THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 481/04
by Danijel SMILJANIĆ
against Slovenia

The European Court of Human Rights (Third Section), sitting on 2 June 2009 as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Corneliu Bîrsan,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Egbert Myjer,
Luis López Guerra, *judges,*
and Stanley Naismith, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 December 2003,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Danijel Smiljanić, is a Croatian national who was born in 1933 and lives in Zagreb.

A. The circumstances of the case

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

1. Background to the restitution proceedings started by the applicant

1. The applicant is a son and an heir of Mr P.S., who lived in Slovenia, which until 1991 was a constituent part of the former Socialist Federal Republic of Yugoslavia ("SFRY"). Until 1948 Mr P.S. was, together with his family, the owner of several plots of land. In 1947 and 1948 respectively the property was nationalised by virtue of an agrarian reform carried out after World War II (*Zakon o agrarni reformi in kolonizaciji*, Official Journal of the Democratic Federal Yugoslavia no. 64/45). Mr P.S. died in 1967.

2. In 1991, after the independence of Slovenia and the change of the political regime, the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije,* Official Journal of the Republic of Slovenia no. 33/1991) and the Denationalisation Act (*Zakon o denacionalizaciji*, Official Journal of the Republic of Slovenia no. 27/91) were adopted, which set the legal framework for restitution of or compensation for property forfeited under the previous regime. With regard to the right of foreigners to claim the

restitution of property, Article 68 of the Constitution was of particular relevance. It provided that foreigners could not acquire title to land except by inheritance, under the condition of reciprocity (see Relevant domestic law and practice below).

3. The Denationalisation Act as adopted in 1991 provided for restitution of property forfeited under the previous legislation (agrarian reform, nationalisation, confiscation, etc.), enacted by the socialist regime. The Denationalisation Act granted, *inter alia*, the right to restitution of or compensation for property to all individuals who at the time of forfeiture had had Yugoslav nationality, or to their legal successors. However, the Denationalisation Act provided in certain cases also for limitations with respect to the right of natural and legal persons to have their ownership rights restored, and referred in section 6 also to other legal acts which might limit or exclude the possibility for a person to acquire ownership rights under the Denationalisation Act (see under Relevant domestic law and practice below).

4. On 11 November 1996 Croatia adopted an Act on Compensation for Property Forfeited during Yugoslav Communism (*Zakon o naknadi za imovinu oduzetu za vrijeme jugoslovenske komunističke vladavine*, Official Gazette of the Republic of Croatia no. 92/1996, "the Croatian Compensation Act"), which, similarly to Slovenia, granted the right to compensation for property nationalised in Croatia. The Croatian Compensation Act granted that right to those individuals and their legal successors who had Croatian nationality. Exceptions were provided where Croatia had concluded an international agreement with another State, by which it granted the right to restitution of nationalised property also to nationals of that State. No such agreement was concluded with Slovenia. As a result, Slovenian nationals were excluded from the right to restitution of property, movable or immovable, in Croatia.

5. In the framework of ratification by the Republic of Slovenia of the Europe Agreement establishing Association between European Communities and their Member States, acting within the Framework of the EU, of the One Part, and the Republic of Slovenia, of the Other Part (Official Journal of the Republic of Slovenia – International Treaties No. 13/1997), Article 68 of the Constitution of the Republic of Slovenia was amended in 1997. It provided that foreigners could acquire ownership rights to real estate, including title to land, under conditions provided by law or if so provided by a treaty ratified by the National Assembly, under the condition of reciprocity. Such a law or treaty should be adopted by the National Assembly by a two-thirds majority vote of all deputies (Official Journal of the Republic of Slovenia no. 42/1997). While the Europe Agreement met these criteria and thus enabled nationals of the Member States of the European Communities to acquire ownership rights to real estate in Slovenia, including title to land, no such treaty or statute was adopted with respect to Croatian nationals.

6. On 18 September 1998 amendments to the Denationalisation Act were adopted (*Zakon o spremembah in dopolnitvah Zakona o denacionalizaciji*, Official Journal of the Republic of Slovenia no. 65/98). They provided that where a claimant for restitution of property was a foreign national and the State of his origin had not concluded an agreement with Slovenia, granting the same right to restitution to Slovenian nationals on its territory, that foreign national did not have the right to restitution of property under the Denationalisation Act. The 1998 amendments to the Denationalisation Act were also to be applied with respect to all proceedings that were still pending before the administrative and court authorities.

2. The restitution proceedings started by the applicant

7. On the basis of the Denationalisation Act, on 4 June 1993, the applicant lodged a request with the Črnomelj Administrative Unit (*Upravna enota Črnomelj*) for the restitution of the plots of land taken from his family.

8. On 17 September 1998 the Administrative Unit granted the applicant's request. It referred to Article 68 of the Constitution as amended in 1997, which at that time provided that foreigners could acquire ownership rights to real estate under conditions provided by law or if so provided by a treaty ratified by the National Assembly, under the condition of reciprocity, and established that such reciprocity in fact existed with respect to Croatia. It thus granted the applicant all the property claimed and ordered the Farmland and Forest Fund of the Republic of Slovenia (*Sklad kmetijskih zemljišč in gozdov Republike Slovenije*, "the Fund"), which was administering the property at issue, to return it to the applicant.

9. The Fund lodged an appeal against that decision to the Ministry for Agriculture, Forestry and Food (*Ministrstvo za kmetijstvo, gozdrarstvo in prehrano*). It claimed that in the applicant's case the condition of reciprocity, as required by Article 68 of the Constitution, had not been fulfilled.

10. On 9 February 1999 the Ministry quashed the Administrative Unit's decision. It established, first, that Mr P.S. had not been the sole owner of the property at issue, but that he had owned it together with other family members. The claimed property could therefore not be returned to Mr P.S. or to the applicant as his heir alone. Secondly, the Ministry noted that while the proceedings were pending, the amendments to the Denationalisation Act of 18 September 1998 had entered into force, which required the condition of reciprocity with regard to the right of foreigners to claim the restitution of property. The Ministry established that according to the Croatian Act on Compensation, Croatia as the applicant's State of origin did not grant the right to restitution of property to Slovenian nationals on its own territory. It therefore concluded that the conditions for the restitution of property, as set out by the Denationalisation Act, were not fulfilled in the applicant's case, and decided that the applicant was not entitled to restitution of property, either *in natura* or in the form of compensation.

11. The applicant instituted proceedings against the Ministry before the Administrative Court of the Republic of Slovenia in Ljubljana (*Upravno sodišče Republike Slovenije v Ljubljani*). He argued that the Denationalisation Act, as adopted in 1991 and as in force at the time of lodging his request for restitution, should have been applied in his case. He claimed that under the Denationalisation Act as adopted in 1991 the condition of reciprocity was not required. The applicant did not challenge the finding of the Ministry that his father was not the sole owner of the claimed property and that the applicant could therefore not claim the whole of his family's property. Nevertheless, he did not modify his request for restitution.

12. On 19 October 2000 the Administrative Court rejected all the applicant's claims. It established that the applicant's State of origin did not provide for the same right to the restitution of property for Slovenian nationals on its own territory, either by implementing such a right in its legislation or by concluding a relevant agreement with

Slovenia. It concluded that the condition of reciprocity as required by the Denationalisation Act for granting restitution to foreign nationals had not been fulfilled.

13. At an undetermined time the applicant appealed to the Supreme Court of the Republic of Slovenia (*Vrhovno sodišče Republike Slovenije*). He claimed that the property should be returned to him regardless of his nationality. In particular, he alleged that by applying the 1998 amendments to the Denationalisation Act, which granted the right to restitution only to those foreign nationals whose State of origin granted such a right to Slovenian nationals, the Administrative Court had violated the principle of equality before the law.

14. On 18 April 2002 the Supreme Court dismissed the applicant's appeal. It found that the Croatian Compensation Act excluded Slovenian nationals from the right to restitution of property, and that the lower-instance courts had therefore correctly applied the requirement of reciprocity in the applicant's case.

15. The applicant lodged a constitutional complaint with the Constitutional Court of the Republic of Slovenia (*Ustavno sodišče Republike Slovenije*).

