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Străin and Others against Romania and Maria Atanasiu and Others against Romania (and 266 similar cases) group

General measures for the execution of the judgments of the European Court

Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights, in close co-operation with the Registry of the European Court

EXECUTIVE SUMMARY

On 5 April 2013, high representatives of the Romanian Government, with the Department for the Execution of Judgments of the European Court and the Registry of the European Court, carried out in-depth consultations on the draft law prepared by the Romanian authorities in response to the pilot judgment in the case of Maria Atanasiu and Others, in order to remedy problems in the mechanism set up with a view to restitution of or compensation for nationalised assets in Romania.

This document contains an assessment of the draft law submitted for that meeting, and a summary of the conclusions reached during the discussions of the points highlighted by that assessment.

The opinions expressed in this document are binding on neither the Committee of Ministers nor the European Court.

INTRODUCTION

1. The Committee of Ministers is currently supervising over **260 cases** concerning the mechanism for restitution of the properties nationalised[1] during the Communist era in Romania. The first judgment on this subject dates from 2004. According to figures published by the Court, there were, in July 2012, 2,700 cases of this type pending before it.

2. In a series of judgments delivered in 2008 and 2009, the European Court emphasised, under Article 46 of the Convention, the **structural nature of the problem**, which originated in a deficiency within the domestic legal order and administrative practice.

3. Relying on Committee of Ministers Resolution Res(2004)3 and Recommendation Rec(2004)6, the Court indicated the measures that it deemed appropriate to remedy the systemic problem identified. Thus it considered that the authorities should ensure through appropriate legal and administrative measures the effective and rapid implementation of the right to restitution or compensation, in pursuance of the principles derived from Article 1 of Protocol No. 1 and from its case-law. These objectives could be achieved, for example, through amendment of the current restitution mechanism and the setting up as a matter of urgency of simplified and efficient procedures, based on legislative and regulatory measures capable of taking into consideration the various interests at issue (see the Viaşu judgment, §83, and for further details, the Faimblat judgment, §§53-54, and the Katz judgment, §35).

4. In a **pilot judgment** delivered on 12 October 2010, final on 12 January 2011, in the case of Maria Atanasiu and Others, the Court observed that the ineffectiveness of the compensation and restitution mechanism continued to pose a recurrent and large-scale problem in Romania. It gave additional details about the causes and suggested the kind of measures which might enable this systemic problem to be resolved[2].

5. The Court held that measures capable of affording adequate redress to all persons affected by the compensation legislation would have to be adopted within the 18 months that follow the date on which the pilot judgment became final, a time limit subsequently extended by the Court until **12 April 2013**. The Court adjourned for that same period its examination of all applications stemming from the same general problem.

6. In response to the Atanasiu judgment, a first **draft law**[3] to reform the restitution/compensation mechanism was drawn up by an interministerial group set up for this purpose in December 2010. This first draft (see DH-DD(2012)505), assessed by the Secretariat in memorandum CM/Inf/DH(2012)18, was analysed by the Committee at its 1144th meeting (June 2012).

7. In March 2013, the authorities presented to the Execution Department and to the Registry of the European Court a new draft law (referred to hereunder as “the draft law”). The Romanian authorities presented to the European Court a request for an extension by **one month** of the deadline set for adoption of these measures, which was granted. The new deadline is **12 May 2013**.

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1 The term "nationalisation" in this document covers all measures whereby the State appropriated assets unlawfully or unfairly during the Communist regime (*de facto* expropriations, seizures, confiscations, collectivisation of agricultural lands and woodland, nationalisation laws, etc).

2 These included an overhaul of the legislation, with the introduction of simplified and efficient rules of procedure; unification of judicial and administrative practice; the setting of realistic and binding deadlines for every stage of the administrative procedure, coupled with effective judicial review of compliance with these and with a cap on compensation and its payment in instalments over a longer period.

3 For more details see the authorities' action plan for the execution of these judgments, submitted in February 2010 and subsequently revised and supplemented: DH-DD(2011)907, DH-DD(2011)908, DH-DD(2011)1039 and DH-DD(2012)212F.

PART ONE - ASSESSMENT OF THE DRAFT LAW SUBMITTED FOR THE TRIPARTITE MEETING

I. General remarks

1. The need to ensure the viability of the solutions envisaged

8. The draft law provides, as a general rule, for the restitution of properties nationalised during the Communist regime.

9. Where agricultural land and woodland are concerned, if restitution of the nationalised land is impossible, the allocation of other land of the same category is envisaged[4]. In this respect, the authorities will firstly draw up an inventory of available land and will centralise restitution claims, in order to establish a comparative table showing both. This preliminary stage should be at an end by 1 March 2014 at the latest. It will be followed by a stage during which claims will be resolved by local authorities, either through restitution of the nationalised land or through allocation of other land, to be completed by 1 January 2016 at the latest.

10. If restitution of the nationalised property or, depending on the case, allocation of other land is impossible, or if the owner has transferred his or her rights of restitution to a third party, compensation through "points" represents the only redress that can be granted. To this end, the case file will be forwarded to the responsible central authority, which will issue the compensation decision. The value of the property, established on the basis of the notaries' scale and expressed in terms of "points" will be indicated therein.

11. The points thus awarded will be able to be used to purchase State-owned properties at the auctions which will be organised each week with effect from 1 January 2016. If they are not so used (or in the event that they are only partly used), any applicants who can prove that they have taken part in at least two auctions will be able to opt to cash in the points (or the remaining points), with effect from 1 January 2017. In that case, payment of the sum awarded will be made in instalments over a period of seven years.

12. The sums already awarded, in application of the restitution legislation in force, through administrative or court decisions which are final on the date on which the new law comes into force, will be paid within five years with effect from 1 January 2014, in equal annual instalments.

13. Assessment: It is pointed out that, in the framework of the pilot procedure, the authorities have indicated that the possibility of the granting of property by way of compensation could be of only very limited application, because of the shortage of properties and the limited nature of public land reserves belonging to municipalities. They also drew attention to the problems linked to the absence of Land Registry information and the absence of an inventory of State-owned property (see §§ 201 and 202 of the pilot judgment). Subsequently the authorities have informed the Committee of Ministers of their intention to draw up such an inventory. This stage, preceding the adoption of legislative measures, should have taken 18 months (see the revised action plan submitted in November 2011 – DH-DD(2011)1039). To date, it does not seem to have been started.

14. Although the announced inventory has not yet been drawn up, the new draft law provides for the allocation and sale by auction of the land which is owned by the State.

15. In the absence of justification for the solutions adopted in the new draft law (see the relevant request by the Committee of Ministers in its decision adopted on 7 March 2013), doubts remain about the viability of the envisaged compensation mechanism. In fact, the risk cannot be excluded that the two aforementioned measures may prove ineffective and that, several years after the setting up of the new mechanism, the authorities will find that the majority of claims remain to be resolved through the award of pecuniary compensation. This scenario raises the question of whether the authorities will have the financial resources to meet these pecuniary obligations. It is pointed out in this respect that, in accordance with the position expressed by the authorities in the context of the pilot procedure, the Court found the absence of a cap on compensation to be among the causes of the problems of the compensation mechanism (see §§ 200 and 220 of the pilot judgment). The Romanian authorities' comments on these issues would be helpful.

2. The absence of a complete overhaul of the existing legislation

[4] The draft law refers to the "reconstitution of ownership at the former site" when designating the restitution of nationalised land, and refers to the "reconstitution of ownership at another site" when designating the allocation of land other than that which was nationalised (see Section 3, para. 6).

16. The draft law contains some new provisions, but also some provisions supplementing or amending the existing laws on compensation[5]. Those laws will therefore remain in force, and the draft law provides that "all provisions contrary to the present law" will be repealed (Section 55). Only a few provisions are expressly repealed in the draft law itself.

17. Assessment: The pilot judgment suggests, amongst the general measures, an "overhaul of the legislation in order to create clear and simplified rules of procedure". The compensation scheme would thus be made "more foreseeable in its application compared with the present system, the provisions governing which are contained in a number of different laws, ordinances and decrees" (see §235 of the pilot judgment).

18. The draft law does not draw together all the provisions relating to the restitution/compensation process and does not therefore bring about an "overhaul of the legislation". Its provisions are to be supplemented by existing rules. This technique, used on several occasions in the past, always entails a risk of lack of clarity and predictability. At this stage, it no longer seems possible to conduct such an overhaul before the expiry of the deadline set by the European Court. However, in response to the concerns expressed by the Court on this subject, it is highly desirable for the draft law to require the central authorities to re-examine the existing legislation in its entirety and to adopt a subsequent standard-setting instrument bringing together all the provisions which govern this matter, and for it to set a realistic deadline for this which does not delay the implementation of administrative procedures with a view to restitution/compensation.

3. The need to cover all the situations found to be in violation of the Convention in the Străin group of cases

19. The draft law does not deal with certain deficiencies revealed by the judgments in this group of cases, namely:

- the impossibility of enjoying the land included on title deeds, because of the existence of other title deeds relating to the same land, issued by local authorities to third parties (see the Drăculeţ case);
- the declaration by the domestic courts, without any redress, that the title deeds relating to certain land, issued several years previously, are null and void (see the Silviu Marin case).

20. In the revised action plan presented in November 2011, the authorities stated that, in order to resolve the first kind of problem mentioned above, they envisaged an assessment at national level of the situation of the land requested in pursuance of the compensation legislation, and this would be followed by the preparation of a draft law on this subject.

21. Where the cases are concerned in which a title deed issued several years previously has been declared null and void for reasons for which the applicants cannot be held responsible, the authorities stated that those applicants could still rely on the provisions of the compensation laws, for their claims for restitution have not been adequately resolved by the authorities. Consequently, the authorities will have to issue new decisions on these applications.

22. Assessment: Not all the situations which have led to findings of violations in this group of cases – and in respect of which the pilot judgment requires the Romanian authorities to take urgent measures to guarantee in an effective manner the right to restitution or compensation – are covered by the draft law.

23. In this respect, it seems vital for the draft law to include provisions making clear how the situation of conflicting title deeds to the same land will be resolved in practice (Who will keep the land? Who will receive compensation? On the basis of which procedure? etc). The authorities might envisage dealing with this kind of situation as a matter of priority, given that the right to restitution of the persons concerned has already been definitively established. In order to ensure that the new legislative framework is uniformly interpreted, it would also be important for the draft law to make express provision for the authorities to be required to resume the procedure for the examination of applications for restitution in those cases in which the title deeds issued after an initial examination have subsequently been declared null and void for reasons for which the applicants cannot be held responsible.

4. Provision relating to applications pending before the Court

24. In accordance with Section 4, para. 2, the provisions of the draft law "may also benefit those

[5] For more details about the legislation currently in force, see Appendix 1.

persons"[6] who have lodged an application with the European Court of Human Rights, the examination of which has been adjourned in accordance with the pilot judgment delivered in the case of *Maria Atanasiu and Others v. Romania*.

25. Assessment: For the sake of clarity, it is suggested that the words "may also benefit" be replaced by "also apply to".

II. Questions concerning compensation measures

A. Preparatory measures

1. Institutional measures

26. The draft law ascribes a series of responsibilities in the context of the compensation mechanism to existing authorities, such as the State Land Agency (ADS) and the National Agency for Cadastre and Land Registration (NACLR) (see below, §§ 31-38).

27. It also sets up new bodies, namely local land inventory boards. To this end, within the 15 days following publication of the new law in the Official Gazette, the government will adopt a decree establishing the procedure for the setting up, the arrangements for the functioning and the responsibilities of these boards (Section 5, para. 4). They will have to be set up within the 30 days that follow the entry into force of the new law (Section 5, para. 1).

28. The draft law also provides for the Central Compensation Board, which currently functions in accordance with the compensation legislation in force, to be replaced by a National Immovable Property Compensation Board (the "National Board"), reporting to the Prime Minister (Sections 18 and 19).

2. Inventories of real property

29. The authorities will first inventory agricultural land and woodland owned by the State or public authorities or institutions which could be used in the compensation process, and will centralise the claims for restitution of that kind of property, in order to be able to produce a comparative table of both. This preparatory stage should be completed by 1 March 2014.

2.1. Inventory of available land

30. Within the 180 days that follow their setting up, local land inventory boards will draw up an inventory of the agricultural land and woodland in the public or private ownership of the State or its territorial administrative units which is liable to be the subject of a reconstitution of ownership (Section 6, para. 1).

31. The inventories will be approved by the NACLR and then forwarded to the county real estate boards (entities currently functioning in accordance with the restitution legislation in force) (Section 6, para. 3). The county boards will centralise the inventories produced at local level, within the 30 days that follow their receipt. The result of the centralisation will then be forwarded to the ADS and to the National Agency for Property Restitution (ANRP) (Section 6, para. 4).

32. Within the 60 days that follow receipt of the results of the centralisation for each county, the ADS and ANRP will begin the necessary legislative measures to transfer the land concerned from the public to the private ownership of the State, so that it may be allocated to compensation measures (Section 6, para. 5)[7]. Within the 30 days that follow publication of these legislative measures in the Official Gazette, the public institutions which own the land concerned will have to transfer it to the ADS. Within the 30 days that follow that transfer, the ADS will inform the county boards of the area of land available in each territorial administrative unit (Section 9, paras. 1 and 2).

33. In accordance with Section 9, para. 3, the transfer of available land to local real estate boards (entities which currently functioning in accordance with the restitution legislation in force) will be effected

[6] In Romanian: "pot beneficia şi persoanele".

