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European rule of law in danger: If property rights are the foundation of a free society, are Europe's former communist states free?

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of Human Rights Declares Evidence of
Ownership "Inadmissible"**

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Introduction

Slovenia is a fortunate country. As part of Yugoslavia, the country escaped Stalinist planning when Stalin, in a moment of delusion, expelled it from the socialist camp. Tito, although an inveterate Stalinist, was forced to allow the change to a kind of collective market economy that worked better than central planning, but still did not work well in spite of considerable subsidies from the West. When these stopped in 1980, Yugoslav wages, including those in Slovenia, fell back to their 1965 level, almost to the level of 1940. Yet this was better than the rest of the communist countries, whose performance was worse than before World War II.¹

Stalin forced Tito to seek protection from the West, but Tito returned to his socialist fervour when the danger passed and organised the non-aligned movement, which did its best to win the undeveloped countries over to socialism and prevented them (especially those in Africa) from continuing to develop. Even Castro became a member.

All this needs to be said in order to correct the superficial impression that the Yugoslav leadership, including that of Slovenia, was any less communist than the Soviets and the rest.

Admission to the European Union

After the Berlin Wall came down, Slovenia separated from the rest of Yugoslavia. The final reason for this was the deterioration of events in Serbia, where Milošević introduced a vile post-communist regime. As a consequence, the first free elections in years could be held, in which DEMOS, the newly organised Democratic Opposition of Slovenia, won the majority. The leader of DEMOS was Joze Pučnik who, after two longish spells in Tito's prisons, had become a professor of philosophy in Germany and now returned home.

¹ Calculated from Table 105.20 in the Statistical Yearbook of the SFRY (1984) and Table 105.19 in the Yearbook of 1988. See also Sirc, L. (1979) *The Yugoslav Economy under Self-Management*, London: Macmillan.

Pučnik, at the same time, narrowly lost to Milan Kučan in the presidential election, so that the former president of the Communist League could maintain his considerable influence. Under his very skilful leadership, the communist successor parties, the Liberal Democrats (formerly the Communist Youth organisation) and the Social Democrats (formerly the Communist League) regained power and began dismantling the DEMOS reforms, primarily the legislation on restitution of property and the investigation of communist crimes.

The abandonment of this investigation after the 1996 election embittered Pučnik since he was, in addition to having been the deputy Prime Minister, the chairman of the parliamentary commission on precisely this subject. But the Liberal Democrats and Social Democrats dropped it.

Pučnik, of course, expected the matter to be taken up again when Slovenia would be preparing to join the European Union. That is why he was keen to take action when he learned about an announcement by the member of the European Commission then in charge of the accession of new members. Professor Pučnik assembled a small group of like-minded Slovenes and addressed an open letter to Mr. Verheugen. It began:

In an official letter of 19/10/01, addressed to ILOG (International League of Victims of Abuse of Power, Cologne) you wrote that the candidate countries for accession to the European Union, would be held to fulfil the so-called Copenhagen political accession criteria, particularly the condition concerning the rule of law.

But Pučnik noted that Verheugen:

...further wrote that the Member States and the Commission “consider the political criteria as being fulfilled by all the countries we are negotiating with”.

Pučnik and his associates strongly disagreed with this assessment of Slovenia and other ex-communist countries. They wrote:

We, the undersigned, respectfully submit that the competent EU bodies should have a more careful look at the fulfilment of the Copenhagen criteria in ex-communist countries. We shall refer in what follows almost entirely to the Republic of Slovenia, but having lived under communism for many years, we are certain that other countries too require a second investigation.²

Where Slovenia was concerned, they pointed out that the valid criminal code was not applied. Although the Communists were killing “class enemies” (including women and children) during the war and until 1946/1947, nobody has so far been found responsible. In Slovenia alone, the number of those murdered amounts to between 150,000 and

² Open letter to Mr Guenther Verheugen, member of the European Commission in charge of the admission of new members to the European Union, dated 16.07.2002.

200,000,³ but it is (allegedly) impossible to identify the perpetrators. Some of the victims were Slovenes, others Croats and Serbs who were trying to escape to the West through Slovenia. Furthermore, there are corpses of German and other prisoners of war. To this day, skeletons are found throughout Slovenia, wherever excavation becomes necessary. Officially, a number of around 500 mass graves is mentioned.⁴

Pučnik's open letter to Commissioner Verheugen, also sent to President Prodi, was answered on their behalf by Jaime Garcia Lombardero on 21/10/2002, who said, responding to the mass murders, that these human tragedies were not a subject of the accession process. Strangely enough, a few years later, the European Parliament voted on 27/09/2006 to instruct Turkey that it must face up to its past in the context of the alleged genocide of the Armenians during the First World War, if it were to join the EU. Is there one rule for communists and a different one for Turks?