16. On 13 June 2003 the Constitutional Court held that in view of the Croatian Compensation Act, no reciprocity in granting the right to restitution of property could be established with respect to Croatia, either as a matter of fact or as a matter of international agreement. Hence, in the applicant's case the conditions for restitution of property as set out by the Denationalisation Act were not fulfilled. Since it did not find any violation of human rights in the applicant's case, it rejected the constitutional complaint.

B. Relevant domestic law and practice

1. The Constitution of the Republic of Slovenia

17. The Constitution of the Republic of Slovenia, as adopted in 1991 (*Ustava Republike Slovenije,* Official Journal no. 33/1991), provided:

Article 68 (Property Rights of Aliens)

"Aliens may acquire ownership rights to real estate under conditions provided by law.

Aliens may not acquire title to land except by inheritance, under the condition of reciprocity."

After the Constitution was amended in 1997 (Official Journal no. 42/1997), the relevant article provided:

Article 68 (Property Rights of Aliens)

"Aliens may acquire ownership rights to real estate under conditions provided by law or if so provided by a treaty ratified by the National Assembly, under the condition of reciprocity.

Such a law and treaty from the preceding paragraph shall be adopted by the National Assembly by a two-thirds majority vote of all deputies."

In 2003 Article 68 was amended again, so that the provisions read:

Article 68 (Property Rights of Aliens)

"Aliens may acquire ownership rights to real estate under conditions provided by law or a treaty ratified by the National Assembly."

18. The following provisions of the Constitution, as amended (Official Journal no. 33/1991, 42/1997, 66/2000, 24/2003, 69/2004, 68/2006), are also relevant to the present case:

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, disability or any other personal circumstance.

All are equal before the law."

Article 22

"Everyone shall be guaranteed equal protection of rights in any proceedings before a court and before any State or local authority or a bearer of public authority which determines his or her rights, duties or legal interests."

Article 67

"The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function. (...)

The manner and conditions of inheritance shall be established by law."

2. The Denationalisation Act

19. The Denationalisation Act (*Zakon o denacionalizaciji*, Official Journal no. 27/91, 31/1993, 65/1998, 66/2000) formed the basis for restitution of or compensation for property that had passed into State ownership through previous legislation (agrarian reform, nationalisation, confiscation, etc.).

20. Section 9 of the Denationalisation Act provided, *inter alia*, that the previous owners of the forfeited property were entitled to claim restitution of property if they had had Yugoslavian nationality on 9 May 1945. Section 15 provided that where the previous owner entitled to claim restitution of property under the Denationalisation Act was deceased, the claim for restitution of property might be lodged by his legal successors. The Denationalisation Act also governed the form and scope of restitution, the

restrictions on restitution and the valuation of property. It also provided for exceptions in which the property should be returned not *in natura* but in the form of compensation.

21. Section 6 stated that the right to acquire ownership rights under the Denationalisation Act might be subject to limitations, provided either by the Denationalisation Act or other legal acts in force. With respect to these provisions, Article 68 of the Constitution as in force at the material time was of particular relevance (see above).

22. The Denationalisation Act did not confer *ipso iure* the right to property on the previous owners or their legal successors, but prescribed restitution proceedings in which such a right should be established. The restitution proceedings were governed by Chapter V of the Denationalisation Act. In these proceedings the competent authority examined whether all the conditions for the restitution of the claimed property were fulfilled in a particular case. Section 66 stated that the final decision, issued at the end of the restitution proceedings, determined the form and the exact scope of the property to be returned, the person who was entitled to the property, the person who was obliged to return the property, and the time-limits for restitution. It also provided for such a final decision to be an enforceable title for the purposes of the entry of the claimant's ownership in the land register. These provisions remained unchanged by the amendments to the Denationalisation Act, which were adopted in 1998 and which were challenged by the applicant.

23. In 1998 the amendments to the Denationalisation Act entered into force. After the Constitutional Court partly repealed these provisions (see below), section 9 stated that a foreigner was also entitled to restitution, under the condition that the right to restitution was granted to Slovenian nationals in his or her State of origin, and that the property had been taken from an individual who on 9 May 1945 had had Yugoslav nationality. The transitional and final provisions of the 1998 amendments provided that the amendments applied also to those restitution proceedings which until the adoption of the amendments had not yet terminated.

