THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44580/98
by Ljubo SIRC
against Slovenia

The European Court of Human Rights (Third Section), sitting on 16 May 2002 as a Chamber composed of

Mr G. Ress, *President*,
Mr I. Cabral Barreto,
Mr P. Kūris,
Mr B. Zupančič,
Mr J. Hedigan,
Mrs M. Tsatsa-Nikolovska,
Mr K. Traja, *judges*,
and Mr. V. Berger, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 13 August 1998 and registered on 17 November 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Ljubo Sirc, is a Slovenian and British national, born in 1920 and living in Glasgow (United Kingdom). He has been represented before the Court since August 2000 by the firm Christian Fisher, Solicitors, and Mr Gordon Nardell, a barrister practising in London.

A. The circumstances of the case

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

The applicant's father was the owner, *inter alia*, of a textile factory in Kranj, Slovenia. The moveable assets of the business were appropriated and the premises taken over by the German occupying forces in 1941. The factory buildings were burnt down by the occupying forces in 1945 at the end of the Second World War.

Following the end of the occupation, Section 1 of 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 (see "Relevant domestic law and practice") provided for immediate restitution of confiscated property

to the owners. It also entitled them to claim compensation for damage to the property and for income or profit realised therefrom by third parties. Pursuant to Section 2, compensation for such income and profit was to be quantified in accordance with the civil law, i.e. the law of tort.

Subsequently, further to an amendment of the land register, the factory land was returned to the owner, the applicant's father, together with a small proportion of the movable assets (including machinery and stock). By 1947, the remainder of the machinery had been taken over by other businesses and eventually became State property. None of the finished textile products that had been sold during the occupation to identified wholesalers had been returned or had given rise to compensation. The raw materials (consignments of cotton from Turkey and Russia) also ended up in the ownership of the State.

On 12 August 1947 the Supreme Court of Slovenia convicted the applicant, the applicant's father and several others for offences of collaboration with Western powers in the so-called "Nagode" trial of spies and plotters against the State who were in fact friends of Western diplomats and tentatively seeking to organise a legitimate opposition. The proceedings have long since been recognised to have been a show trial.

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 property to the State. The sentence was enforced in two different ways.

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, two houses, shares in the Trbovlje coal-mining company, personal possessions and some 9,000 m^2 of agricultural land belonging to the applicant's mother. The remaining assets such as items corresponding to outstanding claims introduced under the 1945 Act for restitution of, or compensation for, finished textiles, the Russian and Turkish cotton and one-third of the unreturned machinery became State property under the "general formula" of the forfeiture order.

The applicant's father and the applicant were imprisoned from 1947 to 1950 and 1954, respectively. The applicant's father died soon after his release in 1950. The applicant inherited his entire estate.

1. *Request for restitution and compensation under the 1978 Act on Implementation of Penal Sanctions*

On 31 January 1991 the Supreme Court ordered retrials of those convicted in 1947. Following the withdrawal of charges by the Public Defender, on 5 April 1991 the Ljubljana first-instance court terminated the proceedings and quashed the convictions.

The applicant thus acquired the right to restitution of, and compensation for, all assets forfeited by his parents and himself as a result of the sentence handed down on 12 August 1947 under Section 145 of the 1978 Act on Implementation of Penal Sanctions as then applicable ("the 1978 Act").

According to the applicant, that provision was consistently interpreted by the domestic courts as putting the right to restitution of property forfeited in criminal proceedings on the same footing as a civil claim in tort. In particular, compensation awarded under Section 145 included damages for the owner's inability to use the property during the period of forfeiture, and each asset was valued individually with due allowance for the effect of inflation, on the basis of expert evidence.

On 27 May 1991, acting in accordance with the relevant provision of the Act on Criminal Procedure, the applicant lodged a formal request with the Minister of Justice to give effect to his right to restitution and compensation.

The Minister having failed to respond to this request, the applicant instituted proceedings in the Kranj Basic Court under the 1978 Act on 27 May 1992. The court rejected his claims on 29 June 1992. The applicant appealed against the decision and on 11 November 1992 the Ljubljana Higher Court upheld the decision of the court below.

When the Kranj Basic Court and the Ljubljana Higher Court examined the applicant's claims, Section 92 of the 1991 Act on Denationalisation was already in force (see below), and it was on that basis that the courts held that the administrative authorities in charge of the denationalisation proceedings enjoyed jurisdiction. Until its rescission by the Constitutional Court on 5 November 1992, that Section had provided that property forfeited in criminal proceedings that had terminated before 31 December 1958 should be returned under the 1991 Act on Denationalisation. The Constitutional Court's ruling was published in the Official Journal on 27 November 1992.

On 19 July 1992 the applicant reiterated his request for compensation to the Ministry of Justice. On 20 October 1992 he approached the Ministry again. On 3 June 1993 the applicant further circumstantiated his request for compensation submitted to the Ministry.

