AS TO THE ADMISSIBILITY OF

Application No. 28407/95
by Dusan OLLE
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 23 January 1996, the following members being present:

Mr. H. DANELIUS, President
Mrs. G.H. THUNE
MM. G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN

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 7 May 1995 by Mr. Dusan OLLE against the Slovak Republic and registered on 1 September 1995 under file No. 28407/95;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Slovak national born in 1953. He is disabled and resides in Bratislava.

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

On 11 June 1992 the applicant's marriage, out of which a son was born in 1985, was dissolved by decision of the Bratislava 3 District Court (Obvodny súd). The court awarded custody of the child to the mother. Under the visiting arrangements ordered by the court the applicant was entitled to meet his son for 10 hours every fortnight.

On 14 October 1993 the Bratislava 3 District Court extended the visiting arrangements at the applicant's request. The applicant was allowed to meet his son from 4 to 6 p.m. every second Wednesday and between Saturday 8 a.m. and Sunday 5 p.m. every fortnight. In addition, he was permitted to stay with the son for part of the summer holidays and also for part of the spring, Christmas and Easter holidays.

On 14 March 1994 the applicant lodged a claim for further extension of his visiting rights. He requested, inter alia, that he should be entitled to meet his son as from Friday 5 p.m. (instead of Saturday morning) every fortnight and for 30 days (instead of 15 days)

during the summer holidays.

The applicant maintained that his son does not prepare for school on Friday afternoons and declared that he was ready to help the son with home-work if necessary. He submitted evidence that he was able to bear the costs of longer stay of his son with him in the summer. The applicant also asked for reduction of the maintenance he was required to pay.

The claim was dismissed by the Bratislava 3 District Court on 13 May 1994. Although pursuant to Section 28 of the Family Act (Zákon o rodine) the court could modify the existing parental rights, it found no new circumstances justifying it. In the court's view, the applicant's visiting rights granted on 14 October 1993 were sufficient and appropriate for both the son and the father. The court found no reason to modify the maintenance.

In particular, the court noted that the regular contacts had strengthened the child's emotional links to his father. The son suffered from minor cerebral dysfunction which influenced his behaviour at school. He stayed at school until 4 p.m. except on Fridays when his mother, who had arranged working hours for that purpose, fetched him at noon. In the afternoons the son usually did home-work and played with friends.

Furthermore, the court held that it was impossible to tell how the son's two weeks' stay during the summer holidays (which was to take place for the first time) would turn out and what would be its financial impact on the applicant.

The applicant was requested by the District Court to submit a psychiatrist's certificate. It appears that the mother did not make any submission to the court as regards the applicant's request for extension of his visiting rights. The social authority left the decision with the court.

On 22 August 1994 the applicant lodged an appeal with the Bratislava City Court (Mestsky súd). He showed that he was able to meet the expense of having his son stay with him during the summer holidays. He further claimed that the first instance court had no reason to express doubts as to the way in which the stay would take place since the son had stayed with him for six days during the Christmas holidays.

The applicant also alleged that it was more appropriate for the son to come to him every fortnight on Friday afternoons since on Saturdays they participated in organised walking-tours which started early in the morning and which were in the interest of the child.

On 9 November 1994 the Bratislava City Court extended the applicant's right to see his son during the Easter holidays by one day and upheld the remainder of the first instance decision. It shared the opinion of the first instance court that the existing right of access was sufficient for maintaining good contacts between the applicant and his son, and that it was proportionate to the age and health of the child. The court underlined that the principal interest of the applicant's son was to meet school obligations.

COMPLAINTS

The applicant alleges a violation of Article 8 of the Convention in that the courts interfered with his private and family life and in that his right of access is restricted more than necessary. Under Article 5 of Protocol No. 7 the applicant complains that the restriction of his right to access benefits his former wife rather than his son.

