AS TO THE ADMISSIBILITY OF

Application No. 31088/96
by Dagmar RYBÁKOVÁ
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 4 September 1996, 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
L. LOUCAIDES
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY
P. LORENZEN
E. BIELIUNAS
E.A. ALKEMA
M. VILA AMIGÓ

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 22 December 1995 by Ms. Dagmar Rybáková against the Slovak Republic and registered on 22 April 1996 under file No. 31088/96;

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 Czech citizen born in 1946. She is an official and resides in Prague. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The particular circumstances of the case

In 1972 the applicant and three other persons were obliged to sell a house in Bratislava to the Slovak Institute for the Preservation of Monuments and the Protection of Nature (Slovensky ústav pamiatkovej starostlivosti a ochrany prírody). By a letter of 19 November 1990 the applicant claimed its restitution from the Ministry of Culture. She pointed out that the house was owned by the Foreign Relations Centre (Stredisko zahranicnych stykov) of the Ministry of Culture and inquired how the claim should be lodged. On 30 November 1990 the Ministry of Culture informed her that she should contact directly the Foreign Relations Centre.

On 18 January 1991 the Foreign Relations Centre confirmed that it possessed the house at issue. It informed the applicant about prerequisite conditions for restitution of property pursuant to Act No. 403/1990, as amended. The applicant was requested to specify, with a

view to verifying whether her claim fell under Act No. 403/1990, the legal title under which her house had been acquired by the State. On 18 January 1991 and on 20 April 1991 the applicant requested the Bratislava District Office (Okresny úrad) to submit the aforesaid information to her.

On 1 April 1991 the Foreign Relations Centre merged with the Administration of Cultural Establishments (Správa kultúrnych zariadení) of the Ministry of Culture. The latter became the owner of the Centre's property including the house claimed by the applicant.

The Bratislava District Office replied to the applicant on 5 February and on 28 June 1991. At the latter date she was informed that "since 1 January 1980 the house had been administered by the Administration of Cultural Establishments (the Foreign Relations Centre) of the Ministry of Culture" which had acquired it from the Slovak Institute for the Preservation of Monuments and the Protection of Nature. The applicant was further advised that information as to how the aforesaid institute had acquired the house was still not available.

The District Office also held that in any event the applicant's claim did not fall under Act No. 403/1990, as amended. The applicant was informed that the District Office was not a person liable to restore the house pursuant to Act No. 87/1991 ("the Act" - see "The relevant domestic law" below), and that "after receipt of a negative reply" from the institute mentioned above the District Office would transfer her claim to the Ministry of Culture.

The District Office transmitted the documents concerning the applicant's claim to the Ministry of Culture on 16 September 1991. The Ministry sent the file to the Administration of Cultural Establishments on 26 September 1991. The Ministry's letter with the file was delivered to the Administration of Cultural Establishments on 2 October 1991.

On 12 December 1991 the Administration of Cultural Establishments informed the applicant and two other claimants that their claim did not fall under the Act.

The applicant brought her claim before the Bratislava I District Court (Obvodny súd). She claimed that she met the requirements of Section 6 para. 1 (g) of the Act.

The District Court dismissed the applicant's claim on 23 June 1994. It found that pursuant to Section 5 para. 2 of the Act the applicant had been under an obligation to claim the restitution of her house in writing within six months from the entry into force of the Act, i.e. between 1 April and 1 October 1991. The District Court further established that the person liable to restore the house within the meaning of Section 4 para. 1 of the Act was the Administration of Cultural Establishments. However, the applicant had failed to lodge her claim to the latter within the time-limit laid down in the Act.

As to the claim which had been transmitted to the Administration of Cultural Establishments through the intermediary of the Bratislava District Office and the Ministry of Culture, the District Court found that it had been delivered on 2 October 1991, i.e. after the expiry of the extinctive time-limit laid down in Section 5 para. 2 of the Act. The District Court further held that the applicant did not qualify for restitution of the house pursuant to Section 6 para. 1 (g) of the Act.

The applicant appealed. She alleged, inter alia, that she had met the formal requirements of the Act as her claim had been transmitted to the Ministry of Culture in time, and that she was entitled to have the house restored pursuant to Section 6 para. 1 (g) of the Act. On 20 October 1994 the Bratislava City Court (Mestsky súd)

upheld the first instance decision. It found that the applicant had lodged her claim out of time and considered it, therefore, irrelevant whether she met the requirements laid down in Section 6 para. 1 (g) of the Act. The judgment stated that the applicant was entitled to challenge it by means of an appeal on points of law (dovolanie).

On 23 June 1995 the Supreme Court (Najvyssí súd) dismissed the applicant's appeal on points of law. It recalled that in accordance with Section 5 para. 2 of the Act claims for restitution of property had had to be lodged with the persons mentioned in Section 4 of the Act from 1 April to 1 October 1991, and that any claim delivered after the latter date was barred.

The Supreme Court held that in the applicant's case the legal persons within the meaning of Section 4 para. 1 of the Act (i.e. from which the applicant was entitled to claim the restitution) were both the Foreign Relations Centre and the Administration of Cultural Establishments of the Ministry of Culture as they had merged on the same day when the Act had entered into force. It found that on 30 November 1990 the applicant had been informed by the Ministry of Culture that the house at issue was possessed by the Foreign Relations Centre, and that on 18 January 1991 the latter had confirmed this information to her. The Supreme Court therefore did not accept the applicant's argument that it had been impossible for her to find out by whom the house had been owned during the relevant period.

In the Supreme Court's view, it was irrelevant that the applicant's claim had been transmitted to the Ministry of Culture within the time-limit set by Section 5 para. 2 of the Act since the Ministry was a distinct legal person and had not possessed the house at issue. The claims which the applicant had lodged prior to the enactment and entry into force of the Act could not be taken into consideration under the Act, either. The Supreme Court concluded that the applicant's right to claim the restitution had lapsed, and considered it irrelevant whether or not she met the requirements laid down in Section 6 para. 1 (g) of the Act.

In the proceedings before the Slovak courts the applicant was represented by a lawyer.

B. The relevant domestic law

Act No. 87/1991 on Extrajudicial Rehabilitation (Zákon o mimosúdnych rehabilitáciách) was adopted on 21 February 1991 and entered into force on 1 April 1991.

Pursuant to Section 4 para. 1 of the Act the State or legal persons which possessed the property covered by the Act on 1 April 1991 were liable to restore it.

In accordance with Section 5 para. 2 of the Act claims for restitution were to be lodged with the persons liable to restore the property within six months from the Act's entry into force. Any claims lodged after the expiry of the aforesaid time-limit were barred.

Section 6 para. 1 (g) of the Act provided for restitution of property purchased by the State if the vendor had been obliged to conclude the contract under conditions that were manifestly disadvantageous.

COMPLAINTS

The applicant complains under Article 6 of the Convention that the courts' decision to dismiss her claim is arbitrary. In particular, she complains that the courts did not take into account that it was impossible for her to find out, within the six months' time-limit set for lodging her claim, by whom the house was owned.

She further alleges a violation of Article 1 of Protocol No. 1 in that she had been forced to sell her house against her will, and that the Slovak authorities refused to restore it to her.

Finally, the applicant complains that she was discriminated against on the ground of her nationality. She alleges a violation of Article 14 of the Convention.

THE LAW

1. The applicant complains that the courts decided arbitrarily. In particular, she alleges that they did not take into consideration that it was impossible for her to find out by whom the house was owned during the relevant period. She alleges a violation of Article 6 (Art. 6) of the Convention which provides, so far as relevant, as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law."

The Commission recalls that it is not called upon to decide whether or not the domestic courts have correctly assessed the evidence before them or 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 (cf., mutatis mutandis, No. 21283/93, Dec. 5.4.94, D.R. 77-A pp. 81, 88, with further references). The Commission cannot review, in principle, the interpretation and application of national law (cf. No. 10153/82, Dec. 13.10.86, D.R. 49 p. 67).

In the present case the applicant's claim was dealt with by courts at three levels. The applicant was represented by a lawyer. The courts examined the complaints raised by the applicant and found, for reasons expressly stated in their judgments, that she had lodged her claim out of time. The Bratislava City Court and the Supreme Court considered it, therefore, irrelevant whether the applicant met the requirements of Section 6 para. 1 (g) of the Act.

In particular, the Supreme Court held that the applicant could have lodged her claim either with the Administration of Cultural Establishments or with the Foreign Relations Centre of the Ministry of Culture. It found that on 30 November 1990 the applicant had been informed by the Ministry of Culture that the house at issue was possessed by the Foreign Relations Centre, and that on 18 January 1991 the latter had confirmed this information to her. The Supreme Court therefore did not accept the applicant's argument that it had been impossible for her to find out by whom the house had been owned during the relevant period. In the Commission's view this decision is not arbitrary.

In these circumstances, the Commission considers that the proceedings concerning the applicant's case were not in breach of the requirements laid down in Article 6 para. 1 (Art. 6-1) of the Convention.

If 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 1 of Protocol No. 1 (P1-1) which provides, so far as relevant, 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."

a) To the extent that the applicant complains that she was forced to sell her house against her will, the Commission recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party.

However, in the present case the alleged interference occurred in 1972, i.e. at a period prior to both 18 March 1992 which is the date of ratification of the Convention by the former Czech and Slovak Federal Republic, and 1 January 1993 which is the date of the entry into force of the Convention with respect to the Slovak Republic.

The Commission further recalls its constant case-law according to which deprivation of ownership or another right in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of right" (cf. No. 7742/76, Dec. 4.7.78, D.R. 14 p. 146; No. 23131/93, Brezny v. the Slovak Republic, Dec. 4.3.96, to be published in D.R. 85-A).

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

b) The applicant also complains about the refusal to restore her property.

The Commission does not consider it necessary to examine whether the applicant's claim amounted to a possession within the meaning of Article 1 of Protocol No. 1 (P1-1) since this part of the application is in any event inadmissible for the following reasons.

Pursuant to Article 26 (Art. 26) of the Convention the Commission may only deal with the matter after all domestic remedies have been exhausted. In order to exhaust domestic remedies, the person concerned must pursue those remedies which are available under national law, as interpreted and applied by the competent authorities (cf., mutatis mutandis, No. 9022/80, Dec. 13.7.83, D.R. 33 p. 21).

In the present case the courts found that the applicant had lodged her claim out of time. For this reason the Bratislava City Court and the Supreme Court did not consider it necessary to examine its merits. The Commission has found above that this decision is not arbitrary.

Thus, the applicant has failed to lodge her claim in accordance with the requirements laid down in Slovak law. She has not, therefore, complied with the requirement as to the exhaustion of domestic remedies laid down in Article 26 (Art. 26) of the Convention.

It follows that this part of the application has to be rejected pursuant to Article 27 para. 3 (Art. 27-3) of the Convention.

3. Finally, the applicant complains that she was discriminated against because of her nationality. She alleges a violation of Article 14 (Art. 14) of the Convention.

The Commission finds, insofar as the matter complained of has been substantiated and is within its competence, that in the present case there is no appearance of discrimination contrary to Article 14 (Art. 14) 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.

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