AS TO THE ADMISSIBILITY OF

Application No. 27552/95
by Beáta MACHATOVÁ
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 2 July 1997, 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
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
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 10 March 1995 by Beáta Machatová against the Slovak Republic and registered on 9 June 1995 under file No. 27552/95;

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 1961. She is partly disabled and resides in Bratislava.

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

A. The particular circumstances of the case

The applicant raises three children on her own. During the relevant period the applicant was unemployed. She was receiving a partial disability pension. Under Slovak law then in force persons receiving a partial disability pension had no right to education allowance in respect of their children.

As her income was insufficient, the applicant requested, with reference to then Section 174 of the Social Security Act (see "The relevant domestic law" below) that the social security authorities grant her an ex gratia payment of education allowance in respect of her three children and a supplement to the education allowance in respect

of her youngest daughter who is disabled. On 9 July 1992 the Bratislava Social Security Administration recommended that the applicant's claim be granted.

On 28 December 1992 the Slovak Social Security Administration rejected the applicant's request. It held that the applicant was entitled to claim an allowance in respect of dependent children pursuant to Law No. 382/1990 and that the father of the applicant's youngest daughter was entitled to claim a family allowance in respect of his daughter. The Slovak Social Security Administration found no hardship in the applicant's case. The decision stated that no appeal was available against it.

The applicant lodged an appeal with the Bratislava 5 District Court (Obvodny súd). She claimed that her request for relief from hardship should be granted and alleged, inter alia, a violation of Articles 6 and 13 of the European Convention on Human Rights. On 28 February 1994 the District Court found that it lacked jurisdiction to deal with the applicant's case and transferred it to the Bratislava City Court (Mestsky súd).

On 2 November 1994 the Bratislava City Court discontinued the proceedings in the applicant's case. It noted that the applicant's claim concerned relief from hardship pursuant to Section 176 (formerly Section 174) of the Social Security Act and recalled that pursuant to Section 248 para. 2 (i) of the Code of Civil Procedure decisions on such claims cannot be reviewed by general courts.

The applicant lodged a constitutional complaint. She challenged the decision of the Slovak Social Security Administration of 28 December 1992 and complained, inter alia, that her rights under Articles 6 para. 1 and 13 of the Convention had been violated.

On 27 January 1997 the Constitutional Court (Ústavny súd) rejected the applicant's complaint. It recalled that Section 176 of the Social Security Act provides for the possibility of granting allowances under that Act, in cases of hardship, to persons who do not meet the formal requirements for such allowances. The Constitutional Court further recalled that the clause of hardship set out in Section 176 of the Social Security Act did not grant an enforceable right to a particular allowance which could be claimed before a court, and that granting of an allowance under this head was within the discretionary power of the competent administrative authority.

B. Relevant domestic law

The applicant introduced her claim for relief from hardship pursuant to Section 174 (it later became Section 176) of the Social Security Act (Zákon o sociálnom zabezpecení) of 16 June 1988, as amended, which provides as follows:

(Translation)

> "Relief in cases of hardship under this Act may be granted, in matters within their respective competence, by the Minister of Labour, Social Affairs and Family of the Slovak Republic, the Minister of Defence of the Slovak Republic, the Minister of Interior of the Slovak Republic and the Minister of Justice of the Slovak Republic."

(Original)

> "Tvrdosti, ktoré sa vyskytnú pri vykonávaní tohto zákona, môze odstránit v rozsahu svojej pôsobnosti minister práce, sociálnych vecí a rodiny Slovenskej republiky, minister obrany Slovenskej republiky, minister vnútra Slovenskej republiky a minister spravodlivosti Slovenskej republiky."

By an instruction of 23 April 1992 the Minister of Labour and Social Affairs vested her power to grant relief from hardship under Section 176 in the social security authorities.

Section 248 para. 2 (i) of the Code of Civil Procedure provides as follows:

(Translation)

> "Furthermore, the courts shall not review decisions concerning requests for benefits to which there is no entitlement or requests for relief from hardship, ..."

(Original)

> "Súdy dalej nepreskúmavajú rozhodnutia o ziadostiach na plnenie, na ktoré nie je nárok, alebo o ziadostiach o odstránenie tvrdosti zákona, ..."

COMPLAINTS

The applicant complains that there was no fair and public hearing before an independent and impartial tribunal as regards her claim for relief from hardship. She alleges a violation of Articles 6 para. 1 and 13 of the Convention.

The applicant also complains that her claim for relief from hardship was rejected and alleges a violation of several provisions of the Constitution of the Slovak Republic and of the Convention on the Rights of the Child.

THE LAW

1. The applicant complains that there was no fair and public hearing before an independent and impartial tribunal as regards her claim for relief from hardship under Section 174 of the Social Security Act. She alleges a violation of Article 6 para. 1 (Art. 6-1) of the Convention which provides, insofar as relevant, as follows:

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

The Commission recalls that Article 6 para. 1 (Art. 6-1) extends under its civil head only to "contestations" (disputes) over "civil rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States (see Eur. Court HR, Pudas v. Sweden judgment of 27 October 1987, Series A no. 125-A, para. 30, p. 13).

The Commission further recalls that the European Court of Human Rights has held that Article 6 para. 1 (Art. 6-1) of the Convention applies, in principle, in the field of social insurance and welfare assistance when the person concerned claims an individual, economic right flowing from specific statutory rules. However, the situation is different when the person concerned was affected in his or her relations with the administrative authorities in matters involving the exercise of their discretionary powers (cf. Eur. Court HR, Salesi v. Italy judgment of 26 February 1993, Series A no. 257-E, p. 59, para. 19).

In the present case the relevant Slovak law, as in force at the relevant period, excluded that persons receiving a partial disability pension be granted an education allowance in respect of their children.

The applicant considered that the impossibility of having an education allowance paid in addition to her partial disability pension entailed hardship for her and claimed relief pursuant to Section 174 of the Social Security Act.

Section 174 of the Social Security Act empowered the Minister of Labour, Social Affairs and Family to grant relief from hardship in matters within his or her competence. The Minister delegated this power to the social security authorities. Section 174 did not lay down any binding requirements or obligations for a claim for relief from hardship to be granted, nor did it confer any entitlement in this respect. In fact, the question whether the applicant's request for relief could be granted was wholly dependent on whether the Slovak Social Security Administration accepted it.

In these circumstances, the Commission considers that the determination of the applicant's claim for education allowance and a supplement thereto under Section 174 of the Social Security Act, to which she had no formal entitlement under Slovak law, was within the discretionary power of the administrative authorities. The right claimed by the applicant cannot, therefore, be considered as a civil right within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention. Consequently, Article 6 para. 1 (Art. 6-1) does not apply in the present case.

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. The applicant further complains that she has had no effective remedy before a national authority as regards the alleged violation of her rights under Article 6 (Art. 6) of the Convention. She alleges a violation of Article 13 (Art. 13) of the Convention which provides 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 recalls that the guarantees of Article 13 (Art. 13) apply only to a grievance which can be regarded as "arguable" (cf. Eur. Court HR, Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31, with further references). However, in the present case the Commission has rejected the applicant's complaint under Article 6 (Art. 6) of the Convention as being incompatible ratione materiae with the provisions of the Convention. For similar reasons, it cannot be regarded as "arguable".

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.

3. To the extent that the applicant alleges a violation of several provisions of the Constitution of the Slovak Republic and of the Convention on the Rights of the Child in that her claim for relief from hardship was rejected, the Commission recalls that, in accordance with Article 19 (Art. 19) of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the European Convention on Human Rights. However, the latter does not guarantee a right to obtain relief in cases of hardship.

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.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber