ACTA SCIENTIARUM POLONORUM
Acta Sci. Pol., Administratio Locorum 19(2) 2020, 97–107.
http://administratiolocorum.uwm.edu.pl plISSN 1644-0749 eISSN 2450-0771 DOI: 10.31648/aspal.5182

ORIGINAL PAPER Accepted: 17.03.2020

PILOT JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON SYSTEMIC PROBLEMS IN THE PROPERTY RIGHTS IN EASTERN EUROPEAN STATES

Elena Safronova[1]✉, Tigran Oganesian[2]

[1] ORCID: 0000-0002-0335-9890
[2] ORCID: 0000-0001-8239-694X
[1] Department of Constitutional and International Law, Belgorod National Research University
Preobrazhenskaya 78b, apartment 42, Belgorod, 308009, **Russia**
[2] Department of Foreign Constitutional, Administrative, Criminal Law and International Law,
Institute of Legislation and Comparative Law under the Government of the Russian Federation, in Moscow
B. Cheremushkinskaya 34, 117218, Moscow, **Russia**

ABSTRACT

The article examines the issues related to the impact of the ECtHR pilot judgments on improving the legal systems of Eastern European states in the field of property rights protection in accordance with Article 1 of Protocol 1 to the European Convention on Human Rights. The subject of the study is the changes taking place in the legislation on property protection in Eastern European states due to the influence of pilot judgments. Special attention is paid to the relevant principles of property rights established by the case-law of the ECtHR. A brief overview of some pilot regulations adopted in relation to Eastern European states is given; an assessment of the effectiveness of the general measures taken is given. The conclusion is substantiated that many systemic problems in the field of protection of property rights of these states are largely related to the legacy of the Communist regime.

Key words: protection of property, pilot judgment, structural (systemic) problem, case-law of the ECtHR

INTRODUCTION

The Convention for the protection of human rights and fundamental freedoms (Convention), adopted in Rome on November 4, 1950, celebrates its 70th anniversary in 2020. Over the years, dozens of countries around the world have become parties of the Convention, and it is rightly considered as one of the fundamental guarantees of respect for and protection of human rights. Several Protocols have been adopted to the Convention, both supplementing the text of the international instrument itself with independent rights and modifying its provisions. In particular, article 1 of Protocol No. 1 to the Convention establishes the right of protection of property, providing that it can be applied equally to both individuals and legal entities In the judgment of the "Marckx v. Belgium" case the European Court of Human Rights (ECtHR) noted the following: "by recognizing that everyone has the right to the peaceful enjoyment of his possessions, Article 1

✉elena_safronova_2010@mail.ru

(P1-1) is in substance guaranteeing the right of property… Indeed, the right to dispose of one's property constituents is a traditional and fundamental aspect of the right of property" (Marckx v. Belgium, 1979, § 63).

This article provides an overview of how Eastern European countries, which are members of the Council of Europe have approached the problem of solving systemic problems related to the violation of the right to property, namely article 1 of Protocol No. 1 to the Convention. A systematic study of issues associated with the protection of property rights related to pilot decisions will significantly expand the existing understanding of this phenomenon and assess the trends in the case-law of the ECtHR. The study of problematic issues of implementation of pilot regulations in the field of property protection in relation to the Eastern European states makes it possible to determine certain aspects of the impact of the relevant regulations on the development of national legislation.

The main purpose of Article 1 of Protocol No. 1 (A1P1) is to protect a person from unjustified interference by a state in peaceful use of his "property". However, in accordance with Article 46 of the Convention, "the High Contracting Parties refuse to abide by the final judgment of the Court in any case to which they are parties". The fulfillment of this General obligation may entail state's adoption of not only individual but also General measures, in particular, the adoption of laws, changes in law enforcement practices, etc. In this regard, the European Court of Human Rights has issued 6 pilot judgments in respect of Eastern European states, providing for the adoption of General measures to protect the property rights of several thousand citizens.

