AS TO THE ADMISSIBILITY OF

Application No. 23063/93
by Jan JONAS
against the Czech Republic

The European Commission of Human Rights sitting in private on 13 May 1996, the following members being present:

MM. S. TRECHSEL, President
H. DANELIUS
C.L. ROZAKIS
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
Mr. F. MARTINEZ
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER
M.A. NOWICKI
I. CABRAL BARRETO
B. CONFORTI
N. BRATZA
I. BÉKÉS
J. MUCHA
E. KONSTANTINOV
D. SVÁBY
G. RESS
A. PERENIC
C. BÎRSAN
P. LORENZEN
K. HERNDL

Mr. H.C. KRÜGER, Secretary to the Commission

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

Having regard to the application introduced on 5 June 1993 by Mr. Jan JONAS against the Czech Republic and registered on 9 December 1993 under file No. 23063/93;

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

Having regard to the observations submitted by the respondent Government on 5 October 1995 and the observations in reply and further observations submitted by the applicant on 30 November 1995 and 22 December 1995 respectively;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, an American citizen born in 1924 in Prague and residing at Lexington, U.S.A., is retired.

A. The particular circumstances of the case

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

In 1960, the applicant and his brother had to give up to the State a family house in their co-ownership.

In September 1968 the applicant left Czechoslovakia with his wife and small children and in March 1969 went as a refugee to the U.S.A. In 1974, he obtained American citizenship in accordance with the Treaty on Naturalization signed between the U.S.A. and the Czechoslovak Republic on 16 July 1928. The same year, in his absence, the applicant was convicted of illegal emigration. A three-year sentence was imposed and all his property was confiscated.

In 1990, this conviction was annulled ex lege and ex tunc in accordance with Law No. 119/1990 on Judicial Rehabilitation.

In September 1991, the applicant's brother made a request under Article 3 of Law No. 87/1991 on Extra-judicial Rehabilitation to the Housing Association of Prague 10 (Bytovy podnik v Praze 10), which was then the holder of the property, for an agreement concerning restitution of the house. He stated that the applicant could not lodge a claim on his own behalf since he was permanently residing abroad and had American citizenship.

On 7 November 1991, the Housing Association concluded an agreement with the applicant's brother concerning restitution of the house.

By decision of 13 May 1992, the State Notary's Office of Prague 10 (Státní notárství pro Prahu 10) registered the agreement only as to the one half belonging to the applicant's brother and refused registration of the applicant's part as the applicant was still alive and nobody could claim restitution on his behalf.

The applicant's brother appealed against the decision stating that under Article 5 of Law No. 87/1991 the whole property should be given to a person entitled to a claim, even though there were more persons entitled to it, but who had not requested it under the above law. In his opinion, the Housing Association had made a proper agreement with him about surrender of the house as a whole. Besides, the applicant could not claim restitution of his part of the property himself as he was not a permanent resident and citizen of the Czech Republic. If the brother's claim was accepted, he would give half of it to the applicant.

On 18 January 1993, the Court of Appeal of Prague (Mestsky soud v Praze) reviewed the decision of the State Notary which was attached to the applicant's brother's appeal and confirmed that the State Notary's decision had made sufficient findings about the real position of the subject matter and had come to an appropriate judicial opinion. The Court stated:

> "The right to restitution of real estate which in the period between 25 February 1948 and 1 January 1990 was transferred to the State by a gift deed under duress, as in the present case, is guaranteed by the provisions of Law No. 87/1991.
>
> Article 3 of the above law sets out the list of persons entitled to restitution of property transferred to the State as described above. The provision of the law is cogent and the list of persons detailed. Under Article 3 para. 1 of the law a person entitled to such restitution is a physical person whose property has been transferred to

