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Case-law of the European Court of Human Rights: summary of selected judgments and decisions on property restitution/compensation

This document is intended to provide an outline of main issues identified by the European Court of Human Rights (hereinafter: European Court) in its selected case-law on the property restitution and/or compensation measures adopted after the fall of the central and eastern European communist regimes and of principles applied by the ECtHR when examining the corresponding complaints under the European Convention on Human Rights.

Moreover, the document also contains measures taken by a number of States in order to implement judgments of the European Court that revealed shortcomings in the process of property restitution/compensation. These measures were taken in the context of the execution of judgments of the European Court which is supervised by the Committee of Ministers.

Please note that the documents is not intended to provide an exhaustive selection of judgments and decisions of the European Court and corresponding implementing measures in the field of property restitution/compensation.

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The summaries of judgments and decisions of the European Court were prepared by an external consultant. They do not bind the Department for the Execution of judgments of the European Court.

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DRIZA v. ALBANIA GROUP¹

Introductory summary

The *Driza* group of cases concerns the unjustified failure of the domestic authorities to execute final domestic court judgments and administrative decisions in relation to the restitution of nationalised property.

Facts and relevant domestic law

The applicants' claims for restitution were brought under the **Property Restitution and Compensation Act 1993** (the Property Act 1993). Under that Act former owners of properties expropriated by the communist regime, and their heirs, had a right to claim ownership of the original properties. If ownership was considered to exist, they were entitled to either restitution of the original property or an award of compensation in kind or in pecuniary terms. The Albanian Council of Ministers had power to define rules for determining compensation and applicable time-limits. Regional commissions on restitution of properties and compensation were the competent bodies to deal with claims. The Property Act 2004, which repealed the previous version, provided two forms of restitution of immovable property, namely the return of the original property or, if that was not possible, compensation. The Property Act 2004 provided for enforcement of decisions awarding compensation within the first six months of each financial year. In 2005 Parliament adopted an act establishing the method by which immovable property was to be valued for compensation purposes. Its implementation was left to the State Committee for the Compensation and Restitution of Properties. The Property Act 2004 was amended by the Property Act 2006, which repealed provisions in relation to the enforcement of decisions that awarded compensation.²

Judgments of the European Court

Article 6§1: The European Court observed that the right of access to a tribunal would be illusory if a State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. **Execution of a final court judgment must therefore be regarded as an integral part of the "trial" for the purposes of Article 6** of the Convention, irrespective of whether the final decision takes the form of a court judgment or a decision of an administrative authority. In respect of all the cases in this group the European Court found a violation of Article 6§1 on account of the **domestic courts' failure to execute final domestic court judgments recognising the applicants' right of ownership and, in certain instances, their right to compensation** under the Property Act 1993 (violation of Article 6§1).³

Article 1 of Protocol 1: The continuing failure to pay the applicants compensation and recognise their right to ownership of property amounted to an interference with the right to peaceful enjoyment of possessions within the meaning of Article 1 of Protocol 1. Notwithstanding the wide margin of appreciation afforded to States in determining what is in the public interest, especially where compensation for nationalised or expropriated property is concerned, the European Court continually held that the **State failed to justify the**

¹ *Driza v. Albania*, no. 33771/02, judgment of 13 November 2007, final on 2 June 2008; *Beshiri and Others v. Albania*, no. 7352/03, judgment of 22 August 2006, final on 12 February 2007; *Ramadhi and Others v. Albania*, no. 38222/02, judgment of 13 November 2007, final on 2 June 2008; *Hamzaraj v. Albania (no. 1)*, no. 45264/04, judgment of 3 February 2009, final on 6 July 2009; *Nuri v. Albania*, no. 12306/04, judgment of 3 February 2009, final on 6 July 2009; *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, judgment of 29 September 2009, final on 29 December 2009.

² The Property Acts are described in *Driza* § 54.

³ In *Driza* the European Court reiterated that "a lack of funds cannot justify a failure to enforce a final and binding judgment debt owed by the state" (§ 108).

non-enforcement of domestic court judgments and administrative decisions.⁴ The failure to strike a fair balance between the general interest of the community and the requirements of the protection of individual's fundamental rights left the applicants in a state of uncertainty with regard to the realisation of their property rights. (violation of Article 1 to Protocol 1).

Article 13: In *Driza* the European Court also found a violation of Article 13 in conjunction Article 1 of Protocol 1 due to the ineffective remedy afforded by the Property Acts, which was the only way to obtain recognition of ownership rights in respect of property which had been unlawfully nationalised. The Court held that by failing to establish appropriate bodies to determine compensation or adopt site plans for the valuation of property, both of which were provided for under the Property Acts, the Government had **failed to establish an adequate procedure in relation to compensation claims** (violation of Article 13).⁵

In *Ramadhi and Others* the European Court noted that the domestic law did not make provision in relation to the enforcement of decisions of regional property and restitution commissions. In particular, the Property Acts neither provided a statutory time-limit for appealing against such decisions before the domestic courts nor any specific remedy for their enforcement. The Court further observed that at the date it delivered its judgment the Council of Ministers had not defined rules for the determination of compensation. The **failure to take the necessary measures to provide for the means to enforce decisions of regional commissions** was held to have deprived the applicants of their right to an effective remedy enabling them to secure the enforcement of their civil right to compensation (violation of Article 13).

Article 46: The European Court observed in *Driza* and *Ramadhi and Others* that the violations originated from the unjustified hindrance of their right to the peaceful enjoyment of their property, stemming from the non-enforcement of court judgments and commission decisions awarding compensation under the Property Act.⁶ Identifying that the legal vacuums detected may give rise to numerous other well founded applications, the Court indicated the type of measures which the respondent State could take in order to put to an end the nature and cause of the violations:

“the respondent State should, above all, introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment as well as in respect of all similar applications pending before it [...] By introducing the relevant remedy, the State should, *inter alia*, **designate the competent body, set out the procedural rules, ensure compliance with such rules in practice and remove all obstacles to the award of compensation under the Property Act.** These objectives can be achieved by ensuring the appropriate statutory, administrative and budgetary measures. These measures should include the adoption of the maps for the property valuation in respect of those applicants entitled to receive compensation in kind and the designation of an adequate fund in respect of those applicants entitled to receive compensation in value, this is in order to make it possible for all the claimants [with judgments or decisions in their favour]⁷ to obtain speedily the lands or the sums due.”⁸

⁴ In *Beshiri and Others* the European Court observed that “It does not appear that the bailiffs or the administrative authorities have taken any measures to comply with the judgment” (§ 65).

⁵ In *Beshiri and others v. Albania* the Government had argued that the applicants' complaint under Article 6§1 in respect of the non-enforcement of a domestic court judgment was inadmissible as they had failed to avail themselves of the remedies introduced by the Property Act 2004 in relation to compensation (§50 of the judgment). Holding the complaint to be admissible the European Court observed that the state had not proven that the new Act could effectively have offered redress to the applicants nor that the state could have effectively complied with its obligation to pay compensation for the original property (§55).

⁶ *Driza* § 122 and *Ramadhi and Others* § 90.

⁷ Inserted to encompass the observations of the European Court in *Driza* § 126.

⁸ *Ramadhi and Others* § 94.

Just satisfaction: Finding that the applicants had suffered considerable pecuniary and non-pecuniary damage, the European Court justified the award of compensation in full and final settlement by reference to the respondent State's failure to adopt measures allowing the enforcement of compensation awards following indications in previous judgments.⁹

Notable measures adopted by the respondent State

Recent amendments to the Property Act (Law no. 10207 of 23 December 2009) abolished the regional commissions. The Property Restitution and Compensation Agency (PRCA), established by the Property Act 2006, is a central administrative body solely tasked with implementing the Property Act, and is competent to decide on restitution and compensation claims. The government has approved and issued a property valuation map used by the PRCA to calculate the value of the expropriated properties and consequently any amount of compensation to be awarded.

A law adopted on the 25 February 2010 established a new, consolidated Compensation Fund. The PCRA administers the fund in accordance with the procedures set-out by the Council of Ministers and the proposals of the Minister of Finance. The Minister of Finance annually transfers the allocated sum to the Compensation Fund, and amounts not awarded can be retained for subsequent years. The Property Act provides for the right to receive default interest covering the period from recognition of the claimant's property rights until an award of financial compensation. Moreover, it makes provision for the establishment of an In-kind Compensation Fund (not yet operational). The Government has set out criteria and procedures for determining which State properties fall within the scope of the fund. The PRCA is responsible for verifying the legal status of each property submitted to the fund.

Albania introduced a private bailiff service approved by Law No. 10031 of 11/12/2008, which established a two-track system, state and private, functioning in parallel. The new service seeks in part to relieve the case-load of the State bailiff service. For more information see CM/Inf/DH(2010)20.

VELIKOVI AND OTHERS v. BULGARIA¹⁰
TODOROVA v. BULGARIA (just satisfaction)¹¹
TSONKOVI v. BULGARIA¹²

Introductory summary

The cases of *Velikovi and Others v. Bulgaria* and *Tsonkovi v. Bulgaria* concern the deprivation of property which the applicants had acquired after its nationalisation under the communist regime, following successful actions brought for recovery of the property by the pre-nationalisation owners, or their heirs, in the 1990s.

Facts and relevant domestic law

Following the fall of the communist regime, the Bulgarian Parliament enacted the **Law on the Restitution of Ownership of Nationalised Real Property** ("the Restitution Law") which came into force in 1992. Section 1 of the Restitution Law provided that the pre-nationalisation owners, or their heirs, became *ex lege*

⁹ *Ramadhi and Others* § 101.

¹⁰ *Velikovi and Others v. Bulgaria*, no. 43278/98 et al., judgment of 15 March 2007, final on 9 September 2007.

¹¹ *Todorova and Others*, no. 48380/99 et al., judgment of 24 April 2008, final on 24 July 2008 (just satisfaction)

¹² *Tsonkovi v. Bulgaria*, no. 27213/04, judgment of 02/07/2009, final on 02/10/2009

the owners of their previously nationalised property. Section 7 provided that pre-nationalisation owners, who had received no compensation, or their heirs, could recover property acquired by a third person, if the latter had become the owner in breach of the law. The pre-nationalisation owners were allowed to bring an action against post-nationalisation owners within a period of one year. The Law on Compensation for Owners of Nationalised Real Property (“the Compensation Law”), which came into force in 1997, made provision that persons who had lost their dwellings pursuant to section 7 of the Restitution Law should receive housing compensation bonds. The face value of the bonds issued was to be equal to the full market value of the dwelling. Until November 2004 compensation bonds were traded at between 15% and 25% of their face value, for two months following which the bond rates peaked at 100% and more, before stabilising around 70% of their face value.

In 1997 pre-nationalisation owners who had missed the initial one-year period, under section 7 of the Restitution Law, were given a second opportunity through a **legislative amendment renewing the time-limit**. On 11 March 1998 the Constitutional Court struck down the amendment as it encroached on the principle of protection of property and legal certainty. That judgment had no retroactive effect.

Judgments of the European Court

Article 1 of Protocol 1: In its judgment in *Velikovi and Others*, the **applicants had been deprived of their respective property** as a consequence of the Restitution Law. Noting the uncertainty as to the interpretation of the Restitution Law, the European Court concluded that issues as to the **quality of the relevant law** could not be dissociated from whether the interference proportionately pursued a legitimate aim. Section 7 of the Restitution Law was held to pursue an **important aim in the public interest, namely to restore justice and respect for the rule of law**.

Recalling the aims of the Restitutions Law and the underlying rationale of section 7, the European Court considered it **highly relevant to the assessment of proportionality whether the property was taken owing to a material breach of the substantive law or abuse of power on the one hand or, on the other hand, as a result of an administrative omission of a minor nature for which the administration had been responsible**. The Court consequently considered that the **proportionality of the interference must be decided with reference to: (i) whether or not the case clearly fell within the scope of the legitimate aims of the Restitution Law, and (ii) the hardship suffered by the applicants and the adequacy of the compensation actually obtained or that which could have been obtained**. In complex cases such as the present one, which involve difficult issues concerning the transition from a totalitarian regime to democracy and rule of law, **a certain “threshold of hardship” must have been crossed for the Court to find a violation of Article 1 of Protocol 1**. In respect of amounts obtained through the sale of compensation bonds, the Court took into account the amounts actually received, as the rise in bond prices at the end of 2004 could not be foreseen.

The European Court **examined the following situations** determining whether the deprivation of property struck a fair balance between the individuals’ Convention rights and the public interest:

Property titles declared null and void on the grounds that either (i) they had obtained the property through an **abuse of power or position**,¹³ or (ii) a **material breach of the relevant housing legislation**, including obtaining a flat that had exceeded the relevant size for the applicant’s family¹⁴: held that the impugned deprivations clearly fell within the scope of the legitimate aim pursued by the Restitution Law and struck a fair balance (no violation of Article 1 of Protocol 1).

¹³ *Velikovi*, no. 43278/98, and *Cholakovi*, no. 48014/99.

¹⁴ *Wulpe*, no. 45437/99, and *Stoyanova and Ivanov*, no. 53367/99.

Property titles had been declared null and void on the basis that **the relevant documents concerning the purchase of the dwelling had been signed by an administrative authority in which such power had not been vested**: considering that the State administration had been responsible for the deficiency that led to the nullification and noting that the applicants' title had not breached substantive requirements of the legislation, it was held that the fair balance required by Article 1 of Protocol 1 could not be achieved without adequate compensation (violation of Article 1 of Protocol 1).¹⁵

Full compensation for the value of the flat: held that the threshold of hardship had not been reached (no violation of Article 1 of Protocol 1).¹⁶

Inadequate compensation received: held that the interference failed to strike a fair balance between the public interest and the applicants' rights (violation of Article 1 of Protocol 1).¹⁷

In one case entitlement to compensation was rejected as the property had not been expropriated under relevant legislation.¹⁸ In another case the applicants had lost their property due to defects found to exist in the title of the individual from whom they had purchased the property some forty years before restitution proceedings were instituted.¹⁹ In both cases the Court held that **the authorities' failure to set clear limits on the restitution of property of bona fide third parties generated legal uncertainty**. Nothing short of compensation reasonably related to the market value of the applicants' property could have maintained the requisite fair balance under Article 1 of Protocol 1 (violation of Article 1 of Protocol 1).

In the Tsonkovi case, the Court stressed that the **measures introduced by section 7 of the Restitution Law could only be seen as proportionate to the legitimate aim of restoring justice where they applied as an exceptional transitional step of short duration in the period of social transformation from a totalitarian regime to democracy**. The Court reaffirmed that by authorising a significant departure from the transitory nature of the restitution legislation by extending the relevant one-year time-limit, the authorities had violated the principle of legal certainty. Consequently, **interferences which derived from proceedings instituted after the expiry of the initial one-year time limit were held not to fall within the scope of the legitimate aims that the Restitution Law pursued**. In such instances nothing short of payment reasonably related to the market value of the flat lost could have maintained the requisite fair balance under Article 1 of Protocol 1. The European Court observed that the applicant had not received **compensation reasonably related to the market value of the property deprived** (violation of Article 1 of Protocol 1).

Just satisfaction:²⁰ The European Court recalled that in its principal judgment it had drawn a distinction between cases in which the interference with the applicants' property rights fell within the scope of the legitimate aims pursued by the Restitution Law but failed to strike a fair balance between the public interest and the individuals' rights (*Bogdanovi* and *Tzilevi*), and cases in which there had been an excessively extensive application of the Restitution Law or significant departure from the transitory nature of the restitution legislation in disregard of the principle of legal certainty (*Todorova, Eneva and Dobrev and Tsonkovi*). In relation to the first group the Court awarded the applicants a single sum in respect of pecuniary and non-pecuniary damage with reference to the value of the property and all other relevant circumstances, such as the hardship suffered. In respect of the second group, the Court reiterated that nothing short of compensation reasonably related to the market value of the property would suffice, and consequently awarded the applicants this sum in respect of pecuniary damage and a separate amount in respect of non-pecuniary damage.

