CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51543/99
by Zora MACKOVÁ and Olaf A. MACKO
against Slovakia

The European Court of Human Rights (Fourth Section), sitting on 1 April 2003 as a Chamber composed of

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mrs V. STRÁŽNICKÁ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 13 June 1999,

Having deliberated, decides as follows:

THE FACTS

The first applicant, Mrs Zora Macková born Schavernoch is a Slovakian national, who was born in 1921 and lives in Liptovský Mikuláš. The second applicant, Mr Olaf Alexander Macko is both a Slovakian and a Canadian national, who was born in 1948 and resides in Toronto (Canada). He is the first applicant's son and also represents the first applicant in the proceedings before the Court.

A. The circumstances of the case

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

The father of the first applicant was a businessman. The assets of his enterprise included *inter alia* a real estate complex serving partially as housing for his family and partially as commercial premises for his business activities.

At some point in the late 1940s or early 1950s, the enterprise of the first applicant's father was expropriated and attached, as an independent subsidiary, to a State company. The first applicant's father, who never received any compensation for his expropriated assets, died in 1959.

Under the Extra-Judicial Rehabilitations Act (*Zákon o mimosúdnych rehabilitáciách* - "the Restitution Act"), the first applicant requested the State company on 23 January 1991 to surrender to her "all assets expropriated from her father".

In its reply of 4 June 1991, the State company informed the first applicant that it had taken notice of her request, which it had interpreted as a claim for restitution of assets expropriated "in accordance with the legal rules adopted in the period between 1945-48, without providing for compensation" within the meaning of Section 2 § 3 of the Restitution Act. The State company further informed the first applicant that her claim would be dealt with in the context of its privatisation, which was being prepared under the Act 92/1991 on the Transfer of State Property to Private Persons (*Zákon o prevode majetku štátu na iné osoby* – "the Privatisation Act").

On 7 September 1991 the first applicant repeated her request to the State company, demanding it to surrender the assets concerned and to conclude with her a restitution agreement on the transfer of ownership of these assets under Section 5 § 3 of the Restitution Act. In this request, the first applicant referred to the assets "that have been expropriated without any compensation" as defined in Section 2 § 3 of the Restitution Act.

At the same time, the second applicant hand-delivered a letter to the Ministry of Administration and Privatisation of National Property (*Ministerstvo pre správu a privatizáciu národného majetku* - "the Ministry"), the Ministry of Economic Affairs and the National Property

Fund (*Fond národného majetku*), in which he requested that the expropriated assets be restored to the first applicant.

On 25 March 1992, in accordance with Section 4 § 4 of the Restitution Act, the first applicant filed a claim for the restitution of the residential house and the commercial premises with the Liptovský Mikuláš District Court (*Okresný súd*). This request resulted in two separate sets of proceedings, i.e. one concerning the house and one concerning the commercial premises.

The claim for restitution of the house

On 4 November 1992, upon the District Court's instruction, the first applicant supplemented her request for restitution of the house.

In its judgment of 7 October 1993, following hearings held on 14 September and 7 October 1993, the District Court ordered the State company to conclude with the first applicant an agreement on restitution within the meaning of Section 5 § 3 of the Restitution Act and to surrender the house to her within 15 days from the date on which the judgment would become final, i.e. in the absence of an appeal filed within fifteen days from the date of service of the judgment on the parties.

On 3 November 1993 the judgment was sent by registered mail to both parties. On 4 November 1993 it was received by the first applicant. The State company confirmed acceptance of the judgment by signing a postal Delivery Card (*doručenka*) indicating 22 November 1993 as the date of delivery.

On 6 December 1993 the State company filed an appeal to the Banská Bystrica Regional Court (*Krajský súd*), claiming that it had been served with the District Court's judgment on 22 November 1993.

On 17 November 1994, a hearing on appeal was held before the Regional Court. At this hearing the first applicant demanded the Regional Court to declare the State company's appeal inadmissible for having been filed out of time. She argued that the defendant had in fact received the District Court's judgment already on 4 November 1993 and, in order to secure the fifteen days' time-limit for filing an appeal, had forged the date stated in the postal Delivery Card. The Regional Court judge ignored this argument and threatened the first applicant with a fine if she did not stop disturbing the hearing by continuously repeating her objection to the admissibility of the State company's appeal. On the same day, having found procedural as well as material flaws, the Regional Court quashed the District Court's judgment and returned the case-file to the Liptovský Mikuláš District Court for a new examination.

