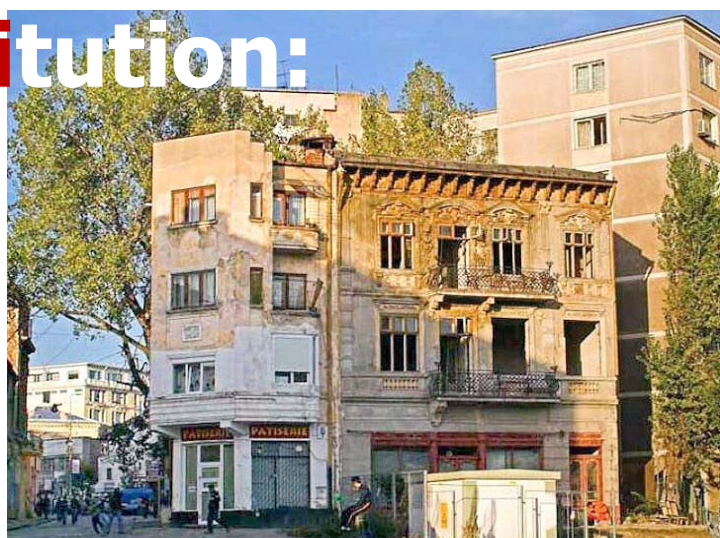


Real estate speculations are the source of many of the fortunes in the national Top 300; on the other hand, former owners cannot get back their properties confiscated by the Communist regime, says SAR

Property restitution: WHAT WENT WRONG IN ROMANIA?



Apart from the judicial details of the restitution program, two traits distinguish Romania in Central and Eastern Europe:

- ✓ Indecision regarding the restitution process, in nature or compensation, the successive adoption of several laws in more than a decade caused confusion and overlapping rights;
- ✓ Large scale abuse at both local and central levels, sustained by ambiguous laws and discrete judicial practices, can be seen in the questionable discrepancies of the restitution process from one county to the other.

SAR has initiated the first numerical indicator analysis of the restitution process, showing who is responsible and what for. This preliminary report sums up the current situation.

Property restitution laws have always been presented by their initiators – mainly the left wing post-Communist party, in power in 1991, 1995 and 2001, when these measures were adopted – as instruments meant to accelerate the restoration process after decades of Communist abuse. Without such normative acts, the alternative for former previous owners would have been to go directly before courts.

To simplify (in principle) the process for those claiming back their houses and land, and address the diversity of local situations, the legislative introduced local committees as mediators. In theory, the committees would deal with the claims in an acceptable way in order to avoid trials.

However, the big problem was that this procedure proved unrealistic in practice, as shown by subsequent developments in early nineties. The national legislative

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managed to create strong institutional counter-stimuli to the effective return of properties: honestly, why would mayors and local counselors be interested in giving up profitable economic assets, solely for the moral argument that former owners were unjustly treated years ago? The laws were passed one after the other in Parliament, over the period of a decade, and not all at once as in other Central and Eastern European countries. This represented another source of confusion.

1. The restitution process in Central and Eastern Europe

Measures taken to restore property abuses in the Communist period in Central and Eastern Europe followed two distinct models¹: the restitution model and the compensation model. **The restitution model** is based on the actual return of confiscated property; in exceptional cases where restitution is not possible, the government offers compensation. This model was applied in its purest form in Czechoslovakia and in a modified version – both elements of restitution and compensation – in East Germany.

The compensation model includes the physical return of property only in a limited number of cases and for the other cases, former owners receive a form of compensation for their property loss. This can take the form of cash, bonds, stocks or *vouchers*. The compensation model is well observed in the case of Hungary.

Both models recognize the property rights of former owners and their right for compensation for the injustice suffered in the Communist period; however the impacts are different for both former owners and the state's resources. The method chosen is just one variable, as there are other key aspects that differentiate the restitution process in former Communist states:

- The value of the compensation. While some countries preferred to correlate compensations with the initial value of the confiscated properties, others preferred to keep costs under control by adopting

ceilings - either on the dimensions of the restituted plots or on the compensation.

- The eligibility of the solicitors: directly limited or not on basis of citizenship or residence; or indirectly by defining in a broader or limited way the historical period when the properties were nationalized, that are subject to restitution.
- The protection of tenants in houses that had to be returned, by limiting the rights of owners to use the property for a certain period after restitution. The extreme method of tenants' protection was applied in Russia where property rights were transferred to tenants, increasing the benefits offered to the nomenklatura in the former regime. In the Czech Republic, where the break from Communism was radical, this was not compatible with the general anti-Communist feeling after 1989².
- The restitution process was institutionally decentralized or not.

In the **Czech Republic and Slovakia**, that at the beginning of the transition period were still one state, the purest restitution model was applied. Property restitution was decided immediately after Communism collapsed and was not just a method to repair property abuses dating from the Communist period, but a form of transferring the state's property in private ownership. Thus, in 1990 and 1991, the restitution process was regulated, but the government also allocated another 750 million dollars as compensation. Any other compensation exceeding this ceiling was made in bonds. While the approach was radical, the process covered only those properties confiscated after 1938, thus excluding those confiscated by the Nazi from Jewish people, as well as properties of the Southern Germans confiscated by the Czechoslovakian government.

In **East Germany**, a whole chapter in the 1990 Unification Treaty was devoted to the restitution issue. The restitution program was probably the biggest in the region, covering some 5 million people (about 20% of the

¹ Harpe G. D.(1999) – Restitution of Property in Cuba: Lessons Learned from East Europe, *Cuba in Transition* ASCE.

²Apple, H, (1995) „Justice and Reformulation of Property Rights in Czech Republic“ *East European Politics and Societies* 9:1, p 22-40.

population) and 90% of urban buildings³. Former owners or their heirs could request the restitution of properties seized by either the Communist or Nazi governments. However, they could not claim those properties confiscated during the Soviet occupation (after Germany's Constitutional Court decision). Unlike other countries in the region, Germany did not condition the eligibility of requests on citizenship or residence. Even if the restitution process led to delays in planning, development or investment dynamics in some cases, the majority of requests were solved quickly in the early 1990's. The fact that Germany maintained clear evidence on the history of properties and had a solid judicial system, ensured the success of the process.

Bulgaria was among the first from the region to legislate on property restitution. The Parliament approved a law on agricultural property restitution in 1991 and in 1992, it approved the restitution of the properties nationalized during Communism. The eligibility of the solicitors was generous in that both private and judicial persons were allowed to make requests, be they Bulgarian citizens and foreigners. Also, people who received a symbolic compensation during nationalization, former owners of agricultural land and workers in agricultural cooperative societies, were allowed to apply.

Property rights for buildings were temporarily limited in certain situations. For example, tenants living in a nationalized house could use it for another three years. The same regulations applied to buildings where schools, hospitals etc., functioned. When it comes to urban property, the number of requests was quite small while the surface of agricultural land requested exceeded available land by 40%. The implementation of the restitution process in Bulgaria was confronted with a series of administrative problems. For example: the lack of clear data on property delimitation, incomplete evidences and the reticence of local authorities to return property. These aspects

³ Blacksell, M. and Born, K (2002) „Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe“ *Geographical Journal* 168:2(2002).

had discretionary power in the implementation process⁴.

Hungary, just like most states in the region, regulated the property issue in the early 1990s, by returning nationalized houses to both non-residents and foreigners. On the other hand, however, Hungary imposed a short period of time to submit requests (6 months deadline after the approval of the law) and managed to process the requests in two years' time. The government offered compensation in *vouchers* instead of actual restitution. The compensation office, an institution created especially for the program, decided on the land restitution requests, offered coupons or compensation *vouchers* and managed all public tenders where these

Post-Communist countries used a variety of solutions, from restitution to compensation – but either decision was taken early, in the beginning of the 1990s.

vouchers were used. Unlike other countries in the region where the compensation level was proportionate with the value of the property, Hungary introduced a ceiling of \$21.000. In Hungary, total restitution costs were estimated at around 2-4 billion dollars⁵.

Poland is currently the only country in the region (besides Romania) that did not find a solution to the property restitution problem, despite the fact that Poland's seized property was considerably less than in neighboring countries. In Poland, industry was nationalized rather than houses and agricultural nationalization was abandoned in 1956 and never exceeded 10% of the total agricultural surface. Some 89,000 properties were confiscated during the war and afterwards, with a total market value of 40 billion dollars. However, along the years, there were some legislative proposals but none of these managed to get the necessary political support. The only way former owners recovered their properties was by normal court trials⁶.

⁴ Kozminski, A. (1997) „Restitution of Private Property. Re-privatization in Central and Eastern Europe“ *Communist and Post-Communist Studies* vol 30 no1 pp 95-106.

⁵ Tucker-Mohl, J. (2005) *Property Rights and Transitional Justice: Restitution in Hungary and East Germany*.

⁶ Krakow Post, *Debate: Property Restitution: Should Poland Pay?* Friday, September 12, 2008. The number

2. Romania in the regional context

Romania was among the few former Communist countries to postpone a decision on the restitution issue. Thus, Law 18/1991 on agricultural land restitution was only followed after a decade by the law on confiscated property restitution. During the 1990s, the tendency to protect tenants prevailed over the principle of restoration of Communist abuses, in the same line as Russia.

After tenants living in state-owned buildings gained rapidly quite cheap property rights over the apartments, in 1990-1991, those living in nationalized houses also pressed for this right invoking non-discrimination, even if those houses were nationalized and not built by the popular power regime,⁷. In 1995, Law 112 allowed tenants to buy their houses at an advantageous price – a bill that benefited even those who voted the law: many of the political leaders had protocol homes in such buildings at the time⁸.

In this period, the only restitution method was the judicial one. Even so, politicians attempted to block restitutions ruled by Courts, arguing that if a special law does not exist, judges cannot decide on the matter. It was the exclusive role of the Parliament to pass such laws and the role of the judges was to simply apply the law. In this case, the incumbent President at that time, Ion Iliescu, took a public stand on the issue and opposed Court restitutions. He urged for the non-application of the courts' decisions, adding that these breach the law in favor of former owners⁹.

The Supreme Court, under political pressures, ruled that in the absence of a special law, inferior courts cannot rule on property restitution cases. Plus, the General Prosecutor at the time, as his successors, frequently used the recourse in annulment practice to change mandatory and final decisions that already ruled in favor of former owners. These situations lead to an avalanche of complaints

is modest: in Romania, it could be at least ten times bigger (see Fig. 1).

⁷ Stan, L (2006) „The Roof over Our Heads: Property Restitution in Romania”, *Journal of Communist Studies and Transition Politics*, 22:2, p.180-205.

⁸ Idem 7.

⁹ Actually, the judicial way, even if unsystematic and slow, was one restitution measure – as in Poland.

at the European Court of Human Rights (ECHR) ever since Romania signed the Treaty in 1994. The institutionalization of recourse in annulment was criticized both by the European Court and by the European Commission and was finally eliminated in 2004. Adopted in 1998, Law 213 on public property and its judicial regime refers to the possibility to retrieve property confiscated by the state even without a title or by breaching the owner's consent without the need of a special restitution law.

It was only in 2001, when the Parliament, at the pressure of the European Commission, adopted Law 10/2001 on the judicial regime of those estates confiscated abusively from March 6, 1945 to December 22, 1989. This was later the subject of considerable amendments and revisions that, in most cases, complicated the situation even more¹⁰.

The main parameters of the institutional framework that defines property restitution today in Romania are:

- The type of estates that are subject to the law: nationalized houses or those seized by confiscation; donations to the state or to other judicial persons; taken over without the payment of equitable compensation with or without a valid title; individual or industrial estates, banks, mines, transports, or equipments and materials within the building. Agricultural lands are excluded (subject of Law 18/1991) and so are the properties of ethnic or religious minorities regulated through attesting documents.
- Several measures to restore damages: restitution or restoration by equivalent measures: compensation in other goods or services or cash or titles to the Proprietatea Fund. The value of the compensation is updated to the market value, and these measures can be combined.
- Restitution requests can be submitted by individual owners or their heirs, judicial persons without a residence or citizenship test.

¹⁰The amendment published in the Official Journal no. 914/2005, OUG 209/2005, Law 263/2006, Law 74/2007, Law 247/2005 etc.

- Tenants in retrieved houses are protected by establishing, in accordance with the law, a 5 year mandatory renting contract and a ceiling to the rent value. Moreover, if there is no agreement in establishing the value of the rent, or the surface of the living space, the old contract prevails.
- From an administrative point of view, the restitution process implies several levels: the local and central administration (depending on the institution owning the estate demanded in the restitution requests) Prefecture, National Authority on Property Restitution, Proprietatea Fund.

Law 10/2001 however did not clarify the situation of the houses which were sold on the basis of law 112/1995. The problem of having more titles on the same property could only be dealt with in court, by comparing the titles. Currently, there is a bill in the Parliament that plans to deal with this problem that favors the initial owners of the property as in the early 1990s. Thus, a property bought based on law 112/1995 could not be returned to its initial owner. On the other hand, tenants who bought the houses they were living in at low prices, and lost them when confronting the initial owners in court, would receive compensation at the current market value of the houses. The exact number of seized property by the

Tab. 1. Confiscated residential properties, nationalized or confiscated by Romanian Communist authorities, 1945-89

Period	Law	Number
1940	Law 187/1945, Decree 83/1949	1,263
1950	Decree 92/1950, Decree 111/1951, Decree 224/1951, Decree 513/1953, Decree 409/1955	139,145
1960	Decree 218/1960, Decree 712/1966, Law 18/1968	4,662
1970	Law 4/1973, Decree 223/1974	62,116
	Not Specified	33,882
Total		241,068

Source: Stan (2006), based on Romania's Official Journal data, part II, June 11, 1994, p.9.

Romanian state is still uncertain. The official number is 241,068 units (Tab 1) but there are other estimations that go over 640,000 units.¹¹ However, currently, there are some 202,000 registered property restitution requests.

3. Current situation

After a decade of delays in regulating the restitution process, today, not even the implementation process moves faster. According to the official data available by the end of 2007, out of the 202,000 submitted requests, only 103,128 received a final decision at local or national level. The decision approved, rejected or redirected them to the responsible institution. (Tab. 2)

A closer look indicates that a smaller number of cases were classified, by either restoring properties or paying compensation. Thus, of the 43,000 cases registered at the National Authority Regulating Property Restitution (ANRP), to take a decision and pay compensation, only 6,000 actually received compensation. For these 6,000 cases, authorities managed to establish the compensation method: in title or cash in 2,440 cases. Even more, only 855 cases received compensation in cash. Thus, the restitution process is far from reaching an end, even if it was 7 years ago when it was first regulated.

An analysis of the available data at the end of 2007, points out other interesting problems. First of all, even though the majority of notifications are submitted to local administrations, the rate of solving cases (taking a decision: approving, rejecting or re-directing the file) is the lowest at the central level: 54% of unsolved cases up to December 2007 as compared to 37% in the territory. (see Tab 2).

Three quarters of notifications submitted to the central administration pile up at three institutions that happen to have the highest unsolved rates:

- AVAS (with over 60% total) and 67% unsolved;
- Agriculture Ministry with 67% unsolved;
- Economy and Finance Ministry with 52% unsolved cases.

¹¹Stan (2006).

Tab. 2. Current situation of files under Law 10/2001

Total Number of registered requests		201,769
At the level of local authorities		190,685
○ Approved		63,189
▪ Restitution	15,067	
▪ Compensation (goods or services)	1,330	
▪ In cash or bonds*	42,051	
▪ Combined measures*	4,741	
○ Rejected		36,416
○ Re-directed		20,520
○ Pending		70,560
At the level of national authorities (Ministries and AVAS)		11,084
○ Approved		1,725
▪ Restitution	667	
▪ Compensation (goods or services)	957	
▪ In cash or bonds*	89	
▪ Combined measures*	12	
○ Rejected		1,698
○ Pending		7,661
<i>*Prefects check the legality of the documents and direct them to ANRP where they're checked again and the compensation level is settled:</i>		
ANRP level		43,000
- Evaluated		15,000
○ With remitted compensation titles	6,000	
▪ With established option	2,440	
▪ With received compensation		
• Bonds	500	
• Cash	855	
○ Pending titles		3,560
- In the process of evaluating the compensation level or not analyzed yet		28,000

Another interesting aspect is that the highest restitution percentage targeted buildings used in the social sectors (health, education, culture) despite the fact that the standard argument for rejected cases is that these public interest institutions need to function. It seems that it was exactly in these cases that the state failed to protect its properties against those claiming them. As such, the state was efficient to solve cases involving kindergartens, schools and nursing facilities. Additionally, city halls are looking for new buildings and investment funds to fill in the gaps.

In turn, it seems that economic assets or other buildings in the state's property have

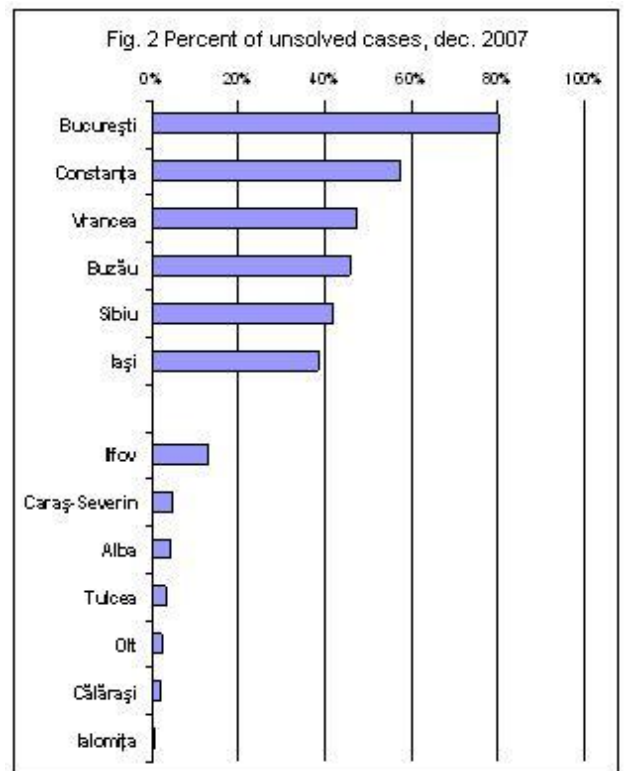
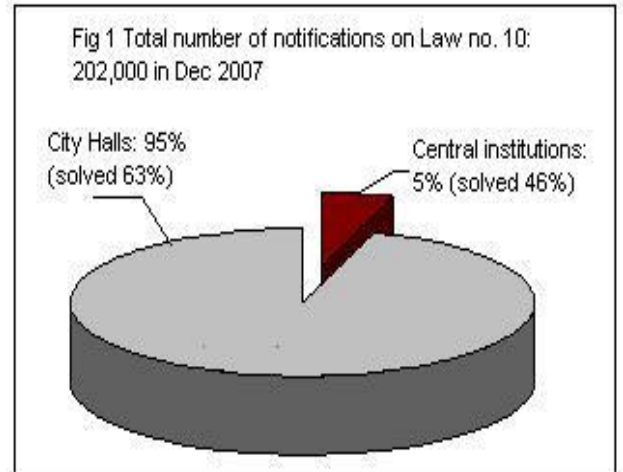
been well protected. It would have been normal and fair to resolve those cases involving the latter rather than the former. The general idea is that the state prefers to return primarily buildings that bare a social importance (cases that would have justified exceptions from the restitution) rather than return those that have important economic values (in which cases ministries happen to control the assets). Thus, Finance, Defense and Agriculture ministries lag behind in the restitution process.

At the level of local authorities where most of notifications were submitted (almost 190,000) 63% of them received a final decision.

However, the situation differs from one region to the other. In fact, there are counties where the restitution process is in an advanced phase, where 97% of the notifications received a decision from the local committee. However, there are others where it barely reached 20%. Small towns, where the number of notifications was low, like Slobozia (334 notifications) Alba Iulia (554), Slatina (577), Calarasi (1,212), did not have any major problems when implementing the restitution process. In these cities, the number of cases which received a decision is over 95%. Measures taken varied from case to case but decisions ruling an equivalent compensation prevailed. In Alba Iulia, for example, almost a third of the accepted notifications were solved by restitution and for the rest, compensation in cash or bonds was offered. In Slatina, of the 491 notifications, 420 cases received compensation in cash or bonds. Talks with local authority representatives underlined major difficulties in restitution, especially in cities that were subject of modernizations and changes in the Communist period. In most of the cases, nationalized houses were demolished and lands occupied by streets or residences.

Compensation methods in other goods or services were barely used. Thus, out of the eight cities analyzed in depth, Slobozia was the only city where the 60 notifications solved by compensation in other goods or services outranked those in cash (57). In cities where the number of notifications was low, the city hall could negotiate with each solicitor in order to offer them compensation (especially in land).

In all other cities, this option was avoided: in Slatina only three cases received land or services in compensation; in Alba Iulia and Focsani there were 12 cases, in Bucharest 15, in Calarasi 29. The main reason was the discretionary way of evaluating properties, both those confiscated and those that needed to be offered as compensation and local authority representatives considered this decision risky. Other frequent causes were the lack of available property or lack of a public goods inventory. Even though the inventory should have been ready a few years ago, few authorities had it completed by the time the restitution process started (Slobozia). Most of them either just finished it, or do not have it



(Iasi, Bucharest).

There are, however, situations in which the number of notifications was relatively small but the performance of local authorities to deal with the cases was very poor. For example, Focsani's city hall received 1,693 requests, of which only 444 received a decision. Calarasi, with a similar population as Focsani, but with lower funding, received 1,212 notifications and solved 1,156 of them, which is almost three times more than Focsani.

Other small cities, like Alba Iulia or Slatina, managed to analyze and settle more cases than Focsani did, despite that at least in the

first case the situation was not simple at all: Alba Iulia is a historical city and many properties were confiscated, among ethnic and religious communities as well. Thus, the implementation of the restitution process depended solely on the efficiency and interest of the local administration to deal with the problem.

Among other cities with poor performance are: Constanta, Buzau, Sibiu and Iasi. Constanta is the only city among these, and one of the 8 cities analyzed in depth, where authorities refused to answer the requests submitted for this project, based on law 544/2001 on free access to public information. The same was true when attempting to talk to the public servants involved in the restitution process. Since the website of the institution is not

At this pace, in Bucharest, the restitution process will continue at least another 5 years

generous enough in offering the information we need, the only data we have are those delivered by ANRP, which places Constanta among the poorest performers. The single worse situation registered is in Bucharest, a special case, due to the high number of requests. Interviews

with other actors, part of the restitution process pointed out many problems in communication, decisions, breaches of court decisions etc.

Buzau also has a poor performance. Of a total of 1,820 requests, only 538 received a decision. A major problem, as mentioned by interviewed public servants of the city hall, is the lack of personnel. The Committee has 5 people and the support personnel is made up of only 3 people. Plus, there is only one person in the institution who can take a legal decision regarding the case.

However, from a comparative perspective, Calarasi managed to analyze double the amount of cases, using the same personnel structure.

Bucharest has a special situation because some 43,000 requests are concentrated there, which represent almost 21% of the total notifications at the national level.

Up to December 2007, some 9,000 notifications received a decision, representing less than 20% of registered total. One of the main causes was that Bucharest is not considered a special case by the law. Thus,

despite the high number of files, the restitution process falls in the responsibility of the General City Hall, without the involvement of the district-level city halls. The concentration leads to the accumulation of many files and a more difficult correlation between the two restitution processes:

- one based on law 10/2001 coordinated in Bucharest, and
- one based on law 18/1991 at the level of the capital city districts.

Except for Bucharest, in the rest of the country, both processes involved the same institutions, and in most cases, the same people. In Bucharest, due to the sharing of responsibility, there were situations in which the Committee on law 10/2001 decided the restitution of a land on its old location but the owner found out that the land was taken over by another person, based on law 18/1991 and all these lead to other administrative complications.

If in time the communication between the two levels improved such as to be able to correlate both restitution processes, the overload issue of the Bucharest city hall has not been solved yet.

Up until the fall of 2007, the personnel delegated to implement law 10/2001 was formed by a commission of 9 people who met on a weekly basis. 28 people formed the support personnel of the commission. Finally, the commission decreased to 5 people with daily meetings and the support personnel increased to 40 people which lead to more efficiency and speed in processing requests.

In an extremely optimistic scenario, even if they maintain the same efficiency level and political will, the restitution process will last another 5. The lack of results, the unpredictable character of the process, unsuccessful communication and lack of response from authorities, lead to a high level of dissatisfaction among solicitors and an avalanche of trials on the restitution theme. Thus, Bucharest city hall managed to get involved in some 30,000 court cases. A lot of owners request an answer on their notification, which has been pending for years while other challenge the refusal of authorities to consider similar acts but not those mentioned in methodological norms, while

others challenge the decision of the local Committee.

The pressure coming from so many notifications is felt in various departments: from the registrar, where hundreds of documents are submitted each day on the restitution process (documents needed in the file, petitions, complaints etc), to the judicial department where most of the personnel deals with the court cases and with analyzing notifications.

The situation is very complicated: for example, a construction authorization cannot be issued, without a report that the building is not the object of a notification on Law 10. Thus, the City Hall remits, daily, 150 such reports. And problems might come up because it is sometimes hard to identify if, for a requested building there is a notification. There are notifications for buildings whose number changed various times after nationalization, just as the name of the street did and the correlation between the two can translate into a real archive research.

In conclusion, the general situation of implementing law 10/2001 is deficient, with relatively few requests leading to the final offering of compensation or ownership rights, even if seven years have passed.

Differences between cities are important, and their justification considers mainly the interest of the authorities in this issue and their institutional capacity to process the files.

4. Implementation uncertainties

Implementing law no. 10 confronted with a considerable number of dilemmas which were not dealt with at policy level.

- **Restitution – a solution of principle or rule?**

According to art.1 line (1) of law no. 10/2001 in its current form: “buildings confiscated by the state, by cooperative organizations or by any other judicial persons, will be returned respecting the conditions of this law”. The text of the law continues, underlining the principle of restitution: “in cases where restitution is not possible, other equivalent compensatory measures will be established”. The idea here is that restitution is the main solution and the equivalent compensation is an exception. However, the power of this principle is

corrected as the text continues by art 7, line (1) „*as a rule*, buildings confiscated are returned in nature”. The expression tends to continue the same trend of law 18/1991 where, in a similar way, the restitution principle was undermined by an ambiguous formulation, introducing the practice of rejection of restitution in nature without an objective motivation.

Through the amendments to the restitution principles, law 10/2001 limited the solution of restitution in nature for lands that, at the time, were not occupied by buildings, or for buildings that were neither destroyed nor sold to other buyers (like tenants who bought them based on law 112/1995) or judicial persons (the case of investors who gained assets by privatization procedures).

Plus, if the former owner does not challenge the sale of the building through an annulment action in 18 months, the purchase is final even if the buyer knew that the state, at the time did not have a right to sell.

Thus, the lack of a normative framework to restore abuses in the past which should have been introduced in the early 1990s, just like in other post-Communist states, together with the

continuous shift between protecting tenants or former owners lead to a fragmented and confusing situation.

The obvious tendencies to protect tenants in the first ten years were only changed in principle with Law 10/2001, as the principle of restitution which was adopted late and without a commitment, faces huge difficulties on implementation.

- **Lack of deadlines**

The legislation does not contain any deadline for finishing the process, nor for solving the files. Moreover, there is no mention about the authority’s responsibility to provide an answer to all requests.

- **Ambiguity of requested documents**

There is a permanent divergence between the administrative and judicial practices, especially when it comes to acceptable documents proving an inheritance right in the restitution process.

Restitution ended up an exception, not a rule, breaching the spirit of law 10/2001

- **Interaction with archives and land registry**

There are serious problems due to lack of land registry data and historical archives. Land surfaces in ownership documents differ from fiscal data before nationalization took place, or from the nationalized/confiscated data or from the current properties. Naturally, this adds to the confusion as public servants have limited resources to deal with such issues.

- **Lack of personnel**

In general, the City Hall – particularly in Bucharest – deals with an acute personnel problem due to the level of workload and lack of proper remuneration. The obvious solution to accelerate the process would be to increase the number of data processers working. However, the Bucharest City Hall has difficulties in maintaining the current personnel due to the decision of the Government to cut off their 50% salary bonus starting January 2008. The salary of a processer amounts to 500 Romanian Ron and each needs to deal with 1,500 files and an assigned number of files per day. Given the situation, many of them choose to leave the public system and new people are hard to find. What the city hall lacks most is data workers and support personnel. To give just an example, a committee's decision took two months to be typewritten because there was nobody able to type and print it.

When it comes to monitoring the performance of public servants or other employees hired to apply Law no. 10, those in charge have too much tolerance due to workloads assigned. Thus, there was never any sanction given to a data processer or a member of the commission through the internal discipline committees.

- **Communication and transparency**

A major problem common to all analyzed institutions was the lack of communication with individuals. It was only in Alba Iulia where people could actually track the status of their requests online. In Bucharest, there was a similar system but it did not credibly protect the personal data of individuals and authorities had to shut it down, until a better program would be offered. However, no deadline was set.

When speaking to former owners and other people trying to retrieve their properties, the

lack of communication both at the local (the Prefect or the Mayor) and central level (AVAS, ANRP, ministries) is very often reported. Even with a file submitted years ago, the individual's only option is to personally book an appointment at the City Hall to find out what other documents are missing.

According to Bucharest Mayor Sorin Oprescu, his schedule is booked for the next years. It is often the case that documents already submitted are missing which indicates a poor organizational ability of institutions. Moreover, it raises important doubts on the integrity of the public servants. Authorities regard meeting hours as an inefficient way to talk to people especially when decisions rest on the responsibility of the Commission members.

"We don't talk anymore. We talked when they submitted their documents, but now we don't talk anymore because people are desperate and we are just wasting time dealing with them."

Public servant, member in the L10/2001 Committee

In just one of the institutions analyzed, where the management of the process was separated from the Committee by the decision making process, meetings with people are regarded as a means to take into account the deficiencies of the process and a chance to remedy individual errors or organizational problems.

In smaller cities, with fewer notifications on Law no. 10 (Slobozia) a well known practice was to allow individuals to take part in the Committee meeting dealing with their particular case. In Alba Iulia, in an initial phase, the owners were invited at the meetings but due to long talks, the efficiency was lost and thus this procedure was replaced by separate meetings. In Iasi, owners are invited to attend the Committee's meeting but it is very often the case that the invitation is sent too late and sometimes even after the meeting took place. Thus, this attempt to increase transparency failed.

The Committee rarely set up activity reports; at best, the reports are destined for internal use only. The Bucharest city hall is the only one to offer information about the number of requests received or the number of requests solved etc. on their website.

Restitution: a bottom - up perspective

Most owners blame (rightfully or not) the authorities' lack of organization, inefficiency and lack of communication or even ill will, that could go so far as to refuse to apply court orders. An example that perfectly illustrates the point is that of Dr. Emil Tomescu whose case should have been resolved by the Bucharest City Hall and by the Romanian National Authority for the Restitution Process (ANRP) a long time ago. Dr Tomescu requested the Bucharest City Hall, based on Law no. 10 to retrieve five buildings confiscated during the Communist period which have been demolished. After eight years, the former owner does not have any file solved by the national authority, did not receive any bond at the Proprietatea Fund and is currently in trial with the Bucharest City Hall which fails to apply court orders. Meanwhile, Emil Tomescu had to replace, on his expense, the documents he submitted in the file several times, on grounds that they were lost.

One of these buildings is in Bucharest, No. 10 Brezoianu Street. After endless requests, documents submitted, lost by the City Hall and re-submitted again, owners receive two contradictory notifications after six years, in 2006: one from RAPPs communicating that the notification was rejected because "necessary documents to prove the ownership were no submitted" and the other notification, from the Bucharest City Hall announcing that the "file has been sent to the land registry department". From 2006 until June 2008 they did not receive any notification from the City Hall, and the file is still pending.

Dr. Tomescu's case also proves the authorities refusal to apply court orders in the file on No. 92 Ducești Street where, six years after submitting the request, the City Hall informs him that the file is rejected because "documents attesting the inheritance of the building were not submitted". However, attesting documents were submitted in the file several times. The decision is challenged in the Bucharest Court and the owners win, which makes the City Hall's decision void. City Hall officials appeal at the Bucharest Appellate Court and lose again but ever since then it refuses to apply the court's order and solve the case by offering compensation.

A similar case is that of Maria Maia Ileana Sculy Logotheti, represented by her daughter Nicole Babeanu. She wants to retrieve 5 buildings in several regions of the country and in Bucharest demands compensation for a building on Lascar Catargiu. The initial notification was submitted on August 2001. After the file circulated between the Prefect and the Mayor, it is currently at the judicial service of the city hall with a registration number dating back in 2006.

Likewise, former owners complain that ANRP delays the files too much and does not notify owners about the status of their case. Liess Marta's case is illustrative: she inherited a plot of land of over 7000 m² in Bucharest and submitted a notification in 2001 at the Bucharest City Hall. She receives a Mayor's decision in September 2005 but only a year later the file leaves to ANRP to be evaluated. However, owners did not receive any notification regarding the status of their file and they could not get an answer for two years, despite their struggle to do so.

Most irregularities signaled by owners refer to the illegal disposal of some buildings under law no. 112/1995. More precisely, it regards authorities selling the apartments to tenants without considering the notifications of the rightful owners or the fact that they sued the City Hall for those buildings. For example, Ramascanu Rodica notified Bucharest's City Hall through various addresses starting 1991, signaling the fact that she owned a building and wants to retrieve it. However, District 5 city hall sold three apartments in the building, based on law no. 112. The owner managed after eight years to receive the rest of the apartments, through a mayor's decision. For the other three sold apartments, however, she still needs to sue the tenants.

Niculescu Mircea's problems start in July 1997 and after two years of notifications and addresses, in August 1999 he receives an address communicating that his file was moved by Local Committee implementing Law 112 from the District 1 City Hall to the Municipal Committee. After Law no. 10, the owner sends a written request to the Bucharest City Hall, requesting restitution. He does not receive an answer until 2003 when, at his request to find out the judicial situation of the building, he finds out that the building, managed by RON VIAL S.A, was sold based on Law 112/1995. Despite various addresses and notifications of the rightful heir, the file is still pending.

By talking to owners, one conclusion was it is not only the City Hall, prefects or ANRP to be blamed for such delays in solving requests but there are other authorities which administer nationalized buildings like RAPPs. Maria Ileana Logotheti, for example, submitted a request in 2001 to Predeal's City Hall for a former villa, *Scully-Logotheti*. The building was demolished and a protocol villa, Postavarul, was build in its place, in the administration of RAPPs. The file was sent to RAPPs which was forced to send all papers to the prefect to establish the restitution right. However, the file was lost and the rightful owner was never notified about the status of the case, despite the numerous addresses sent.

- **Permeability to corruption**

Due to the lack of transparency and administrative coordination, corruption suspicions naturally arise. Most often, people accuse the capacity of public institution to use the information and their power to accelerate or delay a file in order to favor a political interest. Blackmailing former owners, especially old ones, with an eternal delay in taking a decision in order to compel owners to sell their rights is often met in the restitution process.

Credible press documentaries showed how, for example, identified business networks managed to intervene between owners and institutions managing the building and group properties at successive postal addresses in an interesting area in Bucharest (Baneasa)¹².

The agency managing the buildings is RAPPS but it is possible that this system is widely used in other institutions as well.

5. Problems with the system

There was always a permanent difficulty in implementing Law no. 10, that we already mentioned: local committees were offered too much decisional power (like in the agricultural land restitution), and local authorities were not interested to give up important assets just to restore the rights of former owners who left a community long time ago or are part of a local minority and thus incapable of setting up an efficient pressure group. Therefore in many cases, there was an obvious lack of enthusiasm of authorities and local public servants to deal with a problem that was not perceived as being their problem.

Two supplementary "omissions", which make Romania's restitution process unique, finally convinced these local committees that there is no political will at the center to solve the situations fast:

- There were either no deadlines for solving a request (or at least to offer an answer); or, when these appeared (in 2001) there were no sanctions for not complying;
- Ambiguous law texts, particularly by introducing the famous rule that restitution

is implemented, "as a rule", in nature (or in its initial land placement), which in practice was interpreted in a wider sense, as an opportunity to have discretionary power.

These two omissions transformed the exception into rule and even less cases were solved in the spirit of the law. Most often, local Committees took advantage of the ambiguity of the law to delay the restitution process or propose former owners unacceptable locations as compensation, which lead to more court cases against the city hall. The solving rate without a judicial complaint is very low. Another clue that suggests the discontinuity of the law implementation is the discrepancy registered from one county to the other in terms of solving rates of notifications as discussed in previous sections (see Figure 2). The high prices of the buildings raised even more interests in areas as Bucharest or Constanta where delays and harassment of owners would make more sense (but considered just as illegitimate). In other regions, the arbitrary was the rule of the game, and this makes it harder to explain why in neighboring counties, with a comparable economic situation and moderate real estate pressure, the performance differences are so visible: see Buzau vs. Ialomita.

If we are to summarize, the three biggest problems signaled locally, in Prefecture committees and the city hall alike and are linked to the legislative methods and the central administration's implementation of the restitution process.

a. Vague and volatile legal framework

- The attributions of each level ruled in Law no. 10/2001 changed by amendment in an improper moment (in 2005) immediately after the period of maximum effort 2003-2005 when the local administration took over the files and learned to apply procedures. Local committees which used to do the evaluation and propose compensation sums, lost their function in favor of the new National Agency (ANRP) which has its own network of real estate evaluators at the national level. Files are assigned arbitrarily in order to avoid maneuvers or local arrangements. In theory, the system might be a good one

¹² Newspaper article "Alianța PSD-PD pentru vile și terenuri", *Cotidianul*, Feb 15, 2006. http://www.cotidianul.ro/alianta_psd_pd_pentru_vile_si_terenuri-8234.html

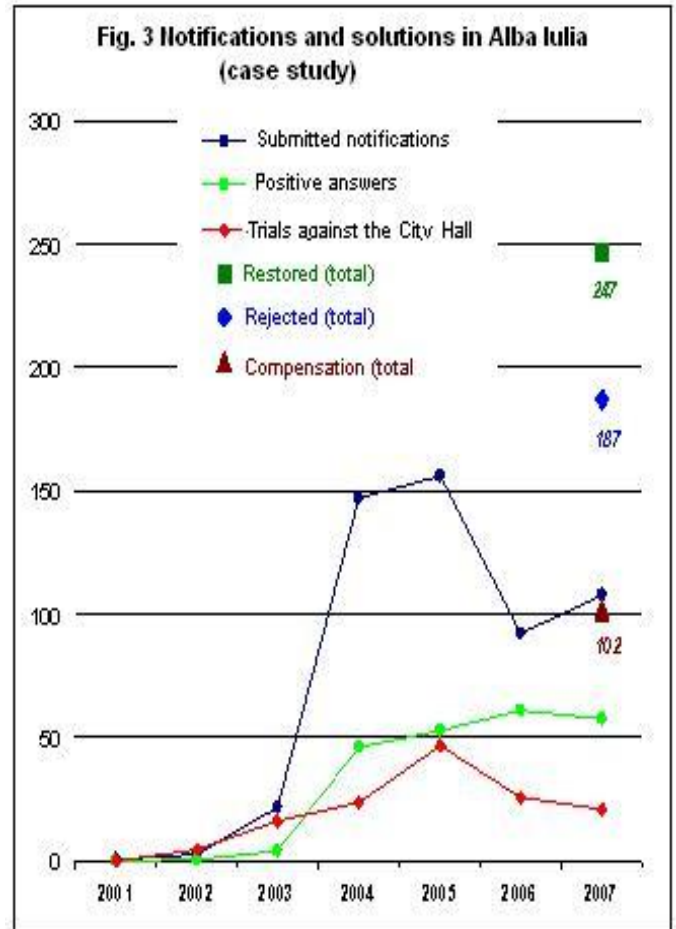
but in practice it only led to more delays and evaluations made by phone from Bucharest (or from other parts of the country) by people who do not know the local real estate market and finally use the help of the local commission. Still, there is no clear idea on what the best method would be in small cities in Ardeal – where there are many claims but the real estate market is not liquid enough to allow an easy property evaluation.

- The problem is very important as Law 10/2001 was amended in 2005 in another important provision: the value estimation of the property that cannot be returned is made at the current market value. Before that, authorities used an accounting methodology, with objective criteria that would decide the final compensation sum. In principle the new provision leans in the favor of the owner because in the implementation norms, their properties were underestimated in comparison to the current market. Thus, in 2005, local Committees used to set up the file and perform an evaluation based on the legal methodology with coefficients and finally send a compensation proposal to the center. As of 2005, local committees only set up the files in order to establish whether the petitioner is eligible or not. In this case, the evaluation is made by certified evaluators of ANRP through a separate procedure, depending on the market value. Despite the mentioned practical difficulties, there is a paradox: even though the introduction of independent evaluators across the country kept total costs under control, the new market value system caused the opposite effect, placing the Proprietatea Fund in a position of not knowing in what way or if the Fund is able to honor all costs. Thus, compensations decided by ANRP evaluators are higher than those previously proposed by local committees. Nonetheless, the system was created precisely to control local public servants from offering exaggerated compensation.
- This attribution and method change operated in 2005 introduced two new major inefficiencies: (i) all the work done in two years by local committees was declared void and all files re-evaluated, in a system that actually works slower; (ii) due to the passing of time, the market value of the building grew and thus the sums that would have been probably accepted by the people as compensation in 2005-2006, raised a lot more. And they continue to rise, as the process slows down, because the pace of the evaluators does not keep up with the fast evolution of prices. There are situations in which the second evaluation is exceeded if ANRP delays the approval of a file (with one year or even more). For example, of the 50 files solved in Alba Iulia until 2005 and sent to Bucharest with proposals of compensation sums, three files returned with a modified sum. Even so, it is not clear how many files were checked by 2007 or what is their status; the public servants of the local committee think that the files did not get to be re-evaluated.
- On the other hand, the costs of the state (in this case of the Proprietatea Fund) represent an increase in the sums of the petitioners. So, the fact that compensation sums increase to the real value of the market, does not make it a bad policy. The main problem is that the whole system should work more efficiently; and a compromise be made between the compensation need of former owners and the interests of the tax payers that have to support them economically.
- Often, judges accepted the restitution of parks in public areas, causing dissatisfaction with the system and protests from environmental institutions. These problems occurred also because of the deficient legislative framework and/or lack of local administrative capacity: in many cases, including Bucharest, the public domain inventory and public utility goods did not finish and the Environment ministry did not publish the regulations for green areas. So, City Hall representatives could not prove before the court that the claimed land should not be returned.
- Last, the lack of deadlines to fill up the files with the necessary documents, once the notification is submitted, puts on hold a great number of properties. Thus, city halls cannot have a clear estimation of the final volume of land returned nor can they

invest public money: land cannot be expropriated until their status is cleared.

b. Divergence between Law no. 10 and its implementation regulations

- Implementation regulations of Law no. 10 delayed for two years (instead of 30 days) which explains the complete loss of years 2001 and 2002 when in Alba Iulia only 4 requests were received out of a total of 574; the same was true for 2003 when only 22 requests were received (see Figure 3); the trend in other cities was about the same – but regulations modified the text of the law illegally, creating serious problems. For example, regulations excluded from the restitution process, those cases that were under Decree 223/1974¹³, even though Law 10 did not exclude them explicitly. Local Committees were compelled to apply the regulations. In turn, petitioners would sue the city hall and win in court based on the law. City Halls pay damages and waste time due to the imprecision of the central legislator. This is how one can explain, in Alba county, the great number of files initially rejected by local Committees (over 40%) and the great number of cases filed against the city hall. The situation of former Romanian citizens who emigrated under Communism is a complex issue and raises many ethical problems at local level (see the last section).
- Another provision of the regulations was that original documents remitted abroad and annexed to the file needed to have a mandatory apostil, according to treaties. However, in court cases against the Committees, the court ruled that foreign documents without an apostil are eligible and thus the public administration paid the costs once again. The estimation is that some 20-25% of the 150 cases against, let's say, Alba Iulia's city hall, are based on Law no.10 and have as object the conflict between the law itself and its implementation regulations: in general, the regulations illegally added provisions to the law but even though the Committee discovered it and issued notifications, the Committee could not disobey the norms and thus ended up dealing with many more



court cases. The problem of foreign citizens and the documents remitted abroad is very relevant in certain areas of the country, like Transylvania, due to the high emigration rate in the Communist period (German and Jew communities). In Alba, estimations show that 10-15% of notifications under Law no. 10 were submitted by foreign citizens, or those with double citizenship.

