

(English version)

Question for written answer E-001406/19
to the Commission
Kinga Gál (PPE)
(19 March 2019)

Subject: Restitution of confiscated properties

The Commission has acknowledged that, following a country's accession to the EU, administrative and judicial practice in connection with properties confiscated prior to accession falls within the scope of application of EC law.

In the case of the confiscation of property from a national of a Member State in a Member State of which they are not a national (Romania) prior to that country's accession — since there was no possibility of its return in kind by applying the legislation of the Member State concerned — the authorities responsible decided in 2010 on financial compensation (9449/06.08.04.-1043/N/2001). This, however, has not yet been acted upon.

1. I would like to ask the Commission whether this conduct on the part of a Member State is compatible with the basic economic freedoms, in particular capital and freedom of establishment.
2. I would also like to ask the Commission whether this is compatible with the principles by which EC law keeps the Member States' procedural and institutional autonomy within strict limits (equal treatment and effectiveness), with the procedural provisions of the Charter of Fundamental Rights of the European Union, and with the principles set down by the established case-law of the European Court of Human Rights, under which administrative decisions must be acted upon by the relevant deadline.
3. If the Commission finds, in the case of the above questions, that this practice is not compatible with EU rules, I would like to ask what the legal entity in question can do to enforce their rights deriving from the EU legal order.

Answer given by Vice-President Dombrovskis on behalf of the European Commission
(7 June 2019)

Administrative decisions related to the restitution of properties confiscated prior to the Member State's accession to the EU fall within the temporal scope of application of EC law where any of their effects occurs or is disputed under the application of EC law. Indeed, the provisions of the Treaty are, save express exception, binding on the Republic of Romania from the date of its accession, with the result that they apply to the future effects of situations arising prior to its accession⁽¹⁾. Therefore, the fact that the first administrative decision in relation to the restitution was issued after the accession date by no means excludes the applicability of EC law⁽²⁾. Under such circumstances, such decisions thus have to be compatible with EC law.

It is for national authorities to execute those decisions in compliance with EC law⁽³⁾. Moreover, in the absence of EU legislation governing that situation, the procedural rules are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States. However, those rules may not be less favourable than those governing similar domestic actions (principle of equivalence), nor may they be framed in such a manner so as to make it in practice impossible or excessively difficult to exercise the rights conferred by EC law (principle of effectiveness)⁽⁴⁾. If individuals consider that the national authorities have breached their rights stemming from EC law, including from the Charter of Fundamental Rights of the European Union, they have the possibility to seek a recourse to national courts. It is primarily for national courts to assess the lawfulness (including with regard to EC law) of a specific administrative decision taking into account all the factual circumstances of the case. National courts have primary responsibility to ensure the adequate and effective enforcement of the rights stemming from EC law. In that regard they may or, if judge of last instance, must refer a preliminary question to the Court of Justice of the European Union.

⁽¹⁾ Case C-630/17, *Milivojević*, EU:C:2019:123, para. 42.

⁽²⁾ C-122/96 *Saldanha*, ECLI:EU:C:1997:458, para. 14.

⁽³⁾ Commission Communication Protection of intra-EU investment, COM(2018) 547/2, pages 17 et seq. and case law referred to therein.

⁽⁴⁾ Case C-312/93, *Peterbroeck*, EU:C: 1995:437, para. 12.