On 18 June 1996 the first applicant supplemented her action by a claim for compensation in respect of costs incurred by her in the proceedings.

Upon the first applicant's request, the District Court made an inquiry with the postal authorities about the delivery of the judgment of 7 October 1993 to the State company.

In a letter of 8 July 1996, the Head of the Liptovský Mikuláš Post Office informed the District Court that according to the postal records on delivery of registered mail, the District Court's registered letter of 3 November 1993 had been delivered to the State company on 4 November 1993.

The applicants claim that at the beginning of April 1997 and in their absence, a meeting was held between an official of the Ministry, a legal representative of the – in the meantime privatised – defendant company and the District Court judge dealing with the applicants' case.

In its judgment of 10 April 1997 the District Court ordered the defendant company to restore the house to the first applicant. The District Court found it established that the commercial assets of the first applicant's late father had been expropriated in the manner referred to in Section 2 § 3 of the Restitution Act. The District Court further found that the house had not in fact formed a part of the commercial assets of the first applicant's father and, therefore, had been unlawfully expropriated, i.e. the situation foreseen in Section 6 § 2 of the Restitution Act.

Having found in the first applicant's favour, the District Court further decided that the first applicant was entitled to be compensated in respect of her legal costs shown to have been incurred. As to the amount of this compensation, the District Court accepted only a minor part of the first applicant's claim for costs and issued a corresponding order for costs against the defendant company. It rejected the remainder of the first applicant's claim for costs as being unsubstantiated.

The defendant company appealed to the Žilina Regional Court. In their reply to the company's appeal, the applicants submitted that the challenged judgment should be upheld as being factually and legally correct. They further submitted that any appeal proceedings were in any event unlawful given the fact that the initial appeal filed by the company on 6 December 1993 was inadmissible as having been lodged out of time.

On 14 April 1997 the first applicant submitted a further specification of her claim for compensation in respect of the costs incurred by her in the proceedings.

On 21 April 1998 the Regional Court gave its judgment in which it upheld the District Court's judgment as regards the merits of the case. As to the first applicant's argument concerning the admissibility of the company's appeal of 6 December 1993, the Regional Court – although finding it established that the judgment of 7 October 1993 had in fact been served on the company on 4 November 1993 and not on 22 November 1993 – held that it was not competent to re-examine the admissibility of the appeal of 6 December 1993 as this appeal had already been determined in the

judgment given by the Banská Bystrica Regional Court on 17 November 1994.

Finally, holding the District Court's findings in respect of the first applicant's claim for reimbursement of costs incurred to be "absolutely incomprehensible", the Regional Court quashed this part of the judgment and returned the case to the Liptovský Mikuláš District Court for a new decision on this issue. No further appeal lay against the Regional Court's judgment of 21 April 1998.

On 1 March 1999 a Judicial Enforcement Officer (*súdny exekútor*), commissioned by the applicants to enforce the District Court's judgment of 10 April 1997, as upheld by the Regional Court on 21 April 1998, notified the defendant company that enforcement proceedings had been instituted. The defendant company filed objections against this enforcement with the District Court.

On 19 May 1999 the District Court dismissed the company's objections and the enforcement appears to have been successfully completed.

On 13 October 1999 the first applicant filed an "action" with the Liptovský Mikuláš District Court, in which she claimed reimbursement of "all costs and expenses incurred by her in connection with the proceedings, the appeal proceedings as well as the enforcement proceedings". She claimed in particular the reimbursement of the additional legal costs and expenses incurred as a result of the Regional Court's failure to declare the appeal of 6 December 1993 inadmissible, as well as compensation for loss of earnings pending the proceedings on her claim for restitution of the house.

On 20 March 2000 the District Court informed the first applicant that her claims for reimbursement of the costs and expenses did not meet the formal procedural requirements and instructed her on the correct manner for filing such claims. On 2 May 2001 the first applicant submitted a detailed specification of her claim.

In its decision of 21 May 2001 the District Court awarded the first applicant a part of her claim for costs and expenses. The remainder of her claim was rejected as being unsubstantiated and ill-founded. As to the first applicant's claim for compensation for loss of income as a consequence of the unjustified and excessive length of the restitution proceedings, the District Court considered that a claim of this nature could not be taken into consideration in the context of proceedings for reimbursement of legal costs and expenses and held that such a claim could be raised as a material claim in separate proceedings. Although this was open to her, the first applicant did not file an appeal against this decision to the Regional Court.

The claim for restitution of the commercial premises

Further to her restitution claim under Section 4 § 4 of the Restitution Act filed on 25 March 1992, the first applicant reapplied on 29 June 1994 to the Liptovský Mikuláš District Court for restitution of the commercial premises. She qualified her claim as a claim for restitution of possessions of which her late father had been deprived "in violation of the then-applicable legislation and without any compensation". She further claimed restitution *in natura* of these premises.

On 11 October 1995, the Ministry decided under the Privatisation Act to privatise the subsidiary of the State company whose assets comprised the commercial premises claimed by the first applicant. According to this decision, the privatisation was to take place in the form of a direct sale to a third private party. It further stated that no appeal could be filed against the decision.

The details of this privatisation operation were set out in a "privatisation project" attached to the decision of 11 October 1995. It appears that Part "B.2.2" of the privatisation project made provisions on the manner in which the first applicant's restitution claims were to be dealt with and in what manner her claims were to be satisfied. Neither the decision of 11 October 1995 nor the pertaining privatisation project have ever been officially served on the applicants.

In accordance with the Privatisation Act, the State company's assets were transferred to the National Property Fund, where the State company was subsequently transformed into a private company with limited liability (hereinafter referred to as "the company").

On 27 September 1996, the first applicant restated her restitution claim filed with the Liptovský Mikuláš District Court. She submitted that, despite all her efforts, she had been unable to find the decisive decree on which the expropriation of her father's assets should have been based. She considered that, in these circumstances, the expropriation should be regarded as having taken place in violation of the then-applicable regulations, i.e. the condition defined in Section 6 § 1 (k) of the Restitution Act. She asserted that the District Court was thus competent to determine her claim and demanded restitution *in natura*.

Under a privatisation contract of 9 October 1996, the National Property Fund sold 51% of the shares of the company to a third private party.

On various occasions, the applicants filed numerous unsuccessful complaints with the Ministry, the National Property Fund, the Ministry of Justice and the Prosecutor General, in which they argued that the privatisation proceedings were unlawful and the outcome thereof illegal. Their demands to be provided with a copy of the privatisation project and to be allowed to submit their comments on it, to declare the decision on privatisation of 11 October 1995 null and void and to replace it by a lawful decision, to declare the entire privatisation operation null and void, and

to take criminal proceedings against those persons responsible for the unlawful privatisation operation remained unsuccessful.

In its decision of 4 March 1997, and apparently on the basis of the procedure set out in the privatisation project appended to the decision of 11 October 1995, the Ministry accepted the first applicant's claim for redress under the Restitution Act. It found it established that the commercial premises concerned had been expropriated in accordance with the legislation adopted between the years 1945 - 1948 and without any compensation, i.e. the situation referred to in Section 2 § 3 of the Restitution Act.

As to the practical manner in which the first applicant's claim was to be satisfied, it noted that after the expropriation new buildings had been constructed on the premises concerned and that in the meantime the ownership rights of these premises had been transferred to a private company with limited liability. It held that, in these circumstances, it would not be appropriate to restore these premises *in natura* to the first applicant. In accordance with Section 47 § 1 of the Privatisation Act, the Ministry therefore decided to satisfy the first applicant's claim by way of financial compensation in the form of a certain number of shares in a Governmental restitution fund (*Reštitučný investičný fond*) with a nominal value of 1,000 Slovakian korunas (SKK) per share. The applicants claim that the market value of those shares at that time was in fact only SKK 52 per share.

By letter of 6 March 1997 the Ministry notified the first applicant of its decision of 4 March 1997 and informed her that she could challenge the evaluation made by the Ministry by seizing the civil court within fifteen days as from the date of service of the notification.

