AS TO THE ADMISSIBILITY OF

Application No. 26345/95
by Miroslav SPADRNA
against the Czech Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 29 November 1995, 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 12 October 1994 by Miroslav SPADRNA against the Czech Republic and registered on 27 January 1995 under file No. 26345/95;

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, a Czech citizen born in 1967, resides in Prague. He is a workman. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Particular circumstances of the case

On 6 April 1990 the applicant was dismissed from his employment.

On 1 June 1990 the applicant brought an action against his employer to challenge his dismissal and for damages for loss of salary while he was unemployed.

On 6 March 1992 the Prague 1 District Court (Obvodní soud pro Prahu 1) declared the dismissal null and void. On 6 November 1992 this court decided that the employer was only obliged to pay damages for the period of six months, as according to Article 61 para. 2 of the Labour Code "in cases where the total period for which individuals are entitled to receive an indemnity exceeds six months, the court may, upon request of an employer, decide to reduce the indemnity for the period exceeding six months or may decide not to grant it at all".

The applicant appealed, claiming that Article 61 para. 2 of the Labour Code is discriminatory and contradictory. He referred to the Supreme Court's case-law according to which a person is not obliged to

take up any job during the period of the proceedings relating to the validity of dismissal (cf. Decisions of the Supreme Court Nos. 9/77, 10/77 and 47/77, Collection of Legal Decisions and Opinions).

On 21 October 1993 the Prague Court of Appeal (Mestsky soud v Praze) partially confirmed and partially quashed the judgment of the Prague 1 District Court, which gave a new judgment on 27 September 1994.

In the meantime, on 27 January 1994, the applicant had lodged a constitutional appeal alleging discrimination under Article 61 para. 2 of the Labour Code: he claimed that he was not in the same position as his employer because the indemnity he was entitled to receive was limited by the period of six months. If an action were to be brought by an employer, the employer could claim compensation for actual damage as well as for lost profits. He further complained about the length of the proceedings before the courts.

The applicant also requested legal aid, stating that he did not have sufficient means to pay for legal representation.

By letter of 15 March 1994 (received by the applicant on 25 March 1994) the Constitutional Court (Ústavní soud) reminded the applicant that he was not represented by a lawyer and asked him to satisfy this condition by 30 March 1994. On 30 March 1994 the applicant sent a letter to the Constitutional Court by which he asked for extension of the time limit to 15 April 1994. He received a positive reply on 12 April 1994.

On 14 April 1994 the applicant sent his form of authority to the Constitutional Court. Another copy, signed by his lawyer and accompanied by additions to the applicant's appeal, was sent to the Court by his representative on 20 April 1994.

On 19 April 1994 the Constitutional Court refused the applicant's appeal. The Court considered that

> "... the matter concerns an appeal which does not satisfy the procedural conditions laid down in Law No. 182/1993 because, in particular, the appeal was not written by a lawyer, although the Court has expressly reminded the applicant about it, and the authority form lacks the applicant's representative's statement about accepting the representation and contains a substitution clause which is contrary to Article 31 para. 1 of the Law No. 182/1993."

B. Relevant domestic law and practice

Law No. 182/1993 on the Constitutional Court

Article 29

[Translation]

> "A party to proceedings ... shall only be represented before the Constitutional Court by a barrister or commercial lawyer or notary in the field ..."

[Original]

> "Úcastník ... se muze dát v rízení pred Ústavním soudem zastupovat pouze advokátem nebo komercním právníkem nebo notárem v rozsahu stanoveném zvlástními predpisy ..."

Article 30

[Translation]

> "1. Physical ... persons as parties to proceedings before the

Constitutional Court ... must be represented before the Constitutional Court by a barrister or commercial lawyer or notary in the field ..."

[Original]

"1. Fyzické ... osoby jako úcastníci rízení ... pred Ústavním soudem musí byt zastoupeny advokátem nebo komercním právníkem nebo notárem v rozsahu stanoveném zvlástními predpisy ..."

