PROPERTY RESTITUTION – A TYPE OF REPARATIONS MEASURE IN ROMANIA

Bianca Elena RADU[*]

Abstract

The paper intends to highlight the manner in which property restitutions starting with 2001, in Romania, have accomplished the functions of a reparations measure. The analysis will follow on the one hand whether the process of property restitutions have been a part of a wider socio-political mechanism, that of transitional justice, and on the other hand it will analyse whether the legislation in the field has or has not facilitated the property recovery and, as a result, the rehabilitation of victims. From a methodological point of view, the study will use the analysis of official documents and of legislation in the field.

Keywords: *reparations, property restitution, transitional justice, Romania, High Court of Cassation and Justice, ECHR*

1. Introduction

Research in the field of reparations concentrates on conceptual, operational aspects, on the manner in which reparations programs are implemented, on the social and political mechanisms that determine the application of reparations programs at the national level. The literature in the field[1] also presents the difficulties related to the implementation of reparations programs: the high and very high number of victims; reduced logistical and economic resources; the difficulty to categorize or to quantify the suffering to which victims were subjected; the lack of experience in managing cases of generalized abuses and violence. Studies show that the countries that conceived the reparations programs outside the context of transitional justice did not enjoy receptiveness from the victims.[2] The lack of receptiveness is directly related to the fact that the victims wish for a form of official recognition of the sufferings and abuses, of presenting the truth, which entails in turn a national mobilization and for the new governments to take upon themselves to implement the reparations programs. In the report of the UN secretary general, *transitional justice* (TJ) is defined as *encompassing the various processes and mechanisms implemented by a society in order to handle the abuses committed in the past with the purpose of establishing those responsible, of administering justice and of allowing reconciliation*.[3] TJ is not a special form of justice, but a justice adapted to the unique conditions of societies that are in the process of transformation and that have experienced generalized human rights abuses. Most of the problems that result from past abuses are often too complex to be resolved through measures such as ordinary judicial processes. Truth commissions represent the central mechanism of the TJ. The members of the commissions have the responsibility to gather evidence, to analyze the files of the victims of the former regime, to ensure the physical, psychological and moral protection of witnesses, to implement decisions, to establish reparations, and to elaborate the final report. The reparations programs are initiatives sponsored by the state that have the purpose of contributing to the material, moral and symbolic reparation of abuses suffered by victims in the past.

In Romania, after 1989, have been adopted laws with a reparatory character in the matter of buildings abusively seize by the state during the communist regime. The present paper will concentrate on the impact generated mainly by two of the laws with a reparatory character: Law no. 10/2001 *regarding the judicial character of certain buildings abusively seized during 6 March 1945-22 December 1989* and Law no. 165/2013 *regarding the measures for the finalization of the restitution process, in kind or in equivalent, of buildings abusively seized during the communist*

[*] PhD Student, PhD School of Law, *Nicolae Titulescu University*, Bucharest, Romania (e-mail: elbiaradu@gmail.com).

[1] Koen De Fayter, Stephan Parmentier, Marc Bossuyt & Paul Lemmens (eds) *Out of the Ashes: Reparations for Victims of Gross and Sistematic Human Rights Violations* (Cambridge: Intersentia, 2005); Max du Plessis & Stephen Peté *Repairing the past? International Perspective on Reparations for Gross Human Rights Abses* (Cambridge: Intersentia, 2007); Jon Ester *Retribution and Reparation in the transition to Democracy* (Cambridge: Cambridge University Press, 2006); Katya Salazar, *Current Challenges in Seeking Justice for Serious crimes of the Past* (Aportes DPLF, 18:2013); Wemmers, Jo Anne M. Wemmers (ed) *Reparation for Victims of Crimes against Humanity: The Healing Role of Reparation* (London: Routledge, 2014); *Reports* of the Special Rapporteur to the Human Rights Council and the General Assembly available at https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/AnnualReports.aspx.

[2] Priscilla Hayner B., "Truth and Reparations" in Priscilla Hayner B. (ed) *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, (New York: Routledge, 2snd ed 2011), p. 166.

[3] UN Report of the Secretary General, *The rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (S/2004/616) p. 4, available at https://www.un.org/ruleoflaw/files/2004%20report.pdf, accessed April 2019.

regime in Romania. Thus, it will analyse whether the two laws have configured a coherent, efficient and stable framework for the victims who were abusively dispossessed of properties to be rehabilitated.

2. Remediation, reparation, return to the "status quo ante".

Colonialism, civil wars, the two World Wars, the Holocaust, totalitarian regimes, military dictatorships, and military conflicts are periods in history where massive, collective and systematic violations of human rights took place. Even the Peace Treaty of Westphalia[4] makes a reference to restitutions. In the periods that followed, the nations that lost wars had to pay the winners certain sums or to offer them certain goods. During the Paris Conference of 1919, for instance, it was stipulated that the central powers (Germany, Austro-Hungary, Bulgaria, the Ottoman Empire) will pay, as a result of their defeat, compensations to the allied and associated forces (France, Great Britain, USA, Italy).

A first category of reparations could come under what Barkan Elazor[5] calls attempts at remediating "history's injustices". Here we could mention the compensations given to Holocaust survivors, the compensatory programs for Japanese-Americans from US concentration camps from World War II, the African-Americans rehabilitated after the slavery period during the American Civil War, and the reparations given to the aborigines in Australia.

The international community has tried to respond to the injustices of history with the purpose of preventing the repetition of similar events, thus creating specialized courts, adapting their norms in international law in order to punish the guilty parties, proposing distribution programs for the physical, moral and economic rehabilitation of victims. If at the beginning reparations were negotiated and given between states, their application sphere has been transferred in time, at the inter-state level, the beneficiaries being the victims of internal violence. All human rights violations involve taking responsibility, in other words, a secondary obligation to repair the violation of a main obligation such as banning genocide, crimes agains humanity, war crimes, torture, and extrajudiciary executions.[6] In time, the introduction of moral and justice indicators in the political sphere has represented a new wave in the manner in which nations have recognized their past abuses and have managed them.[7] The tendency created concentrates on post-conflict or post-authoritarian societies taking responsibility for past crimes.