3. The practice of the Constitutional Court

24. On 30 September 1998 the Constitutional Court examined on the initiative of the Association of the Owners of Forfeited Property (*Združenje lastnikov razlaščenega premoženja*) the compatibility of the 1998 amendments to the Denationalisation Act with the Constitution (decision U-I-326/98). It observed that the legislator had decided to resort to retorsion (*retorzija*) with regard to Croatia and its nationals in view of the Croatian Act on Compensation, which deprived Slovenian nationals of the right to restitution of forfeited property in Croatia. It considered that by implementing the condition of reciprocity in the Denationalisation Act, the principle of equality of States had been exercised. It further noted that different States might adopt the legislation regulating the right to restitution of property at different times, and that the adoption of reciprocity was therefore the only means of assuring a State's equality *vis-à-vis* other States. The Constitutional Court thus considered that the legislator had had a reasonable ground to provide for the condition of reciprocity as regards the right to restitution of property to foreign nationals, and that such a decision was constitutionally legitimate.

25. In the same decision the Constitutional Court also held, however, that in order for the condition of reciprocity to be fulfilled, the right to restitution of property did not necessarily need to be granted to Slovenian nationals by an international agreement, but that it sufficed if such a right was granted as a matter of fact, for example by the national legislation of a foreign State. It therefore repealed the 1998 amendments to the Denationalisation Act in the part which required that the reciprocity between Slovenia and a foreign State should be established by an international agreement.

COMPLAINTS

26. Under Article 1 of Protocol No. 1 the applicant alleged that in 1947 and 1948 the former SFRY had illegally confiscated the property owned by his family and that Slovenia was, as the legal successor to the SFRY, obliged to return that property to him. In his view, the right to restitution of property had been expressly acknowledged by the Denationalisation Act of 1991, which granted the former owners the right to forfeited property. Moreover, by granting that right to former owners, the Denationalisation Act did not create a new property right, but only acknowledged in a declaratory way their title to property which they had never legally lost. The 1998 amendments to the Denationalisation Act, which subsequently introduced the condition of reciprocity with regard to the right of foreigners to restitution of forfeited property, in effect excluded a certain category of foreigners from the right to restitution of property, and thus deprived the applicant of the right to his family's property.

27. The applicant also complained under Article 14 in conjunction with Article 1 of Protocol No. 1 that the 1998 amendments to the Denationalisation Act and the manner in which the domestic authorities had applied these amendments had deprived him of his family's property in a discriminatory way, since he had been denied that right on the ground of his Croatian nationality.

THE LAW

1. Complaints made under Article 1 Protocol 1 to the Convention

28. The applicant complained that since he had not been granted restitution of his family's property, which was forfeited to the former SFRY, his rights under Article 1 of Protocol No. 1 to the Convention had been breached. 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."

1. Recapitulation of the relevant principles

29. The Court reiterates the principles that have been established by its case-law under Article 1 of Protocol No. 1 and that it has also stated in its Kopecký v. Slovakia judgment ([GC], no. 44912/98, § 35, ECHR 2004-IX).

(a) Deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see *Malhous*

v. the Czech Republic (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).

(b) Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, and *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).

(c) An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82-83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII; *Malhous v. the Czech Republic* (dec.), no. 33071/96, ECHR 2000-XII; *Polacek and Polackova v. Czech Republic* (dec.) [GC], no. 38645/97, § 62, 10 July 2002; and *Bugarski and von Vuchetich v. Slovenia* (dec.), no. 44142/98, 3 July 2001).

(d) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003, and *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, ECHR 2005-V).

In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, §§ 70-74, ECHR 2002-VII, and *Preussische Treuhand Gmbh & Co. KG A. A.. v. Poland* (dec.), no. 47550/06, 7 October 2008).

On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see *Broniowski v. Poland* [GC], 31443/96, § 125 and § 33 , ECHR 2004-V).

