



ROMANIA
Ministry of Foreign Affairs



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

ROUND-TABLE

PROPERTY RESTITUTION/COMPENSATION: GENERAL MEASURES TO COMPLY WITH THE EUROPEAN COURT'S JUDGMENTS

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"

Bucharest, Howard Johnson Hotel,
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BRIEFING NOTE

Background information

Since the early 1990s, restitution of or compensation for property seized by the State under communist regimes has been an issue of concern for a number of member states of the Council of Europe.

Many of the States concerned chose to take measures in favour of the former owners, be that the return of the original property, or compensation. The arrangement and scope of these measures varied and there were significant differences in the forms of compensation adopted by States.

States enjoy a margin of appreciation to determine the scope of property restitution and the conditions under which the lost property would be restored or compensation paid. The European Court of Human Rights (the "European Court") held in this respect that the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") did not impose a general obligation to return property which was transferred to States before they ratified the Convention. However, those Contracting States which decide to go ahead with the restitution process after ratification are obliged to conduct it in a manner that is compatible with the Convention's requirements.

The inherent difficulties of such a large-scale process generated an important case-load before the European Court. The increasing number of judgments against some of the Contracting States disclosing various shortcomings in the restitution or compensation mechanisms raised new challenges for the Committee of Ministers of the Council of Europe, the body to which the Convention entrusts the supervision of the execution of the European Court's judgments.

Turning to Romania's experience, since 2004 the European Court has given roughly 240 judgments on restitution-related issues. Their execution is supervised by the Committee of Ministers within the framework of the *Străin and others* and *Sabin Popescu* group of cases. In all these cases the European Court identified dysfunctions of the restitution or compensation mechanisms. In later judgments, these dysfunctions were qualified as "systemic" and found to pose a recurrent problem in Romania, despite the steps taken by the Romanian authorities to comply with the Court's earlier judgments. Around 2,000 such cases are currently pending before the European Court.

Against this background, the European Court recently applied the pilot judgment procedure in the case of *Maria Atanasiu and Others v. Romania* (Judgment of 12/10/2010, final on 12/01/2011). While acknowledging the complexity of the issues the Romanian authorities have been faced with, the European Court held that they must put in place measures capable of providing adequate redress to all those affected by the restitution laws, within 18 months as of the date the judgment became final (i.e. 12 July 2012). It is now up to the Romanian authorities, under the supervision of the Committee of Ministers, to implement the appropriate measures, knowing that some measures have already been identified in an action plan submitted to the Committee of Ministers in February 2010.

Besides the numerous judgments against Romania, the European Court has also delivered a number of judgments against Albania that concern the failure to enforce final domestic court and administrative decisions recognising the right of the applicants to restitution or compensation for properties. In the *Driza* and *Ramadhi* cases, the European Court stated that the Albanian authorities should, *inter alia*: designate a competent body; set out the procedural rules; ensure compliance with such rules in practice; and remove all obstacles to awarding compensation under the Property Act by adopting the necessary legislative; and administrative and budgetary measures. These measures should include the making of maps for property valuation and the designation of an adequate fund. The supervision of the execution of those judgments is carried out by the Committee of Ministers in the framework of the *Driza* group of cases.

Round-table: plenary and thematic sessions

This round-table aims at providing a forum for sharing participating States' expertise in dealing with property restitution or compensation and overcoming the challenges relating to the execution of the European Court's judgments. Among the participating States, some have successfully finalised the restitution or compensation process, for some participants this process is ongoing and some others have not yet passed legislation allowing restitution or compensation for loss of properties. The past and ongoing experience of some of the participants is likely to benefit to the others.

During the morning session, the high-level participants will share their experience related to their domestic property restitution or compensation process. It is hoped that examples of best practice will emerge from this session. The afternoon session will consist of two separate workshops, focusing on the main challenges that have been encountered so far in the process of execution of the European Court's judgments.

During the first workshop, the presentations and subsequent discussions will focus on best practice and difficulties encountered in the process of drafting legislation on property restitution or compensation.

During the second workshop, the presentations and subsequent discussions will focus on best practice and difficulties encountered in the implementation of the relevant legislation.

At the close of the workshops, the participants will reunite in plenary session to draw the conclusions of the round-table.