[7] The Romanian Constitution makes a distinction between two methods of ownership by the State and its territorial administrative units: public ownership and private ownership. Property declared to be public property is inalienable and, for as long as it remains public property, it cannot be used for compensation purposes. Law 213/1998 on public property and the relevant rules provide for the possibility of the transfer of property from the public to the private ownership of the State and/or its territorial administrative units, and for the procedure for doing so (Section 10§2). It should be emphasised that a decision to transfer property from public to private ownership may be challenged in the courts by anyone proving a legitimate interest (Section 10§3).

following validation by the county board of the proposals for the granting of title to this land, by 1 January 2015 at the latest.

34. The draft law provides that all administrative procedures in progress at the time when the new law comes into force will be suspended pending centralisation of the inventories by the county boards (Section 7).

2.2. Centralisation of restitution claims

35. At the same time as the land inventory is carried out, the applications for restitution requiring resolution will be listed. Thus, within the 120 days that follow the entry into force of the new law, the local real estate boards will be required to centralise the claims which remain to be resolved in order to establish the area of land necessary to finalise the restitution process. The result of this centralisation will be forwarded to the county real estate board within the same time limit (Section 8).

2.3. Comparative table of available land and restitution claims

36. By 1 March 2014 the NACLR will prepare a comparative inventory of applications for restitution and areas of land available, for each county and at national level. This inventory, once finalised, will be forwarded to the ANRP and the ADS (Section 10).

3. Setting up of the National Fund of agricultural land and other immovable property

37. In order to make possible the "use of points" (see below, part B.2.2), the draft law provides for the setting up of a National Fund of agricultural land and other immovable property (the "National Fund"), administered by the ADS. Initially, this fund will comprise the agricultural land which is the private property of the State and is administered by the ADS, which will not be the subject of restitution/allocation (Section 21, para. 2). It will subsequently have added to it other immovable property, including the land not used in the restitution/allocation process, which will be returned to the ADS by the local authorities within the 30 days that follow the date of finalisation of the said process (1 January 2016) (Section 11, para. 2, and Section 21, paras. 3 and 5).

38. By 1 July 2014 at the latest, the ADS will publish on its Internet site and forward to the ANRP the list of immovable property included in the National Fund (Section 21, para. 4).

39. The value of each immovable property included in the Fund, established on the basis of the notaries' scale, will be published by 1 January 2015 at the latest. The values of the immovable property subsequently added will be published within 30 days (Section 21, para. 7).

40. Assessment: In the revised action plan submitted in November 2011, the authorities estimated that they would need 18 months to draw up the inventory of available land. This being so, is the 180-day time limit for which the draft law provides realistic? Doubts also exist as to the realistic nature of the deadline envisaged for the setting up of the National Fund, upon which the functioning of the whole compensation mechanism depends, particularly taking account of the fact that the (legislative and/or administrative) measures which need to be taken for this purpose are unknown.

41. It seems to be necessary to exclude from the application of the suspension measure for which Section 7 of the draft provides the administrative procedures necessary for the implementation of final court decisions. This measure is required in order to avoid infringing the right of access to a court, thereby giving rise to new applications to the Court.

42. It would be useful to set time limits for:

- *approval by the NACLR ;*
- *the forwarding of the result of the centralisation of the inventories to the ADS and ANRP, as provided for by Section 6, para. 4;*
- *the adoption of the legislative measures necessary to transfer the land concerned from the public ownership of the State to its private ownership.*

43. The implementation of the procedure for approval by the NACLR raises a number of questions: will the inventory be forwarded to the NACLR and then sent by that agency directly to the county board, or will the NACLR return it to the local board to be sent to the county board? Is approval by the NACLR a purely formal procedure? If not, what procedure is to be followed if the NACLR refuses to approve the inventory?

Who will inform the NACLR of the result of the centralisation of claims to be resolved, so that it can draw up the comparison referred to in Section 10 of the draft law, and within what time limit?

44. The content of Section 9, para. 3 also raises several questions: which authority is competent to transfer land to the local real estate boards, the ADS or the county board? Where proposals for the granting of title are concerned, which authority is responsible for making these, and when? To whom are they addressed?

45. Details also seem necessary in respect of which criteria are to be used to identify the land to which Section 21, para. 2 refers, since, inter alia, Section 9 of the draft seems to indicate that at least part of the land in private State ownership and administered by the ADS will be transferred to local authorities for the purposes of restitution/allocation.

46. Given the possibility of challenging in the courts a decision to transfer immovable property from public to private State ownership, it would be useful to provide that the immovable property subject to such judicial procedures could be added to the Fund only following the adoption of a final court decision in respect of them.

B. Alternatives to the restitution of nationalised assets

47. Like the compensation legislation in force, the draft law gives precedence to the restitution of nationalised property. In the event that restitution is impossible, alternative solutions, which differ according to the nature of the property nationalised (agricultural land/woodland or other nationalised immovable property), are envisaged.

1. Allocation of agricultural land and woodland other than that nationalised

48. If the restitution of nationalised agricultural land or woodland is impossible, other land is to be allocated to the applicants (including land which is in the public ownership of the State), located within the same territorial administrative unit or, where this is impossible, in another unit belonging to the same county (Sections 12 and 13).

49. Assessment: The draft law does not indicate whether the land to be allocated will have the same value as the nationalised land which cannot be returned, or, if that is not the case, what the relationship would be between the value of the nationalised land and that of the land allocated. This omission is detrimental to the predictability of the law, introducing a risk of arbitrariness and discrimination in the application of the new provisions. This question should therefore be clarified.

50. Furthermore, the draft law contains no answer to the question of whether the applicant may refuse the land allocated or is obliged to accept it. If refusal is allowed, the procedure to be followed should be specified.

51. Finally, according to Section 12 of the draft law, land in the public ownership of the State may be allocated to applicants. As direct transfer of property publicly owned by the State to the ownership of the applicants is impossible (see note 6 at the foot of page 6), it would be useful to revise the wording of this section in order to ensure that it does not contravene the Constitution.

2. Compensation through "points"

52. In those cases in which restitution of the nationalised immovable property or, if that property is agricultural land or woodland, allocation of other land in the same category is impossible, applications for restitution will be resolved through the award of "points" (Section 17).

53. Applications for the restitution of agricultural land and woodland will be able to be resolved by compensation in terms of "points" only after exhaustion of the reserve of agricultural land identified at local level (Section 22, para. 4).

2.1. Determination of the number of points

54. In order to determine the number of points to be awarded to each entitled party, the authorities will conduct a valuation of nationalised property which cannot be returned. In accordance with Section 22 of the draft, the value of the property will be established through application of the notaries' scale as it stands on

the date of entry into force of the new law and will be "expressed in terms of points". Each point will be worth 1 RON.

2.2. Using points

55. The points awarded will be able to be used to acquire at auction immovable property owned by the State and/or to obtain pecuniary compensation.

2.2.1. *Auctions*

56. With effect from 1 January 2016, entitled parties will be able to use the points awarded to acquire immovable property included in the National Fund and put up for sale by auction. Auctions via videoconferencing will be held each week at the headquarters of the NACLR. Entitled parties' participation in the auctions will be free of charge, provided that they register in advance at the local offices of the NACLR. The rules of organisation of the auctions will be approved by the National Board by 1 July 2015 at the latest and will subsequently be published on the Internet pages of the ADS, NACLR and ANRP (Section 29).