RESEARCH STAGES AND METHODS

To achieve the intended goal of the study, the following stages and research methods are used. This study starts with a brief analysis of the essence and prerequisites for creating a pilot judgment procedure. The second stage is devoted to a General overview of article 1 of the Protocol No. 1 to the Convention and the systemic problems of the legal systems of Eastern European states. The third stage is related to the study of the main elements of the interpretation of the right to protection of property, which is given by the European Court of Human Rights. Next, all pilot regulations for Eastern European states are reviewed, based on which it has been identified the problematic aspects of implementation of common measures to address legal dysfunctions in the area of property rights. The subject of the study is the systemic problems of Eastern European states in the field of property rights and pilot rulings of the European Court of Human Rights. In the process of working on the study, we used system, comparative legal, historical and legal methods, as well as methods of interpretation, logical and structural analysis.

THEORETICAL FRAMEWORK

The study is based on the analysis of the systemic problems of the legal systems of Eastern European states in the field of property rights protection in the context of the ECtHR pilot regulations. Special theoretical attention is paid to the authors who study the pilot judgment procedure in general (Buyse 2009, De Salvia 2006, Fyrnys 2011, Garlicki 2007, Czepek and Lubiszewski 2015, Maćkowiak 2016, Paraskeva 2007, Wildhaber, 2011). At the same time, the legal positions of some authors on the interpretation of Article 1 of Protocol No. 1 to the Convention, which enshrines the protection of property, were also examined (Harris and O'Boyle 2014, Rozakis 2014). In this regard, some authors give their arguments about why the legal systems of Eastern European states face issues related to compensation for past injustices (Karadjova 2004). Experts' research on the impact of the ECtHR pilot judgments on the elimination of structural (systemic) problems presents a special interest for the current research (Fribergh 2008, Ispolinov 2017, Saccucci 2012, Tomuschat 2011).

PILOT JUDGMENT PROCEDURE

The pilot judgment procedure allows the European Court of Human Rights to prescribe in its judgments not only individual measures (just satisfaction), but also general measures that are binding on the

✉elena_safronova_2010@mail.ru

Respondent states. The pilot judgment procedure was firstly applied by the ECtHR in 2004 – it was done only after this procedure was consolidated in the Rules of the Court in 2011. This fact testifies to the rapid reaction of the ECtHR to the increase in the number of clone complaints caused by the presence of structural (systemic) problems in the legal systems of the Council of Europe member states. According to Michele De Salvia, "the dizzying increase in the number of complaints since 1999 has put the Convention system under stress…"(De Salvia 2006, p. 10). After the Interlaken conference in 2010, the pilot judgment procedure began to develop more intensively, which is why some authors suggest dividing the development of the pilot resolution procedure into pre- and post-Interlaken periods (Czepek and Lubiszewski 2016, p. 84, Ilchenko 2013, p. 6).

Former President of the European Court of Human Rights, L. Wildhaber, calls the pilot judgment procedure as "the boldest attempt to solve the problem of the imperfection of national legislation or law enforcement practice" (Wildhaber 2011, p. 209). Jakub Czepek notes that the pilot judgment procedure has become a necessary element of the Strasbourg landscape over the years (Czepek 2018, p. 347). Indeed, today the pilot decision procedure is a fairly flexible mechanism focused primarily on solving the primary task of reducing the Court's workload – automatic rejection of similar complaints. Another aspect of the study of the legal nature of the pilot judgment procedure is the reinterpretation of the role of the ECtHR due to the acquisition of new properties and qualities. As correctly noted by V. Sadurski, the pilot judgment procedure has partially changed the role of the Court: from a means of resolving conflicts to addressing large-scale and systemic human rights problems (Sadurski 2008, p. 95).

According to Costas Paraskeva, the end of the cold war facilitated the entry of the former Communist states of Eastern Europe into the Council of Europe (Paraskeva 2007, p. 3). At the same time, the number of potential applicants has almost doubled: from 450 to 830 million people. as a result, the number of repeated complaints has increased – according to Cristian Tomuschat, an average of 20% each year (Tomuschat 2009, p. 11). The Council of Europe's acceptance of post-communist states as members of the organization drew criticism from several authors, who referred to the lack of "stable and functioning democratic institutions" in the legal systems of Eastern European states (Harmsen 2001, p. 19). According to some authors, structural dysfunctions of legal systems "with deep-rooted Communist traditions" have blocked the Court's activities (Buyse 2009, p. 2, Fyrnys 2011, p. 1231). Former Deputy Secretary-General of the Council of Europe (1993–1997), professor Peter Leuprecht, expressed concern that "some of the new member states have rushed to ratification without bringing domestic legislation and reality into line with its requirements" (Leuprecht 1998, p. 327). In turn, the former head of the Committee on Legal Affairs and human rights of the parliamentary Assembly of the Council of Europe, Andrew Drzemczewski, stated that the expansion of the Council of Europe poses a serious threat to the ECtHR since the legal standards in several new member states from Eastern Europe are much lower than the Convention standards (Drzemczewski 2000, p. 10)

