AS TO THE ADMISSIBILITY OF

Application No. 38985/97
by Bronislavas JASINSKIJ and others
against Lithuania

The European Commission of Human Rights (Second Chamber) sitting in private on 9 September 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
D. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
E.A. ALKEMA
A. ARABADJIEV

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 12 August 1997 by Bronislavas JASINSKIJ and others against Lithuania and registered on 12 December 1997 under file No. 38985/97;

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 first applicant, Bronislavas JASINSKIJ, is a Lithuanian citizen of Polish origin, born in 1930. The second applicant, Helena JASINSKA, is a Lithuanian citizen of Polish origin, born in 1927. The third applicant, Michailas KROPOTOV, is a Lithuanian citizen of Russian origin, born in 1927. The applicants are pensioners. They live in Vilnius.

In 1982 the applicants bought the USSR fixed term internal state bonds with an optional lottery buy-out (hereinafter referred to as "the USSR bonds"). After the collapse of the Soviet Union in 1991, the applicants approached governmental and financial institutions of the Republic of Lithuania claiming that the bonds had to be redeemed by the Republic. They were however advised that Lithuanian authorities could no longer buy back the USSR bonds as those were securities of another state. It appears that the applicants were also informed that the problem of compensation to Lithuanian nationals for the USSR bonds would be a matter of prospective negotiations between the Republic of Lithuania and the Russian Federation which had announced its succession to rights and obligations of the former Soviet Union. It seems that the applicants were also advised that the Seimas (Lithuanian Parliament) was considering a decision to buy back the bonds.

In 1995 the applicants addressed parliamentary authorities of the Russian Federation who explained that financial liability of the former USSR was only in part incorporated into the internal debt of Russia. In this connection the applicants were informed that there was no legal basis upon which Lithuanian citizens could claim financial liability of the Russian Federation for the USSR bonds.

Following the refusal of the Russian authorities to buy back the securities, the applicants brought court proceedings in Lithuania against the Ministry of Finance and the State Savings Bank arguing that those institutions had to compensate the loss of their investments and claiming substantial amounts of interest.

On 19 April 1996 the Vilnius City First District Court (apylinkės teismas) dismissed the applicants' action. The court held that "the Republic of Lithuania, having been coercively occupied by the USSR, is not responsible for debts of that state".

The applicants appealed against the above decision. They asserted that the first instance court had disregarded relevant provisions of domestic civil law, and that it had taken no cognizance of certain letters and communications that the applicants had received from the former Soviet governmental and financial institutions, as well as from the Lithuanian Ministry of Finance, on the basis of which the applicants' investments should have been reimbursed.

On 28 November 1996 the Vilnius Regional Court (apygardos teismas) dismissed the appeal. The court found that the invoked provisions of Lithuanian law and the letters mentioned by the applicants were irrelevant in determining the above dispute. The court stated that "in the absence of law which would prescribe conditions and procedure to buy

back and reimburse the USSR internal state bonds of 1982, this action has no prospects of success".

On 28 April 1997 the Court of Appeal dismissed the applicant's cassation appeal against the above decision by finding that the first instance and appellate courts had properly decided the case. Having regard to the applicants' financial situation, the Court of Appeal exempted them from paying the stamp duty.

COMPLAINTS

The applicants complain about the refusal of Lithuania to buy back the USSR bonds and the courts' decisions thereon which allegedly deprived them of their possessions. They complain that Lithuania failed to make any legal undertaking with a view to reimbursing the loss of their investments, and that Lithuania allegedly failed to negotiate with the Russian Federation the issue of the USSR bonds. They do not invoke any Article of the Convention.

THE LAW

1. The applicants complain about the alleged deprivation of their possessions by Lithuanian authorities as a result of their failure to buy back the USSR bonds. Although the applicants invoke no Article of the Convention, in the Commission's view, this complaint in principle falls within the scope of Article 1 of Protocol No. 1 to the Convention, which provides, insofar 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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission is firstly called upon to ascertain whether the bonds in question constitute "possessions" within the meaning of the above provision of the Protocol in order to determine whether there was an interference by the Lithuanian authorities with the applicants' property rights.

The Commission recalls that securities having an economic value can be regarded as "possessions" (see e.g., mutatis mutandis, Nos. 8588/79, 8589/79, Dec. 12.10.82, D.R. 29, pp. 64, 81; No. 7775/77, Dec. 5.10.78, D.R. 15, p. 143). The applicants, at the time when they acquired the bonds, became entitled to repayment by the Soviet Government of the principal and the accrued interest on a fixed future date, or on an earlier date

provided a positive outcome of the lottery. The Commission is of opinion that such bonds could indeed be regarded as assets giving rise to a right of ownership.

However, the Commission notes that the securities in question were claims against the Soviet Union, a state which was not a party to the Convention and which ceased to exist in 1991. However, the present application is directed against Lithuania, and the question therefore arises whether Lithuania has any responsibility for these debts of the former Soviet Union.

In this respect, the Commission notes that Lithuania cannot be seen as a successor of the Soviet Union in respect of these debts and has not made any legal undertaking to compensate those of its citizens who are holders of the bonds. Nor is there any other basis on which these bonds could be considered to give rise to a legal claim against Lithuania.

It follows that Lithuania, by failing to compensate its citizens for the bonds in question, has not violated Article 1 of Protocol No. 1 to the Convention. Therefore, this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention.

2. The applicants further complain that Lithuania failed to raise the question of compensation for the USSR bonds in negotiations with the Russian Federation.

In this respect the Commission recalls that no right to diplomatic protection or other such measures by a High Contracting Party on behalf of persons within its jurisdiction is guaranteed by the Convention (No. 7597/76, Dec. 2.5.78, D.R. 14, pp. 117, 123; No. 12822/87, Dec. 9.12.87, D.R. 54, p. 201; No. 37505/97, Dec. 2.4.98, unpublished).

It follows that this part of the application is incompatible ratione materiae with the provisions of the Convention and, as such, must be rejected in accordance with Article 27 para. 2 thereof.

For these reasons, the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

J.-C. GEUS
President
of the Second Chamber