CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 48374/99
JOHANNES ATTEMS and Others
against Slovenia

The European Court of Human Rights (Third Section), sitting on 4 January 2008 as a Chamber composed of:

Corneliu Bîrsan, *President,*
Boštjan M. Zupančič,
Elisabet Fura-Sandström,
Egbert Myjer,
David Thór Björgvinsson,
Ineta Ziemele,
Isabelle Berro-Lefèvre, *judges,*
and Stanley Naismith, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 January 1999,

Having regard to the decision to apply Article 29 § 3 of the Convention and examine the admissibility and merits of the case together,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Johannes Attems, Mrs Eleonore Drasche, Mrs Gabrielle Rau, Mr Ferdinand Attems and Mr Alois Attems, are Austrian nationals who were born in 1947, 1943, 1953, 1945 and 1927 respectively.

2. Mr Johannes Attems, Mrs Gabrielle Rau and Mr Ferdinand Attems live in Vienna, Mrs Eleonore Drasche lives in Ebereichsdorf and Mr Alois Attems lives in Graz.

3. The application was lodged together with two more applicants, who died during the proceedings: Mr Franz Attems, who was born in 1926, lived in Graz and died on 13 May 1999, and Mr Edmund Attems, who was born in 1924, lived in Vienna and died on 4 January 2006.

4. The applicants were represented by Mr Johannes Attems.

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

6. In accordance with Article 36 § 1 of the Convention and Rule 44 of the Rules of Court, the Registrar informed the Government of the Republic of Austria of their right to submit written comments. In their reply of 30 November 2006, the Government of the Republic of Austria did not indicate that they wished to exercise their right[1].

A. The circumstances of the case

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

1. The background of the case

7. The applicants are heirs of Mr Ferdinand Attems and his wife, Mrs Wanda Attems.

8. The Attems family has lived in what is today Slovenia since 1605. By 1945 they had acquired, exclusively by purchase, extensive real estate and numerous companies, as well as movable assets (such as objects of art, etc).

9. After the Second World War, Slovenia became a constituent part of the newly formed Democratic Federal Yugoslavia. Its former legislative body was the Antifascist Council for the National Liberation of Yugoslavia ("the AVNOJ"), the highest political body in Yugoslavia during and immediately after the Second World War. On 21 November 1944 it adopted a decree ("the AVNOJ decree," see under "Relevant domestic law and practice") which prescribed, *inter alia*, the nationalisation of all property belonging to the German Reich and its citizens which was on the territory of Yugoslavia, of people of German origin, except those who were fighting for the national liberation movement, and finally, of all persons who were criminally convicted by a military or an ordinary court and sentenced to forfeiture of their property (see "Relevant Domestic Law and Practice").

10. On 17 August 1945 the Maribor Military Court convicted Mr Ferdinand Attems and Mrs Wanda Attems of the offence of high treason

[1] Rectified on 29 April 2008. The second sentence of the paragraph 6 ("They did not indicate that they wished to exercise their right.") has been rephrased.

during the Second World War. Mr Ferdinand Attems was sentenced to two years' and Mrs Wanda Attems to thirteen months' deprivation of liberty with forced labour. They were also stripped off of their political and civil rights and ordered to forfeit all their property to the State.

11. Probably towards the end of 1945, Mr Ferdinand Attems, Mrs Wanda Attems and Mr Emil Hans Attems (the first son of Ferdinand Attems) lost their lives in a work camp in circumstances that still remain unclear. On 20 February 1950 the Graz Regional Court (in Austria) adopted a decision to the effect that Mr Ferdinand Attems and Mrs Wanda Attems should be deemed no longer to be alive after 2 January 1946.

12. On 16 April 1993, after the independence of Slovenia and the change of the political regime, the Senate of the Maribor Basic Court (*Senat Temeljnega sodišča v Mariboru*), at the request of Mr Johannes Attems and Mr Edmund Attems, decided to reopen the criminal proceedings against Mr Ferdinand Attems and Mrs Wanda Attems. On 3 June 1993 the Public Prosecutor withdrew the indictment against Mr Ferdinand Attems and Mrs Wanda Attems. Consequently, the Maribor Basic Court quashed the convictions and discontinued the criminal proceedings against them. The decision became final on 12 July 1993.

13. On 22 April 1992 Mr Johannes Attems also lodged a request for declaratory decisions concerning the citizenship of Mr Ferdinand Attems and Mrs Wanda Attems with the Slovenska Bistrica Municipality. On 17 March 1993 the Municipality adopted two decisions certifying that Mr Ferdinand Attems and Mrs Wanda Attems were Yugoslav and Slovenian citizens until their death.

2. Requests for restitution of property made under the provisions of the Denationalisation Act

14. On 7 December 1991 the Denationalisation Act (*Zakon o denacionalizaciji*, see "Relevant Domestic Law and Practice") came into force, following which the applicants lodged a request for restitution of the property forfeited by Mr Ferdinand Attems and Mrs Wanda Attems with the Denationalisation Commission of the Slovenska Bistrica Municipality's Assembly (*Komisija za denacionalizacijo, Skupščina Občine Slovenska Bistrica*). On 9 January 1992 the latter informed the applicants that their request was incomplete, informed them about the requirements set forth by the Denationalisation Act and instructed them to amend their request.

15. Between 31 March and 26 April 1993, the applicants lodged claims for restitution of property under the Denationalisation Act with the Slovenska Bistrica Municipality, the Brežice Municipality, the Krško Municipality and the Šmarje pri Jelšah Municipality, respectively. At an undetermined time, a claim under the same provisions was lodged with the Ministry of Culture of the Republic of Slovenia.

16. On 7 January 1994 the applicants and a company, Terme Čatež d.d., reached an out-of-court settlement regarding the restitution of a part of the company's property which constituted a part of the property the applicants claimed in the proceedings before the Brežice Municipality. The applicants were awarded company shares worth approximately 1.1 million euros. The settlement was confirmed by the Brežice Municipality on 10 October 1994 and the proceedings concerning this property were terminated.

17. On 30 December 1995 the Act on Temporary, Partial Suspension of Restitution of Property (*Zakon o začasnem, delnem zadržanju vračanja premoženja*) was adopted, which temporarily suspended the restitution of certain types of property, and which affected also the denationalisation proceedings to which the applicants were parties.

18. On 8 July 1996 the applicants withdrew all their claims made under the Denationalisation Act, and started restitution proceedings under the Act on Implementation of Penal Sanctions (*Zakon o izvrševanju kazenskih sankcij*, see below, and under "Relevant domestic law and practice"). Consequently, the different sets of denationalisation proceedings to which the applicants were parties were terminated.

19. On 8 July 1996 the applicants also instituted proceedings against the Republic of Slovenia in the Ljubljana District Court (*Okrožno sodišče v Ljubljani*), seeking compensation for the loss of profit they had incurred by being prevented from using the forfeited property. At an undetermined time, the proceedings were stayed until the termination of the proceedings concerning the restitution of the property (see below).

20. On 8 August 1997 the Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions (*Zakon o začasnem zadržanju izvajanja nekaterih določb zakona o denacionalizaciji in zakona o izvrševanju kazenskih sankcij*, see "Relevant domestic law and practice") was adopted. This resulted again in a stay of all the proceedings to which the applicants were parties.

3. Requests for restitution of property made under the provisions of the Act on Implementation of Penal Sanctions

21. In July 1996, after withdrawing their restitution claims under the Denationalisation Act, the applicants lodged requests for restitution of property under the provisions of the Act on Implementation of Penal Sanctions (*Zakon o izvrševanju kazenskih sankcij*, see "Relevant domestic law and practice") with four Local Courts.

a) The Slovenska Bistrica Local Court

22. On 11 July 1996 the applicants instituted uncontentious civil proceedings in the Slovenska Bistrica Local Court (*Okrajno sodišče v Slovenski Bistrici*) against twenty-four legal entities, among them the Republic of Slovenia, the Municipality of Slovenska Bistrica (*Občina*

Slovenska Bistrica), the Farmland and Forest Fund of the Republic of Slovenia (*Sklad kmetijskih zemljišč in gozdov Republike Slovenije*, "the Fund") and several museums. They requested restitution of numerous plots of land, buildings, an extensive collection of art paintings, and other property taken from their predecessors, Mr Ferdinand Attems and Mrs Wanda Attems, following the Military Court's judgment of 17 August 1945. They also requested the court to allow certain interim measures preventing the sale or encumbrance of the property at issue, which was at the time in the possession of the company Ritoznojčan.

23. After a hearing held on 15 December 1998, the court on 18 January 1999 allowed the interim measure. After three subsequent sets of appellate proceedings and new requests for re-examination of the case, the Maribor Higher Court (*Višje sodišče v Mariboru*) on 5 January 2001 confirmed the first-instance court decision on the interim measure as final.

