Property Restitution In Romania

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Abstract: - The property right is one of the most important right of a person in modern societies. Most of the national legislations consists of complex provision in what comes to protect this right. Due to the legislation lacks or misinterpretations, Romania has become a subject of criticism regarding property right, more specific regarding the properties that were abusively taken by the state during the communist regime.

Key-Words: - property right, compensation measures, laws ,restitution of properties, budget cost.

1. Introduction

In 1991, 1995 and 2001 Romanian Parliament passed laws for property restitution to their lawful owners who lost their possessions during the Communist regime (1945- 1989). Te main goal of these laws was to clarify and accelerate the Communist abuse restoration process. Without such normative acts, the alternative for former previous owners would have been to address the court directly and in some cases no resolving what so ever.

Ab initio, former owners would have to write a notification to those who are empowered by the state to solve property restitution. The legislative introduced local committees as mediators and the committee would deal with the claims in an acceptable way in order to avoid trials. The state established that confiscated property shall be returned to the former owner to his or her possession and ownership, and if this is, according to the Law, not possible, the former owner shall have the right to compensation. If returning possession of confiscated property is not immediately possible, the former owner shall be ceded with the ownership of the confiscated property, and he or she shall establish a lease relationship with the person-holder of the confiscated property at the time of entry into force of the Law, in accordance with market conditions.

The subject of restitution implied nationalized real property as construction land, agricultural land, forests and forest land, residential and commercial buildings, apartments and business premises and other structures existing on the date of entry into force of the Law. The subject of restitution also implied nationalized movable properties registered in the Public Register, and other movable properties which according to the regulations on cultural properties represent cultural properties, and cultural properties of great and special importance.

The laws also stated that confiscated real property may not be fully recovered, the former owner shall recover a part of the confiscated real property and receive compensation for the unrecovered part.Four major land reforms have taken place in Romania: in 1864, 1921, 1945 and 1991. The first sought to undo the feudal structure that had persisted after the unification of the Danubian Principalities in 1859; the second, more drastic reform, tried to resolve lingering peasant discontent and create social harmony after the upheaval of World War I and extensive territorial expansion; the third, imposed by a mainly Communist government, did away with the remaining influence of the landed aristocracy but was itself soon undone by collectivization (considered by some as yet another land reform, which the fourth then unraveled, leading to almost universal private ownership of land today.

2. Return of properties according to Law no. 18/1991

The February 1991 land reform, which followed the Romanian Revolution of 1989, sought to privatize land resources that were in state hands during the Communist period. The goal was to hand back land in state cooperatives to its pre-collectivization owners, with families that did not own land at the time also receiving

small allotments. Amidst an anti-Communist public mood of 1990-91, the restored interwar parties (PNL and PNȚCD) loudly called for restitution; initially, the governing ex-Communist National Salvation Front resisted the demand and sought to grant all rural residents 0.5 ha, but in a bid to capture the rural vote, it gave in to pressure to dismantle the collectives, although capping the size of restored properties to 10 ha [1]. (The Front claimed this would promote social equity, with others claiming a political motivation: the recreation of a viable, propertied middle class in agriculture, one that could exert certain kinds of pressure on the state, was precluded.)

In addition to righting a perceived historical injustice, the reform also pleased Romanian farmers, who have a long tradition of working their own land and are tied to it not only for subsistence needs but also out of sentiment (for instance because their ancestors retained it through fighting in wars). Given that many families still held legal title as evidence of their claim to the land, and retained a clear memory of where their plots were located (a memory kept alive during Communism), failure to hand back property put some risks in creating significant social unrest. As well, given the relatively egalitarian land structure prevailing in 1949, historical justice (emphasized by the opposition) coincided with the social equity considerations that preoccupied the government.

Before the reform, 411 state farms and 3,776 cooperatives exploited almost all the country's arable land resources; in 1991, about 65% of this land–belonging to cooperatives–was restored to former owners or their heirs. About 3.7 million peasant households were put in possession of the land, deciding to exploit it either individually or in associations. Peasants farms (the norm) were small, subsistence-based units of 2 to 3 ha each; family association farms covered 100 ha, and agricultural companies' farms were 500 ha in area. Reform of state farms, tangled in politics, was slower: in 1997, 60% of the area was taken up by peasant farms, 10% by family associations and 14% by agricultural companies, but state farms still accounted for 16%. By 2004, however, privatization was largely complete, with the private sector representing 97.3% of production value that year (97.4% of vegetable production and 98.9% of animal production); plans are in place to sell off the remainder of state-owned farmland. Out of 2,387,600 ha (9,218.58 mi²) initially held by the state, 1,704,200 were returned based on Law 18/1991 and Law 1/2000; 574,600 were leased; and 108,800 were in the process of being leased at the end of 2004.

