



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

THIRD SECTION

CASE OF GERDEN v. SLOVENIA

(Application no. 44581/98)

JUDGMENT

STRASBOURG

18 March 2008

FINAL

18/06/2008

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 Gerden 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. 44581/98) against the Republic of Slovenia lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Slovenian national, Mr Franc Gerden (“the applicant”), on 12 October 1998.

2. The applicant was represented by Mr H. Đjurković, a lawyer practising in Koper. 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, complaining about the lack of an effective domestic remedy in respect of the excessive length of the proceedings. He further alleged that the amendments to the Act on Implementation of Penal Sanctions violated his rights under Article 6 § 1 (unfair trial), Article 14, Article 1 of Protocol No. 1 and Article 3 of Protocol No. 7 to the Convention.

4. On 29 August 2006 the Court decided to give notice of the complaints concerning the length of the proceedings and the lack of remedies in this 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 1934 and lives in Trebnje.

1. Background of the case

6. On 24 September 1946 the Ljubljana Division Military Court (*Divizijsko vojaško sodišče v Ljubljani*) convicted the applicant's uncle and legal predecessor, Mr A.Z., of the offence of collaboration with the "Black Hands" organisation during the Second World War. He was sentenced to 10 years' deprivation of liberty with forced labour and forfeiture of property to the State. The applicant's uncle lodged an appeal with the Military Court of the IVth Army (*Vojaško sodišče IV. armije*), which was dismissed on 25 October 1946. Following the conviction, the immovable assets belonging to the applicant's uncle were expropriated by a ruling of the Grosuplje District Court (*Okrajno sodišče v Grosupljem*), rendered on 22 November 1946.

7. The applicant's uncle died on 4 September 1949, bequeathing his movable assets to his sister, the applicant's mother. She died in 1973, leaving her property to the applicant and his brother and sister.

8. In 1991, after the establishment of independence of the Republic of Slovenia and the change of the political regime, the applicant's aunt requested the retrial of her brother, the applicant's uncle. On 19 March 1993 the Ljubljana Basic Court, Ljubljana Unit (*Temeljno sodišče v Ljubljani, Enota v Ljubljani*) acceded to her request and re-opened the criminal proceedings. Following the withdrawal of all charges by the Prosecutor General, on 2 September 1993 the court terminated the proceedings and quashed the conviction. The decision became final on 19 September 1993.

2. Request for restitution of, or compensation for, the forfeited property

9. On 3 December 1993 the applicant initiated proceedings against the Grosuplje Municipality before the Ljubljana Basic Court, Grosuplje Unit (*Temeljno sodišče v Ljubljani, Enota v Grosupljem*), in order to obtain restitution of or compensation for the immovable assets forfeited by his uncle, invoking the Act on Implementation of Penal Sanctions. The forfeited property consisted of the following items: four houses, several plots of land, a hayrack and other farm outbuildings.

10. On 1 April 1994 the applicant modified his request and included the Republic of Slovenia as an additional defendant in the restitution proceedings. He also urged the court to start processing his case.

11. On 5 December 1994 the court cancelled a scheduled hearing and adjourned it *sine die*.

12. The applicant again modified his request and included the Municipality of Ivančna Gorica and the Municipality of Dobrepolje among the defendants.

13. On 21 April 1995 the court held a hearing, at which it decided to appoint an expert in building construction and an expert in agriculture.

14. On 1 March 1996 the applicant again modified his request in order to include among the defendants also the Farmland and Forest Fund of the Republic of Slovenia (*Sklad kmetijskih zemljišč in gozdov*, “the Fund”). He also lodged a request for a temporary injunction, and urged the court to deal promptly with the case.

15. On 19 March 1996 the court held another hearing, at which it decided to grant the requested temporary injunction. It also ordered the Fund to return three plots of land to the applicant. The Fund appealed.