Implementation of Laws on Restitution and Denationalisation

The second point in the open letter was about "the adoption and the implementation of the erstwhile laws on restitution and denationalisation". In fact, this economic matter also has a political significance. The Pučnik group wrote:

The clarification of political relationships in Slovenia is made impossible by the non-implementation of the restitution and denationalisation legislation. The control of Slovene capital remains, to a considerable extent, with the old communist managers which gives them power and influences political developments.

In 1991, the rules on the return to rightful owners of property confiscated by communists and nationalised by them were clear. After the advent of a "liberal democratic" (read communist youth) government, there were first delays and then *ex-post* changes in legislation prohibited by Arts. 155 and 14 of the Slovene Constitution of 1991.

Art. 14 prohibits discrimination which, however, occurs if the legal provisions concerning restitution are deteriorating in time, since those dealt with first are privileged over claimant whose rights are equal at the start but their turn comes later. Similarly, those to whom land is physically returned are treated better than persons who receive compensation at artificially determined prices below the market value.

As a consequence of the described antagonism displayed by the authorities towards former owners, mainly entrepreneurial families, economic development, in particular of small and medium-sized enterprises, is gravely inhibited. Without the restitution, the ownership of

³ See 'My part in Slovenia massacre' by Nigel Nicolson, *Sunday Telegraph*, 25.6.2000; 'Vi Sloveniji so likvidatorji pobili 192 tisoč Hrvatov', *Gorenjski glas*, 26.1.2001; Earle, J. (2005) *The Price of Patriotism*, Sussex: The Book Guild.

⁴ See statement by Jose Dezman, Director of the Museum of Recent History, Ljubljana, *Delo*, 6.1.2007.

the capital depends on party politics and financial tricks rather than on the organisation of economic (especially production) activity.

As a consequence, Pučnik insisted:

The European Union should most seriously consider the resolution No. 1096 voted in 1996 by the Parliamentary Assembly of the Council of Europe.

This resolution strongly recommended restitution.

The reply to these warnings, conveyed through Mr. Lombardero, was non-committal:

The Commission will continue to follow the issue of property restitution in the wider context of EU relations with the candidate countries.

At this stage the Slovene democratic leader, Jozе Pučnik, died following a heart attack. This death was particularly unfortunate since, in 2004, the opposition Democratic parties won a majority and replaced the communist successor parties in government.

Democratic Government, Totalitarian Judiciary

Janez Janša who, together with Pučnik, had steered the Slovene Democratic Party so far, became the new Prime Minister of Slovenia. Initially, they called it the Social-Democratic Party of Slovenia, but when the Socialist International refused to accept it, preferring the successor Communist Party, they had to adjust.

A very difficult situation ensued, aptly described by *The Economist* of 18/11/06:

Mr. Janša has notably failed to push through a promised flat tax, privatisation and other reforms – the people, he says, just do not want that kind of change.

On the other hand, it should be taken into account that the courts did not implement even the reforms that were on the statute book. Prime Minister Janša did complain (*Demokracija*, 31/06/06):

Those who have ruled Slovenia almost without interruption for the last 60 years, succeeded in establishing during this time a special one-party judicial system controlled by their own power ... they dominated everything – from professorships at the universities to prison guards ... this network has never been fully dismantled. The judiciary reform of 1994 even attempted to renew it in some way.

Janša added:

Perhaps measures such as the European Union has recently demanded from Bulgaria could help...

In fact, the new EU Commissioner for Enlargement, the Finn Olli Rehn, seems to have addressed the problems of the Bulgarian courts, rather

than seemingly choosing to ignore them, as was the case under Commissioner Verheugen and President Prodi.

Professor Peter Jambrek, a judge of the European Court of Human Rights 1994-1998, expressed a similar view of Slovene courts. In a letter printed in the Saturday Supplement to *Delo*, the main Slovene daily, of 09/12/2006, he pointed out that, in the period 1998-2007, the composition of the Slovene Constitutional Court was 8:1 in favour of the left option. This composition would not be as sinister as it is if the “left option” was not in fact the communist-totalitarian one.

In view of this constellation, it hardly mattered what was prescribed under the Slovene law; the communist judges would not care.

