AS TO THE ADMISSIBILITY OF

Application No. 23318/94
by Antalné GEBLUSEK
against Hungary

The European Commission of Human Rights (First Chamber) sitting in private on 11 May 1994, the following members being present:

MM. A. WEITZEL, President
C.L. ROZAKIS
A.S. GÖZÜBÜYÜK
Mrs. J. LIDDY
MM. M.P. PELLONPÄÄ
G.B. REFFI
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV

Mrs. M.F. BUQUICCHIO, 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 12 December 1993 by Antalné Geblusek against Hungary and registered on 25 January 1994 under file No. 23318/94;

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

A. The particular facts of the case

The applicant is a Hungarian citizen born in 1913. The facts of the case, as submitted by the applicant and apparent from the documents submitted, may be summarised as follows.

In 1952 real property (land in Budapest and two houses thereon) owned by the applicant was expropriated by the State without compensation. The houses have been divided into separate flats and from this time onwards the applicant has rented one of them as a tenant.

On 6 January 1993 the applicant instituted judicial proceedings and claimed that the ownership of the real property should be returned to her.

On 21 January 1993 the Pest Central District Court (Pesti Központi Kerületi Bíróság) refused the petition without summonsing the applicant (keresetlevél idézés kibocsátása nélküli elutasítása), consequently without holding a hearing. The applicant lodged an appeal.

On 2 June 1993 the Metropolitan Court (Fővárosi Bíróság) refused the appeal, also without holding a hearing. The decision was served on the applicant on 24 August 1993.

B. The relevant domestic law and practice

Under Hungarian law the expropriation was executed in 1952 in

compliance with Law-Decree No. 4 of 1952. This Law-Decree was declared to be unconstitutional and was quashed by the Constitutional Court (Alkotmánybíróság) in 1991 by its decision No. 27/1991 (V. 20) AB. This decision has, however, no retroactive effect, i.e. it does not affect expropriations made prior to the decision in compliance with the above Law-Decree.

In 1991 and 1992 the Hungarian Parliament passed two laws, namely Law XXV of 1991 and Law XXIV of 1992. These Acts provide for partial compensation in respect of, inter alia, certain unlawful acts by the former regime, but (with certain exceptions not relevant to the present case) excluded restitution in respect of real property.

Section 115 of the Hungarian Civil Code declares that claims based on the ownership of specific property are not subject to prescription. This regulation, however, concerns only continuing ownership and it is irrelevant in respect of ownership which no longer exists. Other claims are subject to prescription. The maximum period in this respect is 5 years. By Act 1027/1963 the then Government permitted former owners of real property to claim release of expropriation with the possibility of restitution. The time-limit for lodging such claims was 17 December 1963. Hungarian law at the time of the applicant's action provided, and still provides, no judicial remedy as to claims for restitution of real properties expropriated in compliance with Law-Decree No. 4 of 1952.

COMPLAINTS

The applicant complains that she has not been provided with a fair and public hearing contrary to Article 6 para. 1 of the Convention and that she had no effective remedy contrary to Article 13 of the Convention. Under Article 1 of Protocol No. 1 she complains that her right to the peaceful enjoyment of her property has been violated.

THE LAW

1. The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention that she has not been provided with a fair and public hearing.

Article 6 para. 1 (Art. 6-1) of the Convention, so far as relevant, reads as follows.

> "In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The question arises whether the action brought by the applicant entailed the determination of civil rights within the meaning of this provision.

The Commission notes in this respect that the applicant instituted judicial proceedings in order to claim restitution in respect of real property, the ownership of which was lost by her some 40 years before. Under Hungarian law the applicant had no locus standi to claim restitution in respect of this real property. It follows that before the Hungarian courts the applicant was claiming a right which she did not have.

The Commission recalls that the Convention organs cannot create by way of interpretation of Article 6 para. 1 (Art. 6-1) of the Convention a substantive right which has no legal basis whatsoever in the State concerned (e.g. No. 12763/87, Dec. 14. 7. 88, D.R. 57, p. 216-233). The Commission accordingly finds that the applicant`s complaint does not involve a civil right or obligation within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. Under Article 1 of Protocol No. 1 (P1-1) the applicant complains that her right to the peaceful enjoyment of her property has been violated.

The relevant provisions of Article 1 of Protocol No. 1 (P1-1) read 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 general principles of international law."

The Commission notes that according to the generally recognised principles of international law, for all Contracting Parties, the Convention governs only facts which arose after it came into force in respect of the Party concerned.

The Commission recalls that the applicant`s real property was expropriated in 1952 i.e. the applicant ceased to be the owner of it some forty years before Hungary ratified the Convention on 5 November 1992. It follows that, insofar as the application concerns her deprivation of possessions, the Commission is not competent, ratione temporis, to examine them (cf. 21344/93 Dec. 30.6.93 to be published in D.R. or, mutatis mutandis, No. 7775/77, Dec. 5. 10. 78, D.R. 15, p. 143-158).

This part of the application is therefore incompatible ratione temporis with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant complains finally under Article 13 (Art. 13) of the Convention about the lack of an effective remedy.

Article 13 (Art. 13) of the Convention reads as follows.

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission points out, however, that the case-law of the Convention organs establishes that Article 13 (Art. 13) requires a remedy in domestic law only in respect of grievances which are arguable in terms of the Convention (e.g. Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In the light of the conclusion that the applicant`s complaints under Article 6 para. 1 (Art. 6-1) and Article 1 of Protocol No. 1 (P1-1) are incompatible with the provisions of the Convention, the Commission finds that the applicant does not have an arguable claim of a breach of these provisions for the purposes of a remedy under Article 13 (Art. 13) of the Convention.

This part of the application must therefore be rejected as being 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 First Chamber President of the First Chamber

M. F. BUQUICCHIO

A. WEITZEL