Pilot judgments issued by the European Court concerning Eastern European states are to some extent related to remnants of Communist regimes in these countries. Ireneusz Kaminski, investigating the case-law of the ECHR, calls these "historical situations" which include events that occurred shortly after World War II (Kaminski 2010, p. 10). Mariana Karadjova rightly points out that the path to democracy for Eastern European societies (necessarily) faces questions related to compensation for past injustices (Karadjova 2004, p. 362). Indeed, if we look at the pilot judgments issued by the European Court concerning Poland, Albania, Romania, Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Slovenia, all the structural (systemic) problems were related to "defects" that were the result of the "Communist past" (Tab. 1). As noted by Tom Tabori although most states in Eastern Europe have enacted some form of legislation concerning the restitution of property confiscated by former regimes, some have opted to do nothing in this respect, while others have made provision within certain limits (Tabori 2013, p. 195).

✉elena_safronova_2010@mail.ru

Table 1. List of pilot judgments issued by the European Court of Human Rights in respect of Eastern European countries recognizing violations of property rights

Pilot judgments	Date of acceptance	Structural (systemic) problem
Broniowski v. Poland (application No 31443/96)	22.06.2004	lack of an effective compensation mechanism for property lost by Polish citizens repatriated from territories beyond the Bug river
Hutten-Czapska v. Poland (application No 35014/97)	19.06.2006	deficiencies in the rent-control provisions of the housing legislation; the system imposed some restrictions on landlords' rights, in particular setting a ceiling on rent levels which was so low that landlords could not even recoup their maintenance costs, let alone make a profit
Suljagic v. Bosnia and Herzegovina (application No 27912/02)	03.11.2009	systemic problem due to deficiencies in repayment scheme for foreign currency deposited before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY)
Maria Atanasiu and Others v. Romania (applications No 30767/05 and 33800/06)	12.10.2010	ineffectiveness of the system of compensation or restitution, a recurring and widespread problem in Romania; the three applicants complained of the delays on the part of the Romanian authorities in giving a decision on their applications for restitution or compensation of property nationalized or confiscated by the State before 1989
Manushaqe Puto and Others v. Albania (applications No. 604/07, 43628/07, 46684/07 and 34770/09)	31.07.2012	non-enforcement of administrative decisions awarding compensation for property confiscated under the communist regime in Albania
Ališić and Others v. Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Serbia and Slovenia (application No. 60642/08)	16.07.2014	the systemic problem resulting from the failure of the Serbian and Slovenian Governments to include the applicants and all others in their position in their respective schemes for the repayment of "old" foreign-currency savings deposited in the former Socialist Federal Republic of Yugoslavia (SFRY)

GENERAL OVERVIEW

Article 1 of Protocol 1 to the Convention explicitly grants the state broad powers to interfere with property rights for the public interest. David Harris and Michael O'Boyle note that every year the ECtHR receives many cases from Central and Eastern Europe on the restoration of property rights related to events during the Communist regime (Harris and O'Boyle 2014, p. 1200). Analyzing the statistics of judgments adopted by the ECtHR in 2019, we can say that property issues continue to be in the spotlight. In 2019, the ECtHR issued 884 judgments, of which 131 related to article 1 of Protocol No. 1. Most of the rulings applying article 1 of Protocol No. 1 were made against Eastern European states: Russia – 26 judgments, Bosnia and Herzegovina – 15, the Republic of Moldova – 15, and Ukraine – 10 (2019, official statistics of the ECtHR). However, article 1 of Protocol No. 1 is often applied in conjunction with Article 13 of the Convention when applicants lack effective remedies.