24. On 13 December 2000 the applicants urged the court to decide promptly on the case.

25. On 30 January 2002 the court delivered a decision inviting the applicants to amend their request of 11 July 1996 in order to satisfy the requirements under the Denationalisation Act.

26. On 14 May 2002, upon the applicants' request, the court extended the deadline for an additional ninety days.

27. On 26 August 2002 the applicants lodged written submissions supplementing their original request.

28. On 18 October 2002 the court issued a decision rejecting the applicants' request with respect to six adversaries since the applicants had failed to amend correctly their request. With respect to the other eighteen adversaries, the court found that under the Act on Implementation of Penal Sanctions they were not the entities liable for restitution of property. The applicants' respective requests were therefore dismissed. The decision was served on the applicants on 11 November 2002.

29. On 25 November 2002 the applicants appealed to the Maribor Higher Court. They also appealed against the decisions of 30 January 2002 and 14 May 2002.

30. On 5 August 2003 the court allowed the applicants' appeals, set aside the three impugned decisions and remitted the case to the Slovenska Bistrica Local Court.

31. On 21 October 2003 the Slovenska Bistrica Local Court held a hearing and heard submissions from the applicants and their six opposing parties.

32. On 20 November 2003 the court, by an interim decision, upheld the applicants' claim and decided that Mr Ferdinand Attems and Mrs Wanda Attems were entitled to restitution of all the property taken from them in 1945. The court found that the property in question had not been forfeited already by the nationalisation provisions of the AVNOJ decree of

21 November 1944, but only by the later criminal judgment of the Military Court handed down on 17 August 1945. Therefore, the property should be returned to the applicants according to the Act on Implementation of Penal Sanctions, and not under the provisions of the Denationalisation Act.

33. On 23 and 24 December 2003 the Slovenska Bistrica Municipality, the Republic of Slovenia and the Fund appealed to the Maribor Higher Court.

34. On 2 February 2004 the applicants replied and on 9 March 2003 they requested priority treatment of their case, which was granted.

35. On 14 May 2004 the Maribor Higher Court dismissed the appeals and upheld the decision of the first-instance court. The decision was served on the applicants on 9 June 2004.

36. On 29 June 2004 the Republic of Slovenia lodged an appeal on points of law with the Supreme Court (*Vrhovno sodišče*).

37. On 7 October 2004 the applicants replied. On 27 March 2006 they lodged additional documents and requested the court to decide promptly on the case.

38. On 26 October 2006 the Supreme Court set aside the decisions of the second- and first-instance courts in the part concerning the Republic of Slovenia and remitted the case to the first-instance court for re-examination. As for the other adversary parties to the proceedings, including the Municipality of Slovenska Bistrica, the decision of the Maribor Higher Court of 14 May 2004 became final. The court found that the Act on Implementation of Penal Sanctions was not necessarily the right basis for the restitution of the property in this case. It instructed the first-instance court to establish clearly whether the property at issue had been confiscated already by the nationalisation provisions of the AVNOJ decree of 21 November 1944, or by the criminal judgement of 17 August 1945. If the property had already been nationalised by the AVNOJ decree, the property should be returned under the denationalisation provisions of the Denationalisation Act and subject to the limitations for restitution set forth in that Act. If, on the other hand, the forfeiture of the property had been ordered as a penal sanction following the conviction, the property should be returned under the Act on Implementation of Penal Sanctions.

39. On 29 December 2006 the Republic of Slovenia lodged preliminary written observations.

40. On 6 November 2007 the applicants specified before the Slovenska Bistrica Local Court which plots of land should be returned by the Municipality of Slovenska Bistrica further to the Maribor Higher Court's decision of 14 May 2004.

41. The proceedings before the Slovenska Bistrica Local Court are still pending.

b) The Brežice Local Court

42. On 10 July 1996 the applicants instituted uncontentious proceedings against the Republic of Slovenia, the Brežice Municipality (*Občina Brežice*), the Farmland and Forest Fund and four other legal entities in the Brežice Local Court (*Okrajno sodišče v Brežicah*). They requested restitution of the property forfeited by Mr Ferdinand Attems and Mrs Wanda Attems, which was at the time allegedly in the possession of these entities. They also requested an interim measure prohibiting the sale or encumbrance of the property.

43. On 18 February, 8 June, 4 October and 13 December 2000 the applicants requested the court to start processing their case and to inform them of the application number of their case.