¹⁵ *Bogdanovi*, no. 60036/00, *Tzilevi*, no. 73465/01, *Todorova*, no. 48380/99 and *Nikolovi*, no. 194/02.

¹⁶ *Nikolovi*.

¹⁷ *Bogdanovi* and *Tzilevi*.

¹⁸ *Todorova*

¹⁹ *Eneva and Dobrev*, no. 51362/99.

²⁰ *Todorova and Others*, no. 48380/99 *et al.*, judgment of 24 April 2008, final on 24 July 2008 (just satisfaction).

KEHAYA AND OTHERS v. BULGARIA²¹

Introductory summary

The case of *Kehaya and Others v. Bulgaria* concerns the failure by the Bulgarian courts to respect the final nature of a judgment ordering restitution to the applicants of certain plots of land collectivized in the 1950s. This lack of respect for the *res judicata* stemmed from conflicting judgments of domestic courts in relation to the applicants' request for restitution of land.

Facts and relevant domestic law

The applicants were heirs of Mrs Bozova, who had possessed land until the collectivization of agricultural land in the 1950s. Pursuant to the Agricultural Land Act 1991, the **applicants requested restitution of several plots of land**. After the local agricultural land commission partially refused the applicants' request, the district court on appeal set aside the commission's decision and **restored the applicants' title in respect of a plot of land**. In review proceedings brought by the Chief Public Prosecutor, the Supreme Court upheld the district court's judgment on 20 September 1996. The Supreme Court noted that even if part of the land had been forested after collectivisation, this was not an obstacle to restitution under the 1991 Act as only protected forests were excluded from restitution. In February 1997 the local commission ordered the restitution of the applicants' land and two months later they formally entered into possession thereof.

In proceedings brought by the local forest authority, the **Supreme Court of Cassation granted the *rei vindication* claim and ordered the applicants to vacate the land**. The Supreme Court of Cassation stated that the judgment of 1996 had been pronounced in **proceedings which were administrative in nature and that therefore the local forest authority had not been bound by them**. Moreover, it held that the ownership rights of Mrs Bozova had not been established and that the disputed land belonged to the State. The forestry authority entered into possession of the land in 2002.

Judgment of the European Court

Article 6§1: By virtue of the Supreme Court's judgment of 20 September 1996 the **applicants obtained a final judicial decision restoring to them full title to the disputed land**. While this judgment was not quashed, it was **rendered devoid of legal effect by the subsequent proceedings** brought by the local forest authority. The Supreme Court of Cassation considered that judgments delivered in proceedings under the relevant provision of the Agricultural Land Act had no effect *res judicata*, as such proceedings concerned the lawfulness of the land commissions' decision, which were administrative bodies and applied special evidentiary rules. The European Court noted that both sets of proceedings determined the property of the same legal subjects (the State and the applicants), concerned the same plot of land, and examined the same issues, namely whether Mrs Bozova had owned the land prior to the collectivization and whether the statutory conditions for restitution had been fulfilled. Regardless of their theoretical classification, **the initial proceedings had the effect of determining the applicants' property rights**. The European Court held that there was no justification for requiring the applicants to prove their case again in the subsequent proceedings. Noting that such re-examination was possible without any limitation in time, other than the expiry of the relevant period of acquisitive prescription, the approach was held to **breach of the principle of legal certainty** (violation of Article 6§1).

²¹ *Kehaya and Others v. Bulgaria*, no. 47797/99 and 68698/01, judgment of 12 January 2006, final on 12 April 2006, and judgment of 14 June 2007, final on 14 September 2007 (just satisfaction).

Article 1 of Protocol 1: The effect of the judgment of 10 October 2000 was to deny the applicants the fruits of the final judgment of 20 September 1996 and deprive them of their possessions. Recalling its findings under Article 6§1, the European Court held **that the deprivation of property at issue had been unlawful**. The public interest could not be considered to justify overriding the **fundamental principle of legal certainty** and the applicants' rights (violation of Article 1 of Protocol 1).²²

The Court found it established that one of the applicants had been **fined for using land that at the relevant time lawfully belonged to him and the other applicants** pursuant to the Supreme Court's judgment of 20 September 1996. Consequently, the **fines which were imposed amounted to an arbitrary interference** with the applicant's right to the peaceful enjoyment of possessions (violation of Article 1 of Protocol 1).

Just satisfaction: The European Court considered that the **restoration of the applicants' ownership rights and the return of their land** would put the applicants as far as possible in a situation equivalent to the one in which they would have been had there been no violation, failing which the respondent State was to **pay each applicant a sum representing his or her share of the current value of the land**. Each applicant was awarded a sum for non-pecuniary damage.

KIRILOVA AND OTHERS v. BULGARIA²³

Introductory summary

The case of *Kirilova and Others v. Bulgaria* concerns the failure of the State authorities to provide compensation to which the applicants were entitled under domestic legislation, for property expropriated between 1983 and 1990 which had belonged to them or their ancestors.

Facts and relevant domestic law

Between 1983 and 1990 the applicants', or their ancestors', **property was expropriated pursuant to orders under the Territorial and Urban Planning Act 1973 (1973 Act), for which they were to be compensated with other property**. Notwithstanding supplementary orders by which the authorities indicated the exact property with which the applicants were to be compensated, it was **not until 2004 that the authorities first transferred property in compensation**. At the time of the European Court's judgment **several of the applicants had still not received compensatory property**. The domestic authorities had cited a lack of funds for the delays.

One applicant, Mr Ilchev, instituted proceedings against the municipality under the State Responsibility for Damage Act for their failure to deliver the property offered in compensation. On remittal from the Supreme Court, which held that the **applicant had suffered damage as a result of the municipality's failure to deliver the property in compensation**, the Court of Appeal allowed the action and awarded an additional amount in compensation for pecuniary damage. Having presented a writ for execution of the judgment, the municipality informed the applicant that no amounts had been designated in its budget for the payment of the amount due and it remained unpaid.

²² The European Court also found a violation of Article 1 of Protocol 1 on the grounds of fines imposed on the applicants by the local forestry for unlawful use of the land.

²³ *Kirilova and Others v. Bulgaria*, no. 42908/98 *et al.*, judgment of 9 June 2005, final on 9 September 2005, and judgment of 14 June 2007, final on 14 September 2007 (just satisfaction).

Pursuant to a request by one applicant, Ms Metodieva, a municipal commission carried out a new valuation of the expropriated property that had belonged to her. Following proceedings at several instances, the Supreme Administrative Court held that a **valuation under section 102 of the Property Act had to be based on the market price at the time of the expropriation.**

Judgment of the European Court

Article 1 of Protocol 1: The **continuing failure of the authorities to provide the compensation awarded, amounted to an interference** with the applicants' right to peaceful enjoyment of their possessions. The applicants had tried various administrative and judicial avenues to obtain redress. The European Court observed that despite an obligation to provide the applicants with the flats offered in compensation, the **authorities adopted a passive attitude.** The alleged **lack of funds did not justify such lengthy delays.**

In respect of the request by Ms Metodieva for a new valuation of her property, the European Court noted that section 102 of the Property Act expressly stated that **expropriated property was to be valued on the basis of its market price at the time of expropriation,** and that until as late as June 2002 the Supreme Administrative Court had applied that rule. The Court held that the applicants could not have been criticised for not having availed themselves of that avenue of redress.

In respect of the redress offered by the State Responsibility for Damage Act, the European Court noted that **such an action could not compel the authorities to deliver the compensation due,** but resulted only in compensation for the delay. The proceedings which Mr Ilchev instituted in 1996 came to an end more than eight years later and at the date the European Court delivered its judgment the compensation awarded in those proceedings remained unpaid. Consequently, the European Court considered that the **authorities failed to take measures to ensure that an action under the State Responsibility for Damage Act was an effective remedy for the alleged violation of Article 1 of Protocol 1.**

The European Court concluded that the **uncertainty** the applicants faced, coupled with the **lack of effective domestic remedies** and the **reluctance of the competent authorities,** lead to the applicants having to bear a special and excessive burden (violation of Article 1 of Protocol 1).

Just satisfaction: The **pecuniary damage sustained comprised,** firstly, the **value of the flats which had still not been delivered,** and secondly, the **impossibility to use and enjoy the flats before their delivery.** As regards the former, the European Court held that the most appropriate means to eradicate the consequences of the violation would be for the respondent State to **deliver the flats due to the applicants, or equivalent property, failing which it was to pay a sum corresponding to the current value** of the flats. In respect of the former, the Court accepted the applicants' approach based on the **loss of rent,** but only on the assumption that the applicants would have indeed been able to lease the flats due to them. In the absence of conclusive proof that certain applicants could have leased their flats, the damage sustained consisted of the **expenses incurred for finding alternative accommodation.** However as the applicants had been settled in municipal housing free of charge, they had failed to establish that they were forced to incur expenses for alternative accommodation pending delivery of their flats. Nevertheless, the Court considered that the **applicants had suffered a certain loss of opportunity** and awarded sums in compensation. The Court awarded each applicant 2,000 Euros for non-pecuniary damage.

LYUBOMIR POPOV v. BULGARIA²⁴

Introductory summary

The case of *Lyubomir Popov v. Bulgaria* concerns an unjustified delay in providing compensation to the applicant in respect of collectivised agricultural land.

Facts and relevant domestic law

Between 1992 and 1998 the applicant brought a series of restitution proceedings, before both the local agricultural land commission and the district court, in respect of agricultural land which had been formerly owned by his parents and himself prior to being collectivised. In a series of decisions, **the applicant's right to have his property rights restored was recognised**. Yet there were **delays in executing aspects of these decisions**, some of which took eight to twelve years to be implemented, and as of 2006 the applicant was still awaiting restitution or compensation in respect of two plots of land.

For relevant domestic law see *Kehaya and Others v. Bulgaria*.

Judgment of the European Court

Article 1 of Protocol 1: The European Court dismissed the Government's submission that the applicant could have sought damages under the State Responsibility for Damages Act 1988, as it did not consider that there was a constant practice of the domestic courts awarding damages on the basis of unlawful acts or omissions in restitution proceedings. Moreover, such an action could not directly compel authorities to comply with final judgments of domestic courts.

Noting that the applicant had received compensation in respect of certain claims and did not allege that he would not receive compensation in respect of the others, the European Court considered that the **issue to be examined was the delay on the part of the authorities in providing compensation**, which amounted to an interference with the right to peaceful enjoyment of property. The interference was accepted to be lawful, as there was no statutory time-limits for providing compensation, and might have pursued a legitimate aim of the protection of the rights of others.

The compensation paid in respect of certain plots was received between eight and twelve years after the applicant's legitimate expectation arose on recognition of his property rights. Furthermore, as of 2006 the applicant's property rights in respect of certain plots had not been restored nor had he received compensation. Consequently, **the applicant was left in a state of uncertainty as to the realisation of his property rights and was prevented from enjoying his possessions**. While the Court acknowledged that the relevant events happened in a period of social and economic transition, in the absence of any specific justification for the delays in providing compensation, the European Court held that **the delays were unreasonable and placed an excessive burden on the applicant** (violation of Article 1 of Protocol 1).

Just satisfaction: The applicant was awarded 2,000 Euros for pecuniary damage and 1,000 Euros for non-pecuniary damage.

²⁴ *Lyubomir Popov v. Bulgaria*, no. 69855/01, judgment of 7 January 2010.

SMOJE v. CROATIA²⁵

Introductory summary

The case of *Smoje v. Croatia* concerns the excessive length of proceedings brought under the Denationalisation Act in relation to the restitution of, or compensation for, land nationalised under the communist regime.

Relevant domestic law

On 1 January 1997 the *Act on Compensation for, and Restitution of, Property Taken during the Yugoslav Communist Regime* (the Denationalisation Act) entered into force. Pursuant to section 22 of the Act, nationalised flats in respect of which third persons had acquired specially protected tenancies, were not to be restored to their former owners. The tenants had a right to purchase the flats from the *Fund for the Restitution of and Compensation for Property Taken* (“the Restitution Fund”). The former owners or their heirs had the right to financial compensation. Exceptionally, the former owners or their heirs had a right to restitution if no tenancy relationship existed in respect of the property.

Facts of *Smoje*

In 1958 a flat owned by the applicant’s grandmother was nationalised by the Communist authorities and given to D.P. who acquired a specially protected tenancy of the flat. When D.P. died it passed to his wife A.P., who died in October 1996.

***Proceedings instituted by the applicant:* On 27 February 1997 the applicant, relying on the Denationalisation Act, instituted administrative proceedings before a regional office seeking restitution of the original flat.** As both the regional office and the Ministry of Justice did not give a decision within the statutory time-limit of two-months, on 10 July 1998 the applicant instituted an action for failure to respond against the Ministry in the Administrative Court. On 17 September 1998 the regional office decided to stay the proceedings pending the outcome of concurring administrative and civil proceedings (see below). The Administrative Court found in the applicant’s favour and ordered the Ministry of Justice to decide the appeal within sixty days. As the Ministry did not comply with this order, the applicant requested that the Administrative Court give judgment on the appeal. On 27 February 2002 the Administrative Court dismissed the applicant’s appeal against the decision to stay proceedings, since the concurring administrative and civil proceedings were decisive in respect to whether he was entitled to restitution of the flat or compensation. On 10 December 2002 the Constitutional Court declared the applicant’s complaint alleging a violation of his right to property inadmissible as premature given that concurring proceedings were pending. **In July 2005 the regional office resumed the administrative proceedings, which were still pending when the European Court delivered its judgment.**

Concurring administrative and civil proceedings: On 7 January 1997 N.K., the daughter of D.P. and A.P., filed an application to be recognised as holder of a specially protected tenancy in respect of the flat. Her request was ultimately dismissed by the administrative authorities. During this period the local authorities had brought a civil action seeking the eviction N.K, who filed a counter-claim seeking conclusion of a lease contract under a specially protected tenancy. Following the dismissal of the local authority’s claim and a **finding that N.K. had *ex lege* acquired a specially protected tenancy**, the applicant, who had intervened in the proceedings, appealed against the decision. The applicant’s appeal was dismissed, and on 15 December 2004 N.K. concluded, instead of a lease contract, a sale contract with the Restitution Fund by which she bought the flat.

²⁵ *Smoje v. Croatia*, no. 28074/03, judgment of 11 January 2007, final on 11 April 2007.

Judgment of the European Court

Admissibility: In relation to the admissibility of the applicant's complaint concerning the length of the proceedings, the European Court observed that recent practice indicated that the **Constitutional Court, when examining a constitutional complaint concerning the length of proceedings, considers only the inactivity of judicial authorities to be relevant.** As the applicant complained about the length of the proceedings pending before the administrative authorities, the European Court held that a **constitutional complaint under section 63 of the Constitutional Court Act could not be considered an effective remedy** (see violation of Article 13 in *Štokalo and Others v. Croatia*).

Article 6§1: The European Court considered that the **length of the administrative proceedings, which had lasted some nine years and were still pending, was unreasonable and called for a global assessment.** Although the decision to stay the proceedings could in principle be regarded as justified for the fair administration of justice, the European Court considered that the undue delay which had occurred in the concurrent cases had inevitable repercussions on the proceedings instituted by the applicant. The length of the proceedings complained of was imputable to the authorities. Noting that the government had failed to adduce any argument capable of justifying the length of the proceedings, the European Court held that the proceedings failed to meet the "reasonable time" requirement (violation of Article 6§1).

