AS TO THE ADMISSIBILITY OF

Application No. 36912/97
by Emil ŠVEC
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 25 March 1997 by Emil ŠVEC against the Slovak Republic and registered on 17 July 1997 under file No. 36912/97;

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 1925. He is retired and resides in Piešťany. The facts of the case, as submitted by the applicant, may be summarised as follows.

Proceedings concerning compensation for the applicant's capture in Austria

From 1952 to 1958 the applicant served a prison sentence for treason. In 1959 he left Czechoslovakia for Austria. In 1961 the applicant was convicted in absentia of espionage and sentenced to fifteen years' imprisonment. On 7 October 1962 the Czechoslovak armed forces captured the applicant on the Austrian side of the Czechoslovak-Austrian border and brought him forcibly to Czechoslovakia. Subsequently the applicant served twelve years of his sentence for espionage. In 1990 the applicant was rehabilitated and recompensed for both convictions.

The applicant sought to obtain redress also as regards his unlawful capture in Austria. In 1992 the Constitutional Court (Ústavný súd) of the Czech and Slovak Federal Republic rejected for lack of jurisdiction the applicant's complaint in this respect. On 28 April 1994 the Constitutional Court of the Slovak Republic rejected for lack of jurisdiction the applicant's petition concerning this issue.

On 20 April 1994, 11 May 1995 and 16 July 1996 the director of the Slovak Information Service informed the applicant, in reply to the latter's complaint about the refusal to provide him with documents concerning his capture, that such documents could only be put at the disposal of the courts or the public prosecutor upon a written request of the aforesaid authorities.

On 31 December 1996 and 17 January 1997 the applicant lodged a petition with the Constitutional Court. He complained that he had been prevented from seeking redress before a court as regards his capture in Austria because the Slovak Information Service had refused to put the relevant documents at his disposal.

On 5 February 1997 the Constitutional Court rejected the petition as being manifestly ill-founded. The Constitutional Court held, in particular, that there existed no causal relationship between the acting of the Slovak Information Service complained of and the applicant's constitutional right to judicial protection.

On 25 April 1995 the applicant brought an action for damages before the Trnava District Court (Okresný súd) in which he claimed that the "mechanism of the attack [against him]" should be investigated into. On 26 April 1996 the Trnava District Court transferred the action to the Bratislava I District Court. On 26 March 1997 the latter discontinued the proceedings on the ground that the applicant had failed, despite a prior warning, to eliminate formal shortcomings in his action. In its decision the District Court noted, in particular, that the applicant had failed to specify the object of his action and the defendant as required by the law.

On 30 May 1997 the Bratislava Regional Court (Krajský súd) upheld the first instance decision. The Regional Court's decision was served on the applicant on 27 March 1998.

Proceedings concerning the applicant's action of 27 April 1995

On 27 April 1995 the applicant lodged a separate action with the Bratislava Regional Court in which he complained about "punishment of [his] freedom of expression". On 24 April and 17 June 1996 the Trnava District Court informed the applicant that his action of 27 April 1995 was being referred, for reasons of jurisdiction, to the Bratislava I District Court.

On 13 March 1997 the applicant submitted a copy of his action of 27 April 1995 to the Bratislava I District Court. On 16 August 1998 the Vice-President of the aforesaid court informed the applicant that his action of 27 April 1995 had been included in the file concerning the other proceedings in the applicant's case which had been discontinued by the District Court's decision of 26 March 1997.

On 19 August 1998 the applicant complained to the Supreme Court (Najvyšší súd) that his action of 27 April 1995 had been included, without his knowledge and contrary to his wish, in the file concerning his claim for examination of his unlawful capture in Austria, and that the courts had failed to examine it.

Criminal proceedings against the applicant

On 30 august 1993 the Trnava District Court convicted the applicant of insulting a public servant on the ground that in a letter addressed to the President of the Constitutional Court of the Czech and Slovak Federal Republic he had offended a legal adviser of that court. The applicant was conditionally sentenced to three months' imprisonment.

On 13 October 1993 the applicant appealed. He claimed, in particular, that it had not been proved before the first instance court that the contents of the letter in question were offensive.

On 24 November 1993 the Bratislava Regional Court (Krajský súd) upheld the first instance judgment.

On 30 October 1997 the applicant lodged a petition with the Constitutional Court. He complained that the proceedings leading to his conviction had not been fair as the courts had failed to establish the facts of his case correctly and decided arbitrarily.

On 3 February 1998 the Constitutional Court rejected the petition as being manifestly ill-founded. In its decision the Constitutional Court pointed out that in the proceedings before it the applicant had failed to specify which evidence had not been considered by the general courts. It further found that the applicant's constitutional right to judicial protection had been respected as he had had an opportunity to appoint a lawyer representing him in the proceedings, and as he had been able to comment on all evidence before the courts and also to propose the evidence to be taken in the proceedings.