44. At an undetermined time, the judge dealing with the case was replaced.

45. On 30 March 2001 the court held a hearing which was adjourned *sine die* to allow the applicants to prepare a reply to the submissions of the adversaries. In addition, the court requested the applicants to supplement their request for an interim measure of 10 July 1996.

46. On 28 June 2001 the court dismissed the request for an interim measure. The applicants appealed against this decision to the Ljubljana Higher Court (*Višje sodišče v Ljubljani*) on 17 July 2001. It is not determined what was the final decision of the court regarding the interim measure.

47. In March 2002, the acting judge was again replaced.

48. On 26 November 2002 the applicants lodged written submissions with the Brežice Local Court, specifying their claims.

49. On 13 June 2003 the court held a hearing, took submissions from the parties and adjourned the hearing until 12 September 2003.

50. At the hearing held on 12 September 2003, the court decided to issue a partial decision.

51. By a letter of 13 March 2006, the applicants requested the court to issue the decision, as announced on 12 September 2003. They also lodged a supervisory appeal.

52. On 29 November 2006 the first-instance court held another hearing and on 10 March 2007 it issued a partial decision, stating that Mr Ferdinand Attems and Mrs Wanda Attems were entitled to restitution of all the property taken from them in 1945. The court found that the property in question had been forfeited by the criminal judgment and not by the AVNOJ decree. Hence, the applicants' claims made under the Act on Implementation of Penal Sanctions were justified and should be upheld.

53. On 24 April 2007 and 4 April 2007 respectively, the Republic of Slovenia and the Brežice Municipality appealed against this decision to the Ljubljana Higher Court.

54. The proceedings are still pending.

c) The Krško Local Court

55. On 8 July 1996 the applicants instituted uncontentious proceedings against the Republic of Slovenia, the Krško Municipality (*Občina Krško*) the Farmland and Forest Fund and five other legal entities in the Krško Local Court. They requested restitution of the property forfeited by Mr Ferdinand Attems and Mrs Wanda Attems, which was at the time allegedly in the possession of these entities. They also requested that an interim measure be issued prohibiting the sale or encumbrance of the property.

56. On 15 July 1996 the court upheld the applicants' requests for an interim measure. The Republic of Slovenia objected to this decision. The applicants replied to this objection on 13 January 1997.

57. On 25 February 1997 the court held a hearing.

58. On 18 February, 4 October and 13 December 2000 the applicants urged the court to decide on the objection and resume the proceedings on the merits of the case.

59. On 14 March 2001 the court rejected the objection of the Republic of Slovenia. The court also dismissed the applicants' request that their adversaries transfer possession of the property in question to the applicants for the duration of the proceedings.

60. On 12 April 2001 and on 18 June 2001 the court held hearings. The latter was adjourned due to the objection of three parties as to the jurisdiction of the court. It is not certain when the court dismissed this objection.

61. On 18 June 2002 the court delivered a partial decision. It found that under the Act on Implementation of Penal Sanctions, the Republic of Slovenia was liable to return to Mr Ferdinand Attems certain plots of land and that he should be registered as the owner of these properties in the Land Register (*Zemljiška knjiga*). The court decided to defer issuing a decision concerning the remainder of the claims. The decision was served on the applicants on 18 July 2002.

62. On 29 and 31 July 2002, respectively, the Republic of Slovenia and the Fund appealed to the Ljubljana Higher Court.

58. On 9 July 2003 the Ljubljana Higher Court allowed the appeals in part, because the first-instance court had wrongly decided which of the parties was liable for the return of the property. In this respect the case was remitted to the first-instance court for re-examination.

63. On 6 and 7 October 2003, respectively, the Republic of Slovenia and the Fund lodged an appeal on points of law with the Supreme Court.

64. On 6 September 2004 the applicants requested priority treatment of their case. In a letter of 27 September 2004, the Supreme Court informed them that cases such as the applicants', which concern the restitution of property on the basis of the Act on Implementation of Penal Sanctions, were regularly dealt with priority.

65. On 19 January 2006 the Supreme Court allowed the appeals on points of law, set aside the decisions of the first- and second-instance courts and remitted the case to the Krško Local Court for re-examination. The court found that the Act on Implementation of Penal Sanctions was not necessarily the basis for the restitution of the property in this case. The first-instance court would need to establish clearly whether the property at issue had been confiscated by the AVNOJ decree or by the criminal judgment. The decision was served on the applicants on 6 March 2006.

