

**APPLICATION N° 23131/93**

**Ladislav and Aurel BREŽNY v/SLOVAK REPUBLIC**

**DECISION of 4 March 1996 on the admissibility of the application**

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**Article 14 of the Convention : Conditions of application and notion of discrimination**  
*(recap. of jurisprudence)*

**Article 1, paragraph 1 of the First Protocol :**

- a) *Deprivation of ownership or another right in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right"*
- b) *A person complaining of an interference with his right to property must show that such a right existed*
- c) *Property can be either "existing possessions" or assets, including claims, which the applicant can, at least arguably, "legitimately expect" to see realised*

*The hope that an old property right, which it has long been impossible effectively to exercise, may be recognised as having survived is not a "possession", nor is a conditional claim which lapses as a result of the non-fulfilment of the condition.*

- d) *Law No. 87/1991 (Czech and Slovak Federal Republic, hereinafter called the "ČSFR") on Extrajudicial Rehabilitation provides for the restitution of confiscated possessions in certain circumstances. On the facts, no interference with the right to peaceful enjoyment of possessions since the applicants do not own a "possession" and do not fulfil all the legal conditions.*

**Article 2, paragraph 1 of Protocol No. 4** *Law No 87/1991 of the ČSFR on Extrajudicial Rehabilitation provides for the restitution of confiscated property in certain circumstances*

*The fact that this Law requires claimants to be permanently resident within the territory of the Slovak Republic (formerly Czechoslovak territory) cannot be deemed an interference with the right to liberty of movement and freedom to choose one's residence*

**Competence *ratione personae*** *The Commission has jurisdiction to examine an application against the Slovak Republic one of the successor States of the ČSFR concerning matters which occurred between the date on which the ČSFR ratified the Convention (18 March 1992) and the date on which it was dissolved (31 December 1992)*

**Competence *ratione temporis*** *Although Law No 87/1991 of the ČSFR on Extrajudicial Rehabilitation, which came into force on 1 April 1991, provides that applications for restitution of confiscated property must be submitted on or before 30 September 1991 (that is, before the Convention entered into force with respect to the ČSFR on 18 March 1992), the Commission has jurisdiction to examine the application since the restitution proceedings brought by the applicants ended with a judgment of 30 November 1992, which was served on 12 March 1993*

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## THE FACTS

The applicants are Slovak citizens, born in 1913 and 1914 respectively. They live in Birsfelden (Switzerland) and Burwood (Australia).

### A *Particular circumstances of the case*

The facts of the case, as submitted by the parties, may be summarised as follows:

On 30 January 1973, Bratislava Municipal Court (Mestský súd) sentenced the first applicant to 22 months' imprisonment and to have all his possessions confiscated for deserting the Republic.

On 11 December 1949, the investigating judge at Bratislava State Court ordered that the criminal proceedings commenced against the second applicant on 24 October 1949 for high treason (specifically, for refusing to return to the Republic) should be suspended on the ground that the accused's whereabouts were unknown. In 1956, in the course of the same proceedings, Bratislava Regional Court (Krajský súd) confiscated his Czechoslovak possessions.

On 18 September 1990, Bratislava Municipal District Court (Obvodný súd) held that, under section 2 of Law No. 119/1990 on Judicial Rehabilitation, the first applicant's conviction and any consequential decisions had been automatically annulled *ex tunc*

On 14 December 1990 Bratislava Regional Public Prosecutor decided to reopen the criminal proceedings against the second applicant and then to suspend them under sections 2 and 33 para 1 of the same Law. He ruled that there were no grounds on which to prosecute the second applicant.

On 26 August 1991, in pursuance of Law No 87/1991 on Extrajudicial Rehabilitation, the applicants wrote to the company in possession of their property, that is, Trenčín Horticultural Company, seeking an agreement as to the restitution of their property. The company made it clear that it did not intend to comply with this request, so the applicants applied to Trenčín District Court (Okresný súd). They alleged that using place of residence as a criterion for excluding claims was incompatible with the Constitution of the ČSFR and with Constitutional Law No. 23/1991 on the Charter of Fundamental Rights and Freedoms.

