

AS TO THE ADMISSIBILITY OF

Application No. 28390/95
by Alzbeta PEZOLDOVÁ
against the Czech Republic

The European Commission of Human Rights (Second Chamber) sitting in private on 11 April 1996, 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 25 August 1995 by Alzbeta PEZOLDOVÁ against the Czech Republic and registered on 30 August 1995 under file No. 28390/95;

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 is a Czech citizen born in 1947. She lives in Prague. Before the Commission, she is represented by Mr F. Nevrela, a lawyer practising in Prague 1.

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

In 1965 the applicant inherited from her father, Jindrich Schwarzenberg, a cousin and allegedly adoptive son of Adolf Schwarzenberg, various properties belonging to the Hluboká branch of the Schwarzenberg family. The remainder of Jindrich Schwarzenberg's estate was left to his adoptive son, Karel Schwarzenberg.

Pursuant to Law No. 143/1947, also known as the "Lex Schwarzenberg", which entered into force on 13 August 1947, the properties of the Schwarzenberg family (the Hluboká branch) were expropriated without any compensation.

The administrative authorities and in certain cases, where appropriate, the courts (including the Constitutional Court) have jurisdiction to deal with claims for the restitution of property by virtue of Law No. 229/1991 on land.

In 1993 the applicant, pursuant to Law No. 229/1991, submitted

claims to the Land Office (Pozemkový úrad) at České Budejovice, Český Krumlov and Klatovy for restitution of the real estate.

By decisions of 14 February, 20 May and 19 July 1994 the applicant's claims were rejected on the ground that the last owner of the real estate was Adolf Schwarzenberg. The applicant had not established any family relationship with Adolf Schwarzenberg which would qualify her as a person entitled under Article 4 of Law No. 229/1991. She was not even a testamentary heiress of the original owner. The land authorities noted that the property had not been expropriated in one of the ways referred to in Law No. 229/1991, but by Law No. 143/1947. As that law entered into force on 13 August 1947, the expropriation could not be considered under Law No. 229/1991, which relates to expropriations subsequent to 28 February 1948.

The applicant lodged appeals against these decisions with the Prague Municipal Court (Městský soud v Praze), alleging inter alia violation of her rights guaranteed by the Czech Constitution and the Charter of Fundamental Rights and Freedoms. She maintained that the passing of the property had been effected only when the State's right was registered in the Land Register (Pozemková kniha). This entry was registered on 15 July 1948. The applicant further claimed that her father, Jindřich Schwarzenberg, was an adoptive son of the original owner Adolf Schwarzenberg. She asked the court to find documentation about the adoption in archives.

The Prague Municipal Court rejected the applicant's appeals by a judgment of 27 June 1994 and two judgments of 28 February 1995. The court considered in particular that:

[Translation]

"There is no doubt that the whole property at issue fell under ... [L]aw [No. 143/1947], which means that the real property which is the subject of the present proceedings ... passed into the possession of the State by law, i.e. through the force of law (on 13 August 1947) ... before the decisive date, i.e. before 25 February 1948. The court does not share the applicant's objection that the passing of the ownership in this case occurred only when the entry in the Land Register was made ... Registration in this Register was necessary to effect the transfer of the ownership of real estate. However, [the present case involves] not a transfer of ownership but a passing of ownership by operation of law ...

[As t]he passing of the property was effected on 13 August 1947 on the basis of Law No. 143/1947, the real estate cannot be returned pursuant to either of the two restitution laws. ... Law No. 229/1991 is excluded because the passing of property did not occur during the decisive period, but before 25 February 1948; Law No. 243/1992 is excluded, although it relates to expropriation of property before 25 February 1948, since this law only refers to property of which the owner was deprived pursuant to Presidential Decrees Nos. 12/1945 or 108/1945. It cannot be extended to property that was expropriated pursuant to Law No. 143/1947."

Finally, the court considered it unnecessary to determine further questions concerning the adoption of the applicant's father by Adolf Schwarzenberg and the applicant's domicile.

On 20 August 1994 the applicant lodged a constitutional appeal with the Constitutional Court (Ústavní soud) against the Prague Municipal Court's judgment of 27 June 1994.

The applicant complained in particular that the Prague Municipal Court had violated her right to court protection. She also suggested that Law No. 143/1947 should be quashed as unconstitutional. The applicant submitted that in this case, Law No. 143/1947 created legal title only to the conveyance of property, and the proceedings were two-phase proceedings which ended with the registration. Furthermore, she noted that Article 444 of the Civil Code provided expressly that title to real estate only ends upon removal from the Register, and maintained that because the application of the Country National Committee for removal of the original owner from the Land Register was filed on 15 July 1948, the ownership could not be terminated prior to that date. Finally, the applicant alleged that the Prague Municipal Court had not dealt sufficiently in its judgment with the issue of the applicant's status, and therefore had failed to consider the decision of the Land Office that the applicant could not be deemed to be a beneficiary within the meaning of Law No. 229/1991.