3. Restitution of properties according to Law no. 112/1995

Law no. 112/1995 stated that the former owners - natural persons - of dwelling-houses, passed as such into the property of the State or of other legal persons, after March 6, 1945, with title, and were in the State or other legal persons' possession on December 22, 1989, shall benefit by the remedial measures provided by law. By the provisions shall also benefit the heirs of the former owners, according to the law [2].

The persons benefited by the restoration in kind, by reacquiring the property right on the flats in which they lived as lessees or of those which are not occupied, and for the other flats they shall receive indemnification. In the case of flats passed into State property for which indemnifications were received, if they are occupied by the former owners or are free, they shall be restored in kind. The reacquisition of the property right is conditioned by the repayment of the sum received as indemnification, brought up to date. By flat in the sense of the law, shall be understood the dwelling consisting of one or more rooms, with outhouses, garages and annexes connected with the dwelling, service rooms, garrets, cellars, sheds and suchlike, too, regardless of whether they are situated on the same level or at different levels, and which, at the date of their passing into the State's property, constituted a single self-coif the former owner or the respective heirs were living on December 22, 1989 as lessees in the flats passed into State property, they shall become owners of the respective flat, under the provisions of the law.

In case that several heirs were living on December 22, 1989 each in a flat passed into State property from the former owner, they become the owners of the respective flat. The former owner or the respective heirs, who were living on December 22, 1989 in the same flat together with other lessees, became owners of the whole flat. Evacuation of the lessees and giving possession to the owners were made only after the public authorities or the owner effectively provides an adequate dwelling.

Heirs in the sense of the Law no. 112/1995 were considered by right the acceptors of the inheritance after the date when the petition provided by law was registered. If relatives up to the second degree of the former owner still alive were lessees on December 22, 1989 in the flats taken over by the State from the former owner, the flats shall become their property, with the written consent of the owner.

The law stated that contract titular lessees of flats that are not restored in kind to the former owners or their heirs may choose to buy these flats with down payment of the price or by installments. Many of contract titular lessees of flats that were not restored had bought the flats.

4. Restitution of properties according to Law no. 10/2001

According to Law no. 10/2001 all properties abusively taken over by the state, by the cooperative organizations or by any other juristic persons during March 6, 1945 - December 22, 1989, as well as those taken over by the state on the basis of the Law No. 139/1940 on requisitions and not restored, shall be restored, as a rule, in kind. In the cases in which the restoration in kind was not possible, reparative measures through an equivalent were established. The reparative measures through an equivalent shall consist of compensation with other goods or services offered as an equivalent by the holder, with the agreement of the entitled person, of granting shares in trading companies transacted on the capital market, of face value securities used exclusively in the privatization process, or of pecuniary compensation [3].

By properties abusively taken over it was to be understood: a) the properties nationalized through Law No. 119/1948 on the nationalization of the industrial, banking, insurance, mining and transport enterprises, as well as those nationalized without valid title;

b) properties taken over by confiscation of the fortune, as a result of a conviction for crimes of a political nature, provided for in the penal legislation, committed as a manifestation of the opposition to the totalitarian communist system;

c) properties donated to the state or to other juristic persons on the basis of some special normative acts adopted during the period March 6, 1945 - December 22, 1989, as well as other properties donated to the state, if the action for the rescission of the deed of gift or for the acknowledgement of nullity of the gift by a final and absolute judgment was admitted;

d) properties taken over by the state for non-payment of taxes for reasons independent of the owner's volition, or those considered as abandoned, on the basis of an administrative order or of a judgment, during the period March 6, 1945 - December 22, 1989;

e) properties taken over by the state on the basis of certain laws or other normative acts unpublished on the date of the takeover in the Official Gazette or the Official Bulletin;

f) properties taken over by the state on the basis of Law No. 139/1940 on requisitions, and which were not been restored or for which the owner did not receive equitable compensation;

g) any other properties taken over by the state with valid title, such as it is defined in art. 6 para (1) in Law No. 213/1998 on public property and the legal regime thereof;

h) any other properties taken over without valid title or without the observance of the legal provisions in force on the date of the takeover, as well as those taken over without legal grounds by decision documents issued by the local organs of the power or of the state administration.

