AS TO THE ADMISSIBILITY OF

Application No. 36939/97
by Andrej ROZMAN
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 21 October 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. ŠVÁBY
P. LORENZEN
E. BIELIŪNAS
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 13 June 1997 by Andrej ROZMAN against the Slovak Republic and registered on 18 July 1997 under file No. 36939/97;

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 Slovak national born in 1939. He is retired and resides in Košice. Before the Commission the applicant is represented by Mr. J. Sotolář, a lawyer practising in Košice.

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

A. The particular circumstances of the case

The applicant sought restitution of real property which had been taken away from his late parents. As the authorities possessing the property refused to restore it, the applicant lodged four separate actions with the Košice City Court (Mestský súd).

The actions were joined and examined by the Košice 2 District Court in one set of proceedings. On 25 April 1995 the aforesaid court dismissed the applicant's claims on the ground that the applicant had failed to show that he was entitled to have the real property in question restored to him.

In its judgment the District Court noted that the applicant had originally sought restitution of the property pursuant to the relevant provisions of Act No. 403/1990 (see "Relevant domestic law" below) and that, at a later stage of the proceedings, he had also invoked Act No. 87/1991.

The District Court further noted that the applicant had submitted copies of two different sets of entries in the land register concerning the real property in question.

The first set of entries had been made on 8 June 1973 and according to them the property had been nationalised pursuant to the Presidential Decree No. 100/1945.

The second set of entries had been made on 17 April 1991. The truthfulness of two of the entries had been confirmed by an officer of the Košice 1 District Office on 30 November 1994. They indicated that the property had been entered in the land register as State ownership following a decision of the financial department of the Košice National Committee of 4 July 1959 in accordance with the relevant provisions of Regulation No. 15/1959.

The District Court examined the evidence before it and found that the applicant had failed to comply with the obligation to show the reasons for the expropriation of his parents' property. In the court's view, it was not possible to establish from the documents available whether the applicant was entitled to claim the restitution. The District Court noted that the original entries in the land register had been destroyed and that no other documents which would indicate with sufficient certainty the ground for expropriation of the property in question were available.

The District Court concluded that the applicant had neither submitted documents referred to in Section 6 of Act No. 403/1990, nor had he shown that his claim fell under Act No. 87/1991.

The applicant appealed. He claimed that a witness had confirmed the truthfulness of the entries in the land registry established in 1991. In the applicant's view, the real property in question had been first nationalised and later, by a mistake, a new decision had been taken on its transfer to State ownership pursuant to Regulation No. 15/1959. He therefore considered that there was no contradiction between the two sets of entries concerning the real property in question.

The applicant further alleged, with reference to Section 6 of Act No. 403/1990, that the land registry entries submitted by him constituted sufficient proof that he was entitled to claim restitution of the property.

On 8 November 1996 the Košice Regional Court (Krajský súd) upheld the first instance judgment. It shared the District Court's view that the onus of the proof lay on the applicant, and that the latter had failed to show with sufficient certainty the circumstances under which the property in question had been transferred to State ownership. The Regional Court further noted that the applicant had not substantiated his claims for restitution under Act No. 87/1991.

In its judgment the Regional Court held it for impossible to take further evidence on its own initiative because the original entries in the land register as well as the other relevant documents were not available. As to the entries made in 1991, the Regional Court noted that an official whose signature they bore had denied having signed them and that there were remarks on them the purpose of which was unknown to the authorities responsible for keeping the land register.

Finally, the Regional Court noted that the applicant had not shown that he had submitted his claims to the competent authorities within the time-limits laid down in both Act No. 403/1990 and Act No. 87/1991.

The Košice Regional Court's judgment was served on the applicant's lawyer on 16 December 1996.

B. Relevant domestic law

Act No. 403/1990 of 2 October 1990, as amended, had for its purpose to mitigate the effects of certain infringements of property rights resulting, inter alia, from deprivation of property pursuant to Regulation No. 15/1959.

Section 6 of Act No. 403/1990 specified the documents to be submitted in support of a claim for restitution. It provided that when the other relevant documents enumerated in it were not available, they could be replaced by an entry in the land register or any

other reliable document indicating the name of the person deprived of the property and the legal ground for such a deprivation.

COMPLAINTS

The applicant complains that the dismissal of his claims for restitution of his parents' property was arbitrary and infringed his right to enjoy peacefully his property. He alleges a violation of Article 1 of Protocol No. 1.

THE LAW

The applicant complains that the dismissal of his claims for restitution of his parents' property was arbitrary and infringed his right to enjoy peacefully his property. He alleges a violation of Article 1 of Protocol No. 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 notes that both the Košice 2 District Court and the Košice Regional Court examined the applicant's arguments but found, for reasons expressly set out in their decisions, that the applicant had failed to comply with his obligation to show with sufficient certainty the circumstances under which the property in question had been transferred to State ownership. They held it for impossible, in the particular circumstances of the case, to take further evidence in the case on their own initiative. In this respect, the Commission recalls that its power to review compliance with domestic law is limited, and that it is mainly for domestic courts to rule on such issues (see. e.g., Eur. Court HR, Håkansson and Sturesson judgment of 21 February 1990, Series A no. 171-A, p. 16, para. 47).

The Commission further recalls that Article 1 of Protocol No. 1 applies only to existing possessions and does not guarantee a right to acquire property (see, e.g., Eur. Court HR, Van der Mussele v. Belgium judgment of 23 November 1983, Series A no. 70, p. 23, para. 48; No. 25461/94, Seidlová v. the Slovak Republic, Dec. 6.9.95, unpublished). Anyone who complains of an interference with one of his or her property rights must show that such a right existed (see No. 23131/93, Dec. 4.3.96, D.R. 85-B, pp. 65, 80).

In the present case the courts dealing with the applicant's case established no ground entitling the applicant to claim restitution of the property in question under the

Slovak legal order, and the Commission has before it no indication that would indicate that this finding was arbitrary or incompatible with the relevant provisions of Slovak law.

In these circumstances, the Commission considers that there has been no interference with the applicant's rights guaranteed by Article 1 of Protocol No. 1 as interpreted by the Convention organs (see Eur. Court HR, Lithgow and Others judgment of 8 July 1986, Series A no. 102, p. 46, para. 106; No. 30143/96, Estate of Eduard IV Haas v. the Czech Republic, Dec. 15.5.96, pp. 5, 6, unpublished).

It follows that the application is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 of the Convention.

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