



Diocese Budimljansko-Nikšićka could not legitimately expect restitution of property expropriated in Montenegro after World War II

In its decision in the case of [Eparhija Budimljansko-Nikšićka and Others v. Montenegro](#) (application no. 26501/05) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned plots of land in Montenegro formerly owned by the diocese Budimljansko-Nikšićka and its churches and monasteries, which had been expropriated after World War II. The applicants complained in particular that their property rights had been breached, as they had not been restituted the land.

The Court held in particular that the applicants had no legitimate expectation, under Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, that they would be restituted, since the key provisions of the law on which they relied had been declared unconstitutional before they filed their request.

Principal facts

The applicants are the diocese and eleven monasteries and churches which all belong to the Serbian Orthodox Church in Montenegro. They had been owners of several plots of land, which were expropriated either immediately after World War II, without any formal decision, or in 1946, by decisions of the relevant agricultural commissions.

In March 2004, the applicants filed a request with the Government of Montenegro seeking restitution of the expropriated plots of land. They relied on the Just Restitution Act of 2002, which had provided for restitution in kind and had allowed for religious communities to be beneficiaries of the right to restitution. In May 2003, the Constitutional Court of Montenegro had declared a number of provisions of the Act unconstitutional. In particular, it had held that the provisions concerning the restitution in kind were in violation of current owners' property rights and that the competencies and composition of the restitution commissions – which were to include previous owners – were unacceptable. The Act was never applied in practice. On 8 April 2004, a new Restitution of Expropriated Property Rights and Compensation Act entered into force, providing that the restitution of property to religious communities would be regulated by a separate law.

In the absence of a response from the Government, the applicants brought administrative proceedings before the Supreme Court in June 2004. On 22 September 2005, the Administrative Court, which had taken over the Supreme Court's competencies in respect of administrative disputes, ruled against the applicants. The decision, which was sent on 24 October 2005 by post, did not reach their representative. On 2 October 2006, the Administrative Court therefore decided to post the decision on the court's notice board.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 June 2005. The Serbian Government was granted leave to submit written observations as a third party.

Relying on Article 1 of Protocol No. 1 to the Convention (protection of property) and Article 14 of the Convention (prohibition of discrimination), the applicants complained that their property rights had been breached as the expropriated property had not been restituted to them pursuant to the Just Restitution Act 2002 and that they had been discriminated against, as the 2004 Restitution of Expropriated Property Rights and Compensation Act distinguished between natural persons and religious communities. Further relying on Articles 6 (right to a fair trial within reasonable time) and Article 13 (right to an effective remedy), they also complained of the length of the proceedings concerning their administrative action and the lack of an effective domestic remedy in respect of all their complaints.

The decision was given by a Chamber of seven, composed as follows:

Lech **Garlicki** (Poland), *President*,
David Thór **Björgvinsson** (Iceland),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Zdravka **Kalaydjieva** (Bulgaria),
Nebojša **Vučinić** (Montenegro),
Vincent A. **de Gaetano** (Malta), *Judges*,

and also Lawrence **Early**, *Section Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1 and Article 14](#)

The Court underlined that legislation providing for the full or partial restoration of property confiscated under a previous regime, enacted by a member State after its ratification of the Convention and Protocol No. 1, might be regarded as creating a new property right protected by Article 1 of Protocol No. 1. However, that Article did not impose any general obligation on member States to restore property which had been transferred to them before they ratified the Convention. Nor did it impose any restrictions on their freedom to determine the scope and conditions of property restitution.

The applicants' property had been taken from them shortly after World War II, many years before the Convention and Protocol No. 1 entered into force in respect of Montenegro. To the extent that they implicitly complained about the expropriation itself, the Court had therefore no temporal jurisdiction to examine the circumstances of the expropriation or its continuing effects. Subsequent to the expropriation, the applicants had not been able to exercise any rights in respect of the property. Accordingly, they could not, for the purpose of Article 1 of Protocol No. 1, be deemed to have retained a title to property. Their request did thus not concern any existing possessions.

As to the question whether the applicants had a legitimate expectation that their restitution request would be determined in their favour, the Court noted that they had relied on legislation whose key provisions had been declared unconstitutional before the Convention had entered into force in respect of Montenegro and before they had filed their request. It was therefore unrealistic that the request would be determined at all. The belief that the law would be changed to bring it in line with the Constitution could

not be regarded as a form of legitimate expectation for the purpose of Article 1 of Protocol No. 1. Accordingly, the applicants did not have a claim which was sufficiently established to be enforceable and they could therefore not argue that they had a possession within the meaning of that Article. It followed that the complaint under Article 1 of Protocol No. 1 was incompatible with the provisions of the Convention and had to be rejected as inadmissible.

As the prohibition of discrimination under Article 14 had effect only in relation to the other rights and freedoms safeguarded by the Convention, the complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 had to be declared inadmissible as well.

Other articles

The Court further declared the applicants' complaints under Article 6 and under Article 13 inadmissible. It held in particular that their complaint with regard to the reasonable time requirement under Article 6 was manifestly ill-founded as the Montenegrin administrative court had decided on their claim within a year and three months. The Court underlined that under its case-law, Article 13 required a remedy at national level only in respect of complaints that could be considered arguable. Since the applicants' complaints under Article 1 of Protocol No. 1, Articles 6 and 14 had been declared inadmissible, they could not be regarded as arguable for the purposes of Article 13.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.