Article 1 of Protocol 1: The applicant also complained that the decision of the Administrative Court of 27 February 2002, and the resulting sale of the flat, amount to a violation of his right to property as he had been prevented from obtaining restitution of the flat. The European Court observed that the applicant still had an opportunity to bring an action against the parties to the sale with a view to having it declared null and void, but had not done so (inadmissible).

Just satisfaction: The European Court discerned no causal link between the violation and the pecuniary damage alleged, however awarded 4,800 Euros in respect of non-pecuniary damage.

Notable measures adopted by the respondent State

By a decision of 20 June 2007, the Constitutional Court, following the case-law of the European Court, changed its case-law and established that in all future cases examining the length of administrative proceedings, the period during which the case was pending before the administrative authorities should also be taken into consideration.

GRATZINGER AND GRATZINGEROVA v. THE CZECH REPUBLIC²⁶

Introductory summary

The case of *Gratzinger and Gratzingerova v. the Czech Republic* concerns whether the applicants had a "possession" for the purposes of Article 1 of Protocol 1, following the dismissal of their claim for restitution of property on the grounds that they failed to satisfy the statutory condition of Czech nationality.

Relevant domestic law

Article 11 §§ 1 and 2 of the Charter on Fundamental Rights and Freedoms provided, *inter alia*, that everyone has the right to property, however that certain kinds of property may be owned exclusively by nationals of the Czech and Slovak Republic.

²⁶ *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], decision of 10 July 2002.

The Extrajudicial Rehabilitation Act 1991 provided for the restitution of property arising from quashed confiscation proceedings, subject to certain conditions. **Section 3(1) provided that all natural persons who were nationals of the Czech and Slovak Republic were entitled to claim restitution of any property that passed into State ownership.** Where the property could not be returned, an eligible claimant was to receive pecuniary compensation. Section 19(1) provided that any person who had been rehabilitated under the Judicial Rehabilitation Act was entitled to claim restitution provided that he or she satisfied the conditions laid down in section 3(1).

Facts

In 1978 the applicants acquired property in Czechoslovakia. The applicants left Czechoslovakia in 1982, eventually settling in the United States of America where they obtained nationality in 1989, thereby **automatically losing their Czechoslovakian nationality.** In 1983 a district court convicted the applicants *in absentia* of deserting the Republic, ordering the **confiscation of their property.** On 12 September 1990 the same court declared that, pursuant to the Judicial Rehabilitation Act 1990, the applicant's convictions and all ancillary decisions had been automatically quashed with retrospective effect.

On 13 February 1993 the regional court upheld a judgment of district court **dismissing the applicants' civil action for recovery of the property, as they had not satisfied the nationality requirement** in the Extrajudicial Rehabilitation Act. The applicants' constitutional appeal was dismissed, as the Constitutional Court was already seized of this matter. On 4 June 1997 the **Constitutional Court dismissed an application for the abrogation of section 3(1),** noting that Article 11§2 of the Charter was a special provision in relation to the constitutional principle of equality between nationals of the Czech and Slovak Republic in the acquisition and protection of property rights, and thus afforded the legislature some latitude in limiting those entitled to restitution. On 2 September 1997 the reporting judge of the Constitutional Court dismissed the applicants' appeal against the regional courts' judgment of 13 February 1993.

Decision of the European Court

Article 1 of Protocol 1: the European Court reiterated that "possessions" within the meaning of Article 1 of Protocol No. 1 can be either "existing possessions" or assets, including claims, in respect of which an applicant can argue that he has at least a "legitimate expectation" that they will be realised. The applicant's action did not concern an "existing possession" as they did not have the status of owners but were merely claimants. As to whether the applicants had a "legitimate expectation" that a current, enforceable claim would be determined in their favour, the European Court noted that at the time when they brought their action for restitution, **the Extrajudicial Rehabilitation Act provided that only those rehabilitated by the courts who had Czech nationality were entitled to make restitution claims.** As the Extrajudicial Rehabilitation Act did not afford the applicants any possibility of regaining their former ownership, the only chance of the applicants' claim succeeding lay in having the legal provision that imposed the nationality requirement set aside on the ground of being unconstitutional. However, the European Court held that a belief that the law then in force would be changed to the applicants' advantage could not be regarded as a form of legitimate expectation for the purposes of Article 1 of Protocol 1. The European Court thus concluded that the **applicants had not shown that they had a claim which was sufficiently established to be enforceable,** and they therefore could not argue that they had a "possession" within the meaning of Article 1 of Protocol 1 (inadmissible).

PINCOVÁ AND PINC v. THE CZECH REPUBLIC²⁷

Introductory summary

The case of *Pincová and Pinc v. the Czech Republic* concerns the inadequate compensation received by the applicants, whose house, which they had obtained in good faith during the communist regime following its expropriation, was returned to the heir of the original owners pursuant to restitution proceedings.

Relevant domestic law

Article 11 of the Charter on Fundamental Rights and Freedoms provides, *inter alia*, that everyone has the right to property. Expropriation or enforced restriction of the right to property is permissible only in the public interest, in accordance with the law and in return for compensation.

The **Land Act 1991** applied to land or property which had formerly been part of an agricultural undertaking. Where such land or property had been transferred to the State or a legal person by confiscation without compensation between 25 February 1948 and 1 January 1990, the **Land Act provided for its return to the original owner subject to certain conditions being met**. It was for the courts to decide whether to return property in the possession of a natural person who acquired it from the State or another legal person (i) in breach of the rules then in force, (ii) at a price lower than the price required by the regulations applicable at the material time, or (iii) enjoying an unlawful advantage at the time of purchase. **A person who was obliged to return property was entitled to reimbursement of the purchase price and the costs reasonably incurred for its upkeep.**

Facts

On 29 December 1967 the first applicant and her husband purchased a house (the second applicant was their son, who following his father's death became co-owner of the house). The landlord, a State enterprise, had acquired the house without compensating the former owners, who had been dispossessed of their property in 1948. On 12 September 1994 the **district court allowed an application by the son of the former owners seeking recovery of the property and transferred title to him**. On the basis of an expert opinion which it had commissioned, the district court reasoned that the **price paid by the first applicant and her husband for the house was lower than that required by the regulations then in force**. On 4 January 1995 the regional court dismissed an appeal in which the applicants submitted that the initial valuation and contract of sale had been drafted by the vendor and that the transaction had been effected in accordance with the legislation then in force. A subsequent application by the applicants to have the proceedings reopened was rejected by the district court and the Supreme Court on appeal.

During this period the applicants submitted a constitutional appeal alleging a breach of their right to protection of their property, submitting that they had purchased the house in accordance with the rules then in force and without any unlawful advantage. They further **complained that they had been deprived of fair and appropriate compensation**. On 13 January 1997 the **Constitutional Court dismissed the applicants' appeal** upholding the ordinary courts' application of the law.

The applicants were reimbursed by the Ministry of Agriculture for the purchase price they had paid in 1967 and the sum they had paid for the right to make personal use of the land. However, **proceedings in**

²⁷ *Pincová and Pinc v. the Czech Republic*, no. 36548, judgment of 5 November 2002, final on 5 February 2003. See also, *Zvolský and Zvolská v. the Czech Republic*, no. 46129/99, judgment of 12 November 2002, final on 12 February 2003.

respect of the reimbursement of costs they had reasonably incurred for the upkeep of the house were still pending when the European Court delivered its judgment. The applicants continued to live in the house. The new owner had refused to sign a tenancy agreement but had brought an action in the district court seeking payment of rent arrears.

Judgment of the European Court

Article 1 of Protocol 1: The applicants suffered an interference with their right of property which amounted to a **deprivation of possessions**. The deprivation was lawful as it was based on the Land Act. The European Court noted that the aim pursued by the Land Act was to attenuate the effects of the infringements of property rights that occurred under the communist regime, and therefore considered that the general purpose of the Land Act was “in the public interest”. In relation to the proportionality of the interference, the European Court reiterated that where a person has been deprived of his property, a balance between the demands of the general interest and the requirements of fundamental rights is generally achieved where the **compensation paid to the person whose property has been taken is reasonably related to its “market” value, as determined at the time of the expropriation.**

The European Court observed that **the purchase price paid in 1967, which was returned to the applicants, could not have been reasonably related to the property’s value thirty years later.** It also noted that the applicants were in an uncertain and difficult social situation, as they were unable to buy somewhere else to live with the reimbursed purchase price. Moreover, while they had not been compelled to leave the house, the new owner had asked the applicants to pay a monthly rent even though no tenancy agreement existed. Consequently, the Court held that the compensation awarded to the applicants did not take account of their personal and social situation, and that they were **not awarded any sum for the non-pecuniary damage sustained.** In addition, they had still not obtained reimbursement of the costs reasonably incurred for the upkeep of the house. The European Court concluded that the **applicants had endured an individual and excessive burden** which had failed to strike a fair balance between the demands of the general interest and protection of the right to the peaceful enjoyment of possessions (violation of Article 1 of Protocol 1).

Just satisfaction: The European Court awarded the applicants 35,000 Euros for the pecuniary and non-pecuniary damage they had sustained.

Execution: In its Final Resolution CM/ResDH(2007)30, the Committee of Ministers noted that the violation found in this case was isolated and did not call for legislative change.

BAŤA v. THE CZECH REPUBLIC²⁸

Introductory summary

The case of *Bat'a v. the Czech Republic* concerns the refusal of the domestic authorities to recognise the applicant’s claim for compensation in respect of a company which had been nationalised during the communist regime.

Facts and relevant domestic law

The applicant is the son of the founder of the Bat’a Shoe Company, a substantial enterprise in former Czechoslovakia. According to the applicant, on the death of his father in 1932, he and his mother inherited

²⁸ *Bat'a v. the Czech Republic* (dec.), no. 43775/05, decision of 24 June 2008.

75% and 25% respectively of the company's shares. The government submitted that the applicant's father sold the shares to the applicant's step-uncle, which was confirmed by the father's will as interpreted by a district court in inheritance proceedings concluded in 1933, which neither the applicant nor his mother contended. Shortly before the Second World War the applicant moved to Canada. The **company was nationalised pursuant to Decree 100/1945 ("the Decree") issued by the President of Czechoslovakia on 24 October 1945**, which prescribed that certain industries were nationalised as of that date. While section 8 of the Decree expressly provided for compensation, no such compensation was paid to the company's owners.

On 9 January 1991 the **Ministry of Justice and the Ministry of Trade refused the applicant's claims for compensation, stating that the applicant's step-uncle had been the owner of the company.**

Decision of the European Court

Article 1 of Protocol 1: The European Court noted that **redress under restitution laws could be provided only when an injured person raised a claim and met all requirements set forth therein.** Throughout the 1990s the domestic courts had been of the view that the restitution laws barred recourses for redress of past injustices based on other laws. In the light of these circumstances, **the applicant's claim lacked any prospect of being upheld by the national courts.**

The European Court distinguished the situation of the applicant from that in the case of *Broniowski v. Poland*,²⁹ where, after its accession to the Convention, the legislature of the respondent State enacted a law whereby it reaffirmed its obligations arising from pre-ratification legislation, and where the applicant's claim was recognised by national courts. The European Court concluded in the instant case that **under the relevant law, as applied and interpreted by domestic authorities, the applicant had neither a right nor a claim amounting to a legitimate expectation of obtaining compensation** and, therefore, could not be regarded as having a "possession" within the meaning of Article 1 of Protocol 1 (inadmissible).

Articles 6 and 13: The applicant complained that due to the case-law of the national courts concerning the restitution laws he was denied access to a court, and lacked an effective remedy in this respect. The European Court observed that the **applicant was not prevented from raising his claim for compensation before national courts**, and his complaint rather concerned the lack of any prospect of success in such proceedings. The mere fact that an applicant is dissatisfied with the outcome of litigation cannot of itself raise an arguable claim of a breach of Article 6. Moreover, considering that the applicant did not have a "possession" within the meaning of Article 1 of Protocol 1, the European Court found the complaint as to the alleged lack of an effective remedy to be manifestly ill founded (inadmissible).

BEČVÁŘ AND BEČVÁŘOVÁ v. THE CZECH REPUBLIC³⁰

Introductory summary

The case of *Bečvář and Bečvářová v. the Czech Republic* concerns the applicants' eviction from a house they had bought from the State following its expropriation, which was returned to the former owners after the fall of the communist regime. The case concerns also the length of the proceedings for reimbursement of the price paid for the house.

²⁹ *Broniowski v. Poland* [GC], no. 31443/96, judgment of 22 June 2004.

³⁰ *Bečvář and Bečvářová v. the Czech Republic*, no.58358/00, judgment 14 December 2004, final on 14 March 2005.

Facts and relevant domestic law

In January 1986 the applicants bought a house from the State, which had been seized after the emigration of the former owners. In January 1996 the **applicants were ordered to restore the property to the former owners pursuant to the Extrajudicial Rehabilitation Act**, and were subsequently ordered to vacate the property. **Following an unsuccessful request to suspend the eviction, an appeal was still pending before the regional court** when the European Court delivered its judgment.

The former owner instituted proceedings against the applicant for illegal use of the house since 1 January 1996, seeking payment of outstanding rent. The applicants lodged a **counter-claim pursuant to section 7(4) of the Extrajudicial Rehabilitation Act**. Section 7(4) provides that if the value of the property substantially exceeds its original purchase price, it is left to the discretion of the former owner whether he or she will request financial compensation or the return of the property. If the owner insists on restitution of the property, he or she must compensate the person obliged to return the property for the difference between the two prices.

In September 2007 the applicants lodged with the Ministry of Finance a request for reimbursement of the purchase price. Section 11 of the Extrajudicial Rehabilitation Act entitles persons who are under an obligation to restore property to recover the price they had paid when acquiring such property from the State. On 18 January 1999 the applicants lodged an action for damages against the Ministry of Finance and the district office under the State Liability Act, seeking compensation for damage caused by the allegedly erroneous action of a public authority. The damages corresponded, *inter alia*, to the difference between the original purchase price of the property and the present-day value. On 14 July 2003 the district court decided to consider separately the proceedings in respect of the reimbursement of the original purchase price, and dismissed the remainder of the applicants' claim for damages. On the same day, the **Ministry of Finance reimbursed the applicants for the purchase price**. The applicants filed an **appeal on points of law in Supreme Court, which was still pending** when the European Court delivered its judgment. On 21 June 2004 the district court stayed proceedings concerning the reimbursement of the original purchase price, and **ordered the Ministry of Finance to pay interest for the delays in payment since 18 January 1999**. The defendant lodged an appeal and the appellate proceedings were pending when the European Court delivered its judgment.

Judgment of the European Court

Article 6§1: While the proceedings may have been complex from a procedural, factual and legal perspective, this in itself was held not to justify their total length. The conduct of the applicants was held not to have significantly prolonged the proceedings. In contrast there were specific periods of delay attributable to the domestic courts. **What was at stake in the proceedings was undoubtedly of significant importance for the applicants, and required the domestic courts to act with particular diligence.** The European Court concluded that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement (violation Article 6 § 1).

Article 1 of Protocol 1: The order to return the property to the former owners constituted a clear interference with the applicants' possessions, amounting to a deprivation. The European Court accepted, having regard to the State's margin of appreciation, that the deprivation had served not only the interests of the original owners, but the general interests of society as a whole, noting that the Extrajudicial Rehabilitation Act aimed to mitigate certain wrongs caused by undemocratic acts in the past and to prevent their re-occurrence. The Court observed that the **applicants had only been reimbursed the original purchase price in July 2003**. However, in this respect the European Court observed, *inter alia*, that the **applicants had submitted a counter-claim for compensation for the increase in the property's value, relying on section 7(4) of the Extra-Judicial Rehabilitation Act**. Moreover, the **decision of the district**

court, by which the applicants were awarded interest for the delays in payment of the purchase price since 18 January 1999, was the subject of pending appellate proceedings. In these circumstances, the European Court did not consider that the Czech authorities had acted beyond their margin of appreciation or that the burden borne by the applicants was disproportionate (inadmissible).

Just satisfaction: The European Court did not discern any causal link between the violation and the pecuniary damage alleged, however awarded the applicants jointly 2,500 Euros in respect of non-pecuniary damage.

VON MALTZAN AND OTHERS v. GERMANY³¹

Introductory summary

In the case of *Von Maltzan and Others v. Germany*, pursuant to laws enacted following German reunification, the applicants were unable to obtain restitution of property expropriated during the Soviet occupation or the existence of the German Democratic Republic, or compensation of an amount commensurate with its value.

Facts

Sixty-five of the applicants were natural persons who were the **heirs of the owners of land or property that was expropriated in the Soviet Occupied Zone of Germany between 1945 and 1949**. Two legal entities among the applicants also owned land that was expropriated during that period. After the reunification of Germany they **unsuccessfully applied to the relevant authority for restitution of their land and buildings**. Three of these applicants also unsuccessfully applied under the Administrative Rehabilitation Act for the rehabilitation of their ancestors.

Five applicants were natural persons who were the **heirs of owners of land or buildings that were expropriated after 1949 pursuant to a decision of the authorities of the German Democratic Republic (GDR)**. After German reunification, the relevant authorities rejected their applications for restitution of their property on the grounds laid down in the Property Act, namely that the third parties who had acquired the property in the meantime had done so in good faith or that restitution was impossible in practice.

Twenty-one of the applicants applied to the Federal Constitutional Court arguing that the Indemnification and Compensation Act was incompatible with the Basic Law. In a leading judgment of 22 November 2000 the Federal Constitutional Court dismissed their application, holding that the provisions did not infringe the Basic Law.

Relevant domestic law

The *Joint Declaration on the Resolution of Outstanding Property Issues* was issued by both German Governments on 15 June 1990 and laid down the fundamental principles relating to property issues. The **Property Act** of 23 September 1990 provided that persons whose property was unlawfully expropriated at the time of the GDR were in principle entitled to restitution unless it was impossible to return it in practice or it had been purchased in good faith. In such cases the former owners had a right to indemnification under the Indemnification Act of 27 September 1994. The Property Act did not apply to expropriations of property carried out by the Soviet occupying forces between 1945 and 1949.

³¹ *Von Maltzan and Others v. Germany* [GC] (dec.), nos. 71916/01, 71917/01 and 10260/02, decision of 2 March 2005.

The **Indemnification and Compensation Act** of 27 September 1994 (comprised of two acts, the Indemnification Act and the Compensation Act) governed the terms and conditions for indemnifying (post-1949 expropriations) or compensating (1945-1949 expropriations) persons whose property had been expropriated. If the amount of indemnification or compensation exceeded 10,000 DEM it was reduced by a specified percentage.

The legislature also enacted two laws governing rehabilitation; the Criminal Rehabilitation Act of 29 October 2009 and the **Administrative Rehabilitation Act** of 23 June 1994. The latter provided that where property was confiscated pursuant to an administrative measure which was incompatible with the principles of the rule of law and had lasting direct, unreasonable and intolerable effects, **restitution of the property or indemnification for its confiscation was governed by the Property Act.**

The Federal Constitutional Court delivered several leading judgments on land reform upholding the constitutionality of the various statutes enacted.

Decision of the European Court

Article 1 of Protocol 1

Existence of “possessions”: The present case did not concern “existing possessions”, as most of the applicants had inherited property which had been expropriated long before. As the Federal German Republic (FGR) was not responsible for acts committed at the instigation of the Soviet occupying forces or the GDR authorities, the European Court lacked competence *ratione temporis* and *ratione personae* to examine the circumstances in which the expropriations were carried out or their continuing effects.

1945-1949 expropriations: The European Court held that there was **no legal basis that gave rise to a legitimate expectation that the applicants would secure restitution of their property.** The Joint Declaration of 15 June 1990 indicated that “the expropriations carried out by the occupying authorities [between 1945 and 1949] can no longer be revoked.” The European Court found that the applicants’ **rights regarding the amount of compensation they could legitimately expect to receive were clearly established in the Indemnification and Compensation Act.** The claims of the legal entities fell outside the provisions of the Indemnification and Compensation Act as they were not entitled to any compensation under that Act.

Some of the applicants submitted that they were eligible for rehabilitation coupled with restitution of the property of which they had been deprived. The European Court observed that the applicants’ claims clearly did not fall within the provisions of the Criminal Rehabilitation Act. Moreover, in terms of administrative rehabilitation, the Joint Declaration stated that expropriations carried out by the occupying authorities between 1945 and 1949 could no longer be revoked. Moreover, **it was clear from the Administrative Rehabilitation Act, taken in conjunction with the Property Act, that the former did not allow restitution of property confiscated between 1945 and 1949.**

Post-1949 expropriations: The European Court noted that the Joint Declaration established the principle that confiscated property must be returned unless this is impossible or third parties have acquired it in good faith. Those principles were subsequently implemented in the Property Act and the Indemnification Act. Contrary to the applicants’ submissions, the European Court considered that the **applicants’ rights regarding the conditions for recovery were clearly established by the Property Act.** Where those conditions were not fulfilled, because restitution was impossible in practice or third parties had acquired the property in good faith, the **applicants’ claims clearly fall outside the scope of that Act.** The same was true of the applicants’ rights regarding the amount of indemnification that they could legitimately expect to receive, which were clearly established by the Indemnification and Compensation Act.

Conclusion: The European Court noted the **exceptional context of German reunification** and the **enormous task faced by the German legislature in dealing with the complex issues** which inevitably arose at the time of transition from a communist regime to a democratic market-economy system. Where a State elects to redress the consequences of certain acts that are incompatible with the principles of a democratic regime but for which it is not responsible, it has a **wide margin of appreciation** in the implementation of that policy. In challenging the constitutionality of the statutes enacted after German reunification, the applicants had hoped to obtain either restitution of their property or compensation or indemnification commensurate with its real value. However, the belief **that the laws then in force would be changed to the applicants' advantage could not be regarded as a form of legitimate expectation** for the purposes of Article 1 of Protocol 1.

The European Court concluded that **the applicants had not shown that they had claims that were sufficiently established to be enforceable, and could not therefore argue that they had “possessions”**. Consequently, **neither the statutes in question nor the judgments of the Federal Constitutional Court amounted to an interference with the peaceful enjoyment of their possessions** (*inadmissible*).

Article 6

The twenty one applicants who had applied to the Federal Constitutional Court complained that the length of those proceedings exceeded the reasonable length requirement. The period to be considered began on 29 June 1995, when the applicants lodged their application, and ended on 22 November 2000, when the Federal Constitutional Court delivered its judgment (nearly five years and five months later). The European Court noted, *inter alia*, that the **case raised fundamental questions about the criteria adopted by the legislature for compensating the heirs of persons whose property had been expropriated** during the Soviet Occupation or in the GDR. Having highlighted the **importance of the principle of the proper administration of justice**, the Court found that it had been reasonable for the Federal Constitutional Court to group all cases on similar issues so as to obtain a comprehensive view of the matter. Although what was at stake was of undeniable importance to the applicants, payments of indemnification and compensation were not in any event scheduled to be made before 2004. Having regard to the circumstances of the case, and particularly the **exceptional context of German reunification**, the European Court found that the “reasonable time” prescribed by Article 6§1 was not exceeded (*inadmissible*).

JAHN AND OTHERS v. GERMANY³²

Introductory summary

The case of *Jahn and Others v. Germany* concerns a deprivation of property, which had been allocated to the applicants' family during the Soviet occupation of Germany, following the reunification of the State, without compensation.

Facts and relevant domestic law

In 1945 the Soviet occupying forces in Germany expropriated land from private individuals which was redistributed to farmers who had little or no land. The applicants **had inherited land allocated to their ancestors, subject to restrictions on disposal**. In March 1990, the German Democratic Republic (GDR) passed the **Modrow Law**, which lifted all restrictions on the disposal of land acquired under the land reform, whereupon those in possession of the land acquired full title to it.

³² *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, judgment of 30 June 2005.

After German reunification, the Parliament enacted the second Property Rights Amendment Act, which entered into force on 22 July 1992 amending the Introductory Act to the Civil Code. Pursuant to those amendments the **applicants were ordered to reassign their property to the tax authorities of their respective Land without receiving compensation** as they did not satisfy the conditions for allocation, namely they did not carry out an activity in certain sectors. The applicants' judicial challenges were dismissed by the domestic courts, including the Federal Constitutional Court, which found no breach of the applicants' fundamental rights.

Judgment of the European Court

The European Court held that the interference constituted a **deprivation of property** within the meaning of the second sentence of Article 1 of Protocol 1 to the Convention. As the interference was based on the Introductory Act to the Civil Code, the deprivation was provided for by law. Moreover, the European Court had no reason to doubt that the aim of that Act, to settle property matters arising from the land reform and correct the effects of the Modrow Law, was "in the public interest".

The European Court examined whether, **in the light of the unique context of German reunification, the circumstances of the case could be regarded as exceptional justifying the lack of any compensation**. In that context, the European Court reiterated that the State has a **wide margin of appreciation** when passing laws in the context of a change of political and economic regime.

Holding that the **interference was proportionate**, the European Court identified three decisive factors:

- (i) The Modrow Law was passed by a parliament that had not been democratically elected, during a transitional period between two regimes that was inevitably marked by upheavals and uncertainties. In those circumstances, **even if the applicants had acquired a formal property title, they could not be sure that their legal position would be maintained;**
- (ii) **A fairly short period of time elapsed between German reunification and the enactment of the second Property Rights Amendment Act**, and consequently the German legislature was deemed to have intervened within a reasonable time to correct the effects of the Modrow Law;
- (iii) **The German Parliament could not be deemed to have been unreasonable in considering that it had a duty to correct the effects of the Modrow Law for reasons of social justice**. Given the "windfall" from which the applicants undeniably benefited as a result of the Modrow Law, **the fact that this correction was made without paying any compensation was not disproportionate**.

Having regard to all the foregoing considerations and taking account, the European Court concluded that **in the unique context of German reunification, the lack of any compensation did not upset the "fair balance" that has to be struck between the protection of property and the requirements of the general interest** (no violation of Article of Protocol 1).

JASIŪNIENĖ v. LITHUANIA³³

Introductory summary

The case of *Jasiūnienė v. Lithuania* concerns the failure of the domestic authorities to take the necessary measures to execute the judgment of a domestic court in relation to the restitution of nationalised property.

³³ *Jasiūnienė v. Lithuania*, no. 41510/98, judgment of 6 March 2003, final on 6 June 2003

Facts and relevant domestic law

The **Restitution of Property Act 1991** provided two forms of restitution, namely the return of the original property or compensation in kind or pecuniarily. In decisions adopted in 1994 and 1995, the Constitutional Court emphasised that the notion of restitution of property rights essentially denoted partial reparation, which Parliament had selected in view of the difficult political and social conditions. The authorities were required under the Act to obtain the written permission of the claimant before they determined compensation for property which could not be returned. Pursuant to an amendment to the Act in 1999, the authorities were entitled to decide the compensation without the claimant's approval.³⁴

In September 1992 the Palanga City Council, referring to the Restitution of Property Act, **decided to restore the property rights of the applicant** and her sister in respect of their late mother's land, which had been nationalised under the Soviet regime. As that decision was not implemented the applicant brought proceedings against the local authority for recovery of the land. On 3 April 1996 the regional court held that the decision of the City Council did not comply with the Restitution of Property Act, as they had **not decided what compensation should have been offered**. The regional court ordered the county administration to adopt a decision by 30 June 1996 in respect of the applicant's claim to restore her property rights. **No such decision was taken as the applicant refused land in another area of Palanga**. In August 1996 the applicant obtained an execution warrant in respect of the regional court's judgment of 3 April 1996 however the bailiffs were unable to execute the warrant. **The administration took no further decision following another refusal by the applicant of an offer of alternative land**. In 1999 the executive authorities informed the applicant that she had not proved her mother's ownership of the original plot, and therefore could not proceed with a decision on compensation.

Judgment of the European Court

Article 6§1: The European Court rejected the government's contention that the regional court's judgment placed no obligation on the State to afford the applicant compensation as she had not proved her entitlement to ownership rights in respect of the original plot; it was clear from the judgment of 3 April 1996 that the regional court did not deny the applicant the merit of her claim. It was accepted by the European Court that the non-execution of the regional court judgment until 1999 could have been attributable to the applicant in view of her refusal of various offers of compensation. However, there was held to be **no justification for the non-execution of the judgment following amendments to Restitution of Property Act in 1999** which dispensed with the requirement for authorities to obtain the written consent of the claimant before they determined compensation. This **failure to take measures necessary to comply with judgment, deprived the provisions of Article 6§1 of all useful effect** (violation of Article 6§1).

Article 1 of Protocol 1: The European Court considered that the regional court's judgment, which was never revoked, provided the applicant with an enforceable claim that constituted a "possession". Recalling its findings in respect of Article 6§1, the Court held that **the failure to execute the judgment after amendments to the Restitution of Property Act was solely attributable to the authorities, and constituted an interference with the applicant's right to peaceful enjoyment of possessions**. Noting that **no plausible justification had been stated for this interference**, the European Court observed that the national authorities had **prevented the applicant from obtaining compensation she could reasonably have expected to receive** (violation of Article 1 of Protocol 1).

Just satisfaction: The applicant was awarded 9,000 Euros for pecuniary and non-pecuniary damage.

³⁴ For a more detailed description of the relevant domestic law see *Jasiūnienė* §§ 22 and 23.

UŽKURĖLIENĖ AND OTHERS v. LITHUANIA³⁵

Introductory summary

The case of *Užkurėlienė and Others v. Lithuania* concerns the non-enforcement of a Supreme Court judgment in relation to the restitution of nationalised property.

Facts and relevant domestic law

In September 1991 the applicants requested compensation under the Restitution of Property Act in respect of land which had belonged to their father prior to being nationalised under the Soviet regime. The applicants subsequently requested in December 1993 restitution of the original land. The administrative authorities informed the applicants that **part of the original land had already been allocated to a third party**. Following unsuccessful restitution proceedings brought by the applicants, on 20 May 2000 the Supreme Court held that the **lower courts had been responsible for the delays** in restoring the applicants' property rights under the Act. The Supreme Court ordered the regional administration to take a decision in respect of the applicants' property rights, and noted that while part of the original land could not be returned, the applicants were entitled to compensation in lieu thereof. Thereafter, a number of administrative decisions in execution of the Supreme Court's judgment were taken between March 2002 and July 2004, as result of which restitution of the original land or compensation in lieu thereof was afforded to applicants in respect of approximately three quarters of the original land. In relation to the remaining proportion of the original land, offers of compensation in kind had been made to the applicants but the **transfer of property rights had not been finalised**.

For the relevant domestic law on the restitution of property see *Jasiūnienė v. Lithuania* above.

Judgment of the European Court

Article 6§1: Noting that the Act gives discretion to the administrative authorities to determine the form in which property rights are realised, the European Court held that the Supreme Court's judgment did not order the unconditional return of the original property. The Court held that **the failure to finalise the transfer of property rights was imputable to the applicants' inactivity in response to offers of compensation**. The Supreme Court's judgment empowered the administrative authorities to carry out a complex set of actions which necessitated not only the analysis of various historical, legal and technical documents, but required the participation of the applicants. The European Court noted that the **first offer of compensation was made almost two years after the Supreme Court's judgment, and the last offer was made slightly over a further two years later**. The European Court held that while such a lapse of time was regrettable, it could not be compared to the circumstances in *Jasiūnienė* (see above). The European Court concluded that the delays in execution were not such as to impair the right to a court (no violation of Article 6§1).

Article 1 of Protocol 1: Although the judgment of the Supreme Court provided the applicants with an enforceable claim that constituted a "possession", the European Court held that, as **the authorities had duly exercised their discretion in executing the impugned judgment with no serious delays**, there had been no interference with the applicants' possessions (no violation of Article 1 of Protocol 1)

³⁵ *Užkurėlienė and Others v. Lithuania*, no. 62988/00, judgment of 7 April 2005, final on 7 July 2005.

IGARIENĖ AND PETRAUSKIENĖ v. LITHUANIA³⁶

Introductory summary

The case of *Igarienė and Petrauskienė v. Lithuania* concerns the excessive length of civil proceedings in relation to the restitution of property and a corresponding delay in realising the property rights of the applicants through restitution of the original property or providing compensation in lieu thereof.

Facts and relevant domestic law

In October 1993 the **Deputy Mayor of Kaunas and the applicants signed a statement which transferred property to the latter**, pursuant to an administrative decision of 17 November 1992 which recognised their right to restitution. The property in question was at the time occupied as a pharmacy. In subsequent decisions the **administrative authorities subsequently declared the statement null and void** and specified that the applicants would be paid compensation in respect of the property. In June 1994 the applicants instituted civil proceedings challenging the decisions of the administrative authorities. Thereafter followed several **protracted proceedings**, in which the Supreme Court had twice quashed the lower courts' decisions for having failed to assess all the relevant circumstances and remitted the case for fresh examination. On 18 February 2004 the Kaunas District Court dismissed the applicants' action, observing that the law had not required restitution of the original property if it had been occupied by public-interest institutions, such as a pharmacy, and left the determination of compensation to the administrative authorities. **On 11 December 2008 the authorities issued an order to pay the applicants pecuniary compensation for the property.**

There are various provisions under the Constitution and the Civil Code concerning domestic remedies in relation to the length of proceedings (see *Četvertakas and Others v. Lithuania*³⁷, no. 16013/02, 20 January 2009). For relevant domestic law on the restitution of property see *Jasiūnienė v. Lithuania* above.

Judgment of the European Court

Article 6§1: The government did not adduce any evidence to demonstrate that the remedies under Civil Code had any prospect of success.³⁸ Although the proceedings were instituted in June 1994, the period falling within the jurisdiction of the European Court started on 20 June 1995, when the Convention entered into force in respect of Lithuania, and lasted until 26 January 2005. **The proceedings were acknowledged to be complex** in view of the number of participants, ongoing legislative amendments and the nature of proceedings concerning restitution. There was no evidence however that the applicants had disrupted the proceedings proper conduct. The European Court noted, *inter alia*, that **owing to the lower courts' failure to assess all the circumstances in the case, the Supreme Court had twice remitted the case to the lower courts for fresh examination.** These circumstances were sufficient for the European Court to conclude that the total length of the civil proceedings breached the "reasonable time" requirement (violation of Article 6§1).

Article 1 of Protocol 1: The administrative decision of 17 November 1992 to restore the applicants' property rights provided them with an **enforceable claim constituting a "possession"**. As the applicants did not receive the first part of that compensation until 29 December 2008, there was an interference with their right to peaceful enjoyment of their possessions. The European Court reiterated that **compensation for the loss sustained by a deprivation of property must be paid within a reasonable time.** Recalling

³⁶ *Igarienė and Petrauskienė v. Lithuania*, no. 26892/05, judgment of 21 July 2009, final on 21 October 2009.

³⁷ *Četvertakas and Others v. Lithuania*, no. 16013/02, judgment of 20 January 2009, final on 20 April 2009.

³⁸ See *Baškienė v. Lithuania*, no. 11529/04, judgment of 24 July 2007, final on 10 December 2007.

its finding under Article 6§1, the hindrance to the peaceful enjoyment of property was held to be mainly attributable to the State. The European Court held that **the overall length of the restitution proceedings did not strike a fair balance between the general interest in securing the property for public needs and the applicants' personal interest in the peaceful enjoyment of their possessions** (violation of Article 1 of Protocol 1).

Just satisfaction: The European Court found no causal link between the violation and the pecuniary damage alleged, but awarded each applicant 4,500 Euros for non-pecuniary damage.

PRODAN v. MOLDOVA³⁹ AND POPOV v. MOLDOVA⁴⁰

Introductory summary

The cases of *Prodan v. Moldova* and *Popov v. Moldova* concern the failure of the domestic authorities to take the necessary measures to enforce judicial decisions ordering the eviction of occupants from houses in relation to which the applicants' ownership rights were recognised. The case of *Prodan* also concerns a delay in enforcing a judicial decision awarding the applicant compensation.

Facts and relevant domestic law

The applicants were the children of persons who during the communist regime had been deported to other areas of the Soviet Union and whose houses had been nationalised. On 8 December 1992 the Moldovan Parliament enacted Law No. 1225-XII, which enabled the victims of Soviet repression to claim their confiscated or nationalised property. **The applicants instituted proceedings in 1997 seeking restitution of their parents' property, and to declare null and void the contracts by which they had been purchased from the State. The domestic courts found in favour of the applicants and ordered the eviction of all occupants of the houses. The judgments became final in 1997 and 1998, but remained unenforced, with the Municipal Council citing a lack of funds for the construction of apartments for the evicted tenants.** Under an amendment to Law No. 1225-XII, any person to be evicted was to be provided with accommodation on a priority basis by the local administration. **When the European Court delivered its judgment, the decisions of the domestic courts remained unenforced.**

In *Prodan*, the applicant had lodged an action with the district court seeking a partial change in the manner of enforcement of the judgment recognising her ownership rights. The house consisted of six apartments, and the **applicant sought pecuniary compensation** in relation to five of the apartments. **On 3 October 2000 the district court found in the applicant's favour** and ordered the Municipal Council to pay the market value of the five apartments. **The amount was paid on 20 November 2002.**

Judgments of the European Court

Article 6§1: The European Court observed that it is not **open to a State authority to cite lack of funds or available alternative accommodation as an excuse** for not honouring a judgment. The European Court held that by **failing for years to comply with the final judicial decisions**, the Moldovan authorities deprived the provisions of Article 6§1 of all useful effect (violations of Article 6§1).

³⁹ *Prodan v. Moldova*, no. 49806/99, judgment of 18 May 2004, final on 10 November 2004, and judgment of 25 April 2006, final on 25 July 2006 (just satisfaction – striking out).

⁴⁰ *Popov v. Moldova*, no. 74153, judgment of 18 January 2005, final on 18 April 2005, and 17 January 2006, final on 17 April 2006 (just satisfaction).

Article 1 of Protocol 1: The European Court noted that the applicants had an enforceable claim deriving from domestic court judgments. **By failing to comply with the judgments of the domestic courts, the national authorities prevented the applicants from having the occupants evicted and, in *Prodan*, from receiving the compensation the applicant could reasonably have expected to receive**, constituting an interference with the right to peaceful enjoyment of possessions. In the absence of any justification, the **European Court considered that lack of funds and of available alternative accommodation could not justify such an omission** (violations of Article 1 of Protocol 1).

Popov v. Moldova (No. 2): In *Popov* the European Court acknowledged that the decision of the regional court of 5 November 1997, recognising the applicant's property rights, was the subject of revision proceedings which culminated in the Court of Appeal's decision of 26 May 2004 to reopen the proceedings. However, that fact was held not to call into question the final nature of the judgment of 5 November 1997, which remained un-enforced for a period of almost seven years prior to the commencement of the revision proceedings. Indeed, in a subsequent judgment in respect of the same applicant, *Popov v. Moldova (No. 2)*,⁴¹ the European Court found a violation of Article 6§1, partly due to the **Court of Appeal's decision to grant the revision request, which infringed the principle of legal certainty and the applicant's "right to a court"** (violation Article 6§1). Moreover, the European Court held that the **quashing of the judgment after it became final constituted a violation of the applicant's right to peace enjoyment of his possessions** (violation of Article 1 of Protocol 1).

Just satisfaction: Noting in *Prodan* and *Popov* that the applicants had alternative accommodation, the European Court considered it **reasonable to assess the loss suffered with reference to the monthly rent payable in respect of the apartments**. Taking into account other factors, *inter alia*, that the applicants would have been subjected to taxation on any revenue, the European Court awarded the applicants 11,000 and 14,840 Euros respectively for pecuniary damage. The European Court also awarded 3,000 and 5,000 Euros respectively for non-pecuniary damage. A friendly settlement was concluded in *Prodan* for the property in respect of which the applicant had retained her ownership rights, by which the applicant was paid pecuniary compensation for its market value.

BRONIOWSKI v. POLAND⁴²

Introductory summary

The case of *Broniowski v. Poland* concerns an unjustified interference with the applicant's right to peaceful enjoyment of his possessions as a result of legislative provisions and administrative practice which rendered unenforceable his legislative right to compensation for property abandoned by his grandmother on being repatriated after the Second World War.

Facts and relevant domestic law

After the Second World War, the applicant's grandmother was **repatriated from "territories beyond the Bug River"** (Eastern provinces of pre-war Poland), abandoning land and a house. In 1968, a domestic court gave a decision declaring that the applicant's mother had inherited the whole of her mother's property. On an unknown date, the applicant's mother was **granted the right of perpetual use of a plot of land**, the duration of which was set at a minimum of forty years and a maximum of ninety-nine years. A fee for the right of perpetual use was offset against the compensation calculated for the abandoned property. The

⁴¹ *Popov v. Moldova (No. 2)*, no. 19960/04, judgment of 6 December 2005, final on 6 March 2006.

⁴² *Broniowski v. Poland* [GC], no. 31443/96, judgment of 22 June 2004, and judgment of 28 September 2005 (friendly settlement).

value of the right of perpetual use amounted to 2% of the compensation to which the applicant's family were entitled.

In 1992 the applicant sold the property that his mother had received from the State, having inherited it on her death. The **applicant's request that he be granted the remainder of the compensation for the property abandoned by his grandmother was rejected.** The administrative authorities reasoned that as a result of a legislative enactment which transferred most State land to local authorities, it was **not possible to satisfy his claim.** On 12 October 1994 the Supreme Administrative Court rejected the applicant's complaint alleging inactivity on the part of the government for failure to introduce legislation to deal with claims by repatriated persons. Between 1993 and 2001, several laws were passed which further reduced the already small stock of property designated for compensating repatriated persons.

On 19 December 2002 the Constitutional Court, following an application of the Ombudsman, declared unconstitutional several legal provisions that restricted the possibility of satisfying repatriated persons' entitlement to compensation. On 8 January 2003, the date on which the Constitutional Court's judgment took effect, the **military and agricultural property agencies suspended auctions** pending the adoption of new legislation. Subsequently, a **Law of 12 December 2003** entered into force which provided that the State's obligation to compensate repatriated persons who, like the applicant, had obtained some compensation under previous legislation was considered to have been discharged.

Judgment of the European Court

Article 1 of Protocol 1: Noting that in its judgment of 19 December 2002 the **Constitutional Court had described the applicant's entitlement as the "right to credit"**, the European Court held that **such a right constituted a "possession"**. The right to credit was contained in the Land Administration Act 1985, under which **persons repatriated from beyond the Bug River, or their heirs, were entitled to have the value of their abandoned property offset against the price of immovable property purchased from the State or the fee for perpetual use of State property.** If the value of the Bug River property exceeded the price of the compensatory property, the outstanding amount could be offset against the price of industrial or commercial plot of State land. Accordingly, the applicant's **possession comprised the entitlement to obtain compensatory property.**

The European Court considered that the alleged violation could not be classified into a precise category, and it was **appropriate to be examined under the general rule of peaceful enjoyment of possessions.** It was considered it unnecessary to categorise the examination in terms of a positive obligation or negative duty. The interference with the applicant's right was **"provided by law"** and pursued a **legitimate aim in the general interest.**

Having acknowledged the exceptionally difficult situation, the European Court nevertheless observed that, by adopting both the 1985 and 1997 Land Administration Acts, **Poland had chosen to reaffirm its obligation to compensate the Bug River claimants** (the 1997 Act reiterated, in practically identical terms, the provision for compensation in the 1985 Act). However, implementation of that duty was very difficult, if not impossible, as the State Treasury had very little land following the transfer of property to the local authorities. As a result of subsequent legislative measures and administrative practices, the **applicant's right was gradually all but eradicated from the domestic law so that, while it still existed in theory, the right to compensation was rendered illusionary.** This assessment concurred with that of the Constitutional Court, which held that the combination of the restrictions imposed on the right to credit meant that it could not be realised in practice, and that those restrictions were not justified in a democratic State governed by the rule of law. The European Court found no reason to depart from the ruling of the Constitutional Court.

The **suspension of all auctions for the sale of State property** following the Constitutional Court's judgment effectively suspended the execution of the judgment, due to restricted pool of property available. Such conduct by State agencies, which involved a deliberate attempt to prevent the implementation of a final and enforceable judgment, **could not be explained in terms of any legitimate public interest**. Therefore, the **auction procedure could not be regarded as an "effective" or "adequate" means** to realise entitlement to compensation under legislation.

By imposing successive limitations on the exercise of the applicant's right to credit, and by applying practices that made it unenforceable in practice, the authorities rendered that right illusory and destroyed its very essence. The **state of uncertainty in which the applicant found himself as a result of the repeated delays and obstruction was in itself incompatible with the obligation to secure the peaceful enjoyment of possessions**. Moreover, the applicant's situation was compounded by the fact that what had become a **practically unenforceable entitlement was legally extinguished by the Law of 12 December 2003**. The European Court reiterated that Article 1 of Protocol 1 requires the **amount of compensation granted for property taken by the State to be "reasonably related" to its value**. Given that the applicant's family had received a mere 2 % of the compensation due under the legislation, the **European Court found no cogent reason why such an insignificant amount should deprive him of obtaining at least a proportion of his entitlement** on an equal basis with other Bug River claimants (violation of Article 1 of Protocol 1).

Article 46: The European Court observed that the violation originated in a widespread problem which resulted from a **malfunctioning of legislation and administrative practice and which had affected and remained capable of affecting a large number of persons**. In view of the **systemic nature** of the problem, the European Court identified measures that might be taken by the respondent State:

“the Court considers that the respondent State must, primarily, either **remove any hindrance to the implementation of the right of the numerous persons affected by the situation ... or provide equivalent redress in lieu**. As to the former option, the respondent State should, therefore, through appropriate legal and administrative measures, **secure the effective and expeditious realisation of the entitlement in question in respect of the remaining Bug River claimants**, in accordance with the principles for the protection of property rights laid down in Article 1 of Protocol No. 1, **having particular regard to the principles relating to compensation.**”

Friendly settlement and measures adopted by the respondent State

In its judgment on the merits, the European Court reserved the question of pecuniary and non-pecuniary damage. On 28 September 2005 the European Court delivered a judgment which struck out the case in view of a friendly settlement between the parties, which related to both individual and general measures.