the State in cases mentioned in Article 6 of the law, provided the person is a citizen of the Czech Republic and has permanent residence on the territory of the Czech Republic. [The applicant's brother] as the former owner of one half of the house meets these conditions, but the owner of the other half [the applicant], permanently residing abroad, cannot claim restitution of his part. Therefore, only [the applicant's brother] is claiming restitution of the property as a whole and invokes the provisions of Article 5 para. 1 of the above law. The last sentence of the provision sets forth the possibility of restitution of an item as a whole if the claim is made only by one of the persons entitled. The problem here is the interpretation of the provision. The Court of Appeal's position is that the term 'item' means what was taken away from a physical person in the way described by the law, which includes also a part in co-ownership. Therefore, the last sentence of Article 5 para. 1 of the law cannot be applied in cases where more than one entitled person are concerned under Article 3 para. 1 of the law, as each person is entitled only to his property, i.e. to his part in co-ownership ... Accordingly [the applicant's brother] cannot successfully claim restitution of the half of the property originally owned by [the applicant] who is permanently residing outside the Czech Republic. From this point of view he is not a person entitled according to Article 3 para. 2 of the law which can be applied only in cases where the owner has died ..."

By decision dated 12 July 1994, the Constitutional Court (Ústavní soud) annulled the requirement of permanent residence in the Czech Republic for restitution of property under Law No. 87/1991. However, the requirement of citizenship was not affected by that decision.

On 12 September 1994, the applicant applied to the Minister of the Interior for being granted the Czech citizenship which he had lost in 1974 in accordance with the Naturalization Treaty between the U.S.A. and the Czechoslovak Republic. He invoked Article 11 para. 1 c) of Law No. 40/1993 on Obtaining and Losing the Citizenship of the Czech Republic, which allows a person applying for Czech citizenship, who is permanently residing in the Czech Republic and has had Czech citizenship in the past, to be excused from the condition of an uninterrupted five-year stay in the Czech Republic.

By letter of 18 October 1994, the applicant was informed by the Minister of the Interior that, in order to be excused from the condition of an uninterrupted five-year stay, he had to prove a permanent residence on the territory of the Czech Republic by holding a foreigners' permanent residence permit. The law in force did not allow an applicant for Czech citizenship to be relieved from the condition of permanent residence, but the period of an uninterrupted five-year stay could be shortened in cases where an applicant had a permission for permanent stay and met one of the other express conditions, e.g. that the person concerned had had Czech citizenship in the past. The applicant was also informed by the Minister that in accordance with the Naturalization Treaty, a citizen of the U.S.A. who obtains Czech citizenship loses at the same time the citizenship of the U.S.A. He was further informed about the fact that the law in force on obtaining citizenship of the Czech Republic did not provide for "restoration" of citizenship.

B. Relevant domestic law

Law No. 87/1991 on Extra-judicial Rehabilitation [Translation]

Article 3

"1. A person entitled is a physical person whose property has been transferred to the State in the cases stated in Article 6, provided such a person is a citizen of the Czech and Slovak Federal Republic and is permanently residing on its territory."

Article 4

"1. Mandated persons are the State or legal entities who are in possession of the property on the day of entry into force of this law ..."

Article 5

"1. A mandated person shall surrender a property upon written request from an entitled person who has proved his right to the subject matter and specified the way of its transfer to the State ... If there are more than one person entitled ... and only some of them lodge their claim, the whole property shall be surrendered to them.

2. The entitled person shall, within six months from the date of the coming into force of this law, call on the mandated person to surrender the property ; otherwise the right expires.

3. The mandated person shall conclude an agreement with the entitled person about the surrender of property and the property shall be surrendered within thirty days after the expiry of the period stated in paragraph 2. ... such agreement shall be subject to registration by the State Notary ...

4. If the mandated person refuses to surrender the property ..., the entitled person may introduce a judicial request in the period of one year from the date of the coming into force of this law. ..."

Article 6

"1. The obligation to surrender a property shall apply to those cases where the property has been transferred to the State during the stated period
...
d) by a gift agreement made by a donor under duress, ..."

Law No. 40/1993 on Obtaining and Losing the Citizenship of the Czech Republic [Translation]

Article 7

"1. Citizenship of the Czech Republic shall be granted on request of a physical person who meets the following conditions:

a) that he has been permanently resident on the territory of the Czech Republic for at least five years prior to the date of lodging the application, ..."

Article 11

"1. The Ministry of the Interior can excuse a person applying for Czech citizenship from the condition stated in Article 7 para. 1 a) provided he is permanently residing on the territory of the Czech Republic and
...
c) has had the citizenship of the Czech Republic or of the Czech and Slovak Federal Republic in the past, ..."