By letter of 19 March 1997 the applicants informed the District Court and the Ministry that they disagreed with the manner in which the first applicant's restitution claim was to be satisfied as well as with the evaluation thereof. They expressly referred to an "appeal" against the above notification. However, in a letter of 24 March 1997, the second applicant informed the District Court that the letter of 19 March 1997 was only intended to make clear that the first applicant disapproved of the decision taken and that it should by no means be considered as a formal appeal.

On 10 April 1997 the Liptovský Mikuláš District Court dismissed the first applicant's claim for restitution of the commercial premises insofar as this claim was based on Section 6 § 1 (k) of the Restitution Act. It held that the premises at stake had been expropriated in accordance with legal rules adopted in the period between 1945 and 1948 without providing any compensation. It therefore found Section 2 § 3 of the Restitution Act applicable. Noting that, according to this provision, the Ministry was competent to determine such a restitution claim and that the Ministry had in fact already done so, the District Court concluded that the first applicant's claim had already been satisfied.

The first applicant appealed to the Regional Court. On 25 March 1998 the Žilina Regional Court quashed the District Court's judgment of 10 April 1997 and returned the case-file to the latter for a new examination and decision. It held that the District Court had insufficiently established the scope of the subject matter of the first applicant's claim. Insofar as the subject matter was identical with the one determined in the decision of the Ministry of 4 March 1997, the Regional Court accepted the District Court's finding that the question as to the practical manner in which the first applicant's claim was to be satisfied had already been determined by the Ministry. It also agreed with the District Court's finding that it was not up to the civil courts to determine anew those matters already decided by the Ministry. It further held that, although the evaluation of the first applicant's claim by the Ministry could be challenged before a civil court, this was not at issue in the present proceedings. The Regional Court finally held that it only remained to be examined whether the restitution claim, as restated and supplemented by the first applicant, related to any property other than the property already decided upon by the Ministry and, if so, to determine the first applicant's claim in respect of such property under the terms of the Restitution Act. No appeal lay against the Regional Court's decision of 25 March 1998.

The proceedings before the District Court on the remaining question referred to above are apparently still pending.

Interference with the applicants' private communications

During the proceedings on the first applicant's restitution claims, the applicants had the impression that their correspondence and telephone conversations were being monitored. Mail between the applicants and their family members sent by regular airmail from Canada to Slovakia and *vice versa* was frequently inspected by the Slovakian customs authorities and several items sent by mail never reached the addressee.

On 13 March 2000 the Canadian postal authorities informed the second applicant that they were unable to trace a parcel mailed on 2 December 1999 by the second applicant from Canada to the first applicant in Slovakia. Although, according to the Canadian postal authorities, it had in fact been transmitted to the Slovakian postal authorities, it had never reached the first applicant.

B. Relevant domestic law

The Restitution Act (no. 87/1991 Coll.)

On 21 February 1991 the Federal Assembly of the Czech and Slovak Federal Republic enacted the Extra-Judicial Rehabilitations Act. It entered

into force on 1 April 1991 and has been amended several times since. It is still in force in Slovakia.

The purpose of the Restitution Act, as set out in Section 1 § 1, is to endeavour the mitigation of consequences of certain injustices and property losses having occurred between 25 February 1948 and 1 January 1990 by acts falling within the sphere of civil law, labour law, and by administrative acts incompatible with the principles of a democratic society respecting the rights of citizens as enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights.

According to Section 2 § 1 of the Act, infringements of property rights having occurred during this period shall be redressed either by the restitution of property or by financial compensation.

Section 2 § 3 provides that, when an ownership title was taken away in accordance with the nationalisation laws adopted between 1945 and 1948 without appropriate compensation having been paid, the person entitled to restitution may raise a claim under the Privatisation Act (see below).

The State or other entities in possession of expropriated or confiscated property on the day of entry into force of the Act (Section 4 § 1) are obliged to surrender and restore such property to the person entitled to restitution upon a written request to this effect made by the person entitled to restitution (Section 5 § 1). If no such request has been filed within six months after the date of entry into force of the Act, the right to restitution is forfeited (Section 5 § 2).