2. New requests for restitution and compensation under the 1978 Act on Implementation of Penal Sanctions.

Subsequently to the abrogation of Section 92 of the 1991 Act, the applicant's claims were divided into "uncontentious" (*nepravdni postopek*) and "contentious" proceedings (*pravdni postopek*) under Section 145 of the 1978 Act.

a) The Minister having failed to respond to his requests**,** the applicant on 1 April 1994 commenced proceedings in the Ljubljana Basic Court in respect of the "contentious" assets (i.e. those items not formally listed as forfeited in 1947). In these proceedings he is required to prove the existence of each asset and his ownership thereof.

The Ljubljana Regional Court [its new style further to the reform of 1995] held a hearing on 19 January 1996. By judgment of 21 November 1996, the applicant's request (i.e. the claims relating to the Russian and Turkish cotton and some items of the unreturned machinery) was partly granted. The judge accepted that Section 145 of the 1978 Act enshrined the principle of full restitution and held that the applicant was entitled to have each asset valued individually.

However, the Court rejected the claim for the finished textiles on the ground that neither the applicant nor his father would have been likely to succeed in civil claims filed under the 1945 Act against buyers who, during the German occupation, in it's view would have purchased the textiles in good faith. The Court awarded the applicant a total of SLT 123,972,714.80 (approximately US$ 1 Million at 1996 rate of exchange).

Both the applicant and the Ministry of Justice acting on behalf of the Republic of Slovenia appealed to the Ljubljana Higher Court.

On 9 August 1997 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.

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.

Section 145A replacing Section 145 applies the provisions of the 1991 Act regarding the form and amount of restitution as well as the restrictions on restitution and the valuation of property to claims for restitution of property forfeited in criminal proceedings terminated before 31 December 1958.

The applicant and others challenged the 1998 Act before the Constitutional Court on the ground that its provisions were retroactive and discriminatory. On 16 July 1998 the Constitutional Court dismissed their challenges (decision no. U-I-60/98 - see "Relevant domestic law and practice"). The applicant also challenged the method of valuation of property as set out in the 1991 Act. On 18 March 1999 the Constitutional Court dismissed also this challenge (decision no. U-I-137/98).

The "contentious" proceedings continued in the Ljubljana Higher Court after expiry of the period of temporary suspension of the relevant provisions.

Acting on the basis of the 1998 Act and the Constitutional Court's decision upholding it, the Higher Court on 16 April 1999 quashed the Regional Court's judgment of 21 November 1996 on the ground that the law had changed in the meantime. The Higher Court also gave guidance on some of the original issues in the appeal. In particular, it held that no purchaser of finished textiles from the German occupiers could have acted in good faith. The Higher Court returned the "contentious" proceedings to be considered afresh.

At the beginning of September 2001 the Ljubljana Regional Court gave judgment dismissing the whole of the applicant's claims in the "contentious" proceedings. According to the applicant, the date the judgment bears, 8 March 2001, was the date of the hearing, not the date of the judgment itself.

On 11 September 2001 the applicant appealed to the Higher Court.

b) The “uncontentious” claims concerning the forfeited property duly listed in 1947 (factory land, family house, spinning mill, three lots of machinery and various personal assets) were first re-submitted (in four distinct actions) to the Kranj and Ljubljana Basic Courts on 28 April 1993. The first two sets of the proceedings were then also transferred to the Ljubljana first-instance court. In these sets of proceedings, the applicant and the State Defender both provided the court with extensive expert evidence as to the value of the assets.

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 Court granted the applicant’s request pending the outcome of the “uncontentious” proceedings.

On 8 July 1994 the Ljubljana Basic Court partly granted the applicant’s request with regard to the restitution of the land. The applicant challenged that ruling. On 10 November 1994 two sets of the “uncontentious proceedings” were joined.

On 30 December 1994 the Ljubljana Basic Court rectified its partial decision relating to the restitution of the land. On the same day, 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”.

On 24 February 1995 the Ljubljana District Court ordered that the transfer of ownership concerning the returned land be entered in the land register of Kranj.

On 7 July 1995 the Ljubljana District Court also granted applicant’s request concerning the restitution of the land and a house.

On 24 October and 5 November 1996 the applicant amended his claims in these three sets of proceedings.

On 19 November 1996 the applicant applied for a new interim measure for the protection of the land, which was granted by the Ljubljana District Court on 20 November 1996. A challenge made by one of the respondent parties against that decision was dismissed by the court of first instance on 15 February 1997. The respondent party appealed.

On 22 January and 25 February 1997 the Ljubljana District Court ordered the applicant to make payment of a provision to the valuation expert. The State Defender and one of the other respondent parties appealed.

On 25 February 1997 the Ljubljana first-instance court returned further land and a part of a house to the applicant.

On 17 March 1997 the Ljubljana Regional Court suspended further consideration of the applicant’s claims for compensation for his inability to make use for purposes of income or profit of the assets which were the subject of the “uncontentious” proceedings pending the ruling of the District Court in the main proceedings concerning those assets.

On 19 May 1998 the applicant withdrew one part of his claims concerning the restitution of the machinery during a hearing before the Ljubljana District Court. The latter 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.

On 21 April 1999 the Ljubljana Higher Court partly dismissed appeals against the District Court's rulings of 22 January, 15 and 25 February 1997, referring the case to the District Court in relation to the interim measures.

On 24 and 27 September 1999 the applicant applied to the Ljubljana District Court for compensation for dilapidation of the property returned further to the "uncontentious proceedings" in 1994 and 1997.

On 12 June 2001 the first-instance court discovered in the course of a hearing that two sets of proceedings concerning the same claims had been pending before the competent administrative unit.

On 21 June 2001 a valuation expert was appointed in one case. On 8 October 2001 the Ljubljana District Court held a hearing.

The position in relation to the partially returned assets further to the "uncontentious" proceedings is currently as follows:

- The factory land, some 700 m^2, has been returned. The remaining 15,000 m^2 (approx.) have yet to be so, together with a small building. Some other structures on the land had been demolished, which has given rise to a claim for compensation.

- The upper storeys of the family house have been returned and are the subject of a claim in respect of dilapidation. However, the business premises on the ground floor have not been returned.

- Two plots of the garden have been returned and are the subject of dilapidations claims. The third plot has not been returned.

3. Other proceedings before the judicial and administrative authorities

a) On 17 November 1993 the applicant applied to the Community of Ljubljana for compensation in relation to confiscated shares in the Trbovlje coal-mining company.

On 4 May 1993 that claim was submitted also to the Ljubljana Basic Court which held a hearing on 5 May 1994. The same proceedings deal with the applicant's claim in relation to the house which was the subject of a contract of sale in 1946 and subsequently annulled as part of the process of forfeiture of assets.

In domestic law there is a conflict of jurisdiction between the courts and administrative authorities concerning the shares, which conflict has not so far been resolved.

On 23 May 2001 the Administrative Unit of Ljubljana held a hearing. On 4 June 2001 the applicant, in his submissions to the Administrative Unit of Ljubljana, gave further details concerning his request for compensation.

Both proceedings are pending before the first-instance authorities.

b) In parallel with the court proceedings, the applicant introduced two sets of proceedings before the Communities of Kranj and Ljubljana in order to claim compensation in respect of the requisitioned building land and a house formerly belonging to his mother as well as some of her personal possessions under the 1991 Act on Denationalisation (the "1991 Act").

The proceedings before the Community of Ljubljana started on 6 February 1993 and those before the Community of Kranj on 4 May 1993.

The most recent step in connection with the building land in the proceedings before the Community of Kranj was a hearing held on 27 May 1994.

The claim for restitution of the house resulted in a partial decision of 10 April 1998 returning the ground floor. On 24 September 1999 the applicant submitted a claim for dilapidations of the returned property to the Kranj Administrative Unit, on the basis of Section 24 of the 1998 amended Act on Denationalisation.

On 18 September 1999 the Ljubljana Administrative Unit requested the applicant to complete his submissions. On 11 February 2000 the applicant submitted additional documents.

On 23 May 2000 the Ljubljana Administrative Unit forwarded the request for compensation to the Slovenian Indemnity Fund (*Slovenski odškodninski sklad).*

Inasmuch as these two sets of proceedings concern income-producing assets, the applicant submitted claims for loss of profits during the period of forfeiture. These claims are being examined by the Regional Court.

4. Other constitutional applications made by the applicant

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$, as prescribed by the 1991 Act. The Constitutional Court dismissed that challenge on 2 March 2000.

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.

5. Other actions

a) On 7 February 2000 the applicant raised the matter of the excessive length of proceedings with the Slovenian Embassy in Brussels through a Member of the European Parliament. The Ministry of Justice responded by making a "supervisory appeal" to the courts concerned.

On the basis of the report prepared by the Ljubljana District Court upon request by the Ministry of Justice, the latter informed the applicant on 29 November 2000 that the delays in the "uncontentious" proceedings were due to the scale and complexity of the matters at issue. The Court had also stated that the applicant's cases were being examined and some partial decisions being taken. Some measures were adopted in order to expedite the proceedings, namely the appointment by the court of a valuation expert to determine the amount of compensation for property that could not be returned in kind. The applicant was further informed that on 19 September 2000 the Ljubljana District Court had adopted a programme for dealing with the backlog of cases.

On 8 May 2001 the applicant addressed another "supervisory appeal" to the Ministry of Justice. The Ministry requested the Ljubljana District Court to prepare a report on the progress of the cases.

Upon receipt of the report, on 5 July 2001 the Ministry recapitulated the latest developments in the proceedings (the appointment of a valuation expert on 21 June 2001, a hearing planned for 18 September 2001 and the discovery by the first-instance court that two sets of proceedings concerning the same claims were pending before the competent administrative unit).

b) On 27 June 2000 the applicant renewed his request for compensation in respect of the factory building, damaged during the war. On 18 December 2000 the Public Defender rejected his request.