57. In their first communication, submitted on 11 March 2013, in pursuance of Rule 9.2, five non-governmental organisations expressed the view that "this system is inflexible and disadvantageous to the elderly, sick, persons with mobility problems and persons with a low level of education".

2.2.2. Award of pecuniary compensation

58. With effect from 1 January 2017, applicants who prove that they have taken part in at least two auctions will be able to opt to cash in their points. Payments will be spread over a seven-year period.

59. In the second communication, dated 20 March 2013, the NGOs suggested that the obligation to have taken part in auctions in order to be awarded pecuniary compensation should not be imposed on entitled parties "possessing a small number of points, with which they will be able to purchase virtually nothing".

60. Assessment: Account being taken of the principle derived from the case-law of the Court according to which compensation must be "reasonably related" to the monetary value of the property, the authorities are invited to specify the relationship between the values of the notaries' scale and the market value of the property.

61. It is noted that the value of nationalised property will be established by reference to the notaries' scale as it stands on the date of entry into force of the new law. Given the length of time which may elapse between that reference date and the date on which the points awarded are used in full, possibly extending to 16 years[8], it seems necessary to provide for a system of index-linking to take account of inflation. Moreover, such a measure was provided for in the first draft law, presented to the Committee in May 2012.

62. Considering that the draft law provides for each point to be worth 1 RON, it would be helpful to know why the authorities opted for this system, which seems needlessly to complicate the procedure, instead of simply indicating the value of the immovable property in the national currency.

63. There is a need for the authorities to specify how the period over which payments are to be spread was determined. These details are all the more necessary for the fact that the information available to date about the state of advancement of the compensation/restitution process is incomplete (see Appendix 2). And in the absence of this information, it is difficult to understand how the authorities have evaluated the budgetary cost of the measures envisaged in the draft law, and the extent to which the planned spreading out of payments achieves a fair balance between the public interest and the interests of the former owners, especially because the payments will not begin before 2017.

64. The authorities could consider the concerns expressed by the NGOs and indicate whether they plan to take measures to assist vulnerable applicants in order to facilitate their participation in auctions. They could also examine the possibility of exempting those entitled parties possessing a number of points below the values of the immovable properties for sale by auction from the obligation to take part in those auctions, particularly if the sale of those properties at prices below those published will not be allowed.

[8] According to a preliminary calculation, the plan seems to be for the administrative procedure for processing cases to be completed in 2022 (see Sections 35 and 36 of the draft law). There will therefore be some entitled persons to whom payments will not start to be made before 2022. As the period over which payments are to be spread out is seven years, the last instalment would be paid to them in 2029, which is 16 years after the reference date for the calculation of compensation (2013, the year of adoption of the draft law).

65. The authorities should clarify the implications of the provision in Section 22, para. 4 of the draft law. Does this confirm the assumption that the entitled parties will not be able to refuse the land allocated to them by the local authorities in the event that restitution of the nationalised land is impossible? If this is not the case, what will be the impact of this provision on the timetable for implementation of the planned measures? Is there not a risk of the compensation process coming to a standstill?

III. Questions concerning the processing of cases

A. Administrative procedure

1. Stages of the procedure

66. The draft law apparently retains the main stages of the administrative procedure for which the legislation currently in force provides, namely initial examination of cases by the local authorities followed by validation of those authorities' decisions by the National Board. During the third stage, ownership will be recorded in the Land Register following the sale at auction of a property owned by the State and/or payment certificates will be issued by the ANRP.

67. Thus the draft law provides that, with a view to the compensatory measures for which provision is made for those immovable properties which cannot be returned, the local authorities will forward to the National Board their decisions and the documents on which those decisions were based, following their submission to the prefect for verification of their lawfulness (Section 22).

68. After verification of the case file in respect of the existence of the applicant's right to compensatory measures and of the valuation of the nationalised property on the basis of the notaries' scale, the National Board will validate or invalidate the local authority's decision and, depending on the case, approve the number of points determined in accordance with the provisions presented above. When a decision is validated, the National Board will issue a "decision to award compensation through points" for the property which was nationalised (Section 22, paras. 5, 8 and 9).

69. The decision by the National Board to award compensation will be communicated to the entitled parties within the 45 days that follow its adoption. If a decision is invalidated, the board's decision will be reasoned and communicated to the interested parties and the local authorities concerned within the 60 days that follow its adoption (Section 26).

70. During the third stage, the draft law provides that, when an immovable property owned by the State is sold at auction, the entitled parties will receive a record of that sale within the 10 days that follow the auction. The record will be forwarded to the NACLR in order for it to be included in the Land Register (Section 31).

71. An applicant who proves that he or she has taken part in at least two auctions will be able to opt for the award of pecuniary compensation within the three years that follow receipt of the compensation decision, but not before 1 January 2017. To this end, he or she will be able to make a request, each year, to the ANRP for the issue of a payment certificate for a maximum of 14% of the number of points awarded by the compensation decision and not used at the auctions. The final instalment will be 16%. The arrangements for cashing in points will be regulated by the implementing rules for the new law (Section 33).

72. Assessment: It seems that the procedure which will culminate in restitution of the nationalised property or, depending on the case, in the allocation of another plot of land, would continue to be that regulated by the legislation currently in force. If this is the case, the authorities should indicate whether they plan to reassess this procedure in order to bring it into conformity with the requirements stemming from the case-law of the European Court. For example, under the current procedure (see Section 21, para. 1, of Title VII of Law 247/2005), if the Central Board reaches the conclusion that the entities notified have wrongly rejected an application for restitution in kind, it implements restitution of the property concerned itself. Since the section mentioned above is not included on the list of sections of Title VII of Law 247/2005 which will be repealed when the new law comes into force (see Section 55 of the draft law), and as, in conformity with Section 19, para. 3, of the draft law, the National Board will take on the responsibilities of the Central Board, it seems that the National Board will be responsible for itself implementing restitution of the property. If that is the case, it seems necessary to establish a statutory time limit for the granting of title to the owner and to indicate which authority will be responsible for the granting of title.

73. The draft law retains the verification of lawfulness by the prefect, which the authorities previously planned to do away with in order to accelerate the administrative procedure for the granting of compensation measures (see the revised action plan of November 2011). Thus in 2011, the authorities indicated that, in practice, it had been noted that sending the case file to the prefect for an opinion on lawfulness was likely to prolong the procedure needlessly. It would therefore be useful for the authorities to present the reasons for which they decided to change their mind, all the more so because such verification will also be effected by the National Board. At all events, it would be useful to set a time-limit for this administrative stage.

74. The draft law does not state which administrative procedure is to be followed after communication to the local authority of an invalidation decision by the National Board. This point needs to be clarified.

75. Given that, in order to have access to the procedure for the award of pecuniary compensation, entitled parties must prove that they have taken part in at least two auctions, it would be helpful to require the NACLR to provide participants with attestations for this purpose.

76. As the possibility of opting for pecuniary compensation comes into effect only on 1 January 2017, what will be the situation of the beneficiaries of a compensation decision issued more than three years prior to that date? Will they also be able to opt for the award of pecuniary compensation? If so, what will the time limit be?

2. Time limits and sanctions

77. The responsible local authorities will be required to resolve all applications for restitution of agricultural land and woodland, including the granting of title and the issuing of title deeds, by 1 January 2016 (Section 11, para. 1).

78. Where other immovable property is concerned, the deadlines for the local administrative authorities to resolve applications for restitution vary according to the total number of applications pending before each authority. The time limits are: (i) 12 months if the number of applications to be resolved is below 2,500, (ii) 24 months if the number of applications is between 2,500 and 5,000, and (iii) 36 months if the number of applications exceeds 5,000. These time limits run from 1 January 2014. For reasons of transparency, the authorities will be required to publish the number of applications pending before them (Section 35).

79. The applications pending before the Central Compensation Board on the date on which the new law comes into force will be resolved within the 60 months that follow that date. The applications forwarded to the National Board (which will supersede the Central Compensation Board) after the date on which the new law comes into force will be resolved within the 60 months that follow their registration. The number of cases pending on the date on which the new law comes into force and the date of the registration of cases after that date will be published and communicated, on request, to the entitled parties (Section 36).

80. When immovable properties are purchased at auctions, the NACLR will finalise the registration of ownership in the Land Register within the 60 days that follow receipt of the auction records (Section 32). When the pecuniary compensation option is chosen, the sums indicated in the payment certificates will be paid by the Ministry of Public Finance within the 180 days that follow their issue (Section 33, para. 3).

81. The draft law provides for petty offence sanctions for failure to comply with the required time limits (Section 43).

82. In their communication of 11 March 2013, the NGOs criticise the lack of sanctions for failure by members of the National Board to participate in its work. In the absence of such sanctions, they say, the quorum required for the adoption of decisions by the board (see Section 19, para. 2 of the draft law) could not be achieved.

83. Assessment: The introduction of binding time limits and of sanctions for failure to comply with these is to be welcomed. However, it has to be pointed out that these sanctions represent an indirect means of ensuring that the statutory time limits are complied with, and are not therefore such as directly to remedy the situation, especially if delays are not the result of culpable/negligent conduct by officials, but have other causes, such as possible deficiencies of the law or a lack of (human or other) resources to apply it. Consequently, in order to ensure that the time limits are not exceeded, the authorities could envisage an automatic mechanism – in the event that a statutory time limit is exceeded – whereby cases are transferred from one administrative stage to the next, until the point at which the compensation decision is issued. Such a mechanism would also avoid intervention of judicial control in the middle of the administrative procedure,

especially as it is unclear whether, in the event that a reference is made to a court in pursuance of Section 37 of the draft law, a return to the administrative procedure is possible (see below, §§ 91-93).

84. It should be noted that some of the time limits set by the draft law for the processing of cases by local authorities and the National Board seem at first sight to be lengthy. Of course the Romanian authorities are in the best position to assess the realistic nature of these time limits. However, in view of the considerable amount of time which has elapsed so far since the applications for compensation were lodged, it is important to know whether the introduction of these time limits (particularly those for the National Board) went hand-in-hand with an assessment of the needs of the authorities concerned in terms of human and material resources, and whether the need to reassign/strengthen human and material resources, to which the European Court referred in the pilot judgment in the case of Maria Atanasiu and Others, was taken into consideration. Should the authorities take the view that it is impossible to shorten the time limits so as to conclude the examination of applications more rapidly, an alternative solution might be to open access to pecuniary compensation without the need to go through the auction stage, at least for the benefit of certain categories of applicants (holders of a limited number of points; elderly persons, etc).

85. It should also be noted that the draft law does not set time limits for:
- the publication by the responsible authorities of the number of applications pending before them and of the dates of registration of cases by the National Board;
- the verification of lawfulness by the prefect;
- the forwarding of case files to the National Board;
- the issuing of payment certificates by the ANRP;
- the adoption of the implementing rules for the new law to which the draft refers (see Sections 27, para. 2, and 33, para. 5).
There seems to be a need for such time limits to be included, inter alia for the verification of lawfulness by the prefect and for the issuing of payment certificates by the ANRP, for, in their absence, it is impossible to determine the maximum duration of the administrative procedure.

86. The authorities could also respond to the concern expressed by the NGOs about the lack of sanctions to combat failure to participate in the work of the National Board.

3. Order of processing

87. In the case of agricultural land, the draft law provides for the allocation of other land in the event that the nationalised land cannot be returned to be carried out in the order of registration of initial applications (Section 12, para. 3). A similar provision governs the processing of applications for the restitution of immovable properties other than agricultural land and woodland which are pending before the local authorities (Section 35, para. 4).

88. In the communication of 11 March 2013, the NGOs proposed that an order of priority be established for the benefit of former owners who are natural persons, “the great majority of whom are elderly or ill”, “rather than legal persons and purchasers of disputed rights, for whom the time limit is not crucial”.

89. Assessment: In practice, there may be certain categories of applications which deserve priority treatment. For example, under the current legislation, there are some situations in which, in the absence of a reply from the administrative authorities within the statutory time limit, applicants have obtained final court decisions ordering the responsible authority to adopt a solution in response to their application. When these decisions have not been executed, giving priority to this kind of application would be justified by the fact that they raise a problem of non-execution or delayed execution by the authorities of final court decisions, which is in itself a violation of the Convention. The authorities could also respond to the NGOs’ suggestion.

90. Where woodland is concerned, the draft does not include any provisions indicating the order in which applications should be processed by the local authorities, as it does for agricultural land. It would be helpful to include in the law a similar provision. The same comment applies to the processing of cases by the National Board.

B. Judicial review

91. The decisions of the local authorities and those of the National Board may be challenged in the county court within the 30 days that follow their communication. If the responsible local authorities or the National Board do not issue a decision within the time limit set by Sections 35 and 36, the applicant will be able to make a complaint to the same court, within a time limit of six months after the expiry of that time limit.

92. Judicial review will cover the existence and scope of ownership, the court being able to order restitution or the granting of compensation, depending on the case. The court's decision will be open to challenge. The complaint will be exempt from payment of court fees (Section 37).

93. Assessment: It is not clear from the draft law whether the court itself has jurisdiction to determine the value of the immovable property by applying the notaries' scale, and may therefore deliver a decision in place of the National Board's compensation decision, or whether it may only order that board to issue its decision. It seems preferable to avoid returning the case to the National Board, given that such a return would make it impossible to predict the duration of the administrative procedure as a whole and might well deprive court supervision of all effectiveness.

