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**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

ROUND TABLE

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**Bulgarian perspective of the problems concerning the
restitution and compensation process**

Presentation by Mr Daniela Masheva, Deputy Minister of Justice, Bulgaria

The European Court of Human Rights has delivered several judgments concerning Bulgaria with findings on problems caused by national legislation governing restitution of nationalised properties and compensation as a result of restitution processes.

The ECHR assumes that this period must be considered one of social and legal transition in Bulgaria and thus some peculiarities could not be overlooked. For that reason, some uncertainty typifies the application of legislation to remove the injustice caused in past periods.

The Bulgarian model of restitution accommodates the most general principle that all property in the possession of the state, municipalities and legal entities based on state property should be returned to the former owners.

The review of Bulgarian legislation regulating the process of restitution and critical analysis of European Court of Human Rights judgments shows the existence of legislative and structural problems in the national legal framework. These conclusions compel the taking of necessary measures to overcome consequential breaches of the Convention and especially Article 1 of Protocol No. 1.

For that reason, Bulgaria has launched tangible actions related to the practices of the judicial system and all other institutions.

The restitution process has been regulated by the Bulgarian legislator in several laws taking the specificity of the problem into account.

The fundamental statute in this sphere, stipulating the restitution of confiscated properties in urban areas, is the Law on restoring ownership of nationalised real estate.

Since 1992 the Bulgarian judicial authorities and institutions have faced many difficulties in implementing this law.

Major national legislative problems relate to the application of Article 7 of the law on restitution. According to this provision, the former owners of nationalised property or their heirs, who have not received compensation, may claim restitution where the property has been acquired by a third party in violation of statutes, or by misuse of any official or political capacity or of power.

One of the stated problems concerns the case of acquisition of property by a third party in violation of statutes.

Pursuant to the aforesaid provision, many persons who have acquired property legally in the past, during the totalitarian period, come within the scope of the law on restitution.

Many sale/purchase contracts or other relevant documents had been signed by the deputy to or the superior of the official in whom the relevant power was vested (i.e. deputy mayor in place of the mayor, deputy minister in place of the minister, regional governor in place of the district governor, etc.).

After an initial period of uncertain practice, the Bulgarian courts adopted the view that such defects had the automatic effect of rendering the transactions null, these having been established as a result of a wrong judicial practice .

In 2007 the ECHR announced a judgment concerning the case of Velikovi and others against Bulgaria . The case originates in nine applications containing complaints of violation of Article 1 of Protocol No. 1 to the Convention.

The Court ruled five of these applications inadmissible. It concluded that interference with the applicants rights under Article 1 of Protocol No 1 could not be seen as failing to strike a fair balance between the applicants' rights under the Convention and the public interest, because the public interest was not only to restore the property to its owner, from whom it had been taken arbitrarily in 1949 without any compensation , but also more generally to restore justice and the rule of law.

Concerning the other four applications, the Court finds a violation of Article 1 of Protocol No. 1, concluding that the interference with applicants' property rights failed to strike a fair balance between the public interest and the applicants' rights. The Court describes these cases as cases in which the State administration was responsible for the irregularities that led to nullification of titles. Therefore the Court considered that violation of Article 1 of Protocol No. 1 resulted from the implementation of Article 7 of the Bulgarian law on restitution.

In response to the above ECHR judgment, the Bulgarian authorities have applied many remedies via legislative amendments to the law on restitution, the law on compensation and secondary legislation aiming to overcome and reduce injustice ascertained in the application of Article 7.

We could say that the Bulgarian Parliament and the Council of Ministers display political will to improve and develop the process to compensate dispossessed post-nationalisation owners.

These amendments achieve the final goal of striking a balance between the interests of former owners, victims of the communist regime, and the interests of the dispossessed post-nationalisation owners.

In 2007 the Council of Ministers promulgated an implementing regulation for Article 7. This regulation determines the conditions and rules for payment of the currency equivalent of the compensation bonds received by persons deprived of property by court decision under Article 7.

Concurrently, the Ministry of Finance has established frameworks and procedures for execution of compensation payments.

The other group judgments, concerning the implementation of Article 7 related to the case of Tsonkovi against Bulgaria and the case of Kirova and others.

The major problem in these cases **is the term** within which the claim could be submitted to the court. We should point out that according to the provisions of the law on restitution, this right is limited to one year as a deadline after the law' s entry into force.

This term should be considered favourable to the respondent in the suit because after its expiry their rights become unchallengeable. In this way, the law created legal certainty for third parties owning the property.

According to the provisions of the transitional law on restitution, §2 concerning extension of term is to be held contrary to constitutional law on the right of property.

Therefore the ECHR found that the law as amended in 1997 violated principles of the transitory legislation on restitution and legal certainty.

The injustice was also taken into account by the Bulgarian state. In this respect, the Constitutional Court has found § 2 inconsistent with the requirements of legal certainty according to Article 4 of the Bulgarian Constitution, and declared the provision unconstitutional.

Such an extended approach to the implementation of the law on restitution typified the Todorova case. The applicant's title was declared void on the basis of Article 1 of the law on restitution, not on the ground of Article 7. The scheme of compensation by means of bonds is not applicable, because the bond compensation scheme applies only to Article 7.

We have many cases in which, after proceedings according to Article 7 nullifying owners' titles, and the national court deciding that property should be returned, the claimants submit another demand based on Article 108 of the Property Act against third persons to whom property has been transferred. Usually the property transaction has occurred before the initiation of trial proceedings and in many cases before the adoption of the law on restitution.

Regarding these cases and concerning implementation of ECHR judgments against Bulgaria, the national judicial authorities (Supreme Court of Cassation) have taken measures for unification of judicial practices in accordance with Article 1, Protocol No. 1 of the Convention.

Regarding the transitory character of the restitution legislation and taking into account all difficulties emerging during its application we can stress that the Bulgarian state has made considerable efforts to achieve justification and equivalence before the law, aiming at a fair balance between the different interests of various concerned parties, as well as between the needs of social interests and the requirements of protecting the fundamental rights of individuals.

Hitherto the ECHR has announced approximately 25 decisions concerning Bulgarian restitution processes. Bulgaria has implemented some individual measures recommended by the Court. We have 10 agreements with applicants, as well as unilateral declarations.