

Kaleidoscope

Reinforcing the New Democracies: The European Convention on Human Rights and the Former Communist Countries – A Study of the Case Law*

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I. Introduction

This article is based on a survey of decisions by the European Commission of Human Rights regarding applications from former Communist countries which ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (known as the European Convention on Human Rights, hereinafter 'the Convention') following the dramatic events in Europe in the fall of 1989.

To date, eight new countries from Central and Eastern Europe have ratified the Convention: Bulgaria, the Czech Republic, Hungary, Lithuania, Poland, Romania, the Slovak Republic and Slovenia. The Czech and Slovak Federal Republic (CSFR) had ratified the Convention before it split into two States. The jurisdiction of the Convention was also extended to the former East Germany, as a result of its unification with the former West Germany.¹

This article is a result of a study of all the European Commission of Human Rights' decisions in applications from the new Member States.² However, it does not include a discussion of cases summarily decided by the Commission, when all the decision concluded was that no violation of the Convention had been found. For these reasons, the article cannot be seen as an overview of all the complaints that

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1 Estonia, Macedonia and the Ukraine signed the Convention but have not yet ratified it. See Drzemczewski, 'The Council of Europe's Co-operation and Assistance Programmes with Central and Eastern European Countries in the Human Rights Field: 1990 to September 1993', 14 *HRLJ* (1993) 229, 230.

2 No case from the former Communist countries has so far been referred to the European Court of Human Rights.

have been brought before the Commission.³ It is also clear that this article is not a report on the human rights situation in the former Communist countries. Nevertheless, as the article will show, some patterns of the ways in which applicants from the former Communist countries try to use the Convention can be identified. One of the article's contributions is indeed in trying to understand the hopes which the citizens (and lawyers) of the new democracies have of the Strasbourg organs. In addition, the study of the case law raises some more general questions about the role the Convention may play in the transition to democracy.⁴

II. The Time Limits and Attempts to Overcome them

Many cases coming from the ex-Communist countries were rejected 'incompatible *ratione temporis*'.⁵ These rejections were often the result of the fact that the applications dealt with events that happened before the relevant country had recognized the right of individual petition under Article 25 of the Convention.⁶ The other reason for this kind of rejection was that more than the maximum six months had passed since the final decision in the matter that was the subject of the complaint.⁷ These two reasons were in most cases two sides of the same coin, as complaints were usually brought more than half a year after the domestic final decision because the relevant country had only recognized the right of individual petition after that time limit had passed.

The applications which concern events which happened before the relevant dates, and therefore incompatible *ratione temporis*, may be seen as reflecting a hope of the applicants (or their lawyers) that the Commission may help undo the wrongs of the *ancien régime*. Obviously, the new countries have joined the Convention *after* they have already become democracies which respect basic human rights, as those are preconditions to join,⁸ so it may be expected that the more severe human rights violations in those countries had happened *before* they joined. So while the importance of the Convention as part of the transition to democracy should not be underestimated, it is interesting to discover that people's expectations are higher in

- 3 Such an overview would have to include provisional files that were eventually not registered. The information about these files is not public.
- 4 This article includes Commission's decisions which were given until the beginning of May 1995. In addition it was updated to include significant decisions given until the end of 1995.
- 5 For a discussion of the temporal effect of the Convention see P. van Dijk, G.J.H. van Hoof, *Theory and Practice of the European Convention of Human Rights* (1990) 9-11.
- 6 Article 25(1) of the Convention provides: 'The Commission may receive petitions...., provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions...'
- 7 Article 26 of the Convention provides: 'The Commission may only deal with the matter after all domestic remedies have been exhausted, ... and within a period of six months from the date on which the final decision was taken.'
- 8 According to Article 66(1) of the Convention, it is open to signature by Members of the Council of Europe. Articles 3 and 4 of the Statute of the Council of Europe determine that in order to become a Member, a State 'must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms...'. See Drzemczewski, *supra* note 1, at 229-230.

that they lodge complaints about *earlier* events, hoping that the Convention may not only be prospective, but also backward looking and helpful in correcting the past. I shall return to this element with specific examples later.

A recurring pattern that is seen in the Commission's decisions, is the attempt by applicants to overcome the time limit problem. They often do it by trying to introduce some additional measure *after* the entry into force of the Convention in their country, so that they can petition against the decision given in regard of that measure, as if it were the 'final decision' within the meaning of Article 26. The Commission has repeatedly rejected these attempts, saying that the additional measure is not an effective one, and thus the date of the 'final decision' is the earlier date of the decision given in the last *effective* appeal.

For example, in numerous cases from Poland, the relevant events happened before the dates of ratification and of recognition of the right of individual petition. The applicants requested an extraordinary appeal and the request was rejected. In all of these cases the Commission refused to see the rejection of the extraordinary appeal, which happened *after* the relevant dates, as the 'final decision' within the meaning of Article 26, since it was not an effective remedy, and declared the application as inadmissible for being incompatible *ratione temporis*.⁹ In other cases the complaints concerned the rejection of the request for an extraordinary appeal, and the Commission decided that there was no right to such appeal under the Convention.¹⁰

In many cases from Hungary the same pattern returns: the applicants try to add an additional act, so that they can 'extend' the relevant events to after the entry into force of the Convention in regard to their country, but the Commission has rejected these attempts. For example, Application 21888/93¹¹ dealt with a civil litigation concerning property. The last decision was given in 1988. The applicants petitioned the Hungarian Supreme Court in this matter after the ratification date, but the Commission held that this petition was not an effective remedy and thus would not be seen as the 'final decision'.¹²

Poland and Hungary are the two countries where this method of trying to 'extend' the events recur in many cases. In a similar case from the Slovak Republic, the applicant tried to do the same thing by writing a letter to the Ministry of Justice, but the Commission held that this was not an effective remedy, and the application was declared incompatible *ratione temporis*.¹³ In another Slovak case, the Commission, while deciding the case was inadmissible for time reasons, held that an additional application to the prosecutor-general in the matter, was not an effective

9 See, e.g., Application 22701/93 decided 29 June 1994; 23542/94, 13 October 1994; 25428/94, 6 April 1995. (Unless stated otherwise, all the Commission's decisions cited in this article are unpublished. Some decisions may be published in forthcoming volumes of ECHR Dec. & Rep.)

10 See, e.g., 23738/94, 13 October 1994; 23936/94, 1 December 1994; 24418/94, 12 January 1995; 24415/94, 12 January 1995.

11 13 January 1994.

12 For cases with similar issues and results see, e.g., 21936/93, 21983/93 and 22094/93, 13 January 1994.

13 24525/94, 1 December 1994.

resort, and thus did not change the result of incompatible *ratione temporis*. In a Czech Republic case, the Commission reached a similar conclusion as to the ineffectiveness of a remedy tried after the relevant dates.¹⁴

As already noted above, a typical pattern in the cases surveyed, is the attempt to use the Convention not only for recent events in the new democracies, but also for undoing the wrongs of the Communist regimes. Indeed, the shots at 'extending' events that happened before the relevant dates are manifestations of this attempt. In the next section we will see how this theme recurs specifically in the sphere of property.

III. Property Cases

A significant number of cases from the new democracies which have so far been decided by the Commission have to do with citizens' claims regarding property, especially property that was expropriated by the Communist regimes. Here, we see again the hope that by joining the Convention a tool is created to undo or remedy the past. As we shall see, to the extent that citizens of the ex-Communist countries put their hopes in the Convention in this respect, they were, in the cases decided so far, doomed to disappointment. It is important to note that cases with property themes form the largest group among the Commission's decisions which were given on the merits of the issues, and with an elaborated reasoning.

A case that came before the Commission from Poland dealt with trade union branches ('Solidarnosc' Trade Union at the 'Zgoda' Cooperative and at the 'Fresco' Plant) which had had their property seized after the introduction of martial law in 1981. In 1991 they applied for restitution. The Restitution Commission decided that compensation should be paid by the Independent Trade Union to which the property had been transferred, but the applicants argued that the sum of the compensation was insufficient, and invoked the property clause of the Convention, in Article 1 of Protocol 1.¹⁵ The Supreme Administrative Court in Poland dismissed the applicants' appeals in April and May 1994 respectively.

In this case the Commission held that both the expropriation and compensation happened *before* the entry into force of Protocol 1 in respect of Poland. The same

14 22699/93, 12 May 1994. The line of cases discussed in this section should be distinguished from cases where the complaints brought before the Commission involved domestic proceedings that had started before the relevant State had recognized the right of individual petition, but were still pending at that time. In these cases the Commission held that when, by reason of its competence *ratione temporis*, it can only examine the latter part of the proceedings, it can nevertheless take into account, in order to assess the proceedings, the stage they reached at the beginning of the period under consideration. See, e.g., 24557/94, 24559/94, 25792/94, 6 September 1995, 25086/94, 25415/94, 26169/95, 18 October 1995, all against Poland.

15 Article 1 of Protocol 1 provides: 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except...'

was true of the decision of the Supreme Administrative Court.¹⁶ For this reason the complaint was held incompatible *ratione temporis*.¹⁷

The 'Solidarnosc' cases illustrate the limits of the role that the Convention can play in the transition to democracy: in this case, not only did the expropriation happen before Poland had ratified the Convention, but also the decisions regarding compensation, and the appeal on those decisions, were *all* delivered before the relevant date.¹⁸ In those circumstances, the Commission could not intervene. It is interesting to observe here that when the Member State, in this case Poland, was quick to take corrective measures for the Communist past *before* it ratified the Convention, the Commission was precluded from checking if those measures were corrective 'enough'. It is hard to assess whether the result would have been different had the compensation proceedings in Poland occurred after the entry into force of Protocol 1. If that had been the case the Commission would have had to decide whether it was going to scrutinize the *compensation* for expropriation of property through Article 1 of Protocol 1, or whether it was going to interpret Article 1 more narrowly, i.e. only to protect from expropriation as such, but not to allow an assessment by the Commission of compensation. In any case, it is clear that at least from a time perspective, if the corrective measures had happened after the entry into force, they would have been within the Commission's jurisdiction. Indeed, in Application 24559/94,¹⁹ the Commission looked into a complaint regarding proceedings held in Poland on the issue of restoration of property seized in 1951. The applicant complained, under Article 6 of the Convention,²⁰ that his case had not been decided within a reasonable time. The Commission held the case as admissible. This case illustrates the possibility of review, by the Commission, of restitution processes. Nevertheless it is unclear whether the Commission will be willing to go beyond examining the procedural aspects of these processes. As a matter of policy regarding when is the right time for a new democracy to join the Convention, one should note that the earlier it happens, the more chances that the 'correction' processes would be open to scrutiny by the Commission.

The majority of the property cases decided by the Commission in applications from former Communist countries, came from the Czech Republic and Hungary.

A. Czech Republic

Most of the property cases from the Czech Republic involved demands from applicants whose property had been confiscated by the Communist regime.

16 Poland recognized the right of individual petition on 1 May 1993, but in regard to Protocol 1 only on 10 October 1994.

17 25481/94 and 26174/95, 6 April 1995.

18 In this case as a result of the later ratification of Protocol 1.

19 6 September 1995.

20 Article 6(1) of the Convention provides: '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 within a reasonable time by an independent and impartial tribunal established by law...'

In some cases, the confiscation was done as part of the punishment in a criminal trial. For example, in Application 22926/93,²¹ the Commission dealt with an application from a person who was convicted in 1971 for leaving the country, and sentenced to 20 months in jail and confiscation of property. On 23 July 1990 the same Prague court cancelled the convicting judgment *ex tunc*, according to the law of judicial rehabilitation. The applicant demanded the return of the confiscated possessions, but was refused by the court which referred to the conditions in the law on non-judicial rehabilitation, which the applicant did not fulfil because he resided outside the country. The applicant invoked Article 6(1) of the Convention and Article 1 of Protocol 1, but the Commission rejected the petition on the grounds that the applicant had not exhausted his domestic remedies (Article 26) as he had not appealed to the domestic constitutional court.²²

The Commission's decision in Application 23256/94²³ also dealt with the case of an applicant who asked for the restitution of goods which were confiscated in the past. As in the previous case discussed, the applicant was refused because of his residency in Switzerland. In this case the applicant invoked, in addition to the Articles invoked in 22926/93, Articles 2(2) and 3 of Protocol 4²⁴ and Article 14 of the Convention,²⁵ as he argued he was discriminated against based on his residency. This case may illustrate the problems of returning property to previous owners, as the property was now being held by two agricultural cooperatives. The Commission did not go into the merits of the case because it determined the applicant had not exhausted the domestic remedies, as the domestic constitutional court rejected the appeal to it for mere formal reasons. Rejection for non-exhaustion was also the fate of the Application in 23129/93,²⁶ which again dealt with a demand for a return of property in a non-judicial process, following an annulment of the conviction that caused the confiscation.²⁷

In Application 25893/94,²⁸ the Commission had the opportunity to look into the merits of a Czech property case. The application came from a Czech national who

21 *J.A. v. Czech Republic*, 7 April 1994, published in 77A ECHR Dec. & Rep. (1994) 118 (English translation published in 77B ECHR Dec. & Rep. (1994) 118).

22 It should be noted in this context that there were quite a few Commission decisions on applications from the Czech Republic which were rejected on non-exhaustion grounds because the applicants had not appealed to the constitutional court.

23 *Hava v. Czech Republic*, 29 June 1994, published in 78A ECHR Dec. & Rep. (1994) 139.

24 Article 2(2) of Protocol 4 provides: 'Everyone shall be free to leave any country, including his own.' Article 3 of the Protocol prohibits expulsion from or denial of entry to the territory of the State of which one is a national.

25 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.'

26 12 October 1994.

27 Non-exhaustion was also the grounds for rejection of two other petitions in which applicants sought the return of buildings confiscated by the previous regime: 23122/93, 7 April 1994 and 23548/94 *E.F. v. Czech Republic*, 19 June 1994, published in 78A ECHR Dec. & Rep. (1994) 146. Property questions were also at the centre of Applications 22561/93, 7 April 1994 and 21028/92, 10 December 1992 the latter being a case which was brought against the Czech and Slovak Federal Republic (CSFR) when it still existed.

28 19 October 1995.

attempted to get back property that was confiscated in 1948. The authorities in the Czech Republic determined that the applicant did not fulfil the requirements of the relevant Czech restitution laws. The applicant invoked Article 6(1) of the Convention and Article 1 of Protocol 1. The Commission took note of the fact that the application did not concern a confiscation of property, but rather an action of restitution. It held that the property right in Article 1 Protocol 1 does not as such include the right to acquire property. If the applicant did not have any rights created under the restitution laws because she failed to fulfil their requirements, then she cannot argue for a violation of property rights in the confiscated property. The application was held as incompatible *ratione materiae*.

The upshot from the Commission decision in 25893/94, is that the issue of restitution of confiscated property remains at the discretion of the Member States: the Commission in this case did not question the conditions for restitution imposed in domestic Czech law. An applicant does not have a right in confiscated property unless such a right is created by a domestic restitution law.²⁹

B. Hungary

Unlike the Czech property cases (in which arguments were made concerning some official rehabilitation procedure, and which may be viewed as concerning property rights that may potentially have been created under the rehabilitation procedure) in the Hungarian cases, the applicants tried to argue that Article 1 of Protocol 1 includes a right to have their property returned, even when there was no domestic procedure that may have created such rights. In 22016/93,³⁰ the Commission dealt with an expropriation dating from 1945. The expropriation act itself was of course incompatible *ratione temporis*. As to the applicant's claim about the lack of restitution, the Commission held that the Convention does not guarantee such a right or other right to reparation of injuries which are not in themselves violations of the Convention. Hence, because the expropriation has not been a violation, for the reason that Hungary at the time was not a member of the Convention, there is no right under the Convention to undo it or compensate for it.³¹

In 23318/94³² the Commission similarly held that it cannot create, by way of interpretation of Article 6(1), substantive rights that are not existing in the country concerned: the case dealt with real property that was expropriated in 1952. In 1991 the constitutional court decided the land expropriation law from 1952 was unconstitutional, but this decision had no retroactive effect. Therefore, the

29 Similar conclusions may be drawn from the Commission's decision in complaints brought against the Slovak Republic and against Romania. See, respectively, Application 25461/94, 6 September 1995, and Application 27054/95, 13 September 1995.

30 14 October 1993.

31 The Commission decided 18 additional similar cases in the same way. Out of these, 14 were brought by applicants bearing the same last name as that of the applicant in 22016/93, so we may assume there was an organized effort here by a family to regain its property.

32 11 May 1994.

applicant's complaint under Article 6(1) and Article 1 of Protocol 1 was for rights not recognized in Hungarian law.

This series of cases again illustrates an attempt to use the Convention as a mechanism for undoing the deeds of the previous regimes, and, as in the other cases, this attempt has failed. By deciding there is no right under the Convention to compensation for acts that are not violations because they happened before the relevant dates, the Commission has confirmed that the Convention is only forward looking, and will not be given a retrospective interpretation. The outcome of these decisions, is that it is left up to the ex-Communist countries to decide whether they want to make positive acts of restitution. However, once they start taking these actions, there is a possibility that those acts can be scrutinized by the Commission.

Another attempt to bring an old expropriation into the time frame of the Convention failed in 21344/93.³³ Here the applicant argued that the expropriation of land that happened in 1945 was a continuous act, but the Commission chose to see it as an instantaneous act, and thus declared the application incompatible *ratione temporis*. As in other cases, also here the Commission held that Article 1 of Protocol 1 does not guarantee restitution or reparation of injuries which are not in themselves violations of the Convention, and rejected this argument as incompatible *ratione materiae*.

IV. Cases Concerning Public Officials and the Change of Regime

A number of cases from the ex-Communist countries involve public officials, and appointment or dismissal of officials. In some of these cases, it is clear that the facts have to do with the move from the *ancien régime* and the way that members of that regime were to be treated afterwards. In some other cases, it is much less clear from reading the Commission's decisions, what the background circumstances were, and if the issue was related to the change of the regime. Nevertheless, for the sake of convenience, I shall discuss these cases in this section. By doing so I do not intend to indicate that these cases necessarily have any connection to the special circumstances of the ex-Communist States.

A. Bulgaria

Application 21915/93³⁴ came from the former Bulgarian Prime Minister, Andrei Karlov Lukanov, at the time of the application serving as a member of the National Assembly. Previously, between 1986-1990 he had served as Deputy Prime Minister. His parliamentary immunity was suspended in 1992 and he was detained on the charge of participating, as Deputy Prime Minister, in decisions granting assistance to under-developed countries (e.g. Nicaragua, Cuba, etc.), which had adverse effects

33 30 June 1993.

34 12 January 1995. Published in 80A ECHR Dec. & Rep. (1995) 108.

on the Bulgarian economy. His appeal against detention was dismissed by the Supreme Court in the absence of the applicant and his lawyer, and a later application for release for health reasons was also rejected. Meanwhile, the prosecutor had prohibited the applicant from speaking alone with his lawyer, after he published an article in a newspaper. In December 1992 the National Assembly reversed its decision to authorize his detention, and he was released. He claimed that he had been detained without reasonable ground of any offence, claiming that the decisions to grant assistance were collective decisions taken in accordance with the Government's policy and UN recommendations. He argued that the proceedings against him were a political reprisal, and their purpose was to restrict his rights as a member of the National Assembly.

The Commission held the application under Article 5(1)(c)³⁵ and Article 18³⁶ of the Convention admissible, as it was competent to examine the grounds for arrest and detention given in the Supreme Court's decision from 13 July 1992, in so far as they remained unchanged after the entry into force of the Convention as regards Bulgaria on 7 September 1992. Claims under Article 6 were rejected incompatible *ratione temporis* because the Commission could not check the Supreme Court's decision of 13 July 1992; the same applied to the claim under Article 10³⁷ about the prohibition on writing articles and speaking with a lawyer.³⁸

This case dealt with the problems which arise in the way the new democracies handle the officials of the old regimes. It raises the question of what steps the new governments can take against those who acted on behalf of the previous governments, and what are the limits on those steps. By choosing to see the Article 5 issue as continuous, the Commission opened its door to a review of the case on its merits, and it became the first case from a former Communist country to be held (partly) admissible.³⁹

Another Bulgarian case that involved former government officials is Application 24571/94 and 24572/94.⁴⁰ The applicants in these cases were Grigor Stoitchkov, who was Deputy Prime Minister of Bulgaria from 1978 until 1989, and Lubomir Shindarov, who was Deputy Minister of Public Health from 1981 until 1989. They were indicted in Bulgaria in 1991 for failures to undertake the necessary protection measures against the effects of nuclear radiation, which had permeated into Bulgaria following the Chernobyl accident in 1986. They were convicted and their conviction was upheld in appeal.

35 Article 5(1)(c) allows for deprivation of liberty in the case of 'the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence...'

36 Article 18 provides: 'The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.'

37 Article 10 of the Convention protects the right to freedom of expression.

38 Additional claims made in this case, regarding alleged violations of Articles 3 and 7 of the Convention, were rejected, the first on its merits and the latter on the ground of being premature.

39 On 16 January 1996 the Commission adopted a report on this case. At the time of going to print, the report had not yet been made public.

40 28 June 1995.

The applicants complained to the Commission of the alleged unfairness of the criminal proceedings, of violations of their defence rights, and of the alleged partiality of the courts. They invoked Article 6(1) of the Convention, and Article 6(3) which deals with the rights of people charged with criminal offences. In addition Article 14 was invoked in conjunction with Article 6.

The Commission looked into the merits of the case (excluding events that occurred before the entry of the Convention into force in respect of Bulgaria). It held that the facts of the case indicated that the applicants did enjoy the rights to defend themselves, and that there was no indication that in the appellate proceedings the applicants could not sufficiently put forward their point of view or that the proceedings were unfairly conducted. Furthermore, the Commission did not find any indication of judicial prejudice or political bias in the case. The Commission has thus held the application to be inadmissible.

An additional Bulgarian case that may have to do with the transition to democracy is Application 27608/95.⁴¹ In this case, the 'Movement for Democratic Kingdom' petitioned against the Bulgarian authorities refusal to register it under the Act on Political Parties. The applicant invoked Article 11 of the Convention.⁴² The Commission found no violation of Article 11, as the association was not prevented from engaging in political activity, but only from running in elections. Furthermore, the applicant could, the Commission noted, rectify the procedural omissions because of which its registration was refused, or send a fresh petition for registration once it had complied with the pertinent requirements under the law.

B. Czech and Slovak Federal Republic

A case from the former CSFR involved a federal law from May 1990 which passed the property of the Communist party into the hands of the State. However, publishing rights were not transferred, and thus the ownership but not the publishing rights of the Communist Party paper (for which the applicant worked) were transferred. The journalists refused to work for a paper run by a political party. The applicant lodged complaints concerning the arrest of a third person, but these were rejected as the applicant did not claim to be a victim of a violation of the Convention in this context. The applicant also argued that civil servants tried to intimidate the opposition press, but the Commission found no indication that the applicant's freedom of speech was interfered with.⁴³

41 29 November 1995.

42 Article 11(1) of the Convention provides: 'Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests'.

43 Application 20079/92, 10 December 1992.

C. Hungary

A Hungarian case dealt with an applicant that who joined the fire brigade in 1969, and became deputy-chief of a county brigade in 1991. In that year, he was given a car that he used for personal purposes. He put forward Article 6 arguments about disciplinary proceedings that were taken against him in this matter, and also Article 14 arguments. The Commission held the case incompatible *ratione temporis*, because the last proceeding happened before the relevant date.⁴⁴ It is not clear from the Commission's decision whether this case has to do with the change of the regime. Any assumption that this was some kind of a 'hunt' of officials appointed by that regime, and a manifestation of a view of these officials as corrupt, would be a mere speculation.

D. Poland

In Application 25395/94,⁴⁵ the applicant wanted a certificate that he was not an informant for the Communist secret police. The Minister of Justice had refused to give such a certificate, in a decision on which no appeal was possible. The applicant invoked Article 6. The Commission held that there was no 'civil right' to have such a certificate, even if there is one for protection of good reputation. Hence, there was no violation of Article 6, and the case was held to be incompatible *ratione materiae*.

E. Slovak Republic

In Application 24157/94,⁴⁶ the applicant's complaint concerned a Slovak law that prevented persons who were affiliated with the State Security (former secret police) from holding certain important posts. The applicant complained that the law in question is discriminatory, and that by its application he was convicted of a criminal offence and incurred the penalty of being banned from certain posts in State organs. Specifically, the applicant complained that as the result of the application of the said law he was discriminated against and that his right to promotion in employment was violated. He invoked a variety of Convention articles. The Commission held that in the present case no criminal proceedings were brought against the applicant. The Ministry of the interior issued the applicant a certificate alleging that he was registered as a person mentioned in the contested law. However, the issue of this certificate is not a criminal charge within Article 6. Regarding the applicant's complaint of discrimination, the Commission noted that Article 14 of the Convention applies only to the enjoyment of rights guaranteed by the Convention itself, and that the access to civil service is not such a right. Therefore, after

44 Application 21495/93, 30 June 1993.

45 30 November 1994.

46 28 June 1995.

rejecting some of the applicant's other arguments, the Commission found the application to be inadmissible.

F. Other Cases

Other cases that dealt with personnel issues, but where it is unclear whether there is any connection to the change of the regime, dealt with compensation for retirement from the army,⁴⁷ refusal to admit to the bar,⁴⁸ dismissal from a university,⁴⁹ refusal to re-appoint a judge who left for family reasons,⁵⁰ and a decision by the Ministry of Justice not to forward a candidate's name for election as a professional judge.⁵¹ A case from Romania involved the authorities refusal to allow the former king into the country.⁵² All of these cases were held to be inadmissible.

V. Cases Concerning Tribunals Decisions Before the Ratification of the Convention

In three cases brought against the former CSFR, the applicants sought to undo decisions given by tribunals before the Convention entered into force in that country. In 21026/92 the applicant tried to re-open proceedings concerning his claim for industrial accident compensation from 1979; in 21027/92 the applicant tried to appeal a decision from 1990 concerning his claim for compensation for bad medical treatment; and in 21029/90 the applicant tried to challenge proceedings that determined his incapacity to act, which took place in 1976, 1983 and 1990.⁵³ All three complaints were held inadmissible for various reasons.

VI. Other Cases

There is a growing number of Commission decisions against some of the new democracies which are not necessarily typical of the special circumstances concerning those countries and are similar to the cases coming from 'veteran' Member States. Under this category one may include various Article 5 and 6 complaints,⁵⁴ complaints regarding lack of proper medical care in prison⁵⁵ and property claims concerning change in social security.⁵⁶

47 Application 25496/94 against Romania, 5 April 1995.

48 Application 22842/93 against Poland, 30 November 1994.

49 Application 23736/94 against Poland, 31 August 1994.

50 Application 24413/94 against Poland, 12 October 1994.

51 Application 24682/94 against the Slovak Republic, 1 December 1994.

52 Application 26916/95, 4 September 1995.

53 The three decisions are all from 10 December 1992.

54 See, e.g., 24211/94 against the Czech Republic, 11 January 1995; 23400/94 against Poland, 12 May 1994; 23503/94 against the Slovak Republic, 12 May 1994; 26345/95 against the Slovak Republic, 29 November 1995; 25792/94 against Poland, 6 September 1995.

55 Application 25669/94 against Poland, 6 July 1995.

56 Application 22560/93 against the Czech Republic, 7 April 1994.

In Application 22558/93,⁵⁷ the applicant complained, *inter alia*, that the Polish prison authorities had opened a letter for him from the Commission. A majority of the Commission, after looking into the case in light of Articles 8⁵⁸ and 25(1)⁵⁹ of the Convention, decided there was no indication of any hindrance of the applicant's correspondence with the Commission.⁶⁰

A similar case was brought before the Commission in Application 25085/94.⁶¹ In this case too the applicant complained, *inter alia*, that his correspondence with the Commission was opened, read, and delayed by Polish prison authorities. The Commission declared the application to be partly admissible, as it raised serious questions under Article 8, and also decided to pursue the examination of whether the applicant's right under Article 25 was interfered with.

VII. Conclusion

Since the new democracies of Central and Eastern Europe ratified the Convention, there have been a significant number of applications registered with the Commission from each joining country.

The table below shows for each country the date of the recognition of the right of individual petition, and the total number of files that were registered until 17 May 1995.⁶²

Bulgaria	7 September 1992	20
Czech R. ⁶³	1 January 1993	92
Hungary	5 November 1992	147
Poland	1 May 1993	256
Romania	20 June 1994	46
Slovak R. ⁶⁴	1 January 1993	58
Slovenia	28 June 1994	3

(The table does not include provisional files that ended up not being registered with the Commission).

The fact that there are applications registered from each country that joined the Convention, shows that people in the ex-Communist countries put their trust in the

57 29 June 1994.

58 Article 8(1) provides: 'Everyone has the right to respect for his private and family life, his home and his correspondence.'

59 Article 25(1) determines that States that recognized the right of individual petition 'undertake not to hinder in any way the effective exercise of this right'.

60 Application 23380/94 against Poland, has not yet been decided, but was communicated to the Polish Government, and concerned the religious education system.

61 6 July 1995.

62 These statistics do not include Lithuania, which recognized the right of individual petition on 20 June 1995.

63 As successor of CSFR which recognized the right of petition on 18 March 1992.

64 As successor of CSFR which recognized the right of petition on 18 March 1992.

European human rights system and try to benefit from it. Moreover, the fact that applications came from countries even before they ratified the Convention, shows that the mere prospect of joining the Convention creates hope in the new democracies, and be it out of ignorance or out of mere wishful thinking, people are resting their claims with Strasbourg even before it is possible to do so.

Is it possible at this stage to draw any conclusions which would not be premature about the nature of the cases coming from the ex-Communist countries? The number of decisions delivered by the Commission with enough elaboration so we can learn from the decisions what was the nature of the case is still rather low, and we probably need to gather more data before we can draw any conclusions. In addition, it may well be the case that in the near future cases that were communicated to the respondent countries will reach the Commission, and that these cases will be of a more substantial nature than the cases which were rejected by the Commission *ex parte*.

However, as I have elaborated throughout the article, there are some patterns which emerge from the few cases that are before us. The strongest recurring factor is the attempt to bring under the 'wings' of the Convention events that happened before the countries ratified it. In this way, applicants have tried to use the Convention to correct wrongs done to them by the Communist regime. This happens often in the area of expropriation and confiscation of property. The applicants hope that the rays of democracy and human rights that shine from the Convention will light not only their present and future, but also their past. This hope, as I noted earlier, is doomed to be frustrated. The Convention can reinforce the democracy the citizens of the ex-Communist countries already have.⁶⁵ It cannot mend the past. So in the end the story may be the one we are familiar with: the European human rights system is good for countries which are already democracies which respect human rights. Countries which are not in this category will in any case not be able to join it, and countries which join it after they become democracies will benefit in the future, but the Convention will not be able to undo their past. Reinforcement seems to be the main theme.

65 Compare this situation with the initial decision not to admit Russia to full membership of the Council of Europe. This decision followed the conclusion, by a committee of experts, that 'notwithstanding the considerable progress achieved so far, the Russian Federation does not (yet) fulfil the condition "of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms"'. Parliamentary Assembly of the Council of Europe, Doc. AS/BUR/Russia (1994) 7 of 28 September 1994, Report on the Conformity of the Legal Order of the Russian Federation with Council of Europe Standards, in 15 *HRLJ* (1994) 249, 287. According to this rationale, Russia would have been able to join the Convention only when it had already conformed with the European standards. At that stage, the Convention would have been able to play a reinforcing role – but the achievement of this stage would have had to be done without the Convention playing a direct role. A somewhat different approach may be seen as taken in the subsequent decision, from 8 February 1996, to admit Russia to the Council of Europe, on the condition that it would proceed with certain legal and prison reforms. See 'Russia Gets Go-Ahead to Join Council of Europe', *European Information Serviciz – European Report*, 27 January 1996; 'Council of Europe Invites Russia to Become Member', *The Reuter European Community Report*, 8 February 1996. In addition it should be noted that the Council of Europe does cooperate with the transition to democracy in the former Communist States before they reach the stage when they may join the Council and the Convention. See Drzemczewski, *supra* note 1.