c. Lack of central coordination and unified implementation

- There are many clues signaling a bad functioning of the system even when it comes to simple matters, not just the big dilemmas just mentioned. There is a common shared opinion at the local level that ANRP functions pretty slow. Files sent to Bucharest years ago return because meanwhile, the petitioner's ID expired (even though the copy exists in the file) and the local authority is compelled to contact the people for such trivial matters

¹³As citizens emigrated their properties were confiscated in exchange for compensation.

which lead to other delays. The situation is even worse if the petitioner dies in the meanwhile because the heir needs to submit another file. Most often, there are situations in which the Committee receives supplementary information requests (detailed plans, technical description of the building) that exceed the requests in regulations and thus it is not clear who is entitled to produce the information: owners, ANRP evaluators when visiting the territory or the Committee. In such cases, public servants themselves search in Archives and look for the documents because notifying owners would only lead to more delays, scandals and basically the same time lost in explaining what and where to look for the information.

- Finally, repeated deadline delays to submit requests and fill up files, through amendments to the law created administrative confusion and turned the working calendar upside down (overlapping rights, relatives who submitted requests in the second term etc). Some city halls which wanted to treat the process in a rational and transparent way set up an inventory of property after the first wave of requests (2003-2004) in order to know what they can return in nature or what lands are left for compensations. However, those city halls were the ones to feel the consequences of the flexibility and indecision from the center because they made promises to people which they could not keep. Thus, those who hoped for opacity and delays of the process were the only winners as Bucharest legislators voted ambiguous and contradictory provisions.
- The most frequent complaint from the local level is that both the Agency (ANRP) and the National Committee assisting as a permanent secretariat are slow and passive. The National Committee was set up in 2001 and the main complaint is that central authorities do not pick up their phones (complaint coming both from the city hall committee and that of the Prefect), they delay the files and sometimes return the cases for insignificant changes. At the level of the local Committee in Alba Iulia, so far 20% of the files sent back (the number includes the files comprising IDs that expired while at ANRP) were set up before 2005. In comparison, the Prefect did not return any files because the two institutions communicated and the files are solved in collaboration. In most of the cases the center requests the necessary additional information due to the law amendments voted in 2005 or supplementary data that exceed the regulations of the law. However, without this information ANRP evaluators find it difficult to evaluate the properties.
- Just as important is the observation signaled by several public servants that a major failure of the National Committee (and after 2005, of ANRP) is that it could not coordinate the implementation stage even though this was an explicit attribution of the National Committee, ruled in Law no. 10. It seems that the responsibility of delaying regulations by two years is to be found at this level. Plus, after setting up the regulations, the Committee did not attempt to clarify and unify the regulations with Law no. 10 in the territory: instructions or terminologies regarding the sets of documents; instructions on consulting and maintaining transparency within Local Committees; cooperation agreements with Archives and the Land Registry Office and Real Estate Publicity (central institutions) to facilitate systematic access of petitioners on Law no. 10; etc. In Ardeal, the main problem was to obtain data from the Archives; in other counties, the main problem was to get data from the land registry due to the known system differences: in Ardeal and Banat there is a well organized and inherited system of land ownership.
- A peculiar problem, also created by the national legislators is that, if a former owner finds the land occupied by a commercial company, two situations arise: (i) if the company is 100% private, its file is taken by AVAS; (ii) if the state owns a minor part in such a company (there are plenty, including formal central or local agencies where public authorities sold part of their shares) then the notification is guided to the administrative council of the company. According to the law, the company needs to compensate the former owner if the value of the state's

participation in the company covers the value of the compensation. Here, things clearly reach a dead end because such accounting reports are hard to be completed if the company does not agree with them. State representatives in the council are in minority so they cannot impose compensation and the majority of shareholders have no interest or any reason to willingly give up some of their assets or offer compensations. They rightfully consider that it is the obligation of the state to compensate former owners. After an estimation of the Prefecture's committee, there are 20-30 such cases pending in each county but things are still confusing because these are not included in the local authorities' statistical data, which do not have attributions in the area.

d. lack of ability at the local level to deal with complicated property problems

- A chronic problem in Bucharest and other big cities is the lack of an inventory of public domains. Because it is missing, local decision makers do not know what they actually own and what is the utility of the

ECHR does not rule over the 1950s nationalization cases. Its competence oversees all cases after the 1994 Convention

lands. This in turn translates into their reluctance to accelerate the restitution process. The chances of a final list of public property are slim, and a solution to be taken into account (nevertheless

complicated) is to externalize the inventory, in a transparent way, by a public tender.

- In a similar way, most of the big cities do not hold land on reserve which makes restitution almost impossible. A possible solution to this would be to acquire brownfields with all utilities needed and then sold at a higher price. However, there is another problem here related to the property of lands that were privatized in the same time as the state's companies. A big part of this land is requested by former owners and thus few have a clear judicial status.

6. Romania at the European Court of Human Rights (ECHR)

The contentious on nationalized houses represents a big part of the court's decisions against Romania and the problems it stirred up are diverse: failure to apply a court order;¹⁴ the interpretation and implementation of the judged authority;¹⁵ dismissal of the restitution request introduced by one co-owner¹⁶, etc. Among these particular problems, resulted from the circumstances of a case, there are three big groups of causes that underline general system's problems in dealing with nationalized houses:

- Appeals in annulment (some 50 causes)¹⁷;
- Sale of the houses to the tenants (almost 85 causes);
- Extension of rent contracts (some 6 causes).¹⁸

Regarding the causes which dealt with the restitution of some nationalized goods, both against Romania and against other states, ECHR established and applied several principles¹⁹:

a) There is no restitution obligation: in the first place, as a general policy, the Court considered that article 1 of Protocol no. 1 does not compel states to return nationalized goods before the convention enters into force. Moreover, the same disposition does not constrain the liberty of the states in neither way to determine the extent of the application of laws that they can adopt regarding the restitution process and in choosing the conditions in which it does so.

¹⁴ *Matache vs. Romania*, October 19, 2006.

¹⁵ *Lungoci vs. Romania*, January 26, 2006.

¹⁶ *Lupaş vs. Romania*, December 14, 2006.

¹⁷ It is important to underline here that in many cases like Brumarescu, there is the claim that national courts are not competent to analyze restitution requests.

¹⁸ These are estimated numbers in order to have a general perspective of the seriousness of the problem; the number of cases ECHR is assaulted with is in reality much bigger but not all cases have been solved yet. For example, there are some 100 cases like *Străin/Păduraru* were reported to the Government in one day, in 2007.

¹⁹ For a systematic perspective, see the decision of the Great Chamber in the case *Kopecky vs. Slovakia*.

b) *Property deprivation is an ad hoc act and does not create a continuous situation of "right deprivation"*. This principle basically means that ECHR does not have the authority to analyze original property deprivation, from the '50s. Thus, in the case *Costandache vs. Romania*, the plaintiff contacted the Court with a request proving that in 1950, the Communist state nationalized a building in Iasi and internal Courts refused to return the building arguing that it was no longer in the state's property, since it was sold as early as 1956. The petitioner argued that the refusal of the state is a breach of their property right since the house was confiscated.

The court understood that the nationalization took place in 1950, that is before June 20, 1994 when the Convention came into force for Romania. The Court had no authority to examine the circumstances of the confiscation or its effects. Therefore, the decision rules that in this case, it is not a continuous breach of the Convention and is susceptible to impact the temporal limits of the Court's competency.

c) *The creation of new "goods", considering latter proceedings*: If, after the Convention comes into force, the state adopts a legislation that raises a restitution right, this new law could create a new "good" in the complainant's patrimony, that can benefit from the protection of the Convention. In the Romanian cases so far, this new good resulted from final and mandatory court orders that compelled the state to return the good in nature²⁰. Or, the new good could result from court orders recognizing the illegal character of the nationalization with an intrinsic consequence of maintaining the property right in the patrimony of the complainant even if, eventually, the restitution action was rejected²¹ and of the

²⁰For example, in the case *Păduraru vs. Romania*, the complainant won the case, after which the state sold some apartments in the building. For these apartments, sold after the owner won the case, the complainant had "a good" in the sense of the Convention. Moreover, in the case *Brumărescu vs. Romania* and the rest of similar cases, complainants would benefit of final and mandatory court orders in which their ownership rights were recognized.

