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Réunion : 1172 réunion DH (4-6 juin 2013)

Référence du point : Communication d'une ONG (Interessenvertretung Restitution in Rumänien e.V.)(17/04/13) et réponse des autorités (24/04/2013) dans le groupe d'affaires Strain et autres contre Roumanie (Requête n° 57001/00) ***(Anglais uniquement)***

Informations mises à disposition en vertu des Règles 9.2 et 9.3 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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Königsbrunn/Stuttgart, 22.03.2013

CRITICISM
of the
Draft Law
on
Restitution in Kind or Equivalent Compensation of Property Abusively Seized during the Communist Regime in Romania

A) Procedural issues regarding the elaboration of the draft law

1. Pilot Judgment Atanasiu et. Alt. V. Romania

a) The Government does not enforce the decisions of the ECHR (Appendix 1)
Although obliged by the pilot judgment given by the ECHR to take within **18 months** the suggested measures, the Government continued to delay **23 months** after pronouncement the setting up of an Interministerial Board for the elaboration of a draft law concerning the restitution of property, not to speak of the fact that no other parallel provisions have been taken.

After **30 months** the Government submitted a draft law which lacks any professionalism, is full of errors and omissions, unconstitutional and unconventional provisions.

Disregard of the decisions of the ECHR

b) The Government does not observe its commitments to the ECHR (Appendix 2)
By the above decision, the Court commits to the Government to have talks with the NGOs representing the abusively expropriated owners and the civil society. There have been no such talks referring to the elaboration of the draft law between the Interministerial Board and the NGOs of the owners or the civil society, despite the latter's repeated and insistent request for such talks.

Disregard of the commitments to the ECHR

c) Fair balance of interests and false statements of the Government (Appendix 3)
In order to justify the setting of a substantial cap on compensations, the former government succeeded in convincing the Court by **false statements** regarding the amount of the compensations and possibilities of the Government for compensation and by **misleading** the European Court of Human Rights. The present Government is taking advantage of the Court's faith in the false statements of the former government.

Misleading of the ECHR by false statements; fraud

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2. The Interministerial Board (Appendix 4)

The Interministerial Board set up by the Government for the elaboration of the Draft Law has not included any representative of the NGOs of the former owners or of the civil society.

3. Elaboration of the Draft Law and of Measures Appertaining thereto

a) Delay in the Elaboration of the Draft Law

Even though in July 2012 the Government received a 9 month-extension of the deadline for the implementation of measures concerning the restitution of property, the Interministerial Board for the elaboration of the Draft Law was set up only in September 2012. The time-limit for the submission of the Draft Law in December 2012 with the European Court of Human Rights and with the European institutions, the Council of Europe and the European Commission thus was exceeded. The request of Prime Minister Ponta for the Draft Law to be submitted to him on 31.01.2013 was not met with the Interministerial Board.

b) Absence of Public Debate

The Draft Law was submitted for first reading in the Cabinet Meeting on 06.03.2013 followed by debate in the caucuses on Monday, 11.03.2013, in the caucus of the Social-Liberal Union (USL) on Tuesday, 12.03.2013, and in the Cabinet Meeting on Wednesday, 13.03.2013. During this entire period the Draft Law was not submitted to public debate.

Violation of the principle of transparency in Law-Making

c) Vote of Confidence instead of legislative process in Parliament

Despite being in power since May 2012, the present coalition government has found it neither necessary nor useful to start the legislative process and measures appertaining thereto prior to the referendum of last summer and to the general elections in December 2012. Lacking the necessary time to pass a draft through Parliament, having an above 70% majority in Parliament, the Government decided to ask for a Vote of Confidence, although according to **Art. 73 (3) lit.m of the Constitution**, the law in question being a fundamental law would have to pass through debate in the Senate and in the Chamber of Deputies. Although the Constitution does not expressly exclude the **Vote of Confidence** on fundamental laws (**Art. 114 Constitution**), seeking Parliament's Approval in the present case is an abuse which cannot be justified by the emergency of an extraordinary situation (**Art. 115 (4)** Constitution), since such situations only occur in events of force majeure. Thus, the Government's asking for a Vote of Confidence is a flagrant violation of the principle of separation of powers in a state (**Art. 1 (4) Constitution**).

Initially announced for 19.03.2013, the Government prorogated the Vote of Confidence for 26.03.2013.

