

## SECRETARIAT GENERAL

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Date: 30/11/2015

**DH-DD(2015)1287**

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Meeting: 1243 meeting (8-10 December 2015) (DH)

Item reference: Communication from a NGO (Asociatia pentru Proprietatea Privata) (06/11/2015) in the case of Maria Atanasiu and others and the Străin and others group of cases against Romania and reply from the authorities (25/11/2015) (Applications No. 30767/05, 57001/00)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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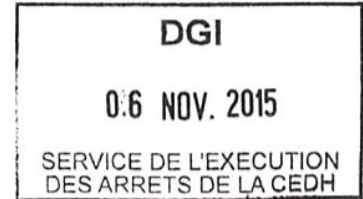
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Réunion : 1243 réunion (8-10 décembre 2015) (DH)

Référence du point : Communication d'une ONG (Asociatia pentru Proprietatea Privata) (06/11/2015) dans l'affaire Maria Atanasiu et autres et le groupe Străin et autres contre Roumanie et réponse des autorités (25/11/2015) (Requêtes n° 30767/05, 57001/00)

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

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To

**Mrs. Věra Jourová**

**EU Commissioner for Justice, Consumers and Gender Equality**

- **Association for Private Property (APP)**  
Str. Paul Orleanu nr. 6, sect. 5, Bucharest
- **Association of Property Owners Dispossessed Illegally by the State (APDAS)**  
Bucharest, Romania
- **Restitution und Menschenrechte in Rumänien e.V. (RESRO)**  
Germany · [www.resro.eu](http://www.resro.eu)
- **The Associations of Property Owners Dispossessed Abusively by the State is hereby drawing your attention to several issues that concern a large number of persons 20 years after the failure to reach a definitive and equitable solution consistent with a state of law.**

## **I. Main issues**

- I. The current law concerning the restitution of properties confiscated illegally by the communist regime (Law nr. 165/2013), together with its numerous modifications, has major deficiencies and does not solve equitably the restitution problem, for the following reasons :**
  - **I. 1 The law violates the principles of predictability, legal security and non-retroactivity of the law.** It violates articles 15 , 21, 24 and 16 (1) of Romania's Constitution.
  - **I. 2 The law violates the European Convention for Human Rights and, implicitly, the Lisbon Treaty, as follows :**
    - Article 1. The obligation to respect human rights**
    - Article 6. The right to a fair trial**
    - Article 13. The right to an effective remedy.**
    - Article 14. Prohibition of discrimination.**
  - **I. 3 The law discriminates against the persons whose requests had not been solved at the time of the promulgation of Law nr.165/2013 (20. 05. 2013), as opposed to the persons whose requests had already been solved on the basis of earlier laws. In fact all requests were initiated before the deadlines stipulated by Law**

10/2001, and Law 18/1991. The legal principle *Tempus regit actum* demands that the requests should be analysed on the basis of laws that are in force at the time of their initiation; otherwise **Law nr.165/2013 would become retroactive**. The delays due to the authorities' failure to respond within 60 days to the persons entitled to a response, as stipulated by Law 10/2001 [art. 23(1)], should not be imputed to those persons.

**Therefore, the requests not solved at the time of the promulgation of Law no. 165/2013 must be solved on the basis of the provisions of Laws 10/2001 and 18/1991. Not doing so would violate art. 16 (1) of Romania's Constitution <sup>1</sup>, and art.14 of the Convention <sup>2</sup>."**

In fact Romania's Constitutional Court has indicated in a number of its rulings the unconstitutional nature of several articles of Law no. 165/2013.<sup>3</sup>.

- **I. 4 The Law confers to the National Council for the Compensation of Properties (CNCI) the right to invalidate decisions** that would grant compensatory measures [Art. 17 (1) of the Law]. An administrative unit would thus have a right that belongs strictly to a judicial authority, in violation of CEDO jurisprudence.

**I. 5 The Law does not follow the CEDO recommendations contained in the Pilot Ruling Maria Atanasiu and others** (requests no. 30767/05 and 33800/06). Rather than simplifying the restitution process, thereby shortening the times required to solve the requests, the new Law introduces more complicated procedures and forces the entitled persons whose requests have not been solved to follow the procedures stipulated by the new law and repeat procedures they already followed.

***The true goal of this law is in effect to inadmissibly delay the restitution actions. This would help dishonest members of the political class to further enrich itself, at the expense of dispossessed owners.***

**II. Even the deficient provisions of the Law are violated; the restitution process is deliberately delayed or extended**

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<sup>1</sup> Citizens are equal before the law and public authorities, without privileges and discrimination

<sup>2</sup> Prohibition of discrimination.

<sup>3</sup> For example, Rulings CCR.nr. 232/2013, and Ruling CCR nr. 210/2014, which note that some provisions of Law nr. 165/2013 are unconstitutional,

**unacceptably by the competent authorities through Emergency Ordinances <sup>4</sup> or through internal measures.**

The delays in solving the requests have a systematic character, their goal being to exert pressure on owners, to determine them to sell their rights at derisory prices to intermediaries favored by the party in power.

Analysing the way in which ANRP fulfills its obligation, established by Law nr.165/2013, to solve the cases registered with the Secretariat of the Central Commission for Settling Compensations (CSCI) within 60 months from the promulgation of the current Law<sup>5</sup>, that is, until May 15, 2018, **one finds that if the current pace is maintained, the dossiers filed on the basis of Law 10/2001 would be solved only in 2043 (see Annex 1, par. II.3).**

**Law nr. 165/2013 violates thus the ECHR recommendations, formulated, e.g., in Pilot Ruling Atanasiu and others, to solve requests of the entitled persons within “reasonable” time frames.**

**Equally unacceptable is the large number of invalidated requests (21,935 % for requests based on law 10/2001; 71,8% for the rural properties). This happened despite the fact that these requests had already been verified by the entity legally entitled to solve the requests, by local commissions, and by prefects.**

- III. The restitution process, as written into law and as applied, generates corruption and abuses of power, which are unacceptable in a state of law. Such situations appear at the highest levels, and will persist until problem of the restitution of the properties is definitively solved. (see in Appendix 1, par. III).**

***The current legislation does not intend to solve the problem of the restitution of real estate or agricultural lands by distributing existing properties to the dispossessed owners. Rather, it targets the enrichment of individuals connected to the political “elite,” directly or through intermediaries, who purchase the proprietary rights for derisory prices.***

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<sup>4</sup>Emergency Ordinance no. 115/2013, which prorogates deadlines of Law 165/2013 by 6 month.

<sup>5</sup>Art. 34 of Law nr.165/2013

**To eliminate the major deficiencies mentioned above, the dispossessed property owners suggest the amendment of the legal frame, as well as the adoption of following measures::**

**1. To solve as soon as possible, (e.g. until 2008) the existing files, because:**

- *The restitution process has been lasting since 1991 for land properties and since 2001 for real estate and is far from been solved.*
- *The first generation of applicants already disappeared, the second one has an age of 80 years or more.*
- *In the Pilot Decision , the European Court of Human Rights ECHR urged the Romanian Government to adopt urgent measures aiming a fair restitution or compensation, in a “reasonable time delay”, but these requests are not reflected in the new law. On the contrary, the new procedures prolong and complicate unnecessarily the existing ones.*
- *The delay of restitution of confiscated properties generated and continues to generate substantial corruption actions, at highets levels. This is a very grave aspect in Romania, because Romania, as well as Greece, Italy and Bulgaria present the highest Percieved Corruption Index in the European Union (69)<sup>6</sup>*
- 1. *The duration of the solution of the requests to be reduced to a “reasonable and predictable” time frame, by instituting mandatory norms. Those who violate them should be severely penalized. Time frames granted by judicial authorities should also be “reasonable” (in the sense of the CEDO terminology), so that the restitution process be completed by 2018.*
- 2. *The restitution decisions should be kept transparent, by publishing them on the Internet.*
- 3. *Existing decisions should be invalidated solely by judicial authorities, as their invalidation by administrative authorities [e.g., CNCI – art. 17(1) of the Law] violates the principle of separation of powers<sup>7</sup>.*
- 4. *The compensation by « points » and through the participation in auctions should be abandoned, and compensation should be limited to restitution in nature or cash.*

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<sup>6</sup>Transparency International, <https://www.transparency.org/cpi2014/results>

<sup>7</sup>The Romanian Constitutional Court declared this article as violating the Constitution, in some cases.