²¹For example, in the case *Străin vs. Romania*, the court's decision admitted explicitly that the building with several apartments was nationalized illegally and the complainant pertained his ownership rights; one of the apartments, however, was sold to former tenants and for this case, the action was rejected; but, for the

administrative decisions based on law 112/1995²² ruling the restitution of the building. By applying these principles, the Court rejected many requests made by complainants who only signalled the 1950 nationalization without enjoying a recognition of their ownership status through court orders or administrative decisions remitted before the Convention came into force. Next, we will focus on paradigmatic cases, emphasizing a general problem regarding the system as a whole.

1. Recourses in annulment and the competency of the courts to analyze the nationalization problem (*Brumărescu vs. Romania*)

The parents of the complainant built a house in Bucharest in 1930 which was nationalized based on Decree nr. 92/1950. In 1994, the request to restore the ownership rights submitted by the complainant against the state was admitted and the courts' decision, final and mandatory, was to restore the ownership rights of the complainant. After the execution of the order, the General Attorney promoted recourse in annulment against the restitution decision. In March 1, 1995, according to Decision no. 1/1995 of the United Sections of the Supreme Court of Justice, the Supreme Court voided the 1993 decision and rejected the action of the complainant, arguing that the court exceeded its judicial competency because the restitution process could only be done by the amendment of the annexed list to the Decree 92/1950. In other words, the court could only rule in favor of the complainant if the nationalization decree would be modified.²³ Complainant Dan Brumărescu invoked at

court, the express acknowledgement of the ownership right was enough to recognize the complainant's right to a "good" in the sense of the Convention.

²²See *Manoilescu and Dobrescu vs. Romania*, a decision of non-eligibility of March 3, 2005.

²³The cause underlines the dispute that existed in the internal law regulations regarding the competence of courts to rule on the legality of the state's confiscation of some goods during the Communist regime in Romania. There were three distinct periods: before 1995 courts considered that they were competent in this sense, between 1995-1998, after the practice of the Supreme Court changed courts decided that they are not competent and after 1998, due to a Supreme Court decision, the courts decided they have competency in the field.

ECHR the breach of article 1, of Protocol no. 1 and of article 6 of the Convention. After the Court admitted that the complainant was the owner of a good based on a final and mandatory court decision, ECHR rule that the Romanian states should be held accountable for the extraordinary annulment, as Romania's Supreme Court breached the judicial security principle. As a consequence, both article 6 and 1 of the Convention were breached. After this case, the Court ruled another 50 decisions in almost identical cases. Once the principles were established, these were applied in other cases as well where the problem that generated the extraordinary measure of attack was not the court's lack of competency in dealing with such cases (as the one in the Brumarescu case or other identical ones) but other problems of law: breaching the law or the lack of a proper defense of the law in the trial²⁴.

2. Selling houses to tenants (cases like *Străin/Păduraru*)

The main characteristic of this type of cases is that, even though in the internal law the quality of the complainant as owner is recognized, explicitly or implicitly through court orders the owner cannot receive the house that was sold to the tenants based on law no. 112/1995. Thus, in the case *Păduraru against Romania*²⁵ the complainant won a restitution action against the state, in which he requested his building, including a land and buildings with apartments. The state sold a part of the apartments to the tenants in the houses, based on law 112/1995. However, a part was sold before the action in justice was introduced but a part was introduced only after the trial ended. The complainant attempted to receive a court order that would void the selling contracts but his requests were rejected on grounds that he did not prove the ill will of the tenants. The analysis of the Court differs depending on the time when each building was sold. Regarding the apartments sold after the case was won, the Court ruled that this was not included in law no. 112/1995 because the law only ruled the sale of apartments that were

owned by the state. For the apartments sold before the trial, the Court retains the ownership right of the complainant acknowledged previously – with retroactive effect – and rules that the apartments were a “good” in the sense of the Convention.

After a detailed analysis of the chaotic situation in the internal law regarding nationalized houses in general, since 1995 up to the decision making process, the Court reached the conclusion that the Romanian state did not rule with sufficient coherence on the matter, creating, through its actions or administrative, legislative or judicial omissions a climate of uncertainty and confusion for the citizens. The Court's decision ruled that this climate affects the judicial security and trust in the rule of law. The same incoherence manifested in a case where the complainant was deprived of his rightful ownership. In the case *Străin and others vs. Romania*, one of the apartments of the nationalized building was sold by the state during the trial. Even though the internal court acknowledged that the nationalization of the building was illegal and declared that the complainant is the rightful owner, the court refused to dispose the restitution of the sold apartment. The Court ruled that internal courts admitted the owner status of the complainants, a right that did not seem revocable and thus was protected by the Convention as “a good”. Assuming that the transaction was a provision of the internal law, the Court considered that it was not proportional, given the disparities within the law²⁶ and did not establish the compensation of the owner in such cases considering that at the moment, law no. 247/2005 did not come into force. After law no. 247/2005 came into force, the Court pronounced on the lack of efficiency of the compensation mechanism. Thus, in the case *Porteanu vs. Romania*, the Court rules the case arguing that the mechanism put forward by law 247/2005 even though it seemed to function, did not produce any effect in the case of the complainant who did not receive any compensation. In other cases the Court ruled that the Proprietatea Fund does not function good enough to offer effective

²⁴ *Androne vs. Romania*, June 6, 2005, published in Romania's Official Journal, Part I, no. 875/September 29, 2005.

²⁵ *Păduraru vs. Romania*, December 1, 2005, published in Romania's Official Journal, Part I, no. 514, of June 14, 2006.

²⁶ See also, par. 54 where the Court rules that no internal law provision does not clarify, beyond doubt, the consequences in cases when the state sells the property rights of a private individual to a third party.

compensation. Moreover, not even law no. 10/2001 nor law 247/2005 take into account the prejudice suffered by people that were deprived of their goods and did not receive compensation²⁷. These types of solutions continue to be ruled by the Court without being influenced by the legislative amendments on the compensation mechanism.²⁸

3. Extension of rental contracts for the state's tenants

In these types of cases, less numerous, there is no pattern for solutions, and thus judges appeal to the circumstances of the cases. In *Radovici and Stănescu, Popescu and Toader or Spanoche*, breaching the right to "a good" meant that, due to the unclear regulation and the implementation methods used to apply some provisions of the emergency ordinance 40/1999, the complainants, former owners, could not compel tenants to sign a rental contract with them. Other similar cases are *Arsenovici* and *Tarik* in which law no. 17/1994 allowed tenants to continue living in the same houses in the same conditions as before, even though the buildings were returned to their rightful owners. Thus, their contractual obligations remained the same and so did the rent, despite the inflation rates which skyrocketed in that period.²⁹ In the case *Burzo vs. Romania*, the complainant was compelled to close a rental contract, after he received the building, with the former tenants of the state but his evacuation actions were rejected without a reason and the rent (1,35 euro/month) was insufficient to maintain the building which deteriorated and needed to be demolished.³⁰

A different situation already existed in the case *Cleja and Mihalcea vs. Romania*: the complainants could not obtain the permission to evacuate the tenants in another apartment the owners were offering because national courts considered that the surface of the

apartment did not comply to the provisions of the law and the apartment was owned by a third party. The court observed that the third party submitted an authentic declaration expressing his will to offer the apartment for the tenants and the surface of the apartment complied with the law, with the exception of a hallway that was 0.25 sq. meters smaller than the surface stipulated by the law. After it showed that the requirements of the law regarding the quality of apartments to be offered at the disposal of the tenants were too high and the owners could not fulfill the conditions, the Court ruled in favor of the complainants. The variety of solutions makes us believe that, in the future, the Court will condemn the Romanian government for breaching the right to goods in such cases.

There are several **important problems** that will most surely be the object of several ECHR decisions in the future and thus Romanian authorities need to be ready to deal with them.

a) Admission of the restitution action introduced after law no. 10/2001 came into force

This problem is highly debated currently, after the High Court of Justice ruled the solution. As mentioned above, one of the problems in the Brumarescu case was that courts could not judge restitution processes. After law no. 10/2001 came into force, the same deadlock was reached because, as the High Court shows, this law should prevail over the general procedure of the restitution process.

However, we believe that in *some cases* this deadlock could lead to serious problems in the Convention. Without denying the general interest of the special law to prevail over the general law, we consider that this could only be implemented if the procedure of the special law is effective. Namely, in the case that it will lead to the same results as the procedures of the general law. In other words, within the restitution process, the former owner could obtain the good in nature after ownership titles are compared, where the oldest title prevails; thus, the former owner would have a real chance of winning the case. The new law (no. 10/2001) and its procedure does not allow the restitution of the goods sold to tenants and thus the special law does not lead to the same result. What is more, the compensation mechanism of law

²⁷ For example, *Radu vs. Romania*, July 20, 2006; *Rabinovici vs. Romania*, July 20 2006; *Negoitǎ vs Romania*, January 25, 2007.