B. Relevant domestic law and practice

1. The 1945 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

Section 1 of 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 (*Zakon o ravnanju z imovino, katero so lastniki morali zapustiti med okupacijo, ter z imovino, katero so jim odvzeli okupator ali njegovi pomagači*, Official Journal of the Democratic Federative Yugoslavia, no. 36/45, and of the Federative People's Republic of Yugoslavia, no. 105/46) provided for immediate restitution of confiscated property (immovable and movable assets, rights, enterprises with machinery and stock, etc.) to its owners. It also entitled the owners to claim compensation for damage to the property and for income or profit realised from the property by third parties. Pursuant to Section 2 (amended to become Section 5), compensation for such income and profit was to be quantified in accordance with the civil law, i.e. the law of tort.

2. The 1978 Act on Implementation of Penal Sanctions, as amended and the 2000 Act on Implementation of Penal Sanctions

The 1978 Act on Implementation of Penal Sanctions, as amended (*Zakon o izvrševanju kazenskih sankcij*, Official Journal nos. 17/78, 8/90) and the 2000 Act on Implementation of Penal Sanctions (Official Journal no. 22/2000) originally excluded from restitution all those sentenced before 31 December 1958.

Section 145, as amended in 1990

"If the sanction of forfeiture of property is quashed, the forfeited property shall be restored to the person sentenced or his heirs.

If the restitution of property in whole or in part is physically or legally impossible, the actual value of that property at the time of the decision on its restitution, and according to the state of the property at the time of forfeiture, shall be paid by the socio-political unit to which the property was allocated. (...)"

The 2000 Act replaced the 1978 Act. However, the provisions of Sections 145 and 145A to 145Č, added by the 1998 Act, remain in force.

3. The 1994 Act on Criminal Procedure

The Act on Criminal Procedure (*Zakon o kazenskem postopku*, Official Journal no. 63/1994) provides, *inter alia*, as follows:

Section 538 § 1

"When extraordinary judicial review proceedings against a person, finally convicted or found guilty (...), then acquitted by such proceedings have been definitively discontinued or when such person has been finally acquitted of the charge brought against him or when the latter charge or the act of indictment has been dismissed, such person shall enjoy the right to compensation for the damage sustained by him as a result of his wrongful conviction."

Section 539 § 2

"Before filing the claim for compensation with the court the injured person shall address his claim to the Ministry of Justice in an attempt to come to an agreement as to the existence of the loss sustained and the nature and extent of the compensation sought."

4. The 1991 Act on Denationalisation

a) The 1991 Act on Denationalisation (*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.). It provides, in its Sections 2 and 42 to 44 that, where property cannot be returned in its original form, compensation is payable (not in cash but in State bonds payable in instalments over 15 years).

Section 44 provides that compensation for land and buildings is to be valued on a fixed system in accordance with the relevant regulatory texts and that the effect of inflation on business assets is to be calculated on the basis of a fixed US$ exchange rate determined by the Minister of Finance. Section 85 empowers various other Ministries to prescribe rules for valuation.

Section 92 of the 1991 Act extended its provisions to property forfeited in criminal proceedings that had terminated by 31 December 1958. That 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).

b) Sections 52 to 57 of the 1991 Act specify which administrative authorities have jurisdiction in matters regulated by the Act. Section 58 sets time limits for delivery of decisions and provides as follows:

"The decision of the body of first instance concerning the request (...) must be issued and served on the applicant within one year at the latest following the filing of any such properly presented request.

(...)"

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

Section 2 of the 1997 Act on the Temporary Suspension of Certain Provisions of the Act on Denationalisation and of the Act of Implementation of Penal Sanctions (*Zakon o začasnem zadržanju izvajanja nekaterih določb zakona o denacionalizaciji in zakona o izvrševanju kazenskih sankcij,* Official Journal no. 49/1997) suspended, *inter alia*, originally until 20 December 1997 and subsequently, under new legislation, until 31 March 1998, those proceedings concerning claims for the restitution of or payment of compensation for property confiscated by virtue of criminal judgments handed down before 31 December 1958 and subsequently annulled.

*6. The 1998 Act on Amendments of, and Supplements to, the Act on Implementation of Legal Sanctions (*Zakon o spremembah in dopolnitvah Zakona o izvrševanju kazenskih sankcij, *Official Journal no. 10/98)*

The 1998 Act on Amendments of, and Supplements to, the Act on Implementation of Legal Sanctions (*Zakon o spremembah in dopolnitvah Zakona o izvrševanju kazenskih sankcij*, Official Journal no. 10/98) added to the 1978 Act new Sections 145A and 145C. Section 145A replacing Section 145, applies the provisions of the 1991 Act regarding the form and amount of restitution as well as the restrictions on restitution and the valuation of property to claims for restitution of property forfeited in the criminal proceedings terminated before 31 December 1958. Section 145C expressly removes the right to compensation for the previous owner's inability to make use of the property during the period of forfeiture.