The right to property is one of the most controversial provisions in the context of the discussion of the draft Convention. Vice President of the European Court of Human Rights Christos Rozakis claims that the states that had the most objections to the inclusion of this right in the Convention were the states with socialist ideas of their governments, which doubted that the right of property was a fundamental human right; the right of property has now grown into one of the most important rights contained in the Convention, judging from the number of appeals each year (Rozakis 2016). The right to property has now become one of the most important rights contained in the Convention, judging by the number of appeals filed annually with the judicial Registry. One might say that it is a right that protects the 'haves' against the 'have-nots'. The European Court of Human Rights

✉elena_safronova_2010@mail.ru

(ECtHR) views the structure of A1P1 as reflecting the search inherent in the Convention for a fair balance between the general interest of the community and the protection of individual rights (2013, p. 194).

As practice shows, there is an erroneous identification of a system problem with a systemic problem. This identification in the erroneous both polish and foreign literature was also pointed out by Czepek and J.M. Lubaszewski (Cepek and Lubachevsky 2016, p. 84). It is noteworthy that the case law of the ECtHR does not explain the differences between these concepts, although, in our opinion, there is a difference. In the first pilot judgment (Broniowski v. Poland, Hutten-Czapska v. Poland). The ECtHR has designated the identified problems as "systemic". However, in many other judgments the problem has been designated as "structural". As for the Rules of Court, it includes both definitions: "the court may initiate a pilot judgment procedure and issue a pilot judgment if the facts of the application indicate in the relevant Contracting Party that there is a structural or systemic problem…" (Rules of Court. Rule 61).

The difference between a systemic and structural problem is not always highlighted not only by researchers, but also by lawyers and judges of the ECtHR themselves. The lack of certainty on this issue is why many researchers use these two terms without distinguishing between them. According to Maria Mačkowiak, the problem of lack of terminological uniformity often arises from an incorrect translation of article 61 of the ECHR Regulation (Mačkowiak 2016, p. 123). Such inaccuracies can be found also in unofficial translations into Russian and Polish of pilot judgment published in various scientific and analytical journals and websites. For example, on the official website of the ECtHR, in the factsheet about the pilot regulations, all problems are listed as "structural", while the ECtHR in its rulings noted some as "systemic" (Factsheet 2020).

The difference between systemic and structural problems is very subtle and difficult to distinguish. A systemic problem is a dysfunction of the legal system due to deficiencies in legislation. Andrea Saccucci, in turn, divides systemic problems into legislative and administrative problems (dysfunctions) (Saccucci 2012, p. 271). A classic example of a systemic problem is the case "Broniowski v. Poland", in which the ECtHR recommended that the Polish authorities take" appropriate legislative measures". The structural problem concerns shortcomings not only in legislation, but also in law enforcement practice. It follows that a systemic problem arises when national legislation is not functioning properly, and a structural problem arises when we are dealing not only with legislative shortcomings, but also with "defects in justice" (Mačkowiak 2016, p .123).

RELEVANT PRINCIPLES OF THE RIGHT TO PROPERTY ESTABLISHED BY THE CASE-LAW OF ECtHR

As the Court has stated on some occasions, Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognizes that the Contracting states are entitled, amongst other things, to control the use of property in accordance with the general interest and to secure the payment of penalties. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should, therefore, be construed in the light of the general principle enunciated in the first rule (see James and Others v. the United Kingdom, 21 February 1986, § 37, Series A no. 98, and Iatridis v. Greece, No. 31107/96, § 55, ECHR 1999-II).

The autonomy of the concepts used in the Convention is typical not only for article 1 of Protocol No. 1, but also for the Convention as a whole. Autonomous interpretation allows for flexibility of legal regulation, the ability to quickly respond to changes in the structure of society: the emergence of new types

✉elena_safronova_2010@mail.ru

of property relations, the emergence of new products of human activity in the field of intellectual activity.

The concept of "possessions" in the first part of Article 1 of Protocol No. 1 is an autonomous one, covering both "existing possessions" and assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation". "Possessions" include rights *in rem* and *in personam*. The term encompasses immovable and movable property and other proprietary interests.

Article 1 of Protocol 1 to the Convention provides for such a concept as "legitimate expectations". "Legitimate expectations" under the ECHR are an expanded notion of conventional ideas of property, arising in contexts where the ECtHR considers that there is some special aspect of individual interests that merits protection. In Broniowski v. Poland (2005) EHRR a protected legitimate expectation was held to have arisen from a promise made to provide land to those displaced after World War II (Sales 2006, 144).