Pursuant to Section 5 § 3, the State or other entity obliged to restore shall conclude an agreement with the person entitled to restitution on surrendering the property concerned, which shall take place within thirty days after the expiry of the time-limit referred to in Section 5 § 2.

Where the State or other entity obliged to restore refuses to surrender the property, the entitled person may, within one year after the date of entry into force of the Act, apply to the civil court in order to obtain a judicial enforcement of the restitution claim (Section 5 § 4).

Section Article 6 § 1 (k) provides that the obligation to restore property also applies where a deprivation of property during the period concerned has taken place in violation of the then-applicable legal rules.

Under Section 6 § 2, in conjunction with Section 2 § 1(c), the obligation to restore property applies also to cases where property was taken by the State without any legal basis and on grounds of political persecution or actions infringing generally accepted human rights and liberties.

Section 9 § 1 provides that, as from the date of entry into force of the Act, it is prohibited to alienate, or allow third parties to start to use, any property subject to restitution or parts thereof. Any legal acts to this effect are null and void.

The Privatisation Act (no. 92/1991 Coll.)

On 26 February 1991 the Federal Assembly of the Czech and Slovak Federal Republic enacted the Privatisation Act. It entered into force on 1 April 1991, has been amended on several occasions since and is still in force in Slovakia. It stipulates the conditions and procedure for the transfer of State property held by State companies, State financial institutions and other State organisations, or State property used by organisations founded by municipalities or administered by the Land Fund (*Pozemkový fond*).

Pursuant to Section 3 § 2, State property in respect of which claims have been raised under special legislation (including the Restitution Act) fall within the scope of the Privatisation Act. The acquirer of such property becomes liable to make restitution under the special legislation.

Section 47 § 1 provides that, where property has been expropriated in the circumstances referred to in Section 2 § 3 of the Restitution Act, the person entitled to restitution under the Restitution Act shall have a claim to redress. It further provides that the manner in which the redress is to be afforded shall be determined in the decision on privatisation concerning that property.

Under Section 47 § 3, when a person entitled to restitution disagrees with evaluation of his or her claim, this person can challenge the evaluation before a general court within 15 days from the day when he or she is notified of the decision on his or her claim.

The State Liability Act (no. 58/1969 Coll.)

Under Section 1 of the State Liability Act (*Zákon o zodpovednosti za škodu spôsobenú rozhodnutím orgánu štátu alebo jeho nesprávnym úradným postupom*), the State is liable for damage caused as a result of unlawful decisions of a public authority in the context of, *inter alia*, civil proceedings.

Pursuant to Section 18 § 1 the State is also liable for the damage caused by erroneous official acts of State agents. A claim for such damages may be awarded when a claimant establishes that he or she has suffered damage as a result of an erroneous act of a public authority, quantifies the amount claimed, and shows that there is a causal link between the damage claimed and the act in question.

The Constitution

Article 48 (2) of the Constitution provides that, *inter alia*, every person has the right to have his or her case tried without unjustified delay.

As from 1 January 2002, the Constitution has been amended in that, *inter alia*, individuals and legal persons can complain about a violation of their fundamental rights and freedoms pursuant to Article 127 the relevant part of which reads as follows:

"1. The Constitutional Court shall decide on complaints lodged by natural or legal persons alleging a violation of their fundamental rights or freedoms or of human rights and fundamental freedoms enshrined in international treaties ratified by the Slovak Republic ... unless the protection of such rights and freedoms falls within the jurisdiction of a different court.

2. When the Constitutional Court finds that a complaint is justified, it shall deliver a decision stating that a person's rights or freedoms set out in paragraph 1 were violated as a result of a final decision, by a particular measure or by means of other interference. It shall quash such a decision, measure or other interference. When the violation found is the result of the failure to act, the Constitutional Court may order that [the authority] which violated such rights or freedoms should take the necessary action. At the same time the Constitutional Court may return the case to the authority concerned for further proceedings, order that such an authority abstain from violating fundamental rights and freedoms ... or, where appropriate, order that those who violated the rights or freedoms set out in paragraph 1 restore the situation existing prior to the violation.

3. In its decision on a complaint the Constitutional Court may grant adequate financial satisfaction to the person whose rights under paragraph 1 were violated." ...