66. On 29 May 2007 the first-instance court held another hearing.

67. The proceedings are still pending.

d) The Šmarje pri Jelšah Local Court

68. On 11 July 1996 the applicants instituted uncontentious proceedings against the Republic of Slovenia, the Šmarje pri Jelšah Municipality (*Občina Šmarje pri Jelšah*) the Farmland and Forest Fund and six other legal entities in the Šmarje pri Jelšah Local Court (*Okrajno sodišče v Šmarju pri Jelšah*). They requested restitution of the property forfeited by Mr Ferdinand Attems and Mrs Wanda Attems, which was at the time allegedly in the possession of these entities.

69. The hearings scheduled for 4 July 1997 and 23 March 1998 were cancelled.

70. On 6 April 1998 the court held a hearing and requested the applicants to specify their claim and amend it so as to meet the requirements set by the law.

71. On 5 January 1999 the applicants lodged preliminary written submissions and increased their claim by seeking damages due to the dilapidation of some real estate.

72. A hearing scheduled for 12 April 1999 was cancelled.

73. On 12 November 1999 the court held a hearing and adjourned it until 14 January 2000 in order to acquire the criminal file and documents related to the forfeiture of the property from the Celje Historical Archives (*Zgodovinski arhiv Celje*). The rescheduled hearing was subsequently cancelled because the requested files had not yet been delivered.

74. The hearing scheduled for 14 January 2000 was cancelled.

75. On 20 January 2000 the court held a hearing which was adjourned. The applicants were given thirty days to submit additional documents.

76. On 18 May and 8 September 2000 the court held hearings. The latter hearing was adjourned, since the court had found that there existed a discrepancy between the transcripts from the Land Registry and the facts established by the court. The applicants were ordered to furnish documents identifying all the plots of land claimed within two months.

77. On 23 March 2001 the court held a hearing and decided to deliver a written decision.

78. On 26 April 2001 the court delivered a written decision. It decided that it had no jurisdiction to hear the case and set aside all the procedural steps taken. This decision was consistent with its finding that the property in question had not been confiscated by the judgment of the Military Court but by the AVNOJ decree, and should thus be sought under the Denationalisation Act and before the competent authorities. The court also found that Mrs Wanda Attems had not been the (co-)owner of the property claimed. On 16 May 2001 the decision was served on the applicants.

79. On 23 May 2001 the applicants appealed to the Celje Higher Court (*Višje sodišče v Celju*).

80. On 29 January 2002 the applicants sought priority treatment of their case in the Celje Higher Court.

81. On 3 May 2002 the applicants again sought priority treatment of their case in the Celje Higher Court and submitted Supreme Court case-law references in similar cases.

82. On 27 June 2002 the Celje Higher Court allowed the appeal in part and remitted the case for re-examination. The decision was served on the applicants on 4 September 2002.

83. The remainder of the case was given a new application number.

84. On 20 November 2002 the court held a hearing.

85. On 14 May 2003 the court held a hearing and decided to deliver an interim and a partial decision in writing.

86. On 30 June 2003 the court found that Mr Ferdinand Attems and Ms Wanda Attems were entitled to the restitution of property, since it had been forfeited by the criminal judgment of the Military Court. The court ordered the Fund to return to the applicants several plots of land. The decision was served on the applicants on 7 July 2003.

87. On 10 July 2003 the applicants appealed to the Celje Higher Court against the decisions concerning the costs and expenses. On 7 and 8 August 2003, respectively, the Ministry of Culture and the Fund cross-appealed. The Republic of Slovenia also cross-appealed.

88. On 1 October 2003 the applicants requested the Celje Higher Court for priority treatment of their appeal.

89. On 8 April 2004 the applicants again sought priority treatment of their case.

90. On 5 May 2004 the president of the Celje Higher Court informed the applicants that their case would be dealt with after the court's summer recess.

91. On 22 September 2004 the Celje Higher Court allowed the applicants' appeal in part and allowed the appeals of their adversaries. The decision of the first-instance court was set aside and remitted for re-examination. The court found that the first-instance court had failed to take into consideration the latest case-law of the Supreme Court concerning the

interpretation of the legal effects of the AVNOJ decree. The decision was served on the applicants on 18 November 2004.

92. On 13 July 2005 the court held a hearing and decided to issue a written decision.

93. On 14 July 2005 the first-instance court dismissed all the applicants' claims. It held that the property at issue had been confiscated by the AVNOJ decree and not by the criminal judgment. Therefore, restitution could not be sought under the provisions of the Act on Implementation of Penalty Sanctions, but rather under the Denationalisation Act.