The 80s represent the years for state reconstructions, for newly installed governments taking responsability for the actions committed by dictatorial and totalitarian regimes characteristic of Latin America and South-Eastern Europe. Victim reparations become a part of the Human Rights and International Law agenda. The efforts have started as early as 1988, when the *Sub-commission on the promotion and protection of human rights*[8] recognized and drew the attention on the fact that all victims who had their fundamental rights and liberties violated are entitled to benefit from restitutions, equitable compensations, and means to rehabilitate (as much as it is possible) the sufferings they were submitted to.

The study of *Theo von Boven* (1993)[9] has argued in turn for the necessity to conceptualize and operationalize reparations and mentioned that the right to reparation, to rehabilitation entails two sides: the procedural right to justice and the material right to compensarion as a result of violations of fundamental rights and liberties to which the victims were submitted and which are stipulated in national and international law. The year 2005 marks the adaptation of *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.[10] The fundamental principles marked a new beginning in regard to the institutionalization of reparatory programs but they stressed as well the necessity to take on at an international level the manner in which reparations are implemented.

In international law[11] reparations are defined as measures through which restitution, compensations,

---

[4] *Treaty of Westphalia. Peace Treaty between the Holy Roman Emperor and the King of France and their respective Allies*, available at http://www.history.ubc.ca/sites/default/files/courses/documents/%5Brealname%5D/treaty_of_westphalia_excerpt.pdf, accessed April 2019.

[5] Elazar Barkan, *The Guilt of Nations, Restitution and Negotiating Historical Injustice* (New York: Norton Publishing House, 2000).

[6] UN General Assembly Resolution, *International Convenant on Civil and Political Rights* (A/RES/2200, 1966), available at https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf, accessed March 2019.

[7] Michael Waltzer *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977/2006)

[8] Dinah Shelton, "The United Nations Draft Principles on Reparations for Human Rights Violation: Context and Content" in Koen De Fayter, Stephan Parmentier, Marc Bossuyt & Paul Lemmens (eds) *Out of the Ashes: Reparations for Victims of Gross and Sistematic Human Rights Violations* (Cambridge: Intersentia, 2005).

[9] Theo von Boven *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*, available at https://www.ilsa.org/Jessup/Jessup17/Batch%202/Study%20Concerning%20the%20Right%20to%20Restitution%20Compensation.pdf, accessed April 2019.

[10] UN General Assembly Resolution, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International HumanitarianLaw (A/RES/60/167 din 2005) available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement, accessed April 2019.

[11] *Rome Statute of the International Criminal Court* (Art. 75), available at https://www.icc-cpi.int/nr/rdonlyres/add16852-aee9-4757-abe7-9cdc7cf02886/283503/romestatuteng1.pdf; ONU, *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or*

rehabilitation, satisfaction, the guarantee of non-repetition, and measures implemented as a response to abuses suffered by victims-subjects of human rights are targeted. The restitution has as a purpose the "return" of the victim to the state before the abuse, whether it is a matter of recovering social or political rights, or material goods. Satisfaction and the guarantee of non-repetition are connected to other mechanisms of Transitional justice such as truth finding, official recognition of the abuses, and institutional reforms. The types of compensations will be mentioned in the next paragraph, with the presentation of the reparatory typologes in the perspective of Pablo de Grieff.

From a judicial point of view, the definitions for reparations take into consideration all possible situations. However, for the practiciens to be able to conceive a design for a reparations program, it is necessary for them to use a clear definition, focused on a target-group, and to take into account two elements: the type of reparation (material or symbolic) and the form of distribution (individual or collective).

Pablo de Grieff[12] creates a synthesis of the advantages and disadvantages of the main types of reparations: individual, collective, symbolic and material. The author highlights that *individual reparations* respect personal autonomy; they satisfy the needs and preferences of the targeted subjects; they promote the recognition of the individuals; they contribute to a better quality of life for the beneficiaries; they can be easy to administer. Concerning the limitations of individual reparations, the following can be highlighted: if they are conceived simply as a way of quantifying the losses suffered, there is the risk of being seen as being inadequate; if the payments are blocked under a certain level, they will not be able to contribute to a better quality of life for the victims; if there are no functional institutions from which the beneficiaries could buy services, the money received will not change their quality of life for the better; if they are not articulated to a complete design for reparations, with the possibility for the beneficiary to be able to understand the significance of the received sums, they could be seen as a way of "buying" the victims' silence. On the other hand, *reparations addressed collectively* with the purpose of developing social investments as well give the impression of being attractive from a political point of view; they give citizens the impression that results can be obtain both in relation to justice and development of the economy; they are *seemingly* directed toward the real causes of the violence. From the series of the limits one can mention the extremely limited reparatory capacities for the victims and the lack of respect for individual sufferings, and for citizens' rights in general.

Pablo de Grieff differentiates as well between *symbolic* and *material reparations*. For instance, letters where regret is presented and forgiveness is asked, photocopies of the reports edited by Truth Commissions that can be consulted by the public are, among others, a part of the category of *individual symbolic reparations*. These reparations represent a way to manifest respect for individual sufferings, a manner of recognizing sufferings, all without substantial financial costs. In the category of *collective symbolic reparations* the author mentions public acts of forgiveness, commemorative days, building museums, etc. with the purpose of consolidating collective memory and social solidarity. *Material reparations* are represented by fix sums, property restitutions, goods, vouchers that replace the value of the goods, service packages such as medical, educational, psychological or domestic assistance ones. They have the advantage of satisfying real needs, they can have positive effects in terms of equal treatment, they can be financially efficient if there already exist institutions that offer the necessary services, and they can stimulate the development of social institutions. On the other hand, the quality of the services depends on existing institutions, most of the programs concentrating on basic services, without being adapted to the needs of the victims.

3. Property restitutions as a reparatory measure in Central and Eastern Europe

A first characteristic of property restitutions in Central and Eastern Europe is an overlap of this procedure with programs of economic development and structural reform at the collective level. In the majority of cases, *restitutions were not oriented* toward the recovery of individual losses, but *toward social desiderata*. Either out of a lack of resources or a lack of openness toward reparatory measures, the governments preferred to associate restitutions with collective social investments such as bridges, roads, hospitals, schools etc. Initially, what was desired was the creation of equality among victims, despite the fact that the losses suffered in the past were different both from a value and quantitative point of view. From a desire to move away from the oppressions and injustices suffered during totalitarian regimes, the new political projects proposed, at a declarative level, a society based on human rights and equality before the law. In reality however the reparatory schemes either omitted or took too little in consideration the individual character. *Another characteristic* of property restitutions in the region was that they were not a part of the transitional justice process, meaning of the process of truth finding, of its official recognition at the national level. The logic according to which these reparations processes have worked and are working is the one according to which

Punishment , General Comment No. 3 of the Committee against Torture Implementation of article 14 by States parties (CAT/C/GC/3 din 2012) available at http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf.