COMPLAINTS

1. The applicants complain under Article 3 of the Convention that the first applicant's father and the first applicant have been persecuted by State authorities during the communist regime for which they have never been compensated.

2. The applicants complain under Article 6 § 1 of the Convention that the judicial proceedings on the first applicant's restitution claims cannot be regarded as fair in that evidence was assessed incorrectly, in particular in that the Banská Bystrica Regional Court judge ignored the first applicant's argument that the State company's appeal had been filed out of time.

3. The applicants further complain under Article 6 § 1 of the Convention that the first applicant's claim for restitution of the residential house was not dealt with by an impartial tribunal in that, in early 1997 and in the applicants' absence, the District Court judge discussed the case during a private meeting with an official of the Ministry and a legal representative of the defendant company.

4. The applicants also complain under Article 6 § 1 of the Convention that the first applicant's claim for restitution of the commercial premises has been determined by the Ministry, which – being a part of the executive – cannot be regarded as an impartial and independent tribunal, whereas the civil courts concluded that they were not competent to review the Ministry's decision of 4 March 1997.

5. The applicants complain under Article 6 § 1 of the Convention that the two sets of proceedings on the first applicant's claims for restitution have both exceeded a reasonable time.

6. Relying on Article 8 of the Convention and the Court' judgment of 6 September 1978 in the case of *Klass and Others v. Germany* (Series A no. 28), the applicants complain that their postal and telephone communications were interfered with during the restitution proceedings, including the disappearance of a parcel sent by the second applicant to the first applicant by mail on 2 December 1999.

7. The applicants complain under Article 1 of Protocol No. 1 that, although the first applicant's claim for restitution of the house was granted, her claim for reimbursement of costs incurred in these proceedings and compensation for related financial losses was only partly awarded.

8. The applicants further complain under Article 1 of Protocol No. 1 that, although the first applicant's entitlement to redress under the Restitution Act with respect to the commercial premises was accepted, her claim to obtain redress by restitution *in natura* was rejected. Instead she was granted financial compensation corresponding to a substantially lower real value than that of the premises concerned.

9. The applicants also complain that the manner in which the Restitution Act was applied in their case amounts to a discriminatory denial of justice contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

10. The applicants complain under Article 13 of the Convention that they have no effective remedy in respect of their complaint under Article 6 § 1 of the Convention of the length of proceedings and their complaint under Article 8 of the Convention.

11. The applicants finally complain of a violation of Articles 12, 17 and 18 of the Convention in relation to their complaints under Article 1 of Protocol No. 1.

THE LAW

1. The applicants complain of persecution of the first applicant's father and of the first applicant by the State authorities during the communist regime and that they cannot obtain compensation therefor. They invoke Article 3 of the Convention that provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

a) As regards the alleged persecution, the Court notes that the facts complained of relate to a period prior to 18 March 1992 which is the date when the former Czech and Slovak Federal Republic, to which Slovakia is

one of the successor states, ratified the Convention and recognised the right of individual petition. However, the Convention only governs facts subsequent to its entry into force with respect to the Contracting Party concerned.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

b) To the extent that the applicants complain that no compensation is available to them for the above persecution, the Court notes that the right to compensation for damage or wrongs caused prior to the entry into force of the Convention with respect to the Contracting Party concerned is not, as such, guaranteed by the Convention or its Protocols.

It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The applicants complain under Article 6 § 1 of the Convention that the first applicant's restitution claims have not been determined in the course of fair proceedings within a reasonable time by an independent and impartial tribunal.