Slovene Law in Favour of Restitution

The main text about restitution was the Act on the Implementation of Penal Sanctions (OJ 17/78, 8/90) of which Section 145, as amended in 1990, reads:

If the sanction of forfeiture of property is quashed, the forfeited property shall be restored to the person sentenced or heirs.

If the restitution of property in whole or in part is physically or legally impossible, the actual value of that property at the time of the decision on its restitution, and according to the state of the property at the time of its forfeiture, shall be paid...

A considerable proportion of Slovene capital was taken over by the communist state by administrative action rather than by penal procedure. This capital was to be restituted in accordance with the Denationalisation Act ratified by Parliament in 1991. Where property could not be returned in its original form, compensation was payable – and, in fact, still is – in line with Article 44 of the Act “taking into account its present value”.

The restitution and payment of compensation began briskly, but then the communist successor parties regained considerable strength, leading to attempts to annihilate the existing legislation. In 1998, the Slovene Parliament passed legislation altering the legal texts, which was in opposition to the principle of no *ex-post* legislation, enshrined in the Slovene constitution. The excuse was that the 1990/1991 provisions would prevent Slovenia from being a social state because so much would have to be taken from current income. This was nonsense because the capital for restitution should have come out of existing capital rather than current production. To this day, approximately 40% of Slovene capital is still in government hands,⁵ although, as a part of privatisation, all adult Slovene citizens were given vouchers worth about 30,000 German Marks.

⁵ See, for instance, the article by Berčič and Aristovnik in the Saturday supplement to *Delo*, 23.12.2006.

In spite of the supposed fear that restitution of capital would prevent Slovenia from being a social state, communist apparatchiks were helping themselves (stealing, as even President Drnovšek called it) to large chunks of capital, so that there are quite a few super-rich ex-communists around.

It is true that it would have been difficult to pay those entitled to compensation compound interest on their capital that, for the period of around 50 years, was used by the communist state. The payment of five per cent interest could amount to ten times the original capital and even two per cent interest could amount to one and a half times the original capital. The communist economic system, along with the apparatchiks that ran it, certainly could not have produced yields of this sort.

Those interested, to whom restitution was due, could not accept an alteration to the law after seven years (1991-1998) and began applying to the European Court of Human Rights. What is more, the communist-successor parties did not just change the law, but seemingly advised “their” judges to draw out the proceedings endlessly.

The European Court of Human Rights

The delaying tactics of the Slovene ex-communists necessarily turned the attention of Slovenes to the workings of the Strasbourg court – proclaimed to be a protector of the rule of law as a human right. It just so happened that, in 1998, Professor Peter Jambrek was replaced in Strasbourg as a Slovene judge by Professor B. Zupančič who was, until then, a member of the Slovene Constitutional Court.

After six months in Strasbourg, Judge Zupančič stated (*Delo*, 14/05/99):

As a matter of fact, there is a deep abyss at the European Court of Human Rights between Western and Eastern thinking, especially as a sizeable part of the former is still caught up in the bourgeois legal mentality.

The attention of the ECHR President, Luzius Wildhaber, was drawn to the language used by Judge Zupančič, but he did not consider that it disturbed the *Unité de doctrine* of the Strasbourg Court.

Soon afterwards Judge Zupančič again explained his low opinion of the Western “yuppie” law in a lengthy article in the “*Delo*” supplement of 03/01/2000.

When 13 years of the Slovene constitution were celebrated, Judge Zupančič – by then the President of the Third Section of the European Court – proclaimed that judges should be allowed to disregard “legal formalism” which only causes delays, and “use their judicial power”. This

speech reported in *Delo* on 24/12/2004, could be interpreted as meaning that judges should have the right to decide issues as they see fit.

“The rule of law cannot depend on the magnanimity of a state regime”, Zupančič continued. This could be interpreted to mean that governments and parliaments may well decree that confiscated property be restituted, yet the (Marxist) judges have every moral and political right to refuse and to decide accordingly. In fact, the leading Slovene professor of criminal law, Ljubo Bavcon, supported the Slovene deputy human rights Ombudsman when he claimed that property was not a human right at all (*Delo*, 27/01/95).