5. *The value of the compensation should be indexed in accordance with the rate of inflation and the variation of the rate Euro/Ron<sup>8</sup>*
6. *The coordination of the administrative activities for the implementation and verification of the procedural measures should be assigned to a politically independent and honest entity. Current institutions do not meet these criteria (see examples in Appendix 1, par. III).*
7. *Money confiscated as a consequence of frauds related to the restitution should be transferred to a fund aimed at compensating rightful owners. In addition, a percentage established by law should be allocated by the state to that fund, with view to shortening the period of **time** needed to pay compensations.*
8. *Discriminations based on the fact that owners do not reside in Romania or are citizens of other EU countries should be prohibited.*
- 10 *Definitive and irrevocable rulings should be executed*
- 11 *The compensation process should be monitored periodically by an international entity, e.g., the Committee of Ministers or the Mechanism of Control and Verification (MCV)*

## **Signatory Associations**

### **Association for Private Property (APP)**

Str. Paul Orleanu nr. 6, sect. 5 Bucharest, Romania  
President Calin Ispravnic, Email birouapp@gmail.com

### **Association of Owners Dispossessed Illegally by the State (APDAS)**

Bucharest, Romania, Anca Zlatescu, Vice-president  
Email ancazlatescu@yahoo.com

### **RESRO – Restitution und Menschenrechte in Rumänien e.V.**

Germany · [www.resro.eu](http://www.resro.eu)  
Karin Decker-That, Chairman

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<sup>8</sup>Such indexation has been proposed by the Department for the Execution of the CEDO decisions  
« Strain and others against Romania. ». point.113.  
[http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs\\_exec/H-Exec\(2013\)1\\_Strain\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs_exec/H-Exec(2013)1_Strain_en.pdf)

DH-DD(2015)1287 : Communication from a NGO and reply from Romania/ et réponse de la Roumanie.  
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Email [k.decker-that@resro.eu](mailto:k.decker-that@resro.eu)

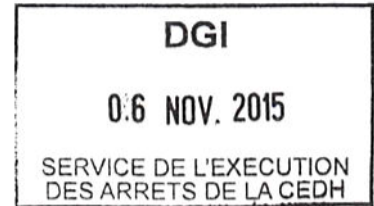
**We are looking forward to your written response to:**

**Asociația pentru Proprietatea Privată - APP**

**Str. Paul Orleanu nr. 6, sect. 5 Bucuresti.**

**or by email at [birouapp@gmail.com](mailto:birouapp@gmail.com)**

Thank you.



## **Annex 1 development of the ideas of memorial**

### **I. Major deficiencies of Law No 165/2013**

#### **1. The Law violates fundamental legal principles: predictability, legal security and non-retroactivity of the law .**

All claimants have lodged their applications during the years 2001-2002, under the rule of law 10/2001. Therefore they acquired the rights laid down in this law and should be treated consequently, independently of the fact whether their requests have been processed before the promulgation of the recent law no. 165/2013 or after that. The infringement of these rights leads to the *violation of the principles of predictability, legal security and non-retroactivity of the law*. In accordance with Article 4 (1) of the new Civil Code, the new law has no retroactive effect, it does not modify or suppress the generating conditions of an existing juridical situation, nor suppress the extinction conditions of a juridical situation previously extincted.

**2 This Law confers to the National Council for the Compensation of Properties (CNCP) the right to invalidate decisions** issued by entities invested by law, containing a proposal for granting of compensatory measures [Article 17 (1) of the law]. This way the Law grants an administrative unit (CNCP) a right which should be exercised only by a court.

This would **also violate the jurisprudence** of the European Court for Human Rights ECHR (e.g. decision Popa Aurel, Article 10), where it is shown that the decision by which a mayor approves an application for restitution or compensation on the basis of the laws 10/2001 and 247/2005, constitutes a civil act of disposition, which, communicated to the interested parties, generates patrimony rights of the entitled person, and cannot be invalidated or cancelled by the administrative authorities, but only by a civil court, on the basis of an appeal (final decisions No 6723 of 17.10.2007 of Romanian Supreme Court and no. 158/22.04.2008 of the Appeal Court Craiova). According to the latter decision, in the absence of an appeal in the justice system, such a decision of the mayor, which recognizes the right of a entitled person to compensation, has a definitive character. The same point of view is represented by the ECHR in the Decision Marin and Gheorghe Radulescu, par 16 (request 15851/2006).

The Constitutional Court admitted in the ruling no. 686/2014 that the provisions of Article 17, paragraph 1 (a) and Article 21 (5), and 8 of the Law do not comply with the Constitution( only in particular cases).



**3. The provisions of the Law violate the Constitution, the European Convention for Human Rights, as well as the recommendations formulated by the ECHR pilot ruling Maria Atanasiu and others ( see the ECHR analysis of the Law No 165/2013 <sup>9</sup>).**

The Law does not comply with the following Articles of the Convention for the Protection of Human Rights and Fundamental Freedoms:

*Article 1 The obligation to respect human rights*

(because following rights are not respected).