Insofar as relevant, Article 6 § 1 reads:

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

a) The Court notes at the outset that the second applicant was not a party to the restitution proceedings complained of. In these circumstances, the Court considers that the second applicant cannot claim to be a victim within the meaning of Article 34 of the Convention in respect of these proceedings. It follows that the complaints under Article 6 of the Convention, insofar as brought by the second applicant, must be rejected for being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

b) As regards the first applicant's complaint of unfairness and lack of impartiality of the tribunal in the proceedings on her claim for restitution of the residential house, the Court notes that these proceedings resulted, on 21 April 1998, in a final decision of the Regional Court in the first applicant's favour and that this decision has subsequently been successfully enforced. In these circumstances, the Court considers that, on this point, the first applicant cannot claim to be a victim within the meaning of Article 34 of the Convention. Consequently, this complaint must be rejected for being incompatible *ratione personae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

c) As to the first applicant's complaint that she did not have access to an independent and impartial tribunal within the meaning of Article 6 § 1 of the Convention in that her claim for restitution of the commercial premises expropriated from her father was determined by the Ministry on 4 March

1997 and that the civil courts considered themselves not competent to review this decision, the Court considers that it cannot, on the basis of the case-file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

d) Insofar as the first applicant complains of the lack of fairness of the proceedings on the remaining part of her civil action in relation to the commercial premises – i.e. the question whether her claim also included any property not covered by the Ministry's decision of 4 March 1997 – and that the judges involved in these proceedings cannot be regarded as independent and impartial, the Court notes that these proceedings are currently still pending before the Liptovský Mikuláš District Court.

In these circumstances and having found no grounds for exempting the first applicant from the obligation under Article 35 § 1 of the Convention to exhaust domestic remedies on grounds of an administrative practice (see *Akdivar v. Turkey,* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 67) as argued by the applicants, the Court considers that this part of the application must be rejected for failure to exhaust domestic remedies within the meaning of Article 35 § 1.

e) As regards the first applicant's complaint that the proceedings on her claim for restitution of the house have lasted unreasonably long, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give also notice of this part of the application to the respondent Government.

f) Insofar as the first applicant complains that the proceedings on her claim for restitution of the commercial premises have lasted unreasonably long, the Court recalls that it has found earlier that a complaint to the Constitutional Court under Article 127 of the Constitution - as effective from 1 January 2002 - represents an effective domestic remedy in respect of alleged unreasonable length of judicial proceedings in Slovakia. (see *Andrášik v. Slovakia* (dec.), no. 57984/00, 22 October 2002).

The Court notes that the first applicant has not lodged such a complaint in the present case. It is true that she introduced the application with the Court on 13 June 1999, while the amendment to the Constitution providing for an effective remedy in respect of her complaint under Article 6 § 1 of the Convention entered into force on 1 January 2002. The Court however further recalls its finding in the Andrášik case quoted above according to which the applicants should be required to use this remedy even though they had introduced their applications prior to the enactment and entry into force of the above constitutional amendment. The court sees no reason to reach a different conclusion in the present case.

It follows that this complaint must be rejected under Article 35 §§ 1 et 4 of the Convention for non-exhaustion of domestic remedies.

3. The applicants complain under Article 8 of the Convention that their postal and telephone communications have been interfered with by the Slovakian authorities and, in particular, that a parcel sent by mail on 2 December 1999 had disappeared. Article 8 of the Convention, insofar as relevant, reads:

> "1. Everyone has the right to respect for his private ... life, his home and his correspondence."

The Court has found no indication in the case-file that the applicants have taken any steps in Slovakia in relation to the facts complained of under Article 8 of the Convention, such as requesting an investigation by the Slovakian postal authorities, the filing of a criminal complaint and/or the institution of civil proceedings against the allegedly responsible authorities.

In these circumstances, the Court considers that the applicants have failed to comply with the obligation to exhaust of domestic remedies under Article 35 § 1 of the Convention in respect of this complaint.

It follows that this part of the application must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicants complain under Article 1 of Protocol No. 1 that they were not awarded full reimbursement of expenses and costs incurred by them in the proceedings on the first applicant's claim for restitution of the house and that their claim for compensation for loss of earnings pending these proceedings was denied. The applicants further complain that the Slovakian authorities arbitrarily decided against restitution *in natura* of the commercial premises to the first applicant and, instead, granted her financial compensation of a substantially lower market value.

Article 1 of Protocol No. 1 provides 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."

a) Noting that the second applicant was not a party to the proceedings at issue, the Court considers that he cannot claim to be a victim within the meaning of Article 34 of the Convention in respect of the present complaints.