Introduction of the Sirc Case

Unfortunately, at this stage, the author has to bring in his own case. These are the three reasons for this:

1. The European Court of Human Rights has decided that the Sirc case was a “test case” or “pilot case”, so that other cases would be considered only “after the adoption of the decision on the admissibility of the pilot case, *Sirc v. Slovenia* (no. 44580/98)”.
2. Franjo Sirc and his son, Ljubo Sirc, were tried in Slovenia in 1947, when Stalin ordered the elimination of democrats in Eastern Europe. In her book *Faust’s Metropolis* (Berlin), Alexandra Richie describes the events:

In 1947, the communist party seized power in Hungary after forcing the resignation of the Nagy government. In Bulgaria Petkov, the leader of the opposition was hanged; in Romania Maniu, leader of the Peasant Party, was sentenced to life imprisonment, and in Poland Mikolajczyk, leader of the non-communist opposition, was forced to flee to the West. By February 1948 a Soviet plot had brought about the capitulation of President Benes, who handed power to the communists.

Yugoslavia is not mentioned because in 1948 Stalin inexplicably turned on Tito, whereupon the West tended to sweep Tito’s communist crimes under the carpet.

If proof is needed of the involvement of Yugoslavia, a leader in *The Times* of August 27, 1947 headed “Petkov and Furlan”, connected the Bulgarian Petkov with the Slovene Furlan, a co-defendant of Franjo and Ljubo Sirc in the Ljubljana Yugoslav trial. Indeed Furlan and Franjo Sirc’s son were both sentenced to death although the sentences were not carried out, while a third co-defendant, Crtomir Nagode, was killed, as was Petkov.

As to the trial itself, the British Consulate in Ljubljana reported to the British Ambassador in Belgrade on 22 August 1947:

A brief reading of the newspaper reports, however, will suffice to make it clear that the trial was first and foremost a gigantic political propaganda stunt whose double aim was first to show Britain and America as irreconcilable enemies of the new Yugoslavia, and second, finally to frighten off anyone who might still think that it is possible to associate with officials of the Western countries and get away with it.⁶

3. Franjo Sirc was an industrial pioneer in so far as, in collaboration with other people from his hometown of Kranj, he succeeded in attracting Czech industrialists to North-Western Slovenia, within the new Yugoslavia after World War I, and he himself organised a textile factory with 250 employees. These endeavours created 6,000 jobs and ended village poverty and emigration to America, as pointed out by A. Puhar, a post-war communist mayor of Kranj.⁷

Sirc's efforts came to nought in 1941, when the Nazis invaded and confiscated all of his property, forcing him to flee to Italian occupied territory with his family. The Nazis liquidated Sirc's textile factory, sold it to a Berlin firm producing rocket parts and finally burnt down the buildings.

In 1945, Tito granted an Act on the Treatment of Property which Owners were Obligated to Abandon during the Occupation or of Property appropriated by the occupying Forces or their Collaborators. It provided for immediate restitution of confiscated property (immovable and movable assets, rights, enterprises with machinery and stock etc.) to its owners.

Communist authorities were very slow in implementing their own act, so much so that of the assets confiscated in 1947, when Franjo Sirc was sentenced, the majority were rights to restitution of parts of his erstwhile factory. Since the Germans dismantled the factory and sold the equipment and inventories in smallish lots, these numerous lots became the objects of confiscation instead of the factory as a working unit. Had all these lots not ended up in government hands because of other confiscations and nationalisations, the task of recovering them after 1991 would have been even more daunting than it eventually turned out to be.

After the 1947 show trial, Franjo Sirc died four years into his prison sentence. Ljubo Sirc was released after seven and a half years in prison and escaped, via Italy, to Britain to avoid being forced to work for the secret police. While teaching international economics at Glasgow University, he critically examined the communist "system", repeatedly predicting its collapse.

⁶ Letter by the British Consulate of 22.8.1947, Public Records Office FO 371/67466 - 46305

⁷ *Gorenjski glas*, Open Pages, pp. 15-16, 30.12.1998.

Quashing the Show Trial Sentence

The collapse of communism made it possible for Ljubo Sirc to return to his home country from his exile of 34 years. In the three years 1989-1991, when the communists actually felt ill at ease, the Supreme Court of Slovenia quashed the show trial sentence of 1947 and thus enabled Sirc to commence proceedings for the restitution of, or compensation for, the confiscated property.

The preliminaries took two years, but initially there was progress. It should be underlined that the honest managements of two enterprises handed over to Sirc what belonged to him. Mrs. Kobal and Mr Jurjevec, of a printing office that developed out of an enterprise founded by Sirc's grandfather and taken over by Sirc's father, gave shares to the value of the enterprise in 1940 without further ado. Mr. Lesjak arranged for Sirc to be paid compensation for the spinning machinery that the Germans transferred to Litija.