[12] Pablo De Grieff "Justice and Reparations", in Pablo de Grieff (ed) *The handbook of Reparations* (Oxford: Oxford University Press, 2006), pp. 451- 477.

the sums of money/restitutions themselves satisfy the needs of those who were abused under the former regime. In Romania, although two Truth Commissions functioned here, restitutions are not seen as reparatory programs stipulated in their reports, from various reasons, one of which being the period in which the two commissioned functioned. *The third characteristic* of property restitutions is related to certain aspects of interpreting the European/national legislation, but especially to the manner in which they were speculated by former communist states. Significant documents such as the Universal Declaration of Human Rights or the EU Charter of Fundamental Rights mention the right to property but they do not make edifying specifications regarding the right to restitution, thus creating a slippery and interpretable space. Moreoever, many of the present Constitutions consider that property represents a protected right, despite the fact that restitution is not constitutionally regulated. Property is always uncertain in internal law, due to the governments' freedom to regulate it at any moment.[13] *The fourth characteristic* is connected to a series of limitations in the restitution process, limitations imposed by States themselves and that have fragmented the reparatory programs and steered them away from the concrete form of the compensation's size, from their initial mission. Among these limitations we can mention: exacting threshold; the lack of accord regarding types of compensations – the actual restitution and/or vouchers for new acquisition; the manner in which the competent authorities defined the past, meaning the period covered by the reparations program; the lack of accord regarding the types of goods – mobile/immobile-; the unrealistic deadlines for turning in the files.

For example, experts in the field from Lithuania have agreed upon the fact that these limitations and steerings away from the initial form of what a reparatory program should be are unconstitutional.[14] Also, as outlined in the no. 39794/98 to the ECHR, *Peter Gratzinger and Eva Gratzingerova v. the Czech Republic*, limited prescription deadline acts as a barrier in the practicing of the plaintiffs' rights[15]. As a result of legislative incoherence, of deadline postponements by courts, of the aforementioned limitations, former owners went to CEDO, this being another *common characteristic* regardting property restitutions in former communist countries.

It can be ascertained that property restitutions in the region only partially fulfilled the characteristics of a reparatory measure, due to the unilateral treatment implemented both by the governments of post-communist countries to this policy, and by the limits imposed by authorized agencies and institutions in the processes of reconvering goods and properties.

4. Reparations restitutions as a reparatory measure in Romania

The European Convention on Human Rights was adopted by member states of the European Council in Rome, on 04.11.1950 and came into effect on 03 September 1953. It was supplemented by 15 additional Protocols that were subsequently adopted by contractant states of which Protocols 15 and 16 have not come into effect yet. Romania ratified the Convention for the protection of human rights and fundamental freedoms through *Law no. 30 from 18 May 1994*[16] regarding the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the additional protocols to this convention, published in the Official Monitor no. 135 from 31 May 1994, in effect since 20 June 1994. Furthermore, Law no. 30 from 18 May 1994 ratified as well the additional Protocol no. 1 to the Convention for the protection of human rights and fundamental freedoms that was signed in Paris, on 20 March 1952 and that came into effect on 18 May 1954.

By adhering to CEDO, Romania took on the obligation to guarantee the protection of rights and freedoms regulated by the Convention of all individuals found under its jurisdiction. The connection between internal law and international protection of human rights is regulated by art. 11 from Title I entitled "General Principles" and in art. 20 from Title II entitled "Fundamental rights, freedoms and obligations" in Chapter I entitled "Common dispositions" from the revised Romanian Constitution.

To this end, art 11[17] (International and internal law) from the Romanian Constitution states that:

"The Romanian state pledges itself to fulfill literally and in good faith the obligations it has from the treaties of which it is part. The treaties ratified by Parliament, according to law, are part of internal law. In the case where a treaty Romania will become a part of comprises dispositions contrary to the Constitution, its ratification can take place only after the revision of the Constitution."

---

[13] Eric A. Posner & Adrian Vermeule "Transitional Justice as Ordinary Justice", *Harvard Law Rewiev*, 2003, 117(3): 761-825.

[14] Kuti Ksongor, "Post-Communist Property Reparations: Fulfilling the Promises of the Rule of Law", *Acta Juridica Hungarica*, 2007, 48(2): 169-188.

[15] Grand Chamber Decision as to the Admissibility of Application no. 39794/98 by Peter Gratzinger and Eva Gratzingerova against the Czech Republic, available at http://echr.ketse.com/doc/39794.98-en-20020710/view/, accessed March 2019.

[16] *Legea nr. 30/1994 privind ratificarea Convenției pentru apărarea drepturilor omului și a libertăților fundamentale și a protocoalelor adiționale la această convenției*, published in Monitorul Oficial al României, in force since 31.05.1994, available at https://lege5.ro/Gratuit/he2tgmi/legea-nr-30-1994-privind-ratificarea-conventiei-pentru-apararea-drepturilor-omului-si-a-libertatilor-fundamentale-si-a-protocoalelor-aditionale-la-aceasta-conventie, accessed April 2019.

[17] Articolul 11, *Constituția României*, republished, *Monitorul oficial al României*, part I, no. 767/31.10.2003, available at https://www.presidency.ro/ro/presedinte/constitutia-romaniei, accessed April 2019.

Art. 20[18] (International treaties on human rights) from the Romanian Constitution states that:

"1) The constitutional dispositions regarding citizens' rights snd freedoms will be interpreted and implemented in accordance to the Universal Declaration of Human Rights, to the pacts and other treaties of which Romania is a part. 2) If there is disagreement between pacts and treaties regarding fundamental human rights, of which Romania is a part, and internal laws, international regulations have priority, with the exception of the case where the Constitution or internal laws contain more favorable dispositions. "

From the interpretation of these constitutional provisions and taking into acount as well the *decision no. 146 from 14 July 2000*[19] of the Constitutional Court, it emerges that CEDO is part of internal law and it is directly implemented, similar to any other law in Romania, with the distinction that the former has priority before internal laws that are in disagreement with the provisions of the Constitution.

The right to property represents a fundamental right for any individual, being enlisted together with the other rights and freedoms in the Constitution, in laws and international acts. The protection and guarantee of the right to private property is consacrated in art. 44 from the Romanian Constitution entitled *The right to private property*. According to the text, this right is not an absolute right but it can involve certain limitations, while the content and limits of the right to private property are established through law.[20] References regarding the right to private property are found as well in art. 136[21] from Title VI entitled *The economy and public finances*, namely:

"1) Property is public or private. ... 6) Private property is inviolable, under the conditions of the organic law."

The Universal declaration of human rights, adopted in 1948 by the General Assembly of the United Nations states in art. 17 that:

"Everyone has the right to own property alone as well as in association with others ... No one shall be arbitrarily deprived of his property" [22]

Art. 1 from the first additional Protocol to CEDO[23] entitled "Protection of property" stipulates that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

Art.17[24] from the EU Charter of fundamental rights (UECFR) states that:

"Right to property. (1) Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest. (2) Intellectual property shall be protected."

A turning point in regard to both private property and the right to have it was represented by the instatement of the communist regime in Romania, when normative acts were adopted, by means of which the process of taking possession of buildings from private property and transfering them to state property was regulated. This process subtends a series of abusive measures first of all because they violated provisions from the Constitution that was in effect at that time, those from the *Universal Declaration of Human Rights from December 1948*, from *the International Covenant on Economic, Social and Cultural Rights*, and in the *International Covenant on Civil and Political Rights.* Second of all, abusive was also the manner in which these dispossession provisions were implemented and namely: not giving compensations to the owner, not publishing the acts regarding the taking over of properties by the state.

The post-1989 reparatory policies targeted both the rectification and attenuation of the abuses of previous regimes, one of the measures being the adoption of laws with a reparatory character in matters of buildings taken over abusively by the state during the communist regime in Romania. Out of these, we mention the Law on land resources no 18/1991, Law no. 169/1997 for changing and supplementing the Law on land resources no 18/1991, Law no. 1/2000 for the restoration of the right to property on agricultural and forests lands, required according to Law on land resources no 18/1991 and to Law no. 169/1997, Law no. 10/2001 on the judicial state of certain buildings

---

[18] Articolul 20, Constituția României … op.cit.

[19] *Decizia nr. 146 din 14 iulie 2000 referitoare la excepția de neconstituționalitate a dispozițiilor art. 291 alin. 3 din Codul de procedură penală, published in Monitorul Oficial al României*, Part I, no. 566/15.11. 2000, available at http://legislatie.just.ro/Public/DetaliiDocumentAfis/25044, accessed April 2019.

[20] Articolul 44, Constituția României … op.cit.

[21] Articolul 136, Constituția României ... op.cit.

[22] *Declaratia universala a drepturilor omului din 10 decembrie 1948*, Articolul 17, published în Broșura din 10 decembrie 1948, available http://www.anr.gov.ro/docs/legislatie/internationala/Declaratia_Universala_a_Drepturilor_Omului.pdf, accessed March 2019.

[23] Articolul 1, Convenția CEDO - Protocolul 1, available at https://jurisprudentacedo.com/Conventia-CEDO/Protocolul-1.html, accessed April 2019.

[24] *Carta Drepturilor fundamentale a Uniunii Europene* (2012/C 326/02), available at https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012P/TXT&from=RO, accessed April 2019.

taken over abusively during 6 March 1945-22 December 1989, Law no. 165/2013 on measures for finalising the restitution process, in kind or in equivalent, of buildings taken over abusively during the communist regime in Romania. To these, we can add the normative acts that exclusively regulate certain categories of buildings, namely GEO no. 83/1999 on the restitution of goods that belonged to communities of citizens part of national minorities in Romania and GEO no. 94/2000 on the restitution of real estates that belonged to religious cults in Romania.

The present paper will concentrate on the impact generated especially by two of the reparatory laws: **Law no. 10/2001** on the judicial state of certain buildings taken over abusively during 6 March 1945-22 December 1989, published in the Official Monitor no. 75 from 14 February 2001; **Law no. 165/2013** on measures for finalising the restitution process, in kind or in equivalent, of buildings taken over abusively during the communist regime in Romania, published in the Official Monitor no. 278 from 17 May 2013.These laws represent framework laws in matters of buildings taken over abusively by the state and special laws in connection to Law 287/2009 on the Civil Code[25] and Law no. 213 from 17 November 1998[26] on public property and its judicial state.

Law no. 10/2001 on the judicial state of certain buildings taken over abusively during 6 March 1945-22 December[27] 1989, was republished in the Official Monitor, Part I no. 798 from 02 September 2005 and modified through the following acts: Rectification 2005; GEO no. 209/2005; Law no. 74/2007; Law no. 1/2009; Law no. 302/2009; Law no. 202/2010; Law no. 165/2013; Law no. 187/2012; Law no. 135/2014; GEO no. 98/2016. Art. 1 par. 1 from this normative act indicates the goods that fall under the incidence of this special law and the manner of their restitution, namely in kind or in equivalent. From the content of par. 1 and 2 from art. 1 it results that the principle of the restitution in kind is explicitly established, the restitution in equivalent intervening only when the restitution in kind is no longer possible. The principle of the prevalence of the restitution in kind is stipulated as well in pt. 1, letr. a from the the Methodological norm for the application of Law no. 10/2001, approved through GD no. 250/2007.[28] The provisions of art. 21-23 from Law no. 10/2001 establish the administrative procedure precursory of the notification to obtain restitution in kind or through equivalent by the rightful person, as well as the judiciary control on the decisions or dispositions issued within this procedure.

Thus, law no. 10/2001 offers to interested parties both access to an administrative procedure, and to a legal procedure when required.

In its interpretation and application, Law no. 10/2001 has generated numerous litigations, both in ***national courts*** and at **CEDO**. Although Law no. 10/2001 came into effect on 14 February 2001, even at present, after 18 years, there are still restitution requests formulated by individuals who allege they are entitled in the administrative procedure, with some of the requests recorded at national courts, while others at **CEDO**. In the administrative procedure, the notifications formulated by individuals who allege to be entitled to restitution were either not resolved by authorities or were resolved with significant delay. National courts have interpreted and applied the provisions of the law in different ways, so that there were many situations where there was no unitary point of view of identical situations.

As a result, in order to ensure a singular interpretation and application of the law by all courts, **The High Court of Cassation and Justice** gave its verdict on the matter of those legal issues that were resolved differently, through definitive judicial decisions, by the courts. Thus the **HCCJ** has intervened with the purpose of unifying the judicial principles through decisions given in the interest of the law, decisions that are mandatory from the moment they are published in the Romanian Official Monitor, Part I.[29] Thus, *according to Decision no. 20/2007* [30] the recourse was admitted in the interest of the law and it's been established in applying the dispositions of art. 26 par. (3) from Law no. 10/2001, republished, the court has the competence to resolve in essence not only the appeal filed against the decision/disposition to reject

[25] *Legea nr. 287/2009 privind Codul Civil*, republished in Monitorul Oficial al României nr. 505/15.07.2011, available at http://legislatie.just.ro/Public/DetaliiDocument/109884, accessed April 2019.

[26] *Legea nr. 213/1998 din 17 noiembrie 1998 privind bunurile proprietate publică*, published in Monitorul Oficial al României nr. 448/24.11.1998, available at http://legislatie.just.ro/Public/DetaliiDocument/16209, accessed April 2019.

[27] *Legea nr. 10/2001 privind regimul juridic al unor imobile preluate în mod abuziv în perioada 6 martie 1945 - 22 decembrie 1989*, published in Monitorul Oficial al României, in force since 14 februarie 2001, applicable form since 02. 09. 2005, available at https://lege5.ro/Gratuit/hezdmmbv/legea-nr-10-2001-privind-regimul-juridic-al-unor-imobile-preluate-in-mod-abuziv-in-perioada-6-martie-1945-22-decembrie-1989, accessed April 2019.

[28] Published in Monitorul Oficial al României nr. 227/3.04.2007, which has abrogated GEO. no. 498/2003, published in Monitorul Oficial nr. 324/14.03. 2003, act which has abrogated GEO. no. 614/2001, published in Monitorul Oficial no. 379/11.01.2001.

[29] Articolul 329 alin. 3 din Codul de procedură civilă 1865; Articolul 517 alin. 4 din Cod procedură civilă 2010, available at http://legislatie.just.ro/Public/DetaliiDocument/39374, accessed March 2019.

[30] Decizia nr. 20/2007 privind examinarea recursului în interesul legii, declarat de procurorul general al Parchetului de pe lângă Înalta Curte de Casație și Justiție, cu privire la aplicarea dispozițiilor art. 26 alin. (3) din Legea nr. 10/2001, republicată, cu modificările și completările ulterioare, în legătură cu stabilirea competenței instanței de a judeca pe fond contestația formulată împotriva deciziei/dispoziției de respingere a cererilor prin care se solicită restituirea în natură a imobilelor preluate abuziv sau în cazul refuzului nejustificat al entității deținătoare de a răspunde la notificare, în vigoare de la 12 noiembrie 2007, published in Monitorul Oficial, Part I no. 764/12.11. 2007, available at https://lege5.ro/Gratuit/geydeobwgq/decizia-nr-20-2007-privind-examinarea-recursului-in-interesul-legii-declarat-de-procurorul-general-al-parchetului-de-pe-langa-inalta-curte-de-casatie-si-justitie-cu-privire-la-aplicarea-dispozitiilor-, accessed April 2019.

the requests through which the solicitor requests compensation in the form of real estate that had been abusively seized, but also the action of the entitled person in the case of the unjustified refusal by the owning entity to respond to the notification of the interested party. Another example is *Decision no. 52/2007*[31] through which recourse was admitted in the interest of the law and it's been established that the stipulations found in art. 16 and the next ones from Law no. 247/2005, regarding the administrative procedure for granting indemnities, does not apply for decisions/dispositions given prior to the law coming into effect, appealed within the terms stipulated by Law no. 10/2001, as it has been modified by Law no. 247/2005.

Under the same category also falls Decision no. *33/2008*[32] through which recourse in the interest of the law has been admitted and has been established with respect to the actions based on the dispositions of the common law, having as an objective the reclaiming of property that was seized in an abusive manner from March 6 1945 to December 22 1989, formulated after Law no. 10/2001 came into effect and were unevenly resolved by the courts. The decision mentions that the competition between the special and the general law is resolved in favor of the special law, according to the principle *specialia generalibus derogant*, even if it isn't expressly stated in the special law. In the case where inconsistencies are noticed between the special law, respectively Law no. 10/2001 and the European convention for human rights, the latter has priority. This priority can be accorded in the case of an act of reclamation, based on common rights, to the extent to which another property law or the security of the judicial report are not thus affected. *Decision no. 1/2015*[33] through which recourse was admitted in the interest of the law establishes, with respect to the interpretation and application of art. 50 par. (2) and 50 ind. Par. (1) of Law no 10/2001, republished, together with subsequent additions. It's been decided that the court that has the power to resolve a monetary request based on market value, established according to art. 50 ind. 1 par. 1 of Law 10/2001, republished, together with subsequent modifications and additions, can grant the plaintiff the up-to-date price paid at the moment when the sale-purchase contract was signed in accordance with Law no. 112/1995, together with subsequent modification, in the case where it has been established that the conditions stipulated in art. 50 par. 2 of Law no. 10/2001, republished, together with subsequent modifications and additions, are fulfilled only if a head of claim has been formulated in this respect.

In addiction, the *HCCJ* has contributed to assuring the unitary applicability and interpretation of the law by courts by issuing rulings beforehand in order to resolve certain matters of law [34]. In this sense *decision no. 5/2015*[35] is mentioned through which the complaints formulated with respect to the pronouncing of a decision were filed and it has been established that: in interpreting and applying the dispositions of art. 26 par. 3 of Law no. 10/2001, republished, together with subsequent modifications and additions, in correlation with art. 4, art. 33-35 of Law 165/2013 it *is* premature to request an arraignment with respect to the solution

[31] Decizia nr. 52/2007 privind examinarea recursului în interesul legii, formulat de procurorul general al Parchetului de pe lângă Înalta Curte de Casație și Justiție, referitor la problema aplicabilității dispozițiilor cuprinse în titlul VII din Legea nr. 247/2005 privind reforma în domeniile proprietății și justiției, precum și unele măsuri adiacente, privind procedura administrativă pentru acordarea despăgubirilor în cazul deciziilor/dispozițiilor emise anterior intrării în vigoare a acelei legi, contestate în termenul prevăzut de Legea nr. 10/2001 privind regimul juridic al unor imobile prelate în mod abuziv în perioada 6 martie 1945-22 decembrie 1989, astfel cum aceasta a fost modificată ulterior, in force since 22.02. 2008 published in Monitorul Oficial, Part I no. 140/22.02.2008, available at https://lege5.ro/Gratuit/geytinzqgm/decizia-nr-52-2007-privind-examinarea-recursului-in-interesul-legii-formulat-de-procurorul-general-al-parchetului-de-pe-langa-inalta-curte-de-casatie-si-justitie-referitor-la-problema-aplicabilitatii-, accessed April 2019.