16. The court upheld the appeal and changed its decision of 19 March 1996. That decision became final on 31 May 1996.

17. On 9 August 1997 the Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on the Implementation of Penal Sanctions entered into force. It had the effect of suspending extant restitution claims under these two acts, originally until 20 December 1997 and subsequently, under new legislation, until 31 March 1998. While those provisions were in abeyance, the Parliament passed the Act on Amendments and Supplements to the Act on Implementation of Penal Sanctions (see under “The Relevant Domestic Law and Practice”).

18. Between 10 September 1998 and 16 September 2003 the court held four hearings. At the hearing held on 10 September 1998 the court issued an order appointing an expert in building construction and an expert in agriculture. Neither the applicant nor his legal representative attended the hearing held on 12 September 2000. At the hearing held on 7 October 2002 the court decided to appoint another expert in building construction instead of the appointed one.

19. On 3 October 2003 the court terminated the restitution proceedings due to the withdrawal of all the applicant’s claims on 1 October 2003. The applicant subsequently recalled his withdrawal and lodged an appeal against the decision of the court of 3 October 2003.

20. On 4 November 2003 new claimants – further legal successors of the applicant’s uncle – requested to join the proceedings on the applicant’s side and appealed against the decision of the court of 3 October 2003 to terminate the proceedings. On 3 November 2004 the court quashed its decision of 3 October 2003 and decided to continue with the restitution proceedings.

21. On 21 April 2005 the re-named Grosuplje Local Court (*Okrajno sodišče v Grosupljem*) awarded compensation in bonds of the Slovenian Compensation Society amounting to 179,225,156 Slovenian tolar (‘‘SIT’’) (EUR 747,838) to be divided among the heirs of the late A.Z., from whom the property had been forfeited in 1946. The judgment became final on 23 May 2005.

3. *Request for compensation for loss of profits*

22. On 2 September 1996, on the basis of Sections 538 and 539 of the 1994 Act on Criminal Procedure, the applicant, his sister and his nephew lodged a formal request with the Ministry of Justice in order to secure their right to compensation for loss of profits amounting to 198,726,975.80 SIT.

23. On 9 December 1996, further to the failure of the Ministry to respond to their request within the prescribed period of three months, they commenced proceedings in the Ljubljana District Court (*Okrožno sodišče v Ljubljani*). At that time, the lost profits were estimated by the applicant and his relatives at 198,726,975.80 SIT, from lost rent and income from the cultivation of the land.

24. On 24 March 1998 the court cancelled the scheduled hearing *sine die* due to the sick leave of the acting judge.

25. On 3 June 1998 and 11 June 1998 the applicant urged the court to deal promptly with their case and to set the date for the first hearing.

26. On 6 July 1998 the court held a hearing, at which it decided to appoint an expert in building construction and an expert in agriculture. It further decided, with the consent of the parties, to adjourn the hearing until the Constitutional Court decided upon the applicant’s constitutional initiative challenging the amendments to the Act on Implementation of Penal Sanctions.

27. On 23 March 2000 the court released the expert from his duties and appointed another expert in building construction.

28. On 21 February 2003 the applicant lodged a supervisory appeal in order to accelerate the proceedings before the court. The acting judge reported that the court was waiting for the final decision in the restitution proceedings.

29. On 10 April 2003 the court held a hearing, at which the Republic of Slovenia requested the court to stay the proceedings until a final decision was taken in the restitution proceedings on the applicant’s right to restitution of the forfeited property. The court granted the request and on 5 May 2003 decided to await the decision in the restitution proceedings. According to the reasoning of the court, the issues dealt with in the restitution proceedings were of a preliminary nature for the court, since the amount of the compensation for loss of profits depended on the question whether the claimant was awarded the restitution of property *in natura*, or in the form of compensation for the forfeited property.

30. On 6 December 2005 the court held a hearing and rejected all the applicant's claims. The applicant did not appeal, whereas his relatives did. As for the applicant, the judgment became final on 21 December 2005.

