CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

CASE OF SIRC v. SLOVENIA

(Application no. 44580/98)

JUDGMENT

STRASBOURG

8 April 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 Sirc v. Slovenia,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele, *judges,*
Rajko Pirnat, ad hoc *judge,*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 18 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 44580/98) 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 and British national, Mr Ljubo Sirc ("the applicant"), on 13 August 1998.

2. From 12 August 2000 until 17 July 2002 the applicant was represented by the firm Christian Fisher, Solicitors, and Mr G. Nardell, a barrister practising in London. Since 21 July 2006, he has been represented by Mr H. Scott Neilson, a solicitor with Harper Macleod LLP practising in Glasgow. The Slovenian Government were represented by their Agent, Mr L. Bembič, State Attorney-General.

3. The applicant alleged violations of Article 6 § 1, Article 13 and Article 14 of the Convention and of Article 1 of Protocol No. 1 in respect of different sets of proceedings with a view to restitution of, or compensation for, forfeited property. In particular, he complained about the excessive length of those proceedings and about the lack of an effective domestic remedy in this respect.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 16 May 2002, the Court declared the application partly inadmissible. By a decision of 22 June 2006, the Court declared the application partly admissible.

6. The applicant filed further written observations (Rule 59 § 1). The Government replied in writing.

7. On 26 July 2006 the British Government, having been informed of their right to intervene (Article 36 § 1 of the Convention), replied that they did not wish to intervene.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Mr Ljubo Sirc, is a Slovenian and British national, born in 1920 and living in Glasgow (United Kingdom) and in Ljubljana (Slovenia).

1. Background to the case

9. Before the Second World War, the applicant's family owned large amounts of various types of real estate located in Kranj and in Ljubljana. In 1941, the Sirc textile factory located in Kranj was taken over by the German occupying forces.

10. Following the end of the Second World War, the 1945 Yugoslav Act on the Treatment of Property which Owners were Obliged to Abandon during the Occupation or of Property appropriated by the Occupying Forces or their Collaborators ("the 1945 Act") provided for immediate restitution of confiscated property or payment of compensation to the previous owners. The applicant's father submitted several requests for restitution and the factory land was returned to him, together with some movable assets.

11. On 12 August 1947 the Supreme Court convicted the applicant, the applicant's father and several others, including the Dean of the Law Faculty, of offences of collaboration with Western powers in the so-called "Nagode" political trial.

12. The applicant was sentenced to death (later commuted to 20 years' imprisonment) and his father to 10 years' imprisonment. Both were sentenced to forfeiture of their property to the State. At the time of the trial, the Sirc property consisted mostly of restitution or compensation claims.

13. According to the applicant, the sentence was enforced in two different ways. On the one hand, some assets were officially listed as appropriated by the State. These included approximately 15,000 m^2 of factory land, returned machinery and items corresponding to more than two-thirds of the claims for the return of the remaining machinery filed under the 1945 Act, the Sirc family house with a small garden, a house in Ljubljana,

shares in the Trbovlje coal-mining company, personal possessions and some 9,000 m^2 of agricultural land belonging to the applicant's mother.

14. On the other hand, the remaining assets such as items corresponding to outstanding claims introduced under the 1945 Act for restitution of, or compensation for, finished textiles, Russian and Turkish cotton and one-third of the unreturned machinery became State property under the "general formula" of the forfeiture order.

15. The applicant's father and the applicant were imprisoned from 1947 until 1950 and 1954, respectively. Soon after his release in 1950, the applicant's father died, leaving his entire estate to the applicant. Soon after his own release, the applicant fled to the United Kingdom.

16. As to the compensation for assets removed from the factory by the German occupying forces, the Sirc family and the Federal Republic of Germany concluded a settlement on 17 March 1964 in Berlin for 1,000,000 German marks (DEM).

17. In 1989, the applicant returned to Slovenia.

2. Request for restitution and compensation under the 1978 Act on Implementation of Penal Sanctions and the adoption of the 1991 Denationalisation Act

18. On 31 January 1991 the Supreme Court ordered retrials of those convicted in 1947, including the applicant. On 5 April 1991, following the withdrawal of charges by the Public Prosecutor, the Ljubljana first instance court terminated the proceedings and quashed the convictions.

19. On 3 June 1991, on the basis of the 1978 Act on Implementation of Penal Sanctions as amended in 1990 ("the 1978 Act"), the applicant lodged a request with the Ministry of Justice to give effect to his right to compensation for seven and a half years' imprisonment and for restitution of forfeited property.

20. At the material time, if the sanction of forfeiture of property was quashed, section 145 regulated the restitution of, or compensation for, the property forfeited through criminal proceedings. According to the applicant, compensation awarded under section 145 included damages for the owner's inability to use the property during the whole period of forfeiture.

21. On 25 June 1991 Slovenia gained independence.

22. On 29 November 1991 the Denationalisation Act was adopted, forming the basis for restitution of property (or its value) that had passed into State ownership after the Second World War. Section 92 extended its provisions to property forfeited in criminal proceedings that had terminated by 31 December 1958, such as the criminal proceedings against the applicant. The less favourable provisions of the Denationalisation Act thus became applicable in the proceedings started in 1991 by the applicant.

23. Section 92 was challenged before the Constitutional Court by means of a constitutional initiative (*ustavna pobuda*) by one individual.

24. On 27 May 1992, the Ministry having failed to respond to the applicant's request, the applicant instituted proceedings in the Kranj Basic Court (*Temeljno sodišče*) concerning some of the forfeited property.

25. On 29 June 1992 the Kranj Basic Court rejected his claims, holding that the administrative authorities in charge of the denationalisation proceedings enjoyed jurisdiction. The applicant appealed.

26. On 19 July 1992 the applicant reiterated his earlier request lodged with the Ministry. On 20 October 1992 he filed additional submissions.

27. On 5 November 1992 the Constitutional Court rescinded Section 92 of the Denationalisation Act, partly on the ground that it was retroactive and therefore violated Article 155 of the Slovenian Constitution (decision no. U-I-10/92). That decision was subsequently published.

28. On 11 November 1992 the Ljubljana Higher Court rejected the applicant's appeal against the decision of the Kranj Basic Court.

29. On 3 June 1993 the applicant filed additional submissions with the Ministry. On 23 November 1993 he reached an agreement with the Ministry of Justice as to the full settlement of compensation claims arising out of his unjust deprivation of liberty for DEM 80,000.

3. New requests for restitution and compensation under the 1978 Act

30. Subsequently, the applicant initiated several sets of proceedings with a view to restitution of, or compensation for, forfeited property. They were divided into contentious proceedings (*pravdni postopek*) and uncontentious proceedings (*nepravdni postopek*). Currently, there are four sets of contentious and three sets of uncontentious proceedings pending; several partial decisions have been delivered in the course of these proceedings.

(a) The main set of contentious proceedings

31. On 1 April 1994 the applicant commenced proceedings in the Ljubljana Basic Court in respect of the contentious assets (i.e. those items not formally listed as forfeited by the State in 1947 – see "Background to the case"), claiming compensation amounting to 3,913,894.40 US dollars (USD) on the basis of the claims under the 1945 Act.

32. The (renamed) Ljubljana District Court (*Okrožno sodišče*) held a hearing on 19 January 1996.

33. On 21 November 1996, the Ljubljana District Court granted one part of the applicant's claim and awarded him a total of 123,972,714.80 Slovenian tolars ("SLT") (approximately USD 1 million at the 1996 exchange rate).

34. Both the applicant and the State Attorney-General acting on behalf of the Republic of Slovenia appealed to the Ljubljana Higher Court.

35. On 9 August 1997 the Parliament passed the Act on the Temporary Suspension of certain Provisions of the Act on Denationalisation and of the Act on the Implementation of Penal Sanctions ("the Temporary Suspension

Act"). It had the effect of suspending extant claims under the 1978 Act, originally until 20 December 1997 and subsequently, under new legislation, until 31 March 1998.

36. While those provisions were in abeyance, the Parliament passed the 1998 Act on Amendments and Supplements to the Act on Implementation of Legal Sanctions (the "1998 Act"). That Act added new Sections to the 1978 Act.

37. As far as criminal proceedings terminated before 31 December 1958 were concerned, section 145A replaced section 145, applying to restitution claims the less favourable provisions of the Denationalisation Act regarding the form and scope of restitution as well as the restrictions on restitution and the valuation of property. Section 145C removed the right to compensation for the previous owner's inability to make use of the property during the period of forfeiture. That change was applicable to pending proceedings.

38. The applicant and others filed constitutional initiatives challenging the 1998 Act before the Constitutional Court on the ground that its provisions were retroactive and discriminatory.

39. On 16 July 1998 the Constitutional Court ruled (a joined decision no. U-I-60/98) that the disputed provisions of sections 145A and 145C of the 1998 Act did not conflict with the Constitution because such interference with the constitutional rights to rehabilitation and compensation in criminal proceedings and to own and inherit property was indispensable for the protection of the rights of other claimants under the Denationalisation Act.

40. The Constitutional Court further held that section 3 of the 1998 Act was in conformity with the Constitution, notwithstanding the fact that it retroactively interfered with accrued rights, because the retroactive effect of the Act was justified by the public interest.

41. By means of the same constitutional initiative, the applicant also challenged the method of valuation of property as set out in the Denationalisation Act. The Constitutional Court dismissed it on 18 March 1999.

42. On 16 April 1999, the Ljubljana Higher Court quashed the Ljubljana District Court's judgment of 21 November 1996 on the ground that the law had changed in the meantime and remitted the case.

43. On 18 January 2001 the applicant specified his claims in greater detail. On 29 January 2001 a hearing was held.

44. On 8 March 2001 the Ljubljana District Court gave judgment, dismissing the whole of the applicant's claims. On 11 September 2001 he appealed to the Ljubljana Higher Court and on 24 May 2002 he filed additional submissions.

45. Furthermore, in June 2002, following the Constitutional Court's ruling of 15 November 2001, section 145C of the 1998 Act was amended again so that persons entitled under section 145A might claim compensation

for being unable to use or to manage property or for loss of earnings incurred throughout the period running from the quashing of the sentence of forfeiture until the decision on its restitution becomes final.

46. On 17 July 2002 the Ljubljana Higher Court upheld the first instance judgment. The applicant then filed an appeal on points of law with the Supreme Court.

47. On 23 October 2003 the Supreme Court partially granted his appeal and referred one part of the case relating to the value of the machinery back to the first instance court for re-examination.

48. On 10 March 2004 the applicant lodged a constitutional appeal.

49. On 14 February 2005 the Constitutional Court declared his constitutional appeal partly admissible.

50. On 12 May 2005 the Constitutional Court dismissed the applicant's appeal.

51. In the framework of the remitted proceedings, on 24 May 2004 the Ljubljana District Court dismissed the part of the applicant's request related to compensation for machinery, amounting to USD 738,807.64. The judgment was served on the applicant on 23 August 2004. He filed an appeal.

52. On 8 December 2004 the Ljubljana Higher Court quashed the judgment and remitted the case to the first instance court.

53. On 14 March 2005, after a hearing, the Ljubljana District Court again rejected the applicant's request. The applicant filed an appeal.

54. The proceedings are pending before the Ljubljana Higher Court.

(b) The uncontentious proceedings and the contentious proceedings arising out of them

55. On 28 April 1993, in the framework of uncontentious proceedings, four claims concerning the forfeited property listed in 1947 (factory land, family house, spinning mill, three lots of machinery and various personal assets) were lodged with the Kranj, Kamnik and Ljubljana Basic Courts.

56. In one set of proceedings, on 9 September 1993, the applicant applied to the President of the Kranj Basic Court for an interim measure (*začasna odredba*) concerning the land. On 24 September 1993, the applicant's request was granted pending the outcome of the proceedings.

57. Subsequently, the sets of proceedings initiated with the Kranj and Kamnik Basic Courts were transferred to the Ljubljana Basic Court.

(i) The uncontentious proceedings nº. Nz 835/93

58. The applicant claimed restitution of land and buildings *in natura* and compensation for forfeited movable assets, i.e. textile machinery confiscated from factories in Kranj, Tržič and Škofja Loka and other property items, amounting in value to USD 1,322,284.92. At some stage, another set of proceedings was merged with this set of proceedings.

59. A hearing was held on 5 May 1994. On 8 July 1994 the Ljubljana Basic Court partly granted the applicant's request with regard to the restitution of land. The applicant appealed.

60. On 10 November 1994 another set of uncontentious proceedings was merged with the present proceedings.

61. On 30 December 1994 the Ljubljana Basic Court first quashed its earlier decision and subsequently returned to the applicant one part of the immovable assets situated in Kranj.

62. On the same day, the court also decided that the applicant's claims concerning compensation for his inability to make use of the assets were to be treated in contentious proceedings. That part of the applicant's claim was separated and transferred to the Ljubljana District Court.

63. On 24 February 1995 the (renamed) Ljubljana Local Court ordered that the transfer of ownership concerning the returned land be entered in the land register of Kranj.

64. On 13 April 1995 another hearing was held by the Ljubljana Local Court.

65. On 7 July 1995 the applicant's request related to the restitution of immovable assets situated in Kranj and in Stražišče was partially granted.

66. On 19 November 1996 the applicant applied for a new interim measure for the protection of land, which was granted on 20 November 1996. The respondent parties challenged that decision.

67. On 22 January and 25 February 1997 the Ljubljana Local Court ordered the applicant to make payment of a provision to the valuation expert. The State Attorney-General and one of the other respondent parties contested this decision.

68. On 25 February 1997 the Ljubljana Local Court also returned further land and a part of the family house to the applicant.

69. On 19 May 1998, at a hearing, the applicant withdrew one part of his claims concerning restitution of the machinery. The court terminated that part of the proceedings and rejected his claim for compensation for one part of the machinery, in so far as it was directed against the Community of Kamnik and not the Republic of Slovenia.

70. On 21 April 1999 the Ljubljana Higher Court partly dismissed appeals against the first instance rulings of 22 January and 25 February 1997, remitting the case to the Ljubljana Local Court.

71. On 24 and 27 September 1999, acting on the basis of Section 24 of the amended Denationalisation Act, the applicant applied to the Ljubljana District Court for compensation for dilapidation of the property returned in 1994 and 1997.

72. On 19 September 2000 a hearing was held.

73. At a hearing on 24 October 2000, an expert valuator was appointed. On 21 June 2001 another expert was appointed.

74. On 18 September 2003 the applicant filed his submissions, repeating his arguments that the proceedings concerning movables should be combined and separated from the proceedings regarding the land and buildings.

75. On 21 October 2005 the Ljubljana Local Court requested the Kranj District Court to consult the files relating to the confiscation of the Sirc property in 1947. On 14 November 2005 the Kranj Local Court replied that the files were stored in the Kranj History Archives (*Zgodovinski arhiv Kranj*).

76. On 2 December 2005 the Kranj History Archives forwarded some of the files to the Ljubljana Local Court. The remainder were not found.

77. A hearing was scheduled for 10 May 2006.

78. The proceedings are pending.

(ii) The uncontentious proceedings nº. Nz 157/94

79. The applicant claimed compensation for forfeited immovable assets (looms in Kranj) amounting in value to USD 100,060.

80. On 8 December 1993 and 5 July 1994 the applicant filed submissions.

81. On 30 December 1994 the Ljubljana Basic Court decided that the applicant's claims concerning compensation for his inability to make use of the forfeited assets were to be treated in contentious proceedings. That part of the applicant's claim was transferred to the Ljubljana District Court.

82. On 19 May 1998 the applicant withdrew part of his claim.

83. On 17 September 2001 this set of proceedings was merged with the following set of uncontentious proceedings.

(iii) The uncontentious proceedings nº. Nz 280/93

84. The applicant claimed compensation for forfeited movable assets (parts of a spinning mill) amounting in value to USD 691,870.

85. On 30 December 1994 the Ljubljana Basic Court decided that the applicant's claims concerning compensation for his inability to make use of the machinery were to be treated in contentious proceedings.

86. On 30 November 1996 an expert opinion as to the valuation of the assets was drawn up.

87. On 18 February 1997 the State Attorney filed submissions.

88. On 25 February 1997 a hearing was held.

89. On 17 September 2001 the previous set of uncontentious proceedings was merged with the present set of proceedings.

90. A hearing was set for 18 September 2001.

91. On 8 October 2001 another hearing was held.

92. On 22 October 2001 the court held a hearing and decided to appoint an expert.

93. On 3 March 2003, the President of the (renamed) Ljubljana Local Court informed the applicant that his case would be transferred to another judge, specialised in denationalisation matters.

94. On 18 September 2003 the applicant filed submissions.

95. On 26 September 2003 the Bank of Slovenia was appointed as a financial expert in order to calculate the monetary debts and claims of the applicant's family firm in 1947. On 18 August 2004 the Bank of Slovenia submitted its calculations.

96. On 27 August 2004 the State Attorney-General filed submissions, as did the applicant on 8 October 2004.

97. On 23 March 2005 a new judge appointed in the case informed the applicant that she was to deal with his case.

98. The proceedings are still pending.

(iv) The uncontentious proceedings nº. Nz 11/93 and the proceedings before the administrative authorities in Ljubljana

99. On 4 May 1993 the applicant applied to the Ljubljana Basic Court for compensation in relation to 185 confiscated shares in the Trbovlje coal-mining company. The same proceedings dealt with the applicant's claim in relation to the house which was the subject of a contract of sale in 1946.

100. On 17 November 1993 the claim concerning the shares in the Trbovlje coal-mining company was also submitted to the Community of Ljubljana. In domestic law there was a conflict of jurisdiction between the courts and administrative authorities concerning the shares.

101. On 5 May 1994 the Ljubljana Basic Court held a hearing.

102. On 24 June 1994 and 17 February 1997 the applicant filed submissions.

103. On 27 March and 8 May 2001 hearings were held by the (renamed) Ljubljana Local Court.

104. On 23 May 2001 the Ljubljana Administrative Unit also held a hearing. On 4 June 2001 the applicant filed further submissions.

105. On 12 June 2001 a hearing was held before the Ljubljana Local Court. Since the court found out that the proceedings concerning the same claims had been pending before the competent Administrative Unit, it postponed the hearing *sine die*.

106. On an unknown date in 2002, the Ljubljana Administrative Unit awarded the applicant compensation for 185 shares.

107. On 17 January 2002 the applicant withdrew his request for compensation relating to the confiscated shares in the Trbovlje coal-mining company from the Ljubljana Local Court.

108. On 8 July 2002 the court made enquiries concerning the state of the proceedings initiated by the buyers of the house with the competent Administrative Unit.

109. On 27 March and 28 May 2003 hearings were held.

110. On 16 April 2003 the State Attorney-General filed preparatory submissions.

111. At the hearing held on 28 May 2003, the applicant's lawyer suggested that the proceedings be stayed pending the decision of the Ljubljana Administrative Unit.

112. In the course of the administrative proceedings started by the buyers of the house, on 23 December 2003 the Slovenian Compensation Corporation filed submissions which were forwarded to the claimants the following day. On 17 February 2004, a hearing was held by the Administrative Unit in those proceedings, at which it was decided to appoint a court valuator.

113. The proceedings are pending.

(v) The contentious proceedings nº. II P 1015/95 arising out of the uncontentious proceedings

114. On 30 December 1994 the Ljubljana Basic Court decided that the applicant's claims concerning compensation for his inability to make use of the assets should be transferred to the renamed Ljubljana District Court.

115. On 7 November 1996 the applicant amended his claims.

116. On 24 January and on 3 December 2002 the Ljubljana District Court asked the applicant whether or not the uncontentious proceedings were still pending. On 24 December 2002 the applicant informed the court that they were still pending.

117. A hearing was set for 20 December 2004. The applicant proposed that the hearing be postponed until the termination of the original set of uncontentious proceedings and that the three sets of contentious proceedings arising out of the uncontentious proceedings be joined.

118. On 17 December 2004 the proceedings were stayed pending the outcome of the uncontentious proceedings.

(vi) The contentious proceedings nº. II P 1016/95 arising out of the uncontentious proceedings

119. A hearing was first set for 17 May 1996 and subsequently cancelled.

120. On 17 May 1996 the applicant filed submissions and on 7 November 1996 he amended his claim.

121. A hearing was set for 13 February 2001. Further to the applicant's proposal, the court postponed the hearing until the final decision in the corresponding set of uncontentious proceedings.

122. The proceedings are pending.

(vii) The contentious proceedings nº. II P 1017/95 arising out of the uncontentious proceedings

123. On 25 October 1996 the applicant amended his claim.

124. On 17 March 1997 the Ljubljana District Court suspended further consideration of the applicant's claims pending the ruling of the Ljubljana Local Court in the uncontentious proceedings.

125. On 3 December 2002 the Ljubljana District Court asked the applicant whether or not the uncontentious proceedings had been terminated so that a hearing could be scheduled. On 24 December 2002 the applicant informed the court that they were still pending.

126. The proceedings are pending.

(c) Request for supervision related to the contentious and uncontentious proceedings

127. Since 1996, the applicant has lodged several requests for supervision with the Ministry of Justice or other State authorities. In 2000, he was informed that the delays in the uncontentious proceedings were due to the scale and complexity of the matters at issue and some measures were adopted in order to expedite the proceedings. In 2003, the applicant was further informed that his proceedings would be transferred to a new judge who was specialised in cases of this sort.

4. The proceedings initiated on the basis of the Denationalisation Act in Ljubljana and Kranj

128. The applicant introduced two sets of proceedings before the Communities of Kranj and Ljubljana in order to claim compensation under the Denationalisation Act in respect of the requisitioned building land and a house formerly belonging to his mother, as well as some of her personal possessions.

(a) The proceedings in Ljubljana

129. The proceedings before the Community of Ljubljana started on 6 February 1993.

130. On 18 November 1999 the (renamed) Ljubljana Administrative Unit requested the applicant to complete his submissions. On 11 February 2000 the applicant submitted additional documents.

131. On an unknown date, the applicant submitted claims for loss of earnings during the period of forfeiture. These claims are being examined by the Ljubljana District Court.

132. On 23 May 2000 the Ljubljana Administrative Unit forwarded the request for compensation to the Slovenian Compensation Fund.

133. On 10 February 2003 the (renamed) Slovenian Compensation Corporation replied to the applicant. On 23 March 2004 the applicant replied.