It follows that his complaints under Article 1 of Protocol No. 1 must be rejected for being incompatible *ratione personae*.

b) Insofar as the first applicant complains that her claim for costs and expenses incurred in the proceedings on her request for restitution of the house was not awarded in full and that her claim for compensation of loss of earning was denied, the Court notes that she has not availed herself of the possibility to file an appeal against the decision of the District Court of 21 May 2001.

In these circumstances the Court finds, even assuming that the decision complained of would raise an issue under Article 1 of Protocol No. 1, that the first applicant has failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention and that, consequently, this part of the application must be rejected under Article 35 §§ 3 and 4 of the Convention.

c) As to the complaint that the Slovakian authorities decided against restitution *in natura* of the commercial premises claimed by the first applicant and awarded her financial compensation of a substantially lower market value, and to the extent that this claim was determined by the Ministry on 4 March 1997, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

d) Insofar as the first applicant's complaint under Article 1 of Protocol No. 1 can be understood as also relating to property not covered by the Ministry's decision of 4 March 1997, the Court notes that the proceedings on this point are currently still pending before the Liptovský Mikuláš District Court. It is therefore of the opinion that, as regards this part of the application, domestic remedies have not been exhausted. Consequently, this part of the application must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention.

5. The applicants also complain that they had no effective remedy within the meaning of Article 13 of the Convention in respect of their complaint under Article 6 § 1 of the Convention of the length of the proceedings at issue and in respect of their complaint under Article 8 of the Convention.

Article 13 of the Convention provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] 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."

a) Noting that the second applicant was not a party to the restitution proceedings concerned, the Court considers that he cannot claim to be a victim within the meaning of Article 34 of the Convention in respect of the complaint under Article 13 in conjunction with Article 6 of the Convention and that, therefore, this complaint, insofar as brought by the second applicant, must be rejected for being incompatible *ratione personae*.

b) As to the first applicant's complaint that she had no effective remedy in relation to her complaint about the length of the proceedings on her claim

for restitution of the residential house which ended prior to 1 January 2002, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

c) As regards the first applicant's complaint that she had no effective remedy in relation to her complaint about the length of the proceedings on her claim for restitution of the commercial premises which are currently still pending, the Court notes its above finding that the newly introduced remedy under Article 127 of the Constitution provides the first applicant with an effective remedy in this respect.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

d) Insofar as the applicants complain that they had no effective remedy in respect of the alleged violation of their rights guaranteed by Article 8 of the Convention, the Court notes that this argument has remained wholly unsubstantiated. Having found no indication in the case-file for holding that a request for an investigation by the Slovakian postal authorities, the filing of a criminal complaint and/or the institution of civil proceedings against the allegedly responsible authorities should be regarded as inadequate for the purposes of Article 13 of the Convention, the Court considers that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

6. The applicants also complain that the manner in which the first applicant's claims under the Restitution Act were dealt with amounts to discrimination contrary to Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1. Article 14 of the Convention reads:

> "The enjoyment of the rights and freedoms set forth in [the] 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 Court recalls that the right under this provision not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV).

Insofar as the applicants can claim to be a victim within the meaning of Article 34 of the Convention of a violation of their rights under Article 14 and even assuming that they have complied with the requirements of Article 35 § 1 of the Convention in respect of this complaint, the Court notes that this part of the application has remained wholly unsubstantiated. Having found no appearance of a violation of the applicants' rights under Article 14 of the Convention, the Court is of the opinion that this complaint

must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

7. The applicants finally complain of a violation of their rights protected under Articles 12, 17 and 18 of the Convention in connection with their complaints under Article 1 of Protocol No. 1.

The Court finds, insofar as this part of the application has been substantiated and falls fall within its competence, that the facts of the case do not disclose any appearance of a violation of these provisions of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the first applicant's complaints under Article 6 § 1 of the Convention that she was denied access to a court insofar as her restitution claim was determined by the Ministry and that the proceedings on her claim for restitution of the residential house exceeded a reasonable time, the first applicant's complaint that the Ministry's determination of her claim for restitution of commercial premises violated her rights under Article 1 of Protocol No. 1, and the first applicant's complaint that she did not have an effective remedy within the meaning of Article 13 of the Convention in relation to her complaint of the length of the proceedings on her claim for restitution of the residential house.

Declares inadmissible the remainder of the application.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President