The applicant complains under Article 3 of the Convention that he was exposed to degrading treatment in that the courts refused to extend his visiting rights and in that he was requested to submit a psychiatric expert's opinion in the course of the proceedings.

The applicant further complains that he did not have an effective remedy and that he has been discriminated against as regards the contacts with his son. In his view his parental rights are restricted to a greater extent than it is necessary in the interests of the son. He alleges a violation of Articles 13, 14 and 17 of the Convention in this respect.

Finally, the applicant also alleges a violation of several Articles of the Convention on the Rights of the Child.

THE LAW

1. The applicant complains about the refusal to extend the right of access to his son. He alleges a violation of Article 8 (Art. 8) of the Convention and of Article 5 of Protocol No. 7 (P7-5) which provide, so far as relevant, as follows:

Article 8 (Art. 8) of the Convention

> "1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others."

Protocol No. 7, Article 5 (P7-5)

> "Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children."

Assuming that the decisions complained of constituted an interference with the applicant's family life, the Commission has to examine whether this interference was compatible with the requirements of Article 8 para. 2 (Art. 8-2) of the Convention.

The courts found no new circumstances justifying a further extension of the applicant's access to his son as required by Section 28 of the Family Act. In their view, the existing visiting rights were proportionate to the age and health of the child. The decisions at issue were, therefore, in accordance with Slovak law and pursued a legitimate aim, namely the son's well-being.

The courts at both instances carefully considered the applicant's request for his parental rights to be extended. They found, for the reasons set out in the judgments, that the existing visiting arrangements were appropriate for both the son and his father and sufficient for maintaining good contacts between them.

The Commission further recalls that the Bratislava 3 District Court's judgment of 14 October 1993 allowed the applicant to meet his son from 4 to 6 p.m. every second Wednesday and between Saturday 8 a.m. and Sunday 5 p.m. every fortnight. He was also permitted to stay with the son for part of the summer holidays and also for part of the spring, Christmas and Easter holidays. In addition, in the course of the proceedings at issue the Bratislava City Court extended the applicant's right to see his son during the Easter holidays by one day.

In these circumstances, the Commission considers that insofar as there was an interference with the applicant's right under Article 8 (Art. 8) of the Convention, that interference was not disproportionate.

For similar reasons the Commission considers that the decisions at issue did not violate Article 5 of Protocol No. 7 (P7-5).

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 Article 3 (Art. 3) of the Convention.

The Commission has found above that the decisions complained of were compatible with the requirements of Article 8 (Art. 8) of the Convention and of Article 5 of Protocol No. 7 (P7-5). These decisions cannot be regarded as constituting inhuman or degrading treatment under Article 3 (Art. 3) of the Convention (cf., mutatis mutandis, Hendriks v. the Netherlands, Comm. Report 8.3.82, D.R. 29 p. 20, para. 130). Nor can the request that the applicant should submit a certificate on his mental status be considered to violate Article 3 (Art. 3) 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.

3. The applicant also alleges a violation of Article 13 (Art. 13) of the Convention. However, the guarantees of Article 13 apply only to a grievance which can be regarded as "arguable" (cf. Eur. Court H.R., Powell and Rayner judgment of 21 February 1990, Series A no. 172, p. 14, para. 31, with further references). In the present case the Commission has rejected the substantive claims as disclosing no appearance of a violation of the Convention or of its Protocols. Accordingly, they cannot be regarded as "arguable".

It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

4. The applicant further alleges a violation of Articles 14 and 17 (Art. 14, 17) of the Convention.

The Commission has examined these complaints but finds that insofar as they have been substantiated and are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

It follows that this part of the application is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

5. Finally, the applicant alleges a violation of several Articles of the Convention on the Rights of the Child. However, pursuant to Article 25 (Art. 25) of the Convention the Commission may only receive complaints of a violation of the rights set forth in the European Convention on Human Rights.

It follows that this part of the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber	President of the Second Chamber
(M.-T. SCHOEPFER)	(H. DANELIUS)