To begin with, the courts acted promptly but somewhat selectively. The local court, which should have proceeded according to simplified, non-contentious rules, restituted the Sirc family house without the business-occupied ground floor, the family garden without the best part of it that had been turned into a skittle alley and 600 square metres of a factory site of over 15,000 square metres. At this stage, the non-contentious proceedings became stuck for about the next 12 years.

The district court had to deal with those parts of the Sirc firm that the communists did not bother to list as confiscated. In consequence, the ownership had to be proved in "contentious proceedings". In the hands of a very competent district court judge, the complications were speedily overcome and she decided as early as 1996 that compensation should be paid for the so-called Russian cotton, for cotton sold to another spinning mill by the Germans and for some machinery also sold by the Germans. In spite of her competence, the judge was holding back and refusing compensation for the textiles sold by the Germans to local shops, as provided for by the law.

There was an appeal that was not ruled on before the change of law in 1998, after which the appeal court sent the judgement back to the first instance court, allegedly because of changed circumstances. It was appealed twice more (in one test three more times) and returned to the first instance court, to be turned down, in 2005, by the Constitutional Court.

Application to the European Court of Human Rights

After the alteration of Slovene restitution law in 1998, Sirc applied to the European Court of Human Rights, quoting the legislation *ex-post* as

discriminating between those obtaining a judgement before the alteration and those after (Article 14 of the European Convention). Further complaints were that there “was no fair ... hearing within a reasonable time by an independent and impartial tribunal” (Article 6), that there was no protection of possessions (Article 1, Protocol 1), and that there was no compensation as required when a court conviction is reversed (Article 3, Protocol 7).

The European Court of Human Rights reacted *after four years*, in 2002, requesting replies to its questions from both the applicant and the Slovene Government. Then, again, there was silence for *another four years*, until 2006. By then, the applicant had submitted more than 100 pages of English argument and more than 200 documents as evidence.

The Final Decision of 22 June 2006 by the Third Section of the European Court of Human Rights, regarding the application No. 44580/93 Sirc v. Slovenia, disregarded these arguments and evidence, and accepted as valid exclusively the complaint about the length of the proceedings: it was suggested that the Slovene government should pay Sirc €18,000 in friendly settlement for a delay of 15 years since the 1947 sentence was quashed. A decision of this sort does not make sense and the offer of payment of €18,000 is derisory in view of the fact that what is in question is the compensation for a textile factory, the present worth of which would be about \$10 million.

Fifteen years is a very long time in comparison to the normal span of human life (at the time of writing, 2007, Sirc is 87) and the length becomes even more important if the procedure is linked to events 50 years ago. A small fine provides no incentive to speed up proceedings. It does not encourage, let alone force, the offending state to speed up the proceedings in the future. All this is particularly important during transition, of which privatisation and the rule of law are important parts.

What makes the delay worse is the clear possibility that it has been engineered deliberately by the Slovene courts. As mentioned, in the contentious proceedings the Sirc case has been considered by the First Instance Court three times, one part even four times, because of having been referred back to it by the higher court. The rest is even worse, as it will transpire.

Furthermore, the judgements and decisions by the courts of the Republic of Slovenia, in particular its Constitutional Court, are so perverse that the misjudgements cannot be considered the result of mistakes about facts and/or law. The perversities become most obvious if the various proceedings in the Sirc case are not taken one by one, but are evaluated together. This kind of evaluation is attempted here.

The Four Proceedings

In the Sirc case, there are four different proceedings: two in courts and two begun in administrative units passing cases on to courts.

- I) The contentious proceeding that has been concluded on 12/05/05 with a decision by the Constitutional Court of the Republic of Slovenia.

The application for compensation for the items not listed as confiscated a) Russian cotton, and b) cotton sold by the German occupier, was rejected by Slovene courts because:

- a) Sirc on his own would allegedly not be able to recover the Russian cotton or the payment for it.
- b) Because the Sirc factory allegedly continued trading under the German occupation and Sirc, therefore, was not entitled to the return of movables sold.

Addendum a) There could not have been any question of Sirc having to recover the Russian cotton personally, because the cotton was bought by the official agency *Pamured* on behalf of all Yugoslav spinning mills. By 1945, most spinning mills had been taken over by the government and, for this reason – if for no other – the task of recovering the Russian cotton was for the government which, in addition to everything else, had a special office for the recovery of foreign debts. From a communication of this office to the confiscation court in Kranj, it is obvious that the cotton, or its dollar equivalent, had already been recovered in 1947.