94. On 18 November 2005 the applicants appealed to the Celje Higher Court.

95. On 10 May 2006 the court allowed the appeal, set aside the judgment of the first-instance court and remitted the case for re-examination. The decision was served on the applicants on 30 May 2006.

96. On 25 September 2006 the first-instance court held a hearing. After being asked by the applicants to stay the proceedings due to the out-of-court settlement procedure taking place between the parties, the court adjourned its decision for 30 days.

97. On 31 January 2007 the court held a hearing and decided to deliver the final decision in writing.

98. The proceedings are still pending.

B. Relevant domestic law and practice

1. Decree on the Transfer of Enemy Assets to State Ownership, on State Administration of the Assets of Absent Persons and on the Seizure of Assets which the Occupying Authorities Have Forcibly Estranged

On 21 November 1944, the Antifascist Council for the National Liberation of Yugoslavia (AVNOJ) adopted the Decree on the Transfer of Enemy Assets to State Ownership, on State Administration of the Assets of Absent Persons and on the Seizure of Assets which the Occupying Authorities Have Forcibly Estranged (*Odlok o prehodu sovražnikovega imetja v državno svojino, o državnem upravljanju imetja odsotnih oseb in o zasegi imetja, ki so ga okupatorske oblasti prisilno odtujile,* "the AVNOJ decree"), which entered into force on 6 February 1945. Its section 1 provided for nationalisation of the following categories of property:

a) all the property of the German Reich and its citizens which is on the territory of Yugoslavia;

b) all the property of people of German origin, except those who were fighting for the national liberation movement and its partisan forces, or are the citizens of neutral countries and did not act for the enemy side;

c) all the property of war criminals and their supporters, irrespective of their nationality, as well as all the property of every person who was convicted by an ordinary or a military court and sentenced to forfeiture of his or her property to the State.

2. The Denationalisation Act

The Denationalisation Act (*Zakon o denacionalizaciji,* Official Journal no. 27/91) formed the basis for restitution of property (or its value) that had passed into State ownership through previous legislation (agrarian reform, nationalisation, confiscation, etc.).

Section 3 provides that all natural persons whose property had passed into State ownership on the basis of the listed legislation adopted in the aftermath of the Second World War, including the AVNOJ decree, the Criminal Code and the Act on Criminal Acts against the Nation and the State, are entitled to denationalisation. Section 4 further specifies that all other natural persons whose property was nationalised by a legal act issued before 1963 are entitled to denationalisation.

In section 92, the Denationalisation Act originally extended its provisions also to property forfeited by virtue of criminal judgments handed down before 31 December 1958. This provision was rescinded by the Constitutional Court on 5 November 1992, partly on the ground that it was retroactive and therefore violated Article 155 of the Slovenian Constitution (decision no. U-I-10/92). According to these findings, the restitution of property which was forfeited by virtue of criminal judgments handed down before 31 December 1958 should instead be governed by the Act on Implementation of Penal Sanctions.

3. The Act on Temporary, Partial Suspension of Restitution of Property

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

4. The Act on Implementation of Penal Sanctions, as amended

Prior to 1998 amendments, the Act on Implementation of Penal Sanctions (*Zakon o izvrševanju kazenskih sankcij*, Official Journal no. 17/78, 8/90) applied also to the restitution of property forfeited in criminal proceedings which had terminated before 31 December 1958 and the decision of which had later been quashed.

The 1998 Act on Amendments of, and Supplements to, the Act on Implementation of Penal Sanctions (*Zakon o spremembah in dopolnitvah*

Zakona o izvrševanju kazenskih sankcij, Official Journal no. 10/98) made minor amendments to Section 145 of the 1978 Act.

It also added new Sections 145A and 145C to the 1978 Act. As far as the criminal proceedings terminated before 31 December 1958 are concerned, Section 145A replaced Section 145 and referred to the provisions of the Denationalisation Act to govern the form and scope of restitution, the restrictions on restitution and the valuation of property in case of claims for restitution of property forfeited in criminal proceedings terminated before 31 December 1958. Section 145C expressly removed the right to compensation for the previous owner's inability to make use of the property during the period of forfeiture.

Section 3 made the change applicable in non-contentious and contentious proceedings concerning the restitution of confiscated property when such proceedings had commenced before the Act came into force but had not become final by that time.

In June 2002, further to the Constitutional Court's ruling of 15 November 2001, Section 145C was amended again so that persons entitled under Section 145A might claim compensation for being unable to use or to manage the property or for loss of earnings incurred throughout the period running from the quashing of the forfeiture of the property until the decision on its restitution becomes final.

