

EP-Petition No.0853-10

ILOG Foundation LTD

Petition to European Parliament

Motion for an amendment of Art. 295 EC Treaty (or Art. 345 of the Lisbon Treaty) and Art. 17 Charter of fundamental Rights of the European Union.

The right to property is a traditional fundamental right in democratic and liberal societies. It is contained in all national constitutions and has been established by the jurisprudence of the Court of Justice.

The regime of protection of property rights (i.e. land, homes, housing rights, small businesses, investments or other assets) as a fundamental right is essential in a democratic society and for a free-market economy. Therefore, the respect and protection of this right against any form of encroachment or unreasonable government interference ought not only be one of the main priorities of national governments but also that of the European Union.

Both, national administrations and the European Union are called upon to regulate the exercise of this right in order for it to be accessible to everyone.

Whereas every now and then for one reason or another (e.g. wars, ethnic cleansing, public use, urban redevelopment, private economic development, cultural or sports celebrations etc.) regimes and public authorities lash out and seize private property in order to achieve a certain purpose or simply just try to consolidate their power.

Whereas contrary to modern myths, there is nothing about governments that renders their violations of property rights less objectionable than those of common thieves and vandals.

Whereas dictatorships in Europe over time have toppled and transitional regimes have emerged from the political rubble, the new governments inevitably inherit stolen property as a legacy of past transgressions and repressions.

Whereas property reparation programs undertaken in Central and Eastern Europe after the fall of the communist regimes fail to fulfil 'the promises of the rule of law'.

Restitution and compensation laws are riddled with discriminatory provisions. The schemes lack reparative nature for they deliberately prevent property restitution and consciously push down compensation rates in order to avoid paying market value prices or reasonable indemnities.

Whereas the continued existence of discriminatory edicts and laws (such as the Czechoslovakian Beneš Decrees - valid still today in the Czech and Slovak Republic-; the Yugoslavian AVNOJ Decrees 21.11.1944; 23. 08.1945 and 31.07.1946 -valid today in Slovenia and in prospective EU members states: Croatia and Serbia- and the Polish Confiscation and Evictions Acts 06.05.1945; 03.01.1946; 08.03.1946; 28.02.1946 and 13.09.1946) in the statutes of some member countries of the European Union encumber restitution and compensation.

Whereas the continued occupation of an European State (in particular Northern Cyprus by Turkey, a prospective member of the European Union), which rigorously obstructs owners from accessing their own homes constitutes an ongoing Human Rights violation.

Whereas in recent decades there has also been a growing concern about the manner in which some states and units of government exercise their power of eminent domain.

Governments appear more and more inclined to exercise eminent domain for the benefit of developers or commercial interests, on the basis that anything that increases the value of a given strip of land is a sufficient public use (e.g. recent land grabs, unbridled construction activity and coastal erosion in Spain, Portugal etc.).

Whereas in order to accommodate big cultural and sports events residents are often forced from their homes with little notice (recent requisition of land for the 2012 Olympic Games in London).

The process of demolition and eviction is largely characterised by arbitrariness and lack of due process.

Whereas governments have committed themselves to sustainable (tourism) development, they actually are only interested in pursuing a policy of growth in order to maximise local economic benefits.

Hereby the authorities hazard the consequences of unlimited expansion, destruction of protected natural areas, non-compliance with the environmental legislation and serious contamination problems; converting the countryside and wildlife habitat into suburbia. Cases such as ECtHR *Arrondelle v. the United Kingdom* indicate a connection between environment and ownership.

State and local officials falsely assume that growth generates more money in revenue than it demands in new services. However, numerous studies show that urban growth rarely pays its own way. The enormous costs of urban development - new infrastructure, roads, schools, emergency services, plus the difficulty to quantify external costs such as traffic jams, air and watershed pollution etc.- are nearly always condoned. These costs are paid by society as a whole, and they frequently outweigh the benefits of urban growth.

Whereas governments are still responsible for paying "just" compensation when private property is seized, they often don't.

Local officials often attempt to minimize payment for the property knowing that most people are unable to challenge these decisions. Cities have been found to hire appraisers that will depress property valuations; use the threat of eminent domain to intimidate property owners to sell below-market rates; avoid paying relocation costs for businesses and homeowners; ignore the value of "good will" and other intangible value implicit in a business's reputation and underestimate start-up and marketing costs involved after a business moves.