30. Furthermore, in a series of cases the Court has found that the applicants did not have a "legitimate expectation" where it could not be said that they had a currently

enforceable claim that was sufficiently established. In a case against the Czech Republic where the applicants' claim for restitution of their property under the Extradjudicial Rehabilitation Act of 1991 failed because they had not met one of the essential statutory conditions (nationality of the respondent State), the claim was not sufficiently established for the purposes of Article 1 of Protocol No. 1. There was a difference, so the Court held, between a mere hope of restitution, however understandable that hope may be, and a "legitimate expectation", which must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision (see *Gratzinger and Gratzingerova*, cited above, § 73).

31. Finally, the Court also considers it relevant for the present case to recall that the Court's case-law does not contemplate the existence of a "genuine dispute" or an "arguable claim" as a criterion for determining whether there is a "legitimate expectation" protected by Article 1 of Protocol No. 1. The Court thus held in its Kopecký v. Slovakia judgment (§ 52, cited above) that where the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it.

2. Application of the relevant principles to the present case

(a) The Court's jurisdiction *ratione temporis*

32. The Court first recalls that it can examine applications only to the extent that they relate to events which occurred after the Convention entered into force with respect to the relevant Contracting Party. In the present case, the property of the applicant's family was forfeited in 1947 and 1948, respectively, which is long before 28 June 1994, the date of the entry into force of the Convention with regard to Slovenia. Therefore, the Court does not have jurisdiction *ratione temporis* to examine the circumstances of the nationalisation measures or the continuing effects produced by them up to the present date. In this regard, the Court refers to its established case-law according to which deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see paragraph 29 above).

33. The applicant's complaints concerning the nationalisation measures carried out in 1947 and 1948 must therefore be declared incompatible *ratione temporis* with the provisions of the Convention, and rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(b) General observations as to the Court's jurisdiction *ratione materiae*

34. The Court further observes the general context in which the relevant legislation was adopted. Like several other States which passed over to a democratic system of government from the late 1980s onwards, Slovenia adopted a series of rehabilitation and restitution laws with a view to providing redress for certain wrongs which had been committed under the preceding communist regime and which were incompatible with the principles of a democratic society. In this context, the Court reiterates that the Convention imposes no specific obligation on the Contracting States to provide redress for wrongs done or damage caused prior to their ratification of the Convention (see in

particular also *Assoziacione Nazionale Reduci and 275 Others v. Germany* (dec.), no. 45563/04, 4 September 2007). Moreover, the Court reiterates that States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of previous owners from the right to restitution of forfeited property, and more particularly that claims for restitution by previous owners who were excluded from such entitlement cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see paragraph 29 above).

35. Consistent with these principles the Court therefore holds that the fact that the scope of restitution under the Constitution and the Denationalisation Act was limited and that restitution of property was subject to a number of conditions, such as the condition of reciprocity with regard to restitution of property to foreign nationals, does not, as such, infringe the applicant's rights under Article 1 of Protocol No. 1.

36. However, the Court acknowledges that according to its established case-law mentioned under paragraph 29 above, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the restoration of property forfeited under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for those persons satisfying the requirements for entitlement. The Court therefore considers it necessary to examine whether the applicant's claim for restitution of property under the Denationalisation Act amounted to a "possession" within the meaning of that provision.

(c) Whether there was an "existing possession"

37. The Court notes that the applicant based his claim to the property on the provisions of the Denationalisation Act, which provided for the restitution of property forfeited under the previous regime. The proprietary interest relied on by the applicant was therefore in the nature of a claim and cannot accordingly be characterised as an "existing possession" within the meaning of the Court's case-law.

38. It thus remains to be examined whether the applicant could have had at any point a "legitimate expectation" of realising his claim to restitution of that property.

(d) Whether the applicant had an "asset"

39. It therefore remains to be determined whether the applicant's claim for the restitution of property constituted an "asset", that is, whether it was sufficiently established to attract the guarantees of Article 1 of Protocol No. 1. In this context, it may also be of relevance whether a "legitimate expectation" of restitution of the property forfeited to the applicant's family arose for the applicant in the context of the proceedings complained of (see paragraph 29 above).