Violation of the principle of separation of powers in a state
by
willful, intentional and irresponsible creation
of an extraordinary situation

Note: The above method of adopting fundamental laws by the Government asking for a Vote of Confidence is not an invention of the present government, over the years having become a **baneful tradition of customary law** for the **constitutionality** in Romania.

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d) Absence of measures appertaining to the Draft Law

All the governments in power since October 2010 have been aware of their obligation according to the pilot judgment, none has taken any efficient measures to make an inventory of the state properties and of the land register. The Draft Law is the first to provide the inventory of the available state property be made by **01.03.2014** by the National Land Title and Survey Office („ANCPI"), an authority thus far having been under the Development Ministry and preoccupied only with detecting property available to be awarded to the property mafia.

The Government delayed
from 2010 to 2014
making an inventory and the land register

B) Basic Issues of the Draft Law

1. Violation of the Principle of Equity and Non-Discrimination

Though mentioned in its text, the Draft Law breaches the **Principle of Equity** but also the Principle of **Non-Discrimination** among the categories of persons requesting reparation measures.

a) Unequal Treatment of Finalised Claims versus Pending Claims (Appendix 5)

The finalised claims have led to restitution in kind of the property, to the issuance of shares to the Proprietatea Fund and/or to the payment of compensations determined to the market value according to international standards. The pending claims, in the event that restitution in kind is impossible, shall receive compensation points, which can be converted by sale by auction or payment in cash.

The number of such points, i.e. the compensation value is to be determined according to the Notaries' Evaluation Grid of 2013. It is generally known that the value according to the Notaries' Evaluation Grid does nor reflect the actual market value of real estate, rather about 50 % of the actual value. The payment of compensation is to start between 01.01.2017 and 01.01.2019 and is to extend over 10 years.

Taking into account that the average inflation rate will be of 5 % over 14 years, the value decreases to about 50 % (1-0,95^14) thus the total decrease in value will be to 25 %. This decrease in value does not take into account the fluctuations of the Leu / Euro exchange rate.

100 % versus 25 %

b) Unequal Treatment: in-kind versus cash

The unequal treatment will also appear in the future between persons who will benefit from restitution in kind and those who will receive monetary compensation.

100 % versus 25 %

c) Unequal treatment: natural persons versus religious institutions, national minorities' organisations and exchanges of territory

Pursuant to Emergency Ordinance 10/2013 payment of compensation to religious institutions, ethnic communities and citizens who lost their properties following exchanges of territory after the war, starts on 01.01.2014 and will be in installments over 10 years; to quote from Art. 1, § 1:

*„payment of compensations [...] shall be in equal installments over a period of **10 years** [...] **The payment of the installments shall begin as of 1 January 2014**".*

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This unequal treatment is to be considered a discrimination of the other claimants, natural persons. Taking into account that the majority of such persons, authors or heirs of the „former" owners are well advanced in age, we hold that, on the contrary, positive discrimination is needed, knowing that the existence of religious institutions and ethnic communities is not limited in time as is the life of natural persons.

d) Unequal Treatment: Emigrants versus other Natural Persons (Appendix 6)
The special status of emigrants has not been taken into consideration by the Draft Law, thus the last chance to repair the injustice caused by the restitution laws has been missed. While the first laws made after the Revolution introduced the discrimination clause excluding from the category of entitled persons those who no longer had Romanian nationality, a large number of those who had emigrated and who had been victims of the communist regime chose to renounce to lodge restitution claims. We expect the present government to repair some of the injustice committed by post-communist politicians and to give a new chance to this category of persons. If there is no willingness for restitution of the confiscated residential and landed property, which by no means would leave the country and at any rate would have been sold to locals, at least a monetary compensation at the market value was to be expected.

It is the responsibility of the Romanian authorities not to permit discrimination.

Violation of the fundamental and universal property right by requesting the Romanian nationality and general theft
We request a new term for notification!

Evaluation by the Notaries' Evaluation Grid (Appendix 7)

By the method of evaluation according to the Notaries' Evaluation Grid, by the purpose and legal grounds of the method, the principle of equity and the decisions of the European Court of Human Rights outlined in the Pilot Judgment Atanasiu et alt. v. Romania are being disregarded. The Draft Law eliminates evaluation of property by an evaluator licensed by the NAPR (National Agency for Property Restitution) according to international evaluation standards. The average value according to the Notaries' Evaluation Grid represents not more than about 50 % of the actual average value of the properties.

Violation of the principle of equity and don-discrimination

3. Lack of coordination of the steps of the administrative procedure

The Draft Law sets the following steps:

- by 01.03.2014 – ANCPI will make an inventory of the state-owned properties at disposal
- by 01.01.2015 – the local authorities transfer the properties to the National Fund
- by 01.01.2016 – the local and county authorities finalise examination of claims
- sale by auction will be from 01.01.2016 to 01.01.2017 when no payments will be made

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We hold that the period of **1 year** for the transfer of the properties from the local authorities to the National Fund intentionally was set too long. The period of **1 year** for examination of claims by the local and county authorities is **in discord** with the provisions regarding variable time limits according to the number of claims pending before each authority:

- **12 months** if the number of pending claims is below **2,500**
- **24 months** if the number of pending claims is below **5,000**
- **36 months** if the number of pending claims is above **5,000**

The above time-limits start to run on **01.01.2014 !**
Hence, finalisation of claims will be during the period.

01.01.2015 – 01.01.2017

contrary to the provisions set forth above which set examination of claims by **01.01.2016**.

Consequently, sales by auction will not start earlier than **01.01.2017**, while the start of compensation payment will be delayed by 1 year to **01.01.2018**.

4. Appropriation by Confiscation

The properties under Appendix 2 lit. a no. 1, 2 and 4 Law No. 10 / 2001, i.e. the properties being in the possession of education and research institutions will be restored in kind on condition they do not change their destination for public interest over 25 years. The new owner will receive a monthly rent in an amount determined by Government Issue.

Firstly, the 25 year-term is much too long, a term of 5 – 7 years would have been reasonable and equitable to the other claimants. After **25 years** a new generation of heirs may have emerged.

According to the Civil Code, the attributes of the property right are:

- possession (ius possidendi)
- usufruct (ius utendi, ius fruendi)
- dispotion (ius abutendi)

In the our case we cannot say that the claimant has the capacity of owner since none of the 3 attributes is granted. The assumed owner is not in possession of the real estate, is not able to use it and has no absolute disposition thereof. Moreover, the owner being obliged to rent the property for a very long period of 25 years, he is not even entitled to negotiate the rent. However he has the honour of paying the annual taxes determined by the government which at best perhaps could be covered by the annual rent. On the other hand, there is the permanent threat of being expropriated by the state in exchange for a monetary compensation much below the market value and abusively determined by the local authorities.

***De facto*: a new expropriation**

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5. Absence of Transitory Provisions

The Draft Law provides the payment of monetary compensations:

- in the files approved by the Central Board for the Determination of Compensations
- in the files having final and irrevocable Court decision which provides an amount of monetary compensation within 5 years, in equal installments, as of 01.01.2014

The Draft Law does not provide the procedure to be followed in the event that there is a final and irrevocable Court Decision without determining the amount of the compensation pursuant to the amendment of the Restitution Law no. 10 / 2001.

Such irrevocable decisions have the authority of a case law and are enforceable. The same resolutions were given under the Law no. 10 / 2001, completed by Law no. 247 / 2005 Part VII, in force at the time of judgement.

By irrevocable Court Decision, according to the jurisdiction of the ECHR, the property right is revived as protected by Art. 1 of Protocol no. 1 of the ECHR, thus the decision is enforceable according to the Law no. 10 / 2001, completed by Law No. 247 / 2005 and the Application Guidelines to Resolution No. 1095 / 2005.

Art. 10 p. 9 of the Law No. 10 / 2001 provides determining the amount of the compensations by the evaluation of the property by an evaluator licensed by the NAPR according to international standards and to their market value. The Draft Law states that any provisions regarding evaluation of property according to international standards be repealed, thus Art. 16 of the Law No. 247 / 2005 Title VII shall also be repealed. We consider that the draft should be completed in the sense that the evaluation procedure, according to international standards and to the market price, be accessible in the former version and the monetary compensation be made pursuant to the above method, i.e. in 5 equal annual installments, as of 01.01.2014.

Amendment of the legal text

6. Sales by auction – New Variation of Misappropriation of Restitution

The invention of the auction procedure can be considered a dedication to the estate agents who will be able to acquire state property to prices below the market price.

Instead of selling these properties by open sales by auction to a price exceeding the price determined by Notaries Evaluation Grid and to speed the awarding of **monetary compensation** or **state bonds** to the claimants, the government is making concessions to the property mafia.

A former owner, in most cases a person well advanced in age, without knowledge of economics and IT will not be able to cope with such situation.

There is the risk that such points may be purchased by investors or property sharks to a price below 1 Leu / point, recording 1 Leu / point in their documents, so becoming owners of valuable state property to prices much below the actual prices and without paying taxes to the state, thus encouraging tax evasion. The same has happened with the Proprietatea Fund shares, but with a different client.

Without an „expert" who will know all the mechanisms of sales by auction, there is no chance to receive compensation soon or the risk to be left outside without gaining auctioned property or cash, or to sell your case with the portfolio of points.

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7. Additional Documents

The Draft Law provides a **time-limit of 90 days** after communication to supplement the files with the missing documents. This period may be extended **only once by 60 days**. Although the law provides sanctions to the authorities for non-compliance of the time-limits, this will not solve the claimant's situation who might be left without his documents and consequently without restitution or compensation, taking into account the minor amounts of the penalties. We consider the **60-day-time-limit** granted **only once** as abusive.

Extension of time-limits for the supplementing of files

8. Euro, Interest and Exchange Rate Difference

We regard it as necessary that the evaluation of the compensation be converted to Euro at the time of awarding the points and to be paid in installments at Euro value.

In the event of a monetary compensation over 7 to 10 years we regard it as necessary that interest should be granted equal to the rate of inflation and the rectification of the amount by the Leu / Euro exchange rate.

9. Board without the Participation of the Owners' Organizations

The Local and County Boards as well as the Central Board have not included representatives of the owners' associations. We hope that this omission will be removed.

We request the representation of the owners' organizations with the Boards

K. Decker-That

F. Demele

Karin Decker-That
Chairman ResRo

Prof. Franz Demele
Deputy Chairman ResRo

Appendix 1

In the Pilot Judgment of 12.10.2019 Atanasiu et.al. vs. Romania, published in the Official Gazette no. 778 / 22.11.2010, the Court

„6. rules that the State as Defendant is to take the measures to guarantee the effective protection of the rights enumerated in Art. 6 § 1 of the Convention and Art. 1 of the Protocol No. 1, in the context of all the cases similar to the case in question, according to the principles provided by the Convention (paragraphs 229 – 236 above). The measures are to be enforced ***within 18 months*** ***after this decision has become final.***"

The decision became final after **3 months**. The time-limit of **18 months** was extended by **9 months** at the request of the present government, and will run out on **12.04.2013**. Thus **30 months** have passed after pronouncement.

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Appendix 2

In the above decision, the Government commits to the Court, quote:

„154. [...] the Government makes reference to the action plan presented to the Committee of Ministers on 25 February 2010 [...] ***Among the solutions taken into consideration is the setting up an Interministerial Board, the amendment of the laws in the matter and organizing talks with the NGOs and with the civil society****."*

There have not been any kind of talks between the Interministerial Board and the NGOs of the owners and the civil society. Our owners' organization ResRo – Interessenvertretung Restitution in Rumänien e.V., despite having been party as third intervenient in the ECHR proceedings Atanasiu et.al. vs. Romania, has not been represented in the Interministerial Group presided by NAPR-Chairman, Mr. George Băeşu, nor had access to the talks, contrary to the spirit of the Pilot Judgment.

Appendix 3

By the decision mentioned above (pt. 167), the Romanian government is requested to maintain a fair balance between the general interests of the community and the defence of the fundamental rights of the individual concerning compensation, a principle also included in the text of the Draft Law; quote:

„178. [...] ***the Romanian state has chosen*** *[...]* ***the principle of compensation ad integrum for the loss of property under the communist regime****. [...]* ***the Romanian law provides, in the absence of the possibility of restitution, the award of a monetary compensation equal to the market value the nationalized property would have today****."*

In order to justify the cap on compensation, the Government has succeeded in convincing the Court, explaining:

- the scope of the phenomenon of nationalisation under the communist regime as well as the variety of goods that make the object of the restitution laws (pt. 198)
- the great number of restitution or compensation claims (pt. 199)
- the sum necessary for the payment of these compensations amounts to 21 billion euro (pt. 200) **false statement**
- lack of properties and limited nature public reserve of plots (pt. 201) **false statement**
- lack of data from the land register and of an inventory of state property (pt. 202) **partly false statement**

The Court expresses its firm belief that all the above statements made by the representative of the Government to the Court are true; we quote:

„189. The factual reasons put forward by the Government ***cannot be questioned****. [...]"*

All this cannot justify the breach from the principle of compensation ad integrum at the market value.

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a) Total Amount of compensations

The Government is taking advantage of a false statement regarding the total amount of compensations.

Thus, in the said Pilot Judgment, in order to convince the European Court of Human Rights of the impossibility of compensation at actual real value to all claimants and in the absence of real and effective evaluation, the Government makes false statement on the total amount necessary for compensations. We quote from the decision:

„200. Then indicates that to the large number of compensation claims the condition of compensation ad integrum imposed by the laws in force is to be added. According to ***an approximate evaluation, the sum necessary for the payment of such compensations amounts to 21 billion euro. The Government in this respect makes mention of the fact the Romania's GNP of the year 2009 was of 120 billion euro. The compensation amounts paid so far are of about 84 million euro****."*

This tort committed by the Boc-Government through the representative of the government with the ECHR was discovered by the present chairman of the NAPR who estimated a total amount of **16 billion euro**, in his turn committing tort by applying the rule of three. By dividing the amount of already granted compensation to the number of finalised claims results in the average value of compensation per claim. Multiplying this amount by the number of pending claims we obtain the amount of 16 billion euro. This calculation has been made without taking into account the fact that the great claims for huge amounts of money have been reached by forgery and by over-evaluation, thus the average calculated above is unrepresentative. In the meantime, according to utterances of ministers in charge, the estimations of the total amount of compensations still needed have been reduced to **8 billion euro**.

In recent public statements, Prime Minister Ponta has pointed out that 8 billion euro have already been paid, with about 8 billion euro still to be paid. We consider this political statement as being a false one which attracts penal responsibility only on termination of his mandate.

The NAPR avoids (and they know why) to make a graduated calculation of the amounts necessary for each category of claimants:

- natural persons
- religious institutions
- ethnic communities, etc.

It is estimated that more than half of the compensation amounts will be awarded to religious institutions. We have good reasons to suppose that the real amount necessary for the compensation of natural persons is of about **3 – 4 billion euro**.

The Ponta government making use of the false statement of the Boc government to obtain the agreement of the ECHR for the capping of compensations under the actual value of the properties, as presented in the Draft Law.

b) Available State-Property

The Government commits **tort by omission** to the ECHR regarding the total availability of plots. We quote from the Draft Law:

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„201. Regarding the possibility provided by the law to award property or compensatory services, the Government holds that the same can be of limited application only due to the lack of properties and the limited nature of the public reserve of plots belonging to the local communities [...]"

Though de facto correct, the statement of the government that the public reserve of landed property belonging to the local communities - the former property of the Agricultural Production Cooperative (**CAP**) – is limited, needs to be completed by the conclusion that this is a result of the **massive frauds at local level.** Besides, the Government omits to mention the reserve from the public domains of the state, the former property of the State Agricultural Enterprises (**IAS**) now in the property of the Agency of the State Domains (**ADS**). Therefore the above statement has obviously been made with the intention of misleading the Court and to obtain a mercy bonus.

According to a recent estimation of the ADS the state still holds property of **400,000 ha** of land, while the claims amount to only **200,000 ha**, according to the estimations made by the National Authority for the Restitution of Property (NARP).

It is known that this property leased to the obedient clients of the ruling political parties is the basis of their funds for election campaigns.

Appendix 4

We quote from the press release of the NARP of 24 September 2012:

„For the implementation of the Draft Law of the European Court of Human Rights (ECHR) pronounced on 12 October 2010, at the level of the Government the Interministerial Board was set up [...] The said Group is [...] formed by the representatives of:

a) the National Authority for the Restitution of Property,
b) the Ministry of Justice,
c) the Ministry of Public Finances,
d) the Ministry of Administration and Internal Affairs,
e) the Ministry of Agriculture and Rural Development,
f) the Ministry of Environment and Forests,
g) the Ministry of Foreign Affairs;
h) the Office of the Prime Minister, and
i) the National Authority for the Recovery of State Assets."

The above board has never included – neither as member nor as consultant invitee - any representative of the owners' organizations or of the civil society. Moreover, we hold it as strictly necessary to include in such board some jurists who have experience and are specialised on the issue of restitution. The first meeting of the above board was held on 14 September 2012, **23 months after pronouncement of the decision**.