General measures: Prior to the friendly settlement certain measures had already been adopted, which were noted by the European Court in its judgment: On 15 December 2004 the **Constitutional Court declared unconstitutional several provisions of the Law of 12 December 2003**, including the provision fixing the 15 % and 50,000 PLN ceiling on claims, and the provision excluding those claimants who had received partial compensation from further compensation. On 7 October 2005, the **Law on the realisation of the right to compensation for property left beyond the present borders of Poland** entered into force, pursuant to which compensation for the Bug River property may be secured through two different channels, depending on the claimant's choice: either, offsetting the indexed value of the original property against the sale price of the state property acquired through an auction procedure, or by receiving a pecuniary benefit. The **legal ceiling for compensation in respect of property abandoned beyond the Bug River was set at 20 % of its original value**. Furthermore, the authorities confirmed the existence of specific civil-law

remedies, enabling Bug River claimants to seek compensation for any pecuniary and non-pecuniary damage suffered due to the defective operation of the domestic legislation prior to the new compensation mechanism.

In the **friendly settlement** the authorities undertook to **adopt general measures to secure the implementation of the “right to credit” for remaining Bug River claimants**, including, *inter alia*, to improve the practical operation of the mechanisms designed to provide Bug River claimants with compensation.

Following the friendly settlement further measures were adopted including, *inter alia*, regulations on the management of the **special Compensation Fund** and an **increase of the State land set aside for auction**. Moreover, in two decisions of 4 December 2007, the **European Court found that the maximum level of compensation prescribed by the July 2005 Law met the requirements of the Convention**, and that the **compensation procedures available to the claimants under that law functioned effectively**.⁴³

Individual measures: Under the terms of the friendly settlement the respondent state paid the applicant a lump sum of 237,000 PLN, corresponding to **22 % of the agreed value of the Bug River property**, compensation for pecuniary and non-pecuniary damage sustained, and costs and expenses.

Execution: Final Resolution CM/ResDH(2009)89.

HUTTEN-CZAPSKA v. POLAND⁴⁴

Introductory summary

In the case of *Hutten-Czapska v. Poland* the applicant’s property was subjected to compulsory tenancy agreement pursuant to domestic law which imposed a system of rent control that severely restricted the rights of the landlord.

Facts and relevant domestic law

In 1945 the applicant’s parents’ house was assigned to a private individual pursuant to a decree of that year, under which **authorities had the power to assign a private flat to a particular tenant and contained rules concerning rent control**. The **Housing Act 1974 introduced the “special lease scheme”** which replaced that established by the 1945 Decree, however did not significantly change the principles on which the right to lease was based. In 1975 the authorities issued a decision assigning part of the property to a new tenant. The applicant inherited the property in 1990, and initiated several sets of unsuccessful administrative and civil proceedings seeking to annul previous administrative decisions and regain possession of the house. The applicant’s property was subsequently vacated.

Despite abolishing the “special lease scheme”, The **Lease of Dwellings and Housing Allowances Act 1994 (the 1994 Act) retained a number of restrictions on the rights of landlords** whose property had previously been subject to that scheme. Any lease that had originated from past administrative decisions was to be treated as a contractual lease signed for an indeterminate time. Moreover, **landlords had no**

⁴³ *Wolkenberg and Others v. Poland*, no. 50003/99, decision of 4 December 2007; *Witkowska-Tobola v. Poland*, no. 11208/02, decision of 4 December 2007.

⁴⁴ *Hutten-Czapska v. Poland* [GC], no. 35014/97, judgment of 19 June 2006, and judgment of 28 April 2008 (friendly settlement).

influence on the essential elements of the agreement including, *inter alia*, conditions for termination and rent, which could not exceed a ceiling of 3% of the reconstruction value. Landlords were obliged to carry out repairs and maintenance work. The **controlled levels of rent covered merely 60% of the maintenance costs**. On 12 January 2000 the Constitutional Court declared unconstitutional the rent control provisions, as they placed a disproportionate and unnecessary financial burden on the landlord's exercise of property rights.

The 1994 Act was repealed by the 2001 Act, designed to implement the Constitutional Court's judgment of 12 January 2000. The **2001 Act made increases in rent dependent on the inflation rate, however maintained the ceiling of 3%**. Moreover, several of the restrictions contained in the 1994 Act were retained, either in the 2001 Act or in other statutory instruments. The rent control provision was repealed in 2002, having been deemed unconstitutional by the Constitutional Court.

On 1 January 2005, two instruments of December 2004 entered into force which amended the 2001 Act, prescribing that **any increase in rent which exceeded the 3% ceiling was subject to a maximum yearly ceiling of 10% of the current rent**. In a judgment of 19 April 2005, the Constitutional Court repealed the amendments. On 29 June 2005 the Constitutional Court delivered a decision setting out recommendations for Parliament including, *inter alia*, that the statutory system of rent control, which had been justified in the transitional period, neither served the interests of landlords nor protected those of tenants.

Judgment of the European Court

Article 1 of Protocol 1: The Grand Chamber of the European Court held that the measures taken could not be considered a formal or *de facto* expropriation but constituted a **control of the use of property**. The impugned measures resulted from the application of domestic law and were held to have a legitimate aim in the general interest; the rent control scheme originated from the continued shortage of dwellings and rentable flats, and aimed to secure the social protection of tenants and ensure a gradual transition to a fully negotiated contractual rent.

Recalling the **Chamber's judgment** of 22 February 2005, the Grand Chamber held that the **violation of the applicant's right to peaceful enjoyment her possessions resulted from the combination of defective provisions on the determination of rent, various restrictions on landlords' rights in respect of the termination of leases, the statutory financial burdens imposed on them and the absence of any means enabling them to recover losses incurred in connection with maintenance**.

The Grand Chamber recalled previous case-law in which limitations on the rights of landlords had been found to be justified and proportionate, however in none of those cases had the landlords' rights been restricted to such a considerable extent: the **applicant had never entered into any freely negotiated lease agreement with her tenants**; the legislation attached a **number of conditions to the termination of leases**, thus seriously limiting the landlords' rights in that respect; the **levels of rent were set below the costs for maintenance of the property** and the **scheme did not provide for any procedure for maintenance contributions or State subsidies**. Noting the **exceptionally difficult and socially sensitive issues** involved in reconciling the conflicting interests of landlords and tenants, the Grand Chamber nevertheless concluded that the Polish State had **failed to strike the requisite fair balance** between the general interests and the protection of the right of property (violation of Article 1 of Protocol 1).

Article 46: Noting that the operation of the rent-control scheme potentially affected a larger number of individuals (some 100,000 landlords and 600,000 tenants), the **Grand Chamber identified the underlying systemic problem as a combination of restrictions on landlords' rights, including defective provisions on the determination of rent, which was exacerbated by the lack of any means enabling them to recover losses incurred in connection with property maintenance**. In light of the systemic nature of the

problem, the Grand Chamber considered that **the respondent State must secure in its domestic legal order a mechanism maintaining a fair balance between the interests of landlords, including their entitlement to derive profit from their property, and the general interest of the community.** The Grand Chamber observed that the options open to the State included the measures indicated by the Constitutional Court in its June 2005 Recommendations, setting out the features of a mechanism balancing the rights of landlords and tenants, and criteria for what might be considered a “basic rent”, “economically justified rent” or “decent profit”.

Friendly settlement and measures adopted by the respondent State

In its judgment of 19 June 2006, the Grand Chamber reserved the question of non-pecuniary damage and awarded the applicant 30,000 Euros in respect of non-pecuniary damage. On 28 April 2008 the European Court delivered a judgment which struck out the case in view of a friendly settlement between the parties, which related to both individual and general measures.

General measures: In judgments of 17 May and 11 September 2006 the **Constitutional Court declared unconstitutional several provisions of the 2001 Act** concerning the protection of the rights of tenants, housing resources of municipalities, municipalities' limited civil liability for failure to provide social accommodation to a tenant, and amendments to the Civil Code. In consequence to the Grand Chamber's judgment and the judgments of the Constitutional Court, the **respondent State enacted several laws prior to the judgment on the friendly settlement.**

An amendment of December 2006 repealed and changed several provisions of the 2001 Act: annual rent increases for the use of a dwelling which exceeded 3% of the reconstruction value could only be made in justified cases, which had been recognised to include an increase to secure “decent profit”. The Grand Chamber observed that the amendment: **seemed to remove previous legal obstacles to raising rent above rigid statutory percentage ceilings;** introduced criteria for judicial control of rent increases; and **enlarged the scope of the authorities' civil liability for failure to provide protected tenants with social accommodation, enabling landlords to recover compensation for losses incurred in that connection.**

Moreover, on 29 February 2008 the government's **Bill on Supporting Thermo-Modernisation and Renovations** was submitted to parliament (entered into force on 19 March 2009). The Bill proposed to introduce, firstly, a **system of subsidies for owners for the purpose of renovating a building** and, secondly, a **special scheme of extra “compensatory refunds” of loans available to landlords** whose property was subject to the restrictions imposed by the rent-control scheme.

Individual measures: Under the terms of the friendly settlement the respondent state paid the applicant a lump sum of 262,500 PLN, corresponding to pecuniary damage suffered as a result of the rent-control scheme as well as costs and expenses. The pecuniary damage was determined in accordance with the Bill on Supporting Thermo-Modernisation and Renovations.

STRĂIN AND OTHERS v. ROMANIA GROUP⁴⁵

Introductory summary

The *Străin* group of cases concerns systemic problems deriving from the ineffectiveness of the mechanism established in Romania after 1989 to afford restitution or compensation for properties nationalised under the communist regime (see also *Maria Atanasiu and Others v. Romania*).

⁴⁵ *Străin and Others v. Romania*, no.57001/00, judgment of 21 July 2005, final on 30 November 2005.

Facts and relevant domestic law

After the fall of the communist regime, the State enacted **Laws no. 112/1995 and 10/2001**, which **established the principle of the restitution of immoveable property and compensation in cases where restitution was no longer possible**. In the cases falling within the *Străin* group, the **domestic courts had recognised that the applicants were the lawful owners of property** which had been unlawfully nationalised under the communist regime. Nevertheless, the **domestic courts refused to rescind contracts of sale between the State and the tenants in respect of such property**, on the grounds that the latter had made the purchase in good faith. In such instances **the lawful former owners had been unable to obtain compensation** in respect of the property.

Judgment of the European Court

Article 1 of Protocol 1: The domestic courts recognition that the applicants remained the lawful owners demonstrated that they had a “possession”. The applicants’ inability to recover possession of their property constituted an interference with their right to peaceful enjoyment of their possessions. Notwithstanding that that the applicable law lacked clarity, in view of the margin of appreciation enjoyed by the domestic bodies in the interpretation and application of domestic law, the European Court accepted that the interference in question was “provided for by law”. However, the uncertainty of the law and the wide discretion conferred on the authorities were to be taken into account when examining whether the interference struck a fair balance.

The European Court noted that **no provision of Romanian law gave a clear and authoritative indication of the consequences for an individual's right of property when his or her possession is sold by the State to a third party acting in good faith**. More precisely, the domestic law made no clear or precise provision as to the manner, or how, an owner thus deprived of his possession could obtain compensation. Consequently, the **European Court held that it was doubtful whether at the material time domestic law would have provided for any compensation**.

In *Străin and Others* the European Court observed that Law no. 10/2001 afforded a right of restitution or compensation to persons who were unlawfully deprived of their property between 6 March 1945 and 22 December 1989. However, the **Law contained no specific provision on entitlement to compensation where the unlawfulness of such deprivation had been recognised by a court before the legislation's entry into force, or where the deprivation originated in the sale of property after 22 December 1989**. Moreover, Law no. 10/2001 provided that subsequent legislation was to establish the conditions, amounts and procedures applicable to compensation claims, however no such law had been enacted when the European Court delivered its judgment. Consequently, **Law no. 10/2001 was held not to enable the applicants to obtain compensation for the deprivation**. Observing that **no exceptional circumstances had been cited**, the Court concluded that **the total lack of compensation caused the applicants to bear a disproportionate and excessive burden in breach of their right to the peaceful enjoyment of their possessions** (violation of Article 1 of Protocol 1).⁴⁶

Just satisfaction: In *Străin and Others* the European Court considered that the **return of the property would put the applicants as far as possible in a situation equivalent to the one in which they would have been had there been no violation**. **Failing such restitution within three months, the respondent State was to pay the applicants an amount corresponding to the current value of the property**. The applicants were awarded 5,000 Euros for non-pecuniary damage.

⁴⁶ The European Court also found a violation of Article 6§1 due to the excessive length of the proceedings for recovery of the property.

Article 46 (judgments subsequent to *Străin and Others*): In several subsequent judgments raising similar issues, the European Court observed that the **violations found were systemic in nature and had their origin in a deficiency in the Romanian legal order and administrative practice** (see the *Viașu*,⁴⁷ *Faimblat*⁴⁸ and *Katz*⁴⁹ judgments). Invoking Committee of Ministers' Resolution Res(2004)3 and its Recommendation Rec(2004)6, the Court indicated measures that might be appropriate to remedy the systemic problem identified. The Court considered that the **authorities must ensure by appropriate legal and administrative measures the effective and rapid implementation of the right to restitution or compensation**. Those objectives could be achieved by **amending the current restitution mechanism and urgently setting up simplified and efficient procedures** based on legislative and regulatory measures capable of taking into consideration various interests at issue.

Notable measures adopted by the respondent State

Law no. 247/2005 made substantial amendments to the existing restitution laws, in particular **establishing a single administrative procedure for claiming compensation, applicable to all properties concerned**. It provides a right to restitution or, if that is not possible, compensation equivalent to the market value of the property. Currently, compensation is awarded in form of shares to an investment fund (*Fondul Proprietatea*), which was floated on the Bucharest Stock Exchange on 25 January 2011 (see also European Court's assessment under Article 46 in *Maria Atanasiu and Others*).

MARIA ATANASIU AND OTHERS v. ROMANIA⁵⁰

Introductory summary

In *Maria Atanasiu and Others v. Romania* the authorities failed to promptly decide the applicants' claims for restitution or award compensation, concerning property in relation to which the domestic courts had recognised the applicants' valid title, as its nationalisation had been unlawful.

Facts and relevant domestic law

After the fall of the communist regime, the **State enacted Laws nos. 112/1995 and 10/2001, which established the principle of the restitution of immovable property and compensation** in cases where restitution was no longer possible. The instant case concerned two applications, in which **final judgments of domestic courts had recognised the applicants' valid title to property, as its nationalisation under the communist regime had been unlawful**.

The **first two applicants brought two sets of proceedings seeking restitution of the impugned property**. The first proceedings ended with a final judgment of 11 March 2005, by which the High Court of Cassation and Justice ("HCCJ") dismissed their action for recovery of possession. The HCCJ held that such actions, based on the general provisions of the Civil Code, became inadmissible upon entry into force of special laws regulating restitution. In the parallel proceedings, **the HCCJ, in a final judgment 18 April 2005, allowed the action and ordered the city council to give a decision on the applicants' claim**. On 23 March 2010 the city council wrote to the Romanian Government Agent informing him that

⁴⁷ *Viașu v. Romania*, no. 75951/01, judgment of 9 December 2008, final on 9 March 2009.

⁴⁸ *Faimblat v. Romania*, no. 23066/02, judgment of 13 January 2009, final on 13 April 2009.

⁴⁹ *Katz v. Romania*, no. 29739/03, judgment of 20 January 2009, final on 20 April 2009.

