AS TO THE ADMISSIBILITY OF

Application No. 30904/96
by Ján PECHANEC
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 22 October 1997, the following members being present:

Mrs G.H. THUNE, President
MM J.-C. GEUS
G. JÖRUNDSSON
A. GÖZÜBÜYÜK
J.-C. SOYER
H. DANELIUS
F. MARTINEZ
M.A. NOWICKI
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 30 October 1995 by Ján PECHANEC against the Slovak Republic and registered on 1 April 1996 under file No. 30904/96;

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 1914. He is retired and resides in Staten Island, USA. Before the Commission the applicant is represented by H. Bognerová, a lawyer practising in Trencín.

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

A. Particular circumstances of the case

On 27 July 1954 the Trencín People's Court (Ludovy súd) found that the applicant had concealed and unlawfully dealt with precious metals, watches and jewellery. The applicant was convicted of three offences and sentenced to two years' imprisonment. Subsidiarily, the court ordered confiscation of the applicant's property and imposed a fine on him. The applicant's movable and real property was confiscated by the Czechoslovak State.

On 23 November 1990 the Trencín District Court (Okresny súd) quashed, pursuant to Section 2 of Law No. 119/1990 on Judicial Rehabilitation (Zákon o súdnej rehabilitácii - see "The relevant

domestic law" below) the applicant's conviction of two of the aforesaid offences and discontinued the proceedings against the applicant in this respect. At the same time the District Court quashed, ex tunc, all other decisions by which additional penalties had been imposed on the applicant.

As to the third offence of which the applicant had been convicted in 1954, the District Court imposed a year's prison sentence on the applicant. The court noted that the applicant had served that sentence already and did not consider it appropriate to impose any accessory penalty in this respect.

The General Prosecutor considered that the conviction of the applicant, in 1954, of the third offence had been unlawful and lodged a complaint in the interest of the law (staznost pre porusenie zákona) on the applicant's behalf.

On 10 June 1992 the Supreme Court (Najvyssí súd) found that the conviction of the applicant of the third offence had been unlawful and quashed the corresponding part of the People's Court's judgment of 1954 and all subsequent decisions relating to this issue. The Supreme Court further found that the offence in question fell under the presidential amnesty of 1 January 1990 and discontinued the proceedings concerning this count.

B. The relevant domestic law

The purpose of Law No. 119/1990 on Judicial Rehabilitation of 23 April 1990 (in force from 1 July 1990 and amended on 30 January 1991) is to authorise the quashing of convictions for offences where such convictions are incompatible with the principles of a democratic society and to ensure the social and economic rehabilitation of the persons so convicted.

Section 2 of Law No. 119/1990 sets out, inter alia, the cases in which convictions pronounced between 25 February 1948 and 1 January 1990 shall be quashed with effect from the date on which they were pronounced, together with any consequential decisions.

Section 23 governs compensation for damage to which persons rehabilitated under Law No. 119/1990 are entitled. Para. 1 of Section 23 provides that the persons concerned shall be compensated, inter alia, for loss of earnings due to their detention and imprisonment, for the costs incurred by them in connection with the criminal proceedings against them, their detention and imprisonment, for the lawyer's fees in the original criminal proceedings against them as well as for the pecuniary penalties paid by such persons.

Para. 2 of Section 23 of Law No. 119/1990 provides as follows:

> "A special law shall define the conditions for submitting claims relating to quashed confiscation decisions ... as well as the manner of redress and the scope of such claims."

The issues mentioned in Section 23 para. 2 of Law No. 119/1990 are governed by the following provisions of Law No. 87/1991 on Extrajudicial Rehabilitation (Zákon o mimosúdnych rehabilitáciách) of 21 February 1991 (in force from 1 April 1991):

Section 3

> "1. Any natural person who is a citizen of the Czech and Slovak Federal Republic permanently resident within its territory is entitled to claim restitution of any of his or her property which passed into state ownership in the circumstances referred to in Section 6."

Section 5

"1. A person who is under the obligation to restore property shall do so upon the receipt of a written request submitted by the person entitled to restitution...

2. Any request for restitution shall be made within the period of six months from the date on which this Law enters into force, failing which the relevant claim shall lapse."
...

Section 19

"1. Any person rehabilitated under the provisions of Law No. 119/1990 shall be entitled to restitution provided that he or she fulfils the conditions laid down in Section 3 para. 1..."

COMPLAINT

The applicant complains that because of the requirement of permanent residence laid down in Section 19 para. 1 in conjunction with Section 3 para. 1 of Law No. 87/1991 on Extrajudicial Rehabilitation he is prevented from recovering his property which had been confiscated by virtue of the judgment of 27 July 1954 or obtaining compensation in lieu thereof. He alleges that the aforesaid requirement interferes with his rights under Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7.

THE LAW

The applicant complains that he cannot obtain restitution of his property or compensation in lieu thereof. He alleges that there is an incompatibility between, on the one hand, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7 (P1-1, P7-3) and, on the other hand, Section 19 para. 1 in conjunction with Section 3 para. 1 of Law No. 87/1991 on Extrajudicial Rehabilitation under which permanent residence in the Slovak Republic (and until 31 December 1992 in the former Czech and Slovak Federal Republic) is a condition for eligibility to claim restitution of confiscated property.

Article 1 of Protocol No. 1 (P1-1) 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."

Article 3 of Protocol No. 7 (P7-3) provides a as follows:

"When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."

The Commission recalls that it can examine applications only to

the extent that these 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. 78, 79).

The Commission notes that the applicant was deprived of his property in 1954, i.e. long before the aforementioned date. Therefore, the Commission lacks temporal jurisdiction to examine the circumstances of the confiscation of the applicant's property or the possible effects produced by it in 1990, when the applicant benefited from the judicial rehabilitation in respect of the confiscation decision. 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 cited above, p. 79).

To the extent that the applicant alleges that Section 19 para. 1 in conjunction with Section 3 para. 1 of Law No. 87/1991 prevented him from recovering his property or receiving compensation for its confiscation, the Commission notes that on 23 November 1990 the Trencín District Court quashed, ex tunc, the confiscation decision of 1954 concerning his property. However, despite his judicial rehabilitation in this respect, the applicant's former right of ownership over the confiscated possessions was still not capable of being effectively exercised since Section 23 para. 2 of Law No. 119/1990 expressly reserved the detailed provisions regarding redress for later legislation.

Such provisions were laid down in Law No. 87/1991 and they limited those who could claim restitution or damages for confiscated property to citizens of the then Czech and Slovak Federal Republic permanently residing on the territory of that State. The Commission notes that the applicant did not fulfil the aforesaid permanent residence condition. For this reason, he was excluded, from the very moment of the entry into force of Law No. 87/1991, from obtaining either restitution of his property or compensation in lieu thereof.

The Commission notes that Law No. 87/1991 entered into force on 1 April 1991 and the six-months period within which those eligible could claim restitution of their property expired on 30 September 1991. Thus, the relevant facts of the applicant's case are prior to 18 March 1992 whereas, as stated above, the Commission can examine applications against the Slovak Republic only if these concern facts which are subsequent to this date.

It follows that the application is incompatible ratione temporis with 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
Secretary
to the Second Chamber

G.H. THUNE
President
of the Second Chamber