AS TO THE ADMISSIBILITY OF

Application No. 34195/96
by PATENTNA PISARNA
against Slovenia

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
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 20 November 1996 by PATENTNA PISARNA against Slovenia and registered on 16 December 1996 under file No. 34195/96;

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 company, registered in Ljubljana. It is represented by its director Vlado Potrc.

A. Particular circumstances of the case

On 23 June 1992 the applicant company purchased from another company part of a building in Ljubljana for offices. The offices are in a new extension of an old building, which was nationalised in 1948. A claim for restitution of the whole building was lodged under the Denationalisation Act 1991 by the former owner.

The prosecutor filed an action against the purchaser (the applicant) and the vendor, claiming that the purchase should be annuled as the property was subject to denationalisation. The first instance court in Ljubljana rejected the request on 29 June 1993. It found that no legal grounds existed for prohibiting disposal of the building, as restitution in kind would in any event be impossible, because the majority of the building was used for cultural purposes.

The prosecutor`s appeal against the first instance judgment was dismissed on 24 January 1994.

The state prosecutor lodged an appeal for safeguarding the law. The Supreme Court of the Republic of Slovenia on 18 May 1995 decided against the previous judgments and annulled the contract. The Court found that the first and second instance courts erred in law as they failed to take into consideration the provision of the Denationalisation Act which provides for partial restitution if full restitution is not possible. The decision was taken without a hearing, in private, but in the presence of the state prosecutor.

The applicant lodged a constitutional complaint before the Constitutional Court alleging violations of constitutional rights to equality before the law (Article 14 of the Constitution), to the exercise of and limitations on rights (Article 15 of the Constitution) and to own property (Article 33 of the Constitution). The applicant referred to equality before the law in the meaning of equal consideration of equal facts and the application of the appropriate legal norm in a case. The applicant then alleged that the Supreme Court decision annuling the purchase of offices deprived it of the constitutional right to own property.

On 24 April 1996 the Constitutional Court dismissed the complaint on the ground that it disclosed no violation of the constitutional rights. The applicant received its decision on 1 June 1996.

B. Relevant domestic law

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 22 of the Constitution reads as follows:

> "Each person shall be guaranteed equality in the protection of his/her rights in proceedings before the court, as well as before any state body, local community body or public corporation which determines the rights, obligations or legal entitlements of such person."

COMPLAINTS

The applicant company alleges violations of Article 6 para. 1 of the Convention.

It complains about the judgment of the Supreme Court as being unjust from the point of view of its contents. It also claims that the law was not correctly applied by the Supreme Court which resulted in annulling the purchase.

The applicant company also alleges inequality of arms in that it was not invited to the session of the Supreme Court while the state prosecutor was present. Although both parties were asked to submit their arguments in writing, only the prosecutor allegedly had a possibility to orally set out the arguments.

THE LAW

1. The applicant complains about the Supreme Court judgment in general as being in itself a violation of Article 6 para. 1 (Art. 6-1) of the Convention.

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 an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention. The Commission refers, on this point, to its constant case-law (see eg. No. 458/59, Dec. 29.3.60, Yearbook 3, pp. 222, 236; No. 5258/71, Dec. 8.2.73, Collection 43, pp. 71, 77; No. 7987/77, Dec. 13.12.79, D.R. 18, pp. 31, 45; No. 19890/92, Dec. 3.5.93, D.R. 74, p. 234).

It follows that this part of the applicant`s complaints is manifestly ill-founded and must be rejected within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also alleges inequality of arms under Article 6 para. 1 (Art. 6-1) of the Convention in the proceedings before the Supreme Court. He complains in particular about not being invited to the session of the Supreme Court while the other party attended the session.

However, the Commission is not required to decide whether or not the facts alleged by the applicant company disclose any appearance of a violation of this provision as, under Article 26 (Art. 26), it may only deal with the matter after all domestic remedies have been exhausted according to the generally recognised rules of international law.

The mere fact that the applicant company has submitted its case to the Constitutional Court does not in itself constitute compliance with this rule. According to the Commission`s constant case-law the applicant must have raised during the domestic proceedings concerned, at least in substance, the complaint he is arguing before the Commission (see No. 10307/83, Dec. 6. 3. 84, D.R. 37, pp. 113, 120; No. 15669.89, Dec. 28. 6. 93, D.R. 75, p. 39).

In this respect, the Commission notes that the applicant did not raise, either in form or in substance, in the proceedings before the Constitutional Court, the complaint which the company now makes before the Commission. In particular, although the complaints before the Constitutional Court referred to the right to equality before the law (Article 14 of the Constitution), they only referred to the proper consideration of the facts and application of the law. There is no reference in the constitutional complaint to the inequality alleged to flow from the presence of the prosecutor in the proceedings before the Supreme Court, nor a reference to either Article 22 of the Constitution (equal protection of rights) or to Article 6 para. 1 (Art. 6-1) of the Convention, which forms part of the Slovenian legal order.

Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising his complaint in the proceedings referred to.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and this part of the application must therefore be rejected for non-exhaustion within the meaning of Article 27 para. 3 (Art. 27-3) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber