AS TO THE ADMISSIBILITY OF

Application No. 32683/96
by Elena NEMANOVÁ
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 14 January 1998, the following members being present:

MM J.-C. GEUS, President
M.A. NOWICKI
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
Mrs G.H. THUNE
MM F. MARTINEZ
I. CABRAL BARRETO
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 29 March 1996 by Elena NEMANOVÁ against the Slovak Republic and registered on 21 August 1996 under file No. 32683/96;

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 1909. She is retired and resides in Banská Bystrica.

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

A. The particular circumstances of the case

The applicant owned a three-storey house comprising several flats in Banská Bystrica. On 25 May 1976 the applicant requested that the local tax in respect of the house be reduced. On 24 June 1976 the National Committee (Národny vybor) in Banská Bystrica dismissed the request. It noted that the applicant had had an opportunity to sell the house.

In a letter of 2 June 1976 addressed to the National Committee in Banská Bystrica the applicant stated, inter alia, that the maintenance of the house caused considerable difficulties to her and that she had therefore decided to sell it to the Slovak Television.

She requested, with reference to Section 13 para. 2 of Regulation No. 47/1969 (see the "Relevant domestic law" below), that an exception be granted and the permissible compensation for her house be increased up to 455,638 Czechoslovak crowns. The applicant explained that the amount of the compensation she requested had been established on the basis of an expert opinion and that the Slovak Television was prepared to pay it to her.

On 29 June 1976 the applicant signed a contract by which she sold her house to the Slovak Television.

In his opinion of 12 August 1976, elaborated at the request of Slovak Television, an expert stated that the real value of the applicant's house was 1,640,077 Czechoslovak crowns.

On 18 November 1976 the National Committee in Banská Bystrica agreed that the sale price be increased to 436,745 Czechoslovak crowns. On 19 November 1976 the contract was amended accordingly.

On 2 June 1993 the applicant requested before the Banská Bystrica District Court (Okresny súd) that the contract of 29 June 1976 be declared void. She claimed that she had signed the contract under pressure which had been exercised upon her by representatives of political and State authorities and that the sale price had not corresponded to the real value of the house.

A witness confirmed that a representative of the National Committee had told the applicant that selling the house had become a political necessity for her and that if she refused to sell it, it would be transferred to State ownership under Law No. 71/1959. The witness further confirmed that subsequently the applicant had explained to him that the pressure had made her depressed and that she had had no other possibility but to sell the house.

Another witness, the applicant's doctor, stated that she had been present when a representative of the National Committee had insisted that the applicant sell the house. The applicant had suggested that another house be chosen, claimed that she had no other place to live and finally burst into tears.

A third witness stated that the applicant had been threatened with dispossession and removal from the town should she refuse to sell the house and that she had been charged high local taxes.

The former president of the National Committee in Banská Bystrica stated that the representative of the National Committee who had allegedly exercised pressure on the applicant had not been in charge of the sale of the house. Another witness stated that an acquaintance of the applicant had informed him about the applicant's wish to live in a flat as she had had difficulties in maintaining the house.

The District Court requested a second expert opinion as regards the compensation paid to the applicant. The second expert evaluated the compensation to which the applicant had been entitled at 437,274 Slovak crowns.

On 26 June 1995 the District Court found that the applicant had not concluded the contract under pressure as the representative of the National Committee who had allegedly forced her to sell the house had not been in charge of the sale. The court further held that even if the contract had been concluded under pressure, the applicant could have revoked it within three years after its conclusion.

As to the sale price, the District Court noted that it had been fixed in accordance with the relevant rules then in force and in conformity with an expert opinion which had been later confirmed by a second expert. The applicant's action was declared manifestly ill-

founded.

The applicant appealed. She challenged the statements of the witnesses who had alleged that the representative of the National Committee in Banská Bystrica in question had not been in charge of the sale and that the she had expressed her wish not to live in the house.

The applicant further claimed that it was irrelevant for which price she had sold the house as the very fact that she had sold it under pressure was sufficient for declaring the contract void. She submitted that the political climate of Czechoslovakia in the mid-seventies had rendered it impossible for her to revoke the contract within three years. Finally, the applicant requested that leave to appeal on points of law should be granted to her in case the appellate court dismissed her appeal.