[32] Decizia nr. 33/2008 privind examinarea recursului în interesul legii, declarat de procurorul general al Parchetului de pe lângă Înalta Curte de Casație și Justiție, cu privire la admisibilitatea acțiunii în revendicare, întemeiată pe dispozițiile dreptului comun, având ca obiect revendicarea imobilelor preluate în mod abuziv în perioada 6 martie 1945 - 22 decembrie 1989, formulată după intrarea în vigoare a Legii nr. 10/2001- Secțiile Unite, published in Monitorul Oficial al României, in force since 23.02. 2009, available at https://lege5.ro/Gratuit/gezdanbvg4/decizia-nr-33-2008-privind-examinarea-recursului-in-interesul-legii-declarat-de-procurorul-general-al-parchetului-de-pe-langa-inalta-curte-de-casatie-si-justitie-cu-privire-la-admisibilitatea-actiunii, accessed April 2019.

[33] Decizia nr. 1/2015 privind examinarea recursului în interesul legii formulat de Colegiul de conducere al Înaltei Curţi de Casaţie şi Justiţie cu privire la posibilitatea instanţei de judecată învestite cu soluţionarea unei acţiuni în plata preţului de piaţă, întemeiată pe prevederile art. 50[1] din Legea nr. 10/2001 privind regimul juridic al unor imobile preluate în mod abuziv în perioada 6 martie 1945-22 decembrie 1989, republicată, cu modificările şi completările ulterioare, de a acorda reclamantului, în lipsa unui capăt de cerere distinct, preţul actualizat plătit la momentul încheierii contractului de vânzare-cumpărare în temeiul Legii nr. 112/1995 pentru reglementarea situaţiei juridice a unor imobile cu destinaţia de locuinţe, trecute în proprietatea statului, cu modificările ulterioare, în cazul în care constată ca fiind îndeplinite condiţiile prevăzute de dispoziţiile art. 50 alin. (2) din Legea nr. 10/2001, republicată, cu modificările şi completările ulterioare, in force since 25.03.2015, published in Monitorul Oficial al României I, 197/25.03.2015, available at https://www.legalis.ro/2015/03/27/ril-admis-interpretarea-si-aplicarea-dispozitiilor-art-50-alin-2-si-501-alin-1-din-legea-nr-102001/, accessed May 2019.

[34] *Articolul 521, Cod procedură civilă 2010*, available at https://lege5.ro/Gratuit/gyztaojtgy/art-521-continutul-si-efectele-hotararii-codul-de-procedura-civila?dp=g43temjvgyytg, accessed April 2019.

[35] Decizia nr. 5/2015 privind examinarea sesizărilor formulate de Curtea de Apel Bucureşti - Secţia a IV-a civilă, în Dosarul nr. 37.758/3/2013, şi Curtea de Apel Bucureşti - Secţia a III-a civilă şi pentru cauze cu minori şi de familie, în Dosarul nr. 30.602/3/2013, privind pronunţarea unei hotărâri prealabile pentru dezlegarea modului de interpretare şi aplicare a dispoziţiilor art. 26 alin. (3) din Legea nr. 10/2001 privind regimul juridic al unor imobile preluate în mod abuziv în perioada 6 martie 1945-22 decembrie 1989, republicată, cu modificările şi completările ulterioare, art. 1.528 din Codul civil, în corelare cu dispoziţiile art. 4, art. 33 alin. (1), art. 34 şi art. 35 din Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, cu modificările şi completările ulterioare, in force since 23.04.2015, published in Monitorul Oficial al României I no. 272/23.04. 2015, available at http://legislatie.just.ro/Public/DetaliiDocumentAfis/167356, accessed May 2019.

on the main issue of the notification that has been unresolved by the holding entity, a request that has been introduced after Law no. 165/2013 came into effect but prior to the fulfillment of terms of the previous procedure that have been regulated by this normative act, *coming into effect on 23 April 2015, published in the Official Monitor, part I no. 272 from 23 April 2015*. In addition *Decision no. 81/2017*[36] through which the complaint was filed has established that: in the interpretation and application of the dispositions of art. 42 par. (3) of Law no. 10/2001 republished, together with subsequent modification and additions, apart from the right to preemption, tenants also have the right to opt for purchasing living spaces, a right that is stipulated in art. 9 par. (1) of Law no. 112/1995[37] for the settlement of judicial situations of living spaces, taken by the state, together with subsequent modifications.

The Constitutional Court in turn, has decided in regards to the unconstitutionality of certain provisions from Law no. 10/2001, by conducting an ulterior control of constitutionality by means of the unconstitutionality exception, invoked before the courts, its decisions being definitive and generally obligatory[38]. Thus, through *Decision no. 830/2008*[39] the unconstitutionality exception was admitted for the dispositions from art. 1 pt. 60 from title I from Law no. 247/2005 on the reform in the field of properties and justice, such as some adjacent measures. The exception was raised *ex officio* by the High Court of Cassation and Justice – Civil Chamber and intellectual property and it was ascertained that by repealing the syntagm *buildings taken over with valid title* from the content of art. 29 par. (1) from Law no. 10/2001, the dispositions from art. 15 par. (2) and art. 16 par. (1) from the Constitution are violated. Another decision is *841/2015*[40], through which the unconstitutionality exception was admitted and it was ascertained that the provisions of art. 5 par. (1) from Law no. 10/2001 are constitutional as long as they do not allow restitution in kind or awarding reparatory measures by equivalent to individuals who come under the incidence of accords signed by Romania with other states regarding regulating the financial problems in suspension enumerated in Appendix 1 to Law no. 10/2001.