II. THE RELEVANT DOMESTIC LAW AND PRACTICE

1. The Constitution of the Republic of Slovenia

31. 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 ..."

2. The Act on the Protection of the Right to a Trial without undue Delay

32. 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 under the Act governing non-contentious proceedings and to an injured party in criminal proceedings.

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*

33. 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.).

34. 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.

35. 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).

36. 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*

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

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

38. On 9 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) entered into force. 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.

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

39. 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 had been handed down before 31 December 1958 and had later been quashed (see the Constitutional Court's decision mentioned under "3. The Denationalisation Act").

40. 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 that 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 property during the period of forfeiture.

41. 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.

42. 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 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 Constitutional Court's decisions*

43. 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 had been 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 the quashing of 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.

44. On 13 February 1998 the Constitutional Court upheld in part a constitutional initiative 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 had 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 that there was a violation of the constitutional rights protected under Article 14 (right to equality before the law).

45. Following a constitutional initiative lodged by the applicant and some other individuals, the Constitutional Court was called on to rule on the constitutionality of Sections 145A and 145C of the Act on Implementation of Penal Sanctions, which refer 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 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 of 16 July 1998). The principle of the Welfare State empowered the legislator, with due consideration paid 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.

46. 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.

47. 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.

THE LAW

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

48. 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 fair... hearing within a reasonable time by [a] ... tribunal...”

49. 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

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

51. The applicant contested that argument, claiming that the remedies available were not effective.

52. The Court notes that in the two sets of proceedings to which the applicant was a party, the judgments became final on 23 May 2005 and

21 December 2005, respectively. It follows that both sets of proceedings had terminated before the Act on the Protection of the Right to a Trial without undue Delay entered into force. The applicant could therefore only have availed himself of the legal remedies available before the 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, ECHR 2005-X, 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.

53. 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.

54. The Government's objection must therefore be dismissed. The Court furthermore finds that the applicant's complaint relating to the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 6 § 1 of the Convention

(a) The parties' submissions

55. The applicant maintained that the courts and the Republic of Slovenia as a defendant in both sets of proceedings continuously delayed the proceedings. In particular, he argued that it was not necessary for the court to await the decision of the Constitutional Court in order to decide the case, and further, that he was compelled to modify his claims on several occasions due to the legislation that had changed during the proceedings and which affected also the identity of the subjects liable for the restitution of property.

56. The Government claimed that the length of the two sets of proceedings was due not only to the complexity of the case, but first and foremost to the applicant's conduct. They complained in particular that the applicant modified his claims before the courts and initiated the constitutionality review procedure, the outcome of which the court then had to await. As for the second set of proceedings, the Government further

claimed that it could not have been dealt with more promptly, as the court had to await the final decision in the first set of proceedings.

(b) The Court's assessment

(i) Period to be taken into consideration

57. In determining the relevant period to be taken into consideration, the Court notes that the first set of proceedings started on 3 December 1993, 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 elapsed after 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 *Kudla v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI). As far as the end of the period is concerned, the date to be taken into account with regard to the first set of proceedings is 23 May 2005, when the judgment of the Grosuplje Local Court became final. The period to be taken into account in the first set of proceedings is therefore nearly 10 years and 11 months, during which the applicant's case was dealt with by one level of jurisdiction.

58. As for the second set of proceedings, the Court notes that it started on 9 December 1996, when the applicant lodged his request for compensation for loss of profits with the Ljubljana District Court. The date to be taken into account as the end of the second set of proceedings is 21 December 2005, when the proceedings became final with regard to the applicant. The second set of proceedings therefore lasted 9 years and 12 days, during which the case was dealt with by one level of jurisdiction.

59. 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).