*Article 6 Right to a fair trial*

*Article 13 Right to an effective remedy*

*Article 14 Prohibition of discrimination*

Articles 6 and 13 are not met, as applications of entitled persons are rejected by courts as *premature*. Even the Ombudsman of the people (*Avocatul Poporului*) declares (CCR Decision 570/2014) that the criticised provisions violate the principle of equal rights, by introducing new rules concerning notifications, which have led courts to reject lodging applications, under the reason they have been prematurely introduced.

And entitled persons, even those who have covered previously all steps imposed by law 10/2001 or 247/2005 or have even reached the ECHR, after covering all these steps, are obliged to take virtually at the beginning, going through all the stages of Law No 165/2013 (Article 4 of the law).

**Article 14** : while persons, whose requests have been resolved before promulgation of Law No 165/2013, have received back either their confiscated building, or a cash compensation, equivalent to its market value, those persons, whose applications remained still unresolved, shall obtain a decision in which their compensation will be assessed in terms of virtual points. With these points they may be participating in an auction for land, for which the list has not yet been drawn up. The surface of the restituted land will be equal to that of the land seized, **independently of unitary values of the two plots of land. For these reasons the procedure is unfair and lacking of transparency.**

And older people, persons with a small number of points or who do not know how to use the Internet, do not have any chance to participate in online bidding. These persons will not have any other chance of recovery of the points acquired, then selling them to agents, at prices of 20-25% of the nominal value.

Those who do not participate in bidding shall have the right to request a monetary compensation beginning in the year 2017, payable in 7 annual

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<sup>9</sup> Department for the Execution of the CEDO decisions « Strain and others against Romania. ». [http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs\\_exec/H-Exec\(2013\)1\\_Strain\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs_exec/H-Exec(2013)1_Strain_en.pdf)

instalments, not indexed with inflation or with the euro/dollar rate. Payment of compensations may be extended up to the year 2029 (if no new Emergency Ordinances deferring these payments are promulgated), and if deadlines defined in the law are met (see also section II.3).

This produces a discrimination between persons whose applications have been processed on the basis of the provisions of previous laws, to those, whose claims will be resolved based on the new law, breaking this way Article 16 alin. (1) of the Constitution "*citizens are equal before the law and public authorities, without any privilege or discrimination*", as well as Article 14 of the Convention.

**The Romanian Constitutional Court CCR has found in many rulings that different articles of the Law violate the Romanian Constitution.**<sup>10</sup>

The Romanian Ombudsman expressed several times the point of view, according to which other articles of the Law should be declared unconstitutional.<sup>11</sup>

In Ruling Maria Atanasiu and others<sup>12</sup> the ECHR urged the Romanian authorities to take urgently steps for fair restitution or compensation, within a reasonable time period, but these requirements can not be found in the new law. Instead of simplifying and shortening the restitution procedures, the new procedures for claims adopted lead to lengthening and needlessly complicating administrative procedures.(see also the criticism of the ECHR paragraph 62.73 and 84<sup>13</sup>).

#### **4. The law establishes unacceptably long deadlines for the enforcement of the restitution process.**

According to the headlines of the Law, payment of compensation begins in the year 2017 and ends in the year 2029, while payment is performed in seven instalments. But even these deadlines are uncertain, because intermediate deadlines have been postponed by Urgency Ordinances, e.g. OUG No 115/2013, or OUG no. 71/2013. For instance deadlines for the inventory of

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<sup>10</sup> E.g. Decision CCR.no. 232/2013, which finds that the provisions of Article 4 for the second sentence compared to those of Article 1 (2) of Law No 165/2013 ..... are unconstitutional .

In Decision CCR No 210/2014 it is found that the provisions of Article 4 for the second sentence compared to those of Article 1 (2) ..... are unconstitutional.

<sup>11</sup> Examples : .Rulings no. 686/2014 and 68/2015 of the Constitutional Court

<sup>12</sup> Ruling of the ECHR Maria Atanasiu and others, from October 12 2010

<sup>13</sup> Department for the Execution of the CEDO decisions « Strain and others against Romania. ». [http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs\\_exec/H-Exec\(2013\)1\\_Strain\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs_exec/H-Exec(2013)1_Strain_en.pdf)

available land for compensation or for the comparison of available land with land requests have been delayed. for at least 6 months.