In a judgment of 21 April 1992, the court found against the applicants, holding that they did not fulfil one of the conditions laid down by Law No 87/1991 - that is, permanent residence within the territory of the ČSFR - so that they were not entitled to restitution of the property in question.

The applicants appealed, arguing that the permanent residence condition was contrary to Constitutional Law No 23/1991 on the Charter of Fundamental Rights and Freedoms, Protocol No 4 and, in substance, Protocol No 1 to the Convention. They claimed that Law No 87/1991 had introduced a form of discrimination detrimental to them.

In a judgment of 30 November 1992, which was served on the applicants on 12 March 1993, Bratislava Regional Court (Krajský súd) dismissed the appeal and upheld the judgment at first instance, holding, in particular, that the condition in question did not appear to be incompatible with the Constitution, in that Law No. 87/1991 had been designed only as a "measure redressing certain infringements of property rights".

Meanwhile, on 31 December 1992, the ČSFR was constitutionally dissolved into two distinct States, the Czech Republic and the Slovak Republic.

On 1 January 1993 the Slovak Government wrote to the Secretary General of the Council of Europe expressing the wish to become a member of the Council of Europe and declaring that, "in accordance with the current rules of international law, the Slovak Republic, as a successor State of the Czech and Slovak Federal Republic, would consider itself bound, from 1 January 1993, by the multilateral international treaties to which the Czech and Slovak Federal Republic was a party at that date,

including the reservations and declarations as to their provisions made by the Czech and Slovak Federal Republic". The Government gave notice that "the Slovak Republic felt bound by the Convention and the declarations under Articles 25 and 46 of the Convention".

On 30 June 1993 the Committee of Ministers of the Council of Europe decided that the Slovak Republic was to be considered as a Party to the Convention with effect from 1 January 1993 and was bound, as from that date, by the declarations under Articles 25 and 46 of the Convention made by the Czech and Slovak Federal Republic.

B. *Relevant domestic law and practice*

[Translation]

I. Constitutional position at the material time

a The position up to 31 December 1992

Constitutional Law No. 23/1991 on the Charter of Fundamental Rights and Freedoms, enacted on 9 January 1991

Section 1

"1 Constitutional Laws, Statutes and Regulations shall be drafted, interpreted and applied in conformity with the Charter of Fundamental Rights and Freedoms.

2. The Constitutional Court shall ensure that the fundamental rights and freedoms referred to in the Charter of Fundamental Rights and Freedoms are respected."

Section 11

"1. Everyone is entitled to own property. Property rights are equal for everyone and everyone having such a right is entitled to equal protection therefor. The right to inherit is guaranteed.

2. ...; the law also provides that certain property can be owned only by citizens of, or artificial legal persons having their registered office (sídlo) within the territory of, the Czech and Slovak Federal Republic."

## Section 36

"...

3 Everyone is entitled to compensation for any loss or harm suffered by them as a result of an unlawful decision by a court, another organ of the State or a public authority, or of an error on the part of a public authority

4. The conditions and procedures for obtaining such compensation shall be laid down by law."

## Section 42

"1. In the context of the Charter, the word "citizen" shall mean a citizen of the Czech and Slovak Federal Republic."

Constitutional Law No 91/1991 on the Federal Constitutional Court (in force from 1 April 1991)

## Section 2

"The Constitutional Court shall examine:

- a) the compatibility of federal laws ... with federal constitutional laws, [and]
- b) the compatibility of federal laws, constitutional laws and other Czech and Slovak national laws with those international treaties on human rights and fundamental freedoms [which have been] ratified and published . ."

## Section 6

"The Constitutional Court shall examine constitutional-law applications challenging measures or decisions taken by ... or infringements committed by the public authorities and whereby fundamental rights and freedoms, recognised as such in a constitutional law or an international treaty, have been violated . ."