⁵⁰ *Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06, judgment of 12 October 2010, final on 12 January 2011.

consideration of the claim had been suspended pending receipt of some missing documents, a defence that had been dismissed in the above mentioned court proceedings.

On 18 July 2001 the third applicant brought legal proceedings seeking compensation in respect of her land, which had been allocated to a university. In a **final judgment of 30 March 2006 the HCCJ upheld the claim**, taking the view that, **under Law no. 10/2001, the University was obliged, if restitution was not possible, to make an offer of compensation corresponding to the value of the property**. Despite the university's proposals to the competent authorities, **at the date of the European Court's judgment the third applicant had received no compensation**.

In an **interpretative judgment of 19 March 2007**, binding on all domestic courts, the **HCCJ held that the domestic courts had jurisdiction to determine the merits of claims and, where appropriate, to order the restitution of the property in question or award compensation, where the administrative authorities had failed to respond to the notifications issued under Law no. 10/2001**.

Judgment of the European Court

Article 6§1: The European Court observed that the first two applicants had availed themselves of the remedy in Law no. 10/2001, but that the final judgment ordering the council to respond was never enforced. It was **clear from domestic practice that the competent authorities repeatedly failed in their obligation to respond to restitution or compensation claims within the relevant statutory time-limit**. This **systemic problem**, which hampered the operation of the procedure established by Law no. 10/2001, prevented the persons concerned from having administrative decisions reviewed by the courts. Consequently, the Court held that prior to the remedy established by the judgment of 19 March 2007 the **applicants had no possibility of claiming restitution of their property** in the domestic courts. The administrative authorities' **failure to respond to the restitution claims lodged under Laws nos. 112/1995 and 10/2001, combined with the lack of a remedy, imposed a disproportionate burden on the applicants and thus impaired the very essence of their right of access to a court** (violation of Article 6§1; not necessary to examine the third applicant's complaint under Article 6§1).

Article 1 of Protocol 1: The European Court observed that despite the first two applicants having obtained several final court decisions to the effect that their property had been unlawfully expropriated and that the local administrative authority was ordered to give a decision on their claim, the decisions in question had still not been enforced. With regard to the third applicant, despite the fact that she obtained a final court decision fixing the amount of compensation, followed by an administrative decision confirming her entitlement, these decisions had not been enforced to date. Whilst it acknowledged the complex problems confronting the State, the Court held that **"insufficient legislative and administrative measures were adopted in the circumstances, capable of providing all parties concerned by the restitution process with a coherent and foreseeable solution proportionate to the public-interest aims pursued."** The Court concluded that **the fact that the applicants had obtained no compensation and had no certainty as to when they might receive it had imposed on them a disproportionate and excessive burden** (violation of Article 1 of Protocol 1).

Article 46: It was clear from the present case that the **ineffectiveness of the compensation and restitution mechanism continued to pose a recurrent and large-scale problem in Romania, and that this situation persisted in spite of the European Court having indicated that general measures were needed to guarantee the right to restitution in an effective and rapid manner** (see the *Viaşu, Faimblat* and *Katz* judgments). Noting the several hundred of applications pending before it, the European Court considered the present case suitable for pilot-judgment procedure.

The following were identified, *inter alia*, as causes of problems as regards the legislation and administrative practice: gradual extension of the scope of the reparation laws to include virtually all nationalised immovable property; absence of a cap on compensation; complexity of the legislative provisions and amendments, which had resulted in inconsistent judicial practice and a general lack of legal certainty; absence of any time-limit for the processing of claims by the Central Compensation Board; slow rate of progress towards having the Compensation (*Propriatea*) Fund floated on the stock exchange. The Court noted that the enactment of **Law no. 247/2005**, establishing a **single administrative procedure for claiming compensation, applicable to all the properties**, represented a positive step by establishing **simplified, harmonised procedures**, however cautioned that it would only be effective if the competent authorities had **sufficient human and material resources**.

The European Court considered it **imperative that the State take general measures as a matter of urgency capable of guaranteeing in an effective manner the right to restitution or compensation while striking a fair balance between the different interests at stake**. In this respect the European Court identified Resolution Res(2004)3 and Recommendation Rec(2004)6. The **respondent State must either remove all obstacles to the effective exercise of the right concerned, or, failing that, provide appropriate redress**. That objective could be achieved by amending the current restitution mechanism and establishing simplified and effective procedures, on the basis of legislation and coherent judicial and administrative practice, with a view to striking a fair balance between the various interests at stake.

The European Court noted with interest the proposal in the Government's action plan, aimed at laying down binding time-limits for each administrative step. Moreover, the Court identified examples of good practice and legislative adjustment provided by other signatory States. In this respect, **an overhaul of the legislation in order to create clear and simplified rules of procedure would make the compensation scheme more foreseeable in its application compared with the present system. Setting a cap on compensation awards and paying them in instalments over a longer period** might also help to strike a fair balance between the competing interests.

The **European Court decided to adjourn consideration of all the applications stemming from the same general problem for eighteen months** from the date on which the judgment becomes final, pending the adoption of general measures by the Romanian authorities.

Just satisfaction: The European Court considered that the applicants had suffered pecuniary and non-pecuniary damage. In view of the **ineffective nature of the current system of restitution**, the Court considered it reasonable to **award the applicants a sum which would represent a final and exhaustive settlement** of the present case, and consequently awarded 65,000 Euros to the first two applicants jointly and 115,000 Euros to the third applicant, for all heads of damage.

RADOVICI AND STĂNESCU v. ROMANIA⁵¹

Introductory summary

The case of *Radovici and Stănescu v. Romania* concerns a violation of the applicants' right to peaceful enjoyment of their possessions in that, for a protracted time, they were prevented from controlling their property and receiving rent from the tenant, as a result of the defective provisions and omissions in emergency housing legislation.

⁵¹ *Radovici and Stănescu v. Romania*, no. 68479/01, 71351/01 and 71352/01, judgment of 2 November 2006, final on 2 February 2007.

Facts and relevant domestic law

Background: In 1996 the **applicants instituted an action for recovery of possession** in respect of property that had been nationalised during communist regime. The property consisted of a house divided into flats, one of which was occupied by ED under a tenancy agreement entered into with the State in 1986 and extended until 8 April 1999. In a final judgment of 2 April 1997, the **Bucharest District Court allowed the applicants' action** on the ground that the nationalisation of the property had been illegal, and **ordered the competent administrative authorities to return the property** to them. On that date the applicants began to pay the rates and land taxes levied on their property. The applicants' requests for ED to enter into a tenancy agreement in respect of the flat were refused by the latter.

First set of eviction proceedings: On 25 August 1999 the **applicants brought proceedings for the eviction of ED** claiming that she was occupying their property without any right of tenancy and had refused to enter into a tenancy agreement with them or to pay them rent. The District Court granted their application and ordered the eviction of ED. It found that ED had not requested an extension of her tenancy under article 2 of Government Emergency Ordinance no. 40/1999 ("the Ordinance"), which would have enabled her to enter into an agreement with the new landlords. The District Court further observed that the applicants had not complied with the obligation under article 10§1 to notify the tenant, within a period of thirty days from the entry into force of the Ordinance, of the date and place fixed for the signing of a tenancy agreement. Whilst the court observed that, under article 11§1, failure by a landlord to comply with those formalities resulted in the extension of the previous tenancy until the signing of a new agreement, it nevertheless considered that this provision was not applicable in the present case in view of the exception provided for by article 13(d) whereby there was no extension in the event of a dispute arising from a tenant's refusal to enter into a tenancy agreement with the new landlord. In a final judgment of 26 September 2000, the **Bucharest Court of Appeal dismissed the applicants' action**, holding that the **applicants had failed to comply with article 10§1 of the Ordinance** and accordingly the existing tenancy agreement between E.D. and the State had been automatically extended. The reasoning in the judgment made no reference to article 13(d) of the Ordinance.

Action for damages: In a final judgment of 30 November 2001, the **Bucharest District Court dismissed an application for damages brought by the applicants against the ED**, on the ground that the defendant had a tenancy agreement with the State, which had been automatically extended.

Second set of eviction proceedings: On 8 August 2001 the **applicants brought eviction proceedings against E.D.** on the ground that she had been occupying a flat without paying them any rent (section 24(b) of law no. 114/1996), and that her conduct was such that her cohabitation with the other occupants of the building had become impossible (article 13(i) of the Ordinance). In a final judgment of 15 February 2002, the **Bucharest County Court granted their application, and ordered the eviction of ED**. On 23 September 2003 **possession of the premises was restored to the applicants** however there had been serious damage to the flat. The **applicants never received any rent for the flat** between 2 April 1997 and 23 September 2003.

Judgment of the European Court

Article 1 of Protocol 1: It was not disputed that the Ordinance amounted to control of the use of property. The interference was held to pursue an aim that was in the general interest, namely the protection of tenants during the housing crisis. As the Ordinance risked imposing an excessive burden on landlords in terms of their ability to dispose of their property, **the authorities were under an obligation to institute foreseeable and coherent procedures or statutory mechanisms providing certain safeguards so as to ensure that the operation of the system, and its impact on a landlord's property rights, were neither**

arbitrary nor unforeseeable. The European Court was not satisfied however that the Ordinance introduced such safeguards.

The European Court observed that article 11§1 merely indicated that tenancies were to be extended “until the parties have entered into a new agreement”, without stipulating under what conditions they would be able to do so. The Ordinance provided an exception to the automatic extension of existing agreements where a “dispute arose from the tenant’s refusal to enter into a tenancy agreement”, however did not stipulate what type of “dispute” was concerned by such an exception. Noting the conflicting interpretations adopted by the domestic courts, the Court held that the **use of such vague or insufficiently characterised notions resulted in legal uncertainty**. Moreover, **there was no information as to any remedies available to a landlord** who had omitted to comply with article 10§1, that would enable him or her to enter into a new agreement.

The European Court held that the **restrictions imposed on the applicants as regards the use of their property, and in particular the impossibility to oblige the occupants to pay them rent, on account of defective provisions and omissions in the law, failed to strike a fair balance** between the general interest and the protection of the individual’s right to the peaceful enjoyment of his possessions. Even taking into account the wide margin of appreciation afforded to the respondent State, the Court concluded that **penalising landlords who had failed to comply with the formalities laid down in the Ordinance by requiring them to maintain tenants in their properties for five years, without any realistic prospect of receiving rent, placed them under an individual and excessive burden such as to upset a fair balance** between the competing interests (violation of Article 1 of Protocol 1).

Just satisfaction: The European Court observed that **pecuniary damage would be directly related to the applicants’ inability to receive rent**, however insufficient material was available for an accurate evaluation. Finding that the applicant had sustained non-pecuniary damage, the Court awarded the applicant 23,000 Euros in respect of both heads of damage.

TUDOR TUDOR v ROMANIA⁵²

Introductory summary

The case of *Tudor Tudor v. Romania* concerns conflicting interpretations of restitution laws by the Bucharest Court of Appeal, creating continual legal uncertainty for the persons concerned.

Facts and relevant domestic law

On 13 January 1997, the **applicant bought an apartment from the State in a nationalised building**, which he had lived in from 1973. In a final decision of 23 May 1997 the **Bucharest District Court allowed an action brought by the former owner against the State for recovery of possession of the building** and subsequently **ordered the applicant to surrender possession of the apartment to the plaintiff**, as the former owner’s property title deed prevailed over the applicant’s purchase contract. It also considered that **the applicant’s bona fides in concluding the 13 January 1997 contract was relevant only in the event that the applicant lodged an action for compensation against the State**. Eviction proceedings against the applicant were still pending before the domestic courts when the European Court delivered its judgment.

⁵² *Tudor Tudor v. Romania*, no. 21911/03, judgment of 24 March 2009, final on 24 June 2009.

Meanwhile, the Bucharest **Court of Appeal had taken into account the buyers' good faith in dismissing several actions lodged by the former owner against other persons who had bought apartments in the same building.** The High Court of Cassation and Justice set-aside several of these decisions and remitted the cases for re-examination. The proceedings were still pending before the domestic courts when the European Court delivered its judgment.

Judgment of the European Court

Article 6§1: The European Court recalled that **while the Convention does not impose an obligation on States to restore confiscated assets, once a solution has been adopted by a State, it must be implemented with reasonable clarity and coherence in order to avoid uncertainty and ambiguity** for the persons concerned. In the particular context of the restitution of nationalised properties in Romania, the **lack of legislative coherence and the conflicting case-law on the interpretation of certain aspects of the restitution laws created a general climate of legal uncertainty.** The same uncertainty appeared in the instant case; the Bucharest Court of Appeal gave **opposing interpretations of the relevance of the buyers' good faith in concluding sale contracts with the State.** While certain divergences in interpretation could be an inherent consequence of any judicial system, the European Court noted that in the instant case the conflicting interpretations stemmed from the same jurisdiction which, in addition, was the court of last resort. In the **absence of an effective mechanism which ensured consistency in the practice of the national courts, such profound and long-standing differences in approach in the case-law were such as to create continual uncertainty,** which in the instant case deprived the applicant of a fair trial (violation of Article 6 § 1).⁵³

Just satisfaction: The European Court did not discern any causal link between the violation found and the pecuniary damage alleged, but awarded the applicant 5,000 Euros for non-pecuniary damage.

URBÁRSKA OBEC TRENČIANSKE BISKUPICE v. SLOVAKIA⁵⁴

Introductory summary

The case of *Urbárska Obec Trenčianske Biskupice v. Slovakia* concerns the compulsory letting of the applicant association's land and its subsequent transfer to the tenants pursuant to legislation which addressed the status of land which had been nationalised under the communist regime.

Relevant domestic law

Under the communist regime, landowners were often obliged to put their land at the disposal of State-owned or cooperative farms. Following the fall of that regime, the Czechoslovakian Parliament adopted the **Land Ownership Act 1991.** Where the original owner maintained ownership rights in respect of land on which allotment gardens had been established, the Land Ownership Act prescribed conditions enabling the owner to enjoy their ownership rights to a greater extent. It provided that the users of the land would acquire tenancy rights in respect of it, which could not be terminated before expiry of the period for which the land had originally been put at their disposal. The rent and the purchase price in respect of such land were to be determined on the basis of the classification and quality of the land at the time when the gardeners' right to use it had been established.

⁵³ The European Court declared inadmissible the applicant's complaint under Article 1 of Protocol 1 for non-exhaustion of domestic remedies.

⁵⁴ *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, judgment of 27 November 2007, final on 2 June 2008, and judgment of 27 January 2009, final on 24 April 2009 (just satisfaction).

The approach of the Land Ownership Act, permitting the owners to recover full possession of their land after the expiry of the tenant's lease, was modified with the adoption of **Act 64/1997**. As a result, **tenants were entitled to acquire ownership of the land** they used for gardening. In such instances, owners had a right to obtain either a different plot of land of corresponding **surface and quality** in the same area or pecuniary compensation. Compensation was to be determined on the basis of the **quality and nature** of the land at the time when the gardeners' right to use it was established. The **annual rent for the use of plots of land in allotment gardens was 10% of their value**.

Facts

Under the communist regime, land owned by the predecessors of the members of the applicant association, a registered association of landowners, was put at the disposal of an agricultural cooperative, which rented it to the Union of Gardeners. The **owners' formal title to the land remained unaffected, but they had no possibility of using it in practice**. In 1982 the authorities approved the establishment of allotment gardens on the land, and **individual plots of land were put at the disposal of members of a local gardening association under leases** which expired on 31 December 1999. In 1997 the applicant association, the members of which had inherited title to the impugned land, submitted a draft rent contract to a representative of the gardening association, which the latter rejected. The allotment gardeners initiated proceedings under Act 64/1997 in 1998, with a view to acquiring ownership of the land. An **administrative authority granted the request, transferring ownership to the allotment gardeners**, and this decision was upheld on appeal by the district court. As a consequence, the **applicant association received land in compensation**.