COMPLAINTS

1. The applicant complains that he is denied use and enjoyment of his property. He claims that Law No. 87/1991 denied him the right to apply for renewed use of his private property only because he is an American citizen. He claims that this denial of use of his private property continues to be to his personal detriment.

He states that the court's decision of 1974 by which he was sentenced to a three-year imprisonment and by which all his property was confiscated has been fully annulled by Law No. 119/1990. Therefore, he claims that he has never lost his ownership rights. He invokes Article 1 of Protocol No. 1.

2. The applicant complains that Law No. 87/1991 denied him the right to the restitution of his property without any charges being brought against him in a court and without any opportunity for a hearing. He maintains that his property was de facto confiscated by Article 3 of that law. He invokes Article 6 para. 1 of the Convention.

4. He states that since he could not personally pursue the case before the Czech courts - because proceedings brought by him would have had no chance of success in view of Article 3 of Law No. 87/1991 - no effective remedy before a national authority was available to him.

4. He alleges that he and his brother have been discriminated against by Law No. 87/1991 because of the applicant's citizenship status. He invokes Article 14 of the Convention.

5. He further complains that his conviction for unlawful emigration continues to violate his right to leave the country as guaranteed by Article 2 of Protocol No. 4 since he is not able to claim return of his property. He notes that he has received no compensation for having been wrongfully sentenced in 1974.

6. The applicant states that although he was judicially rehabilitated for his emigration by Law No. 119/1990, he was punished again by Law No. 87/1991. He invokes Article 4 of Protocol No. 7.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 5 June 1993 and registered on 9 December 1993.

On 5 July 1995 the Commission decided to give notice of the application to the Czech Government and to invite them to present their observations in writing on the admissibility and merits of the application.

The respondent Government's observations were submitted on 5 October 1995.

The applicant's observations in reply and further observations were submitted on 30 November and 22 December 1995 respectively.

THE LAW

1. The applicant complains about being denied the use and enjoyment of his property in view of Law No. 87/1991 on Extra-Judicial Rehabilitation. He alleges discrimination against himself, and consequently his brother, by Law No. 87/1991 because of his citizenship status. He claims that his property was de facto confiscated by Article 3 (Art. 3) of this law. He invokes, in particular, Article 1 of Protocol No. 1 and Article 14 (P1-1, 14) of the Convention.

He states that he could not personally pursue the case before the Czech courts because proceedings brought by him would have had no chance of success in view of Article 3 (Art. 3) of Law No. 87/1991.

Article 1 of Protocol No. 1 (P1-1) provides:

"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."

Article 14 (Art. 14) of the Convention provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Government first submit that the application is incompatible ratione temporis with the provisions of the Convention. They point out in particular that there is no judicial decision on the merits concerning the applicant's half of the house. The restitution proceedings could not be taken into consideration because the applicant was not a party to these proceedings.

The Government further object that the applicant has not exhausted the domestic remedies at his disposal and submit that the application should be declared inadmissible on this ground. The applicant was free to submit his claim for restitution within the six months period, pursuant to Article 5 para. 2 of Law No. 87/1991. In the event of failure to satisfy the claim on the part of the mandated person, the applicant should have submitted his claim to the courts, including the Constitutional Court, and asserted his right to the peaceful enjoyment of possessions guaranteed by Article 11 para. 1 of the Charter of Fundamental Rights and Freedoms and/or Article 1 of Protocol No. 1 (P1-1), which is directly applicable in Czech law.

As regard the merits of the applicant's complaint, the Government submit that the requirement of Czech citizenship is fully compatible with Article 14 (Art. 14) of the Convention and Article 1 of Protocol No. 1 (P1-1). They point out in particular that Article 11 para. 2 of the Charter of Fundamental Rights and Freedoms provides that certain property may be owned exclusively by citizens or by legal persons having their seat in the Czech Republic. Thus, the limitation of the exercise of property rights on the basis of citizenship is legitimate.

The applicant does not accept the conclusions of the Government concerning the competence of the Commission and considers that the Commission is competent ratione temporis to examine his case.

