



**ROUND-TABLE:
RECOMMENDATION (2008)2
OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON EFFICIENT DOMESTIC
CAPACITY FOR RAPID EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS**

**organised with financial support from the Human Rights Trust Fund
under the project “Removing obstacles to the enforcement of domestic
court judgments/Ensuring an effective implementation of domestic
court judgments”**

Tirana Hotel International
Tirana, Albania
15-16 December 2011

Presentation by Ms Irina Cambrea
Government Co-Agent before the European Court of Human Rights,
Ministry of Foreign Affairs, Romania

The views expressed are those of the author only.

PROCESS OF DRAWING UP THE ACTION PLAN IN RESPECT OF THE PILOT JUDGMENT MARIA ATANASIU AND OTHERS V. ROMANIA AND ITS IMPLEMENTATION

Irina Cambrea, Government Co-Agent before the European Court of Human Rights,
Ministry of Foreign Affairs of Romania

- Taking into consideration the importance of the execution of a pilot judgment and the general difficultness of solving the issue of the restitution of property, one of the most complex Romanian experiences in the field of drawing up action plans concerns the execution of the pilot judgment *Maria Atanasiu and others*.
- This judgment deals with the systemic problem represented by the ineffectiveness of the mechanism set up in Romania after 1989 in order to afford restitution or compensation for properties nationalized during the communist period.
- Typically, our action plans/reports with regard to judgments revealing structural problems or special issues are drawn-up following consultations held with the authorities concerned, meetings and the establishment of inter-ministerial working groups.
- That was the case of the pilot judgment *Maria Atanasiu and others*. On 3 December 2010, an inter-ministerial committee was created in order to implement the general measures required for solving the problems identified by the Court (“*the inter-ministerial committee concerning the process of reformation of the legislation and procedures in the field of restitution of properties*”).
- This committee consists of representatives of the following authorities: the National Authority for the Restitution of Properties, the Ministry of Justice, the Ministry of Public Finances, the Ministry of Administration and Interior, the Ministry of Agriculture and Rural Development, the Ministry of Environment and Forests, the Ministry of Foreign Affairs, the Working Office of the Prime Minister and the Authority for State Assets Recovery.
- The inter-ministerial committee drew up a draft law, aiming to create an effective mechanism for the restitution of property.
- Regular consultations took place between the inter-ministerial committee and the parliamentary sub-commission for the supervision of the execution of the ECHR’s judgments.
- On 17 February 2011, a high-level Round Table gathering representatives of 21 member states of the Council of Europe was held in Bucharest to discuss possible ways to tackle the challenges raised by the process of restitution and/or compensation for properties nationalized before 1989 in Central and Eastern Europe.
- The purpose of this event was to create an adequate framework for an exchange of good practices in the field of restitution properties nationalized before 1989 and to identify effective mechanisms for implementing the Court’s case-law at the domestic level, in order to avoid new violations of the property right, guaranteed by the European Convention of Human Rights.

- The participants at the Round Table stressed the importance of sharing their experiences and taking into account examples of good practices and legislation providing for restitution or compensation for property nationalized before 1989.
- Following this event, a report was drawn up, containing the conclusions arising from the presentation of good practices by the representatives of the states invited to attend the Round Table. The abovementioned report was circulated to the relevant domestic authorities.
 - Several rounds of consultations on this matter also took place between the relevant domestic authorities and the Service for the Execution of Judgments of the European Court.
- As a result of these efforts, in November 2011 the Romanian Government submitted a revised action plan which provides updated information on the evaluation of the requests for restitution of properties confiscated and on the treatment of these requests. The revised action plan also provides information on the measures envisaged by the domestic authorities in order to streamline the system of restitution or compensation as well as a provisional calendar for the implementation of the measures considered by the authorities.
 - Concerning the envisaged measures, the action plan presented the main improvements included in the draft law. They concern the acceleration of the administrative procedures, the effectiveness of the internal remedies in this area as well as the capping and the rescheduling of the payment of compensations.
 - The acceleration of the administrative procedures will be accomplished mainly by providing for precise and realistic deadlines in which the relevant authorities will have to treat the notifications and by simplifying the procedures, including the elimination of certain administrative stages.
- As for the provision of effective domestic remedies in this field, we have proposed the unification of the existing remedies, in order to render the present system more coherent and to avoid divergent case-law. It is noteworthy that the draft law offers to petitioners the possibility to lodge a complaint before a court, in case the relevant administrative authority does not issue its decision inside the deadline provided for by the law. This possibility makes the abovementioned deadlines effective.
- Moreover, the draft law proposes the capping and the rescheduling of the payment of compensations, by putting in place a mechanism based on a grid (table) for evaluating the immovable properties, taking into account the types of territorial administrative units in which the immovable properties are situated, as well as the concrete type of the immovable property. The draft law proposes a 300.000 (three hundred thousand) Romanian lei cap for the compensation awarded, as well as the rescheduling of the payment of compensations for a period of maximum 15 years.
- In addition, the provisional calendar for the implementation of the measures envisaged by the authorities respects the deadline set by the Court in the pilot judgment.
 - The first and the most important difficulty raised by the implementation of the pilot judgment is represented by the necessity to change the rules of the game in the middle of it. In our country, the legal system set up for the restitution of property is a complex one,

formed by many laws, which were amended many times. The members of the Committee estimated particularly difficult the task of drawing up a single new law, containing amendments for all the previous laws, considering the fact that these laws are producing effects nowadays. Accepting the introduction of the cap and rescheduling of compensation, in view of the limited budgetary resources, and finding the most appropriate means to technically implement these modifications, was great challenge.

➤ We must also be aware of the fact that we are only halfway down the road. To fully implement the pilot judgment, the draft law must be accepted by the parliament and the civil society and then it must prove its efficiency in practice.