



ROMANIA  
Ministry of Foreign Affairs



COUNCIL OF EUROPE  
CONSEIL DE L'EUROPE

WORKSHOP 1

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

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*The views expressed are those of the author only*

**Dear Mr. Minister, dear Ladies and Gentleman,**

**I. Hungarian scope of the European Convention for the Protection of Human Rights and Fundamental Freedoms**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention) shall be applied in Hungary from 5 November 1992. The Convention and its supplementary protocols were promulgated by Act XXXI of 1993.

Right to property is protected by Article 1 of the First Supplementary Protocol of the Convention. According to the case-law of the European Court of Human Rights (hereinafter: Court) Article 1 protects only existing property and does not grant right to regain property already lost. In this regard one of the main types of property deprivation – namely the nationalization – shall be considered a single act by the Court instead of continuous breach of law. No matter how long this state exists according to Section 1 of Article 35 of the Convention an application for restoring property could only be submitted within 6 months after the loss of property. Taking into account that nationalization happened in the 1950's the fact that Hungary acceded in 1992 meant that the Hungarian applications based on Article 1 of the First Supplementary Protocol were already overdue. Consequently, the ownership of immovables and movables nationalized earlier in socialist states became lost and could not be enforced before the Court.

Exception to this rule is, if the nationalized immovables or movables would be returned to the former owner or his/her successor through the final decision of the national authorities or courts. In such situation, if the harm occurred after the final decision, the owner is entitled to sue before the Court within 6 months. (See: *Brumarescu v. Romania* judgment of 28 October 1999.)

Contrary to the re-privatisation executed in Romania only a symbolic compensation had been provided in Hungary and the regulation on compensation already settled the case before the Convention came into force in Hungary. Therefore property rights did not

revive according to this article and the Hungarian claims are not accepted *ratione temporis* by the Court.

## **II. Preliminaries**

Compensation in Hungary looks back on more than 50 years (11 March 1939 – 23 October 1989) due to the successive totalitarian regimes in the country's 20th century history, which seriously violated the basic rights to life, freedom, human dignity and property, and brought about immeasurable suffering to masses of Hungarian citizens. Thus, each of the freely elected democratic governments after the political changeover felt morally and legally responsible for remedying the damage to assets and human lives caused by dictatorships.

The return from the totalitarian systems to the community of democratic states in 1990 was dominated by a twofold idea. On the one hand, it was clear that such damage needed some remedy. On the other hand, Hungary's poor economic conditions and the high number of damaged people prevented immediate and overall compensation as an overarching goal.

As a consequence, Hungary's political changeover was followed by the creation of compensation laws in two areas: property and personal compensation.

## **III. Property compensation**

With a view to arranging ownership and securing the enterprises required for a market economy, driven by the rule of law principle and in consideration of society's sense of justice and capacities, the Parliament passed **Act XXV of 1991** as the first step to remedy citizens' property damage unjustly caused by the state. This law granted partial compensation to individuals who had their private properties taken by the despotic regime after 8 June 1949.

The second property compensation law was passed in 1992. **Act XXIV of 1992** also granted partial compensation to individuals who had their private properties damaged between 1 May 1939 and 8 June 1949. This law mostly remedied damage to properties of Jews and leftists.

Both property compensation acts had an annex of the legal instruments which entitled people to file applications.

The two acts **granted eligibility to people who were Hungarian citizens either at that time or when suffering damage, who sustained damage in conjunction with the deprivation of Hungarian citizenship, and to non-Hungarian citizens who were permanent residents of Hungary on 31 December 1990.** If the entitled party had died, compensation was granted to their descendents or surviving spouses. A person whose claim had already been satisfied by an international agreement was not eligible.

The two acts did not grant compensation for any property damage but restricted eligibility **to the taking of real estate (arable land, residential properties, vacant plots), enterprises (factories, banks, plants, retail shops, etc.), gold objects, precious stones, platinum and valuable works of art.**

The maximum eligible compensation granted to entitled people amounted **to 5 million forints.** Compensation was paid by **compensation note or agricultural voucher.**

Under the relevant laws, a **compensation note** is a transferable bearer **security which represents the nominal value of a claim to the state, equivalent to the amount of compensation.** In the first years, there were several ways to use compensation notes. Now, the possibilities are more restricted. Holders were entitled to attend **arable land auctions** and to **buy assets, shares and business shares sold during the privatisation of state properties.** Also, the notes could be used as **coverage of starting-up loans** and be **converted to life annuities.** **It was especially important that local governments had an obligation to accept compensation notes when selling their flats** if the holder was an actual resident of the building in question.

As experience showed that the statutory deadline for submission of compensation notes was too short, the Parliament extended the same by **Act II of 1994**. The eligible parties were allowed to reapply for compensation in the period between 15 February and 15 March 1994. A missed deadline resulted in forfeiture regardless of any certified excuse.

#### **IV. Amount of compensation**

Regarding the amount of compensation, I wish to stress again that in passing the two legal instruments for the remedy of property damage, the Parliament decided to grant partial compensation only for the most serious damage and in highest consideration of the population's capacities as a key principle of compensation.

At the same time, the legislator did not allow for re-privatisation, i.e. the return of individual real properties to their original owners in the case of applications submitted and considered under the two property compensation acts.

During the creation of the compensation laws and after their entry into force, the Constitutional Court passed several decisions both on the amount of partial compensation and on re-privatisation issues.

In making the first property compensation law, the legislator declared that a property taken may not be returned in its original form, because much of it has long been lost or has undergone major changes by its bona fide owners, or the former owners are dead or could not exercise their corresponding rights and obligations, or due to the nation's limited capacities. Hence, **partial compensation not only means a statutory definition of damage and the amount of compensation (degression) but also a ban on re-privatisation.**

In this context, decision No. 16/1991 (20 April) AB of the Constitutional Court of the Republic of Hungary pointed out as follows: "The new approach gives the legislator a

good deal of freedom in making fine distinctions. The primary reason is that the state does not satisfy legal claims but grants assets to beneficiaries out of fairness. Consequently, if it does not make a distinction between entitled parties by definition, distinction is restricted by the theoretical limit of positive discrimination: the unconditional observance of treatment as persons of equal dignity and the non-violation of fundamental rights set out in the Constitution. In this respect, the only obligation is to have a reasonable cause of non-equal treatment, i.e. to avoid arbitrariness.”

Also, decision No. 21/1990 (4 October) AB of the Constitutional Court sets forth that “**equity** is the only legal ground for partial compensation: the state has no obligation to grant any and no one is entitled to any. **Compensation is left to the state’s discretion.**”

Consequently, it is fair to say that the state did not grant compensation to entitled parties with a view to re-privatisation or according to the principle of damages, but only offered a partial remedy for the previous regime’s politically motivated measures, in consideration of the state’s capacities.

## **V. Property compensation in figures**

By today most property compensation claims and the related personal claims have been processed.

The compensation authority entitled to proceed in property compensation cases decided on compensation rights in its decisions passed during administrative procedure. These decisions could have been subjects of judicial review.

Under the property compensation acts, the compensation authority has taken **1.5 million decisions, paid compensation notes with a nominal value of over 81 billion forints and vouchers supporting agricultural enterprises worth 3.7 billion forints in respect of assets worth approximately 830 billion forints.**

Regarding the special matter of **arable land auctions**, the compensation authority has conducted nearly **27,000 auctions**, which affected a total of **2,131,773 hectares worth a total of 39,284,667 gold crowns**, granting arable land to **759,787 people** in the past 18 years.