



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

## FIRST SECTION

### DECISION

Application no. 10149/13  
SERBIAN ORTHODOX CHURCH  
against Croatia

The European Court of Human Rights (First Section), sitting on 30 June 2020 as a Chamber composed of:

Krzysztof Wojtyczek, *President*,

Ksenija Turković,

Linos-Alexandre Sicilianos,

Aleš Pejchal,

Armen Harutyunyan,

Tim Eicke,

Jovan Ilievski, *judges*,

and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 13 December 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, the full name of which is Serbian Orthodox Church in Croatia, Eparchy of Dalmatia – Orthodox Monastery (*Srpska pravoslavna crkva u Hrvatskoj, Eparhija dalmatinska – Pravoslavni manastir Dragović* – hereinafter “the applicant monastery”), is a monastery and legal entity of the Serbian Orthodox Church – a religious community recognised under Croatian law – more specifically, of its Eparchy of Dalmatia. The seat of the applicant monastery is in Imotski, whereas the seat of the Eparchy is in Šibenik. The applicant monastery was represented before the Court by Mr I. Mirošević, an advocate practising in Split.

2. The Croatian Government (“the Government”) were represented by their Agent, Ms Š. Stažnik.

**A. The circumstances of the case**

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

4. In 1946 the Communist authorities appropriated 164 plots of agricultural land owned by the applicant monastery.

5. During the construction of the Peruća hydroelectric power plant and the associated artificial lake in 1959, the land in question was submerged and is presently situated at the bottom of that lake.

*1. Administrative proceedings*

6. On 1 July 1997 the applicant monastery, relying on the Restitution Act (see paragraphs 21-25 below), instituted administrative proceedings before the relevant State administration office in Sinj (hereinafter “the Sinj Office”) seeking compensation for the appropriated land.

7. On 22 April 1998 subordinate legislation setting out the criteria for determining the value of appropriated agricultural land entered into force (see paragraph 26 below – hereinafter “the 1998 Rules”). Under section 59 of the Restitution Act, these criteria are relevant for calculating the amount of compensation for such land (see paragraph 23 below).

8. On 30 November 2001 the Amendments to the 1998 Rules came into force (hereinafter “the 2001 Amendments”), effectively increasing the amount of compensation for appropriated agricultural land (see paragraphs 19 and 27 below).

9. On 8 July 2003 a hearing was held before the Sinj Office concerning the applicant monastery’s request.

10. On 11 February 2004 new subordinate legislation setting out the criteria for determining the value of appropriated agricultural land entered into force (hereinafter “the 2004 Rules”), reducing the amount of compensation for such land. The 2004 Rules provided for their immediate application to all pending proceedings in which the first-instance decision had not yet been adopted (see paragraph 28 below).

11. By a decision of 24 May 2004 the Sinj Office recognised the applicant monastery’s right to compensation and, applying the 2004 Rules, awarded it 1,424,827.45 Croatian kunas (HRK) in State bonds.

12. On 16 June 2004 the applicant monastery lodged an appeal with the Ministry of Justice (*Ministarstvo pravosuđa*), contending, in particular, that it would have been entitled to a higher amount of compensation had the 2004 Rules not been applied retroactively.

13. On 3 April 2006 the Ministry, as the second-instance administrative authority, dismissed the applicant monastery's appeal and upheld the first-instance decision of the Sinj Office.

14. The applicant monastery then brought an action for judicial review in the Administrative Court (*Upravni sud Republike Hrvatske*), challenging the administrative authorities' decisions.

15. On 29 September 2010 the Administrative Court dismissed the applicant monastery's action and held that the administrative authorities had been correct in their decision to apply the 2004 Rules. The first-instance decision of 24 May 2004 (see paragraph 11 above) thus became final (*pravomoćno*).

16. The applicant monastery then lodged a constitutional complaint with the Constitutional Court (*Ustavni sud Republike Hrvatske*), complaining that the retroactive application of the 2004 Rules had been in breach of its right to a fair hearing and the right of ownership, guaranteed by the Croatian Constitution. It also complained that by dismissing its action for judicial review the Administrative Court, without any explanation, had departed from its earlier practice that the administrative authorities had to apply the subordinate legislation in force at the time of the institution of the administrative proceedings (see paragraphs 29-30 below).

17. By a decision of 20 June 2012 the Constitutional Court dismissed the applicant monastery's constitutional complaint. The court held, *inter alia*, that the Administrative Court had not departed from its earlier practice, because no subordinate legislation had been in force at the time the applicant monastery had instituted the administrative proceedings on 1 July 1997 (see paragraph 6 above and paragraphs 26-28 below).

18. The decision of the Constitutional Court was served on the applicant monastery's representative on 9 July 2012.

## 2. Other relevant facts

19. The applicant monastery submitted to the Court a report by a certified agricultural expert, dated 9 April 2013, in which he calculated and compared the level of compensation by applying the criteria set out in the 1998 Rules, 2001 Amendments and 2004 Rules. The expert report suggested that the applicant monastery would have been awarded: HRK 531,249.01 had the 1998 Rules been applied; HRK 3,699,912.92 had the 2001 Amendments been applied; and HRK 1,427,474.45 had the 2004 Rules been applied.

## **B. Relevant domestic law and practice**

### *1. The Constitution*

20. The relevant Article of the Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) reads:

#### **Article 90 §§ 4 and 5**

“(4) Statutes and other [subordinate] legislation of state or public authorities shall not have retroactive effect.

(5) Only certain provisions of a statute may have retroactive effect, for especially justified reasons.”

### *2. Relevant primary and subordinate legislation*

#### **(a) The Restitution Act**

21. The Act on Compensation for, and Restitution of, Property Appropriated During the Yugoslav Communist Regime (*Zakon o naknadi za imovinu oduzetu za vrijeme jugoslavenske komunističke vladavine*, Official Gazette nos. 92/96 with subsequent amendments – “the Restitution Act”), which entered into force on 1 January 1997, enables the former owners of confiscated or nationalised property or their heirs to seek under certain conditions either restitution of, or compensation for, appropriated property.

22. The Act, as a rule, provides for restitution in kind of appropriated agricultural land, forests and forest land, but also provides for a number of exemptions in which former owners are entitled to compensation in State bonds (sections 15 and 20, read in conjunction with sections 54-55 and 57).

23. Section 59 contains the mathematical formula for calculating this compensation. The formula takes into account the value of appropriated property.

24. Section 63(1) provided that the criteria for determining the value of agricultural land, forests and forest land were to be set forth in special subordinate legislation to be enacted by the minister for agriculture and forestry within a year of the Restitution Act’s entry into force (see paragraph 21 above and paragraphs 26-28 below).

25. Section 65(3) provided that former owners had to lodge their requests within six months of the Act’s entry into force (see paragraph 21 above), that is, by 1 July 1997. This time-limit was extended by the entry into force of the 2002 Amendments to the Restitution Act on 5 July 2002 in respect of foreign nationals, foreign legal entities and certain categories of Croatian nationals.

**(b) Rules on the criteria for determining the value of appropriated agricultural land, forests and forest land**

26. On 22 April 1998 the Rules on the criteria for determining the value of appropriated agricultural land, forests and forest land entered into force (*Pravilnik o mjerilima za utvrđivanje vrijednosti oduzetog poljoprivrednog zemljišta, šuma i šumskog zemljišta*, Official Gazette 58/98 – “the 1998 Rules”).

27. On 30 November 2001 the Amendments to the 1998 Rules entered into force (*Pravilnik o izmjenama i dopunama Pravilnika o mjerilima za utvrđivanje vrijednosti oduzetoga poljoprivrednog zemljišta, šuma i šumskog zemljišta*, Official Gazette 106/01 – “the 2001 Amendments”).

28. On 19 February 2004 the new Rules on the criteria for determining the value of appropriated agricultural land, forests and forest land entered into force (*Pravilnik o mjerilima za utvrđivanje vrijednosti oduzetog poljoprivrednog zemljišta, šuma i šumskog zemljišta*, Official Gazette 18/04 – “the 2004 Rules”). Section 4 of the Rules provides for their immediate application to pending proceedings in which the first-instance decision has not yet been adopted.