134. On 3 March 2005 the Slovenian Compensation Corporation requested additional documents which were supplied on 23 March 2005 in so far as available.

135. On 29 September 2005 a hearing was held. On 12 October 2005 the applicant submitted an explanatory note.

136. The proceedings are pending.

(b) The proceedings in Kranj

137. On 4 May 1993 the proceedings before the Community of Kranj started. On 27 May 1993 the applicant completed his request.

138. A hearing was held on 27 May 1994.

139. On 15 February 1996 the applicant requested the (renamed) Kranj Administrative Unit to terminate the proceedings.

140. The claim for restitution of the house resulted in a partial decision of 10 April 1998 returning the ground floor and a plot of land. The decision became final on 4 May 1998.

141. On 24 September 1999 the applicant submitted a claim in respect of dilapidation of the returned property.

142. On 8 August 2002 the Kranj Administrative Unit transferred one part of the applicant's claim lodged in 1993 to the Kranj District Court.

143. On 18 October 2002 the Kranj Administrative Unit issued a decision, fixing the amount of compensation at 53,641 Euros (EUR), payable in bonds of the (renamed) Slovenian Compensation Corporation, for a plot of land.

144. On 31 January 2003 the Kranj District Court held a hearing. A new hearing was scheduled for 11 July 2003.

145. On 23 April 2003 the Kranj Administrative Unit, acting *ex proprio motu,* reopened the proceedings and amended its previous decision by awarding the applicant higher compensation amounting to DEM 157,936.84, payable in bonds. The applicant and the respondent, the Slovenian Compensation Corporation, filed objections. The applicant replied on 4 June 2003.

146. On 8 September 2003 the applicant requested the annulment of the decision given on 18 October 2002 and priority treatment of his appeal.

147. On 18 September 2003 the Ministry of Environment, Spatial Planning and Energy rejected his request concerning the decision of 18 October 2002. By a separate decision, it also quashed the decision of 23 April 2003.

148. On 29 October 2003 the applicant instituted two administrative disputes before the Administrative Court and on 30 October 2003 he filed submissions with the Administrative Unit.

149. On 20 March 2004 the Kranj Administrative Unit issued a supplementary decision, fixing the amount of compensation at DEM 49,047.67.

150. On 19 May 2004 the Kranj District Court issued an intermediary decision concerning one part of the applicant's claims lodged in 1993 with the Kranj administrative authorities and transferred on 8 August 2002 to the

Kranj District Court. It held that the applicant had a right to compensation since the alleged contracts had actually been acts of requisition.

151. On 14 September 2004, by separate judgments, the Administrative Court rejected the applicant's requests. He lodged appeals with the Supreme Court. The proceedings are pending.

152. On 22 September 2004, after a hearing, the Kranj District Court fixed the amount of compensation. The applicant appealed.

153. On 26 January 2005 the Ljubljana Higher Court rejected the appeal. On 21 March 2005 the applicant filed an appeal on points of law with the Supreme Court which rejected it on 15 September 2005. The applicant then filed a constitutional appeal.

154. On 20 October 2006 the Constitutional Court dismissed the applicant's constitutional appeal.

5. Other applications to the Constitutional Court

155. On 17 March 1997 the applicant challenged before the Constitutional Court the method of valuation of property based on the fixed exchange rate with the US dollars, as prescribed by the Denationalisation Act. The Constitutional Court dismissed that challenge on 2 March 2000.

156. The applicant also made an application to the Constitutional Court for a binding interpretation of the provisions of the 1945 and 1978 Acts, but this too was refused on 2 March 2000.

6. Entry into force of the Act on the Protection of the Right to a Trial without undue Delay

157. In a letter of 9 October 2006 the State Attorney-General officially informed the Court that, further to its judgment in *Lukenda v. Slovenia* (no. 23032/02, §§ 93 and 95, ECHR 2005-X) binding the Slovenian State to adopt appropriate legal measures and administrative practices in order to secure the right to a trial within a reasonable time, the Act on the Protection of the Right to a Trial without undue Delay ("the 2006 Act") had been enacted on 26 April 2006. The 2006 Act came into force on 27 May 2006 and became operational on 1 January 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

158. 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 for a party to court proceedings, a participant under the Act

governing non-contentious proceedings and an injured party in criminal proceedings.

Section 3 provides for two remedies to expedite pending proceedings - a supervisory appeal (*nadzorstvena pritožba*) and a motion for a deadline (*rokovni predlog*) - and, ultimately, for a claim for just satisfaction in respect of damage sustained because of the undue delay (*zahteva za pravično zadoščenje*).

