



Round table: Property Restitution/Compensation: General measures to comply with the European Court's Judgments

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Conclusions

The participants of the Round Table underlined the complexity of the economic, social and political context in which the States have had to, and still have to, take decisions with respect to properties nationalised by former communist regimes, most notably regarding the extent to which restitution of such properties should be allowed or monetary compensation be accorded instead.

The discussions highlighted the delicate problems facing the different national authorities concerned, in particular in ensuring a fair balance between the private interests involved and the interest of the community.

The representatives of the participating States stressed that they were fully aware of the large-scale systemic problems triggered by the dysfunctioning of several restitution or compensation mechanisms set up. They also acknowledged the risk these systemic problems posed for the effectiveness of the Convention mechanism as a result of the important number of repetitive cases being brought before the European Court.

The representatives of the States concerned conveyed the determination of their authorities to tackle efficiently and as a matter of urgency the structural problems involved and in particular those already revealed in the different judgments of the European Court. In accordance with the principle of subsidiary, the debates put special emphasis on the obligation to establish effective domestic remedies so as to avoid the necessity of persons affected seeking redress from the European Court.

During the different sessions the participants recalled that in its case-law relating to restitution or compensation for properties nationalised before 1989 the Court had notably underlined that:

- the national authorities have a considerable margin of appreciation in matters concerning restitution or compensation, and in particular that the Convention does not impose any obligation on the States to restore or to compensate for properties affected by the kind of nationalisations here at issue;
- if a State decides to accept responsibility for such earlier nationalisation, it retains the freedom to determine the scope of the right to restitution and also a large margin of appreciation in deciding the level of compensation in the absence of restitution; relevant factors for the latter determination are notably the State's financial situation and the general political context ; difficult state finances and/or the fact that responsibility is assumed in the context of a radical reform of the State's political and economic system may thus justify stringent limitations on compensation;

It was also noted that as both restitution and compensation may affect a number of other rights under the Convention, enjoyed both by the beneficiaries themselves and by good faith third persons, the original compensation and/or restitution schemes and subsequent efforts to rectify possible shortcomings, required careful consideration in order to avoid additional findings of violations of the Convention (related mainly to Article 6 of the Convention or to Article 1 of Protocol 1).

The participants of the Round Table stressed the importance of States concerned sharing their experiences and taking into account existing good practices whenever enacting or implementing legislation providing for restitution or for compensation for property nationalised before 1989 or overhauling already existing mechanisms. Good practices referred to in the course of the discussions included :

- carrying out impact assessments and carefully examining possible financial implications of planned restitution and/or compensation schemes before adopting or modifying relevant legislation;
- securing adequate political support for proposals made as well as adequate coordination between all actors concerned;
- ensuring the existence of transparent and effective systems of property registration;
- adopting clear and simple legal frameworks for restitution and/or compensation schemes, based on coherent state policies and avoiding frequent changes of the legislation, as such may notably lead to legal uncertainty;
- setting, wherever full *restitutio in integrum* was deemed impossible, a cap on compensation awards, or paying them in instalments over a longer period or in some other form allowing budgetary processes to provide the necessary funds (bonds, shares....) in order to help to strike the fair balance required between the interests of all involved, including former owners, current tenants or owners and the general interest of the community;
- ensuring the transparency of the schemes with a view to enhancing also public confidence;
- ensuring that legislative frameworks be accompanied, from the outset, with appropriate administrative and budgetary measures and means to ensure the effective implementation, within clearly set time limits, of the restitution and/or compensation schemes set up;
- ensuring through well considered and clear legal provisions and adequate training (including in the requirements of the Convention), a uniform and foreseeable application of the schemes set up by courts and administrative authorities;
- guaranteeing the availability of judicial review of administrative decisions taken and securing effective enforcement of all final decisions relating to property restitution and/or compensation, be they administrative or judicial;
- providing for effective remedies, where necessary with retroactive effect, for all allegations of violations of relevant Convention Articles, most importantly of Article 1 of Protocol 1 and of Article 6 of the Convention, and this in particular in all situations of major dysfunctions of the restitution and compensation mechanism;
- ensuring regular exchanges of information on developments in the setting up and implementation of the schemes with the Convention organs in order to ensure optimal interaction between the European and the national levels.