*3. Relevant practice*

29. At a session on 15 March 2011 the Property Division of the Administrative Court adopted an opinion that the administrative authorities in administrative proceedings had to apply the subordinate legislation (rules) in force at the time of the institution of the proceedings, even if the subordinate legislation provided otherwise.

30. In judgment no. Us-6108/2007-6 of 5 May 2011 the Administrative Court applied that opinion and quashed the administrative authorities’ decisions in a case where they had applied the 2004 Rules in administrative proceedings which had been instituted before that subordinate legislation had entered into force. The court held that the 1998 Rules as amended by the 2001 Amendments – which had been more beneficial to those entitled to compensation – should have been applied, and that section 4 of the 2004 Rules was contrary, *inter alia*, to Article 90 § 4 of the Croatian Constitution (see paragraph 20 above) because it provided for their retroactive application. The court at the same time lodged an application for constitutional review of that provision with the Constitutional Court.

31. In cases no. Uzz 45/12-6 of 26 November 2013, U-zpz 5/13-7 of 15 July 2014, Uzz 3/13-5 of 29 October 2014, Uzz 16/12-6 of 8 January 2015, Uzz 15/12-4 of 2 September 2015 and Uzz 18/12-8 of 7 December 2016, the Supreme Court (*Vrhovni sud Republike Hrvatske*) quashed the judgments of the Administrative Court, which by then became the High Administrative Court, which were based on the above legal view (see the two previous paragraphs). In some of the cases it held that the 2004 Rules and section 4 thereof did not have retroactive effect because their

application did not affect acquired rights, whereas in the other cases it held that the Constitution in Article 90 § 5 explicitly allowed for certain provisions to have retroactive effect and that therefore the 2004 Rules or section 4 thereof were not incompatible with the Constitution (see paragraphs 20 and 28 above).

32. By decision no. U-II-3092/2011 of 30 January 2018 the Constitutional Court dismissed the Administrative Court's application for constitutional review (see paragraph 30 above). It held that section 4 of the 2004 Rules did not have retroactive effect because it did not affect acquired rights. Before reaching that decision, the Constitutional Court obtained observations from the Ministry of Agriculture, which argued that the application of the criteria set forth in the 2001 Amendments had resulted in compensation awards significantly higher than those resulting from the application of the 1998 Rules. That had had negative effects on the State budget. The 2004 Rules had thus been enacted to protect the State's financial interests and to compensate former owners of appropriated agricultural land in accordance with the State's financial capacities. The Constitutional Court accepted that the enactment of the 2004 Rules pursued the legitimate aim of maintaining the stability of the State's financial system and awarding compensation corresponding to the State's financial capacities.

## COMPLAINTS

33. The applicant monastery complained that the application of the 2004 Rules instead of the 1998 Rules, as modified by the 2001 Amendments, to its case had been in breach of its rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto.

34. It also complained under Article 6 § 1 and Article 13 of the Convention that the Administrative Court had departed from its earlier practice without any explanation (see paragraphs 15 and 29-30 above), and that the Constitutional Court had dismissed its constitutional complaint without first deciding the application for constitutional review (see paragraphs 17, 30 and 32 above).

## THE LAW

### **A. Alleged violations of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 thereto on account of the retroactive application of the relevant subordinate legislation**

35. The applicant monastery complained that the application of the 2004 Rules had violated its rights to a fair hearing and to the peaceful enjoyment of its possessions. It relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto, the relevant parts of which read as follows:

#### **Article 6 (right to a fair hearing)**

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

#### **Article 1 of Protocol No. 1 (protection of property)**

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

#### *1. The parties' submissions*

##### **(a) The Government**

36. The Government disputed the admissibility of this part of the application on several grounds. They argued that the applicant monastery could not claim to be a victim of the violations complained of, that it had not suffered a significant disadvantage on account of the violations alleged, and that in any event this part of the application was manifestly ill-founded.

37. As regards their argument concerning the lack of victim status and the lack of significant disadvantage, the Government submitted that the expert report (see paragraph 19 above) suggested that the applicant monastery would have been awarded HRK 531,249.01 had the 1998 Rules been applied (see paragraph 26 above). Given that the applicant monastery had been awarded HRK 1,424,827.45 (see paragraph 11 above), it had actually profited from the application of the 2004 Rules.

38. The Government also pointed out that the land appropriated from the applicant monastery was currently situated at the bottom of the artificial lake created by the construction of the hydroelectric power plant in 1959 (see paragraph 5 above). That meant that the applicant monastery had been awarded compensation for land which had practically no market value.

39. Regardless of these arguments (see the two previous paragraphs), this part of the application was, in the Government's view, in any event manifestly ill-founded, for the following reasons.

40. Firstly, the 1998 Rules had entered into force on 22 April 1998 (see paragraphs 7 and 26 above). That meant that at the time of the institution of the impugned administrative proceedings on 1 July 1997 (see paragraph 6 above) no subordinate legislation had been in force regulating the level of compensation for appropriated agricultural land. The applicant monastery could not have therefore had any legitimate expectations that the level of compensation would be determined by applying the 1998 Rules or 2001 Amendments thereto. Consequently, the State could not have been barred from introducing new subordinate legislation on the matter.

41. For the same reason, the Administrative Court in the applicant monastery's case had not followed the opinion adopted at the session of its Property Division on 15 March 2011 and the ensuing practice (see paragraphs 15 and 29-30 above). That had been clearly explained by the Constitutional Court in its decision of 20 June 2012 dismissing the applicant monastery's constitutional complaint (see paragraph 17 above).

42. The application of the 2004 Rules had greatly benefited the applicant monastery, as it had increased the level of compensation for appropriated agricultural land compared to the 1998 Rules (see paragraph 19 above). It was therefore evident that the applicant monastery had in fact wanted the 2001 Amendments to be applied in its case. However, the principles of the rule of law and of prohibition of retroactive application of the law could not be interpreted so as to allow the applicant monastery to choose between two or more pieces of legislation, depending on which benefited it the most.

43. In the Government's submission, the applicant monastery seemed to consider that those principles had been reflected in the legal opinion of the Administrative Court of 15 March 2011 (see paragraph 29 above) on which it had relied. However, if that view were to be followed, the 1998 Rules – which had offered the lowest level of compensation – should have been applied to the applicant monastery's case. What is more, unlike the 2004 Rules, the 2001 Amendments to the 1998 Rules had not provided for their immediate application to pending proceedings (see paragraphs 27-28 above).

44. Lastly, the Government pointed out that the level of compensation the applicant monastery had received in the application of the 2004 Rules had been almost three times what it would have been entitled to receive under the 1998 Rules (see paragraphs 11 and 19 above).

45. In the light of the foregoing, the Government concluded that under no circumstances could the applicant monastery have expected the 2001 Amendments, entitling it to the highest level of compensation, to apply to its case.

**(b) The applicant monastery**

46. The applicant monastery did not comment on the Government's arguments concerning the lack of victim status and the lack of significant disadvantage (see paragraph 37-38 above).

47. The applicant monastery submitted that the 2004 Rules had provided for their retroactive application to pending proceedings (see paragraph 28 above), and had been applied in that manner in the administrative proceedings in question to its detriment. In this connection, the applicant monastery pointed out that, under Article 90 § 5 of the Croatian Constitution (see paragraph 20 above), only certain provisions of a statute, that is, of primary legislation, could have retroactive effect for especially justified reasons. Since the 2004 Rules constituted subordinate and not primary legislation, their retroactive effect had been in breach of that constitutional provision. What was worse, the 2004 Rules as a whole, and not only certain provisions, had had retroactive effect.

48. The applicant monastery further found it indicative that the only hearing in the case had been held on 8 July 2003, whereas the first-instance decision had been adopted as late as 24 May 2004, as if the administrative authorities had deliberately waited for the 2004 Rules to enter into force on 11 February 2004 (see paragraphs 9-11 and 28 above).

49. Lastly, the applicant monastery was particularly critical of the Government's attempt to twist its argument that the administrative authorities should have applied the subordinate legislation in force at the time of the institution of the proceedings. In particular, the Government averred that if that view was followed, the 1998 Rules, offering the lowest level of compensation, should have been applied, and that in any event the 2001 Amendments could not have been applied because they had not provided for their immediate application to pending proceedings (see paragraph 43 above). In reply, the applicant monastery explained that all requests for restitution or compensation had to be lodged by 1 July 1997, which was before any of the relevant subordinate legislation had entered into force (see paragraphs 26-28 above). Therefore, if the Government's counterargument was to be accepted, the applicant monastery would not have been entitled to any compensation because, at the time of the institution of the proceedings (see paragraph 6 above), no rules had been in force. The applicant monastery thus wondered what the purpose of enacting the 1998 Rules and the 2001 Amendments had been if they had not been applicable to pending proceedings.

*2. The Court's assessment*

50. The Court does not find it necessary to examine all the arguments raised by the parties in the present case because these complaints are in any event inadmissible for the reasons set out below.

**(a) Alleged violation of Article 1 of Protocol No. 1 to the Convention**

*(i) Applicability*

51. The Court first reiterates that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her “possessions” within the meaning of that provision. “Possessions” can be “existing possessions” or claims that are sufficiently established to be regarded as “assets” (see, among many other authorities, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 142, 20 March 2018).

52. The present case concerns the level of compensation for 164 plots of agricultural land appropriated by the Communist authorities in 1946 (see paragraphs 4 and 6 above), that is, before the Convention and its Protocols entered into force in respect of Croatia, on 5 November 1997.

53. In this connection, the Court reiterates that the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to their ratification of the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 38, ECHR 2004–IX). Therefore, 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 (see *Kopecký*, cited above, § 35).

54. However, 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 (*ibid.*). That is precisely the situation in the present case, where the applicant monastery was entitled to obtain compensation for the land in question under the relevant provisions of the Restitution Act (see paragraphs 21–24 above). It follows, in the light of the foregoing, that the proprietary interest relied on by the applicant monastery in the present case is in the nature of a claim and cannot be characterised as an “existing possession” within the meaning of the Court’s case-law.

55. The Court reiterates in this regard that where a proprietary interest is in the nature of a claim, it may be regarded as an “asset” and therefore a “possession” attracting the guarantees of Article 1 of Protocol No. 1 to the Convention, only if there is a sufficient basis for that interest in national law (for example, where there is settled case-law of the domestic courts confirming it), that is, when the claim is sufficiently established to be enforceable (see *Kopecký*, cited above, §§ 49 and 52, and *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301–B).

56. The applicant monastery's claim for compensation for the land at issue had a sufficient basis in national law, which was eventually certified by a final decision of the domestic authorities allowing the claim (see paragraphs 11 and 15 above). The Court therefore finds that the applicant monastery's claim for compensation constituted a "possession" within the meaning of Article 1 of Protocol No. 1.

*(ii) Existence of an interference and the applicable rule*

57. Having established that the applicant monastery's compensation claim amounted to a "possession", the Court, taking into account its case-law on the subject (see, for example, *Maurice v. France* [GC], no. 11810/03, § 79, ECHR 2005-IX, and *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 34, Series A no. 332), considers that the enactment of the 2004 Rules and their application in the applicant monastery's case entailed interference with the exercise of the right to compensation which could have been asserted under the domestic law applicable until then. It thus constituted an interference with the applicant monastery's right to the peaceful enjoyment of its possessions guaranteed by Article 1 of Protocol No. 1.

58. Having regard to the fact the interference concerns the allegedly disproportionate reduction of the applicant monastery's entitlement to compensation for the property taken under the Communist regime, the Court considers that it should be examined under the first paragraph of Article 1 of Protocol No. 1, which prohibits the State from depriving a natural or legal person of property "except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

59. The Court must further examine whether that interference was justified, that is, whether it was lawful, pursued an aim in the public interest, and was proportionate to that aim.