The persons whose properties were taken over without valid title maintain the quality of owner they had on the date of the takeover, which they shall exercise after the receipt of the decision or judgment of restoration, in accordance with the provisions of the law.

A problem appeared when the rightful owners of the buildings that were abusively taken over by the state during March 6, 1945 - December 22, 1989 tried and obtained the property of the houses that were bought by tenants according to Law no. 112/1995. Another problem was the delay process in solving the problem. 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. 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 works.

5. Solution given by the European Court of Human Rights in Atanasiu and others vs. Romania

In a pilot judgment, The European Court of Human Rights adjourns the cases concerning properties nationalized during the communist era in Romania pending general measures at national level. The case of Maria

Atanasiu and others v. Romania concerns the issue of restitution or compensation in respect of properties nationalized or confiscated by the state before 1989 [4]. The European Court of Human Rights recognized that series of restitution laws were enacted in Romania following the collapse of the communist regime, based on the principle of restitution in kind, or compensation where restitution was not possible. The compensation was capped during some periods and not during others and was payable in cash at some times and in either cash or shares at others; since 2005 it has been paid through the Property Fund, which has yet to be listed on the stock exchange. Several hundred thousand individuals in Romania continue to wait for processing of their claims for restitution or compensation. The applicants in Maria Atanasiu and others v. Romania are three Romanian nationals who live in Bucharest. The first two applicants, Maria Atanasiu and Ileana Iuliana Poenaru (application no. 30767/05), were born in 1912 and 1937 respectively. They are the heirs of Mr Atanasiu, the former owner of a building in Bucharest which was nationalized in 1950 and is now divided into several flats. After 1989, relying on the provisions of ordinary law, they secured the return of seven of the flats and compensation in respect of an eighth, the domestic courts having held that the nationalization of the building had been unlawful. With regard to the last remaining flat, which is the subject of the case in question, the High Court of Cassation and Justice ("the HCCJ") on 11 March 2005 declared the applicants' action for recovery of possession inadmissible, on the ground that they should have made use of the restitution or compensation procedure applicable at the time under Law no. 10/2001 on the legal status of nationalized property. As they did not receive any reply within the statutory time-limit in response to the claim they lodged under that law for restitution of the flat, the applicants brought proceedings against Bucharest City Council, which on 18 April 2005 was ordered by the HCCJ to give a decision. To date, the applicants' claim for compensation has still not been determined by the city council. The third applicant, Ileana Florica Solon (application no. 33,800/06), was born in 1935. She complained of her inability to obtain compensation on the basis of Law no. 10/2001 (as amended by subsequent texts) for the damage sustained on account of the nationalization of an area of land for use by the University of Craiova. Mrs Solon applied for compensation to the University, which refused her request in a decision of 10 July 2001. Subsequently, the HCCJ, in a final judgment of 30 March 2006, ruled that Mrs Solon was entitled to compensation in the amount claimed. To date, the applicant has received no compensation. In June 2010 the Romanian Government informed the Court that her claim would receive priority treatment. The Court decided to deal with the case under the "pilot-judgment" procedure, which is aimed at the overall settlement of large groups of identical cases. The Court has already found over 150 violations in cases of this kind, and several hundred similar cases are pending before it. The first two applicants complained that they had not had access to a court in order to claim restitution of one of the nationalized flats. All three applicants complained of delays on the part of the administrative authorities in giving a decision on their applications for restitution or compensation. They relied on Article 6 § 1 (right to a fair hearing within a reasonable time) of European convention of Human Rights and Article 1 of Protocol No. 1 (protection of property) of European convention of Human Rights and Article 1.

The Court considered that the need to strike a fair balance between the general interest and the protection of the individual's fundamental rights also applied in the context of far-reaching change linked to reform of the State; however complex such reform, it must not entail consequences at variance with the Convention.

In the applicants case, the final court rulings ordering the authorities to give a decision on the claim lodged by Mrs. Atanasiu and Mrs. Poenaru and fixing the amount of compensation due to Mrs. Solon had not been enforced to date. The Romanian Government had not given any reasons to justify the failure to secure the applicants' right to compensation. That failure, and the uncertainty as to when the compensation might be paid, had imposed a disproportionate and excessive burden on the applicants which was incompatible with their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1.