Despite the breadth of the scope of the property right and the diversity of its objects in the case-law of the ECHR, the property right itself is not considered absolute. The ECtHR, when considering an application for violation of property rights, first determines whether a particular object or right is property protected by the Convention, and then finds out whether the plaintiff's property right was violated, because the state fulfilled or failed to fulfill its obligations under the content of the property rules.

In cases involving an alleged violation of Article 1 of Protocol No. 1, the European Court must ascertain whether because of the state's action or inaction the person concerned had to bear a disproportionate and excessive burden. In assessing compliance with that requirement, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective" (Broniowski v. Poland, § 151). However, with the increasing attention to the protection of human rights, the Court could do more (Zheng 2014, p. 33).

Thus, it can be argued that the structure of Article 1 of Protocol No. 1 is complex in its own way, and its elements are developed over time in the process of interpretation by the European Court of Human Rights.

PILOT JUDGMENTS AND THE RIGHT TO PROTECTION OF PROPERTY

The European Court of Human Rights issued its first pilot judgment in 2004 in the case "Broniowski v. Poland", and the pilot judgment procedure itself was enshrined in Rule 61 of the ECHR Rules in 2011. as of 1 February 2020, the European court of human rights issued 31 pilot decisions in respect of 17 states parties to the Convention. Since the introduction of this procedure, the ECtHR has developed a significant practice of issuing pilot judgments, mostly concerning Eastern European states.

From 2004 to 2019, the European Court of Human Rights issued 6 pilot judgments stating the existence of a structural problem in the field of property protection in respect of 8 Eastern European states. Violations of property rights were mostly found by the ECtHR in Eastern European countries. These violations were related to the absence or inefficiency of compensation or restitution systems, non-payment by the state of social benefits, allowances, pensions provided for by national legislation, non-provision of legal housing, etc. It should be noted that for the first time, the pilot judgment procedure was initiated on this basis.

The pilot judgment procedure is aimed at eliminating structural (systemic) problems in the legal systems of the Respondent states of the Convention. One of the goals of the pilot order procedure, as noted by the then-current Registrar of the ECtHR, Erik Friberg, is an indicative goal, manifested in "encouraging the Respondent state to protect the Convention rights" (Friberg 2008, p. 86).

Professor Dothan S. believes that the ECHR prefers to test its innovations in Eastern European countries, whose reputation in human rights issues from a European point of view is far from ideal (Dothan 211, p. 115). Professor of MSU Alexey Ispolinov notes that "this reduces the very value and weight of possible objections from these countries and is not so dangerous for the reputation of the Court" (Ispolinov 2017, p. 26).

✉elena_safronova_2010@mail.ru

Indeed, the first pilot judgment was issued in 2004 against Poland, whose legal system was in a state of restructuring.

The Grand Chamber of the European Court of Human Rights adopted a judgment on June 22, 2004, in the case "Broniowski v. Poland", which revealed a systemic problem in the Polish legal system that deprives an entire category of people (approximately 80,000 people) of the right to freely use their property. A Polish citizen complained that he had not received the compensation due to him for property lost by Polish citizens repatriated from territories beyond the bug river that had been transferred to Ukraine, Belarus, and Lithuania. Following the adoption of this decision and the postponement of the Court's consideration of similar complaints, Poland in July 2005 adopted a new law providing for financial compensation for property left behind by the bug river. The court recognized that the new law and the compensation scheme were effective in practice. In 2007 and 2008, it deleted from the list of more than 200 similar cases that had been postponed and decided that further use of the pilot decision-making procedure was not necessary. Judge L. Garlicki notes that the main feature of this pilot order is that it indicated "not a simple recommendation, but a command" what to do. In addition, a former judge of the Polish constitutional court, and later a judge of the European Court of Human Rights, draws attention to the fact that the pilot decision in this case "rose" above the specific context of the individual complaint and gave the decision a constitutional character (Garlicki 2007, p. 185).

Antoine Buyse, a Professor at the Netherlands Institute of human rights, notes that the case "Broniowski v. Poland" was followed by a period when the ECtHR tested the pilot judgment procedure and applied it as an exceptional measure (Buyse 2009, p. 1894). The value of the first pilot judgment in the "Broniowski v. Poland" case is that the ECtHR in this case was first formed a constitutive basis to the legal nature of a pilot judgment.

