AS TO THE ADMISSIBILITY OF

Application No. 30900/96
by Ondrej GALLO
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 4 September 1996, the following members being present:

Mrs. G.H. THUNE, President
MM. J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

Ms. M.-T. SCHOEPFER, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 26 July 1995 by Mr. Ondrej Gallo against the Slovak Republic and registered on 1 April 1996 under file No. 30900/96;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Slovak national born in 1939. He is retired and resides in Kosice. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The particular circumstances of the case

By an order dated 23 February 1990 the Minister of the Interior suspended the applicant from the police. By another order of 17 July 1990 the applicant was dismissed pursuant to Section 100 para. 1 (e) of Act No. 100/1970 (see "The relevant domestic law" below). The dismissal was based on the finding of a special commission according to which between 1983 and 1989 the applicant had repeatedly used official cars for private purposes and had abused his position of the Head of the Public Security Section of the National Security Corps in Kosice.

The applicant complained that his guilt had not been proved and that the Minister's decision to dismiss him violated his right to be presumed innocent. On 16 October 1990 the Minister of the Interior upheld his decision of 17 July 1990. He held, inter alia, that no criminal charges against the applicant were determined by the decision

to dismiss him. The decision concerning the applicant's dismissal became final on 22 October 1990.

On 26 September 1990 the Presov Military Prosecutor introduced criminal proceedings against the applicant on the ground that by the acts imputed to him by the Minister he had committed criminal offences. On 15 April 1991 the proceedings were discontinued as the offences of which the applicant had been accused fell under the presidential amnesty of 1 January 1990. The applicant requested that the proceedings should be pursued as he considered himself innocent.

On 18 May 1994 the Velky Krtís District Court (Okresny súd) acquitted the applicant, and on 27 September 1994 the Banská Bystrica Regional Court (Krajsky súd) upheld this decision. The courts held that insofar as the acts imputed to the applicant could have been established, they did not attain a degree of gravity which would warrant qualifying them as offences under the Criminal Code.

The applicant requested several times that, having regard to his acquittal, the Minister of the Interior should quash the decision concerning his dismissal and order allowances and damages to be paid to him. On 27 September 1994 the Minister informed the applicant that he had been dismissed in accordance with Section 100 para. 1 (e) of Act No. 100/1970, and that no criminal charge against him had been determined by that decision.

On 12 October 1994 the Minister informed the applicant, with reference to Section 139 of Act No. 410/1991, that his right to claim that the decision to dismiss him should be quashed had lapsed, and that it was therefore irrelevant that the applicant had been acquitted. On 25 January 1995 the Minister informed the applicant that he would examine his claim for damages on receipt of the criminal courts' decisions in the applicant's case.

The applicant sought judicial review of both the order concerning his dismissal from the police and the Minister's refusal to quash it after his acquittal.

On 28 April 1995 the Supreme Court (Najvyssí súd) discontinued the proceedings. It held that it lacked jurisdiction to examine the applicant's claims concerning his dismissal in 1990. It noted that decisions concerning dismissal from the police pursuant to Act No. 100/1970 had not been reviewable by courts, and that in any event Section III of Act No. 519/91 excluded the judicial review of administrative organs' decisions which had become final prior to 1 January 1992, i.e. the date when the administrative judiciary had been established.

As to the complaint about the Minister's refusal to quash the decision concerning the applicant's dismissal, the Supreme Court recalled that Section 141 of Act No. 410/1991 provided for judicial review of, inter alia, decisions concerning a policeman's dismissal, but not of such decisions as were challenged by the applicant. It pointed out that the applicant's claim in this respect could only be considered as a request for an extraordinary remedy. Its refusal was not, however, reviewable by courts.

On 5 June 1995 the applicant lodged a constitutional complaint. He claimed, inter alia, that his right to be presumed innocent had been violated, and that the Supreme Court should have dealt with the merits of his action. He requested that the Minister's decisions to suspend and to dismiss him from the police and the Supreme Court's judgment of 28 April 1995 should be quashed. The applicant also complained that no allowances and damages had been paid to him.