**5. Discriminatory treatment applied to persons whose requests have not been resolved by the time the law No 165/2013 promulgated.** While persons whose requests have been solved **before the Law** had been promulgated No 165/2013 have received the confiscated object or a compensation equivalent to the market value of the confiscated item, persons whose requests have not yet been solved will receive only a compensation in the form of points, they will be expecting the equivalent in lei between the years 2017 and 2029. But any discriminatory treatment is contrary to Article 16, paragraph 1 of the Romanian Constitution - *Equality of rights* - (1) *All citizens are equal before the law and public authorities, without any privilege or discrimination*, as well as contrary to art. 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*The Convention*).

The Romanian Constitutional Court ruled also against discrimination of Romanian citizens living abroad (Decision No 73/1995 Article 8): *The objection, according to which the provisions of Article 4 of the law, which established that citizens living abroad do not benefit from the provisions of the law only to the extent that they shall establish residence in the country within a period of six months after the entry into force of the country, is in breach of Article 16 in the Constitution, that will be accepted*".

*The fact that requests have not been resolved by at this time, this way non respecting the provisions of law 10/2001, cannot be imputed entitled persons, but only to the institutions concerned.*

**6. Law No 165/2013, instead of attempting to resolve restitution problem by distributing available buildings or agricultural land to former owners, aims the enrichment of intermediaries and of the real estate mafia, affiliated in most cases to the political parties.**

These speculators acquire the data of the persons entitled to obtain compensation decisions from the responsible authorities, contact these persons, trying to persuade them to sell their rights at a price of 25-30% of the nominal amount. Fearing that the file in question might still be procrastinated, these persons accept the discriminatory conditions offered. As if by some strange coincidence, the transferred files are resolved quickly (e.g. 2 months), in contrast to the other requests, who have to wait many years.

When there is however money allocated for compensations, instead of paying it correctly to the former owners, it is redirected by the corrupt authorities to their favourites.

Other examples of corruption in the field of property restitution are mentioned in paragraph III.

**We are witnessing political or administrative frauds valued several millions of euro** - some of them with the direct support of the competent authority ANRP - institution founded just to support correct enforcement of the laws-while owners (many of them sick) are deferred for more than 15 years, although their restitution rights had been validated by authorities..

**7. Local and central authorities (ANRP/National Commission) act most often as "a state within a state", assuming rights not included in the law.**

*The Constitutional Court and, by Decision 686/96 (2014, established that National Commission to compensate for buildings and the Secretariat they are not competent to validate or to invalidate decisions issued by entities invested by law, which shall contain a proposal for granting of compensatory measures and the amount of damages, in the event that these issues have been already established by a judicial decision.* In our opinion, this competence of the Central Commission is illegal also in the case of administrative decisions, which can be invalidated only by a court ruling.

**8. Final and irrevocable rulings of the courts are not enforced, which is not admissible in a state governed by the rule of law.**

Only a part from deficiencies Law no. 165/ 2013 have been listed here (these had been reported by associations of the dispossessed owners, even before the promulgation of law). Recommendations of the Committee of Ministers or of the ECHR were ignored<sup>14</sup>. Many jurists expect that other provisions of the law be declared as non compatible with the Constitution.

**II. Even in this promulgated form into law, the Law No 165/3013 has not been adhered to by the authorities.**

**II. The drawing up of the inventory of available land has been delayed.**

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<sup>1414</sup> See Department for the Execution of the CEDO decisions « Strain and others against Romania. ». [http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs\\_exec/H-Exec\(2013\)1\\_Strain\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs_exec/H-Exec(2013)1_Strain_en.pdf)

The law prescribed [Article 6 (1)] that local authorities should draw up an inventory of agricultural and forestry land, which may be the object of restitution, within 180 days after its issue. But even after two extensions of time limits the work has not been completed. This delay will postpone all the deadlines of the law.

