AS TO THE ADMISSIBILITY OF

Application No. 35268/97
by Marcela SVIDRANOVÁ
against the Slovak Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 1 July 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. SVÁBY
P. LORENZEN
E. BIELIUNAS
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 27 December 1996 by Marcela SVIDRANOVÁ against the Slovak Republic and registered on 11 March 1997 under file No. 35268/97;

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 Czech national born in 1949 and residing in Zvolen, the Slovak Republic. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. Particular circumstance of the case

On 8 September 1994 the applicant inherited a car from a relative who had lived in Vienna. The car, a Volkswagen Polo, had been produced in 1986 and was registered in Austria.

On 1 August 1995 the customs office in Banská Bystrica authorised the applicant to use the car in Slovakia without paying any importation fee provided that she did not sell the car before 1 August 1996.

On 18 October 1995 the applicant requested the police department in Zvolen to certify that the car conformed, from the technical point of view, to the relevant regulations. Such a certificate was indispensable for registration of the car in Slovakia.

To this effect the applicant was invited to have the car checked in a specialised technical centre in Banská Bystrica. On 14 November 1995 a record of the check was established by the aforesaid

centre indicating, inter alia, that the applicant had not shown that the car's exhausts conformed to Regulation No. 83-01 B of the UN Economic Commission for Europe.

On 29 October 1995 the applicant asked the Minister of Transport, Post and Telecommunications to exempt her from the obligation to comply with Regulation No. 83-01 B.

On 20 November 1995 the police department in Zvolen stayed the proceedings concerning the applicant's request of 18 October 1995 on the ground that she had not submitted a certificate from a technical centre authorised to carry out the required check. The applicant was invited to submit the certificate before 31 August 1996.

On 5 December 1995 the Ministry of Transport, Post and Telecommunications informed the applicant that for a car to be allowed to be used in Slovakia it had to conform to Regulation No. 41/1984 (see "Relevant domestic law" below). The Ministry further recalled that under Section 82 of Regulation No. 41/1984 the Ministry was not entitled to grant an exemption from Section 39 setting out the standards for exhausts. On 29 January 1996 the Ministry of Transport, Post and Telecommunications upheld this position.

Subsequently the applicant unsuccessfully sought redress before the President of the Slovak Republic, the Prime Minister and the President of the National Council of the Slovak Republic.

The applicant also wrote to the President of the Constitutional Court. On 9 February 1996 she was informed that the latter cannot exempt her from the obligation to comply with Regulation No. 41/1984.

On 24 June and 10 July 1996 the applicant again requested the Minister of Transport, Post and Telecommunications to exempt her from the obligation to comply with Section 39 of Regulation No. 41/1984. She alleged a violation of her right to enjoy her property freely.

On 2 August 1996 the Minister of Transport, Post and Telecommunications informed the applicant that she could obtain the requested certificate only if she showed that her car conformed to the relevant provisions of Regulation No. 41/1984.

On 16 October 1996 the applicant addressed a complaint to the President of the Constitutional Court in which she alleged a violation of her property rights and of her right to equal treatment. She complained, in particular, that as a result of the dismissal of her request for an exemption from the requirements set out in Section 39 of Regulation No. 41/1984 she was prevented from using her car, and that a considerable number of other cars were allowed to circulate in Slovakia notwithstanding that they did not comply with the aforesaid Regulation.

On 5 November 1996 a judge of the Constitutional Court informed the applicant that the Constitutional Court lacked jurisdiction to deal with her submissions.

B. Relevant domestic law

The conditions for use of vehicles on the roads in Slovakia are set out in Regulation No. 41/1984 of 30 May 1984, as amended.

Section 5a para. 2 provides that a certificate entitling a person to use a vehicle can only be issued if the vehicle is in appropriate condition and if the requirements set out in chapters II to V of the Regulation are met.

Section 5a para. 6 was included in Regulation No. 41/1984 by an

amendment which entered into force on 13 October 1994 and provides as follows:

(translation)

> "For the purposes of this Regulation the following shall be considered as justified cases of individually imported vehicle:
>
> a) a vehicle of a person who was granted Slovak citizenship with permanent residence within the Slovak Republic,
>
> b) an ambulance and a vehicle for physically disabled persons specially adapted for driving or for transport,
>
> c) a vehicle acquired by a staff member of a diplomatic representation of the Slovak Republic and imported after he or she has ceased to work abroad,
>
> d) a vehicle belonging to a staff member of a foreign diplomatic representation during his or her stay in this capacity in the Slovak Republic."