²⁸ For last solutions proposed, see *Stan and Rosenberger vs. României*, July 17, 2008; *Albu vs Romania*, June 17, 2008; *Nistorescu vs. Romania*, June 17, 2008; *Stoicuța vs. Romania*, June 3, 2008.

²⁹ *Arsenovici vs. Romania*, February 7, 2008; *Tarik vs. Romania*, February 7, 2008.

³⁰ *Burzo vs. Romania*, March 4, 2008.

no. 10/2001 is considered inefficient by the Court. Thus, the methods stipulated under law 10/2001 cannot be conducive to an equivalent result with the restitution process (when the same building is returned to the former owner). Presuming that the “former owner” solicited the annulment of the rental contract, one can observe that the action is not the same as the restitution process because the comparison of ownership titles (a relatively simple operation) was replaced by a complex analysis of the situation that has an unpredictable result due to the discrepancies in the judicial practice. A rather simple operation, with predictable results is replaced by a complex and unpredictable mechanism.

In conclusion, we believe that the procedure ruled under law 10/2001 is not, in some cases, equal in effects and predictability as that used in restitution processes because it cannot lead to a per se restitution of goods. Moreover, the compensation mechanism is not efficient enough and the procedure can be complicated and unpredictable. These criteria cannot be generalized, as their results depend upon specific circumstances of the case.

b) Failure to pay effective compensation as provisioned by law no. 10/2001

The situation we consider is that of individuals who launched the procedures stipulated under law no. 10/2001 or those who did not receive an answer to their request or obtained administrative or judicial rulings that recognize their ownership rights and compensation level but did not receive compensation. In such cases, a parallel can be drawn from the *Broniowski vs. Poland* case.³¹ In this case, the complainant, heir of a person repatriated from the territories belonging to Poland before the second World War had every right, according to the law, to a compensation from the state for the abandoned goods beyond the border (“beyond Bug”, in the Soviet Union). Polish law rules that the value of the abandoned goods needs to be deducted from the price at which the state would have sold the agricultural land to the owner. The compensation right was pretty vague, depending upon the existence of an administrative decision that would allocate the land to the owner. However, this was present in the Polish system and the state was bound to respect it. The complainant requested

compensation in 1992. Various administrative practices and legislative amendments blocked the “recognition” of the complainant’s rights. However, in 2003 a new law dismissed the right of the complainant. The Court considered that the state has the obligation to guarantee the legal and practical conditions of the rule of law but Polish authorities imposed successive limitations of this particular right and actually ended up transforming it in an illusory and non-executable right. The confusion of the complainant due to the delays and obstructive manners of the responsible authorities was incompatible with the right to respect the goods of an individual. There is a parallel between this case and that of Romanian complainants: there are elements that lead to a state of confusion ever since they submitted the necessary documents until now, when their right transformed from an executable to an illusory one. This parallel cannot be applied in all cases or in any conditions, but a request submitted in 2001 and unsolved in 2008 could raise serious questions.

c) Tenants - buyers at ECHR

Until now, there is no decision against Romania in which the Court analyzed the case of a tenant that bought a nationalized building and was evacuated after the restitution process was won by the former owner. Even so, these types of problems have a direct connection with nationalized houses; sooner or later, they will be reflected in the jurisprudence of ECHR, as there are several cases on this matter in progress. Moreover, it is important to underline that such decisions exist against other states.³²

Considering the principles established in these decisions, one could argue that, in some cases, the problem of tenants who bought the nationalized buildings and got evicted could be a serious subject of reflection. Thus, there is a serious problem when the purchase contract was not declared void, because the tenant was considered of good faith. However, the court admitted the contract in the restitution process and the tenant was evicted without receiving any compensation. Other cases that have even slighter chances

³² See for example *Pincova and Pinc vs. the Czech Republic*, November 5 2002; *Velikovi vs. Bulgaria*, March 15, 2007.

³¹ *Broniowski vs. Poloniei*, din 22 iunie 2004.

are those where the contract was declared void, due to the ill will of the tenant (who was notified not to buy the apartment) but in this case, the tenant received a compensatory sum (in accordance with the market price).

As one can notice, the omissions present in the decision-making of the restitution process in Romania during the first decade of transition have every chance to produce important and long-term effects. Romanian political leaders live with the illusion that they can legislate disregarding any principles and general law related norms. Also, the lack of administrative capacity and the discrepancies in the implementation processes have every chance of generating ECHR decisions that would oblige Romania to pay important compensatory damages.

7. Conclusions: principles, redistribution and social costs

After two decades of disputes and several constantly amended laws, one can draw some knowledge-based conclusions on the restitution of properties in Romania. There are several dilemmas that have not been recognized from the very beginning which cause some fundamental errors that either delayed the procedures or created inefficiency and major supplementary inequities.

- The fact that there was no clear decision at the beginning of the process, like in other countries in the region, generated confusion, complications and overlapping property rights. Ideally, land restitutions should have been correlated in some way with the land registry office because there were several points where the processes overlapped. In general, the biggest error was that the process delayed as it was legislated step by step, at various points. The best solution would have been to have a clear cut decision at some point, even if on the legal edge or even a more restrictive one, in terms of restitution conditions.
- The second major error was law no. 112/1995 that allowed the sale of nationalized houses to the tenants. As a local committee public servant declared, "maybe former owners would not be so frustrated with law 10 if their houses would have not been confiscated before". All

those interviewed, representatives of local or central authorities proposed alternative measures to the best methods to solve the restitution problem. They ground their solutions on the last 10 years and all conclude that law 112/1995 should have not existed. Most often, public servants argue that houses should have been returned in full to former owners even if when rental contracts were signed for 10-15 years. Houses that would not have been requested (seems that there are enough) could form a special fund that would solve the temporary problems of evacuated tenants.

- There were many situations when Law 10, meant to address injustices in the past, generated new ones. The cases which involved foreign citizens (former Romanians) whose houses were confiscated by Decree 223/1974³³ are complex and diverse. By the way the decree was implemented at the time; most confiscations were actually forced evacuations. But, in other cases, reasonable compensation was paid. Moreover, those evacuated receive compensation from the state they moved to, due to existent international agreements. Today, through the provisions of law 10, those who received compensation from foreign countries, based on the international agreements, are not eligible to request their house in Romania but local authorities find themselves in the impossibility to check. Of the 2,275 requests in Alba, for example, there was only one case admitting (by mistake probably) that the petitioner received compensation from a foreign state: a German citizen, whose file was ruled not eligible. In reality, it is possible that there are more similar cases.
- Another problem, even more important, is that of buildings which are returned twice: once to the rightful owners confiscated after 1949; and the second time, to those living in the houses in the 80s, with a right to live there but without property rights, who were evacuated when the buildings were demolished due to public utility

³³ Citizens leaving abroad, legally or not, would not come back.

works. There is a long list of such cases in various counties. After evacuation, those living in the houses received apartments and compensation of 50,000-80,000 Romanian Ron, at the value of the market in the 80s. In the initial version of law 10, these "quasi-owners" in the 70's and 80's were not eligible for the restitution process but they soon became through several amendments introduced in 2005. Thus, due to faith, they keep the apartments offered by the state at small prices in 1990-1991 and have also the right to request compensation for the old houses based on law 10. Members of the Committees consider that from the value of the ruled compensation, authorities should deduct the sums already received by the Communist regime, updated to the current market value. This solution would be equitable and would reduce the pressures of the Proprietatea Fund for compensation in cash. They argue that these solutions would not be complete, because there are detailed cases on the expropriations in the 80's and compensations paid.

- Finally, there is a strong feeling shared by those working in law 10 committees that the law should limit somehow the area and volume of compensation: (i) to those affected and their direct heirs, children or nephews excluding relatives; (ii) by limiting the ceiling of the sum offered as compensation.
- It is the last point that raises serious concerns: according to a 2004 estimation, the total volume of compensation for those who could not receive their initially owned buildings, would amount to four times

more of the Romania's GDP thus basically at some 240 billion euro. If the estimation is real, it is not entirely sure who and how will be able to pay this sum.

It is clear that the Proprietatea Fund, once it will become fully functional, will not be able to cover the whole sum. In general, such an open commitment based on the national budget, before having an estimation of the actual costs, represents a big public policy problem. The presented combination of factors: (i) law 112, that blocked the reduction of debts by returning valuable buildings and (ii) procedures introduced in 2005 ruling that compensation should be leveled to the market value create today a situation that will be hard to deal with, no matter what judicial decisions rule.



It is possible that, realizing the impact of the problem created, central authorities could manage to delay case decisions until after the government is changed. In the same time, however, the restitution process should truly become a priority

for the state considering that the uncertain status of property rights infringes development. Important urban infrastructure projects that could be funded through European projects cannot be implemented because the terrains have uncertain judicial status.

Thus, the need of consensus that would accelerate the process is imperative. Without a property resource allocation, the restitution process could continue for decades. Just as large administrative projects such as the pension recalculation were solved in a reasonable period, the restitution process, through political consensus, can end in several years.

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