Article 83

[Translation]

"1. The judge rapporteur may decide, upon the applicant's request made prior to the first consideration of the constitutional appeal, that the costs relating to the applicant's legal representation will be fully or partly borne by the State if the constitutional appeal has not been refused and if such need is justified by the applicant's personal and financial situation, mainly if he/she has not sufficient means for covering the costs for legal representation (Articles 29 and 30 para. 1)."

[Original]

"1. Oduvodnují-li to osobní a majetkové pomery stezovatele, zejména nemá-li dostatecné prostredky k placení nákladu spojenych se zastoupením (§§ 29 a 30 odst. 1) a nebyla-li ústavní stíznost odmítnuta, soudce zpravodaj rozhodne na návrh stezovatele podany pred prvním ústavním jednáním, ze náklady ne jeho zastoupení zcela nebo zcásti zaplatí stát."

Law No. 128/1990 on the legal professions

Article 16

[Translation]

"1. Everyone has the right to legal representation. Barristers may refuse to provide legal assistance if they have not been appointed or designated by the Bar Association.

2. Those who have been refused legal representation may ask the Bar Association to designate a barrister."

[Original]

"1. Kazdy má právo na poskytnutí právní pomoci. Advokát je oprávnen poskytnutí právní pomoci odmítnout, pokud nebyl k jejímu poskytnutí ustanoven nebo Komorou urcen.

2. Ten, komu bylo poskytnutí právní pomoci odmítnuto, muze požádat Komoru, aby mu advokáta urcila."

Decision No. I US 335/92 of the Constitutional Court of the Czech and Slovak Federal Republic of 17 June 1992 (Collection of decisions and judgments)

[Translation]

"An appeal is contrary to law where an applicant claims that he/she has been refused legal representation and requests the Constitutional Court to decide on the merits of his/her appeal without satisfying the requirement of legal representation. The provisions of Articles 19 and 58 para. 1 of Law No. 491/1991 unambiguously and without exception require legal representation from the introduction of an appeal and during the proceedings ..."

[Original]

> "Pokud navrhovatel uvádí, ze ho advokát odmítá zastupovat a zádá, aby Ústavní soud meritorne rozhodl bez splnení podmínky advokátního zastoupení, je tato zádost v rozporu se zákonem. Ustanovení §§ 19 a 58 odst. 1 zákona c. 491/1991 Sb. jednoznacne a bezvyjimecne vyzadují advokátní zastoupení uz pri podání návrhu (ústavní stíznosti) a celém rízení ..."

COMPLAINTS

1. The applicant complains under Article 6 para. 1 of the Convention that his case was not dealt with fairly by the national courts and within a reasonable time. He claims that the principle of equality of arms was violated. He also alleges discrimination contrary to Article 14 of the Convention as, by virtue of Article 61 para. 2 of the Labour Code, he was not in an equal position with his employer: if an indemnity is requested by an employee it is limited to the period of six months and to compensation for loss of salary, whereas where an action is brought by an employer, the employer may claim compensation for actual damage as well as for lost profits.

2. The applicant claims that he was refused access to the Constitutional Court as guaranteed by Article 6 para. 1 of the Convention and that his appeal was unfairly considered by the Constitutional Court: it was refused on the ground that it had not been introduced by a lawyer. He claims that there is a contradiction in Articles 29 and 30 of Law No. 182/1993 and points out that the law has no provision which requires introduction of an appeal by a lawyer. The applicant further claims that the form of authority he submitted to the Constitutional Court was a valid document even if signed only by the authorising person.

THE LAW

1. The applicant complains that he was denied access to the Constitutional Court within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention and that his appeal was unfairly considered by the Constitutional Court as it was refused on the ground that it had not been introduced by a lawyer. He alleges a contradiction in Articles 29 and 30 of Law No. 182/1993 on the Constitutional Court and claims that no provision of the law requires a complaint to be introduced by a lawyer.

Article 6 para. 1 (Art. 6-1) of the Convention provides, as far as relevant, as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by a ... tribunal ..."