94. Apparently the right to challenge in court a failure to deliver decisions within the statutory time limit applies only to the local authorities responsible for resolving applications for the restitution of nationalised immovable property other than agricultural land and woodland, and to the National Board (see Section 37, para. 2, in conjunction with Sections 35 and 36). The question thus arises of whether failure by the local authorities responsible for resolving applications for the restitution of nationalised agricultural land and woodland by 1 January 2016 will also be subject to judicial review, and if so in what conditions. It would also be useful to provide for judicial review in the event that the ANRP fails to issue a payment certificate in pursuance of Section 33 of the draft law.

95. Finally, the authorities could envisage specifying the consequences of failure to comply with the six-month time limit for which Section 37 of the draft law provides, in order to avoid differing interpretations by the courts to which complaints are made in this respect.

IV. Questions concerning the execution of the administrative and court decisions delivered before the new law comes into force

96. The sums of money already awarded by administrative or court decisions which have become final by the date on which the new law comes into force will be paid within five years with effect from 1 January 2014, in equal annual instalments. For this purpose, the National Board will issue compensation certificates in accordance with a procedure specific to the Central Compensation Board[9]. This stage will be followed by the issuing of payment certificates by the ANRP. The amount of each instalment cannot be less than 5,000 RON and will be paid by the Ministry of Public Finance within the 180 days that follow the issue of the payment certificate (Section 48).

97. Assessment: The draft law does not provide for a requirement to index-link to the inflation rate the sums which are to be paid. The authorities' comments on this point would be helpful.

98. It should be noted that the draft law does not deal with the fate of final court decisions acknowledging a right to compensation in pursuance of existing legislation, but not setting the amount of compensation (referring the subject to the administrative authorities responsible). In order to avoid divergences in application of the new law, the draft should clearly state whether the applications giving rise to this kind of situations are considered to be unresolved within the meaning of Section 4, para. 1, of the draft law.

V. Questions concerning the obligations imposed on applicants

1. Substantive obligations

99. In the event of restitution, the entitled party will be required to repay the value of any necessary and useful improvements made to the immovable property returned. Until that repayment has been made, the holder will exercise the right to remain in possession of the property (Section 16).

100. Assessment: Although such a measure does not in itself constitute a violation of Article 1 of Protocol No. 1, it nevertheless represents a de facto deprivation of the property (see the judgment of 17 February 2009 in the case of Ileana Lazar v. Romania). Thus, in certain cases, the possibility is not excluded that this may impose an excessive burden on the entitled party. In order to make it possible to assess the risks of its application, the authorities should specify whether applicants will have a choice between restitution of the nationalised property (or, depending on the case, allocation of another plot of land) and compensation. Other

[9] For details, see Appendix 1.

alternative solutions, which would impose a lesser constraint on the entitled parties (such as the payment in instalments or the replacement of the right to remain in possession by a mortgage) could be envisaged. There is a need to know in addition what the procedure will be for determining and challenging the value of the improvements, and particularly whether the loss of enjoyment suffered by the entitled party will be taken into account in this process.

101. It seems that, in cases where the applicant has, in pursuance of the compensation legislation in force, received compensation for the nationalised immovable property of a sum which exceeds the value of that property as determined through application of the notaries' scale in pursuance of the new law, he or she will be required to repay to the State the difference between the sum already received and the value of the immovable property established in conformity with the notaries' scale (Section 27, para. 5).

102. Assessment: It should be pointed out that, in accordance with Law 112/1995, in the event that restitution of the nationalised property was impossible, the former owner was entitled to receive capped compensation. This cap was removed by Law 10/2001 (see §§ 47 and 49 of the pilot judgment). Once the latter law had come into force, the former owners, including those who had already received capped compensation in pursuance of Law 112/1995, were able to claim restitution in kind or uncapped compensation. Thus there exists one category of applicants who, having received capped compensation in conformity with Law 112/1995, lodged new applications and obtained the difference between the market value of the immovable property and the capped compensation received. Requiring this category of applicants to repay to the State the sums received perfectly lawfully several years before would constitute an infringement of their property right, which might give rise to new applications to the European Court. The authorities are invited to clarify their position on this subject. It would also be helpful to have examples of application of this measure, given that a similar provision exists in the legislation in force (see Section 22, paragraph. 8 of Title VII of Law 247/2005).

103. The draft law provides that former owners or their heirs benefiting from the restitution of properties which house schools, hospitals, theatres, libraries, museums, etc, will be required to maintain the assignment to public use of those buildings for a period of 25 years. The list of properties concerned and the amounts of rent to be paid to the owners during this period will be adopted by government decrees (Section 54).

104. Assessment: In order to decide whether or not, in the present case, this requirement is excessive, it would be necessary to know the relationship between the amount of rent to be paid and the market rent. It would therefore be helpful either to list in the draft law the criteria on which the calculation of the rent will be based or to state that it should be reasonably related to the market value. The authorities might also envisage alternative solutions to the restitution of such properties.

105. The natural or legal persons to whom former owners or their heirs have transferred their restitution rights will be required to pay a tax of 85% based on the difference between the value of the points awarded (in the event that the points are used at auctions) or the sum received (in the event that the points are cashed in) and the price paid to the former owner or to his or her heirs (see Chapter IV of the draft law).

2. Procedural obligations

106. A limitation period of 90 days is provided for to enable applicants to add the requisite documents to administrative files. This period starts with effect from the date on which the responsible authority tells the applicant which documents are missing. It may be extended once only for 60 days, if the applicant proves that he or she is in the process of obtaining the missing documents, held by public entities other than the authority to whom the application was made. The public entities holding them will be required to deliver the documents requested within the 30 days that follow the date on which the relevant requests were registered (Section 34).

107. Assessment: During the Secretariat's mission to Bucharest in July 2012, the authorities stated that applicants would have the right to challenge in court any failure by the responsible authorities to deliver the documents within the 30-day time limit, in pursuance of the law on administrative proceedings, and that a special sanction for such failure would be included in the new law. That sanction seems to be provided for by Section 43 h) of the draft law. However, given that such a sanction represents an indirect means of coercing the authority concerned, it would be helpful to specify whether the lodging of the missing documents after expiry of the time limit will be allowed in the event that the applicant proves that the 30-day time limit was not complied with by the authority holding the documents.

108. With effect from the date on which the new law comes into force, any persons concluding a transaction concerning rights to the immovable properties covered by the restitution legislation will be required to communicate to the ANRP a copy of the document certifying the transaction within a time limit of five days. Documents submitted after that time limit will not be taken into consideration by the National Board when it issues its decisions (Section 25).

109. Assessment: It is unclear who is required to do this: the initial applicant, the other contracting party or both. Given that, in the event that the document certifying the transaction is submitted late, the board will not take it into consideration when it issues its decision, it seems more appropriate to impose such a requirement solely on the other contracting party, in whose interest it is to obtain a decision issued in his or her name.