In the pilot judgment in the case "Hutten-Czapska V. Poland" dated June 19, 2006, the Court noted as a systemic problem the shortcomings of the provisions of the housing legislation regulating the issues of renting housing. The system provided for a number of restrictions on the rights of homeowners, in particular, it set an upper limit on rent, which was so low that homeowners could not even reimburse their expenses for the maintenance and maintenance of rented housing, let alone make any profit. The Court estimated that this issue potentially affected about 100,000 rental homeowners.

Shortcomings in the system for the return of foreign currency deposits deposited before the collapse of the Socialist Federal Republic of Yugoslavia (SFRY) were revealed in the case "Suljagic v. Bosnia and Herzegovina" of 3 November 2009. The applicant, a Bosnian citizen, filed a complaint that the state did not issue bonds that, in accordance with Bosnian law, would allow citizens to return their deposits deposited in Bosnian banks before the collapse of the SFRY. The ECtHR noted that it is considering more than 1,350 similar cases. Subsequently, the authorities of Bosnia and Herzegovina issued government bonds intended to repay foreign exchange savings. The government of Bosnia and Herzegovina decided to issue these bonds for the first time on October 21, 2009, and on March 24, 2010. The government of Bosnia and Herzegovina also issued a resolution on the payment of outstanding payments related to the payment of interest on the bonds.

The inefficiency of the compensation or restitution system is a recurring and widespread problem in Romania as well. Three applicants in the case "Maria Atanasiu and Others v. Romania" filed a complaint about the delay in the decision of the Romanian authorities on their applications for restitution or compensation for property nationalized or confiscated by the state before 1989.

The Romanian Parliament in 2013, passed Act No. 165/2013 on the completion of the process of restitution or alternative compensation for real estate that was illegally transferred to state ownership under the Communist regime in Romania. The law established that the amount of compensation awarded will be paid in installments over a period of seven years. The law

✉elena_safronova_2010@mail.ru

also established mandatory deadlines for each stage of the administrative process for processing applications for restitution and provides for the possibility of judicial review, which allows national courts not only to verify the legality of administrative decisions but also to take measures to implement restitution or compensation if necessary.

As part of the pilot judgment procedure in the case "Maria Atanasiu and Others v. Romania", the European Court has approached with caution and understanding the assessment of the remedies established by the Romanian authorities.

It is very significant that the European Court took into account the fact that the judicial or administrative practice of applying the adopted Law No. 165/2013 has not yet been formed, and therefore it is not fully justified to recognize new obligations for the Romanian authorities to take additional measures. However, the new legislative mechanism has not been recognized yet as an effective mechanism by the Court. The Romanian authorities are currently in the process of searching for optimal ways to apply the adopted amendments in practice.

The failure to comply with administrative decisions to pay compensation for property confiscated by the Communist regime in Albania was indicated in the case "Manushaqe Puto and Others v. Albania" of 31 July 2012. The case concerned 20 Albanians who, despite the fact that their hereditary right to land plots was recognized by the authorities, did not receive compensation payments in accordance with the effective administrative decisions to pay compensation instead of restitution in one of the ways prescribed by law. There were 80 similar cases pending before the Court.

In December 2015, the Albanian Parliament adopted Act No. 133/2015 "on the circulation of property and the completion of the property compensation process" (entered into force in February 2016). The law is aimed at enforcing all decisions to obtain the compensation that have not been executed, and also applies to applications that are pending before national courts. Besides, The Act established a compensation Fund (Financial Fund and land plot Fund) to provide the necessary resources to pay compensation to former owners.

The next systemic problems that arose in post-communist states due to the inability of the governments of Serbia and Slovenia to include applicants in the scheme for the return of "old" foreign exchange savings deposited in banks of the former Socialist Federal Republic of Yugoslavia (SFRY) were established by the Grand Chamber of the ECtHR in the case "Alisic and Others v. Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Serbia and Slovenia" dated 16 July 2014. The applicants (citizens of Bosnia and Herzegovina) claimed that they could not receive their "old" currency savings deposited in two banks that were located in the territory of Bosnia and Herzegovina after the collapse of the SFRY. The court considered it appropriate to apply the pilot judgment procedure since it was considering more than 1,850 such complaints involving more than 8,000 applicants.