Article 6 (Art. 6) of the Convention does not guarantee a right to appeal as such but if a right to appeal is provided under domestic law, the requirements of Article 6 (Art. 6) must be respected in the appeal proceedings. The Commission recalls the Court's established case-law according to which Article 6 para. 1 (Art. 6-1) of the Convention does not prevent Contracting Parties from making regulations and limitations governing the access of litigants to an appellate court. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent as to impair the very essence of the right. Furthermore, a limitation will not be compatible with Article 6 para. 1 (Art. 6-1) if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (cf. Eur. Court H.R., Fayed judgment of 21 September 1994, Series A no. 294-A, p. 49 et seq., paras. 65 et

seq.).

In the present case, the Commission observes that the requirement of representation before the Constitutional Court by a barrister, a commercial lawyer or a notary applies generally to appeals introduced before the Constitutional Court under Articles 29 and 30 of Law No. 182/1993. The aim of the limitation is to prevent unqualified appeals to be introduced by applicants before the Constitutional Court, which is the supreme judicial organ in the Czech judicial system. This undoubtedly pursues the legitimate aim of ensuring a proper administration of justice.

The Commission cannot accept the applicant's allegation that there is a contradiction between Articles 29 and 30 of the Law No. 182/1993 on the Constitutional Court. Article 29 defines the persons who may represent individuals before the Constitutional Court, whereas Article 30 para. 1 sets up a condition for individuals to be represented before the Constitutional Court as a necessary procedural formality in any constitutional appeal.

It is true that no provision of this law expressly sets up a condition that constitutional appeals must be introduced by a representative. However, the Commission notes that according to the Czechoslovak Federal Constitutional Court's case-law an applicant must be represented both when a constitutional appeal is introduced and during the proceedings before the Court (cf. No. I US 335/92, 17 June 1992, Collection of decisions and judgments).

It is true that the applicant had problems finding a representative. However, he could have asked the Czech Bar Association to appoint a lawyer for him under Article 16 para. 2 of Law No. 128/1990 on the legal professions.

In view of all these circumstances, the Commission considers that the essence of the applicant's "right to a court" was not impaired, and 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 complains under Article 6 para. 1 (Art. 6-1) of the Convention that his case was not dealt with fairly by the national courts and within a reasonable time. He claims that the principle of equality of arms was violated. He also alleges discrimination under Article 14 (Art. 14) of the Convention as by virtue of Article 61 para. 2 of the Labour Code he was not in an equal position with his employer.

Article 14 (Art. 14) of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground ..."

The Commission is not, however, called upon to decide whether the facts alleged by the applicant disclose any appearance of a violation of the above provisions. Under Article 26 (Art. 26) of the Convention, the Commission may only deal with the matter after all domestic remedies have been exhausted in accordance with the generally recognised rules of international law (cf. mutatis mutandis No 24211/94, Dec. 11.1.95, unpublished).

The Constitutional Court in its judgment of 19 April 1994 dismissed the applicant's constitutional appeal on the ground that it did not satisfy the procedural conditions laid down in Law No. 182/1993 for introducing such an appeal, in particular, that the applicant was not represented by a lawyer before the Court (Articles 29 and 30).

According to the Commission's established case-law, there is no exhaustion of domestic remedies where a domestic appeal is not admitted

because of a procedural mistake (cf. No. 6878/75, Dec. 6.10.76, D.R. 6 p. 79 ; No. 23256/94, Dec. 29.6.94, D.R. 78 p. 139). In this case, the applicant's constitutional appeal was declared inadmissible because the applicant was not properly represented. The Commission has considered the question of the requirement of representation above, and concluded that it did not deny the applicant access to court. The corollary of this is that the applicant can be expected to comply with these rules in the context of the domestic remedies to be exhausted.

It follows that in this respect the applicant has not exhausted the domestic remedies as required by Article 26 (Art. 26) of the Convention and that the application is inadmissible within the meaning of Article 27 para. 3 (Art. 27-3) 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)