**This produces a substantial harm to dispossessed owners, as the amount of compensation, determined on the basis of the data available at the time of the appearance of Law No 165/2013, but paid in the following 26 years, is not indexed with the inflation rate** New damage may occur on the date of conversion of the local currency (RON) into Euro, because no correction depending on the Euro/Ron exchange rate will be granted. The absence of these indexing factors is also criticized by the ECHR<sup>15</sup> (par 97)

- **II. 2 ANRP activity is carried out at present under interimary management**, so that nobody can be held accountable for the non enforcement of definitive judicial runings.
- **II. 3 Delaying the solving of dossiers on the ANRP/ CNCI level is demonstrated by the unacceptable slow solution rate of the requests.**

**Law No 165/2013 imposes for the solution of files recorded at the Secretariat CNCI the deadlines 20.05.2018 for real estate, respectively 20.05.2016 for land.** We will examine data published on the site ANRP and interpolate intermediate data:

**Total number of files that were to be solved under Law No 165/2013: 42,427 for real estate, respectively 14,822 for land.**

The number of number of files solved, or respectively invalidated, after the issue of Law No 165/2013 is shown in the table below:

Year	Real estate Files solved	Real estate files invalidated	Land Files solved	Land files invalidated
2013 (*)	• 307	• 3	• 77	• 8
2014	• 1468	• 294	• 1408	• 1084
2015	• 1367	• 392	• 1327	• 927

<sup>15</sup> See See Department for the Execution of the CEDO decisions « Strain and others against Romania. ». [http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs\\_exec/H-Exec\(2013\)1\\_Strain\\_en.pdf, par. 97](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs_exec/H-Exec(2013)1_Strain_en.pdf, par. 97)

<b>Total ( ** )</b>	<b>• 3142</b>	<b>• 689</b>	<b>• 2812</b>	<b>• 2019</b>
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( \* )from 20.05.2013 ( \*\* ) up to 31.07.2015

Previous data represent totals on 26,33 months (The interval 20.05 - 31.05.2013 is equivalent to 0.33 months).

Analyzing the data from the above table :

**The average number of files resolved monthly is :**

- **Real estate:  $3142/26,33 = 119,33$  files/month**
- **Land:  $2019/26,33 = 76,68$  Files per month.**
- **Rates of invalidated files:**

**Real estate  $689/3142 = 21,93$  %**

**Land  $2019/2812 =$  approximately **71.8 %****

**These rates are unacceptable high**, taking into account the fact that these files had been previously checked at least by the entity vested by law with the settlement of the demand, by the local commission and by the prefect. And an invalidation should be decided only by a judicial court, **otherwise of the principle of separation of powers in the state would be breached** .

If we take into account the irregularities to ANRP (see par. III), we doubt that a new validation would substantially reduce the level of corruption.

- On the basis of the number of files which were are still open at the issue of Law No 165/2013 (real estate 42,427, land 14.882) and of the solving rate (119,33, resp. 76,68), we are able to estimate the number of months required for solving all the files, namely: real estate  $42.427 / 119,33 = 356$  months, or **29 years and 8 months, i.e. up to the year 2043, and not until the year 2018**, as specified in the law.

**Following conclusions are resulting from these data:**

- **The right of administrative units to invalidate existing decisions should be withdrawn** (see in this respect the decisions of the European Court Viasu par. 59, Popa Aurel and others).
- **Law No 165/2013 violates the recommendation of the ECHR, formulated in the ruling Maria Atanasiu and others, to solve the requests of the persons entitled, within a "reasonable period".**

**We ask therefore also to give up the present sistem of compensation based on virtual points, because**

- **Most of the petitioners are aged and are not accustomed with bidding on-line. Many of them have a reduced number of points**

**and are consequently not able to participate at such biddings. They are discriminated against those, which posses a huge number of points and are able to get internal informations concerning the object. Their only solution is to sell their points at derisory rates, to intermediaries. Inventories of available land are not yet finished, the operation is undermined by local authorities**

- **This system generates corruption. As well as in previous phases, a number of intermediate agents appeared (see par. III)**

### **III Corruption is generated by the absence of a solution for the restitution of confiscated properties**

As a consequence of the fact that the problem of property restitution has not yet been solved, numerous cases of corruption and abuse of power appeared. These have been investigated by the the prosecutor's office, and followed, in many cases, by resonant prison sentencies. According to media reports such cases occurred at the highest political and administrative levels.

**Of the many notable names involved in corruption in real estate** we cite only a few: Adrian Nastase, former prime minister (e.g. “Zambaccian” building), Viorel Hrebenciuc, former Vice-president of the Chamber of Deputies (e.g. villa in which he lives, as well as illegal restitution of thousands of hectares of forest ), Tudor Chiuariu, former Minister of Justice, Marian Oprisan, the president of the county council in Vrancea (Disney Land) - helped by former prefect Baesu, currently interim president ANRP - Radu Mazare, the mayor of Constanta city (illegal restitutions), Dan Voiculescu ("honorable president" of the Conservative Party), and the list can be continued *ad infinitum*.