Judgment of the European Court

Article 1 of Protocol 1 (transfer of ownership): The transfer of ownership of the land to the tenants deprived the applicant of its possession. The interference was prescribed in Act 64/1997, and was "in the public interest". The European Court recalled that pursuant to Act 64/1997 the **compensation payable for plots of land situated in allotments was to be determined on the basis of the quality and classification of the land at the time when the gardeners' right to use it was established**. In the instant case that sum corresponded to less than 3% of the market value of the property at the time of the transfer. **The land the applicant received had a general value per square metre amounting to one-third of that transferred to the tenants. Moreover the surface area of the land that the applicant received amounted to approximately 60% of that which it had been deprived of. The Court was not persuaded that the public interest was sufficiently broad and compelling to justify the substantial difference between the real value of the applicant's land and that of the land which it obtained in compensation** (violation of Article 1 Protocol 1).

Article 1 of Protocol 1 (compulsory letting of the land): The compulsory letting of the applicant's land amounted to a **control of the use of property**. The interference was prescribed in Act 64/1997 and contributed to the legal certainty of the persons concerned, therefore pursuing a "legitimate aim" in the "general interest". The **annual rent payable for use of the land, calculated in accordance with Act 64/1997, was SKK 0.3 per square metre**. During that period the **municipality charged the applicants SKK 0.44 per square metre as annual tax on the land**. Moreover, an opinion of December 2006 stated that the allotments **could be annually leased for at least SKK 20 per square metre**. The **European Court discerned no demands of the general interest sufficiently strong to justify such a low level of rent, bearing no relation to the actual value of the land** (violation of Article 1 Protocol 1).

Article 46: The European Court observed that the violations arose from Slovakian legislation, which affected a number of landowners whose land came under the regime of Act 64/1997. Noting that several other applications concerning the same issue were pending before it, the Court stated that:

“Having regard to the **systemic situation** which it has identified, the Court is of the opinion that general measures at national level appear desirable in the execution of the present judgment in order to ensure the effective protection of the right to property ... Firstly, the respondent State should **remove all obstacles to the letting of land in allotment gardens on rental terms which take account of the actual value of the land and current market conditions** in the area concerned. Secondly, the respondent State should **remove all obstacles to the award of compensation for the transfer of ownership of such land in an amount which bears a reasonable relation to the market value of the property at the date of transfer.**”

Just satisfaction: In respect of the transfer of ownership, the European Court accepted that an award for **pecuniary damage should be based on the difference between the market value of the applicant’s land and that of the land which it received in compensation**, and accordingly awarded the applicant 200,000 Euros. As the applicant claimed no specific sum in respect of pecuniary damage resulting from the compulsory lease of its land, the European Court did not make any award in that respect. The Court awarded 7,000 Euros for non-pecuniary damage in respect of both aspects of the violation found.

Notable measures adopted by the respondent State

Two draft legislative amendments are currently subject to inter-ministerial consultation. It is proposed that **the rent for the compulsory letting of the land and the compensation for the transfer of ownership be henceforth determined on the basis of the current market value of the property.** In cases of transfer of ownership, owners would remain entitled either to pecuniary compensation or to compensation in kind with plots of land of corresponding category, size, quality, location and economic condition, and located, where possible, in the same municipality. The new provisions are expected to apply retroactively, thus enabling the former owners whose rights have already been determined by a final decision, to **claim the difference of the amount of the compensation pursuant to the amendments and that which they received under the previous legislation.**

JANTNER v. SLOVAKIA⁵⁵

Introductory summary

The case of *Jantner v. Slovakia* concerns the dismissal of the applicant’s claim for restitution of his ancestors’ property, on the grounds that at the relevant time he had not permanently resided within the territory of the former Czech and Slovak Federal Republic as required by the relevant legislation.

Facts and relevant domestic law⁵⁶

The applicant left Czechoslovakia for Germany in 1968. From 1990 he lived partly in Germany and partly in Czechoslovakia. On 25 September 1992 the applicant registered his permanent residence at his friend’s

⁵⁵ *Jantner v. Slovakia*, no. 39050/97, judgment of 4 March 2003, final on 9 July 2003.

⁵⁶ For further issues raised under the Land Ownership Act, see also the case of *Rosival and others v. Slovakia*, no. 17684/02, judgment (friendly settlement) of 23/09/2008, final on 23/09/2008 and the case of *Valová, Slezák and Slezák v. Slovakia*, no. 44925/98, judgment of 1/06/2004, final on 1/09/2004.

address in Krompachy, Czechoslovakia. The local land office dismissed the applicant's claim for restitution of his father's and uncle's property on the ground that at the relevant time **he had not permanently resided within the territory of the former Czech and Slovak Federal Republic as required by section 4(1) of the Land Ownership Act**. The regional court upheld that decision noting that, by the expiry of the deadline for lodging his claim on 31 December 1992, the applicant had not satisfied the permanent residency requirement, recalling that under the domestic law citizens could not permanently reside at more than one address at the same time. As the applicant failed to terminate the registration of his main abode in Germany prior to the registration of his permanent residence in Krompachy, **his stay in Czechoslovakia was regarded as temporary**. The Supreme Court refused to re-examine the case as there was no remedy available against the regional court's judgment.

Judgment of the European Court

The applicant's action did not concern "exiting possessions" as he did not have the status of an owner but was merely a claimant. In addressing whether the applicant had a "legitimate expectation" to an enforceable right, the European Court recalled that the regional court upheld the decision dismissing the applicant's claim, on the grounds that the applicant did not satisfy the permanent residence requirement in section 4(1) of the Local Ownership Act. The European Court considered that it could not substitute its view for that of the regional court on the applicant's compliance with that requirement. The European Court held that **under the relevant law, as applied and interpreted by domestic authorities, the applicant neither had a right nor a claim amounting to a legitimate expectation to obtain restitution of the property** and therefore had no "possession" within the meaning of Article 1 of Protocol No. 1 (no violation of Article 1 of Protocol 1).

KOPECKÝ v. SLOVAKIA⁵⁷

Introductory summary

The case of *Kopecký v. Slovakia* concerns the dismissal of the applicant's claim for restitution of his father's moveable property, on the grounds that he had failed to satisfy the statutory condition of identifying where the property had been when the relevant legislation had entered into force.

Facts and relevant domestic law

On 12 February 1959, the applicant's father was convicted of keeping, contrary to the regulation then in force, a large number of gold and silver coins of numismatic value, and the **coins were confiscated**. In April 1992 the Supreme Court of the Slovak Republic quashed the judgment of 12 February 1959 and all consequential decisions. On 19 September the district court granted the applicant action for restitution of the coins under the Extra-Judicial Rehabilitations Act 1991 (the 1991 Act) and ordered the Ministry of the Interior to restore the coins to the applicant. On appeal by the Ministry, the regional court overturned that judgment as the **applicant had failed to show where the coins had been deposited when the 1991 Act had entered into force, as required by that Act**. An appeal was dismissed by the Supreme Court dismissed.

Judgment of the European Court

The fact that the scope of restitution under the 1991 Act was limited and that restitution of property was subject to a number of conditions did not, as such, infringe the applicant's rights under Article 1 of Protocol

⁵⁷ *Kopecký v. Slovakia* [GC], no. 44912/98, judgment of 28 September 2004.

1. The proprietary interest relied on by the applicant was in the nature of a claim and could not be characterised as an “existing possession”. The European Court observed that the **applicant’s restitution claim was a conditional one from the outset** and that the question whether or not he complied with the statutory requirements was to be determined in the ensuing judicial proceedings. The courts ultimately found that that was not the case. The **European Court was therefore not satisfied that the applicant’s restitution claim had been sufficiently established to qualify as an “asset”**. Although the district court had granted the applicant’s action, that judgment had been overturned on appeal without having acquired legal force, and therefore was not sufficient to generate proprietary interest amounting to an “asset”. The European Court concluded that the **applicant did not have a “possession”** (no violation of Article 1 of Protocol 1).

SMILJANIĆ v. SLOVENIA⁵⁸

Introductory summary

The case of *Smiljanić v. Slovenia* concerns restitution proceedings brought by foreign persons under the Slovenian Denationalisation Act, in respect of property situated in Slovenia which had been nationalised under the communist regime.

Relevant domestic law

In 1991, following the independence of Slovenia, the Constitution and the Denationalisation Act were adopted, which established the legal framework for restitution of, or compensation for, property that had passed into State ownership through previous legislation of the communist regime. **Article 68 of the Constitution** provided that foreigners could not acquire land except by inheritance, and under the condition of reciprocity. In 2003 the provision was again amended to remove the reciprocity condition.

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 Yugoslav nationality, or their legal successors, subject to limitations provided either by the Denationalisation Act or other legal provisions in force. In 1998 the Denationalisation Act was amended to provide that a foreign claimant was entitled to restitution, under the conditions that the property had been taken from a Yugoslav national, and that the right to restitution was granted to Slovenian nationals in the claimant’s State of origin. Croatian law similarly restricted the right of restitution to individuals and their successors who had Croatian nationality, with an exception where Croatia had concluded an international agreement with another State, by which it granted the right of restitution to nationals of that State. No such agreement was concluded with Slovenia.

Facts

The applicant, a Croatian national, lodged a request under the Denationalisation Act requesting the restitution of land which had, until its nationalisation in 1947 and 1948, belonged to his father and his father’s family. The Ministry of Justice quashed an initial administrative decision granting the request, holding that the **property could not be returned to the applicant as he was not the sole owner of the impugned property and the condition of reciprocity was not satisfied**. Subsequent judicial appeals and a constitutional complaint were all dismissed, the domestic courts holding that, in view of the Croatian Compensation Act, the condition of reciprocity was not satisfied.

⁵⁸ *Smiljanić v. Slovenia* (dec.), no. 481/04, decision of 2 June 2009.

Decision of the European Court

Article 1 of Protocol 1: The European Court held that the fact that the scope of restitution under the Constitution and the Denationalisation Act was limited, such as the condition of reciprocity with regard to foreign nationals, did not, as such, infringe the applicant's rights under Article 1 of Protocol 1. The Court considered that the **proprietary interest relied on by the applicant was in the nature of a claim**, and did not constitute an "existing possession". The European Court noted that, as the his father was not the sole owner of the property claimed, the applicant did not fulfil the statutory condition of being an heir with respect to the whole of the claimed property. Moreover, the applicant did not satisfy the condition of reciprocity with regard to foreign nationals, which had been required in law since 1991 by virtue of the Constitution. The **applicant's request for restitution of property did not amount to an enforceable claim sufficiently established in domestic law**, and he consequently did not have a "possession" within the meaning of Article 1 of Protocol 1 (inadmissible).

See also *Nadbiskupija Zagrebačka v. Slovenia*⁵⁹ in which the applicant, the Zagreb Archdiocese which exercised its activities in Croatia, was unsuccessful in seeking restitution of properties situated in Slovenia, as under the Denationalisation Act only churches and other religious communities operating within Slovenia were entitled to recover property (inadmissible).

SIRC v. SLOVENIA⁶⁰

Introductory summary

The case of *Sirc v. Slovenia* concerns the length of several proceedings concerning the restitution of, or compensation for, property forfeited during the communist regime, pursuant to a criminal conviction which was subsequently quashed.

Facts and relevant domestic law

On 12 August 1947 the Supreme Court convicted the applicant, his father and several others, of collaboration with Western powers, and their **property was forfeited to the State**. At the time of the trial, the **majority of that property consisted of restitution or compensation claims in respect of property confiscated by the German occupying forces** during the Second World War. On his release from prison in 1954, the applicant fled to the United Kingdom returning to Slovenia in 1989.

On 31 January 1991 the Supreme Court ordered retrials of those convicted in 1947, and the **convictions were subsequently quashed**. Following Slovenian independence, the applicant initiated several sets of proceedings in 1993 and 1994 under the **Implementation of Penal Sanctions Act 1978**, which provided for restitution of, or compensation for, property forfeited through criminal proceedings. When the European Court considered the applicant's complaint as to the length of these proceedings, the **vast majority were still pending at first or second instance. One set of proceedings ended on 20 October 2006** when the Constitutional Court dismissed the applicant's constitutional appeal.

The *Act on Protection of the right to trial without undue delay* (the 2006 Act) entered into force on 1 January 2007. It **provides two remedies to expedite pending proceedings - a supervisory appeal and a motion for a deadline - and, ultimately, for a claim for just satisfaction** in respect of damage sustained because of the undue delay. In respect of proceedings which had concluded before the entry into force of the 2006 Act and in relation to which an application has been lodged with the European Court, the 2006 Act provides that the State Attorney's Office shall offer the party a settlement in just satisfaction.

⁵⁹ *Nadbiskupija Zagrebačka v. Slovenia* (dec.), no. 60376/00, 27 May 2004.

⁶⁰ *Sirc v. Slovenia*, no. 44580/98, judgment of 8 April 2008, final on 29 September 2008.

Judgment of the European Court

Article 6§1: The European Court observed that since 1 January 2007, when the 2006 Act became operational, the applicant had been entitled to seek acceleration of the impugned proceedings pending before the domestic courts and may ultimately obtain compensation. The European Court recalled that it had **held the aggregate of remedies provided by the 2006 Act to be effective** in cases of excessively long proceedings pending at first and second instance, including those lodged before 1 January 2007 as the **remedies were in principle capable of both preventing the continuation of the alleged violation and of providing adequate redress for any violation that had already occurred** (*Grzinčič v. Slovenia*, no. 26867/02, judgment of 3 May 2007, final on 3 August 2007). In relation to the proceedings still pending at first or second instance, **the European Court found no reason to assume that the applicant would not be able to avail himself of the remedies provided by the 2006 Act**, and declared the part of the application relating to those proceedings inadmissible.

In respect of the **proceedings lodged in 1993 which had ended on 20 October 2006**, the European Court found that the **transitional provisions of the 2006 Act were not applicable as the proceedings had terminated before 1 January 2007**. The Court recalled similar cases which it had examined before the entry into force of the 2006 Act, where it had found that the legal remedies at the applicant's disposal were ineffective (*Lukenda v. Slovenia*, no. 23032/02, judgment of 6 October 2005, final on 6 January 2006). The relevant period started on 8 August 2002, when part of the applicant's claim was transferred to the ordinary courts, and ended on 20 October 2006 with the Constitutional Court's decision, lasting approximately **four years and two months before four levels of jurisdiction**. Taking into account that what was at stake was of great importance to the applicant, that the proceedings were not particularly complex, and that the applicant had not contributed to their length, the European Court considered that the **length of this set of proceedings failed to meet the "reasonable-time" requirement** (violation of Article 6§1)

Article 13: The objections and arguments put forward by the Government in cases of proceedings terminated before the implementation of the 2006 Act had been rejected in earlier cases (*Grzinčič*, above) and the European Court found no reason to reach a different conclusion in the present case. Accordingly, **domestic law lacked a remedy whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time** (violation of Article 13).

Just satisfaction: The European Court awarded 10,000 Euros in damages.

Notable measures adopted by the respondent State

Following the judgment of *Lukenda v. Slovenia* (above), in which the European Court held that the violation of the right to a trial within a reasonable time was a systemic problem resulting from inadequate legislation and inefficiency in the administration of justice, the Slovenian Parliament passed the **2006 Act**. In respect of the effectiveness of the remedies afforded by the 2006 Act, see the summary of the European Court's judgment above.