The applicant also claims that all domestic remedies available to him under Czech [Czechoslovak] law have been exhausted. He contends that he could not have brought restitution proceedings because he was not an entitled person under Law No. 87/1991 as he did not have Czech citizenship. He recalls that his brother applied to the court on his behalf and this application was rejected for the above reason. The applicant also points out that he could not turn to the Constitutional Court. In January 1993 when the Prague Court of Appeal denied the claim, the Constitutional Court had not been constituted. This jurisdiction was created later by Law No. 182/1993 which entered into force on 1 July 1993.

As for the merits of the case, the applicant claims that the requirement of Czech citizenship for applying for the return of property violates his rights guaranteed by Article 1 of Protocol No. 1 in conjunction with Article 14 (P1-1+14) of the Convention.

The Commission first notes that the property in question is the property which the applicant and his brother had given up to the State in 1960. The applicant's conviction for unlawful emigration in 1974, which was annulled ex tunc and ex lege in 1990 in application of Law No. 119/1990 on Judicial Rehabilitation, did not concern the property at issue.

The Commission recalls that it is not competent to examine complaints concerning facts which relate to a period prior to the date of the entry into force of the Convention and its Protocols with respect to each Contracting Party. The Commission is therefore not competent ratione temporis to examine the expropriation in 1960, which was long before the Convention entered into force in respect of the Czech Republic.

The Commission also recalls that Article 1 of Protocol No. 1 (P1-1) aims at securing the peaceful enjoyment of existing possessions. It does not guarantee, in general, a right to acquire property (cf. No. 11628/85, Dec. 9.5.86, D.R. 47 p. 270). Besides, a 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 pp. 146, 168).

The applicant complains about denial of the use and enjoyment of his property in view of Law No. 87/1991 on Extra-Judicial Rehabilitation.

The Commission notes that this law entered into force on 1 April 1991. It set up a six months' period for restitution claims, which expired on 30 September 1991. However, the applicant never made his own restitution claim. The Commission further notes that since the expiration of this legal period the applicant's position has not changed.

In this regard, the restitution proceedings brought by the applicant's brother in September 1991 cannot be taken into consideration because at the time when the applicant's brother made the request for restitution, the applicant had no property interest in his part of the house. Accordingly, the applicant's complaint falls outside the competence ratione temporis of the Commission.

As regards the applicant's allegation that the denial of use of his private property continues to be to his personal detriment, the Commission recalls that the Convention does not guarantee the right to restitution of property (cf. mutatis mutandis, No. 23131/93, Dec. 4.3.1996). In this regard, the application falls outside the competence ratione materiae of the Commission.

Finally, having regard to its findings in regard to the applicant's complaints under Article 1 of Protocol No. 1 (P1-1), the Commission finds that no further issue arises under Article 6 para. 1 (Art. 6-1) of the Convention.

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

2. The applicant complains that his conviction for unlawful emigration continues to violate his right to leave the country as guaranteed by Article 2 of Protocol No. 4 (P4-2) as he is not able to claim return of his property to him. He notes that he has received no compensation for having been wrongfully sentenced in 1974.

The Commission has already noted that it is not competent to examine complaints concerning facts which relate to a period prior to the date of the entry into force of the Convention and its Protocols with respect to each Contracting Party. In the light of this principle, the Commission is not competent ratione temporis to examine the applicant's conviction in 1974, which was long before the Convention entered into force in respect of the Czech Republic. The continuing effects of this conviction cannot be seen as constituting a new interference with the right guaranteed by Article 2 of Protocol No. 4 (P4-2).

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

3. The applicant further states that although he was judicially rehabilitated for his emigration by Law No. 119/1990, he was punished again by Law No. 87/1991. He invokes Article 4 of Protocol No. 7 (P7-4).

The Commission considers that the fact that Law No. 87/1991 does not allow the applicant to claim restitution of his property cannot be considered as a new punishment for an offence for which he has already been convicted, within the meaning of Article 4 of Protocol No. 7 (P7-4).

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 Commission (H.C. KRÜGER)

President to the Commission (S. TRECHSEL)