60. The Court notes that the need to obtain expert reports in order to establish the facts of the case shows that the proceedings at issue 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 further considers that the modifications of the applicant's claims, his non-attendance of the scheduled hearing, his withdrawal of all his restitution claims and his subsequent recall of the withdrawal contributed to prolonging the proceedings. However, the Government, on the other hand, failed to provide any explanation for a number of delays and periods of inactivity of the judicial authorities. Thus, the court dealing with the first set of proceedings only held its first hearing almost a year and a half after the applicant had lodged his request for the restitution of the property.

Furthermore, the same court needed more than three years from its decision to obtain an expert report until it in fact appointed the expert. The same court also appears to have been totally inactive during the period between the fourth and fifth hearings, during which more than two years had passed. Similarly, the court in the second set of proceedings stayed completely inactive for over a year and a half after the Constitutional Court had delivered the judgment the court was waiting for.

61. 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.

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

2. Article 13 of the Convention

63. 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). 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.

64. 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.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AS TO THE RIGHT TO A FAIR HEARING, ARTICLE 14, ARTICLE 1 OF PROTOCOL NO. 1 AND ARTICLE 3 OF PROTOCOL NO. 7 TO THE CONVENTION

65. The applicant further complained that the amendments to the Act on Implementation of Penal Sanctions violated his 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. In substance, he also invoked Article 6 § 1 in conjunction with Article 14 of the Convention, alleging that the challenged amendments discriminated against those claimants for the restitution of forfeited property whose restitution proceedings were still pending before the courts when the challenged legislation introducing a less favourable restitution regime entered into force. The applicant also complained that the challenged

amendments breached his right to property as guaranteed under Article 1 of Protocol No. 1, arguing that from the moment the criminal judgment was quashed, he had a right to obtain the full restitution of the property forfeited by the quashed judgment, as guaranteed by the Act on Implementation of Penal Sanctions at the material time, that is, before the challenged amendments entered into force. In addition, he claimed that the challenged amendments violated his right to full compensation for the wrongful conviction as guaranteed under Article 3 of Protocol No. 7. Finally, the applicant 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 amendments deprived him of his property on a discriminatory basis, as 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.”

66. The Court observes that the applicant’s remaining claims all concern the amendments to the Act on Implementation of Penal Sanctions as adopted in 1998. In this respect, the Court reiterates 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)).

67. The Court further observes that on 21 April 2005 the Grosuplje Local Court took the final decision with regard to the applicant’s claims for the restitution of forfeited property and awarded him compensation for the forfeited property. Furthermore, on 6 December 2005 the Ljubljana District

Court took a final decision with regard to the applicant's claims for compensation for loss of profits.

68. The Court further observes that the applicant did not lodge any appeal either against the judgment of the Grosuplje Local Court of 21 April 2005 or against the judgment of the Ljubljana District Court of 6 December 2005 to the Ljubljana Higher Court.

69. 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 (see, *Sirc v. Slovenia* (dec.), no. 44580/98, § 247, 22 June 2006).

70. 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.

71. It follows that this part of the application must be considered inadmissible for non-exhaustion of domestic remedies within the meaning of Article 35 § 1 of the Convention and rejected in accordance with Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

73. The applicant claimed 10,000 Euros (EUR) in respect of non-pecuniary damage.

74. The Government contested the claim.

75. The Court considers that the applicant must have sustained some non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 8,000 under that head.

B. Costs and expenses

76. The applicant claimed EUR 3,656 for the costs and expenses incurred before the Court, and EUR 1,983 for the costs and expenses incurred before the domestic courts.

77. The Government argued that the claim was excessively high and was not supported by any documents as far as the costs and expenses incurred before the domestic courts were concerned.

78. 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. The Court further notes that the proceedings before the domestic courts were not at all aimed at remedying the violations of the Convention rights alleged by the applicant before the Court (see *Scordino v. Italy (no. 1)* no. 36813/98, 29 March 2006). It therefore considers that the applicant cannot claim the reimbursement of costs incurred before the domestic courts. 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

79. 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 complaint concerning the excessive length of the proceedings and the lack of remedies with regard to excessive length of the proceedings 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 8,000 (eight 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;

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