*(iii) Lawfulness of the interference*

60. In examining whether the interference with the applicant monastery's right to the peaceful enjoyment of possessions (see paragraph 57 above) was justified, the Court is first required to determine whether it can be regarded as lawful, given that the law upon which any interference with that right is based should be in accordance with the internal law of the Contracting State, including the relevant provisions of the Constitution (see, for example, *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 82, ECHR 2000-XII).

61. The Court has in previous cases acknowledged that laws which were found to constitute legislative interference still conformed to the lawfulness requirement of Article 1 of Protocol No. 1, and finds no reason to hold otherwise in the present case (see, for example, *Azienda Agricola*

*Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 104, 24 June 2014).

62. As regards the applicant monastery’s argument that the 2004 Rules had been incompatible with the Croatian Constitution because of their retroactive effect (see paragraph 47 above), the Court first reiterates that its power to review compliance with domestic law is limited and that it is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law and to decide on issues of constitutionality (see, for example, *Radomilja and Others*, cited above, § 149, and *Former King of Greece and Others*, cited above, loc. cit.). The Court further notes that in the decision of 30 January 2018 the Constitutional Court held that the 2004 Rules had not been in breach of the Constitution (see paragraph 32 above). The Court thus sees no reason to hold otherwise.

63. The Court is therefore satisfied that the interference with the applicant monastery’s right to the peaceful enjoyment of its possessions was “provided for by law”, as required by Article 1 of Protocol No. 1 to the Convention.

*(iv) As to whether the interference pursued an aim in public interest and whether it was proportionate to that aim*

64. The Court reiterates that, as already stated above (see paragraph 53), where the deprivation of property occurred before the entry into force of the Convention in respect of the State concerned, Article 1 of Protocol No. 1 does not impose any restrictions on the Contracting States’ freedom to determine the scope of property restitution or compensation and to choose the conditions under which they agree to restore or compensate for such property (see *Kopecký*, cited above, § 35, and *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003). However, once the State has enacted restitution legislation generating a new property right (see paragraph 54 above), such as for instance compensation for loss of property appropriated under the Communist regime and then has restricted the amount of compensation available, the Court’s scrutiny of the State’s compliance with Article 1 of Protocol No. 1 inevitably encompasses the assessment of whether the new compensation terms respected the requisite fair balance between the general interest of community and the applicant’s right to the peaceful enjoyment of possessions (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 176 and 182, ECHR 2004-V).

65. While under Article 1 of Protocol No. 1 the State is entitled to expropriate property – including any compensatory entitlement granted by legislation – and to reduce, even substantially, levels of compensation under legislative schemes, this provision requires that the amount of compensation granted for property taken by the State be “reasonably related” to its value (see *Broniowski*, cited above, §§ 176 and 186).

66. It is with these considerations in mind that the Court will examine whether the interference with the applicant monastery's right to the peaceful enjoyment of possessions pursued an aim in the public interest and whether it was proportionate to that aim.

67. Turning again to the present case, the Court notes that by enacting the 2004 Rules the State sought to decrease public expenditure by limiting the compensation for agricultural land appropriated during the Communist regime (see paragraph 32 above). Given the wide margin of appreciation enjoyed by the States in restitution matters (see paragraph 64-65 above), and having regard to its case-law (see the cases cited in paragraph 64-65 above and *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 105), the Court accepts that that the respondent State's choice to cut down on that expenditure served the general interest of the protection of the public purse.

68. Lastly, as regards the proportionality of the interference, the Court notes that the rules governing the level of compensation for appropriated agricultural land changed three times during the administrative proceedings complained of (see paragraphs 6-18 and 26-28 above). In the application of the impugned 2004 Rules the applicant monastery was awarded neither the highest nor the lowest amount of compensation available under the above-mentioned regulations (see paragraphs 11 and 19 above). Having regard to the principles laid down in its case-law (see paragraphs 63-64 above), the Court considers that the middle amount granted does not appear to be unreasonably low, in particular considering that it exceeded nearly three times the award that the applicant could expect under the 1998 Rules applicable at the beginning of the proceedings (see paragraphs 6, 19 and 26 above). In these circumstances, and having regard to the above-mentioned wide margin of appreciation (see paragraphs 64-65 above), it cannot be said that the interference with the property rights in the present case failed to strike the requisite fair balance between the demands of the public interest and the requirements of the protection of one's fundamental rights, or that it imposed a disproportionate and excessive burden on the applicant monastery.