Whereas International courts and tribunals have treated creeping or indirect expropriations and equivalent measures (i.e. acts of a government squeezing a project by taxes, regulations, access or changes of law) in the same way as direct expropriations (*PCIJ Chorzów case; Iran -United States Claims Tribunal*) national authorities, partially without making a distinction between foreign and domestic owners tend not to compensate the owners for they consider that these acts do not constitute a formal 'taking'.

Unfortunately, even the European Court of Human Rights (ECHR) has found an expropriation only in those cases where the owner has been definitely and fully deprived of the ownership of his/her property.

If the owner's rights have not disappeared, but have only been substantially reduced, and the situation is not "irreversible", there will be no "deprivation" under Article 1, Protocol 1 of the European Convention of Human Rights (*Handyside v UK; Matos e Silva v Portugal*), thus compensation will not be awarded.

Whereas rent control programmes were introduced in most major cities in Western Europe during World War I to mitigate the disruptive effects of the War and to prevent profiteering.

These programmes were discontinued in most cities after the War; in others however, they lingered on, e.g. Austria, Portugal, Norway etc.; particularly regarding old apartments and residential houses built before the last war.

This form of price ceiling can create [shortages](#) and reduce housing [quality](#). The freezing of rents deprives property owners of a reasonable return on their properties proportionate with the increase in the cost of living and the cost of building materials. Old and frozen rents bear little relation to present-day maintenance costs, the current returns from alternative forms of investment or the prevailing market rents in respect of new accommodation. Rent control laws lead to neglecting repairs and maintenance. Furthermore, rent control violates the [property rights](#) of the property owners. Owners are limited in what they may do with their property. Price ceiling has also led to the emergence of practices such as 'key money' (payment of large deposits) that make rented housing less accessible to those who are less privileged.

Whereas the European Union is slowly starting to acknowledge these diverse forms of property rights violations, historic or present-day abuses, it has however, not yet established a comprehensive procedure to resolve the legal problems arising from these infringements.

The EU legal system does not encourage the efficient settlement of claims, nor protect the rights of victims seeking recovery of illegally seized property.

Down to the present day the European Union fallaciously relies upon the European Court of Human Rights to resolve these issues, without realising that the right of restitution is not guaranteed by the European Court of Human Rights (*cf. ECtHR, Gratzinger v Czech Republic; ECtHR, Polacek v Czech Republic, ECtHR Maltzan v Germany*).

Moreover, Art. 1 of Protocol 1 of the European Convention does not guarantee the free enjoyment of property in pleasant environment nor compensate the loss of a property's economic value through irresponsible speculative growth (e.g. road network and airport expansion, excessive noise nuisance through night-flights or noise radiation from wind turbines) nor protect property owners from creeping expropriations.

As a result, there is a disconcerting absence of mechanisms for individual complaints in Europe with regard to economic, social, and cultural rights.

Thus, there is an overwhelming necessity to revise European existing and future property law with regard to the above stated transgressions. Due to the lack of appreciable intervention in this matter on behalf of the European Union Property Rights have significantly been weakened and are now subject to cost-benefit analysis.

Recalling art. 1 of the first additional protocol to the European Convention on Human Rights, which provides for the rights to the peaceful enjoyment of one's possessions.

Recalling Article 17 EU Charter of Fundamental Rights, which requires "*fair compensation being paid in good time for loss*" of property. Recalling Article 6 of the EU Treaty, which declares that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and that it shall provide itself with the means necessary to attain its objectives and carry through its policies.

Recalling the European Union's commitment to the duty of remembrance.

Recalling the various resolutions: EP resolution B4-1493/95 on return of plundered property to Jewish communities; Council of Europe resolution 1096 (1996) on measures to dismantle the heritage of former communist totalitarian systems; EP resolution 1998 (10) on the restitution of property belonging to Holocaust victims; Council of Europe's resolution draft condemning totalitarian communism (Council of Europe Doc.9875 rev) and Council of Europe's Parliamentary Assembly resolution 1481 (2006) regarding the need for international condemnation of crimes of totalitarian communist regimes.