On 5 October 1995 the Banská Bystrica Regional Court (Krajsky súd) upheld the District Court's judgment.

In the Regional Court's view, the fact that a representative of the National Committee had informed the applicant that the flat would be taken away from her under Law No. 71/1959 if she failed to sell it could not be considered as undue pressure as the possibility of expropriating real property had always been provided for in Slovak law. The Regional Court also referred to the applicant's statements made in her letter of 2 June 1976 and held that the applicant had concluded the contract of her free will.

The Regional Court further recalled that by its decision of 18 November 1976 the National Committee had agreed, upon a request lodged by the Slovak Television, that the sale price be increased to 436,745 Czechoslovak crowns pursuant to Regulation No. 47/1969. Furthermore, the second expert opinion had confirmed that the sale price conformed to the relevant regulations. Finally, the Regional Court noted that the applicant could have revoked the contract within an extinctive period of three years.

On 12 November 1995 the applicant complained that in its judgment of 5 October 1995 the Regional Court had not dealt with her request that leave to appeal on points of law be granted to her. On 22 November 1995 the president of the Regional Court's chamber informed the applicant that the court had not granted the applicant's request as it considered that the decision in her case had not concerned an issue of exceptional legal importance within the meaning of Section 238 para. 2 (a) of the Code of Civil Procedure. She further pointed out that the assessment of the importance of a case in this respect was within the discretionary power of the court.

On 30 January 1996 the Minister of Justice refused to lodge an appeal on points of law on the applicant's behalf.

B. The relevant domestic law

Law No. 71/1959 on Measures Concerning Certain Houses in Private Ownership provided for appropriate maintenance of privately owned houses comprising flats rented to individuals. It entitled national committees to carry out necessary maintenance of such houses even if the owner disagreed. If the owner failed to pay compensation for the maintenance and his debt in this respect exceeded two thirds of the value of the house prior to the repairs, the competent national committee was entitled to transfer the house into State ownership.

Regulation No. 47/1969 governed the prices of buildings owned by individuals and compensation in case of their expropriation. Under Section 13 para. 2 national committees were entitled to agree compensation to amounts of up to the value of a family house the surface of which does not exceed 120 square metres.

Section 37 para. 1 of the Civil Code provides that, in order to be valid, a legal act has to be carried out freely, with serious intention, clearly and certainly.

Pursuant to Section 399 para. 1 of the Civil Code, as in force at the relevant period, the sale price agreed between the parties could not exceed the maximum permissible price under the price regulations in force.

Section 238 para. 2 (a) of the Code of Civil Procedure provides that an appeal on points of law is permissible if an appellate court, in its judgment by which a first instance judgment was upheld, expressly states that an appeal on points of law can be lodged as the decision in question is of exceptional legal importance.

COMPLAINTS

The applicant complains about the dismissal of her request that the contract of 29 June 1976 be declared void and about the Regional Court's failure to examine her request for leave to appeal on points of law. She alleges a violation of Article 6 para. 1 of the Convention and of Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains about the courts' decisions in her case and about the refusal to grant leave to appeal on points of law to her. 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 ... hearing by an independent and impartial tribunal established by law."
> ...

As to the applicant's complaint that the courts refused to declare void the contract by which she had sold her house, 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 Convention. In particular, it is not competent to deal with applications concerning errors of law or fact allegedly committed by the competent national authorities, to whom it falls, in the first place, to interpret and apply domestic law. The Commission is not competent to look into allegations concerning such errors except where, and to the extent that, they seem likely to have entailed a possible violation of any of the rights and freedoms set out in the Convention (see, e.g., No. 25062/94, Dec. 18.10.95, D.R. 83-A, pp. 77, 86).

In the present case the courts concluded, on the basis of the evidence before them, that the applicant had not been put under undue pressure that would justify declaring the contract in question void.

In particular, the District Court relied on the evidence of the former president of the National Committee in Banská Bystrica according to which the person who had allegedly exercised pressure on the applicant had not been in charge of the sale of her house.

The Regional Court found, with reference to the applicant's letter of 2 June 1976 indicating that the applicant had had difficulties in maintaining the house and that she had wished to sell it to the Slovak Television, that the applicant had not concluded the contract under pressure. In the Regional Court's view, the fact that a representative of the National Committee in Banská Bystrica had informed her that the flat would be taken away from her under Law No. 71/1959 if she failed to sell it could not be considered as undue

pressure as Slovak law had always provided for expropriation of real property.