The Constitutional Court (Ústavny súd) rejected the complaint on 12 July 1995. It held that in proceedings concerning constitutional

complaints it could only review the challenges of final decisions made by administrative authorities or local self-governing bodies in cases involving violations of fundamental rights and freedoms unless the protection of such rights fell under the jurisdiction of the general courts. Furthermore, it could not examine the alleged violation of rights which had occurred prior to the entry into force of the Constitution on 1 October 1992. The Constitutional Court concluded that it lacked jurisdiction to deal with the applicant's case.

B. The relevant domestic law

Section 100 para. 1 (e) of Act No. 100/1970 on Service in the National Security Corps (Zákon o sluzobnom pomere príslusníkov Zboru národnej bezpecnosti) of 17 November 1970, as amended, provides that a member of the corps can be dismissed in case of breach of his or her oath, failure to carry out his or her duties, or gross abuse of authority and if his or her further service would cause prejudice to the National Security Corps.

Pursuant to para. 1 (f) of the same Section, a member of the corps can be dismissed if he or she was convicted of a criminal offence and sentenced, by a judgment that has become final, to a term of imprisonment.

Section 124 of Act No. 100/1970 provides for the possibility of quashing, by means of an extraordinary remedy, final decisions under the aforesaid Act if their unlawfulness is established. However, such decisions can only be quashed within three years after they have become final.

Pursuant to Section 125 of Act No. 100/1970 final decisions under this Act can be quashed, at the request of the policeman concerned, if important new facts are established. The request for such a decision to be quashed is to be lodged within three years after it has become final.

Act No. 410/1991 on Service in the Police Corps (Zákon o sluzobnom pomere príslusníkov Policajného zboru) of 25 September 1991 replaced Act No. 100/1970 as regards members of the Police Corps. It entered into force on 1 November 1991.

Pursuant to Section 138 of the aforesaid Act final decisions may be quashed, at the request of the policeman concerned, if important new facts are established. Such a request can only be lodged within three years after the decision at issue has become final.

Section 139 of Act No. 410/1991 entitles the Minister to quash a decision, within three years after it has become final, if its unlawfulness is established.

Section 141 para. 1 (a) of Act No. 410/1991 provides for judicial review of certain decisions concerning the dismissal of policemen. Pursuant to para. 2 of the same Section the request for review of such decisions is to be filed within 30 days after they have become final.

Act No. 519/1991 amended the Code of Civil Procedure in that, inter alia, the decisions of administrative organs became reviewable by courts unless the law provided otherwise. It entered into force as from 1 January 1992. Pursuant to Section III para. 4 (a) of the aforesaid Act, actions against decisions of administrative authorities can be examined by courts only in cases when the available remedies were exhausted and the decisions complained of became final after the entry into force of Act No. 519/1991.

COMPLAINTS

The applicant complains that the Minister refused to quash the

decision concerning his dismissal notwithstanding that he had been acquitted. In his view, his right to be presumed innocent was thereby violated. He also complains that he was deprived of his right to a judicial review of both the decision concerning his dismissal and the Minister's refusal to quash it after his acquittal.

The applicant further complains that he did not receive the allowances he was entitled to, and that no damages were paid to him after his acquittal. He alleges a violation of Articles 3, 6 and 7 of the Convention.

THE LAW

1. The applicant alleges a violation of Article 6 (Art. 6) of the Convention which provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

a) To the extent that the applicant complains that the courts refused to deal with his complaint about the Minister's decision to dismiss him, the Commission recalls that the Supreme Court discontinued the proceedings as it found, inter alia, that the decision at issue had not been reviewable by courts pursuant to Act No. 100/1970, and that in any event Section III of Act No. 519/91 excluded the judicial review of administrative organs' decisions which had become final prior to 1 January 1992.