Recalling in particular EP Resolution B6 -0251/2007 which considers that the obligation to cede legitimately acquired private property without due process and proper compensation, and the obligation to pay arbitrary costs for un-requested and often unnecessary infrastructure development, constitute a violation of an individual's fundamental rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the light of the case law of the European Court of Human Rights (*c.f. ECtHR Aka v. Turkey*) and as contained in the EU Treaty.

Recalling Council Directive 93/7/EEC on the Return of Cultural Objects Unlawfully Removed from the Territory of a Member State, which obliges Member States to return cultural objects in accordance with the procedure and in the circumstances provided for in that directive.

Recalling the EU Accession Criteria (so-called Copenhagen criteria), which among other things calls for the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

Recalling States' international obligations under UN A/CN.4.L602 (Responsibility of States for internationally wrongful acts).

Recalling Jose Ayala Lasso's speech: "Our goal remains the universal recognition of human rights, which are based on the principle of equality of all human beings. Indeed all victims of war and injustice deserve our respect and compassion, since every individual human life is precious".

Recalling especially the UN 'Pinheiro Principles' - 'Restorative Justice', UN Resolution E/CN.4/Sub.17 June 18. 2005 on Housing and Property Restitution for Refugees and Displaced Persons.

Recalling the UN Commission on Human Rights: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (April 19, 2005) found in numerous international instruments, in particular in art.8 of the Universal Declaration of Human Rights, art.2 of the International Covenant on Civil and Political Rights, Art. 6 of the International Convention on the Elimination of All Forms of Racial Discrimination at article 6, art 14 in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 39 of the Convention on the Rights of the Child and of international humanitarian law as found in article 3 of the Hague Convention of 18 October 1907 concerning the Laws and Customs of War and Land (Convention No. IV of 1907), article 91 of Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), and articles 68 and 75 of the Rome Statute of the International Criminal Court.

Recalling the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emanating from the deliberations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and resolution 40/34 of 29 November 1985.

Recalling the fact that the aspiration to recover and repossess land or property has emerged in recent years as a distinct and claimable right applicable to all displaced persons who wish to invoke it.

Convinced that, in adopting a victim-oriented perspective, the European Union would affirm its human solidarity with victims of violations of international law and be finally consistent with principles of international law as well as in harmony with its own values.

Therefore, **I**, in the name of Justice, **call upon the European Union** to ensure that all persons threatened with or subject to present or passed forced evictions due to wars or urban redevelopment schemes have the right of access to timely remedy in accordance with the above stated UN principles.

Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation.

In accordance with the above mentioned principles when eviction is or was unavoidable, and necessary for the promotion of the general welfare, both, the responsible State as the European Union must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case.

Restitution should in accordance with international law be given preference. Real compensation in form of land and common property resources as well as pecuniary compensation should only be options if restitution is not possible.

Moreover, **I demand that European Commission** interpret Art. 17 Charter of Fundamental Rights in the light of the above said and ensure that art 17 has retroactive effect.

Additionally, **I urge the European Commission** to broaden the scope of Art. 295 EC Treaty (respectively Art.345 EU Reform Treaty – Treaty of Lisbon) in accordance with the above stated principles of international law in order to encompass also the EU's right to intervene in the national systems of property ownership of EU member countries in cases where serious property rights violations have been committed or are about to be carried out. Countries which violate these terms ought to be heavily fined and denied further pecuniary aids (i.e. EU subventions).

Further **I request that the European Commission** declare the communist discriminatory property decrees and acts (in particular the Beneš Decrees; Yugoslavian AVNOJ Decrees and Polish Confiscation and Evictions Acts) null and void as well as redeem the unjust findings (incompatible with above stated principles of international law) drafted in the Legal Opinion on the Beneš Decrees.

Finally, **I urge the European Commission** to setup an independent forum (i.e. a committee composed of independent experts with the task of collecting and assessing information regarding Nazi and communist property confiscations and implement a Tribunal apt to pass binding property restitution decisions on EU Member States) competent to deal with confiscated property claims

since the European Court of Human Rights deems itself *ratione temporis* incapable to hear such claims.

Date
Name
Nationality
Address
Signature

N.B.

The main objective of this petition is to propose the development of transparent remedial structures, which should be consistent with applicable principles of European and international law.

These measures not only contribute to a more consistent and predictable internal market in private property issues, they also improve access to justice and respect the rule of law.