



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

**CASE OF KNEZ AND OTHERS v. SLOVENIA**

*(Application no. 48782/99)*

JUDGMENT

STRASBOURG

21 February 2008

**FINAL**

*21/05/2008*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Knez and Others v. Slovenia,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Corneliu Bîrsan, *President*,

Boštjan M. Zupančič,

Elisabet Fura-Sandström,

Alvina Gyulumyan,

David Thór Björgvinsson,

Ineta Ziemeļe,

Isabelle Berro-Lefèvre, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 31 January 2008,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 48782/99) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Slovenian nationals, Mr Miklavž Knez, Mr Igor Levstek, Ms Silvija Oblak and Mr Aleksander Majdič on 7 January 1999. On 7 August 2001 Mr Andrej Jakša also lodged his application, pertaining to the same factual and legal background as the original application.

2. Initially, the applicants were represented by the Vidovič-Horvat law firm from Ljubljana. In the latter stages of the proceedings, Mr Miklavž Knez, Mr Igor Levstek and Mr Andrej Jakša were represented by Mr B. Grossman and Mr I. Grossman, lawyers practising in Ljubljana, and Mr Aleksander Majdič was represented by the Jesenko Law Firm from Ljubljana. The Slovenian Government ("the Government") were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. On 4 November 2005 the Vidovič-Horvat law firm informed the Court that it was no longer authorised to represent the applicant Ms Silvija Oblak. The applicant did not reply to the Court's subsequent inquiries relating to her legal representation.

4. The applicants alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which they were parties was excessive. They also invoked Article 13 of the Convention, complaining about the lack of an effective domestic remedy in respect of the excessive length of the proceedings. They further alleged that the temporary suspension of and the amendments to the Denationalisation Act and the Act on Implementation of Penal Sanctions, the Act on Issuing State Bonds for Compensation of Forfeited Property Due to the Quashing of the Sentence of

Forfeiture of Property, and the Constitutional Court's decisions of 16 July 1998 and 22 February 2001 violated their rights under Article 6 § 1 and Article 14 of the Convention, as well as under Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7 to the Convention.

5. On 28 September 2006 the Court decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The applicants, Mr Miklavž Knez, Mr Andrej Jakša, Mr Igor Levstek, Ms Silvoja Oblak and Mr Aleksander Majdič are Slovenian nationals, who were born in 1929, 1932, 1931, 1912 and 1922, respectively, and live in Ljubljana, except Mr Aleksander Majdič, who lives in Bled.

#### *1. Background to the proceedings started by Mr Miklavž Knez and Mr Andrej Jakša*

7. On 11 December 1946 the Ljubljana District Court convicted Mr T. K., who was a legal predecessor of Mr Miklavž Knez and Mr Andrej Jakša, and sentenced him to 10 years' deprivation of liberty with forced labour, forfeiture of his property and of the property belonging to the company I. K. (Mr T. K. and Mr Miklavž Knez were partners in the company I. K.) to the State. Mr T. K. was also stripped of his civil and political rights for three years. On 31 January 1947 that judgment was upheld by the Supreme Court.

8. On 13 November 1991, after the independence of Slovenia and the change of the political regime, the Public Prosecutor filed a request for protection of legality against the criminal judgment. On 19 December 1991 the Supreme Court quashed the conviction.

9. On 7 September 1992 Mr T. K. lodged a request for compensation for wrongful conviction with the Ministry of Justice.

10. On 18 January 1993 the newly incorporated company T. K., claiming to be the legal successor of the company I. K., instituted proceedings against a company PEKO and another party in the then Kranj Basic Court (*Temeljno sodišče v Kranju*), seeking restitution of or compensation for the property forfeited by the company I. K.

11. The company T. K. also filed a motion for a temporary injunction in order to protect the property of the company PEKO in the process of privatisation. At an undetermined time, the requested temporary injunction was granted.

*2. Proceedings to which Mr Miklavž Knez and Mr Andrej Jakša are parties*

**Request for restitution of, or compensation for, the forfeited property**

12. On 14 February 1994 fourteen individuals, including Mr T. K. and the applicants Mr Miklavž Knez and Mr Andrej Jakša, joined the company T. K. in the above-mentioned proceedings. They also informed the court that they had reached an out-of-court settlement with the second adversary party to the restitution proceedings.

13. On 3 April 2001 the claimants modified their restitution claims and, *inter alia*, included the Republic of Slovenia among the adversary parties.

14. Between 13 December 2002 and 11 February 2005 the court held seven hearings, at which it obtained two expert opinions, clarified the *locus standi* of the parties to the proceedings and identified the exact nature and scope of the property claimed.

15. On 22 May 2006 the court rejected all claims for restitution of or compensation for the forfeited property.

16. On 18 October 2006 the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) set aside the judgment of 22 May 2006 and remitted the case to the first-instance court for re-examination.

17. The proceedings are pending.

*3. Proceedings to which only Mr Miklavž Knez is a party*

**Request for compensation for loss of profits**

18. On 24 October 1994 the company T. K. and its partners lodged a request with the Ministry of Justice in order to claim compensation for loss of profits following the forfeiture of the company's property. On 11 January 1995 the Ministry rejected their request.

19. On 25 January 1995, the company T. K., Mr T. K. and the applicant Mr Miklavž Knez instituted proceedings against the Republic of Slovenia in the Ljubljana District Court (*Okrožno sodišče v Ljubljani*), seeking compensation in the amount of 1,286,943,751.05 Slovenian tolars ("SIT") (10,397,865 US dollars at the material time) for the loss of profits of the confiscated company I. K. and the companies owned by it.

20. On 17 September 1998, on the applicant's request, the court decided not to continue with the proceedings until the European Court of Human Rights had decided upon the present application.

21. Mr T. K., born in December 1901, died in October 1998.

22. On 3 July 2002 the court held a hearing, at which both parties agreed to stay the proceedings until the proceedings concerning the restitution of property were terminated.

23. The proceedings are pending.

*4. Proceedings to which Mr Igor Levstek and Silvija Oblak were parties*

**Request for restitution of, or compensation for, the forfeited property**

24. The applicant Mr Igor Levstek is an heir of Mr I. L. and Mrs N. L., who were convicted on 12 January 1946 by the Supreme Court. Mr I. L. was sentenced to death and Mrs N. L. to 8 years' imprisonment. They were both also sentenced to forfeiture of their property to the State and stripped of their civil and political rights. The applicant Ms Silvija Oblak is an heir of Mr F. O., who was also convicted by the above-mentioned judgment of 12 January 1946 and was sentenced to 15 years' deprivation of liberty with forced labour. He was also sentenced to forfeiture of his property and stripped of his civil and political rights.

25. On 20 February 1991, after the independence of Slovenia and the change of the political regime, the Supreme Court granted the request for reopening of the criminal proceedings lodged by Mr Igor Levstek and Ms Silvija Oblak. On 29 March 1991 the Public Prosecutor withdrew the criminal charges, following which the Ljubljana Basic Court (*Temeljno sodišče v Ljubljani*) on 8 April 1991 terminated the criminal proceedings and set aside the judgment of 12 January 1946.

26. On 15 May 1991 Mr Igor Levstek and Silvija Oblak, together with some other individuals, started proceedings against the Republic of Slovenia in the then Ljubljana Basic Court, Rakek Unit (*Temeljno sodišče v Ljubljani, Enota na Rakeku*), seeking restitution of forfeited property and compensation for the property that could no longer be returned *in natura*, including loss of profits.

27. On 5 November 1991 the court held a hearing, at which the applicants supplemented their request with an additional list of forfeited property.

28. On 2 December 1991 the court appointed an expert to evaluate the nature and value of the property which the applicants claimed in the restitution proceedings.

29. On 7 October 1993 the court held a hearing and subsequently adjourned it for 30 days, in order to invite also the Cerknica Municipality and the appointed expert to participate at the hearing.

30. On 15 October 1993 the applicants again supplemented their request with an additional list of forfeited property.

31. On 6 December 1993 the court held another hearing, at which it decided to issue a partial decision.

32. On 28 January 1994 the court granted the applicants compensation for the forfeited property, but not for the loss of profits.

33. On 10 May 1994, the Ljubljana Higher Court upheld the judgment of the first-instance court. The Republic of Slovenia lodged an appeal on points of law to the Supreme Court against this decision.

34. On 4 November 1994 the Supreme Court set aside the decisions of the second- and first-instance courts and remitted the case to the first-instance court for re-examination.

35. On 19 April 1995 the re-named Cerknica Local Court (*Okrajno sodišče v Cerknici*) held a hearing.

36. On 29 April 1998 the Republic of Slovenia requested an adjournment of the next scheduled hearing, which was granted by the court. The hearing was eventually held on 25 May 1998.

37. On 3 July 2000 the applicants withdrew their claims against the Cerknica Municipality (*Občina Cerknica*) as one of the adversaries in the proceedings, following which the court on 25 October 2000 terminated the proceedings relating to this part of the claim.

38. On 30 October 2000 the Republic of Slovenia requested the adjournment of the next scheduled hearing, which was granted by the court. The hearing was eventually held on 21 November 2000.

39. On 9 January 2001 and 28 June 2001 the court held two more hearings. At the hearing held on 28 June 2001 the court issued an order by which it decided upon the restitution of a part of the property.

40. On 21 September 2001 the court rectified the order of 28 June 2001.

41. On 25 October 2001 the court again rectified the order of 28 June 2001.

42. On 13 November 2002 the Ljubljana Higher Court upheld in part the appeal of the Republic of Slovenia against the order of the first-instance court.

43. On 25 March 2004 the Supreme Court dismissed the applicants' request to appoint another court to decide on the case.

44. At an undetermined time between 13 November 2002 and 1 December 2004 Ms Silvija Oblak, as well as some other claimants, ceased to be parties to the proceedings.

45. On 8 July 2004 the Cerknica Local Court decided that it did not have jurisdiction to rule on the part of the applicants' claims concerning a property falling under the jurisdiction of another district court.

46. On 1 December 2004 the Ljubljana Higher Court decided that the Cerknica Local Court should hear the case as far as it concerned the property at issue.

47. On 30 March 2005 the Ljubljana Higher Court handed down the final decision in respect of the conflict of jurisdiction and appointed the

Cerknica Local Court to decide also upon the property falling under the jurisdiction of the Ljubljana Local Court.

48. On 21 June 2005 the first-instance court held a hearing and decided, due to the applicant's partial withdrawal of his restitution claims, to terminate the proceedings in the part relating to these claims.

49. On 16 November 2006 the first-instance court held a hearing, where it decided on the remainder of the restitution claims. It granted to each of the claimants, including the applicant Mr Igor Levstek, compensation for the forfeited immovable property in the value of 269,407.52 German marks at the material time. In addition, it granted to each claimant, including the applicant Mr Igor Levstek, compensation for the forfeited movable property in the value of 19,276 US dollars at the material time. The judgment was served on the applicant on 14 December 2006. None of the parties appealed.

*5. Proceedings to which only Mr Igor Levstek is a party*

**Request for compensation for loss of profits**

50. On 4 February 1994 Mr Igor Levstek, together with another individual, lodged a request for compensation for loss of profits further to the forfeiture of the property to the State, initially filed with the Ljubljana Basic Court, with the Ministry of Justice. According to the applicant's submissions, the Ministry instructed him to lodge the request with the competent court.

51. On 26 October 1994 Mr Igor Levstek, together with another individual, initiated proceedings against the Republic of Slovenia for compensation for loss of profits with the Rakek Local Court (*Okrajno sodišče na Rakeku*) in the amount of 439,475,000 SIT.

52. On 19 April 1995 the applicant modified his claims and requested the amount of 439,475,000 SIT as covering also compensation for certain property that could no longer be returned *in natura*.

53. On 11 October 1995 the court declared that it had no jurisdiction over the case and submitted the case file to the Ljubljana District Court (*Okrožno sodišče v Ljubljani*).

54. On 27 May 1997 the applicant again modified his request.

55. On 3 November 1997 the applicant urged the court to decide promptly on the case.

56. On 25 November 1997 the court decided, at the Republic of Slovenia's request, to stay the proceedings temporarily due to the new Act on Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions.

57. On 3 April 1998 the court terminated the proceedings following the applicant's withdrawal of all claims.

58. On 17 September 1998 the Ljubljana Higher Court allowed the applicant's appeal and set aside the decision of the first-instance court. The applicant also appealed against this decision.

59. On 11 December 1998, at the applicant's request, the first-instance court cancelled a scheduled hearing and decided not to continue the proceedings until the European Court of Human Rights had decided upon the present application.

60. On 6 April 2006 the applicant modified and partially withdrew his claims.

61. On 30 August 2006 the court held a hearing and decided to adjourn it in order to give the parties time to negotiate an out-of-court settlement. The hearing was adjourned *sine die* due to the replacement of the acting judge.

62. On 6 December 2006 the court held another hearing.

63. The proceedings are pending.

*6. Proceedings to which Mr Aleksander Majdič is a party*

**Request for restitution of, or compensation for, the forfeited property**

64. On 20 July 1946 the Ljubljana District Court convicted Mr M. L., who was a legal predecessor of the applicant Mr Aleksander Majdič, for two offences and sentenced him to five years' deprivation of liberty with forced labour for each offence and forfeiture of his property to the State. He was also stripped of his civil and political rights. On 17 September 1946 the Supreme Court upheld the judgment.

65. On 12 October 1994, after the independence of Slovenia and the change of the political regime, the Supreme Court quashed the convictions against Mr M. L. following the Public Prosecutor's request for protection of legality against the judgment.

66. At an undetermined time, the applicant Mr Aleksander Majdič lodged a request for compensation for the forfeited property with the Ministry of Justice, which did not reply to it.

67. On 22 December 1994, the applicant started proceedings against the Republic of Slovenia, the Vrhnika Municipality, the Logatec Municipality, the Vič-Rudnik Municipality, the Municipality Radlje ob Dravi and a company Liko Vrhnika in the then Ljubljana Basic Court, seeking restitution of the forfeited property and compensation for the property that could no longer be returned *in natura*, as well as compensation for loss of profits. In addition, he filed a motion for a temporary injunction in order to protect the property of the company Liko Vrhnika, in the process of privatisation.

68. On 27 December 1994 the court issued the requested temporary injunction.

69. On 27 March 1995 the applicant supplemented his request for restitution of forfeited property.

70. On 4 April 1995 the court held a hearing and decided, *inter alia*, that neither *locus standi* of the applicant nor the district under whose jurisdiction the forfeited property fell was clearly established.

71. On 16 May 1995 and 8 June 1995 the court held two more hearings. After the hearing held on 8 June 1995 the court granted the applicant 90 days to specify his restitution claims and the legal ground on which these were based.

72. On 8 June 1995 the court granted in part the objection against the temporary injunction. The applicant, as well as the company Liko Vrhnika and another adversary party, appealed against this decision.

73. On 29 August 1995 the applicant modified his claims.

74. On 7 September 1995 the applicant again modified his claims and instituted proceedings against eleven additional parties. He also filed a new motion for a temporary injunction.

75. On 25 September 1995 another individual joined the proceedings on the applicant's side.

76. On 11 October 1995 the Ljubljana Higher Court requested the applicant to correct his submissions, and on 26 October 1995 the applicant requested the court to extend the deadline for submission of his corrections.

77. On 27 March 1996 the Ljubljana Higher Court rejected the appeal of the applicant against the decision on the temporary injunction and decided in favour of the appeal lodged by the company Liko Vrhnika. It set aside the decision of the first-instance court of 27 December 1994 and decided not to grant the temporary injunction.

78. On 21 November 1996 the Supreme Court rejected the request for revision lodged by the applicant and upheld the decision of the Ljubljana Higher Court of 27 March 1996.

79. On 18 March 1997 the first-instance court held a hearing and requested the applicant to furnish relevant documentation supporting his claims.

80. At an undetermined time, but before 16 July 1998, the applicant requested the court not to continue with the proceedings until the Constitutional Court decided on his constitutional initiative, challenging the amendments to the Act on Implementation of Penal Sanctions.

81. On 16 April 1999 the applicant withdrew in part his request for restitution of the forfeited property, and on 15 December 1999 he submitted a renewed request without one of the previous adversaries.

82. On 27 January 2000 the court held a hearing and issued a partial decision, granting restitution of 58 plots of land to the applicant.

83. On 6 April 2000 the Ljubljana Higher Court dismissed the appeal lodged by the Republic of Slovenia and the Farmland and Forest Fund of

the Republic of Slovenia (*Sklad kmetijskih zemljišč in gozdov Republike Slovenije*) and upheld the decision of the first-instance court.

84. On 30 October 2002 the Supreme Court dismissed the adversaries' request for revision and upheld the decision of the first- and second-instance courts.

85. On 10 February 2004 the first-instance court requested the applicant to supplement his submissions relating to the rest of his claims for restitution of the forfeited property (about 150 plots of land) with the relevant supporting documentation, and on 15 March 2004 urged the applicant to respond.

86. On 19 May 2005 the court appointed an expert in geodesy to make an assessment of the property that was still subject to the court proceedings.

87. On 25 May 2006 the court held another hearing.

88. The proceedings are pending.

#### **Request for compensation for loss of profits**

89. On 24 November 1997 the applicant lodged a request for compensation for loss of profits, initially filed with the Ljubljana Basic Court, with the Ministry of Justice. According to the applicant's submissions, the Ministry failed to reply to the request.

90. On 23 February 1998 the applicant filed a claim against the Republic of Slovenia with the Ljubljana District Court, seeking compensation for loss of profits in the amount of 11,904,823,000 Slovenian tolar (126,057,000 German marks).

91. On 18 October 1999 the applicant requested the court not to continue the proceedings until the European Court of Human Rights had decided upon the present application.

92. On 29 March 2002 the court recommended the parties to seek an out-of-court settlement and placed itself at their disposal to mediate, which was refused by both parties.

93. On 14 June 2005 the applicant submitted to the court a statement, in which he declared that he would under no circumstances claim the time lapsed while waiting for the decision of the European Court of Human Rights as an excessive delay in the domestic proceedings.

94. On 5 July 2005 and 18 August 2005 the Republic of Slovenia objected to the proposal of the applicant for a temporary stay of the proceedings.

95. On 30 September 2005 the court held a hearing, at which it dismissed the applicant's request to stay the proceedings until the European Court of Human Rights had decided upon his application and issued a judgment. The applicant appealed against this decision.

96. On 22 March 2006 and 6 July 2006 the Ljubljana Higher Court returned the case file to the first-instance court for rectification.

97. On 13 September 2006 the Ljubljana Higher Court partially allowed the applicant's appeal and remitted the case in part to the first-instance court for re-examination.

98. On 7 February 2006 the first-instance court held a hearing.

99. The proceedings are still pending.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### *1. The Constitution of the Republic of Slovenia*

100. The following provisions of the 1991 Constitution (*Ustava Republike Slovenije*, Official Journal no. 33/91) are particularly relevant for the present case:

#### **Article 23**

“Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law.”

#### **Article 26**

“Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office ...”

#### **Article 30**

“Any person unjustly convicted of a criminal offence or deprived of his liberty without due cause has the right to rehabilitation and compensation, and other rights provided by law.”

### *2. The Act on the Protection of the Right to a Trial without Undue Delay*

101. The Act on the Protection of the Right to a Trial without Undue Delay (*Zakon o varstvu pravice do sojenja brez nepotrebnega odlašanja*, Official Journal, No. 49/2006, “the 2006 Act”) has been implemented since 1 January 2007. Under its sections 1 and 2, the right to a trial within a reasonable time is guaranteed to a party to court proceedings, to a participant under the Act governing non-contentious proceedings and to an injured party in criminal proceedings.

102. Section 3 provides for two remedies to expedite pending proceedings - a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*) - and, ultimately, for a claim for just

satisfaction in respect of damage sustained because of the undue delay (*zahteva za pravično zadoščenje*).

103. Section 25 lays down the following transitional rules in relation to applications already pending before the Court:

**Section 25 - Just satisfaction for damage sustained prior to implementation of this Act**

“(1) In cases where a violation of the right to a trial without undue delay has already ceased and the party had filed a claim for just satisfaction with the international court before the date of implementation of this Act, the State Attorney's Office shall offer the party a settlement on the amount of just satisfaction within four months after the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorney's Office within two months of the date of receipt of the proposal of the State Attorney's Office. The State Attorney's Office shall decide on the proposal as soon as possible and within a period of four months at the latest. ...

(2) If the proposal for settlement referred to in paragraph 1 of this section is not acceded to or the State Attorney's Office and the party fail to negotiate an agreement within four months after the date on which the party filed its proposal, the party may bring an action before the competent court under this Act. The party may bring an action within six months after receiving the State Attorney's Office reply that the party's proposal referred to in the previous paragraph was not acceded to, or after the expiry of the period fixed in the previous paragraph for the State Attorney's Office to decide to proceed with settlement. Irrespective of the type or amount of the claim, the provisions of the Civil Procedure Act concerning small claims shall apply in proceedings before a court.”

**3. The Denationalisation Act**

104. The Denationalisation Act (*Zakon o denacionalizaciji*, Official Journal no. 27/91) forms the basis for restitution of property (or its value) that had passed into State ownership through previous legislation (agrarian reform, nationalisation, confiscation, etc.).

105. Section 3 provides that all natural persons whose property had passed into State ownership on the basis of the listed legislation adopted in the aftermath of the Second World War are entitled to denationalisation. Section 4 further specifies that all other natural persons whose property was nationalised by a legal act issued before 1963 are entitled to denationalisation.

106. The Denationalisation Act governs, *inter alia*, the form and scope of restitution, the restrictions on restitution and the valuation of property. In particular, it provides for several exceptions in which the property should not be returned *in natura*, for example if the property belongs to the natural or cultural heritage of the State (Section 17). Furthermore, in its Sections 2 and 42 to 44 it provides that, where property cannot be returned in its original form, compensation is payable (not in cash but in State bonds payable in instalments over 15 years).

107. In accordance with Section 92, the Denationalisation Act originally applied also to the restitution of property in cases where the property was forfeited by virtue of criminal judgments handed down before 31 December 1958. Since the restitution of property to a wrongfully convicted person is otherwise governed by the Act on Implementation of Penal Sanctions, which does not provide for the above-mentioned restrictions on the restitution of the forfeited property, Section 92 of the Denationalisation Act had an effect of introducing a less favourable restitution regime where the criminal judgment had been rendered before 31 December 1958. This provision was rescinded by the Constitutional Court on 5 November 1992, partly on the ground that it was retroactive and therefore violated Article 155 of the Slovenian Constitution (decision no. U-I-10/92, see below).

*4. The Act on Temporary, Partial Suspension of Restitution of Property*

108. On 30 December 1995 the Act on Temporary, Partial Suspension of Restitution of Property (Official Journal no. 74/95) entered into force, which held in abeyance certain types of restitution proceedings for a period of three years.

*5. The Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions*

109. On 8 August 1997 the Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act of Implementation of Penal Sanctions (*Zakon o začasnem zadržanju izvajanja nekaterih določb zakona o denacionalizaciji in zakona o izvrševanju kazenskih sankcij*, Official Journal no. 49/97) was adopted. Its Section 2 suspended, originally until 20 December 1997 and subsequently, under new legislation, until 31 March 1998, the proceedings concerning claims for the restitution of or compensation for property, *inter alia* in cases where the property was confiscated by virtue of criminal judgments handed down before 31 December 1958.

*6. The Act on Implementation of Penal Sanctions, as amended*

110. Prior to the 1998 amendments, the Act on Implementation of Penal Sanctions (*Zakon o izvrševanju kazenskih sankcij*, Official Journal no. 17/78, 8/90) applied also to the restitution of property forfeited by criminal judgments which were handed down before 31 December 1958 and were later quashed (see the Constitutional Court's decision mentioned under "3. The Denationalisation Act")

111. In 1998, when certain provisions of the Act on Implementation of Penal Sanctions were in abeyance (see under 5. The Act on the Temporary

Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions), the Parliament passed the 1998 Act on Amendments and Supplements to the Act on Implementation of Legal Sanctions (*Zakon o spremembah in dopolnitvah Zakona o izvrševanju kazenskih sankcij*, Official Journal no. 10/98). That Act added new Sections to the Act.

112. As far as claims for restitution of property forfeited by the criminal judgments handed down before 31 December 1958 are concerned, Section 145A replaced Section 145 and referred back to the Denationalisation Act to govern the form and scope of restitution, the restrictions on restitution and the valuation of property, thus providing again for a less favourable restitution regime than granted under the Act on Implementation of Penal Sanctions. Section 145C expressly removed the right to compensation for loss of profits due to the forfeiture of the property during the period of forfeiture.

113. Section 3 made the change applicable also in non-contentious and contentious proceedings concerning the restitution of confiscated property when such proceedings had commenced before the Act came into force, but had not become final by that time.

114. In June 2002, further to the Constitutional Court's ruling of 15 November 2001, Section 145C was amended again so that persons entitled under Section 145A may now claim compensation for the loss of profits incurred throughout the period running from the quashing of the forfeiture of the property until the decision on its restitution becomes final.

#### *7. The Act on Issuing State Bonds for Compensation of Forfeited Property Due to Quashing of the Sentence of Forfeiture of Property*

115. Article 1 of the Act on Issuing State Bonds for Compensation of Forfeited Property Due to the Quashing of the Sentence of Forfeiture of Property (*Zakon o izdaji obveznic za plačilo odškodnine za zaplenjeno premoženje zaradi razveljavitve kazni zaplembe premoženja*, Official Journal no. 49/99, "the State Bonds Act") provides:

"For the purposes of compensation for forfeited property due to quashing of the sentence of forfeiture of property, the Republic of Slovenia shall issue state bonds in the maximum value of 20 milliards Slovenian tolar, in view of its obligations arising out of final decisions on quashing the sentence of forfeiture of property and out of setting the amount of compensation for the forfeited property.

#### *8. The Constitutional Court's decisions*

116. On 5 November 1992 the Constitutional Court quashed Section 92 of the Denationalisation Act, which provided for the restitution of property forfeited by virtue of criminal judgments which were handed down before 31 December 1958 and later quashed on the basis of extraordinary legal

remedies, to be governed by the Denationalisation Act (decision no. U-I-10/92). The court established that the challenged provisions interfered with the effect of final decisions on quashing the criminal judgments and retroactively affected the rights of wrongfully convicted persons. According to the court's findings, the restitution of this type of property should instead be governed by the Act on Implementation of Penal Sanctions, which provides for a more favourable restitution regime.

117. On 13 February 1998 the Constitutional Court upheld in part a constitutional initiative lodged by the applicant Mr Igor Levstek and some other individuals, challenging the provisions of the Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions (a joined decision U-I-200/97). It ruled, *inter alia*, that the legislator had not complied with the requirement of proportionality when it suspended the two Acts and thus affected the human rights of all the claimants in restitution proceedings in order to revise the restitution regime applying to only some of them. The court established a violation of constitutional rights protected under Article 14 (right to equality before the law).

118. With another constitutional initiative the applicants Mr Igor Levstek and Mr Aleksander Majdič, as well as some other individuals, challenged sections 145A and 145C of the Act on Implementation of Penal Sanctions for introducing a less favourable restitution regime where the property had been forfeited by a criminal judgment handed down before 31 December 1958, by referring to the Denationalisation Act to govern the restitution of this type of property. The court held that the challenged provisions did not conflict with the Constitution, because such interference with the constitutional rights granted under Articles 30 (right to rehabilitation and compensation in criminal proceedings) and 33 (right to own and inherit property) of the Constitution was indispensable for the protection of the rights of other claimants under the Denationalisation Act, who were similarly entitled to reparation for the wrongs perpetrated in the aftermath of the Second World War (a joined decision no. U-I-60/98). The principle of the Welfare State empowered the legislator, with due consideration to the right of all citizens to social security, to have regard to the financial resources of the State and, in cases which were constitutionally admissible, also to restrict certain rights accordingly.

119. The Constitutional Court also added that, when deciding on 5 November 1992 to quash Section 92 of the Denationalisation Act and to consider the Act on Implementation of Penal Sanction as the appropriate basis to govern the restitution of property forfeited by criminal judgments rendered prior to 31 December 1958 (decision no. U-I-10/92), it had been unaware of the full extent of the property forfeited through criminal proceedings prior to 31 December 1958 and thus also of the financial obligations incumbent on the State.

120. The Constitutional Court further ruled that Article 3 of the Act on Amendments of, and Supplements to, the Act on Implementation of Penal Sanctions was in conformity with the Constitution, notwithstanding the fact that it retroactively interfered with acquired rights, because the retroactive effect of the Act was justified by the public interest.

121. On 22 February 2001 the Constitutional Court decided upon a constitutional initiative filed by Mr Igor Levstek, Mr Aleksander Majdič and Mr Miklavž Knez against the State Bonds Act (a decision U-I-175/99). It dismissed their complaint that fixing the maximum amount of money the State is obliged to pay in order to compensate all those whose property was unduly forfeited by a criminal judgment was a discriminatory act, and that it violated their right to full compensation for the forfeited property. The court held that their right to compensation would be determined by a competent court in accordance with the conditions and limitations as set in the Act on Implementation of Penal Sanctions and not as set in the challenged Act. By only alleging, in general terms, that the fixed amount of money would not suffice to compensate all those who, like the applicants, still claimed the forfeited property in the restitution proceedings, the applicants did not demonstrate the necessary legal interest to challenge the relevant Act.

## THE LAW

### I. APPLICATION OF ARTICLE 37 OF THE CONVENTION AS TO THE APPLICANT Ms SILVIJA OBLAK

122. On 31 May 2006 the applicant Ms Silvija Oblak was requested by the Court to clarify who was her current legal representative in the case. After she failed to reply to the Court's inquiry, the Court sent her a warning letter dated 7 July 2006, sent by registered post, indicating that her application would be considered as withdrawn if she did not respond to the Court's request. No reply has been received to date.

123. The Court recalls Article 37 of the Convention which, in the relevant part, reads as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application;

...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

124. The Court notes that the applicant did not submit the requested information even after she had received a remainder thereof and was informed about the possible consequences of her failure to reply. The Court therefore considers that the applicant does not intend to pursue the application. The Court further observes that there are no special circumstances relating to respect for human rights as defined in the Convention and its Protocols which would require it to continue with the examination of the application as far as it concerns Ms Silvija Oblak.

125. In these circumstances the Court considers that this part of the application should be struck out of the list of cases of the Court in accordance with Article 37 § 1 (a) of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AS TO THE LENGTH OF THE PROCEEDINGS AND OF ARTICLE 13 OF THE CONVENTION

126. The applicants complained about the excessive length of the proceedings. They relied on Article 6 § 1 of the Convention, which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal...”

127. The applicants further complained that the remedies available for excessively lengthy court proceedings in Slovenia were ineffective. They relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

### A. Admissibility

#### *1. As to the different set of proceedings pending before first-instance courts to which Mr Miklavž Knez, Mr Andrej Jakša, Mr Igor Levstek and Mr Aleksander Majdič are parties*

128. The applicants claimed that the remedies available were not effective.

129. The Government contested that argument and pleaded non-exhaustion of domestic remedies.

130. The Court observes that since 1 January 2007, when the Act on the Protection of the Right to a Trial without undue Delay (“the 2006 Act”) became operational, the applicants have been entitled to seek acceleration of the impugned proceedings pending before the domestic courts. The Court

notes that in proceedings pending at first or second instance, it is open to persons such as the applicants to seek the acceleration of the proceedings under sections 3, 5 and 8 of the 2006 Act by means of a supervisory appeal and by a motion for a deadline. The latter constitutes, in substance, an appeal against a decision on a supervisory appeal under certain conditions. Moreover, the applicants may ultimately obtain further redress through a compensatory remedy, by bringing a claim for just satisfaction under Section 15 of the 2006 Act.

131. The Court has already examined the aggregate of remedies provided by the 2006 Act for the purposes of Article 35 § 1 of the Convention. It was satisfied that they were effective also in cases of excessively long proceedings pending before first- and second-instance courts, lodged before 1 January 2007, in the sense that these remedies were in principle capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred (see *Grzinčič v. Slovenia*, no. 26867/02, 3 May 2007, *Korenjak v. Slovenia*, no. 463/03, 15 May 2007, *Gliha and Joras v. Slovenia* (no. 72200/01, 6 September 2007, and *Žunič v. Slovenia* (dec.), no. 4342/04, 18 October 2007).

132. The Court observes in this respect that the proceedings to which Mr Miklavž Knez, Mr Andrej Jakša and Mr Aleksander Majdič are parties, as well as the proceedings concerning compensation for loss of profits to which Mr Igor Levstek is a party, are still pending before the first-instance courts.

133. The Court notes that Mr Miklavž Knez, Mr Andrej Jakša, Mr Igor Levstek and Mr Aleksander Majdič have not availed themselves of any of the remedies provided for by the Act on the Protection of the Right to a Trial without undue Delay and considers that they are required by Article 35 § 1 of the Convention to use those remedies. It follows that this part of the application must be considered inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies, and therefore rejected in accordance with Article 35 § 4 of the Convention.

134. As regards the applicants' complaint under Article 13 of the Convention, the Court has already found that the 2006 Act does afford the applicants effective remedies in respect of the complaint about the length of the proceedings pending at first and second instance (see § 131 above). That finding is also valid in the context of their complaint under Article 13 of the Convention. It follows that this complaint is manifestly ill-founded and must therefore be rejected in accordance with Article 35 § 3 and 4 of the Convention.

*2. As to the terminated proceedings to which Mr Igor Levstek was a party*

135. The applicant complained that the remedies available were not effective.

136. The Government contested that argument and pleaded non-exhaustion of domestic remedies.

137. The Court notes that the restitution proceedings to which Mr Igor Levstek was a party and which started on 15 May 1991, terminated on 14 December 2006, when the decision of the Cerknica Local Court was served on the applicant.

138. The Court further notes that this set of proceedings terminated before the 2006 Act entered into force. The applicant could have therefore only availed himself of the legal remedies available before the 2006 Act became operational. It follows that the present application is in this part similar to the cases of *Belinger* and *Lukenda* (see *Belinger v. Slovenia* (dec.), no. 42320/98, 2 October 2001, and *Lukenda v. Slovenia*, no. 23032/02, 6 October 2005). In those cases the Court dismissed the Government's objection of non-exhaustion of domestic remedies because it found that the legal remedies at the applicants' disposal were ineffective. The Court recalls its findings in the *Lukenda* judgment that the violation of the right to a trial within a reasonable time was a systemic problem resulting from inadequate legislation and inefficiency in the administration of justice.

139. As regards the instant case, the Court finds that the Government have not submitted any convincing arguments which would require the Court to distinguish it from its established case-law.

140. The Government's objection must therefore be dismissed. The Court further finds that the applicant's complaints relating to the length of the proceedings are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is this part of the application inadmissible on any other grounds. It must therefore be declared admissible.

**B. Merits as to the terminated proceedings to which Mr Igor Levstek was a party**

*1. Article 6 § 1*

**(a) The parties' submissions**

141. The applicant maintained that it is first and foremost the suspension of and amendments to the challenged legislation that were to blame for the delays in the proceedings.

142. The Government argued that the length of the proceedings was due to the complexity of the case, both in terms of legal as well as factual issues

the courts had to deal with. The property claimed was extensive and consisted of several items. It fell under the jurisdiction of three different courts and even gave rise to a conflict of jurisdiction, which was promptly solved. Moreover, in order to assess its value and establish whether the conditions were fulfilled for its restitution *in natura*, the court needed to appoint an expert. The Government further maintained that all the courts dealt with the case diligently and promptly throughout the proceedings, whereas the applicant continuously delayed the proceedings by modifying his claims on several occasions. Finally, the Government acknowledged the importance of restitution claims for the claimants in general, but pointed out that in cases where the restitution *in natura* is no longer possible, the claimant is entitled to compensation which includes interest running from the day the criminal judgment was quashed. Protracted restitution proceedings therefore did not deprive the claimant of proper compensation.

**(b) The Court's assessment**

143. In determining the relevant period to be taken into consideration the Court notes that the proceedings at issue started before 28 June 1994, the day the Convention took effect with respect to Slovenia. Given its jurisdiction *ratione temporis*, the Court can only consider the period which has elapsed since that date, although it will have regard to the stage reached in the proceedings in the domestic courts on that date (see, for instance, *Belinger*, cited above, and *Kudła v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI).

144. This set of proceedings terminated on 14 December 2006, when the final judgment of the Cerknica Local Court was served on the applicant. The period to be taken into account is therefore 12 years, 5 months and 16 days, during which decisions were rendered at four instances and three levels of jurisdiction were involved.

145. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

146. The Court notes that the considerable size of the property involved and the need to obtain an expert report in order to establish the facts of the case show that the proceedings at issue were of some complexity. The Court further notes that what was at issue in the domestic proceedings was of some importance to the applicant, but considers that his modifications of the restitution claims rendered the case more intricate. However, the Government failed to provide any explanation for a number of delays and periods of total inactivity of the judicial authorities, the latest being two and a half years between the hearing held by the first-instance court and the

decision of the same court to terminate one part of the proceedings following the withdrawal of some of the applicant's claims.

147. Having examined all the material submitted to it, and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement.

148. There has accordingly been a breach of Article 6 § 1.

## 2. Article 13

149. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government have been rejected in earlier cases (see *Grzinčič*, cited above) and sees no reason to reach a different conclusion in the present case.

150. Accordingly, the Court considers that in the present case there has been a violation of Article 13 on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1.

## III. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 14 OF THE CONVENTION, AND OF ARTICLE 1 OF PROTOCOL No. 1 AND ARTICLE 3 OF PROTOCOL No. 7 TO THE CONVENTION

151. The applicants complained that the temporary suspension of and amendments to the Denationalisation Act and the Act on Implementation of Penal Sanctions, the State Bonds Act and the Constitutional Court's decisions of 16 July 1998 and 22 February 2001 violated their right to a fair trial guaranteed under Article 6 § 1 of the Convention, since they constituted an unfair interference by the State in the pending proceedings to which the State was a party. They also invoked Article 6 § 1 in conjunction with Article 14 of the Convention, alleging that the challenged Acts discriminated against those claimants for the restitution of forfeited property, whose restitution proceedings were still pending before the courts when the challenged legislation entered into force and introduced a less favourable restitution regime. The applicants further complained that the challenged Acts and the unreasonably long restitution proceedings breached their right to property as guaranteed under Article 1 of Protocol No. 1, arguing that from the moment the criminal judgments were quashed, they had a “legitimate expectation” of obtaining the full restitution of property forfeited by the judgments, which, until the present day, had not occurred. In addition, they claimed that the challenged Acts violated their right to full

compensation for wrongful conviction as guaranteed under Article 3 of Protocol No. 7. Finally, the applicants invoked Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7 in conjunction with Article 14 of the Convention, alleging that the challenged Acts deprived them of their property on a discriminatory basis, since before the challenged legislation entered into force, the successful claimants were entitled to full restitution.

Article 14 of the Convention reads:

“The enjoyment of the rights and freedoms set forth in [the] 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.”

In so far as relevant, 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...”

Article 3 of Protocol no. 7 provides:

“When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”

152. In respect of the aforementioned complaints the Court recalls that, in cases arising from individual applications, it is not its task to examine the domestic legislation in the abstract, but it must consider the manner in which that legislation was applied to the applicant in the particular circumstances (see *Sommerfeld v. Germany* [GC], no. 31871/96, § 86, ECHR 2003-VIII (extracts)).

153. The Court observes in this respect that the proceedings to which Mr Miklavž Knez, Mr Andrej Jakša and Mr Aleksander Majdič are parties, as well as proceedings concerning compensation for loss of profits to which Mr Igor Levstek is a party, are still pending before the first-instance courts. Since the fairness of the proceedings must be determined in the light of all the circumstances of the case, it considers, therefore, that the complaints relating to those proceedings are premature, since the domestic remedies have not been exhausted as required by Article 35 § 1 (see, *Sirc v. Slovenia* (dec.), no. 44580/98, § 247, 22 June 2006).

154. The Court further observes that the restitution proceedings to which Mr Igor Levstek was a party terminated with the decision of the Cerknica Local Court of 16 November 2006. In this respect the Court notes that the applicant did not lodge any appeal against the judgment of the first-instance

court to the Ljubljana Higher Court and, subsequently, to the Supreme Court and to the Constitutional Court.

155. The Court reiterates that in accordance with the Article 35 of the Convention, the Court may only consider the complaints raised by the applicant, after he has exhausted all domestic remedies.

156. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from raising his complaints before the said domestic courts.

157. It follows that this part of the application relating to the proceedings started on 15 May 1991 by Mr Igor Levstek must be considered inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention.

158. In view of the above, this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

159. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### **A. Damage**

160. The applicant Mr Igor Levstek claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

161. The Government contested the claim.

162. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 9,000 under that head.

##### **B. Costs and expenses**

163. The applicant Mr Igor Levstek claimed approximately EUR 10,000 for the costs and expenses incurred before the Court.

164. The Government argued that the claim was too high.

165. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Regard being had to the information in its possession and the

above criteria, the Court considers it reasonable in the present case to award the applicant the sum of EUR 1,000 for the proceedings before the Court.

### C. Default interest

166. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the application out of its list of cases in so far as it concerns Ms Silvija Oblak;
2. *Declares* the complaints of Mr Igor Levstek concerning the length of the proceedings started on 15 May 1991 and the lack of effective remedies admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant Mr Igor Levstek, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage and EUR 1,000 (one thousand euros) in respect of costs and expenses, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the application.

Done in English, and notified in writing on 21 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Corneliu Bîrsan  
President