**A special chapter is the corruption inside the ANRP:** following personalities have been investigated or even condemned: e.g. former presidents Ingrid Zaarour and Crinuta Dumitrean, former vice-presidents Theodor Nicolescu, Remus Baciuc and Catalin Dumitru – ( for a bribery of 1,000,000 €<sup>16</sup> ), former president of National Agency for Integrity Horia Georgescu, as well as former head of division of Investigation of Organized Crime and Terrorism, Alina Bica, all members of the Commission for Evaluation of Compensations. Moreover, the National Anti-Corruption Dpartment started criminal proceedings against the whole Central Commission for the Evaluation of Compensations, for having overestimated land properties.

<sup>16</sup>

<http://anticoruptie.hotnews.ro/stiri-anticoruptie-17057308-fostul-vicepresedinte-anrp-catalin-dumitru-trimis-judecata-dna-pentru-mita-milion-euro.htm>



*Is it admissible, that an institution so deeply compromised as the ANRP coordinates the activities in the field Property restitution and has a preponderant role in elaborating the concerned laws? "The Wolf as keeper of the sheep!"*

With political influences and relations inside ANRP more than a thousand people, who bought litigious rights, received 7 billion lei (about 1.573.000.000€) from ANRP, while the rest of a several tens of thousands of former owners received a total of compensations of about 6.4 billion lei (about 1.440.000.000 €). So for example a person with the initials name CCM received a decision of compenstion in May 2011 for the sum of 2.7 million euros, after buying claims valued 150,000 euros in April 2011. Another person with the initials MMA bought in October 2009 compensation rights from an entitled person, with 10,000 euros, 25% of a file of claims, for which it receives in January 2010 over 1.5 million euro<sup>17</sup>. According to a report published by the Court of Auditors to ANRP for the period 2007-2012, Horia Simu Schiopu is one of the largest buyers of compensation rights in accordance with law 10/2001. *He has paid for the compensation rights about 1.5 million dollars, and the value of the goods obtained amounted to 466 million lei, more than 100 million €*<sup>18</sup>.

**As in previous phases, a series of intermediaries obtain the addresses of the entitled persons to the competent authorities. They offer these persons the acquisition of existing decisions, at a derisory price of 25-30% of the value of the contract. Facing the alternative to get the money very much later (or may be never), these persons accept the offer .**

The examples mentioned above show us that the lack of a solution for property restitution generated and will again generate a large number of **cases of corruption and abuse of power**

And this is in a situation in which approximately. 70% of the request have not yet been solved! These examples demonstrate our assertion in the main text, namely that:

***Current legislation does not aim to resolve the issue of restitution by distributing available real estate or land to the dispossessed owners, but the enrichment of the " political elite", directly or through the intermediary of speculators, who***

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<sup>17</sup> « Bilanț sumbru la retrocedări: Supraevaluări de 300 de ori ale terenurilor, compensații uriașe încasate de grupuri mici de interese » Ziarul Financiar ,<http://www.zf.ro/burse-fonduri-mutuale/bilant-sumbru-la-retrocedari-supraevaluari-de-300-de-ori-ale-terenurilor-compensatii-urias-e-incasate-de-grupuri-mici-de-interese--fonduri->

<sup>18</sup> [http://www.comisarul.ro/politic/perchezitii-dna-la-un-rege-psd-al-retrocedarilor-a\\_500040.html](http://www.comisarul.ro/politic/perchezitii-dna-la-un-rege-psd-al-retrocedarilor-a_500040.html)



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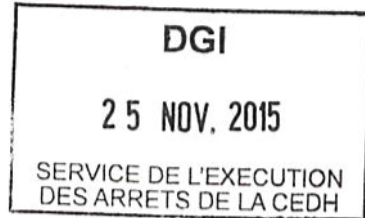
*continue buying compensation rights from desperate owners, at ridiculously low prices.*

*Different media channels publish daily new examples of corruption, of huge proportions. Money obtained in the cases of corruption should be confiscated and distributed to the dispossessed owners.*



ROUMANIE  
Ministère des Affaires Etrangères

Agent du Gouvernement  
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des Droits de l'Homme



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### Groupe *Străin*

#### La réponse du Gouvernement à la lettre des organisations non-gouvernementales

Suite à la lettre du 6 novembre 2015 concernant des préoccupations soulevées par des organisations non-gouvernementales sur les mesures d'exécution de l'arrêt pilote *Maria Atanasiu et autres c. Roumanie*, nous avons l'honneur de vous informer qu'on a pris connaissance des informations et observations fournies.