## Section 8

"1 The Constitutional Court shall open proceedings where an application is lodged ...

- h) by a court in relation to an action before it,

3 In relation to applications under section 6 above, the Constitutional Court shall open proceedings where such an application is lodged by a natural person

."

Law No 491/1991 on the organisation of the Federal Constitutional Court (in force from 3 December 1991)

Section 36

"Where a court lodges a constitutional-law application , it shall defer judgment until the Constitutional Court has given its ruling "

Section 54

1 Any natural person who claims that their fundamental rights or freedoms as recognised in a federal constitutional law or international treaty have been violated by a public authority may lodge a constitutional law application "

Section 63

1 Where the Constitutional Court upholds an application, it shall proceed to examine which fundamental rights and liberties enshrined in the provisions of a constitutional law or international treaty have been violated

2 Where the Constitutional Court upholds an application, it shall

a) quash the decision of the relevant public authority '

b The position as from 1 January 1993

The Constitution of the Slovak Republic (in force from 1 October 1992)

Section 20

'1 Everyone is entitled to own property Property rights are equal for everyone and everyone having such a right is entitled to equal protection therefor The right to inherit is guaranteed

2 , the law also provides that certain property can be owned only by citizens of, or artificial legal persons having their registered office (sídlo) within the territory of, the Slovak Republic "

Section 130

"

3 The Constitutional Court may also open proceedings where it is petitioned by a natural person who complains that his or her rights have been violated '

Law No 38/1993 on the organisation and procedures of the Slovak Constitutional Court  
(in force from 15 February 1993)

Section 18

"1. The Constitutional Court shall open proceedings where an application is lodged by:

- a) at least one fifth of the Members of the Slovak Parliament, or
- b) the President of the Slovak Republic; or
- c) the Government of the Slovak Republic, or
- d) any court, or
- e) the Principal State Counsel of the Slovak Republic; or
- f) any person whose rights are at issue in the manner referred to in Article 127 of the Constitution.

2. The Constitutional Court may also open proceedings where it is petitioned by any natural person who complains of a violation of his or her rights

3. The proceedings shall be opened on the date.

- a) on which the application is lodged with the Constitutional Court, or
- b) on which the petition is accepted as a result of the preliminary procedure "

Section 37

"1. Where any of the entities referred to in section 18 para 1(a)-(e) consider that a hierarchically-inferior legislative provision is incompatible with a hierarchically superior one they may lodge an application with the Constitutional Court .. "

Decisions of the Constitutional Court of the Slovak Republic of 16 November and 12 October 1993, published in the Collected Decisions of the Constitutional Court as Nos 1 and 15 of the year 1993-1994

"Where a natural person petitions the Constitutional Court alleging a violation of his or her rights under Article 130 para 3 of the Constitution, the Court may not open proceedings and rule as to whether constitutional rights have been violated where the outcome of such proceedings depends on how an issue which is to be examined in separate proceedings is resolved (e.g. an issue as to the compatibility of different legislative provisions) "

Decision No 10 of the Constitutional Court of the Slovak Republic of 7 September 1993 as published in the Collected Decisions of the Constitutional Court as No 10 of the year 1993 1994

"The Constitutional Court has no jurisdiction to set aside a decision of another court in civil or criminal proceedings, or to substitute its own decision therefor "

II Legislation concerning restitution and rehabilitation in force at the material time  
Law No 119/1990 on Judicial Rehabilitation (in force from 1 July 1990)

#### Section 1

"The object of this Law is to authorise the quashing of convictions for offences where such convictions are incompatible with the principles of a democratic society respecting the political rights and freedoms enshrined in the Constitution and guaranteed by international treaties, and to ensure the social and economic rehabilitation of the persons so convicted "

#### Section 2

"1 All convictions from 25 February 1948 to 1 January 1990 relating to events occurring after 5 May 1945 shall be quashed with effect from the date on which they were pronounced, together with any consequential decisions

