AS TO THE ADMISSIBILITY OF

Application No. 27337/95
by Kamilo MISSON
against Slovenia

The European Commission of Human Rights (First Chamber) sitting in private on 21 January 1997, the following members being present:

Mrs. J. LIDDY, President
MM. E. BUSUTTIL
A. WEITZEL
L. LOUCAIDES
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 4 January 1995 by Kamilo MISSON against Slovenia and registered on 16 May 1995 under file No. 27337/95;

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 Slovenian national, born in 1919. He lives in Ljubljana. The facts of the case, as they have been submitted by the applicant, may be summarised as follows.

A. The particular circumstances of the case

On a date between 1958 and 1961, property belonging to the applicant's family was nationalised under the Nationalisation (Land and Buildings) Act 1958. The applicant and his family had to move into state-owned apartments, their house was demolished, and the family was given a small sum by way of compensation. A state construction company built its headquarters on the site.

In January 1992 the applicant and some of his relatives lodged a request for restitution of the nationalised property, under the Denationalisation Act 1991. The request, made to the Committee for Housing and Communal Economy of the Local Community Ljubljana Centre ("the Housing Committee"; Komite za stanovanjsko in komunalno gospodarstvo Obcine Ljubljana Center), has not yet been dealt with.

In November 1992, a Privatisation Act was adopted. It provided

a procedure by which the same Housing Committee could defer claims under the Privatisation Act until claims under the Denationalisation Act had been dealt with. The applicant lodged such an application under the Privatisation Act on 3 February 1993.

The Housing Committee noted that a new building had been erected on the land at issue, and so the applicant and his family were entitled to compensation rather than restitution under the Denationalisation Act. Accordingly, the Housing Committee rejected the Privatization Act application on 19 April 1993 on the ground that the applicant in any event had no right to restitution in kind under the Denationalisation Act, and that there was therefore no reason to defer claims under the Privatisation Act until the Denationalisation Act proceedings had finished.

The applicant appealed unsuccessfully against this decision to the Ministry of Environment.

On 22 September 1994 the Supreme Court (Vrhovno sodisce Republike Slovenije) rejected the applicant's appeal on the same grounds as the previous two instances. The applicant received the Supreme Court's judgment on 20 October 1994.

In May 1993 the applicant also initiated proceedings before the Constitutional Court as to the constitutionality and legality of the Privatisation Act and the Denationalisation Act, and as to the legality of the published commentary to the Denationalisation Act. It appears that these proceedings are still pending.

B. Relevant domestic law

Articles 32 and 42 of the Denationalisation Act 1991 read as follows.

Article 32

> "Nationalised building land on which buildings have been erected shall not be restituted unless a building stands on it, and the owner of the building is the person entitled to restitution."

Article 42

> "If real property cannot be returned to the original owner, and possession or property right cannot be established with respect to it, the [original owner] shall be entitled to compensation..."

Articles 9 and 12 of the Privatisation Act 1992 read as follows.

Article 9

> "This Law governs ... the protection of claims for restitution of property belonging to companies which are in the process of privatisation ... "

Article 12

> "If the claim is [likely to be successful], the competent authority may issue an interim measure and require that disposal of the property in question and partial or full privatisation of the company be prohibited."

Article 160 of the Constitution of the Republic of Slovenia provides for the jurisdiction of the Constitutional Court. The Constitutional Court has jurisdiction, amongst other matters, to determine complaints of breaches of human rights and fundamental freedoms by individual acts.

Article 50 of the Constitutional Court Act reads as follows.

"1. Any person may, under the conditions determined by this Act, lodge a constitutional complaint with the Constitutional Court if he/she believes that his/her human rights and basic freedoms have been violated by an individual act of a state body, local community body or public corporation."

Article 51 of the Constitutional Court Act provides that domestic remedies must be exhausted before the Constitutional Court may deal with a complaint; Article 52 provides for a 60-day time limit (which can be extended in exceptional circumstances), and Article 53 provides that a complaint must be in writing, and must set out the facts of the case and the violations alleged.

Articles 54 and 55 of the Constitutional Court Act provide for rejection of complaints which do not meet the formal requirements for a constitutional complaint; Articles 56 to 60 provide for the procedure for complaints which have been accepted. In particular, by virtue of Article 59, the Constitutional Court has power to abrogate the individual act which is challenged and to return the case to the competent body and, where the individual act is itself based on a provision which is unconstitutional, it may abrogate that provision in accordance with the relevant part of the Constitutional Court Act.