40. The Court notes, first, that it was established in the restitution proceedings that the applicant's father and his legal predecessor was not the sole owner of the property claimed by the applicant, and that the whole of the claimed property could therefore not be returned to the applicant alone. Hence, the applicant did not fulfil the statutory condition of being an heir with respect to the whole of the claimed property in order to be able to acquire it under the Denationalisation Act. In the Court's view, it could

therefore not be said that the applicant had a "legitimate expectation" for the return of the whole of his family's property.

41. Secondly, with regard to the applicant's claims relating to restitution of the property that had once belonged to his father, the Court observes that when the applicant instituted restitution proceedings before the Črnomelj Administrative Unit on 4 June 1993, the applicable provisions of the Constitution and the Denationalisation Act were those as adopted in 1991.

42. Article 68 of the Constitution, which governed the property rights of foreigners at the material time, provided that foreigners could not acquire title to land, except by inheritance and subject to reciprocity.

43. As for the Denationalisation Act as adopted in 1991, the Court observes that section 9 granted the right to claim restitution of property to all individuals who at the time of forfeiture had had Yugoslavian nationality. The Court also notes that section 6 stated that the right to acquire ownership rights under the Denationalisation Act might be subject to limitations, provided either by the Denationalisation Act or other legal acts in force.

44. The Court further notes that in 1997 Article 68 of the Constitution was amended in order to allow foreigners to acquire title to land, this however only under conditions provided by law or if so provided by a treaty ratified by the National Assembly, and under the condition that reciprocity existed with respect to their State of origin. In addition, in 1998 the condition of reciprocity with regard to the right of foreigners to acquire title to land was introduced into the Denationalisation Act.

45. The Court also notes that in 2003 the condition of reciprocity was removed from the Constitution, so that foreigners could acquire title to land under conditions provided by law or a treaty ratified by the National Assembly. In this respect the Court notes that as from 2003 onwards the condition of reciprocity was only required by the Denationalisation Act.

46. Turning to the circumstances of the present case, the Court thus observes that the condition of reciprocity with regard to the right of foreigners to acquire title to land has been required *de lege lata* since 1991, when the Constitution was adopted, and was therefore not introduced only by the 1998 amendments to the Denationalisation Act, as claimed by the applicant.

47. The Court further observes that the condition of reciprocity was consistently examined by all the domestic authorities which dealt with the applicant's case. In this respect the Court notes that the Črnomelj Administrative Unit, which first examined the applicant's claims and which granted him restitution of his family's property on 17 September 1998, based its decision on the finding that the condition of reciprocity had been fulfilled in the applicant's case. The Court notes that that decision of the Administrative Unit was taken at a time when Croatia had already adopted the 1996 Act on Compensation for Property Forfeited during Yugoslav Communism, to which all the higher domestic authorities referred when they established, contrary to the Administrative Unit, that the condition of reciprocity had not been fulfilled in the applicant's case. Thus, the decision of the Administrative Unit was subsequently

overturned by the Ministry for Agriculture, Forestry and Food in the context of the same proceedings. This rendered the decision of the Administrative Unit as having acquired no final and binding effect (see *Sirc v. Slovenia*, (dec.), no. 44580/96, § 283, 22 June 2006, see also *a contrario*, *Nacaryan and Deryan v. Turkey*, nos. 19558/02 and 27904/02, § 56, 8 January 2008).

48. In the course of the subsequent court proceedings, all the domestic courts dismissed the applicant's request. In particular, both the Supreme Court and the Constitutional Court pointed out that the foundation of the applicant's claims for the restitution of property depended on the fulfilment of the condition of reciprocity as set out by the Denationalisation Act. The Court therefore observes that the applicant did not satisfy all the requirements for entitlement to restitution of his family's property (see paragraph 29 above).