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

On 8 August 1997 the Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions (*Zakon o začasnem zadržanju izvajanja nekaterih določb zakona o denacionalizaciji in zakona o izvrševanju kazenskih sankcij*, Official Journal no. 49/1997) was adopted. Its Section 2 suspended, originally until 20 December 1997 and subsequently, under new legislation, until 31 March 1998, proceedings concerning claims for the restitution of or compensation for property which had been confiscated by virtue of criminal judgments handed down before 31 December 1958, or which was of a "feudal origin".

6. The 1991 Constitution of the Republic of Slovenia

The following provisions of the 1991 Constitution (*Ustava Republike Slovenije,* Official Journal no. 33/91) are particularly relevant for the present case:

Article 23

"Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law.

...

Article 26

"Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office ..."

7. The Constitutional Court's decisions

On 13 February 1998 the Constitutional Court decided in favour of the applicants and some other individuals, who had lodged a constitutional appeal challenging the provisions of the Act on the Temporary Suspension of Certain Provisions of the Denationalisation Act and of the Act on Implementation of Penal Sanctions. It ruled (a joined decision U-I-200/97), that the legislator did not have a justified cause to differentiate between the claims for restitution of property of a feudal and non-feudal origin.

Following another constitutional appeal lodged by Mr Johannes Attems and some other individuals, the Constitutional Court ruled on 16 July 1998, (a joined decision no. U-I-60/98), that the challenged provisions of section 145A and 145C of the 1998 Act on Amendments of, and Supplements to, the Act on Implementation of Legal Sanctions did not conflict with the Constitution because such interference with the constitutional rights granted in Articles 30 (right to rehabilitation and compensation in criminal proceedings) and 33 (right to own and inherit property) of the Constitution was indispensable for the protection of the rights of other claimants under the Denationalisation Act.

The Constitutional Court further ruled that Section 3 of the 1998 Act on Amendments of, and Supplements to, the Act on Implementation of Legal Sanctions was in conformity with the Constitution notwithstanding the fact that it retroactively interfered with acquired rights, because the retroactive effect of the Act was justified by the public interest.

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

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*).

COMPLAINTS

1. The applicants complained under Article 6 § 1 of the Convention about the length of the proceedings.

2. The applicants also complained under Article 13 of the Convention about the lack of effective remedies.

3. The applicants further claimed that their right to a fair trial guaranteed under Article 6 § 1 had been violated, in particular with the temporary suspension of the Denationalisation Act and the Act on Implementation of Penal Sanctions and amendments to these Acts. The suspension constituted an unfair interference by the State in pending proceedings to which the State was a party and amounted to inequality of arms between the parties to the proceedings.

The applicants also invoked Article 6 § 1 and Article 14 in substance, claiming that the suspension applied primarily to those proceedings for the restitution of property which dealt with the property of a "feudal origin." Moreover, they claimed that by referring to the AVNOJ decree of 1944, which provided for the forfeiture of property of German nationals, Slovenia was still discriminating against their family.

The applicants further maintained that the unreasonably long restitution proceedings, temporary suspension of and amendments to the legislation applicable in these proceedings, the amendments to the legislation and the decision of the Constitutional Court of 16 July 1998 also violated their rights under Article 1 of Protocol No. 1. They argued that they had, under the legislation in force at the moment they instituted the restitution proceedings, the "legitimate expectation" that the property in question would be returned to them. They supported this view by the fact that some part of their property had already been returned to them on the basis of an out-of-court settlement. This restitution had subsequently also been acknowledged by a decision of the Brežice Municipality, which constituted a legal act on which their legitimate expectation to the rest of the forfeited property was based. In the applicants' view, this fulfilled the criteria for a "legitimate expectation" as set out in the *Sirc* case (no. 44580/98, § 279, 22 June 2006).

Finally, the applicants also made complaints under Article 1 of Protocol No. 1 in conjunction with Article 14, arguing that they were discriminated against on the basis of the size of the property sought and the German origin of their parents.

THE LAW

1. Complaints made under Article 6 § 1 of the Convention

99. The applicants' first complaint under Article 6 § 1 of the Convention related to the length of four sets of proceedings, which began in July 1996 and are still pending before the first- or second-instance courts. They have therefore already lasted over eleven years. The relevant part of Article 6 reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by an independent and impartial tribunal established by law."

100. The applicants claimed that the length of the proceedings is in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention.