2 The court shall examine of its own motion all questions relating to the rehabilitation of a convicted person "

#### Section 23

"

2 The conditions under which the provisions of this Law shall apply to claims resulting from quashed confiscation decisions as well as the manner of redress and the scope of such claims, shall be defined in a special Law "

#### Section 33

"1 Where criminal proceedings for one of the offences listed in sections 2 or 4 have been stayed or suspended, those persons referred to in section 5 para 1 may apply for them to be resumed



2. This Law applies, by analogy, to the rehabilitation of persons unlawfully deprived .. of their possessions in connection with the offences listed in sections 2 and 4 during the period from 25 February 1948 to 1 January 1990, even where no criminal proceedings have been brought. "

Law No 87/1991 of 23 March 1991 on Extrajudicial Rehabilitation (in force from 1 April 1991)

"With the aim of redressing certain infringements of property and social rights which occurred between 1948 and 1989 .."

### General object

#### Section 1

"1. This Law redresses certain infringements arising . between 25 February 1948 and 1 January 1990 (hereinafter 'the period concerned') and which are incompatible with the principles of a democratic society respecting the rights of citizens as enshrined in the Charter of the United Nations [and] the Universal Declaration of Human Rights ...

2 This Law also lays down the conditions under which it applies to claims resulting from quashed confiscation decisions, the manner of redress and the scope of such claims "

#### In the field of civil and administrative law

#### Section 2

"1 Infringements of property rights ... which occurred during the period concerned shall be redressed either by the restitution of the property or by way of financial compensation, "

#### Section 3

##### Persons entitled to restitution

"1 Any natural person who is a citizen of the Czech and Slovak Federal Republic permanently resident within its territory is entitled to claim restitution of any of his or her property which passed into state ownership in the circumstances referred to in section 6. "

## Section 4

### Persons obliged to make restitution

"1 The State and/or any artificial person having confiscated property in its possession at the date on which this Law comes into force shall be obliged to restore such property to its former owner(s) .

2 Any natural person who [unlawfully] acquired property from the State .. is also obliged to restore such property to its former owner(s) . "

## Section 5

"1. A person who is obliged to make restitution shall make restitution to the person entitled to restitution upon receipt of a written request for restitution .

2. Any request for restitution shall be made within the period of six months from the date on which this Law comes into force, failing which the relevant claim shall lapse.

3 The person obliged to make restitution shall enter into a restitution agreement with the person entitled to restitution and shall restore the latter's possessions within the period of 30 days following the expiry of the six-month period referred to in paragraph 2 above ..

4 Where the person obliged to make restitution refuses so to do, the person entitled to restitution may commence legal proceedings within the period of one year from the date on which this Law comes into force "

## Section 8

"

5. Where property cannot be restored for the reasons [set out in paragraphs 1-4], the person entitled to restitution shall be financially compensated in accordance with section 13."

## Section 13

"1 A person entitled to restitution may not be financially compensated . save where restitution of real property is impossible.

2. Where moveable property has passed into state ownership by virtue of a decision which has been or is to be set aside under the provisions of Law No. 119/1990 . , a person entitled to restitution shall be compensated in the sum of 60,000 Slovak korunas

3 A claim for compensation must be filed . within one year from the date on which this Law comes into force or from the date of service of a judgment rejecting a claim for restitution "

#### In the field of criminal law

##### Section 19

"1 Any person rehabilitated under the provisions of Law No 119/1990 shall be entitled to restitution provided that he or she fulfils the conditions laid down in section 3 para. 1 . ."

##### Section 20

"1. The following are obliged to restore confiscated property: any artificial person referred to in section 4 para. 1; any natural person referred to in section 4 para 2 who acquired such property from the State where the State itself obtained it as a result of a conviction; and the Government of the Republic

2 A person who is obliged to make restitution shall make restitution to the person entitled to restitution in accordance with the provisions of sections 5 and 7-12 above Where restitution is impossible, the person entitled to restitution shall be compensated in accordance with section 13 above.