VI. **Conclusions**

110. It emerges from the above comments that the draft law raises quite a number of problems and questions which are potential obstacles to validation of the new mechanism by the Committee of Ministers, in the framework of the procedure for the execution of the pilot judgment, and by the European Court, in the framework of the future processing of cases relating to the same general area.

111. One of the main weaknesses of this draft law is highlighted in paragraphs 13 to 15 of this document: the solutions envisaged are inconsistent with the situation on the ground, as explained previously by the authorities to the European Court and the Committee of Ministers. On this subject the authorities are expected to present to the Committee of Ministers and the European Court, and to reiterate in the explanatory memorandum to the draft law, the necessary clarifications to reinforce the viability of these solutions.

112. The planned duration of the application of the measures for which the new law provides (potentially continuing until 2029), coupled with the complexity of the mechanism envisaged are the draft's other weaknesses. In order to remedy these, the authorities are strongly encouraged to take into consideration the following solutions: a considerable shortening of the time limits for processing cases, through allocation to the responsible authorities of the additional financial and human resources that they need to conclude the examination of applications within 12 to 18 months, and/or the immediate opening of access to pecuniary compensation (without going through the auction procedure), at least for the benefit of certain categories of applicants to be defined in the draft law (those to whom a limited number of points have been awarded, those who are elderly, etc).

113. Furthermore, in order to meet the minimum requirements stemming from the relevant case-law of the European Court, it seems necessary for the draft law to provide, in a revised version, for solutions concerning, in particular:

- *an overhaul of the legislation relating to restitution/compensation, i.e. an assessment of the compatibility of the legislative framework which already exists (and which will remain in force after adoption of the law) with the requirements of the case-law of the Court, and the adoption of a consolidated standard-setting instrument comprising all the provisions applicable in this field, by a deadline which will be set by the draft law;*

- *the existence of conflicting title deeds relating to one and the same plot of land and the declaration that title deeds are null and void for reasons for which the applicants cannot be held responsible;*

- *the index-linking of the value of nationalised immovable property established on the basis of the notaries' scale, the same solution being necessary for the payments of the sums awarded by administrative or court decisions which are final before the new law comes into force;*

- *judicial review, for which it is necessary (i) to provide for the possibility of reference to the courts also in the event that the local authorities responsible have failed to resolve the applications for restitution of agricultural land and woodland by 1 January 2016; and (ii) for the court decision to take the place of the compensation decision which should have been issued by the National Board;*

- *the criteria and conditions for the allocation of other agricultural land and woodland in the event that it is impossible for the nationalised land to be returned (the aim would be (i) to provide for the value of the land allocated in compensation to be equivalent to that of the nationalised land, and (ii) to clarify whether or*

not the entitled party may refuse the land allocated and whether the administrative decision to allocate other land may be the subject of judicial review).

114. It would, finally, be helpful for the authorities to provide for the setting up of an internal monitoring mechanism, in order to ensure that any potentially systemic defect that may arise in the application of the legislation on this subject is rapidly identified and resolved. The National Board could carry out this task, provided that it is given the necessary human and material resources.

PART TWO – CONCLUSIONS OF THE TRIPARTITE MEETING

1. Conclusions to be drawn from the absence of an overhaul of the legislation

The Romanian authorities indicated that the implementing rules relating to the new law, which will have to be adopted within the 15 days that follow the date on which the law comes into force, will clearly establish the procedures to be followed at the level of each new authority involved in the restitution/compensation process.

The mechanism for which the draft law provides also being based on procedures described in the texts already in force, clarification of all the procedures concerned nevertheless remains highly desirable; failing express provisions in this respect in the draft law, it would be appropriate for the Romanian authorities to present, in the explanatory memorandum relating to the law and/or in the revised action plan to be submitted to the Committee of Ministers, the reasons why they have opted not to carry out a complete overhaul of the legislation and are confident that the difficulties created in the past by the lack of clarity of the legislative framework will not recur.

2. The need to include solutions for all the situations which have given rise to violations of the Convention

The Romanian authorities gave a reply to one of the points raised, expressing their agreement to the inclusion in the revised version of the draft law of express provisions regulating the problem of conflicting title deeds relating to one and the same plot of land.

3. Justification of the solutions envisaged by the draft law

The explanatory memorandum relating to the law will present the reasons which have justified the change of vision relating to the solutions envisaged by the draft law as compared to the first draft law presented to the Committee of Ministers.

4. The main weaknesses of the solutions envisaged (period of application and complexity of the mechanism envisaged) and possible solutions

The authorities declared their willingness to make the following amendments to the draft law:

- They thought that they would be able to shorten the amount of time allowed for the examination by the National Board of applications relating to land, reducing it from a maximum of 60 to 36 months.

- Judicial review will be opened in the event that the local authorities fail to comply with the time limit set by Section 11 of the draft law relating to the examination by the local authorities of applications for restitution of land.

- The requirement to attend public auctions will be done away with, and this will open direct access to pecuniary compensation for all applicants.

- Where verification by the prefect of the lawfulness of the decisions adopted by local authorities on applications for the restitution of immovable property other than land is concerned, the authorities have agreed to include in the draft law the maximum time limit of six months provided for by the legislation governing prefects' responsibilities.

5. Section 4, para. 2 of the draft law – applications pending before the Court

The Romanian authorities will be reviewing the wording of this provision.

6. The notaries' scale and questions relating to index-linking of the value of immovable property established on the basis of the notaries' scale

The authorities provided details about the notaries' scale and about the reasons which led them to choose this as the means of valuing properties which are subject to restitution. These details should be included in the explanatory memorandum and/or in the revised action plan which is to be submitted to the Committee of Ministers.

As to index-linking of the amount of compensation established on the basis of the notaries' scale, the authorities said that such a link was not necessary, given the inflation targets set by the government for the years to come. They also stated that the introduction of index-linking could jeopardise the fundamental objective of giving precedence to compensation in equivalent form (land) and to transactions based on the points awarded in compensation, which the authorities intended to encourage.

Account being taken of the length of time which may elapse between the reference date for calculation of the amount of pecuniary compensation (the date on which the new law comes into force) and the date on which the points awarded are used in full, these arguments nevertheless do not seem to provide convincing justification for the absence from the draft law of provisions introducing an index-linking arrangement to take account of inflation. The comments on this subject made in the working document thus remain relevant.

7. Question relating to judicial review

The authorities stated that the courts will be responsible for establishing the value of immovable property through application of the notaries' scale. Thus any delay that might be caused by the return of the case file to the department concerned will be able to be avoided. This important detail will need to be included in the revised action plan to be submitted to the Committee of Ministers.

Also see paragraph 4 above.

8. Criteria and conditions for the allocation of other agricultural land and woodland

The authorities said that the criterion for the allocation of land as compensation, i.e. the surface area of the plots of land to which the application for restitution relates, was provided for by the legislation in force (Law 18/1991).

9. Priority processing in situations in which final court decisions exist

The Romanian authorities stated that, where court decisions awarding compensation of an established amount were concerned, the transitional provisions of the draft law were applicable, whereby the payment of these amounts would begin on 1 January 2014 and be spread over a five-year period.