The court held that Serbia and Slovenia must take all necessary measures, including legislative amendments, within one year to allow applicants, as well as other persons in a similar situation, to return their "old" currency savings on the same terms as citizens of Serbia and Slovenia who have savings in national branches of Serbian and Slovenian banks.

In order to implement the prescribed measures, the government of Serbia has prepared a bill establishing a scheme (system) for the payment of "old" savings in accordance with the regulations of the European court of justice. The Serbian authorities indicated that the draft law also provides for the payment of foreign currency savings deposited in branches of Serbian banks in other states. The bill does not apply to depositor applicants who used their "old" savings during the privatization process.

As for the general measures taken by the representatives of Slovenia, the situation looks more dynamic and progressive. In July 2015, Slovenia adopted an Act, which established a corresponding scheme for depositors to exercise their right to receive their "old" foreign exchange savings.

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The adopted Act sets the following interest rates for existing "old" deposits. According to the information provided, as of the beginning of 2016, the Slovenian authorities received almost 14,000 applications from depositors to verify unpaid "old" savings. By September 16, 2016, they had made payments of foreign currency savings to almost 5100 depositors for a total of 63.6 million euros. At the same time, according to the authorities, another 385 million euros will be required from the budget for the implementation of subsequent payments. Thus, the adopted law provided for the creation of a remedy, restoring the rights of depositors of "old " savings and ensuring equal conditions for depositors of all branches while maintaining the real value of assets after more than 20 years.

It should be noted that in this process, depending on the timeliness of the implementation of General measures, two different results are observed. The Serbian authorities did not take a number of legislative measures within the prescribed period, while in Slovenia the adopted law not only entered into force but also provided initial data on the implementation of this act. However, with regard to the effectiveness of the measures taken by the authorities of Serbia and Slovenia, both the Committee of Ministers and the European Court of Human Rights have yet to assess not only the effectiveness of individual measures but also the completeness and timeliness of the set of measures to address the identified systemic problems.

Some authors attribute the effectiveness of cooperation between the European Court and the Respondent states to the nature of the alleged violation, the assessment of national authorities, and the political and economic advantages of this cooperation (Wildhaber 2008, p. 66). It is clear that the pilot judgment procedure allows for a dialogue between national authorities and the Committee of Ministers, as well as between national authorities and other stakeholders. This creates conditions that increase the chances of finding more effective and coherent reforms and measures to address the national systemic problem.

CONCLUSIONS

A significant part of the systemic problems identified by the European Court of Human Rights in the first years of testing the pilot judgment procedure is related to the remnants of the post-Communist regimes of the Eastern European parties to the Convention. In these cases, the pilot judgment procedure is a necessary tool for eliminating such dysfunctions of national legal systems that affect the rights of a significant number of persons.it is essential for the European Court of Human Rights to overcome these negative consequences of the Communist legacy of the legal systems of the Respondent states. Overcoming very persistent and complex systemic dysfunctions related to the protection of the right to property in these states (compensation for property lost by Polish citizens repatriated from the territories beyond the bug river; shortcomings in the foreign exchange Deposit return system in Bosnia and Herzegovina; inefficiency of the compensation or restitution system in Romania; inability of the governments of Serbia and Slovenia to include applicants and others in the scheme for the return of foreign exchange savings deposited in banks of the former Yugoslavia; non-payment of compensation for property confiscated by the Communist regime in Albania, etc.) is one of the key directions of the ECtHR in the framework of the pilot judgment procedure for the harmonization and unification of the legal space of the Council of Europe.

Another example, according to Antoine Buyse, is the first two full-fledged pilot judgment in the cases of "Broniowski v. Poland" and "Hutten-Czapska v. Poland", which showed a different attitude of the state to the implementation of general measures (Buyse 2009, p. 1896). While in the first case, the Polish authorities expressed their full readiness to cooperate, in the case of "Hutten-Czapska v. Poland", the authorities expressed doubts as to whether the pilot judgment procedure could be applied at all. This is due to the differences of opinion that have arisen between the higher courts of Poland, on the one hand, and the Executive and legislative authorities, on the other.

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For the effectiveness of the remedies created, Eastern European states need to constantly monitor the state of legislation, improve certain aspects of law enforcement practice, and, equally important, allocate the necessary budget funds in a timely and sufficient manner to award compensation.

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✉elena_safronova_2010@mail.ru

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✉elena_safronova_2010@mail.ru