101. The Government rejected the allegations. They maintained that the applicants should have availed themselves of the effective remedies at their disposal for the purpose of expediting the judicial proceedings and/or claiming compensation, in particular after the implementation of the Act on the Protection of the Right to a Trial Without Undue Delay of 1 January 2007 (the "2006 Act"). Considering the fact that the new legislation has been operational for only a short period of time, the Government claimed that the time which had elapsed was too short for establishing a firm evaluation of new remedies as being obviously futile.

102. The Court observes that since 1 January 2007, when the 2006 Act became operational, the applicants have been entitled to seek acceleration of the impugned proceedings pending before the domestic courts. The Court notes that in proceedings pending at first or second instance, it is open to persons such as the applicants to seek the acceleration of the proceedings under sections 3, 5 and 8 of the 2006 Act by means of a supervisory appeal and by a motion for a deadline. The latter constitutes, in substance, an appeal against a decision on a supervisory appeal under certain conditions. Moreover, the applicants may ultimately obtain further redress through a compensatory remedy, by bringing a claim for just satisfaction under section 15 of the 2006 Act.

103. 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 courts, 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,* no. 463/03, § 62, 15 May 2007, and *Gliha and Joras* (no. 72200/01, 6 September 2007).

104. The Court notes that the applicants have not availed themselves of any of the remedies provided by the 2006 Act and considers that they are required by Article 35 § 1 of the Convention to use those remedies. It follows that this part of the application must be rejected under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies. This part of the application must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

2. Complaints made under Article 13 of the Convention

105. The applicants also complained that the remedies available in Slovenia in length of proceedings cases were ineffective. In substance, they 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."

106. The applicants acknowledged that since 1 January 2007 remedies against excessive delays in the domestic proceedings are available in Slovenia, but complained that they are ineffective. They maintained that they cannot remedy a violation of their right to a decision within a reasonable time, since any new instrument to accelerate the proceedings provided by the new legislation cannot undo the delays and violations of their rights that have already occurred. Furthermore, they claimed that even the highest amount of compensation possible under the new legislation, which is EUR 5000, cannot be interpreted as an effective compensation for such an excessive length of proceedings and such a value of property at stake as in the present case.

107. The Government argued that the violation of Article 13 depends on the violation of some other right of the Convention. Since Article 6 was not breached, Article 13 could not have been violated.

108. The Court has already found that the 2006 Act does afford the applicants effective remedies in respect of the complaint about the length of the proceedings pending at first and second instance (see above). That finding is also valid in the context of their complaint under Article 13 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

3. Complaints under Article 6 § 1 (fair trial), Article 1 of Protocol No. 1 and Article 14

109. Invoking Article 6 § 1, the applicants claimed that the temporary suspension of the Denationalisation Act and the Act on Implementation of Penal Sanction, as well as the amendments to these acts constituted an

unfair interference of the State in the proceedings and thus amounted to a breach of their right to a fair trial. The applicants also invoked Article 6 § 1 in conjunction with Article 14 of the Convention in substance, claiming that they were discriminated against in the proceedings on the basis of their parents' origin. Furthermore, they invoked Article 1 of Protocol No. 1, alone and in conjunction with Article 14, claiming that they were deprived of possession of the forfeited property, and that the amendments to the Act on Implementation of Penal Sanctions introduced a discriminatory treatment for the restitution of property in those cases where the property was forfeited by the AVNOJ decree. In this regard they argued that they have a "legitimate expectation" that their restitution claims would be determined in their favour, which constitutes a "possession" within the meaning of the Convention.

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 fair ... hearing ... by [a] ... tribunal..."

Article 14 of the Convention reads as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

In so far as relevant, Article 1 of Protocol No. 1 reads as follows:

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

110. In respect of the aforementioned complaints the Court recalls that, in cases arising from individual applications, it is not its task to examine the domestic legislation in the abstract, but it must consider the manner in which that legislation was applied to the applicant in the particular circumstances (see *Sommerfeld v. Germany* [GC], no. 31871/96, § 86, ECHR 2003-VIII (extracts)).

111. The Court notes in this respect that all sets of the applicants' proceedings are still pending before the first or second instance courts. Since the fairness of the proceedings must be determined in the light of all the proceedings as a whole, it considers that the complaints relating to those proceedings are premature. This part of the application must therefore be declared inadmissible for non-exhaustion of domestic remedies and rejected in accordance with Article 35 § 4 of the Convention.

112. In view of the above, it is appropriate to discontinue the application of Article 29 § 3 of the Convention and to reject the application.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith Deputy Registrar	Corneliu Bîrsan President