The authorities also indicated that all court decisions imposing an obligation on the Central Board (over 1,000 according to their estimates) would be executed rapidly in accordance with the provisions of the new law, with effect from 15 April 2013, and that a decision of the Central Board to this end had already been adopted. These details will have to be included in the action plan to be submitted to the Committee of Ministers.

10. The right to remain in possession in the event that improvements have been made to the immovable property returned and the returning of the amounts lawfully received in pursuance of the previous legislation

The authorities declared their willingness to make the following amendments to the draft law:

- Section 16 of the draft law will be deleted.

- The text of Section 27, para. 5 of the draft law concerning the repayment of the sums received previously will be revised in order to ensure that it will be applied only when the nationalised property is returned.

11. Suspension of administrative procedures in pursuance of Section 7

The wording of Section 7 of the draft law will be revised in order to ensure that suspension is not applied to the execution of final court decisions.

12. Monitoring mechanism

The authorities envisage the setting up of a national monitoring system entailing six-monthly or quarterly reports. Details about this monitoring will have to be provided to the Committee of Ministers in the revised action plan.

Appendix 1

THE CURRENT LEGISLATIVE AND ADMINISTRATIVE FRAMEWORK

I. The relevant domestic law

A. General framework

1. After the fall of the communist regime, the Romanian State adopted a series of laws to redress the violations of property rights caused by that regime. The scope of a first set of laws, adopted between 1991 and 1997, was subsequently expanded in 2000 and 2001 in respect of those persons who could claim restitution in kind of those immovable properties used for residential purposes and those areas of land which could be returned. The cap on compensation, originally provided for in respect of those properties which could not be returned (such as immovable properties used for residential purposes and sold to their tenants), was done away with. Furthermore, successive regulations brought several amendments to the time limits for lodging applications for restitution.

B. Restitution/compensation mechanism in force since 2005

2. Law 247/2005 substantially amended the existing compensation legislation, particularly by introducing a single administrative procedure for compensation claims, applicable to all the properties concerned.

3. This law provides for the obligation to return in kind, or if this proves impossible, for payment of compensation equivalent to the market value of the property. There are new time limits for the submission of restitution or compensation applications relating to agricultural land (60 days) and to immovable properties which have belonged to religious institutions or national minorities' organisations (six months).

4. The leading role in the implementation of this law was entrusted to two newly created bodies: the Central Compensation Board (Central Board) and the National Agency for Property Restitution (ANRP).

a. Procedure before local authorities

5. Initially, applications are examined by the local authorities, which decide on restitution in kind or the award of compensation. The lawfulness of local authorities' decisions that compensation should be awarded is subject to verification by the prefect. If the prefect considers that the decision concerned is unlawful, he or she may ask the courts to declare it invalid. If the prefect considers that the decision is lawful, he or she is required to forward it to the Central Board.

b. Procedure before the Central Board

6. Having received the case file, the Central Board has to examine the lawfulness of any refusal to grant restitution in kind. If it reaches the conclusion that the local authorities have wrongly rejected an application for restitution in kind, it grants restitution of the property concerned. If the local authorities rightly considered that restitution in kind was impossible, the Central Board sends the file to approved valuers in order to establish the immovable property's market value. On the basis of the valuation report, the Central Board issues a decision which constitutes the "compensation certificate", which sets the amount of compensation.

7. The law does not set a time limit for the processing of cases by the Central Board or lay down the order in which cases are to be processed. Whereas initially cases were processed in no particular order, the Central Board has, since September 2008, decided to process them in the order in which they were registered.

c. Payment procedure

8. On the basis of the "compensation certificate", the ANRP issues, in accordance with the option chosen by the interested party and with the statutory provisions, "conversion certificates" or "payment certificates". The former enable the compensation certificates to be converted into shares in the *Proprietatea* Fund, a body which makes collective investments in securities, the majority of whose capital is made up of State assets in various companies, while the latter enable pecuniary compensation to be paid.

9. Until June 2010, applicants who held compensation certificates could opt either to receive part of their compensation in cash (subject to a limit of 500,000 RON) and the rest in shares in the *Proprietatea* Fund, or to receive the full amount of their compensation in shares.

II. The current state of the functioning of the restitution/compensation mechanism

10. In June 2010, the Romanian Government suspended payment of pecuniary compensation for a period of two years, in order to achieve budgetary balance. During this period, compensation certificates could be converted only into shares in the *Proprietatea* Fund.

11. The *Proprietatea* Fund has been quoted on the stock market since January 2011. At bilateral meetings with the Secretariat, the authorities nevertheless stated that the State's participation in this fund had declined sharply following the allocation of shares to former property owners in the context of the restitution/compensation process, and that, halfway through the year 2012, the State's participation in the Fund would probably be exhausted. In the present economic situation, there was no plan to increase the Fund's capital.

12. Between November 2011 and February 2012, the Ministry of Public Finance audited the activity of the ANRP. The preliminary results of this audit showed a number of problems in the restitution/compensation process. In this context, the Romanian Government in March 2012 adopted an emergency ordinance[10] which indicates that, at present, **there is no longer a statutory institutional compensation mechanism**. The ordinance provides for the **suspension, for a period of six months, of the issuing of compensation certificates and conversion certificates**, and of immovable property valuation procedures, pending the adoption of a standard-setting instrument for the execution of the pilot judgment in the case of Maria Atanasiu and Others.

[10] Emergency ordinance of the Government No. 4/2012, published in Official Gazette No. 169 of 15 March 2012.

Appendix 2

THE CURRENT SITUATION OF THE RESTITUTION/COMPENSATION PROCESS

The partial statistics supplied relating to claims for restitution and/or compensation lodged in pursuance of the compensation legislation are summarised in the table below. As the table shows, some essential information has not yet been supplied, such as the **number of applications for restitution/compensation relating to agricultural land or woodland still pending before local authorities.**

According to the Romanian authorities' assessment, on the basis of the compensation legislation in force, a total of approximately 8.4 billion euros remains to be paid.

Authority	**Stage of the procedure**	**Agricultural land/woodland**	**Other immovable properties** (most of them used for residential purposes)	**Total**
Local authorities	Applications **registered**	The total number is unknown. According to a partial count, dating from September 2010, and relating to **8 of the 41 counties, almost one and a half million** applications for restitution or compensation had been submitted to local authorities.	202,120	?
	Applications **resolved** (restitution in kind, forwarded to the Central Board or rejected) (August 2011)	?	124,012	?
	Applications **pending** (August 2011)	?	78,108	?
Central Board	Applications **registered**	24,520	49,800	74,320
	Applications **resolved through the issuing of compensation certificates**	15,133	12,614	27,747
	Applications **resolved through payment** or **conversion** (March 2012)	?	?	15,821
	Applications **pending** (August 2011)	9,387	37,186	46,573
	Applications **awaiting payment** (March 2012)	?	?	14,452