Finally, the Constitutional Court recalled that it could not examine issues falling within the jurisdiction of the general courts.

COMPLAINTS

The applicant complains that by denying him access to the documents concerning his capture in Austria the Slovak authorities prevented him from claiming redress in this respect before a court, that his action of 27 April 1995 was not examined by the courts, and that his above conviction was arbitrary as the acting imputed to him did not constitute an offence. He alleges a violation of Article 6 para. 1 of the Convention

THE LAW

The applicant alleges a violation of Article 6 para. 1 of the Convention which provides, so far as relevant, as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law..."

a) The applicant complains, in substance, that his right of access to a court has been violated in that he cannot obtain documents relating to his unlawful capture in Austria.

Before stating an opinion as to whether this part of the application reveals any appearance of a violation of the applicant's rights under Article 6 para. 1 of the Convention, the Commission must determine whether or not it is barred by the ground of inadmissibility set forth in Article 27 para. 1 (b) of the Convention which provides as follows:

"1. The Commission shall not deal with any petition submitted under Article 25 which:

...

b. is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure of international investigation or settlement and if it contains no relevant new information."

In this respect the Commission notes that on 12 January 1995 and 11 April 1996 respectively it declared inadmissible Application No. 24151/94 and Application No. 29012/95 in which the applicant complained that it was impossible for him to obtain redress as regards his capture in Austria in 1962. In its decision on the admissibility of Application No. 29012/95 the Commission noted that on 25 April 1995 the applicant had brought an action for damages with the Trnava District Court. However, as the applicant had not shown that a final decision had been delivered on his claim by the Slovak courts, it found that application to be substantially the same as Application No. 24151/94.

Subsequently, the proceedings concerning the aforesaid action of 25 April 1995 were discontinued. Having regard to the nature of the applicant's complaint, the Commission considers that the decision to discontinue the proceedings in question can be regarded as "relevant new information" justifying a re-examination of the applicant's case.

To the extent that the applicant complains that the courts refused to deal with his claim, the Commission recalls that the requirement as to the exhaustion of domestic remedies laid down in Article 26 of the Convention has only been complied with if domestic remedies were used in accordance with the forms laid down by national law (see No. 9022/80, Dec. 13.7.83, D.R. 33, pp. 31, 39).

To the extent that the applicant complains that the refusal to put the relevant documents at his disposal prevented him from pursuing his case before a court, the Commission notes that the courts discontinued the proceedings in question on the ground that the applicant had failed, despite a prior warning, to specify the object of his action and the defendant as required by the law, and not because of his failure to submit relevant documents in support of his claim.

Furthermore, the director of the Slovak Information Service repeatedly confirmed to the applicant that documents possessed by the aforesaid authority could be submitted to the courts at their written request, and the Constitutional Court found no causal relationship between the refusal, by the Slovak Information Service, to put the documents requested by the applicant at his disposal and the applicant's right to bring his case before a court.

In view of the above facts, the Commission finds no particular circumstances that would absolve the applicant from the obligation to exhaust domestic remedies laid down in Article 26 of the Convention.

It follows that this part of the application must be rejected in accordance with Article 27 para. 3 of the Convention.

b) The applicant further complains that the courts discontinued the proceedings in his case without having examined his action of 27 April 1995.

The Commission notes that the applicant complained, on 19 August 1998, to the Supreme Court about the aforesaid fact. Since the applicant's case is still pending before the Supreme Court, the Commission considers that the applicant has not, for the time being, exhausted domestic remedies as required by Article 26 of the Convention.

It follows that this part of the application must be rejected pursuant to Article 27 para. 3 of the Convention.

c) Finally, the applicant complains, in substance, that in the proceedings leading to his conviction the courts failed to establish the facts correctly and convicted him arbitrarily.

The Commission does not consider it necessary to determine whether the Constitutional Court's decision of 3 February 1998 can be regarded as "final" within the meaning of Article 26 of the Convention in the applicant's case as, in any event, this part of the application is inadmissible for the following reasons.

The Commission recalls that, in accordance with Article 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. 25062/94, Dec. 18.10.95, D.R. 83-A, p. 77).

In the present case both the Trnava District Court and the Bratislava Regional Court established, on the basis of the evidence before them, that the applicant had committed the offence of insulting a public servant in that he had made, in a letter addressed to the President of the Constitutional Court of the Czech and Slovak Federal Republic, offensive remarks in respect of a legal adviser of that court. It appears from the documents submitted that in the aforesaid proceedings the applicant had an opportunity to be represented and to make submissions as regards the establishment of the relevant facts of his case.

The Commission has before it no information which would indicate that the applicant's conviction was unfair or arbitrary, or that the proceedings in question otherwise failed to comply with the requirements of Article 6 para. 1 of the Convention.

It follows that this part of the application is manifestly ill-founded 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