159. 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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

160. The applicant complained under Article 6 § 1 of the Convention about the unreasonable length of different sets of proceedings brought to secure his right to restitution or compensation.

The relevant part of Article 6 § 1 of the Convention 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..."

161. The applicant further complained that the remedies available in Slovenia in length of proceedings cases were ineffective. He relied on Article 13 of the Convention, which provides:

> "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."

1. The parties' submissions

162. According to the applicant, the length of the proceedings was in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

163. The applicant further contended that the remedies in length of proceedings cases lacked the necessary quality of effectiveness required by Article 13 of the Convention.

164. The Government rejected these allegations. They argued, as in the previous stages of the procedure before the Court, that the applicant had not availed himself of the domestic remedies for the purpose of expediting the judicial proceedings and/or claiming compensation which could be regarded as both adequate and effective.

165. Those remedies were and remained effective in both theory and practice, in particular after the implementation of the Act on the Protection of the Right to a Trial without undue Delay (the "2006 Act"), which had been implemented since 1 January 2007.

2. The Court's assessment

(a) The Government's preliminary objection concerning different sets of proceedings pending at first or second instance

166. The Court firstly notes that one part of the main set of contentious proceedings is pending before the Ljubljana Higher Court (see paragraph 54 above), that different sets of non-contentious proceedings are pending before the Ljubljana Local Court (see paragraphs 78, 98 and 113 above), and that different sets of contentious proceedings arising out of the non-contentious proceedings are pending before the Ljubljana District Court (see paragraphs 118, 122 and 126 above).

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

168. The Court notes that in proceedings pending at first or second instance, it is open to persons such as the applicant to seek their acceleration under sections 3, 5 and 8 of the 2006 Act by means of a supervisory appeal and a motion for a deadline. The latter constitutes, in substance, an appeal

against a decision on a supervisory appeal under certain conditions. Moreover, the applicant may ultimately obtain further redress through a compensatory remedy, namely by bringing a claim for just satisfaction under section 15 of the 2006 Act.

169. The Court has already examined the aggregate of remedies provided by the 2006 Act for the purposes of Article 35 § 1 of the Convention. It was satisfied that they were effective also in cases of excessively long proceedings pending at first and second instance, lodged before 1 January 2007, in the sense that these remedies were in principle capable of both preventing the continuation of the alleged violation of the right to a hearing without undue delay and of providing adequate redress for any violation that has already occurred (see *Grzinčič v. Slovenia*, no. 26867/02, § 98, 3 May 2007, *Korenjak v. Slovenia,* (dec.) no. 463/03, § 62, 15 May 2007, and *Gliha and Joras v. Slovenia,* (dec.), no. 72200/01, 6 September 2007).

170. The Court finds that these remedies are now at the applicant's disposal. In particular, as to the main set of contentious proceedings which was partially terminated on 12 May 2005, the Court considers that the proceedings, taken as a whole, have still not terminated since one part of those proceedings remain pending before the Ljubljana Higher Court. There is no reason to assume that the applicant will not be able to use the acceleratory remedies provided for by the 2006 Act and subsequently the compensatory remedy for the total length of the proceedings.

171. The Court therefore finds that the Government's objection of failure to exhaust domestic legal remedies in respect of the different sets of proceedings pending at first or second instance is well-founded.

172. It is further recalled that under Article 35 § 4 of the Convention, the Court may reject any application which it considers inadmissible at any stage of the proceedings (see *Medeanu v. Romania* (dec.), application no. 29958/96).

173. Consequently, the Court declares this part of the application inadmissible, in accordance with Article 35 § 1 of the Convention (see, *Azinas v. Cyprus* [GC], no. 56679/00, § 42, ECHR 2004-III, and *Civet v. France* [GC], no. 29340/95, § 44, ECHR 1999-VI). As to the applicant's complaint under Article 13 that the remedies at his disposal to complain about the length of proceedings pending at first or second instance were ineffective, it should be declared manifestly ill-founded under Article 35 § 3 of the Convention (see, *Grzinčič v. Slovenia*, cited above, § 111).

174. This part of the application should therefore be rejected under Article 35 § 4 of the Convention.

(b) The Government's preliminary objection concerning terminated proceedings

175. The Court notes that one set of proceedings concerning a part of the applicant's claims lodged in 1993 with the Community of Kranj, which was on 8 August 2002 transferred to the Kranj District Court, ended on 20 October 2006 with the Constitutional Court's decision (see paragraph 154 above).

176. The Court recalls its decision in the *Grzinčič v. Slovenia* judgment where it found that the transitional provisions of the 2006 Act were not applicable in cases concerning terminated proceedings which had been notified to the Slovenian Government before 1 January 2007, such as the present case.