What is more, Franjo Sirc, who had actually been the leader of the delegation going to Moscow to buy Russian cotton in 1940, was also instrumental in recovering the dollar payment for the *Pamured*, which, in turn, should have paid it out to contributing individual owners.

Addendum b) While the Slovene Constitutional Court judgement says that the Sirc factory was confiscated in 1944, it was actually confiscated by the Germans on 03/07/41. The new spinning mill machinery was sold immediately, as were the existing cotton stocks, which hardly indicates any intention of continued trading. The prospective German buyer came to view the factory in August 1941, but bought it on 21/01/42, because of some bargaining over the price with the *Reichskommissar*. The textile machinery was sold off, which is not “normal trading” for a textile factory and, in May 1942, newly brought in machinery began producing rocket parts. A judge claimed in his written judgement that, if it did not

continue trading in textiles, it “continued trading in rocket parts”. In 1944, even trading in rocket parts stopped. The German army took over and burnt down the factory building in 1945.

It is fraudulent to call this development “continuous trading”, and doubly fraudulent to say that it prevents any compensation for property, because the law does not say that continuous trading should prevent compensation, but only restitution *in natura* (payment in kind).

- II) The administrative plus judicial proceedings concerning land owned by the late Mrs. Z. Sirc came to an end with the decision by the Constitutional Court of the Republic of Slovenia of 20/10/06, rejecting the claim that it was discriminatory to either return land *in natura* or compensate for it at artificially reduced prices.

As it is, this kind of compensation also violated the Paragraph 1, Article 44 of the Act on Denationalisation, itself providing that nationalised property should be restituted *in natura*, or compensated for “taking into account its present value”.

The subsidiary regulations even introduced a procedure for situations when compensation prices fall more than ten per cent below market prices.

- III) The bulk of the so-called non-contentious proceedings under the Act on Implementation of Penal Sanctions are still at the First Instance Court in Ljubljana, after 16 years. One possible explanation is that they are still pending after this period because of the actions of the State Attorney. She is suggesting that the Sirc factory debts be deducted from the compensation for machinery, despite the following objections:

- i) that the Sirc factory did not have debts only, but also pecuniary claims/assets which amounted to much more than the debts;
- ii) that all this is irrelevant because both nominal debt and claims should be divided by 10,000 and expressed in Slovene Tolars, an operation which makes them both minute;
- iii) that any question of debts or claims cannot be treated in non-contentious proceedings, but new proceedings in a higher court must be instituted.

- IV) When the show trial “judgement” was passed in 1947, the secret police first sealed the apartment in which the two defendants, Franjo and Ljubo Sirc, had lived together with their respective wife and mother, Mrs. Z. Sirc. The Sirc flat was simply emptied by the

secret police, so that the judicial authorities could not enter it or, in fact, take possession of the confiscated property. It all disappeared, including the personal effects of Mrs. Z. Sirc, which were not confiscated and the taking of which must constitute robbery by the secret police.

Mrs. Z. Sirc and her courageous lawyer challenged this robbery in the courts. At this, the secret police produced a shabby “document”, which even the court valuer rejected. Now the Administration Unit of Ljubljana pretends that it should be used to counter the proper document drafted in 1955.

Mistakes or Deliberate Distortions

A mistake in four proceedings, even two mistakes, would be possible. However, one or two mistakes in every proceeding indicate that something more fundamental is involved. One would not want to claim, or accept the claim, that all officials involved in the Sirc case are stupid, incompetent or negligent. One has to assume that a concerted, deliberate influence is at work.

An article in the *MAG* magazine of 03/01/07, page 28, suggests that Milan Kučan, formerly president of the Slovene League of Communists, and then until 2004 the President of the Republic of Slovenia, carefully put forward for the election as Constitutional judges names of persons who were known communists. The Parliament then elected them since the communist successor parties had a majority until 2004.

Direction by Forum 21

After the end of his term as President, Milan Kučan founded “Forum 21”, described as “civil society”. In an article (*Delo*, 10/06/04, p.5), an associate of his by the name of Stane Saksida, a well-known secret policeman, defined the task of Forum 21 as “criticism of Slovene party politics”. In fact, Forum 21 assembled “a concentration of business capital, predominantly financial” (i.e. all those managers of “social enterprises” who succeeded in laying their hands on “social capital”) and “intellectual capital” (i.e. communist ideologues). Since the Slovene political parties are “too young” to know what to do, and the “opposition” (i.e. democratic) parties have “negative characteristics”, Forum 21 will tell them what to do. This instruction will aim also at “other institutional deviations” (perhaps courts, perhaps even the Constitutional Court).

