at a fixed price and to dispose of them". The offer to purchase was made by the Mayor of Mulhouse on behalf of an association aiming to develop a motor museum in Mulhouse. The proposed price was 44,000,000 FF.

The applicants joined the proceedings in order to oppose the proposed transaction. Producing an expert opinion from Mr. C. Huet, a vintage car expert, and from the firm of Christie, Manson and Woods, who set the total value of the cars at 307,615,000 FF and 325,870,000 FF respectively, they maintained that the proposed price of 44,000,000 FF was derisory, and that to let the collection go at the proposed price would amount to dispossession ("spoliation") when an infinitely higher price could be obtained at a public auction.

The administrators then gave the reasons for their request: the creditors' interest in having the collection sold as soon as possible; the two court expert opinions prepared by Mr. Loudmer and Mr. Poulain, valuing agents in Paris, and Mr. Chappelon, an expert at the Versailles Court of Appeal, who had valued the collection at 56,786,000 FF and 39,697,000 FF respectively; the difficulty of organising a public auction quickly; the need to prevent the collection being split up and the risk of public discontent if it were; and finally the fact that the offer was the only one received from French buyers, export being prohibited.

After initially rejecting the administrators' request, considering that the purchaser was not specifically identified, the Mulhouse Regional Court eventually, in a judgment of 8 April 1981, authorised the sale of the collection to the "Mulhouse National Motor Museum Association", incorporated as an association on 23 March 1981 (according to a statement by the Paris Prefecture of Police), for a price of 44,000,000 FF, in spite of the applicants' complaint of the derisory nature of this sale price.

On 9 June 1982 the Colmar Court of Appeal upheld this judgment, rejecting the applicants' arguments according to which the transaction conflicted with the case-law on Section 88 of the Act of 13 July 1967.

The applicants appealed to the Court of Cassation, reiterating their arguments as to the inapplicability to this case of Section 8 of the Act of 13 July 1967. They further noted in their submissions that acceptance of the insufficient offer of 44,000,000 FF sanctioned "outright dispossession" ("une véritable spoliation") though they did not rely on this argument in their appeal to the Court of Cassation.

On 16 February 1984 the Court of Cassation rejected the applicants' appeal against the judgment of the Court of Appeal. It noted that, in view of the uncertainty both as to the status and value of the vehicles in the collection and as to the extent of the established rights ("droits acquis") which ruled out any guarantee for the purchaser, the Court of Appeal had correctly found that the transaction at issue indeed fell within the scope of Section 88 of the Act of 13 July 1967.

COMPLAINTS (Extract)

.....

3. [Finally,] the applicants complain of a violation of Article 1 of Protocol No. 1, which lays down that everyone has the right to the peaceful enjoyment of his possessions and that no one may 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.

They consider that, in view of the difference between the real value of their collection and the derisory price for which it was sold, the French courts acquiesced in their being dispossessed of their property. They further state that the deprivation of which they were victims was not in accordance with Article 1 of Protocol No. 1 to the Convention, which refers to the principles of international law and requires that any deprivation should be completely compensated for in advance.

THE LAW (Extract)

....

3. The applicants [finally] complain of a violation of their right to the peaceful enjoyment of their possessions and maintain that they were the victims of dispossession ("spoliation").

It is true that Article 1 of Protocol No. 1 recognises the right of every natural or legal person to the peaceful enjoyment of his possessions.

The Commission is not, however, called upon to decide whether the facts alleged by the applicant disclose any appearance of a violation of that provision. Under the terms of Article 26 of the Convention, "the Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law".

This condition is not met by the mere fact that the applicant has submitted his case to the various competent courts. It is also necessary for the complaint brought before the Commission to have been raised, at least in substance, during the proceedings in question. On this point, the Commission refers to its constant case-law (cf., for example, No. 6861/75, Dec. 14.7.75, D.R. 3 p. 147; Nos. 5573/72 and 5670/72, Dec. 16.7.76, D.R. 7 p. 8).

In this case the applicants noted in the submissions they made to the French courts that they would be the victims of dispossession if the offer of 44,000,000 FF were accepted. They also noted in the formal notice of 23 October 1981 to the administrators D. and T., that they intended to initiate proceedings before the organs of the European Convention on Human Rights on the grounds of the "dispossession which they would suffer".

The Commission notes, however, that the applicants did not raise before the Court of Cassation any argument concerning their allegations of deprivation, even though it would have been lawful to do so under the provisions of the Convention and of national law. In fact, the arguments brought by the applicants, on the basis of which the Court of Cassation had to rule, related only to formal irregularities in measures taken by the administrators and the inapplicability of Section 88 of the Act of 13 July 1967. The Commission considers that the phrase "the acceptance of such an insufficient offer would manifestly have sanctioned the outright dispossession ("une véritable spoliation") both of (the applicants) and of their creditors", which appears in the section relating to the facts of the case in the *introduction* to the applicants' submissions to the Court of Cassation, is not sufficient to show that they raised, even in substance, the complaint relating to Article 1 of Protocol No. 1.

It follows that the applicants have not satisfied the condition of the exhaustion of domestic remedies and that this part of the application must be rejected in accordance with Article 27 para. 3 of the Convention.

Be that as it may, even assuming that the applicants had satisfied the condition of the exhaustion of domestic remedies in respect of this complaint, the Commission recalls its case-law according to which the seizure and sale of property in the context of enforcement proceedings are measures essential in any liberal society, and cannot in principle be considered as contrary to Article 1 of Protocol No. 1 unless they arbitrarily and unjustly deprive a person of property in favour of another (Nos. 8588/79 and 8589/79, Dec. 12.10.82, D.R. 29 p. 64). The Commission notes that in this case the French courts authorising the administrators to deal with the collection for a fixed price had provided themselves with expert opinions as to the possible price of the collection, so that their decisions can in no way be considered arbitrary.

It follows that this part of the application would also be rejected as manifestly ill-founded under Article 27 para. 2 of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.