AS TO THE ADMISSIBILITY OF

Application No. 36542/97
by Jaroslav NOVOTNY
against the Czech Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 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
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 October 1996 by Jaroslav NOVOTNY against the Czech Republic and registered on 18 June 1997 under file No. 36542/97;

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 Czech citizen, born in 1936 and residing in Ostrava (Czech Republic).

A. Particular circumstances of the case

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

Since 1 July 1959 the applicant has worked for a State company called Railway Constructions Brno (Zeleznicní stavitelství Brno). By ruling (usnesení) of 1 April 1992 of the Brno-venkov District Court (okresní soud) the company was entered in the Companies Register (obchodní rejstrík) kept by the Brno Regional Commercial Court (krajsky obchodní soud) as a public company (plc.). At the same time, two organs of the company were appointed, namely the board of directors (správní rada) and the supervisory board (dozorcí rada). The members of the supervisory board were designated by the Federal Fund of National Property (Federální fond národního majetku) and were entered in the Companies Register.

On 23 April 1992 the applicant wrote a letter to the company maintaining that according to the Commercial Code (obchodní zákoník), one of three members of the supervisory board should be elected by the employees, and announced his intention of standing in the elections. On 24 March 1993 the applicant informed the president of his trade union branch that the elections had not yet been held. In the middle of April 1993 the applicant learnt that the elections had been conducted on 9 April 1993 at a meeting of the presidents of the trade union branches (Council of Presidents - Rada predsedu), and that a representative of the employees to the supervisory board had been elected.

On 15 April 1993 the company requested the Brno-venkov District Court to remove the existing members of the supervisory board from the Companies Register and to enter the three new ones (two had already been elected at the general meeting (valná hromada) as representatives of the shareholders of the company).

On 24 July 1993 the applicant issued proceedings against the company at the Brno Municipal Court (mestsky soud) seeking an order that the company hold, within two months, an ordinary election in relation to the post of employees' representative on the supervisory board and give the applicant an opportunity to participate in the election.

On 7 April 1995 the Brno Municipal Court rejected the applicant's action in the following terms:

> "According to Section 38 of the articles of association of the company, the supervisory board shall be elected by the general meeting from the shareholders or other persons; the board has three members; two members shall be elected and removed by the general meeting and the third one shall be elected by the employees in full-time employment. ...
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> Section 200 para. 1 of the Commercial Code provides that the supervisory board must have at least three members. Two thirds shall be elected by the general meeting and one third shall be elected by employees of the company if the company has, at the time of the elections, more than 50 employees in full-time employment.
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> According to Section 18 para. 1 of the Labour Code (zákoník práce), trade union organs have the right to enter into industrial relations including collective negotiations under conditions provided for by law. According to paragraph 2(c) of this Section, the employer shall discuss with a competent trade union organ in particular those measures which concern a higher number of employees. ...
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> According to the collective agreement of 1993 (kolektivní smlouva pro rok 1993) and with reference to the provisions of the Commercial Code, the general director of the company invited, in a letter of 29 March 1993, the Council of Presidents to conduct an election in relation to the post of employees' representative on the supervisory board. The Presidents of the trade union branches of the company were invited ... to nominate a candidate for the election scheduled for 9 April 1993. The applicant filed his application as an independent candidate. The President of the applicant's trade union branch was notified of the latter's candidature and informed all its branches. Upon a recommendation from technical economic employees, Mr B. was proposed as a candidate. The elections were conducted on 9 April 1993 in application of the rules on elections (volební rád) of 7 April 1993, and Mr C. was elected member of the supervisory board. ...

On the basis of these circumstances the court found that the applicant's request that the company hold ordinary elections was not founded. Having assessed all the evidence, the court did not find any breach of legal provisions by the company, in particular of the Labour Code and the amended provisions. ...

The applicant has claimed the right to elect an employees' representative to the supervisory board as a right resulting from his contract of employment. Neither the fact that the applicant did not participate in the election nor the result of this election or the manner in which the elected employees' representative accomplishes his functions can be considered to be a violation of labour law by the company."

On 22 May 1996 the Brno Regional Court (krajsky soud), upon the applicant's appeal, upheld the judgment of first instance as regards the merits and changed the judgment as to the court fees stating that the parties had no right to recover the court fees, but ordered the applicant to pay 431 crowns to the State. The Court held in particular:

"According to Section 30 of the articles of association of 31 March 1992 ... the supervisory board shall be elected by the general meeting from the shareholders and other persons. The supervisory board has three members. On the foundation of the company the founder shall appoint first members of the supervisory board in the decision on the foundation. Afterwards, two members shall be elected and removed by the general meeting and the third one by the employees in full-time employment. ...

The status of the supervisory board as an organ of a public company (plc.) is governed by Section 197 et seq. of the Commercial Code. The supervisory board is a collective organ having at least three members. Section 200 of the Commercial Code provides that 2/3 of the members of the supervisory board shall be elected by the general meeting and 1/3 by the employees of the company if the company has more than 50 employees in full-time employment at the time of the elections. ... The fact that 1/3 of the supervisory board shall be elected by the employees constitutes a legal guarantee that the employees can influence the composition of the supervisory board. Section 200 of the Commercial Code specifies who shall elect the supervisory board, but determines neither who shall conduct the elections of the employees' representative nor the way in which these elections shall be held. It merely consistently separates elections by the general meeting from elections of the employees' representative. Section 200 only provides that '1/3 shall be elected by the employees of the company'; it only appears that all the employees of the company shall participate in the elections. Neither the Commercial Code nor any other legal act links the right of the employees to vote and to be elected to the supervisory board and to participate in organising the elections with any duty laid on the company to organise and conduct these elections.