This intention to instruct everybody is surprising in view of the fact that communism collapsed. Its totalitarian political and economic approach reduced Slovene wages from 75% of the Austrian wages in 1937 to 30% of the Austrian wages in 1990.⁸

⁸ Slovene Prime Minister Jansa, *Delo*, Saturday Supplement, 23.12.2006.

The Role of the European Court in Restitution Cases

The discrepancies between the “findings” of the Slovene courts and the facts are so great, and as they are present in all proceedings, they cannot possibly be mistakes, but would appear to be deliberate distortions. As such they should not be simply disregarded by the Third Section of the European Court of Human Rights as “inadmissible”, but should be fully investigated in a fair hearing as postulated by Article 6 of the European Convention on Human Rights.

Whether a mistake or a deliberate distortion, a wrongly prosecuted person whose entire property has been confiscated most certainly has the “human right” for this property to be restored to him as provided for by the law.

The Situation in Slovenia

After separation from Yugoslavia, Slovenia became a small independent country of two million. Apparently, there were 36,000 requests for restitution or compensation made after 1990. According to the statistics published by the Ministry of Justice,⁹ by 2007 (after 15 years), 94.3% of the cases have been resolved, albeit the proportion of requests granted to those turned down is unknown.

There is no figure for the cases of restitution *in natura*. On the other hand, it is known that, so far, 17,989 claimants have received compensation in the form of bonds worth 54.4 million Euros. The largest single compensation payment was 6.6 million Euros, not including interest.

The above figures do not include compensation for confiscation of property after show trials. According to the State Attorney’s own statistics, those having been wrongly sentenced have so far received bonds worth 7.4 million Euros. After 15 years, 169 wrong judgement cases have been resolved, while 81 cases are still pending.¹⁰

The figures indicate that the denationalisation and restitution of confiscated property have been very restrictive and also very erratic (or maybe carefully discriminatory). In quite a few instances, amounts of compensation paid were similar to those demanded in the Sirc case.

Of course, it was hoped that the compensation paid for business property would be used to start new enterprises. Such new enterprises could have been an important part of the economic transition process, had the question been handled less reluctantly. Sirc had planned to build a conference hotel on the textile factory site destroyed by the Germans and wrote an appropriate proposal to the mayor of Kranj. Yet beforehand an

⁹ Quoted in *Delo*, 12.2.2007.

¹⁰ Ibid.

allegation was submitted, on 13 October 1997, to the Local Court of Ljubljana, that Sirc might have already received compensation from the Germans, which was, of course, incorrect. Sirc's plans for a hotel were simply forgotten.

Let us, finally, point out that there is a considerable difference between the efficiency of the Slovene economy when those, whose families now have to beg for compensation, were in charge, than under the communists. Between 1918-1940, the GDP *per capita* rose from 60% of the Austrian to 80%, while now the Slovene wages are about 30% of Austrian wages. Furthermore, Slovenia is only now catching up with Greece which, in 1940, had about half of the Slovene GDP *per capita*.¹¹

Rule of Law and Protection of Property Rights Necessary for Freedom and Development

The characteristics of good governance include: peace, the rule of law, the authority of law, the absence of corruption, independent judicial processes, the enforcement of contracts, basic free markets or freedom to exchange goods and services, and the enforcement of property rights. These issues should be the basic starting point for any constructive discussion of development. Every other policy in the economist's toolbox is secondary to having these basic requirements of good governance in place.

Philip Booth¹²

The preceding reports from Slovenia clearly show that the communists who pretend to have abandoned their ideology continue behaving in ways incompatible with liberal democracies (British-American system). This should be unacceptable because no intelligent person in the West would envisage that the re-united Europe would want a system halfway between a democratic system and totalitarian dictatorship.

This means that the rule of law and private property remain unassailable. But assailed they are. During the Parliamentary Assembly of the Council of Europe debate on the condemnation of communism, many members demanded that a distinction should be made between the crimes of communist regimes and communism as a political movement. If communism as a political movement is acceptable, what becomes of private property as a human right, as stated in Protocol 1 of the Convention? The protection of justly acquired private property by the rule of law, which implies that it should be impossible to expropriate, is essential both for political liberty and economic development.