Considering the successive legislative modifications, non-unitary practice, numerous requests were registered at ***CEDO*** against Romania through which what was invoked was the violation of the right to property guaranteed by art. 1 of the additional Protocol no. 1 of the European Convention for human rights.

The plaintiffs have claimed *the violation of the right to property,* either on the basis of fact that the property that they owned was sold by the state to third parties of good faith, either on the basis of the fact that they found themselves in the impossibility of fully recovering their good even when they had at their disposal a definitive motion to force the state to apply the court's decision. In the cases where it has been brought to notice, the Court has analyzed whether the plaintiffs own/don't own a "good" in the sense of art. 1 of Protocol no. 1, whether any violation of property rights are noticed/not noticed to exist, whether the violations of the right to property are justified/not justified. The court has been confronted with such phrases as "state title", "the sale of another's property", "the good-faith of the buyer", "reclaim", "the theory of the appearance in the law". In this sense the *Decision from 1 December 2015 in the case of Păduraru versus Romania*[41], as well as *the Decision in the case of Străin et al. versus Romania* [42] In observing these realities, the Court has restated that the only obligation, according to art. 19 of the Convention, is to ensure the respecting of the commitments that result from the Convention for the contracted parties. The Court has shown that it *is*

[36] Decizia nr. 81/2017 privind examinarea sesizării formulate de Tribunalul Cluj - Secția civilă în Dosarul nr. 3.633/211/2016 în vederea pronunțării unei hotărâri prealabile, in force since 18.01.2018, published in Monitorul Oficial, Part I no. 49/ 18.01. 2018, available at https://lege5.ro/Gratuit/gi3dmnrrgmya/decizia-nr-81-2017-privind-examinarea-sesizarii-formulate-de-tribunalul-cluj-sectia-civila-in-dosarul-nr-3633-211-2016-in-vederea-pronuntarii-unei-hotarari-prealabile, accessed May 2019.

[37] Legea nr. 112/1995 pentru reglementarea situației juridice a unor imobile cu destinația de locuințe, trecute în proprietatea statului, published in Monitorul Oficial al României, in force since 28.01.1996, available at https://lege5.ro/Gratuit/haydinq/legea-nr-112-1995-pentru-reglementarea-situatiei-juridice-a-unor-imobile-cu-destinatia-de-locuinte-trecute-in-proprietatea-statului, accessed April 2019.

[38] Articol 31, Legea nr. 47/1992 privind organizarea și funcționarea Curții Constituționale, published in Monitorul Oficial no. 807/3.12.2010, republished, available at https://www.ccr.ro/Legea-nr-471992, accessed April 2019.

[39] Decizia nr. 830/2008 referitoare la admiterea excepției de neconstituționalitate a dispozițiilor art. I pct. 60 din titlul I al Legii nr. 247/2005 privind reforma în domeniile proprietății și justiției, precum și unele măsuri adiacente, in force since 24.07.2008, published in Monitorul Oficial, Part I no. 559/24.07. 2008, available at https://lege5.ro/Gratuit/geytaojvga/decizia-nr-830-2008-referitoare-la-admiterea-exceptiei-de-neconstitutionalitate-a-dispozitiilor-art-i-pct-60-din-titlul-i-al-legii-nr-247-2005-privind-reforma-in-domeniile-proprietatii-si-justitiei-pr, accessed April 2019.

[40] Decizia nr. 841/2015 referitoare la admiterea excepției de neconstituționalitate a prevederilor art. 5 alin. (1) din Legea nr. 10/2001 privind regimul juridic al unor imobile preluate în mod abuziv în perioada 6 martie 1945 - 22 decembrie 1989, in force since 12.02. 2016, published in Monitorul Oficial, Part I no. 110/12.02. 2016.

[41] *Hotărârea în Cauza Păduraru împotriva României*, Cerere no. 63252/2000, ECHR final Judgment/01.03.2006, published in Monitorul Oficial al României, Part I no. 514/14.06.2006, available at https://hudoc.echr.coe.int/eng#{"fulltext":["\"CASE%20OF%20PĂDURARU%20v.%20ROMANIA\""],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-71444"]}, accessed May 2019.

[42] *Hotărârea în cauza Străin și alții împotriva României*, Cerere no. 57001/2000, final Judgment ECHR/30.11.2005, published in Monitorul Oficial al României/02.02. 2006, available at https://hudoc.echr.coe.int/eng#{"fulltext":["cauza%20Străin%20și%20alții%20împotriva%20României"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-122574"]}, accessed April 2019.

not obliged to substitute the internal courts, underlining the fact that interpreting internal law encumbers first of all national authorities and in particular courts. In this sense, one can consult the decisions in the cases *Garcia Ruiz versus Spain*[43] and *Păduraru versus Romania* [44].

In its jurisprudence, *repeatedly*, the Court has decided that art. 1 of the First Protocol addendum to the Convention for the protection of human rights and of fundamental liberties contains three distinct norms[45]:

"the first, established in the first thesis of the first paragraph, is of a general nature and lays out the principle for respecting property; the second, found in the second thesis of the same paragraph, refers to the privation of property and subject it to certain conditions; the third norm, registered with general intent. The second and third rules refer to specific examples, where the rights to property were touched upon, rights which therefore have to be interpreted based on the principle that has been consecrated by the first".

With respect to the *existence of a "good"*, the Court has constantly states that the notion of "goods" may include both "actual goods", as well as patrimonial valuables, including debt on the basis of which the plaintiff can claim to have had at least a "legitimate hope" of obtaining effective benefit of the right to property. On the other hand, the hope of recognizing the continuation of an old right to property that has long been impossible to effectively exercise cannot be considered a "good" in the sense of art. 1 of Protocol no. 1. In this sense, one may consult the cases *Prince Hans-Adam II of Lichtenstein versus Germany*[46], *Draon versus France*[47], *Bock and Palade versus Romania* [48], *Gratzinger and Gratzingerova versus the Czech Republic* [49].