69. In the light of the foregoing considerations the Court finds that the interference (see paragraph 57 above) with the applicant monastery's right to the peaceful enjoyment of possessions was justified under Article 1 of Protocol No. 1 to the Convention.

70. It follows that this complaint is inadmissible under Article 35 §§ 3 (a) of the Convention as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 thereof.

**(b) Alleged violation of Article 6 § 1 of the Convention**

71. The Court first notes that the Government did not contest the applicability of Article 6 § 1 to this complaint. However, the issue whether a particular Article of the Convention or a Protocol thereto is applicable or not

is a matter that goes to the Court's jurisdiction *ratione materiae*. The scope of the Court's jurisdiction is determined by the Convention itself, in particular by its Article 32, and not by the parties' submissions in a particular case. Accordingly, the Court, has to satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its jurisdiction of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Nylund v. Finland* (dec.), no. 27110/95, 29 June 1999) unless the application is in any event inadmissible on other grounds.

72. In this connection, the Court reiterates that the applicability of Article 6 § 1 in civil matters depends, *inter alia*, on the existence of a "dispute" (in French, "*contestation*", see, for example, *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, §§ 44-45, Series A no. 43, and *Gorou v. Greece* (no. 2) [GC], no. 12686/03, §§ 27-36, 20 March 2009).

73. Having regard to the Court's case-law on the subject (see, for example, *Božić v. Croatia*, no. 22457/02, § 26, 29 June 2006, and *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001), it would appear that in the present case the dispute arose only on 16 June 2004 when the applicant monastery lodged an appeal against the first-instance decision of 24 May 2004 (see paragraphs 11-12 above). However, the 2004 Rules entered into force on 11 February 2004 (see paragraphs 10 and 28 above), that is, before the dispute arose and Article 6 § 1 of the Convention would become applicable. It would therefore appear that, in complaining that enactment and application of the 2004 Rules in its case amounted to legislative interference in the pending proceedings, the applicant monastery could not rely on Article 6.

74. However, in *Moreira de Azevedo v. Portugal* (23 October 1990, § 66, Series A no. 189; see also *Le Compte, Van Leuven and De Meyere*, cited above, § 45) the Court also held:

"In the Court's opinion, the right to a fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 para. 1 ... of the Convention restrictively.

Conformity with the spirit of the Convention requires that the word '*contestation*' should not be construed too technically and that it should be given a substantive rather than a formal meaning. Besides, it has no counterpart in the English text of Article 6 para. 1 ... ('in the determination of his civil rights and obligations' - see, *mutatis mutandis*, the *Le Compte, Van Leuven and De Meyere* judgment of 23 June 1981, Series A no. 43, p. 20, para. 45).

In so far as the French word '*contestation*' would appear to require the existence of a dispute, if indeed it does so at all, the facts of the case show that there was one.

In any event, the case concerned the determination of a right; the result of the proceedings was decisive for that right."

75. The Court therefore considers that it may leave open the issue of applicability of Article 6 § 1 in the present case, as well as the issue whether the enactment of the 2004 Rules and their application in the applicant monastery's case amounted to legislative interference in the pending proceedings within the meaning of its case-law developed under Article 6 § 1 (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 111-33, ECHR 2006-V, and *Azzopardi and Others v. Malta (dec.)*, no. 16467/17, §§ 44-45, 12 March 2019, with further references to the Court's case-law).

76. That is so because, even assuming that Article 6 § 1 is applicable in the present case and that there was legislative interference in the pending proceedings, this complaint is, as already noted above (see paragraph 50), in any event inadmissible for the reasons set out below (see paragraphs 77-81).