Section 39 para. 1, as in force from 1 July 1995, provides that the exhausts of vehicles shall, at the moment of the approval of their conformity to Regulation No. 41/1984, meet the requirements set out in special regulations including Regulation No. 83 of the UN Economic Commission for Europe.

Section 82, as in force until 12 October 1994, excluded any exemption from, inter alia, Section 39 of the Regulation. As from 13 October 1994, Section 82 has been amended in that exceptions from Section 39 are permissible in "justified cases of individually imported vehicles" within the meaning of Section 5a para. 6.

COMPLAINTS

The applicant complains under Article 1 of Protocol No. 1 that she cannot use her car in Slovakia. She further complains under Article 14 of the Convention that she is discriminated against in this respect as there are a considerable number of other cars allowed to circulate in Slovakia notwithstanding that they do not meet the standards set out in Regulation No. 41/1984.

THE LAW

1. The applicant complains that she cannot use her car in Slovakia. She alleges a violation of Article 1 of Protocol No. 1 (P1-1) 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 recalls that Article 1 of Protocol No. 1 (P1-1) comprises three distinct rules. The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of possessions. The second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions.

The third rule, stated in the second paragraph, recognises that Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest (see Eur. Court HR, Fredin v. Sweden judgment of 18 February 1991, Series A no. 192, p. 14, para. 41).

In the present case the applicant has been prevented from using her car in the Slovak Republic as its exhausts do not conform to Section 39 of Regulation No. 41/1984 which incorporates in Slovak law the standards set by Regulation No. 83 of the UN Economic Commission for Europe. In the Commission's view, the obligation imposed on the applicant to ensure that her car complies with the aforesaid regulations amounts to an interference with her rights under Article 1 of Protocol No. 1 (P1-1). This interference is a measure of control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1).

The Commission must therefore consider whether the obligation imposed on the applicant is proportionate and necessary to control the use of the applicant's property in accordance with the general interest (see No. 11723/85, Dec. 7.5.87, D.R. 52, pp. 250, 256, with further references).

The Commission notes that the contested provisions of Regulation No. 41/1984 pursue the legitimate aim of protecting the environment in that it sets standards, elaborated and adopted by the UN Economic Commission for Europe, concerning exhausts of vehicles used in the Slovak Republic. The obligation imposed on the applicant by the aforesaid provisions is, therefore, in the general interest within the meaning of the second paragraph of Article 1 of Protocol No. 1 (P1-1).

The Commission further considers, bearing in mind the importance of protecting the environment from excessive pollution caused by motor vehicles and the wide margin of appreciation afforded to States in this respect, that the control of the use of the applicant's property is proportionate to the legitimate aim pursued.

Accordingly, there is no appearance of a violation of Article 1 of Protocol No. 1 (P1-1) in the particular circumstances of this case.

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 further complains that she is discriminated against in the enjoyment of her property as there are a considerable number of other cars allowed to circulate in Slovakia notwithstanding that they do not meet the standards set out in Regulation No. 41/1984. She alleges a violation of Article 14 (Art. 14) of the Convention which provides as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Commission recalls that Article 14 (Art. 14) affords protection against discrimination, that is treating differently, without an objective and reasonable justification, persons in "relevantly" similar situations (see Eur. Court HR, Spadea and Scalabrino v. Italy judgment of 28 September 1995, Series A no. 315-B, p. 28, para. 45). The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law; the scope of this margin will vary according to the circumstances, the subject-matter and its background (see Inze v. Austria judgment of 28

October 1987, Series A no. 126, p. 18, para. 41).

To the extent that the applicant may be understood as complaining that the possibility of granting an exemption from the relevant provisions of Regulation No. 41/1984 does not extend to her case, the Commission considers that her situation is not sufficiently analogous with those set out in Section 5a para. 6 of the aforesaid Regulation to give rise to an issue under Article 14 (Art. 14) of the Convention.

Moreover, and even assuming that a problem might arise in this connection, the Commission considers, having regard to the margin of appreciation reserved to the Contracting States in this respect and to the specific nature of those cases in which exemptions from the relevant provisions of Regulation No. 41/1984 are allowed, that the distinction thus drawn can be regarded as objectively and reasonably justified and not therefore discriminatory within the meaning of Article 14 (Art. 14) of the Convention.

To the extent that the applicant may complain that vehicles which were certified as conforming to the relevant regulations prior to the incorporation of Regulation No. 83 of the UN Economic Commission for Europe in Slovak law are allowed to circulate in the Slovak Republic, the Commission considers that her situation is not "relevantly" similar to the aforesaid cases since the difference of treatment in this respect arose under different legislation, passed and applied at different times.

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

J.-C. GEUS
President
of the Second Chamber