On 9 March 1995 the Constitutional Court dismissed the applicant's appeal as unsubstantiated. The Court considered, in particular, that:

[Translation]

"... the Constitutional Court is no part of the system of general courts ..., it is not a further level of jurisdiction and it thus has generally no power to reexamine the activities of those courts; it has such a right only in those cases where the constitutional principles have been breached. The applicant expressly alleges a violation of her right to court protection ... which is, in substance, a right to a fair trial, including the issue of a court decision. However, in the contents of the file ... nothing was identified to suggest that principles of a fair trial were violated ... With regard to the result of the dispute, it should then be added that no interference with the rights guaranteed by the Constitution can be derived from the fact that the applicant's claim was not satisfied and that the applicant does not share the court's conclusions ...

... Law No. 143/1947 brought about a change in the identity of the owner of the property to which the law applied, independently of the will of the existing owner. That is how the Prague Municipal Court came to the conclusion that there was a conveyance of the ownership right, not a transfer thereof, which would have necessitated an identical manifestation of will of the person transferring the property and the person to whom it was transferred. ... The conclusion of the Prague Municipal Court that title to real estate could, within the period of validity of the General Civil Code, be acquired even without a registered record, can therefore be supported. The record of the entry of the title to the real estate was, in the case of Law No. 143/1947, of a declaratory character only, ... The conveyance of the title with regard to the property and, at the same time, the loss thereof by the initial owner ... thus occurred, in the opinion of the Constitutional Court, ex lege upon the entry into force of Law No. 143/1947 on 13 August 1947. ... the application of Law No. 229/1991 ... in the present case does not come into consideration. ... [E]ven if it was proved that the applicant's father was adopted by Dr. Adolf Schwarzenberg, the final result of the dispute would be the same. The fact that the Court did not address in more detail the issue of adoption does not amount to a violation of the right to court protection.

The opinion of the Prague Municipal Court that Law

No. 243/1992 was excluded was also correct. Although this law applies to the property the expropriation of which occurred prior to 25 February 1948, the effect of the law cannot be extended beyond property expropriated under Presidential Decrees Nos. 12/1945, 108/1945. The decision as to which injustices should be put right, the conditions for doing so, and the determination of the persons eligible to apply, are matters for the legislative body.

[T]he applicant's constitutional appeal is clearly unsubstantiated ... [and] it [is] not possible to address the applicant's proposal to quash Law No. 143/1947."

COMPLAINTS

1. The applicant claims that, by reason of the continuing deprivation of her property, which was unlawfully taken from her family pursuant to Law No. 143/1947, her rights under Article 1 of the Protocol No. 1 have been violated. She submits that she did not institute a constitutional appeal against the two judgments of 28 February 1995 as this would have been futile in the light of the Constitutional Court's decision in relation to the first case.
2. She also claims that her rights of access to an independent and impartial tribunal guaranteed by Article 6 para. 1 of the Convention have been violated by the Constitutional Court in that the Court refused to consider her complaints about the unconstitutionality of Law No. 143/1947 and about her title to restitution of property pursuant to Law No. 229/1991 and rejected her claim that the taking of the property occurred in the period provided for by Law No. 229/1991.
3. The applicant claims that she has been discriminated against in the enjoyment of her rights under the Convention contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 and with Article 6 para. 1 of the Convention. She submits that only her family was discriminated against as Law No. 143/1947 expropriated without any compensation her family's real estate.

THE LAW

1. The applicant claims that, by reason of the continuing deprivation of her property, which was unlawfully taken from her family pursuant to Law No. 143/1947, her rights under Article 1 of the Protocol No. 1 (P1-1) have been violated.

Article 1 of Protocol No. 1 (P1-1) reads 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 the expropriation took place in 1947 which was long before the Convention entered into force in respect of the Czech Republic. The Commission is therefore not competent *ratione temporis* to examine the expropriation as such.

It is plain from the text of Article 1 of Protocol No. 1 (P1-1) that it aims at securing the peaceful enjoyment of existing possessions and that it does not guarantee, in general, a right to

acquire property (cf. No. 11628/85, Dec. 9.5.86, D.R. 47 p. 270).

In the present case, the Commission observes that the proceedings before the national judge did not concern an expropriation of the applicant's property which took place after the date of the entry into force of the Convention and Protocol No. 1 with respect to the Czech Republic, but it relates to her claims for restitution.