Ces préoccupations et observations, qui avaient été, d'ailleurs, présentées auparavant au Comité des Ministres, ont été adressées dans les plans d'action présentés par le Gouvernement dans l'arrêt précité.

De l'avis du Gouvernement, les informations transmises par ces plans d'action prouvent que le mécanisme mis en place par la nouvelle législation est effectif et fonctionnel.

Pour renforcer cette conclusion, le Gouvernement aimerait présenter des informations actualisées sur le processus de restitution des propriétés

a) L'activité de la Commission Nationale pour la Compensation des Immeubles (la Commission Nationale)

Pendant la période juin 2013-septembre 2015, la Commission Nationale a solutionné 5.648 dossiers; ont été délivrés 2.725 décisions de compensation (en montant de plus de 1.000.000.000 points), 682 titres de dédommagements (en montant de plus de 1.530.000.000 RON) et 2.240 décisions d'invalidation. Dans un dossier, la Commission Nationale a décidé la restitution en nature de l'immeuble, en renversant la décision de l'autorité locale. Les décisions d'invalidation ont été émises dans les dossiers où les requérants n'ont pas prouvé leur droit de propriété sur l'immeuble en litige.

L'Autorité Nationale pour la Restitution des Propriétés (ANRP) apprécie que le rythme de travail lui permette d'estimer que les dossiers enregistrés au

Secrétariat de la Commission Nationale seront analysés dans les délais prévus par la nouvelle loi.

b) Le paiement des dédommagements

Jusqu' à en septembre 2015, l'ANRP a émis des titres de paiement en valeur d'environ 1.092.000.000 RON, pour les premières deux tranches, afférentes aux années 2014 et 2015<sup>1</sup> (environ 558.000.000 RON pour 2014 et environ 534.000.000 RON pour 2015).

Les montants afférents à la première tranche ont été intégralement payés. Pour assurer le paiement de la deuxième tranche, pour l'année 2015, le montant alloué au budget du Ministère des Finances Publiques est de 570.000.000 RON. Le paiement pour cette deuxième tranche est en cours.

c) L'inventaire des terrains

Conformément aux informations fournies par l'Agence nationale de Cadastre et Publicité Immobilière (l'ANCPI), au mois de septembre 2015, l'inventaire des terrains était réalisé à un niveau de 99,47 %.

g) La jurisprudence de la Cour Constitutionnelle concernant la Loi n° 165/2013

En plus de la jurisprudence présentée dans le plan d'action du septembre 2014, par la Décision n° 686 du 26 novembre 2014, l'instance constitutionnelle a décidé que les dispositions des articles 17 par. (1) let. a) et 21 par. (5) et (8) de la Loi n° 165/2013 (concernant l'attribution de la Commission Nationale de réexaminer l'existence et l'étendu du droit et, par conséquent, de procéder à la validation/invalidation de la décision de l'entité investie avec la solution de la notification) sont constitutionnelles dans la mesure où elles ne s'appliquent pas aux décisions émises dans l'exécution des décisions judiciaires par lesquelles les instances ont établi d'une manière irrévocable l'existence et l'étendu du droit.

Le Gouvernement estime que les décisions de la Cour Constitutionnelle ont le but de clarifier l'application de la nouvelle loi dans les affaires pendantes au moment de l'entrée en vigueur et de prévenir une application contraire à l'article 6 de la Convention de cette loi.

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<sup>1</sup> Pour les dossiers dans lesquels les instances ont établi le montant des dédommagements et les dossiers approuvés par l'ancienne Commission Centrale pour la Compensation des Immeubles avant l'entrée en vigueur de la nouvelle loi, celle-ci a prévu des dispositions transitoires en ce qui concerne la procédure de paiement ; ainsi, par exception à la procédure régulière de paiement, on a prévu pour ces dossiers un système de paiement en 5 tranches annuelles égales, à payer à compter du 1<sup>er</sup> janvier 2014, chaque versement ne pouvant pas être inférieur à 5 000 RON .

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Le Gouvernement estime que ces informations actualisées renforcent la conclusion que le mécanisme mis en place par la Loi n° 165/2013, ainsi que le suivi des autorités compétentes, offrent les prémisses nécessaires pour le bon fonctionnement du système de réparation pour les propriétés nationalisées et, par conséquent, qu'il constitue un remède adéquat pour la solution des demandes de restitution des anciens propriétaires.