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Appendix 5

We first point out that the term „**finalised**" has not been defined by law, there being no clear explanation as to what the legislator means by this term.

We distinguish several steps in the procedures with regard to finalise claims:

a) the administrative procedure before the authorities

Finalised by the issuing of a decision providing.

- the issuing of a property title and entry into possession in the event of restitution of property

or

- the issuing of a certificate which entitles to monetary compensation or Proprietatea Fund shares

b) the voluntary judicial procedure

Finalised by the issuing of a final and irrevocable decision

- granting of the claim

or

- rejection of the claim

in two variations:

- with the evaluation of the property

or

- without the evaluation of the property

c) administrative procedure before the NARP

Finalised by the evaluation of the property and the issuance

- of a title for payment by the Finance Ministry
- of a title of shares to the Proprietatea Fund

Appendix 6

The special status of emigrated persons has not been taken into consideration by the Draft Law, thus the last chance to repair injustice caused by the restitution laws has been missed. While the first laws made after the Revolution introduced the discriminatory clause excluding from the category of entitled persons those who did not have Romanian nationality, a large number of those who had emigrated and who had been victims of the communist regime renounced to lodge restitution claims.

We expect the present government to repair some of the injustice committed by post-communist politicians and to give a new chance to this category of persons. It appears that nothing has changed. The generation which, despite having made their contribution to the reconstruction of the country during the communist regime, have not benefited from free certificates to shares in state-owned companies, nor from the facilities granted by law to the tenants to buy the apartments.

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A large number of those who emigrated before the Revolution were sold for big money by the communists, those who emigrated after the Revolution have been stolen their life-long achievements by post-communists over night changed into honest capitalists. The few emigrants who still believed in the change of the society after the Revolution encountered great difficulties in obtaining documents to prove property from the mayors, land registry. Many of their houses or lands had been sold based on forged documents and abuses. Others were extorted to sell their property right to a derisory price or lost proceedings sold by their lawyers after the latter had been paid good fees. The mentality of stealing from those who had left the country was spreading around, and the legal system has taken to this mentality.

By correct treatment regarding restauration of property, of the emigrant community, Romania for decades to come would have gained their respect, the friendship and sympathy of those who left the country in disgust. This real brand has no monetary equivalent. A leaf cannot make a country's brand.

Restoration of lost property would have been a conciliatory gesture which would have paid off ten times more in the future. Had the general theft been a charitable gesture to the misfortunate and not to the pockets of the thieves, it would have been acceptable. What has been left from our ancestors' fortune? We cannot rely only on the support of the governments of our new home-countries, which subjectively might readily be interpreted as interference with domestic affairs, as "revanchism". Having remained without lobby in both our country of origin and in our new home-country, we shall turn to the European and international bodies to claim our rights.

We make mention of the fact that we represent the interests for compensation of more than 350,000 emigrants. Taking into account that each has an average of 10 acquaintances, we reach as many as 3.5 million friendship ambassadors to the Romanian people. Such brand money cannot buy.

Only a minor number of those who took residence abroad have actually lodged claims, the majority angrily renounced.

If there is no willingness for restitution of the confiscated residential and landed property, which by no means would leave the country and at any rate would have been sold to locals, at least a monetary compensation at the market value would be expected.

It is the responsibility of the authorities of the Romanian government not to permit discrimination.

Appendix 7

The Notaries' Evaluation Grid

By the evaluation method according to the Notaries' Evaluation Grid, by the purpose and legal grounds of the method, the principle of equity and the decisions of the European Court of Human Rights outlined in the Pilot Judgment Atanasiu et alt. v. Romania are being disregarded, as follows:

1) the significance of the word „equivalent"

the word „**equivalent**" is derived from the combination of the Latin word:

aequus = **equal** ***and*** **valere** = **to value**,

thus it can be replaced by „**object or credit having the same value**".

2) the value according to the Notaries' Property Evaluator

The value according to the Notaries' Evaluation Grid does not reflect the actual market value at the date the compensation is awarded, the value being determined for other purposes and not being in conformity with international standards. In the majority of the cases it is **less than 50 %** of the actual value, which is **generally known and accepted** by notaries, officials and clients.

a) Coordination of property evaluation

The evaluation of properties is coordinated by the **National Union of the Romanian Notaries Public** (UNNPR).

b) Partners to the evaluation act

Beneficiary: The County Chamber of the Notaries Public
Executor: expert evaluator, member of the **National Association of the Romanian Evaluators** (ANEVAR)

c) Purpose and standards of making up the Notaries' Evaluation Grid

We quote from the Evaluation report 2013 for the Iaşi county:

„The determination of the minimum market value of apartments situated in apartment houses, individual houses in the urban and rural area, of commercial premises as well as of plots situated within („intravilan") or outside („extravilan") city limits in the urban or rural area, for the purpose of their correlation to the provisions of the laws in force."