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

The Act also made minor amendments to Section 145 of the 1978 Act to make it clear that the obligation to meet claims for restitution lay in the first instance with the Republic of Slovenia rather than with individual socio-political units, thus confirming a ruling by the Constitutional Court in 1997.

*7. The 1998 Act on Amendments of, and Supplements to, the Act on Denationalisation (*Zakon o spremembah in dopolnitvah Zakona o denacionalizaciji, *Official Journal no.65 /98)*

Section 24 of the 1998 Act on Amendments of, and Supplements to, the Act on Denationalisation (*Zakon o spremembah in dopolnitvah Zakona o denacionalizaciji*, Official Journal no. 65 /98) provides that claims for compensation for dilapidation of returned property should be submitted not later than one year from the entry into force of the present Act.

8. The 1991 Constitution of the Republic of Slovenia

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

Article 8

"Laws and regulations must comply with the generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly."

Article 14

"In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.

All are equal before the law."

Article 15

"Human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

The manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom.

Human rights and fundamental freedoms shall be restricted only by the rights of others and in such cases as are provided by this Constitution.

Legal protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed.

No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the ground that this Constitution does not recognise that right or freedom or recognises it to a lesser degree."

Article 22

“Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on his or her rights, duties or legal interests.”

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.

Only a judge duly appointed pursuant to rules previously established by law and by judicial regulations may judge such an individual.”

Article 30

“Any person unjustly convicted of a criminal offence or deprived of his liberty without due cause has the right to rehabilitation and compensation, and other rights provided by law.”

Article 33

“The right to private property and inheritance shall be guaranteed.”

Article 155

“Laws and other regulations and general legal acts cannot have retroactive effect.

Only a law may establish that certain of its provisions have retroactive effect, if this is required in the public interest and provided that no acquired rights are infringed thereby.”

9. Constitutional Court decisions

a) On 8 March 1998 the applicant challenged the 1998 Act by constitutional initiative (*ustavna pobuda*) before the Constitutional Court on the ground that its provisions were retroactive and discriminatory. He also challenged the method of valuation of property as set out in the 1991 Act.

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 granted in Articles 30 (right to rehabilitation and compensation in criminal proceedings) and 33 (right to own and inherit property) of the Slovenian Constitution was indispensable for the protection of the human rights of others.

Placing unjustly convicted persons on an equal footing with all rightful claimants regarding the redress of post-war wrongs was an appropriate means through which the legislator had achieved his aim. The principle of the social state empowered the legislator, with due consideration paid to the right of all citizens to social security, to

have regard to the financial resources of the State and, in cases which were constitutionally admissible, also to restrict certain rights accordingly.

The Constitutional Court also added that, when deciding, in November 1992 (decision no. U-I-10/92), to quash Section 92 of the 1991 Act, it had been unaware of the full extent of the property forfeited through criminal proceedings prior to 31 December 1958 and thus also of the financial obligations incumbent on the State.

The Constitutional Court ruled 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, and since such interference, provided it be subjected to rigorous constitutional scrutiny, was in conformity with paragraph 3 of Article 15 of the Constitution.

It also emphasised the need, in the light of the Temporary Suspension Act and the 1998 Act, for swift completion of pending cases, all the more so as the restitution of property had twice been delayed by law and that the matter required an early solution.

b) On 18 March 1999 the Constitutional Court (decision no. U-I-137/98) dismissed the part of the applicant's constitutional challenge made on 8 March 1998 concerning the method of valuation of property as set out in Section 44 of the 1991 Act. The Constitutional Court had previously separated that matter from its decision of 16 July 1998.

In particular, the applicant considered that compensation for forfeitured property that could not be returned in kind should have been calculated in accordance with the civil law (i.e. the law of tort). He also disputed the payment of compensation in the form of bonds issued by the Slovenian Indemnity Fund (*Slovenski odškodninski sklad*), for which the State offered no guarantee. In his view, the previous owners who would receive so-called compensation of less than the market value of the forfeited property were discriminated against in comparison with those whose property could be returned to them in kind.

The Constitutional Court took the view that, guided by economic and political reasons (privatisation of property and redress of injustices), the legislator had regulated the new property relations *ex nunc* and decided not to have recourse to the civil law institution of *restitutio in integrum.* In determining the rights of the entitled persons in accordance with the actual circumstances and the law, the legislator had acted within his margin of appreciation. The Constitutional Court was also of the opinion that the actual circumstances, at the time of the enactment of the legislation and its application, determine the appropriate amount of compensation.