49. Finally, the Court notes that the Denationalisation Act did not confer *ipso iure* the right to forfeited property on the previous owners or their legal successors, but prescribed restitution proceedings in which such a right should be established in the light of all the limitations and conditions required by law, in order for restitution of forfeited property to be granted by a competent authority. Thus, the Court considers that when the applicant lodged his request for the restitution of property with the Črnomelj Administrative Unit on 4 June 1993, the title to the property he sought to recover could not have been vested in him solely on the basis of the Denationalisation Act as adopted in 1991 and as in force at the material time, without the competent authorities having first examined his request in the framework of the restitution proceedings and in the light of all the conditions required by domestic law, including those required by the Constitution (see, *mutatis mutandis*, Kopecký, cited above, §§ 41 and 48, *Assoziacione Nazionale Reduci and 275 Others*, cited above, *Sirc*, cited above, § 275, and *Dolhar v. Slovenia*, no. 66822/01, § 67, 18 March 2008). The applicant's claim for restitution of property therefore did not amount to an enforceable claim sufficiently established in domestic law to fall within the ambit of Article 1 of Protocol No. 1 (see paragraphs 30 and 31 above).

50. It could therefore not be said that, at the time of filing the claims or at any point thereafter, the applicant's request for the restitution of his family's property could be considered as being sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1. In these circumstances, the Court finds that in the context of his restitution claim the applicant did not have a "possession" within the meaning of the first sentence of Article 1 of Protocol No. 1. It follows that the complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 of the Convention.

51. This part of the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

2. Complaints made under Article 14 of the Convention

52. The applicant also complained that his rights under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 had been breached, since the 1998 amendments to the Denationalisation Act and the domestic courts had deprived him of the right to restitution of his family's property, on the ground of his foreign nationality.

Article 14 provides:

"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."

53. According to the Court's settled case-law, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to the "enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Gratzinger and Gratzingerova,* cited above, § 76; *von Maltzan and others*, cited above, § 116).

54. The Court has already found that the applicant cannot claim to have had a legitimate expectation of restitution of the claimed property and that the facts of the present case therefore do not fall within the ambit of Protocol No. 1 (see § 50 above). Since Article 1 of Protocol No. 1 to the Convention is not applicable, the Court holds that Article 14 of the Convention cannot be taken into account in the present case.

55. This conclusion is not contradicted by the Court's findings in a series of cases in which it dealt with welfare benefits and decided that although Article 1 of Protocol No. 1 does not grant the right to receive a social security payment of any kind, if a State does decide to establish a benefits scheme it must do so in a manner compatible with Article 14 (see, for example, *Stec and Others v. the United Kingdom* (dec.), nos. 65731/01 and 56900/01, ECHR 2005-X; subsequently confirmed by the Grand Chamber's judgment in *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, 18 February 2009 ; see also *Luczak v. Poland*, no. 77782/01; § 48, ECHR 2007). Those cases dealt with non-nationals who had been living in the country concerned and whose position, in all relevant respects, was comparable to that of resident nationals. Thus, their exclusion from the scope of the various welfare benefit schemes (which were otherwise of general application) could not have been justified solely on the basis of their non-national status.

56. In contrast, the subject matter of the present case is the restitution of property that was nationalised in 1947 and 1948, that is even before the Convention entered into force. The provisions of Slovenian law relating to restitution of property are thus intended to address a very specific situation affecting a limited group of people. In that respect, the Court reiterates, as noted above, that Article 1 of Protocol No. 1 does not impose any general obligation on States to return property transferred to them before they ratified the Convention, nor does it impose any restrictions on their freedom to determine the scope of property restitution and to choose the conditions under which they do so. The Court observes in that respect that in the present case the principles applicable to the restitution of property derive from a more general regulation in Slovenia of the rights of aliens to own property. Within this regime, the principles have remained consistent, i.e. foreigners can own property in accordance with the conditions provided for by law or set out in an international treaty ratified by Parliament on

condition of reciprocity. This regime applies to all foreigners and reflects a practice that exists in a number of European States.

57. In these circumstances, and bearing in mind its finding that the applicant does not have a "possession" for the purposes of Article 1 of Protocol No. 1, the Court considers that the situation can be distinguished from the issue of entitlement to welfare benefits and concludes that it does not engage the applicability of Article 14 in conjunction with Article 1 of Protocol No. 1. It follows that the applicant's complaint under Article 14 is incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto, within the meaning of Article 35(3) of the Convention, and must be rejected pursuant to Article 35(4).

58. The application must therefore be rejected as a whole under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith Josep Casadevall
Deputy Registrar President

SMILJANIĆ v. SLOVENIA DECISION