3 Where a decision quashing a sentence of confiscation of property becomes final after the date on which this Law comes into force, the period within which a compensation claim may be made shall run from the date on which such decision becomes final."

#### C *Legislation concerning the dissolution of the Czech and Slovak Federal Republic*

[Translation]

Constitutional Law No 542/1992 on the dissolution of the Czech and Slovak Federal Republic

##### Section 1

"1 The Czech and Slovak Federal Republic shall no longer exist after 31 December 1992

2 The Czech and Slovak Federal Republic shall be succeeded by the Czech Republic and the Slovak Republic "

## The Constitution of the Slovak Republic

### Article 153

"The rights and obligations set out in international agreements binding on the Czech and Slovak Federal Republic are transferred to the Slovak Republic to the extent specified in Constitutional Laws of the Czech and Slovak Federal Republic or to the extent agreed between the Czech Republic and the Slovak Republic "

#### D. *Case-law and academic opinion on restitution*

The Supreme Court of the Slovak Republic, in a judgment of 30 September 1992, ruled on the relevant principles of restitution. Applying another Law concerning restitution (No 403/1990), it held, *inter alia*, that, "it does not transpire from the wording of this Law that it automatically quashed administrative decisions made pursuant to [the relevant confiscation legislation]. Therefore, this Law did not re-establish the former property right. The Law on restitution is a *lex specialis*, expressly setting out which persons are entitled to claim restitution, and in what order. It allows such persons to claim restitution of possessions transferred to the State. Hence, the person entitled to restitution does not become an owner until he or she makes a claim (in the case of moveable property) or until the restitution agreement is approved by the court (in the case of real property)" (judgment published in 1993 in the Collected Decisions as No. 23)

According both to academic opinion and case law, the conditions laid down in section 3 of Law No 87/1991 for the restitution of property, namely that the claimant must hold Slovak nationality and reside permanently within the territory of the Slovak Republic, must be satisfied by, at the latest, the date of expiry of the time limit for lodging a claim for restitution (under section 5 para 2), or for financial compensation (under section 13 para 3)

In the words of another Supreme Court judgment, "the permanent residence of a person entitled to claim restitution, as referred to in section 3 para 1 of Law No 87/1991, means a place where that person lives with the intention of remaining there. The existence of such an intention depends on the particular circumstances of the case. In order to determine whether or not such an intention existed, a court cannot rely exclusively on the legislative provisions concerning police reports and/or the Population Register (under Law No 135/1982), but must take into account the aim and objective of Law No 87/1991" (judgment published in 1994 in the Collective Decisions as No 2)

## COMPLAINTS

1 The applicants complain, first, that the refusal to recognise their property right on the grounds of their residence abroad amounted to a disguised penalty. In this regard they invoke Article 7 para 1 of the Convention

2 Under Article 14 of the Convention, they complain that Law No 87/1991 on Extrajudicial Rehabilitation introduced a form of discrimination against persons permanently domiciled abroad

3 They also allege that Article 1 of Protocol No 1 has been violated, in that they claim to have no chance of obtaining restitution of their property, even though the confiscation decision was declared void *ex tunc*. They also consider that section 3 of Law No 87/1991 is incompatible with the provisions of Constitutional Law No 23/1991 on the Charter of Fundamental Rights and Freedoms and with the Constitution

4 Further, invoking Article 2 of Protocol No 4 taken in conjunction with Article 14 of the Convention, the applicants allege that restricting their place of residence to a particular territory is not necessary in a democratic society

5 Lastly, they invoke Articles 17 and 60 of the Convention, without giving their grounds for so doing

## THE LAW

1 The applicants complain that they have no chance of obtaining restitution of their property, even though the deeds of confiscation were declared void *ex tunc* pursuant to Law No 119/1990 on Judicial Rehabilitation