Moreover, the same method for the determination of the value of the forfeited property was applied also in cases where the property was to be returned in kind. Finally, the Constitutional Court had already ruled that the State's unwillingness to offer a guarantee for the bonds was not to be construed as a refusal by the State to meet its obligations towards the entitled persons should the financial resources provided for by the law not be sufficient to cover the needs.

c) In 1998 the applicant also made an application to the Constitutional Court for a binding interpretation of the provisions of the 1945 Yugoslav Act and its amendments adopted in 1946. He challenged the valuation of the forfeited property given by the lower courts in the 1990s, concerning claims for restitution of property brought under the 1945 Act in relation to which proceedings had not been completed because of subsequent sentence to forfeiture of property. On 2 March 2000 the Constitutional Court rejected his application on the ground that such an interpretation did not fall within its jurisdiction.

d) On 2 March 2000 the Constitutional Court dismissed the applicant's challenge inister of Finance concerning the fixed US$ exchange-rate method of valuation prescribed by the 1991 Act.

10. The 1999 Administrative General Procedure Act

Section 222 § 1 of the 1999 Administrative General Procedure Act (*Zakon o splošnem upravnem postopku,* Official Journal no. 80/99) provides that in simple matters, where there is no need to undertake separate examination proceedings, an administrative body is obliged to give a decision within one month of the submission of an application. In all other cases the administrative body is obliged to give a decision within two months.

Section 222 § 4 entitles a party whose application has not been decided upon within the time limits set out in paragraph one to lodge an appeal as if the application had been denied.

11. The 1997 Administrative Disputes Act

Section 26 of the 1997 Administrative Disputes Act (*Zakon o upravnem sporu,* Official Journal no. 50 /97) entitles a party having lodged an application with an administrative body to institute administrative proceedings before the Administrative Court (administrative dispute) in the following cases:

" (...)

2. If the appellate body does not rule on the applicant's appeal against the first-instance decision within 2 months or within a shorter period if any, provided by law, and fails to make an award upon a subsequent request within a further period of seven days, the applicant may then bring an administrative action, as if his request had been dismissed.

3. The applicant may also act in accordance with the preceding paragraph when an administrative body of the first-instance fails to give a decision from which no appeal lies.

4. If in matters where a right to an appeal exists a body of the first instance fails to give a decision upon the individual's application within 2 months or within a shorter period, if any, provided by law, the individual may then submit his application to the appellate administrative body. Should the latter find against him, the individual may then bring an administrative action. The individual may also bring an administrative action under the conditions set out in paragraph 2."

12. The 1994 Judicature Act

Section 72 of the 1994 Judicature Act (*Zakon o sodiščih*) provides that in the event of a delay in proceedings any party may address a "supervisory appeal" (*nadzorstvena pritožba*) to the president of the court or to the Ministry of Justice. The president of the court or the Ministry acting through the president of the court then requests the judge dealing with the case to prepare a report on the progress of the case and the allegations of the aggrieved party. Further, to the Judicature Act as amended in March 2000, the court has to inform the Ministry of the measures taken to accelerate the proceedings.

In accordance with Section 73, the Ministry may also refer the application to a higher court, which is requested to examine the functioning of the court below and to report to the Ministry on its findings.

COMPLAINTS

1. The applicant complains under Article 6 § 1 of the Convention about the length of the "contentious", "uncontentious" and other proceedings brought to secure his right to restitution or compensation.

In general, the applicant considers that these sets of proceedings should be regarded as including the administrative stage before the Ministry of Justice which preceded the judicial stage. According to the applicant, the Ministry itself formed part of the machinery for determining claims arising from his acquittal on 5 April 1991. Since the State had made no guidance available to potential claimants as to how they should proceed, the obvious course was to lodge a request with the Minister.

Hence, for the purposes of assessing the delay already affecting the proceedings as at 28 June 1994 (when the Convention came into force in respect of Slovenia), the proceedings as a whole should be considered to have started on 27 May 1991, the date of the applicant's letter to the Minister.

He contends that the overall delay is plainly unreasonable and that the national authorities are responsible for that delay. Moreover, it is nearly eleven years since the applicant's right to restitution arose.

2. The applicant also complains under Article 13 that he has not had access to any effective machinery, before the judiciary or any other national authority, for ending the delay to the proceedings.

3. The applicant further considers that the Slovenian State's retroactive legislative removal of his vested right to compensation on the basis of Section 145 of the 1978 Act and its replacement with a substantially less valuable right violates his rights to a fair trial under Article 6 § 1 of the Convention and to property under Article 1 of the Protocol No. 1. The legislative change was effected in pending proceedings to which the State was a party.

In the applicant's view his complaints concerning the length of the proceedings and the legislator's intervention are interconnected, since the change in the law that took place

in 1998 would not have become applicable to his case, had the proceedings been completed within a reasonable time.

In particular, for the purposes of both Article 6 § 1 of the Convention (fair trial) and Article 1 of the Protocol No. 1, the applicant observes that, under the scheme of the 1945 and 1978 Acts, his right to restitution of, and compensation for, the assets confiscated and destroyed during the war or forfeited under the sentence of 1947 was vested in him on his acquittal on 5 April 1991.