77. The Court reiterates that although in theory the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing law, the principle of the rule of law and the notion of fair trial enshrined in Article 6 of the Convention preclude any interference by the legislature – other than on compelling grounds of the general interest – with the administration of justice designed to influence the judicial determination of a dispute (see, for example, *Scordino*, cited above, § 126, and *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII).

78. The Court further reiterates that, under its settled case-law, financial considerations alone cannot be seen as “compelling grounds of the general interest” capable of justifying legislative interference (see, for example, *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 82; *Cabourdin v. France*, no. 60796/00, § 37, 11 April 2006; and *Ducret v. France*, no. 40191/02, § 40, 12 June 2007).

79. Nevertheless, the Court considers that, exceptionally, the alleged legislative interference can be considered justified in the very specific circumstances of the present case. Specifically, the Court finds the following combination of elements to be of decisive importance:

- the present case concerns restitution for the property appropriated during the Communist regime, it being understood that the States, as noted above (see paragraphs 64-65 above), enjoy wide margin of appreciation in restitution matters,

- the alleged legislative interference was not aimed specifically at the present proceedings (see, for example, *Forrer-Niedenthal v. Germany*, no. 47316/99, § 64 20 February 2003, and contrast with *Stran Greek Refineries and Stratis Andreadis*, cited above, §§ 44-50),

- no rules governing the level of compensation for appropriated agricultural land existed at the time when the applicant monastery instituted the administrative proceedings complained of, and

- those rules changed three times in the course of those proceedings before any decision was adopted (compare with *Tarbuk v. Croatia*, no. 31360/10, § 54, 11 December 2012, and contrast with *Stran Greek Refineries and Stratis Andreadis*, cited above, §§ 19-20 and 47, where the impugned legislation was adopted shortly before the hearing in the Court of Cassation), by first setting the level of compensation, then increasing it and finally reducing it to the level which was still almost three times above the level initially set (see paragraphs 6-18 and 26-28 above).

As regards the last point, the Court considers that in cases such as the present one, where applicable rules change several times in the course of the proceedings, an applicant cannot be considered entitled to have the most favourable rules applied as long as his or her claim was not substantially reduced under the rules eventually applied.

80. In these very specific circumstances, and having regard to its above findings under Article 1 of Protocol No. 1 to the Convention that the amount of compensation awarded to the applicant monastery was not unreasonably low (see paragraph 68 above), the Court considers that the domestic authorities were not prevented from adopting the 2004 Rules and providing for their immediate application to pending proceedings in which the first-instance decision has not yet been adopted (see paragraph 10 and 28 above).

81. It follows that this complaint is likewise inadmissible under Article 35 §§ 3 (a) of the Convention as manifestly ill-founded, and must be rejected pursuant to Article 35 § 4 thereof.

## **B. Other alleged violations of the Convention**

82. Relying on Article 6 § 1 and Article 13 of the Convention, the applicant monastery also complained of breaches of its right to a fair hearing and the right to an effective remedy in that (a) the Administrative Court had dismissed its action for judicial review without explaining why it had departed from its earlier practice (see paragraphs 15, 29-30 and 34 above), and (b) the Constitutional Court had dismissed its constitutional complaint without first deciding on the application for the constitutional review of the 2004 Rules (see paragraphs 17, 30, 32 and 34 above).

83. Article 13 of the Convention 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.”

84. Given that the safeguards of Article 6 § 1 in respect of a “fair hearing”, implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13 (see *Kudła v. Poland* [GC], no. 30210/96,

§ 146, ECHR 2000 XI), the Court will examine these complaints under Article 6 § 1 only.

85. As regards the alleged lack of reasoning by the Administrative Court, the Court finds that this complaint was satisfactorily addressed by the Constitutional Court in the decision of 20 June 2012 (see paragraph 17 above).

86. As regards the alleged failure of the Constitutional Court to decide the issue of constitutionality of the 2004 Rules before examining the applicant monastery's constitutional complaint, the Court notes that there is nothing in its case-law that would require the Constitutional Court to proceed in that manner.

87. It follows that the remainder of the application is also inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Renata Degener  
Deputy Registrar

Krzysztof Wojtyczek  
President