The pilot-judgment procedure, which the Court decided to apply to the case of Maria Atanasiu and others v. Romania, was designed to assist the member States in fulfilling their role in the Convention system by resolving structural problems speedily at national level. That entailed an assessment by the Court extending beyond the case of the individual applicant, in the interests of other potentially affected persons.

Several judgments by the Court - in the cases of Viasu, Faimblat and Katz - had already resulted in findings of a violation of Article 6 § 1 and Article 1 of Protocol No. 1 on account of shortcomings in the Romanian system of compensation and restitution. Those judgments had identified some of the causes of the problems in question, in particular the gradual extension of the reparation laws to cover virtually all nationalized immovable property, resulting in a heavy workload for the authorities. The simplification of the procedures as a result of Law no. 247/2005 represented a step in the right direction, provided that it was backed up by the appropriate human and material resources. The Court noted, however, that by May 2010, out of a total of 68,355 files registered with the Central Compensation Board, only 21,260 had resulted in a decision awarding a

"compensation certificate", and that fewer than 4,000 payments had been made. While the Court took note of the very substantial cost to the State budget represented by the restitution and compensation scheme, it observed that the listing of the Property Fund on the stock exchange, which had been due to take place in 2005, had still not been accomplished, although the diversion towards the stock market of some of the claims from persons in receipt of "compensation certificates" would reduce pressure on the budget.

As the pilot-judgment procedure was aimed at allowing rapid redress to be afforded at national level to all those affected by the structural problem identified, the pilot judgment could indicate that examination of all similar applications would be adjourned pending the adoption of general measures. In today's case, in view of the very large number of applications concerning similar issues, the Court decided to adjourn examination of those applications for 18 months from the date on which the present judgment became final, pending adoption by the Romanian authorities of measures capable of providing adequate redress to all those affected by the reparation legislation.

6. Restitution Problem in numbers and Conclusion

According to the Romanian Government, 202,782 claims had been registered with the local authorities under Law no. 10/2001. 119022 files had been examined and an award of compensation had been proposed in 56000 cases; 46701 files compiled under Law no. 10/2001 and 375 under Government Emergency Ordinances nos. 83/1999 and 94/2000 had been forwarded to the Central Board, which had issued 10.345 “compensation certificates”. The remaining files were under consideration; with regard to Laws no. 18/1991 and 1/2000 concerning agricultural land, according to a partial calculation relating to eight out of forty-one counties, almost one and a half million claims for restitution or compensation had been lodged with the local authorities. A total of 55,271 files compiled under the laws in question had been forwarded to the Central Board, which had granted 21,279 of the claims and had issued 10,915 “compensation certificates”. The remaining files were under consideration; With regard to claims for restitution of land or compensation under Law no. 247/2005, over 800,000 claims had been registered with the local authorities. Approximately 172,000 of these had been granted and compensation had been proposed; of the persons who had received “compensation certificates”, 15,059 had opted to receive part of the sum in cash, amounting to a total of about RON 2 billion (approximately EUR 400 million). 3850 people had received payments amounting to RON 350 million (approximately EUR 80 million). Shares in the Property Fund, in existence since December 2005, are still not listed on the stock exchange. However, since 2007 the Fund has been paying dividends to its shareholders and since March 2008 its shares may be sold by means of direct transactions under the supervision of the stock exchange regulatory authority. For instance, 206 sales of shares were registered in May 2010. According to the information published on 4 June 2010 by the Property Fund, the Ministry of Finance is the major shareholder, with 56% of the Fund's shares, 12% are held by 103 legal entities, while 31.4% are owned by 3622 individual shareholders. According to Government estimates a total of EUR 21 billion will be needed to pay the compensation provided for by the compensation law [5]. Until now, the Romanian Government hasn’t solved this complicated problem.

Notes and References:

[1] Official Gazette of Romania, Part. I, No. 37 of February 20, 1991

[2] Official Gazette of Romania), Part I, No. 279/November 29, 1995

[3] Official Gazette of Romania, Part I, No. 75 of February 14, 2001

[4] http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-100989# {%22itemid%22:[%22 001-100989%22]}

[5] http://propertyrightsintransition.com/denying-justice-by-delaying-it