In so far as he was entitled to pecuniary compensation rather than actual restitution of property, he considers that he acquired on that date, by operation of the law, a concrete right to receive that compensation under Section 145 of the 1978 Act as then in force, i.e. according to the law of tort. So far as identifiable items of property are concerned, court proceedings to recover them from the State were necessary only because of the authorities' failure to respond positively to the requests for restitution made by the applicant in and after 1991. In relation to each category of property and compensation, the applicant invoked judicial remedies in order to vindicate a pre-existing right. The existence of that right, and the method of valuation of its pecuniary component, were laid down by law and did not depend on the exercise of judicial discretion. Therefore, in his view, in relation to each asset, that right is a possession within the meaning of Article 1 of Protocol No.1.

The applicant alleges that inevitably the court will eventually come to quantify his claims on the basis of the 1991 Act and not on that of Section 145 of the 1978 Act as the latter stood at the time of both his acquittal and the first Regional Court judgment. The award that he is now entitled to expect on completion of the pending proceedings would reflect his entitlement under the 1991 Act, whereas before he was entitled to have the value of the restitutionary rights quantified according to the law that stood at the time he acquired those rights.

The pecuniary claims in relation to unreturned land and buildings would thus be substantially diminished; according to his estimates the 1991 Act values will be approximately 3/5 of the civil law values. The claims in relation to the family house and the garden would be reduced from some 264,000 $ to some 158,400 $. Since the award will be payable in bonds rather than cash, there is a further diminution of 30 per cent, producing an overall loss of 153,120 $.

If the court decides to award compensation in lieu of the claim for restitution of the factory land in kind, the value of the right to restitution will likewise fall from the real present value of the asset (1,875,000 $) to 787,500 $, a loss of approximately 1,087,500 $.

The remaining claims in the "contentious" and "uncontentious" court proceedings (totalling approximately 6 million $ under the 1991 Act) would be reduced by application of the lower, fixed multiplier for inflation to some 4,4 million $. The precise effect of the lower multiplier will differ in relation to the various elements of the claims (because their value is expressed above in US$ equivalents on different dates). That figure will be further reduced by 30 per cent as a result of payment in bonds, producing an overall loss of approximately 3,093,000 $.

The applicant alleges that his right to a fair trial under 6 § 1 and in particular the principle of equality of arms have been violated by the 1997-98 decisions of the Slovenian legislature and that the subsequent rulings of the Constitutional Court perpetuated that violation. He relies on the principles established in the Stran Greek Refineries judgment of 9 December 1994, Series A no. 301-B. He further submits that these principles should not be confined to the situation where a party has, before the intervention, obtained judgment in its favour. There may equally be a violation of Article 6 § 1 where the State interferes before the conclusion of the proceedings in order to secure a final judgment in its favour. In any event, the applicant observes that prior to the 1998 Act he had already obtained a judgement in his favour in relation to at least part of his claims. Moreover, the legislator's intervention in the proceedings was a material cause of the unfavourable view taken by the Regional Court in September 2001.Contrary to the principle of legal certainty, the Constitutional Court, when ruling on the validity of the 1998 Act, gave no explanation for its decision to depart from its earlier rulings on the comparable provisions of Section 92 of the 1991 Act.

Therefore, the applicant considers that this case is comparable to the *Zielinski and Pradal & Gonzalez and Others v. France* judgment [GC], nos. 24846/94 and 34165/96 to 34173/96, ECHR 1999-VII, rather than to National & Provincial Building Society and others v. the United Kingdom judgment of 23 October 1997, Reports of Judgments and Decisions 1997-VII.

The applicant alleges that the change of the law effected by the 1998 Act is a deprivation of possession or at any rate a substantial interference with his right to peaceful enjoyment of that possession. The applicant considers that the intervention cannot in the circumstances be regarded as proportionate.

In his submissions the applicant has also made a number of observations about the general political climate that prevailed in the proceedings in the "Nagode" trial and still obtains in the current proceedings. He argues that he cannot expect a fair trial in Slovenia, because the President (and to a lesser extent) other key politicians with a communist background are closely linked to persons who organised the "Nagode" trial and mass murders in the late 1940. According to him, the President would do his best to prevent their prosecution for various criminal acts. He must also be inclined to take vengeance against their victims on behalf of those persons.

One would expect that the latter would do everything in their power to prevent the applicant from getting his property back. He thinks that the use of the Titoist methods would probably be more difficult today where criminal law is involved but relatively easy when it comes to property. The applicant also quotes an eminent professor of law who said that there was insufficient legal security and awareness in Slovenia.

Moreover, the applicant considers that all senior Slovenian judges are certified communists because they could not have become judges without having proved their "moral-political qualifications", meaning their loyalty to the party. His sentence was indeed quashed in 1991, but only because the judges were for once frightened of the democratic interlude 1990-1992. For these reasons, the applicant is of the opinion that the restitution of the family property (about 90 per cent of the confiscated property has still not been given back to him) is impeded by political bias.