They argue that there is an incompatibility between Article 1 of Protocol No 1 and section 3 of Law No 87/1991 on Extrajudicial Rehabilitation, under which residence in the Slovak Republic is a condition of eligibility to claim restitution of property. They consider that this restriction is not necessary in a democratic society

Article 1 of Protocol No 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 respondent Government raise the preliminary objection of failure to exhaust domestic remedies on the part of the applicants, namely, their failure to lodge a petition (podnet) with the Slovak Constitutional Court, which could have ruled on the issue of whether the residence condition was discriminatory

The Government also claim, by way of preliminary objection, that Article 1 of Protocol No 1 is inapplicable since the Convention does not guarantee a right to restitution. They maintain that the relevant possessions were confiscated in 1956 and 1973 respectively, therefore, the applicants were not, at the time of lodging their restitution claims, the owners of those possessions but mere claimants

Alternatively, the Government argue that making place of residence a criterion for eligibility to claim restitution is compatible with Article 1 of Protocol No 1. They emphasise that Law No 87/1991 on Extrajudicial Rehabilitation was designed as a "Law redressing certain infringements of property rights" and that, seen in this light, making residence within the Slovak Republic a precondition for claiming restitution of property is justified, *inter alia*, for the economic well being of the country

The applicants dispute these arguments. First, they express doubts as to the effectiveness and accessibility of a "petition" to the Constitutional Court. In their opinion, the Government are raising a merely theoretical and illusory possibility in referring to this remedy, since a natural person has no *locus standi* to lodge a constitutional-law application claiming that a national law is incompatible with the Constitution or an international treaty and they consider that the Constitutional Court has jurisdiction only in those cases expressly set out in the legislation

Secondly, they maintain that they do have a property right in that their convictions as well as the confiscations, which took place in 1956 and 1973 respectively, have been declared void *ex tunc* pursuant to Law No 119/1990 on Judicial Rehabilitation. In limiting the pool of those eligible to claim restitution to Slovak citizens permanently residing within the Slovak Republic, Law No 87/1991 on Extrajudicial Rehabilitation allegedly violated their property rights by preventing them from retaking possession of their property

a) The Commission must first examine the issue of its competence *ratione personae*. On the facts, the question is whether the Slovak Republic, as one of the successor States of the Czech and Slovak Federal Republic, is bound by the Convention and its Protocols for the period from 18 March 1992 (the date on which the Czech and Slovak Federal Republic ratified the Convention) to 31 December 1992 (the date on which the Czech and Slovak Federal Republic was dissolved), a period during which the Federal Republic was a Contracting Party to the Convention

The parties consider that the Commission has jurisdiction to examine events which occurred during this period. In the course of the proceedings before the

Commission, the Government expressly confirmed that they were responsible, as one of the successor States, for matters relating to the period between 18 March and 31 December 1992.

The Commission notes that when the Slovak Republic was admitted as a full member of the Council of Europe on 30 June 1993, the Committee of Ministers decided that it should be considered as a Contracting Party to the Convention with effect from 1 January 1993 and that it was bound from that date by, *inter alia*, the declaration made by the Czech and Slovak Federal Republic under Article 25 of the Convention.

The Commission observes that under the national legislation concerning the transfer of powers arising out of the dissolution of the Czech and Slovak Federal Republic, and in particular under Article 153 of the Constitution of the Slovak Republic, the Slovak Republic, as one of the two successor States, took over, according to the territorial principle, all rights and obligations arising under international treaties which had bound the Federal Republic to the extent specified in that State's constitutional laws or by agreement between the Slovak Republic and the Czech Republic.

The Slovak Republic made similar statements at the international level. Indeed, in their letter of 1 January 1993 to the Secretary General of the Council of Europe, the Slovak Government declared that, "in conformity with the valid principles of international law, the Slovak Republic, as a successor State to the Czech and Slovak Federal Republic, considers itself bound, as of 1 January 1993, by multilateral international treaties to which the Czech and Slovak Federal Republic was a party on that date, including reservations and declarations to their provisions made by the Czech and Slovak Federal Republic".

In the circumstances, the Commission considers that it is competent *ratione personae* to examine this case.

b) Secondly, as regards its competence *ratione temporis*, the Commission recalls that it can examine applications only to the extent that these relate to events occurring after the Convention entered into force with respect to the relevant Contracting Party.

On the facts, the applicants' possessions were confiscated in 1973 and 1956 respectively that is, long before the above-mentioned date. Therefore, the Commission is not competent, *ratione temporis*, to examine the circumstances of the confiscations or the continuing effects produced by them in 1990, when the applicants benefited from the judicial rehabilitation measures. In this regard, the Commission refers to its established 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 a right" (cf. No 7742/76, Dec. 7.7.78, D.R. 14 p 146).

The applicants point out that the decisions relating to them, which were taken in 1990, annulled *ex tunc* the decisions flowing from the old criminal proceedings, including the decisions confiscating their possessions. Therefore, they claim that it was only when section 3 of Law No 87/1991 was applied to their case that there was an interference with their property rights. That provision limits those who can claim restitution to Slovak citizens permanently residing within the territory of the Slovak Republic.

The Law in question came into force on 1 April 1991 and the six-month period within which those eligible could claim restitution of their property expired on 30 September 1991 that is, before 18 March 1992, the date on which the Convention entered into force with respect to the Czech and Slovak Federal Republic. Nevertheless, the Commission notes that the restitution proceedings commenced by the applicants before the national courts continued during the year 1992 and ended with the appeal judgment of 30 November 1992, which was served on the applicants on 12 March 1993.

In these circumstances, the Commission is bound to take these judicial proceedings into account and cannot, therefore, reject this part of the application for lack of temporal jurisdiction.

c) However, the applicants cannot allege a violation of Article 1 of Protocol No. 1 in the context of these judicial proceedings unless those proceedings related to their "possessions" or "property" within the meaning of that provision. Anyone who complains of an interference with one of his property rights must show that such a right existed (cf. No. 7694/76, Dec. 14.10.77, D.R. 12 p. 131).

In this regard, the Commission recalls the established case-law of the Convention organs, according to which "property" can be either "existing possessions" (see Eur. Court H.R., *Van der Musselle v. Belgium* judgment of 23 November 1983, Series A No. 70, p. 23, para. 48) or assets, including claims, which an applicant can, at least arguably, "legitimately expect" to see realised (cf. Eur. Court H.R., *Pine Valley Developments Ltd and Others v. Ireland* judgment of 29 November 1991, Series A no. 222, p. 23, para. 51, and *Pressos Compania Naviera S.A. and Others v. Belgium* judgment of 20 November 1995, para. 31, to be published in Series A no. 332). By way of contrast, the hope of recognition of the survival of an old property right which it has long been impossible effectively to exercise cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1 (cf. Nos. 7655-7657/76, Dec. 4.10.77, D.R. 12 p. 111), nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see No. 7775/77, Dec. 5.10.78, D.R. 15 p. 143).

In the present case, the applicants brought an action for restitution before the national courts under Law No. 87/1991 on Extrajudicial Rehabilitation. Therefore, the action did not concern "existing possessions" belonging to the applicants, who were obviously not owners but, as the Government affirm, merely claimants. Despite their judicial rehabilitation in 1990, their former right of ownership over the confiscated



possessions was still not capable of being effectively exercised, especially as section 23 para 2 of Law No 119/1990 on Judicial Rehabilitation expressly reserved the detailed provisions regarding redress for later legislation

As regards the question whether the applicants nevertheless had a "legitimate expectation" of having a claim to redress upheld and enforced, the Commission notes that Law No 87/1991 granted the opportunity to claim restitution of property only to persons who had been judicially rehabilitated, who were of Slovak (or, previously, Czechoslovak) nationality and who were permanently resident within the territory of the Slovak Republic (or, formerly, the Czech and Slovak Federal Republic) Since the applicants did not fulfil the permanent residence condition they were excluded, from the outset of the action, from obtaining either restitution of the property or compensation in lieu thereof Indeed, the applicants were conscious of this fact and knew that their only chance of succeeding in their case was to claim, via the ordinary courts dealing with their restitution claim, that the legislative provision laying down that condition was unconstitutional

However, the Commission takes the view that the fact that the national courts could have made a constitutional-law application to the Constitutional Court (under section 8 of Constitutional Law No 91/1991 on the Federal Constitutional Court) regarding the alleged incompatibility between the permanent residence condition for those claiming restitution and the Constitution or the Convention, is not in itself enough to allow the applicants to claim to have a "possession" within the meaning of Article 1 of Protocol No 1

It follows that the applicants, who have, no doubt, long harboured the hope that the confiscated property would be restored to them, have not proved that they ever had a claim to redress Consequently, neither the judgments of the national courts nor the application to their case of Law No 87/1991 could have constituted an interference with their peaceful enjoyment of their possessions The facts of the case do not fall within the scope of Article 1 of Protocol No 1

In these circumstances, the question whether the applicants have exhausted domestic remedies may be left undecided

Hence, this part of the application must be rejected as being incompatible, *ratione materiae*, with the provisions of the Convention in accordance with Article 27 para 2 of the Convention

2 Under Article 14 of the Convention, the applicants also complain that Law No 87/1991 on Extrajudicial Rehabilitation introduced a form of discrimination against persons domiciled abroad

Article 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 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 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect only in relation to the "rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of one or more of such provisions - and to this extent it is autonomous - there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter (see Eur. Court H R., *Inze v. Austria* judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

In the present case, the applicants have invoked Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, but the Commission has just held that Article 1 of Protocol No. 1 does not apply to the facts of the case. Since Article 1 of Protocol No. 1 has proven to be inapplicable, Article 14 of the Convention cannot be combined with it on the facts (see Eur. Court H R., *Marckx v. Belgium* judgment of 13 June 1979, Series A no. 31, p. 23, para. 50).

Therefore, this part of the application must also be rejected pursuant to Article 27 para. 2 of the Convention as incompatible with the provisions of the Convention.

3. The applicants also claim that the permanent residence condition laid down in section 3 of Law No. 87/1991 is not in conformity with Article 2 of Protocol No. 4 and that the refusal to recognise their property rights amounts to a disguised penalty contrary to Article 7 of the Convention.

The Commission has already found that it lacks temporal jurisdiction to examine applications which refer to events prior to the date on which the Convention entered into force with respect to the relevant Contracting Party. It notes in this regard that the sanctions imposed on the applicants for leaving their country were imposed in 1956 and 1973 respectively, so that they do not fall within the Commission's competence.

The Commission notes that Law No. 87/1991 laid down a six-month time limit for restitution claims. The fact that section 3 of that Law requires permanent residence within the territory of the Slovak Republic (or, formerly, Czechoslovak territory) cannot be considered as a violation of the applicants' right to freedom of movement and to choose their residence.

Hence, the national courts' refusal, pursuant to Law No 87/1991, to restore the applicants' possessions cannot be considered either as a conviction for a "criminal offence", or as the imposition of a "penalty" within the meaning of Article 7 of the Convention. Moreover, the applicants did not raise this complaint before the national courts.

It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 27 para 2 of the Convention.

4 To the extent that the applicants invoke Articles 17 and 60 of the Convention, the Commission notes that they have not substantiated their complaints in any way. In the light of the considerations set out above, the Commission considers that it is not necessary to examine these complaints separately.

It follows that this part of the application must also be rejected pursuant to Article 27 para 2 of the Convention.

For these reasons, the Commission, by a majority,

**DECLARES THE APPLICATION INADMISSIBLE**