AS TO THE ADMISSIBILITY OF

Application No. 24506/94
by Alexander GASPARETZ
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 28 June 1995, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
S. TRECHSEL
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

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 25 January 1993 by Alexander GASPARETZ against the Slovak Republic and registered on 29 June 1994 under file No. 24506/94;

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 1953. He is a doctor and resides in Levice.

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

In 1946 a spa in Sklené Teplice was confiscated from the applicant's grandfather who was then of Hungarian nationality. The confiscation took place pursuant to President Benes' 1945 Decree No. 108 on Confiscation of the Enemies' Property and on Funds of National Reconstruction. By virtue of the decree the property of persons considered as "collaborators and enemies of the people" was subject to confiscation without compensation. Although in 1949 the applicant's grandfather received a certificate officially granting him Slovak nationality, the confiscated property was not restored.

After 1989 the applicant sought restitution of his grandfather's property. Under Act No. 229/1991 he claimed restitution of the agricultural land belonging to the spa (which allegedly represents only a minor part of the confiscated property). It appears from the documents submitted that the proceedings are still pending.

With a view to having the spa restored (i.e. the principal part of the confiscated property to which Act No. 229/1991 allegedly does

not apply) the applicant petitioned the Constitutional Court and the Prosecutor General. He complained that President Benes' decrees are incompatible with the Constitution of the Slovak Republic. He received no reply from the Prosecutor General. As to the Constitutional Court, he was informed that under Slovak law individuals lack the capacity to introduce proceedings on constitutional conflicts.

On 7 February 1994 the applicant introduced a new petition with the Constitutional Court. He claimed restitution of the confiscated property.

On 12 April 1994 the Constitutional Court rejected the petition. It noted, in particular, that it lacked jurisdiction in matters concerning restitution of estates and movables confiscated in the past and that these issues were, by virtue of special laws enacted in 1990 and 1991, within the competence of other State organs. The Constitutional Court held further that since the applicant had failed to claim restitution of his grandfather's property pursuant to the aforesaid laws, he could not complain about violation of his rights before the Constitutional Court. The constitutional petition had therefore no legal basis under Slovak law.

COMPLAINTS

The applicant alleges that by virtue of President Benes' decree No. 108 his family's right to enjoyment of their possessions was and still is violated. He claims the restitution of the confiscated property (to the extent that it was not recoverable under Act No. 229/1991). He alleges a violation of Article 8 of the Convention and of Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains of the confiscation, in 1946, of his grandfather's property and claims the restitution of its major part which is not recoverable under Slovak law. He alleges a violation, in this respect, of his rights guaranteed by Article 1 of Protocol No. 1 (P1-1) which provides, so far as relevant, 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."

a) To the extent that the applicant complains of the confiscation of his grandfather's property, the Commission recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party.

However, in the present case the confiscation of property took place in 1946, i.e. at a period prior to both 18 March 1992 which is the date of ratification of the Convention by the former Czech and Slovak Federal Republic, and to 1 January 1993 which is the date of the entry into force of the Convention with respect to the Slovak Republic.

The Commission further recalls its constant case-law according to which deprivation of ownership or another right in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of right" (cf. No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146; No. 21344/93, Szechenyi v. Hungary, Dec. 30 June 1993, unpublished).

The proceedings before the Constitutional Court cannot be considered as an effective remedy capable of bringing the case within the Commission's competence ratione temporis as under Slovak law the Constitutional Court lacked jurisdiction to deal with the applicant's

case.

The letter which the applicant addressed to the Prosecutor General does not affect the position as under the Commission's case-law an extraordinary remedy, the use of which depends on the discretionary power of a public authority, cannot be considered as effective (cf. No. 8395/78, Dec. 16.12.81, D.R. 27 p. 50; No. 21344/93).

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) To the extent that the applicant claims restitution of the confiscated property, the Commission recalls that Article 1 of Protocol No. 1 (P1-1) "applies only to existing possessions" and it does not guarantee, as such, any right to acquire property (cf. No. 11628/85, Dec. 9.5.86, D.R. 47 p. 271, with further references).

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.

2. Finally, the applicant alleges a violation of Article 8 (Art. 8) of the Convention. The Commissions notes, however, that the applicant failed to substantiate this complaint.

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.

Secretary to the Second Chamber — President of the Second Chamber

(M.-T. SCHOEPFER) — (H. DANELIUS)