It is true that the applicant, pursuant to Law No. 229/1991 on land and Law No. 243/1992 on questions associated with Law No. 229/1991, submitted her claims for restitution to the competent authorities and then to the civil jurisdiction and to the Constitutional Court. However, the applicant's claims were rejected because neither of those two laws applied to her. Therefore, the Commission considers that the present complaint only concerns the right to acquire property, which is not covered by Article 1 of Protocol No. 1 (P1-1). There is nothing to suggest that the applicant's right to peaceful enjoyment of her possessions has in any way been violated by the refused claims for restitution.

Accordingly, the applicant's complaint falls outside the scope of Article 1 of Protocol No. 1 (P1-1) and this part of the application is therefore incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 para. 2 (Art. 27-2).

2. The applicant also complains that her rights of access to an independent and impartial tribunal have been violated by the Constitutional Court in that the Court refused to consider her complaints about the unconstitutionality of Law No. 143/1947 and about her title to restitution of property pursuant to Law No. 229/1991 and that it rejected her claim that the taking of the property in question occurred in the period provided for by Law No. 229/1991. She invokes Article 6 para. 1 (Art. 6-1) of the Convention which, in so far as relevant, reads as follows:

"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 Article 6 para. 1 (Art. 6-1) of the Convention extends only to disputes ("contestations"), over (civil) "rights and obligations" which can be said, at least on arguable grounds, to be recognised under domestic law; it does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States (cf. Eur. Court H.R., *Lithgow and others* judgment of 8 July 1986, Series A no. 102, p. 70, para. 192). There is a question in the present case as to whether Article 6 para. 1 (Art. 6-1) of the Convention is at all applicable to the proceedings which the applicant brought, as the courts all found that neither of the laws relied on by the applicant applied to her. However, the Commission is not required to decide that question in the present case as, even if Article 6 para. 1 (Art. 6-1) of the Convention is applicable, the complaint is inadmissible for other reasons.

With regard to the judicial decisions of which the applicant complains, the Commission points out that, in accordance with Article 19 (Art. 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 (cf. No. 21283/93, Dec. 5.4.94, D.R. 77 pp. 81, 88).

In the present case, the national judge examined the applicant's case on the basis of Law No. 229/1991 on land and Law No. 243/1992.

He found that the property concerned was not expropriated to the State within the meaning of Law No. 229/1991, but ex lege by Law No. 143/1947 on 13 August 1947 which was before the period referred to in Law No. 229/1991. The result would not have been different even if the applicant had been able to prove that her father had been adopted by the original owner. In these circumstances, the national judge considered it unnecessary to examine the applicant's claim about the alleged unconstitutionality of Law No. 143/1947.

As regards Law No. 243/1992 which constitutes the *lex specialis* in comparison with Law No. 229/1991 and which applies to restitution of property expropriated pursuant to Presidential Decrees Nos. 12/1945 and 108/1945, the domestic court found it not to be applicable on the ground that it refers only to property of which the owner was deprived according to the said Decrees and thus not to property that was confiscated under Law No. 143/1947.

Thus whilst the Constitutional Court did not consider the entirety of the proceedings, the domestic judge gave full reasons for his rejection of the applicant's claim, and the Constitutional Court thereafter considered the constitutional aspects of the 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.

3. Finally, the applicant claims that she has been discriminated against in the enjoyment of her rights under the Convention contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1) and with Article 6 para. 1 (Art. 14+6-1) of the Convention.

However, the Commission recalls that Article 14 (Art. 14) of the Convention only prohibits discrimination with respect to the enjoyment of the rights and freedoms set forth in the Convention (cf. No. 11278/84, Dec. 1.7.85, D.R. 43 pp. 216, 220). In connection with Article 1 of Protocol No. 1 read in conjunction with Article 14 (P1-1+14) of the Convention, the Commission recalls that it has declared inadmissible the applicant's claim under Article 1 of Protocol No. 1 (P1-1) as being incompatible *ratione materiae* with the Convention.

As regards the applicant's complaint under Article 6 para. 1 (Art. 6-1) in connection with Article 14 of the Convention, the Commission does not find any indication that the applicant was discriminated against in the proceedings before the national judges who considered the case on the basis of the applicable domestic law. The fact that the applicant's claim was unsuccessful does not in itself constitute discrimination. No allegations have been made of discrimination as regards the procedure as such.

It follows that this part of the application must be rejected as manifestly ill-founded under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber

(M.-T. SCHOEPFER)

President of the Second Chamber

(H. DANELIUS)