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COUNCIL OF EUROPE  
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WORKSHOP 2

**ROUND-TABLE:  
PROPERTY RESTITUTION/COMPENSATION:  
GENERAL MEASURES TO COMPLY WITH THE  
EUROPEAN COURT'S JUDGMENTS**

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*The views expressed are those of the author only*

## **Lithuanian experience in the field of restoration of property rights to former owners**

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The process of restoration of the property rights lasts already for 20 years in Lithuania - the first **Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property was adopted in June 1991.**

The Currently applicable Law was adopted in 1997 and was amended numerous times. The process is not yet over, however, it slowly comes to the end, since according to the currently applicable provisions the deadline for submission of applications was set to December 31, 2001, the deadline to submit necessary documents – to December 31, 2003

On the other hand, those deadlines had already been postponed by the legislator several times; besides these deadlines may be reinstated by courts if applicants are able to show that there were objective obstacles to meet those deadlines.

It should be noted that the process of restitution of property rights went in parallel with the process of privatisation (including the possibility to privatize so-called land granted to individuals; to buy buildings which are built on land plots which would be later give back to former owners of the land) and the outcome of those processes in some cases generated various conflict situations.

The applications should have been lodged to state (in case of land, forests, water bodies) or municipal (in case of buildings) institutions - currently - the National Land Service and director of administration of local municipalities.

### **Modalities of awarding compensation:**

**The general principle** – *if it's possible, the rights must be immediately restored in kind to existing property – if that is not possible –then, either financial compensation (cash or securities), or other equivalent property (the form of compensation depends on the type of compensated property)*

It's up to a person to choose the particular form of compensation, however, if a person hasn't expressed his will up to a certain moment – *administrative authorities have a discretion in choosing the form of compensation*

In general the Law establishes the principle of equal value when it comes to compensation, however, in reality the Governmental decrees establishing methodologies for calculation of compensations do not reflect in full current market prices. Back in 1998 the Constitutional Court stated that legislature, having in mind the necessity to strike a balance between different interests, has a broad discretion in determining the conditions of restoration of property rights.

**Generally speaking, the Constitutional Court played the important role in setting certain basic principles in the field of restoration of property rights:**

According to the Court, the Constitution, having regard to the fact that not Lithuanian authorities are responsible for nationalisation of private property, that half a century has past, the new proprietary and socio-economic relations have been formed and they could not be neglected, allows the legislator to choose to conduct not restitutio in integrum, but limited restoration of property rights/partial reparation principle  
*(for example, under current Law there is no legal basis to restore property rights to buildings which ceased to exist before August 1, 1991; property rights to land, forests are restored up to 150 hectares)*

Also, the Court ruled that limited restitution means that state has no obligation to restore rights to all extent – there is no obligation in the Constitution on the part of the state to compensate nationalised property **in current market prices**

In the recent ruling (2010) the Court ruled that provisions of the law allowing restoration of property rights only to citizens of Lithuania do not contravene the Constitution

**Most frequent problems, faced in administrative courts:**

The most frequent court disputes concern restoration of property rights to land plots, when it's not possible to restore property rights in kind in the former place.

- I. The Law does not provide exact time limits concerning drafting and adopting territory planning acts, by which a certain territory is planned for restoration to those who want to restore their ownership rights (when equivalent land plots are offered). Besides these plans are not drawn by state institutions, they only buy services from private service providers. Such a situation in some cases leads to court disputes since applicants require courts to impose certain time-limits for adoption of those territory planning acts and it's very difficult to assess what exact time is necessary to prepare them.

There is only **a general term of six months** to adopt a final decision restoring property rights which is calculated from the moment, once all necessary documentation (documents confirming the right of ownership and relation by blood or connection by marriage are submitted, and other documents, specified in this Law) is prepared

- II. According to the Law some land must be purchased by the state if there is a certain private or public interest (for example, a land plot is occupied by a building which is owned by other persons; certain infrastructure project is planned in the future) – to whom to give priority??? – former owners often prefer to restore ownership rights to land in kind (in former place) – balance of interests - court practice tends to define public interest extensively – indication of public interest in general planning document is enough;

- III. Judicial actions from the part of prosecutors concerning annulment of administrative acts by which property rights were restored in violation of certain imperative provisions of national laws (e. g., restoration of property rights to forests of state importance; in protected areas) – court practice tends to be on the side of public interest – those decisions are being annulled, but court rulings indicate that administrative institutions.
- IV. Quite many complaints to administrative courts concerning unjustified delays in the process of restoration of property rights – if legal acts do not provide for exact deadlines, courts, on the basis of the principle of reasonable term, tend to impose specific time-limit in each individual case.

Still, despite the above mentioned problems Lithuania **is not very frequent customer of the ECtHR in this field** – so far only several negative rulings of the Court:

*Jasiūnienė v. Lithuania (2003)* – non-execution of national court judgment ordering the county administration to adopt a decision restoring property rights to land

*Jurevičius v. Lithuania (2005)* – non-execution of national court judgment ordering return in kind of one flat and to offer equivalent compensation for another flat

*Igarienė and Petrauskienė v. Lithuania (2009)* excessive length of civil proceedings

Although there are many problems, low number of cases before the ECtHR shows, that Lithuanian administrative and judicial system functions rather efficiently in this field.

Pro-active approach of Lithuanian courts *vis-a-vis* the Convention and the practice of the Strasbourg Court.

Property restitution cases amounted to **4 percent** from the whole workload of the Supreme administrative court of Lithuania in 2010.