Under Article 60 of the Constitutional Court Act, where the Constitutional Court abrogates an individual act, it may also take a decision on the "contested right or freedom". The body which took the original (abrogated) decision is then required to implement the new decision.

COMPLAINTS

The applicant complains about the judgment of the Supreme Court and other decisions in the procedure under the Privatisation Act. He claims that his family should be entitled to restitution in kind in order to be able to continue the family business, since many of the family members are builders. He also claims that the Denationalisation Act has been wrongly applied and that the Constitution has been violated. He invokes Article 1 of Protocol No. 1 in this respect.

The applicant considers that his right to an effective remedy has not been satisfied, because the decisions were not in his favour and because the facts of his case were not properly established in the decisions conveyed. He claims that the property was nationalised from the family registered company and not from the private person and that in this respect the second instance has not established the facts correctly. He considers that this error influenced the final decision. He invokes Article 13 in this respect.

The applicant is also of the opinion that he and his family have been victims of discrimination because members of his family, of French origin, were never members of the Communist party and were even regarded as foreigners before the second world war. The applicant considers that the xenophobic feelings against his family were so strong that they led to the violation of Article 14 of the Convention in his proceedings for denationalisation.

The applicant also invokes Articles 16, 17, and 18 of the Convention.

The applicant also complains generally about the denationalisation as well as about the relevant laws and the attitude of the State and its authority.

In his application form of 18 March 1995, the applicant encloses a form of authority dated 19 January 1992 which authorises him to

represent four other members of his family in the denationalization proceedings. He also refers to a further member of his family as representative, although that person has not made any submissions to the Commission.

THE LAW

1. The Commission first notes that the applicant has made various references in his application form to persons other than himself. All the decisions in the case, however, are decisions in proceedings brought by the applicant in person. Moreover, the person named as representative has made no submissions to the Commission whatsoever. The Commission will therefore deal with the application on the basis that the applicant is the sole applicant, and that he is not represented.

The applicant complains the decisions refusing to protect his claims under the Denationalisation Act violated his right to respect and peaceful enjoyment of property, as well as his right to enjoyment of this right without discrimination and his right to an effective remedy.

The Commission recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party. The Convention entered into force with respect to Slovenia on 28 June 1994. It follows that, to the extent that the applicant complains of decisions delivered before that date, the application is outside the competence ratione temporis of the Commission and therefore incompatible with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. In respect of the remainder of the applicant's complaints, the Commission notes first that the decision of the Supreme Court of 22 September 1994 was delivered subsequent to the entry into force of the Convention with respect to Slovenia. The Commission is therefore competent ratione temporis to the extent that the events complained of are subsequent to 28 June 1994 (see Eur. Court HR, Stamoulakatos v. Greece judgment of 26 October 1993, Series A no. 271, p. 13, para. 32).

3. The applicant complains about the proceedings under the Denationalisation Act, alleging in substance a violation of Article 1 of Protocol No. 1 (P1-1) and Articles 13 and 14 (Art. 13, 14) of the Convention.

However, the Commission notes that no domestic decision has been taken yet. The applicant will be able to challenge any adverse decision in the domestic proceedings.

The Commission concludes that this part of the application is therefore premature and must be rejected as being manifestly ill-founded under Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant also complains about the proceedings under the Privatisation Act, again alleging in substance a violation of Article 1 of Protocol No. 1 (P1-1) and Articles 13 and 14 (Art. 13, 14) of the Convention.

However, the Commission recalls that under Article 26 (Art. 26) it may only deal with the matter after all domestic remedies have been exhausted: in the present case, the applicant failed to make a constitutional complaint to the Constitutional Court, in accordance with Article 160 of the Constitution and Article 50 of the Constitutional Court Act, about the Supreme Court's decision of 22 September 1994. The Commission notes that these provisions have already generated case-law (decisions of the Constitutional Court are published in Decisions and Resolutions of the Constitutional Court, I-V(1992-96); Odlocbe in sklepi Ustavnega sodisca, I-V(1992-96); Nova Revija,

Ljubljana). The applicant has not, therefore, exhausted the remedies available under Slovenian law.

This part of the application must therefore be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

5. Finally, the applicant complains about the constitutional procedure he did initiate (for the evaluation of constitutionality and legality of general acts) in May 1993.

The Commission notes that the applicant's constitutional "initiative" was not a complaint under Article 50 of the Constitutional Court Act, but was a general challenge to the law under Articles 21 and 24 of the Constitutional Court Act. To the extent that the "initiative" could be relevant to Convention complaints, it is in any event still pending.

The Commission concludes that this part of the application is also premature and must therefore be rejected as being manifestly ill-founded under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber