



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

THIRD SECTION

CASE OF DOLHAR v. SLOVENIA

(Application no. 66822/01)

JUDGMENT

STRASBOURG

18 March 2008

FINAL

29/09/2008

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 Dolhar v. Slovenia,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 66822/01) 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 a Slovenian national, Mr Jože Dolhar (“the applicant”), on 9 January 2001.

2. The Slovenian Government (“the Government”) were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged under Article 6 § 1 of the Convention that the length of the proceedings before the domestic courts to which he was a party was excessive. He also invoked Article 13 of the Convention, claiming that the available domestic remedies for excessive length of proceedings were not effective. He further alleged that the delays in the court proceedings amounted to a violation of his rights under Article 1 of Protocol No. 1, Article 3 of Protocol No. 7 and Article 4 of Protocol No. 7 to the Convention.

4. On 5 September 2006 the Court decided to give notice of the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1927 and lives in Kranj.

6. On 26 August 1949, in the framework of criminal proceedings, the applicant's father J.D. was sentenced, *inter alia*, to forfeiture of his property to the State. On 26 December 1949 that judgment was executed by the decision of the Kranj Local Court.

7. On 30 October 1991, after the establishment of independence of the Republic of Slovenia and the change of the political regime, the Supreme Court partly granted the request for protection of legality (*zahteva za varstvo zakonitosti*) filed by the Public Prosecutor in respect of the criminal judgment of 26 August 1949 and acquitted J.D. of some of the charges.

8. As for the remaining part of the conviction, including the part relating to forfeiture of property to the State, the applicant and his brother filed a request for reopening of the criminal proceedings, which was granted by the Ljubljana Basic Court, Ljubljana Unit (*Temeljno sodišče v Ljubljani, Enota v Ljubljani*) on 19 November 1993. Further to the withdrawal of charges by the Public Prosecutor, the Ljubljana Basic Court on 15 December 1993 discontinued the criminal proceedings and set aside the judgment of 26 August 1949.

9. On 27 December 1993 the applicant then requested the Kranj Local Court (*Okrajno sodišče v Kranju*) to set aside also the decision of 26 December 1949, executing the initial criminal judgment and forfeiting the property to the State, and to enter the transfer of ownership of the forfeited property back to J.D. in the land register.

10. In addition, on 7 June 1994, the J.D.'s heirs, including the applicant, started proceedings against the Republic of Slovenia for restitution of the property forfeited to J.D. before the Kranj District Court (*Okrožno sodišče v Kranju*). They requested that all the forfeited immovable property be returned *in natura*.

11. On 9 March 1995 the Kranj Local Court granted the applicant's request for the annulment of the execution decision of 26 December 1949, but not for the entry of the transfer of ownership of the forfeited property in the land register. The applicant lodged an appeal, which was dismissed on 6 August 1996 by the Kranj Local Court as lodged out of time.

12. On 9 February 1996, in reply to a summons by the Kranj District Court, the applicant informed it that he objected to the institution and continuation of the proceedings for the restitution of forfeited property, started on 7 June 1994 by a group of heirs of J.D., claiming that the restitution of the property could already be carried out on the basis of the

decision of the Kranj Local Court of 9 March 1995 alone, which had quashed the decision on execution of the sentence of forfeiture of property.

13. On 13 February 1996 the applicant requested cancellation of the scheduled hearing, which was granted by the court.

14. On the same date the applicant also lodged a request for the designation of another court to decide on the case, which was rejected by the Supreme Court on 12 June 1996.

15. On 16 March 1998, the applicant again requested the land register to enter the transfer of ownership back to J.D. on the basis of the decision of Kranj Local Court of 9 March 1995, which had quashed the decision on execution of the sentence of forfeiture of property of 26 December 1949. On 26 August 1998 the Kranj District Court rejected his request, stating that property in cases such as the applicant's could only be returned in the non-contentious proceedings provided for in respect of the restitution of forfeited property, and further, that two sets of such proceedings were already pending before the court further to the applicant's request. The applicant filed an appeal, which was rejected by the Ljubljana Higher Court on 11 November 1998.

16. On 25 August 1998 the applicant lodged a request for the land register to prohibit the disposal and encumbrance of the property in question, which was rejected by the Kranj Local Court on 20 March 2000.

17. On 29 March 1999 the Kranj District Court joined different sets of proceedings for restitution of the forfeited property, to which the applicant, as well as other family members, were parties.

18. Between 17 May 1999 and 15 March 2001 the court held five hearings.

19. On 18 July 1999 the applicant again lodged a request for the land register to prohibit the disposal and encumbrance of the property at issue. On 18 January 2000 the Kranj Local Court referred the applicant to its previous decisions, that the requested entry in the land register could only be approved after the final decision had been delivered in the restitution proceedings.

20. On 17 April 2000 the applicant lodged a constitutional appeal with regard to not being granted the requested entry in the land register, which was dismissed by the Constitutional Court on 30 May 2000 as incomplete.

21. On 16 August 2000 the applicant lodged a supervisory appeal with the Ministry of Justice, which replied on 14 November 2000.

22. In the years 2000 and 2001, the applicant lodged complaints concerning the refusal of the land register to enter the transfer of ownership back to his father J.D. and the length of the restitution proceedings with the Slovenian Parliament, the Government, the Ministry for Justice, the Supreme Court, the Public Prosecutor and the Ombudsman.

23. On 15 March 2001 the Kranj District Court issued a partial decision granting compensation for the forfeited movable property to J.D.'s heirs,

including the applicant. It awarded each of them 112,879 Slovenian tolar (SIT) (EUR 471), payable in State bonds. The decision was upheld by the Ljubljana Higher Court on 18 July 2001.

24. On 24 January 2003 the court held another hearing, at which it decided on the remainder of the restitution claims, concerning the forfeited immovable property. The court established that restitution *in natura* was no longer possible, since on the claimed plots of land at Brdo at Kranj (*Brdo pri Kranju*) several buildings had been built after their forfeiture to the State, some of which were used also by the State for its ceremonial events. The claimants were therefore granted compensation for the forfeited immovable property in the amount of SIT 424,270 (EUR 1770,50), payable in State bonds. The applicant appealed.

25. On 3 September 2003 the decision was upheld by the Ljubljana Higher Court. On 13 April 2005 the Supreme Court rejected the applicant's request for revision.

26. On 21 December 2005 the Constitutional Court dismissed the applicant's constitutional appeal. It is not clear from the case file when the decision was served on the applicant.

27. On 8 April 2004 the applicant again requested the land register to enter the transfer of ownership of the forfeited property back to his father J.D., which was rejected by the court on 14 July 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution of the Republic of Slovenia

28. 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*

29. 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) 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 in non-contentious proceedings and to an injured party in criminal proceedings.

30. 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*

31. 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.).

32. 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.

33. 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), or if it is used for State activities which could not be satisfactorily transferred to another location (Section 19). 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).

34. In accordance with its 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 was 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 thus violated Article 155 of the Slovenian Constitution (decision no. U-I-10/92, see below).

4. *The Criminal Procedure Act*

35. According to the Criminal Procedure Act (*Zakon o kazenskem postopku*, Official Journal no. 63/1994) provides:

Section 538 § 1

“When extraordinary judicial review proceedings against a person, finally convicted (...) have been definitively discontinued, such person shall enjoy the right to compensation for the damage sustained as a result of his wrongful conviction.”

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

36. 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.

6. *The 1997 Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions*

37. 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, proceedings concerning claims for the restitution of or compensation for property, *inter alia* in cases where the property had been confiscated by virtue of criminal judgments handed down before 31 December 1958.

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

38. 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 below the Constitutional Court's decision U-I-10/92 of 5 November 1992). In its Section 145 it provided that the court which executed the sentence of forfeiture of property also decided on restitution of or compensation for the forfeited property.

39. The 1998 Act on Amendments of, and Supplements to, the Act on Implementation of Penal Sanctions (*Zakon o spremembah in dopolnitvah Zakona o izvrševanju kazenskih sankcij*, Official Journal no. 10/98) added new Sections 145A and 145C to the Act. As far as claims for restitution of property forfeited by 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.

40. 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.

8. *The Constitutional Court's decisions*

41. 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 provided for a more favourable restitution regime.

42. Further to another constitutional initiative, the Constitutional Court was called to rule upon the constitutionality of amended Sections 145A and 145C of the Act on Implementation of Penal Sanctions, which refer back to the Denationalisation Act to govern the restitution of property forfeited by criminal judgments handed down before 31 December 1958 and thus provide for a less favourable restitution regime. The court held that the challenged provisions did not conflict with the Constitution, because such interference with the constitutional rights of unjustly convicted persons 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 rightful 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 of 16 July 1998). 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.

43. 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 the 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.

44. 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.

9. The Supreme Court's decision

45. Since the Act on Implementation of Penal Sanctions does not provide for any particular procedure to govern the restitution of property forfeited by a criminal judgment, the Supreme Court adopted on 21 and 22 December 1992 a legal opinion that such property is to be returned in

“non-contentious proceedings, which is a less formal procedure and therefore in favour to the person entitled to restitution” (Supreme Court Report no. 11/92).

THE LAW

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

46. The applicant complained about the excessive length of the proceedings. He 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... hearing within a reasonable time by [a] ... tribunal...”

47. The applicant further complained that the remedies available for excessive length of court proceedings in Slovenia were ineffective. He 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

48. The applicant claimed the remedies available were not effective.

49. The Government pleaded non-exhaustion of domestic remedies.

50. The Court notes that in the proceedings to which the applicant was a party the final decision was taken on 21 December 2005, when the Constitutional Court dismissed his constitutional appeal. It follows that the proceedings had terminated before the Act on the Protection of the Right to a Trial without undue Delay (“the 2006 Act”) entered into force. The applicant could therefore only have availed himself of the legal remedies available before the 2006 Act became operational. The present application is thus 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, see also *Grzinčič v. Slovenia*, no. 26867/02, judgment, 3 May 2007). 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 applicant’s disposal at that time 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.

51. 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.

52. The Government's objection must therefore be dismissed. The Court further finds that the applicant's complaints relating to the length of the proceedings and the lack of effective remedies are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

(a) The parties' submissions

53. The applicant maintained that the proceedings, in objective terms, did not meet the "reasonable time" requirement.

54. The Government claimed that the length of the proceedings was due to the complexity of the case, in particular in view of fact that the property was extensive and included several items. The applicant contributed himself to additional delays, by insisting on unrealistic claims for restitution of all the property *in natura*, refusing to co-operate, cancelling the scheduled hearing and requesting that another court decide on the case.

(b) The Court's assessment

55. In determining the relevant period to be taken into consideration, the Court notes that the proceedings started on 7 June 1994, that is, before 28 June 1994, when 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). The proceedings terminated on 21 December 2005 at the earliest, when the Constitutional Court dismissed the applicant's constitutional appeal. The period to be taken into account is therefore nearly 11 years and 6 months, during which the applicant's case was dealt with by four levels of jurisdiction.

56. 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).

57. The Court notes that the proceedings were of some complexity. The Court also takes into account that what was at issue in the domestic proceedings was of some importance to the applicant. The Court considers, however, that the applicant's conduct, in particular his refusal to co-operate in the proceedings and to attend the scheduled hearing contributed to a certain extent to the length of the proceedings. The Government, on the other hand, failed to provide any explanation for several substantial delays in the proceedings, such as more than a three-year period between the day the court cancelled the scheduled hearing and the day on which it joined different sets of restitution proceedings. The court also remained completely inactive for almost two years after it issued the partial decision on compensation for the forfeited movable property.

58. 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.

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

2. Article 13 of the Convention

60. 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 *Kudla v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). In this respect the Court notes that the objections and arguments put forward by the Government in respect of the legal remedies available before the Act on the Protection of the Right to a Trial without undue Delay entered into force have been rejected in earlier cases (see *Grzinčič*, cited above) and sees no reason to reach a different conclusion in the present case.

61. Accordingly, the Court considers that in the instant 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.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL NO. 1, ARTICLE 3 OF PROTOCOL NO. 7 AND ARTICLE 4 OF PROTOCOL NO. 7 TO THE CONVENTION

62. The applicant further maintained that the proceedings for restitution of the forfeited property were not necessary, since the restitution could have already been granted on the basis of the decision of the Ljubljana Basic

Court of 15 December 1993, by which the court quashed the sentence of forfeiture of property. In the applicant's view, this decision alone already gave him the right under the domestic legislation to the restitution, *in natura*, of the immovable property forfeited by the criminal judgment. Any further proceedings aimed at establishing this right protracted the transfer of ownership and therefore prevented him from exercising his rights granted under Article 1 of Protocol No. 1, Article 3 of Protocol No. 7 and Article 4 of Protocol No. 7 to the Convention, and therefore constituted a violation of those provisions.

63. 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."

Article 4 of Protocol No. 7 reads:

"1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention."

64. Concerning the alleged violation of Article 1 of Protocol No. 1, the Court reiterates the principles which have been established by its case-law under Article 1 of Protocol No. 1 and which it has also stated in its *Kopecký v. Slovakia* judgment ([GC], no. 44912/98, ECHR 2004-IX (see also *Sirc v. Slovenia*, no. 44580/98, 22 June 2006):

(a) Deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

(b) Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, and *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).

(c) An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his “possessions” within the meaning of this provision. “Possessions” can be either “existing possessions” or “assets”, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII, *Polacek and Polackova v. Czech Republic* (dec.) [GC], no. 38645/97, § 62, 10 July 2002, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII and *Bugarski and von Vuchetich v. Slovenia* (dec.), no. 44142/98, 3 July 2001).

(d) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States’ freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

(e) On the other hand, once a Contracting State, having ratified the Convention, including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State’s ratification of Protocol No. 1 (see *Broniowski v. Poland* [GC], 31443/96, § 125, ECHR 2004-V).

65. Turning to the facts of the present case, the Court considers that it is clear that the applicant could not be said to have had “existing possessions” within the meaning of Article 1 of Protocol No. 1, since the property in question was forfeited in 1949. It thus remains to be examined whether the applicant could have had any “legitimate expectation” of realising his claim to restitution at the moment the sentence of the forfeiture of property was quashed on 9 March 1995.

66. The Court notes that according to the Constitutional Court's decision of 5 November 1992, the restitution of property forfeited by a criminal judgment rendered before 31 December 1958 was to be governed by the Act on Implementation of Penal Sanctions. In its Section 145, the Act provided that the court which executed the sentence of forfeiture also decided upon the restitution of or compensation for the forfeited property. Furthermore, according to the Supreme Court's opinion of 21 and 22 December 1992, the proceedings to be followed by the court when deciding on restitution of the forfeited property were "non-contentious" proceedings. It is clear that the applicant was obliged under domestic law to institute proceedings in order to exercise his right to restitution of or compensation for the forfeited property.

67. The Court therefore finds that at the moment the sentence of forfeiture of property was quashed on 9 March 1995, the applicant could not have legitimately expected that the property would be returned instantaneously, without a competent court having first examined his request in the framework of non-contentious proceedings (see *Sirc v. Slovenia*, cited above, § 275). The title to the property the applicant sought to recover could not be vested in him on the basis of the judgment of 9 March 1995 alone, without further intervention of the courts (see *Kopecký*, cited above, § 41)

68. The Court further observes in this respect that the right to restitution of forfeited immovable property was in fact granted to the heirs of J.D, including the applicant, by the Kranj District Court on 24 January 2003, which awarded each of them compensation in the amount of SIT 424,270 (EUR 1770,5), payable in State bonds. The judgment was subsequently upheld by the higher levels of jurisdiction and on 21 December 2005 ultimately by the Constitutional Court.

69. As for the applicant's complaint that he was not granted restitution of immovable property *in natura*, the Court notes that according to the Denationalisation Act, to which the Act on Implementation of Penal Sanctions referred as the Act governing the restitution of property forfeited by a criminal judgment rendered before 31 December 1958 at the time when the judgment of 24 January 2003 was rendered, the confiscated property shall be returned *in natura*, unless exceptional reasons justify the payment of compensation instead. One such exception is provided in Section 19 of the Denationalisation Act, which prevents property being returned in its original form where it is used for State activities which could not be satisfactorily transferred to another location.

70. As follows from the reasoning of the Kranj District Court in its decision of 24 January 2003, several buildings had been built on the claimed plots of land after their forfeiture to the State, some of which were also used for its ceremonial events. The court concluded that the property could therefore not be returned *in natura* and instead awarded compensation to the

applicant. As follows from the court's decision, as well as from the decisions of other domestic courts upholding this decision, the applicant did not have a right under domestic legislation to the restitution of the property *in natura*. His claim to restitution of immovable property *in natura* thus essentially amounts to an objection to the outcome of the proceedings before the judicial authorities and to the errors of interpretation and application of domestic law allegedly committed by them.

71. The Court recalls that while its duty, according to Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, it is primarily for the national administrative and judicial authorities, notably the courts, to interpret and apply domestic law (see, *inter alia*, *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96, 35532/97, 44801/98, § 49, ECHR 2001-II, and *Houfova v. Czech Republic* (dec.), no. 58177/00, 1 July 2003).

72. In the Court's assessment, the national judicial authorities gave reasoned decisions, addressing all relevant submissions by the applicant (see *Nadbiskupija Zagrebačka v. Slovenia*, no. 60376/00, 27 May 2004). There is nothing to show that the conclusion of the national judicial authorities was arbitrary or contrary to the provisions of domestic law.

73. It follows that there was no interference with the applicant's right to respect for property, as provided by the domestic legislation. The applicant's complaints made under Article 1 of Protocol No. 1 should therefore be rejected as manifestly ill-founded in accordance with Article 35 § 3 of the Convention.

74. As far as the applicant's allegations under Article 3 of Protocol No. 7 and Article 4 of Protocol No. 7 could be construed as claims to an instantaneous restitution of the forfeited immovable property, based solely on the Ljubljana Basic Court's judgment of 15 December 1993 quashing the sentence of forfeiture, the Court firstly notes that under domestic law the heirs of persons wrongfully convicted in the aftermath of the Second World War do enjoy the right to restitution of property forfeited by virtue of criminal judgments in the framework of non-contentious proceedings (see above § 49). The Court further notes that the Slovenian courts, in non-contentious proceedings, indeed granted the applicant his right to restitution of the forfeited immovable property and awarded him compensation (see § 50 above). In the Court's view, the applicant can therefore no longer claim to be a victim of the alleged violations.

75. The applicant's claims made under Article 3 of Protocol No. 7 and Article 4 of Protocol No. 7 should therefore be declared inadmissible as being incompatible *ratione personae* with the Convention and rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. The applicant claimed to have sustained pecuniary damages and submitted an expert report assessing the value of the forfeited immovable property. As for non-pecuniary damages, the applicant claimed in his application form that he sustained these as a result of the unreasonable time required under the domestic legislation and enforcement mechanisms for the forfeited property to be returned to wrongfully convicted persons and their heirs. The applicant failed to specify these claims even after the Court invited him to do so on 14 March 2007 and 30 March 2007, only referring back to the submissions in his initial documentation of 9 January 2001.

78. The Government contested the claim, claiming that the applicant did not properly specify his claims or submit any supporting evidence in this respect.

79. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have sustained non-pecuniary damage in respect of the excessive length of the proceedings and the lack of an effective remedy. Ruling on an equitable basis, and taking into account the applicant's conduct, it awards him EUR 3,500 under that head.

B. Costs and expenses

80. The applicant did not clearly specify any costs and expenses he might have incurred in the proceedings. The Court therefore makes no award under that head.

C. Default interest

81. 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. *Declares* the complaints concerning the excessive length of the proceedings and the lack of remedies in that respect admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention as to the length of the proceedings;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred Euros) in respect of non-pecuniary damage, 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President