In a situation where the legal provisions do not place a duty on a public company (plc.) to organise and conduct elections of an employees' deputy to the supervisory board, and where, at the same time, it has not been established that the company concerned has undertaken such a duty by means of a collective agreement, its articles of association or otherwise, it is not possible to impose this

duty by a court decision."

On 7 October 1996 the applicant lodged a constitutional appeal with the Constitutional Court (Ústavní soud) claiming that the proceedings before the Brno Regional Court were unreasonably long and unfair, in particular because the Regional Court had not informed him of the possibility of filing a cassation appeal.

On 26 May 1997 the Constitutional Court rejected the applicant's appeal as being manifestly ill-founded.

B. Relevant domestic law

Section 200 para. 1 of the Commercial Code provides in particular that the supervisory board must have at least three members. Two thirds shall be elected by the general meeting and one third shall be elected by employees of the company if the company has, at the time of the elections, more than 50 employees in full-time employment. According to paragraph 2, the members of the supervisory board are elected for the period determined by the articles of association, but not for more than five years.

COMPLAINTS

The applicant complains that the proceedings before the Brno Municipal Court and the Brno Regional Court as well as the Brno-venkov District Court and the Brno Regional Commercial Court were unfair and in breach of the Introduction and Articles 90, 95 and 96 of the Constitution of the Czech Republic, Articles 1, 36 and 38 of the Charter of the Fundamental Rights and Freedoms, Section 3 of the Civil Code, Sections 2, 5, 6, 114, 115 and 200(b) of the Code of Civil Procedure and Sections 1, 175, 200 and 265 of the Commercial Code. He also claims that the proceedings concerning his action against the company lasted unreasonably long. He further claims that the proceedings were not held by an impartial tribunal in particular with regard to the Brno Regional Court. He invokes Article 6 para. 1 and Article 13 of the Convention.

THE LAW

The applicant complains under Article 6 para. 1 (Art. 6-1) of the Convention and 13 of the Convention that the proceedings before the Brno Municipal Court and the Brno Regional Court as well as the Brno-venkov District Court and the Brno Regional Commercial Court were unfair and in breach of different national legal provisions. He also claims that the proceedings concerning his action against the company lasted unreasonably long and were not held by an impartial tribunal, in particular with regard to the Brno Regional Court.

1. The Commission first notes that the proceedings before the Brno-venkov District Court and the Brno Regional Commercial Court concerning the registration of the member of the supervisory board elected on 9 April 1993 by the employees of the company in the Companies Register relate to April 1993 which is more than six months before the date on which the present application was submitted.

It follows that this part of the application has been introduced out of time and must be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

2. As regards the proceedings before the Brno Municipal Court and the Brno Regional Court dealing with the applicant's action against the company, the Commission considers that as the requirements of Article 13 (Art. 13) of the Convention invoked by the applicant are less strict than the requirements of Article 6 para. 1 (Art. 6-1) of the Convention the violation of which the applicant also alleges, the applicant's complaints should be examined under the latter provision

which provides, inter alia, that in the determination of his civil rights and obligations, everyone is entitled to a hearing within a reasonable time by an independent and impartial tribunal.

The Commission further recalls that Article 6 para. 1 (Art. 6-1) of the Convention extends 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 of (civil) "rights and obligations" in the substantive law of the Contracting States (see Eur. Court HR, W. v. the United Kingdom judgment of 8 July 1987, Series A no. 121-A, p. 32, para. 73). In particular, the dispute ("contestation") must be "genuine and serious" (see Eur. Court HR, Allan Jacobsson v. Sweden judgment of 25 October 1989, Series A no. 163, p. 19, para. 67).

The Commission notes that in the proceedings brought before the Brno Municipal Court the applicant sought an order that the company hold, within two months, an ordinary election in relation to the post of employees' representative on the supervisory board and give the applicant an opportunity to participate in the election.

In the present case, the Commission notes that Czech law does not contain a right for an employee to have elections to the supervisory board of his company ordered at a particular time. Section 200 of the Commercial Code merely provides that "the supervisory board must have at least three members. Two thirds are elected by the general meeting and one third is elected by employees of the company if the company has, at the time of the elections, more than 50 employees in full-time employment".

In any event, the "right" to participate in the elections of the employees' representative to the supervisory board of the company or to stand for election as such a representative cannot be described as a right which is "civil" in nature. The Commission observes that even though this "right" derives from the status of the employee which is based on a contract of employment, a possible election to the supervisory organ does not affect this status in any way. Moreover, even assuming that the representative of the employees sitting on the supervisory board defends the interests of the employees including questions of salaries or working conditions, the Commission considers that such a general task is not sufficiently decisive for his financial and social situation as an employee.

The Commission considers, therefore, that the proceedings before the Brno Municipal Court and the Brno Regional Court did not involve a dispute ("contestation") about one of the applicant's civil rights. It concludes that Article 6 para. 1 (Art. 6-1) of the Convention is therefore not applicable in the present case.

It follows that this part of the application must be rejected as incompatible ratione materiae with the provisions of 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

J.-C. GEUS
President
of the Second Chamber