We quote from the Evaluation Report 2013 for the Vaslui county:

„[...] the purpose being the estimation of the Present Average Circulation Value, to the correlate value of immovable properties of the above categories to the inflation rate, to prevent subjective / unreal estate transactions, to avoid reporting transactions for prices which are not in conformity with the estate market specific for the property for transaction / taxation.

This type of evaluation is a deviation from the International Evaluation Standards, not being defined any standard, being requested by the client, and being the evaluation premise, however the same has not been defined either."

The real purpose of introducing these Evaluation Grids is complex:

- the state is interested in collecting more money by the combat of tax evasion and money laundering
- the notary is interested in collecting higher notary fees.
- the client is interested in declaring a lower value in order to save taxes by tax evasion and to launder huge amounts of illicitly acquired money.

The notaries, being between hammer and anvil have realized the compromise between state, notary and client, when drawing these evaluation grids at a minimum value of 50 % versus the actual average value.

The notaries will not lose a huge amount with clients who declare a lower value, but they will gain with correctly declared values, taking into account that the state does decrease the percentage of the notary fee calculation. The state is in a similar situation and gaining from honest clients through taxes and duties, and not losing much from tax evasion and money laundering. The notary fees are

determined by order of the Ministry of Justice for the determination of the percentage to be calculated to the declared or minimum value according to the property evaluator, but also by the notaries when determining the taxation value according to the property evaluator. The state not being able to hold control of tax evasion and money laundering, leaves it to the notaries to determine a minimum taxation value by means of the property evaluator.

However, the value determined by the notaries' evaluation grid does not reflect the market value of a property, nor the average market value of the property, but rather a value below 50% of the actual average value.

Average value according to notary property evaluator < 50 % of the actual average value

d) Different Currency in the Notaries' Evaluation Grids

While in the evaluation grid of the Chamber of Public Notaries of the Iasi county the values are indicated in **Euro**, the grid of the Chamber of the Notaries Public of the Vaslui county indicates the same in **Lei**. The Draft Law states the value in **Lei**.

e) the aberrations of the Notaries' Evaluation Grid will cause interminable legal proceedings

Example:

1) one property is situated in Iaşi at a street corner, at the crossing of two streets, 21, Aleea Grigore Ghică Vodă Street and 2, George Coșbuc Street. There is an entrance to the property from both streets.

According to the Notaries Evaluation Grid of Iași 2013, the property is assessed in

- **zone A**, situated on Aleea Grigore Ghica Voda Street, to be calculated at **360 € / m²**
- **zone B**, situated on George Cosbuc Street, to be calculated at **108 € / m²**

2) a property situated in Iaşi in the Botanical Gardens, having its main entrance on 7–9, Dumbrava Roșie Street, but neighbouring 16, Podgoriilor Street, which is its former entrance before confiscation.

According to the Notaries' Evaluation Grid of Iaşi 2013, the property is assessed in

- **zone B**, situated on Dumbrava Roșie Street, i.e. calculated at **108 € / m²**
- **zone D**, situated on Podgoriilor Street, to be calculate at **30 € / m²**

ROUMANIE
Ministère des Affaires Etrangères

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Madame Geneviève Mayer
Chef de Service
Service de l'Exécution des Arrêts
de la Cour européenne des Droits de l'Homme

Bucarest, le 24 avril 2013

L1/3480

Madame Geneviève Mayer,

Suite à votre lettre du 18 avril 2013 concernant l'arrêt pilote *Atanasiu et Poenaru c. Roumanie*, nous avons l'honneur de vous informer qu'on a pris connaissance des informations et observations fournies par les organisations non-gouvernementales en cause.

Ces informations et observations vont être prises en considération lors de la rédaction du plan d'action révisé dans l'arrêt précité.

Veuillez agréer, Madame Geneviève Mayer, l'expression de ma considération distinguée.

Catrinel BRUMAR

Agent du Gouvernement