177. The Court therefore finds that this part of the application is 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) examined by the Court before the 2006 Act became operational. 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 were ineffective (see *Grzinčič*, cited above, §§ 67 and 68). 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.

178. The Government's preliminary objections concerning terminated proceedings in the present case must therefore be dismissed.

(c) Merits concerning terminated proceedings

1. Article 6 § 1 of the Convention

179. The Court recalls that the applicant's complaints concerning the allegedly excessive length of the proceedings pending before the lower administrative authorities were declared inadmissible on 16 May 2002 for non-exhaustion of remedies available under Slovenian law since the applicant had failed to pursue his application under the conditions set out in the Denationalisation Act and the Administrative Disputes Act (see, *Sirc v. Slovenia*, (dec.), no. 44580/98, 16 May 2002).

180. Therefore, the Court can only take as the starting date for the purposes of calculation of the relevant period 8 August 2002, when one part of the applicant's claims was transferred by the administrative authorities to the ordinary courts. It is therefore on that day that the proceedings before the Kranj District Court started. This set of proceedings ended on 20 October 2006 with the Constitutional Court's decision and lasted approximately four years and two months. Four levels of jurisdiction were involved.

181. 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 of 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).

182. In the particular circumstances of the present case and despite the fact that the applicant did not use the remedies at his disposal to speed up the proceedings before the lower Kranj administrative authorities (see paragraph 179 above) the Court cannot but note that it took the administrative authorities more than eight years from 28 June 1994 when the Convention entered into force in respect of Slovenia to transfer one part of the applicant's claims to the Kranj District Court which enjoyed jurisdiction from the outset. The Court will therefore have regard to the stage which the proceedings had reached on 8 August 2002, the date when the period under examination in the present case began (see, mutatis mutandis, *Kudła v. Poland* [GC], no. 30210/96, § 123, ECHR 2000-XI). The Court further notes that the proceedings were not in themselves particularly complex and takes into account that what was at stake in the domestic proceedings was of great importance to the applicant. Moreover, it does not appear from the case-file that the applicant did contribute in any way to the length of this set of proceedings. Having regard to its case-law on the subject, the Court therefore considers that the length of this set of proceedings was excessive, and failed to meet the "reasonable-time" requirement.

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

2. Article 13 of the Convention

184. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that the objections and arguments put forward by the Government in cases of proceedings terminated before the implementation of the 2006 Act have been rejected in earlier cases (see *Grzinčič*, cited above, §§ 75 and 76) and sees no reason to reach a different conclusion in the present case.

185. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

186. 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

187. The applicant requested the Court to award him sums in respect of non-pecuniary damage and stated that he had commenced proceedings for restitution of his and his late father's property in 1991 when he was 71 - he is now 87. He had dedicated considerable mental and physical effort to pursuing his claims at domestic and international level and expressed doubts whether he would live to see the resolution of his outstanding claims in Slovenia.

188. In addition, he requested EUR 8,397,083.58, which is the estimated value of the confiscated property, for pecuniary damage.

189. The Government contested these claims

190. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

191. Regard being had to the circumstances of the present case, in particular the applicant's advanced age and the systemic nature of the violations in question (see paragraphs 177 and 182-185 above), the Court awards EUR 10,000 under this head.

B. Costs and expenses

192. The applicant stated that it was difficult to isolate costs in instructing lawyers in Slovenia as a consequence of the unreasonable delay. He has paid EUR 112,500 to the attorney Mr Jarkovič during 15 years of court proceedings and EUR 3,725.88 to the attorney Ms Murnik during 3 years of court proceedings.

193. In addition, the applicant requested EUR 12,277.31 for preparation of the submissions in the proceedings before the Court, EUR 20,000 for the cost of translation and personal work provided by him and EUR 12,800 for travelling expenses between Slovenia, Glasgow and Strasbourg.

194. The Government argued that the applicant's claims were too high.

195. 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. In the present case, regard being had to the information in its

possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 2,500 for the proceedings before the Court.

C. Default interest

196. 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

1. *Declares* by a majority the complaints under Articles 6 and 13 of the Convention concerning the proceedings pending at first and second instance inadmissible;

2. *Holds* unanimously that there has been a violation of Article 6 of the Convention in respect of the terminated proceedings;

3. *Holds* unanimously that there has been a violation of Article 13 of the Convention in respect of the terminated proceedings;

4. *Holds* unanimously
   (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 10,000 (ten thousand euros) in respect of non-pecuniary damage and EUR 2,500 (two thousand five hundred 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President