Finally, the applicant also alleges a violation of Article 14 of the Convention in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in that the 1998 Act provides for different treatment of substantially identical claims on an arbitrary basis depending on whether the proceedings to secure rights to restitution or compensation happen to have been completed before the entry into force of the 1998 Act or whether the proceedings concerned claims for restitution or compensation lodged by persons wrongfully sentenced to forfeiture of property after 1958. The applicant considers that the persons who now claim restitution and compensation in respect of the property forfeited in Soviet-era criminal proceedings have suffered the same essential injustice of politically motivated prosecution and conviction, whether before or after that date. He considers that no legitimate aim is served by that difference.

He claims that the number of cases affected by the State's intervention was artificially increased by the enactment and the subsequent renewal of the Temporary Suspension Act.

THE LAW

1. The applicant's complaint relates to the length of different sets of proceedings brought to secure his right to restitution or compensation. He contends that the date on which the proceedings as a whole should be considered as having started is 27 May 1991, the date of his letter to the Minister of Justice.

In particular, the "contentious" court proceedings started on 1 April 1994, the "uncontentious" court proceedings on 28 April 1993 and the court proceedings relative to the confiscated shares on 4 May 1993. With the exception of the "contentious" proceedings now pending before the Higher Court, different sets of proceedings are pending before the court of first instance.

The applicant complains also about the length of the proceedings pending before the administrative authorities of Ljubljana and Kranj, started on 6 February, 4 May and 17 November 1993, respectively.

Finally, different sets of proceedings concerning compensation for the applicant's inability to make use for purposes of income or profit of the assets that are the subject of the court and the administrative proceedings are pending before the Ljubljana Regional Court.

The complaint is to be examined under Article 6 § 1 of the Convention, the relevant parts of which read as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

a) The Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaints relating to the "contentious", "uncontentious" and other court proceedings. It is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

b) As to the length of the proceedings before the Ljubljana and Kranj administrative bodies of first instance, the Court notes that the applicant introduced his applications on 6 February, 4 May and 17 November 1993, respectively, under the 1991 Act on Denationalisation.

On 10 April 1998 the Kranj Administrative Unit partially granted the applicant's request in respect of a house. On 23 May 2000 the Ljubljana Administrative Unit forwarded his application concerning compensation for the personal possessions formerly belonging to the applicant's mother to the Slovenian Indemnity Fund. On 23 May 2001 the Administrative Unit of Ljubljana held a hearing in the proceedings concerning the confiscated shares in the Trbovlje coal-mining company. Nevertheless, all sets of the proceedings are still pending.

However, the applicant failed to pursue his application under the conditions set out in the 1991 Act on Denationalisation and the 1997 Administrative Disputes Act. Section 58 of the 1991 Act sets out a special time limit for delivering a first-instance decision in denationalisation proceedings, namely one year in lieu of one or two months, as provided by the 1999 Administrative General Procedure Act.

In particular, following the expiry of the one-year time limit, the applicant could have filed an appeal with the appellate body as specified by the 1991 Act. Furthermore, according to Section 26 of the 1997 Administrative Disputes Act, if the appellate body has not ruled within seven days on an application renewed by the applicant 2 months after the filing of the initial application with the same body, he could have instituted administrative proceedings directly before the Administrative Court.

Although having at his disposal remedies that would have enabled him to pursue his request and bring it before the administrative judicial authorities and even, should they have denied his request, then to lodge a constitutional appeal, the applicant failed to avail himself of those remedies (see, *mutatis mutandis*, *Štajcar v. Croatia*, no. 46279/99, 20 January 2000).

In these circumstances, the Court concludes that the applicant cannot complain about the length of the proceedings before the administrative bodies since he has not, as required by Article 35 § 1 of the Convention, exhausted the remedies available under Slovenian law. This part of the application must therefore be rejected under Article 35 § 4 of the Convention.

2. The applicant further alleges under Article 13 of the Convention that he has not had access to any effective machinery, before the judiciary or any other national authority, for ending the delay to the proceedings.

That article 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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints. It is therefore necessary, in accordance with Rule 54 §

3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

3. Finally, the applicant contends that his rights under Article 6 § 1 (fair trial) of the Convention, Article 1 of Protocol No. 1, alone and in conjunction with Article 14 of the Convention, were breached, because the Slovenian State enacted retroactive legislation during the pending proceedings to which the State was a Party, changing grounds for the restitution of, and compensation for, the forfeited property to his detriment.

Article 1 of Protocol No. 1 reads, so far as it is relevant:

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

(...)"

Article 14 of the Convention disposes:

"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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of the complaints relating to Article 6 § 1 (fair trial) of the Convention and Article 1 of Protocol No. 1, alone and in conjunction with Article 14 of the Convention. It is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of these complaints to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints under Articles 6 § 1 (length of the proceedings and fair trial), 13 and 14 of the Convention and Article 1 of Protocol No. 1 related to the proceedings he brought after his acquittal for criminal offences to secure his right to restitution or compensation;

Declares inadmissible the complaint under Article 6 § 1 of the Convention in so fas as it concerns the length of the proceedings before the Ljubljana and Kranj administrative units.

Vincent Berger Georg Ress
Registrar President

SIRC v. SLOVÉNIE DECISION