Finally, both courts dealing with the applicant's claim found that the sale price had been fixed on the basis of an expert opinion and had conformed to the price regulations then in force. This fact was confirmed by a second expert opinion submitted at the request of the District Court.

The Commission considers that the reasons on which the courts based their above decisions are sufficient to exclude the assumption that the evaluation of the evidence had been arbitrary. Furthermore, the Commission has before it no information that would indicate that the proceedings leading to the decisions complained of did not conform to the requirements of Article 6 para. 1 (Art. 6-1) of the Convention.

To the extent that the applicant complains that she was not granted leave to appeal on points of law and that the Regional Court failed to state its reason for the dismissal of her request in this respect, the Commission notes that under Section 238 para. 2 (a) of the Code of Civil Procedure an appellate court may, when it confirms a first instance judgment, grant leave to appeal on points of law to the parties in the proceedings if it considers that the case raises an issue of exceptional legal importance.

Such a decision falls within the discretionary power of appellate courts and, accordingly, Slovak law did not entitle the applicant to lodge an appeal on points of law on her own accord. Furthermore, the Commission notes that Slovak law neither sets specific criteria for assessment of the importance of a question of law, nor provides that the courts' considerations in this respect shall be set out in the judgments rendered by them. Finally, the Commission recalls that Article 6 para. 1 (Art. 6-1) of the Convention does not guarantee the right of appeal to a higher court (see No. 13135/87, Dec. 4.7.88, D.R. 56, pp. 268, 274).

In these circumstances, the Commission considers that the Regional Court's refusal to grant the applicant's request for leave to appeal on points of law and its failure to state the reasons for such a decision did not interfere with the applicant's rights under Article 6 para. 1 (Art. 6-1) of the Convention.

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.

2. The applicant further alleges a violation of her property rights in that she had been forced to sell her house and that the courts refused to declare the contract on the sale void. She invokes Article 1 of Protocol No. 1 (P1-1) which 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."

The Commission recalls that it can examine applications only to the extent that they relate to events occurring after the Convention entered into force with respect to the relevant Contracting Party. The Commission found earlier that it has jurisdiction to examine

applications against the Slovak Republic concerning matters which are subsequent to 18 March 1992, i.e. the date when the Convention was ratified by the former Czech and Slovak Federal Republic (see No. 23131/93, Dec. 4.3.96, D.R. 85-B, pp. 65, 78 and 79).

The Commission notes that the applicant sold her house in 1976, i.e. long before the aforementioned date. Therefore, the Commission lacks temporal jurisdiction to examine the circumstances under which the applicant concluded the contract in question. In this regard, the Commission recalls that deprivation of property or another right in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see No. 7742/76, Dec. 7.7.78, D.R. 14, p. 146; No. 23131/93, decision cited above, p. 79).

In the judicial proceedings subsequent to the entry into force of the Convention with respect to the Slovak Republic the applicant requested that the contract in question be declared void on the ground that she had not concluded it of her free will. In fact, under Section 37 of the Civil Code, for a legal act to be valid, it has to be carried out, inter alia, freely. However, the courts established, for reasons expressly stated in their judgments, that the applicant had not concluded the contract under pressure and the Commission has found above that this decision was not arbitrary.

Thus the relevant domestic law, as interpreted and applied by Slovak courts, did not entitle the applicant to have the contract declared void. Her claim in this respect cannot, therefore, be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (P1-1) (see, mutatis mutandis, Eur. Court HR, Pressos Compania Naviera S.A. and Others v. Belgium judgment of 20 November 1995, Series A no. 332, p. 21, para. 31; No. 23131/93, decision cited above, p. 65). The Commission further recalls that Article 1 of Protocol No. 1 (P1-1) applies only to existing possessions and it does not guarantee any right to acquire property (see No. 11628/85, Dec. 9.5.86, D.R. 47, p. 271, with further references).

It follows that this part of the application falls outside the scope of Article 1 of Protocol No. 1 (P1-1) and must be rejected as being incompatible ratione materiae with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.-T. SCHOEPFER	J.-C. GEUS
Secretary	President
to the Second Chamber	of the Second Chamber