It is essential for political freedom because property concentrated in the hands of an organised group gives this group, or its leaders, the ability to pressure the inhabitants of a country into submission by denying them subsistence and employment. There is no lack of historic evidence for this claim. Hayek concluded that an unequal distribution of property as

¹¹ See, for example, *Delo*, 15.12.2006.

¹² *Encouraging Entrepreneurship in Eastern Europe, A CRCE Conference*, CRCE, London, 2006

required by practical life does not limit freedom provided it is sufficiently dispersed.

Similarly dispersed property which can be used for business purposes is essential for economic advance. This need is parallel to the well-established fact that economic knowledge and information is not concentrated in one centre, and even less in one person, and cannot possibly be assembled at one place. Therefore, economic decisions, necessarily stretching into the future, can be taken only by individuals with a particularly good knowledge of a given economic sector. In fact, they must know their sector so well that they can hope to overcome the uncertainty about the future sufficiently to take risks. Because of uncertainty, no large scale planning is possible; plans for individual enterprises have to be co-ordinated by markets.

People with ideas and organisational ability, in other words entrepreneurial talents, usually find an opportunity to implement their plans, starting from some small property and also borrowing initially. As their enterprises develop they are supposed to earn differential profits in competition with others and thus to acquire new capital which they put to good use. Of course, even entrepreneurs are mortal and so the enterprises will lose their founders, but will remain in the hands of their heirs, possibly having inherited entrepreneurial talents to pass on. Doubtless, the new generation will make changes since the structure of economic output alters under the influence of higher productivity. Yet ever more enterprises established by new entrepreneurial talent will rise, while some older ones will fall by the wayside.

What we are dealing with here in particular, is a situation in which the historic natural economic development was interrupted by an economic clique that imagined it had discovered a new and artificial way of managing the economy. This clique dispossessed or even physically eliminated the entrepreneurs and then muddled on until it became clear in the 1980s that their invented system did not function.

A return to the normal spontaneously developed economic system used in the most prosperous countries was imperative, but since the transition was peaceful rather than revolutionary, the organised communists still wanted to have their say. Practically everywhere in Eastern Europe, but particularly in Poland and Hungary, they succeeded in making it possible for their own friends to acquire large parts of the existing economic units. Poland and Hungary also offered existing units for sale to foreigners without, however, allowing the restitution of property to dispossessed domestic owners. A consequence of this attitude is that there is hardly any development of new small and medium-sized enterprises, which in normal countries produce more than half of the output.

Other Eastern European countries that have joined the European Union have all adopted restitution legislation, allowing more or less normal functioning and progress. But Slovenia falls between the two groups. It has clear restitution legislation, but its judiciary is dominated by

communists who seem bent on limiting the rights and activities of non-communists.

Furthermore, the Slovene communists still maintain that private property is not a human right, presumably preparing another attempt at communism, which means an economic system without private enterprise. They do not know as yet what it will look like, but we must not forget that Marx and Lenin did not know either. They still launched a revolution.

This desire for something different from the functioning spontaneous system is dangerous because their main lines of attack are against private property and the rule of law, which are the basis of economic progress and political freedom, while the communists themselves have no rational aim. Even more dangerous is that, since Leninism, the communists indulge in his strategy and tactics, allowing them to collaborate under any pretext with anybody, as long as this advances their influence on events.

Stalin did not hesitate to collaborate with Hitler when the intermediary aim was to annihilate British and French imperialists. Therefore, it is surprising that *The Economist* of 10 February 2007 (p. 69) asks how any leftists can ally themselves with “Islamic illiberal technocrats” – Leninists certainly can as long as the intermediary aim is anti-American.

Because of unscrupulous tactics, Leninist communists are exceedingly dangerous, in particular as moderate left-wingers and others have great difficulty in accepting that they are in fact entirely immoral. This credulity explains why so many are prepared to play the parts that Lenin called “useful idiots”. Unfortunately, the gullible taken in by Leninists rarely realise how trustful they are themselves and consider all those who do to be exaggerating. Fortunately, Leninist aims are so irrational that in the end they are bound to fail, but until this becomes clear much harm and suffering may occur. The present time is especially dangerous as the transition from communism in Eastern Europe looked too smooth. In Slovenia we know that elaborate plans for preserving communist influence, even dominance, were prepared.

In view of the many dangers and complications, it is particularly important to abide by the rule of law and the protection of property rights. The European Court of Human Rights should lead in this endeavour and thereby secure the foundations of freedom and prosperity.