The Commission considers, even assuming that the impossibility of having the Minister's decision to dismiss the applicant reviewed by a judicial body with full jurisdiction amounted to a breach of Article 6 (Art. 6) of the Convention, that the applicant would have become a victim of it on 22 October 1990 at the latest, i.e. when this decision became final. Such a breach would have been instantaneous in regard to the applicant's rights under Article 6 (Art. 6) of the Convention. As to the aforesaid Supreme Court's finding of 28 April 1995, the Commission considers that it merely confirmed the aforesaid impossibility of judicial review (cf., mutatis mutandis, Eur. Court HR, Kefalas and Others v. Greece judgment of 8 June 1995, Series A no. 318-A, pp. 19-20, para. 45).

Thus, the alleged interference with the applicant's right of access to a court occurred on 22 October 1990 at the latest, whereas the former Czech and Slovak Federal Republic only ratified the Convention and recognised the right of individual petition pursuant to Article 25 (Art. 25) of the Convention on 18 March 1992. However, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party.

The applicant's constitutional complaint cannot be considered as an effective remedy capable of bringing the case within the competence ratione temporis of the Commission as the Constitutional Court lacks jurisdiction to deal with complaints which relate to a period prior to 1 October 1992.

It follows that this part of the application is incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

b) The applicant further complains that the Minister refused to quash the decision to dismiss him notwithstanding that he had been acquitted, and that the Supreme Court did not deal with his claim in

this respect.

The Commission recalls that Article 6 (Art. 6) of the Convention is only applicable, inter alia, to disputes ("contestations") over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law (cf. Eur. Court HR, Skärby v. Sweden judgment of 28 June 1990, Series A no. 180-B, p. 36, para. 27).

Under Slovak law the applicant could only request that the Minister of the Interior should quash the decision to dismiss him if either the existence of relevant new facts or the unlawfulness of this decision was established. Such a request represented an extraordinary remedy the use of which was within the discretionary power of the Minister. The applicant could lodge it within three years after the decision concerning his dismissal had become final, i.e. until 22 October 1993.

In these circumstances, the Commission considers that the right claimed by the applicant, namely to have the decision concerning his dismissal quashed on the ground that he had been acquitted in 1994, was not recognised, even on arguable grounds, under Slovak law. Accordingly, Article 6 (Art. 6) of the Convention was not applicable to the proceedings at issue.

To the extent that the applicant complains, in substance, that the Minister refused to re-admit him to the police, the Commission recalls that the Convention does not guarantee as such any right to access to the civil service (cf. Eur. Court HR, Kosiek v. the Federal Republic of Germany judgment of 28 August 1986, Series A no. 105, p. 20, para. 35).

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

c) The applicant further alleges a violation of his right to be presumed innocent in that the Minister of the Interior refused to quash his decision concerning the applicant's dismissal after the latter had been acquitted.

The Commission recalls that on 27 September 1994 the Minister informed the applicant that he had been dismissed in accordance with Section 100 para. 1 (e) of Act No. 100/1970 and that no criminal charges had been thereby determined. On 12 October 1994 the Minister informed the applicant that in accordance with Section 139 of Act No. 410/1991 his right to claim a review of the decision by which he had been dismissed had lapsed. The Minister considered it therefore irrelevant that the applicant had been acquitted.

These comments cannot be considered as a formal declaration that the applicant is guilty. Furthermore, it does not appear from the documents submitted that the Slovak authorities dealing with the applicant's case made any other statements, in the period falling within the competence ratione temporis of the Commission, which would imply that the applicant is guilty.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. To the extent that the applicant complains that he did not receive the allowances he was entitled to and that no damages were paid to him after his acquittal, the Commission notes that it does not appear from the documents submitted that he brought these claims before the general courts. In this respect the applicant has not, therefore, complied with the requirement as to the exhaustion of domestic remedies laid down in Article 26 (Art. 26) of the Convention.

It follows that this part of the application must be rejected pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

3. Finally, the applicant alleges a violation of Articles 3 and 7 (Art. 3, 7) of the Convention. The Commission has examined such complaints but finds that, insofar as they have been substantiated and are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	G.H. THUNE
Secretary	President
to the Second Chamber	of the Second Chamber