With respect to the *justified intrusion*, the Court analyzed whether the intrusion is "provided by law", the purpose of the intrusion and scope of the intrusion. In its jurisprudence, the Court has shown that art. 1 of Protocol no. 1 imposes, before anything else, that an intrusion by public authorities in the property rights should be legal. The principle of law implies also the existence of norms pertaining to internal law, sufficiently accessible, precise and predictable. Relevant in this situation are the cases *Hentrich versus France*[50], and *Lithgow et. al. versus the UK*[51]. Nevertheless, the Court has limited competence when verifying whether internal law is respected, as has been mentioned in the cases *Hokansson and Sturesson versus Sweden*[52], *Străin et. al. versus Romania*[53], *Păduraru versus Romania* [54].

In a series of law suits against Romania, the Court has noticed that the sale by the state to third parties in good faith of property that had belonged to someone else, represents a privation of goods, even in those cases when such a sale occurs prior to the definitive recognition by the justice system of the right to property of the respective person. Such a privation, combined with a total lack of compensation, is contrary to art. 1 of Protocol no. 1. This situation is also encountered in the following cases: *Străin et. al. versus Romania*[55], *Katz versus Romania*[56]; *Porțeanu versus Romania*[57]; *Buttu and Bobulescu versus Romania*[58]. Furthermore, in the case *Păduraru versus Romania*[59], the Court ruled

---

[43] *Case of Garcia Ruiz v. Spain*, Application no. 30544/96, ECHR Judgement/ 21.01. 1999, available athttps://hudoc.echr.coe.int/eng#{"display":[2],"languageisocode":["ENG"],"appno":["30544/96"],"itemid":["001-58907 accessed April 2019.

[44] *Hotărârea în Cauza Păduraru împotriva României* … op.cit.

[45] *Articolul 1, Convenția CEDO - Protocolul 1* … op.cit.

[46] *Case of Prince Hans-Adam II of Liechtenstein v. Germany*, Application no. 42527/1998, ECHR Judgment/21.07.2001, available at https://www.legal-tools.org/doc/4c1354/pdf/, accessed April 2019.

[47] *Case of Draon v. France*, Application no. 1513/2003, ECHR Judgement/21.06.2006, available at https://hudoc.echr.coe.int/eng#{"itemid":["001-75905"]}, accessed April 2019.

[48] *Cauza Bock și Palade împotriva României*, Cererea nr. 21740/02, 15.02. 2007, definitivă 15/05/2007, Strasbourg, available http://ier.gov.ro/wp-content/uploads/cedo/Cauza-Bock-și-Palade-împotriva-României.pdf, accessed April 2019.

[49] Case of *Peter Gratzinger and Eva Gratzingerova v the Czech Republic*, Application no. 39794/1998, Admissibility ECHR/ 10.07. 2002, available at http://echr.ketse.com/doc/39794.98-en-20020710/view/, accessed April 2019.

[50] *Case of Hentrich v. France*, Application no. 13616/88, ECHR Judgment/ 22.09.1994, available at https://www.legal-tools.org/doc/5513d6/pdf/, accessed April 2019.

[51] *Case of Lithgow and Others v. The United Kingdom*, Applications no. 9006/80; 9262/81; 9263/81; 9265/81; 9266/81; 9313/81; 9405/81, ECHR Judgment/8.07.1986, available at https://www.legal-tools.org/doc/21e1dd/pdf/, accessed April 2019.

[52] *Case of Håkansson and Sturesson v. Sweden,* Application no. 11855/85, ECHR Judgment/21.02.1990, available at http://cambodia.ohchr.org/sites/default/files/echrsource/Håkansson%20&%20Sturesson%20v.%20Sweden%20[21%20Feb%201990]%20[EN].pdf, accessed April 2019.

[53] *Hotărârea în cauza Străin și alții împotriva României … op.cit.*

[54] *Hotărârea în Cauza Păduraru împotriva României … op.cit.*

[55] Hotărârea în cauza Străin și alții împotriva României … op.cit.

[56] Hotărârea din Cauza Katz împotriva României, Cerere nr. 29739/2003, Hotărâre ECHR/20.01.2009, available at https://jurisprudentacedo.com/Cauza-Katz-c.-Romaniei-Case-nationalizate.-Hotarare-pilot.-Obligatiile-statului.html, accessed March 2019.

[57] Hotărârea în Cauza Porțeanu împotriva României, Cererea nr. 4596/2003, Hotărârea definitivă ECHR/16.05. 2005, published in Monitorul Oficial, Part I, no. 783/15.09. 2006, available at https://hudoc.echr.coe.int/eng#{"itemid":["001-122755"]}, accessed May 2019.

[58] Hotărârea în Cauza Buttu și Bobulescu împotriva României (no. 2), Cererea no. 20.532/2002, Hotărârea ECHR/7.02.2008, published in Monitorul Oficial al României, Part I no. 613/20.08.2008, available a https://hudoc.echr.coe.int/eng#{"fulltext":["Buttu%20and%20Bobulescu%20v."],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-122814"]}, accessed May 2019.

[59] Hotărârea în Cauza Păduraru împotriva României … op.cit.

that the state did not fulfill its positive obligation to react in a coherent and timely manner in regards to the general real interest of the return or sale of property that had come under its possession, by virtue of the decrees of nationalization. At the same time, the Court appreciated that the general uncertainty thus created reverberated back to the plaintiff, who found themselves in the impossibility of recovering their property in its entirety, even though they were in possession of a court order that obligated the state to return it to them. Similar situations may be found in the cases *Togănel and Grădinaru versus Romania* [60], *Ruxandra Ionescu versus Romania* [61]; *Johanna Huber versus Romania* [62], *Fara versus Romania* [63].

In 2010. The Court observed that it had registered requests against Romania similar to those requests that it had settled beforehand and through which it had noticed the violation of art. 6 and 1 of the Convention and art. 1 of Protocol no. 1, although through the rulings *Viașu*[64], *Faimblat*[65] *and Katz*[66] it had indicated that the Romanian state should adopt general measures in order to ensure the effective and rapid realization of the right to restitution.

In relation to what has been noticed and in order to prevent new rulings that would note breaches of the Convention to be passed on similar requests, the Court appealed to the application of a ruling pilot-procedure. As a result, on October 22 2010, the Court issued against Romania its first *pilot-ruling*, in the case of Maria Atanasiu et. al. *versus Romania*[67] , Monitor no. 778 on November At the heart of the case are two requests against Romania through which the plaintiffs Maria Atanasiu and Ileana Iuliana Poenaru (request no. 30.767/05) and the plaintiff Ileana Florica Solon (request no. 33.800/06) have called upon the Court, in keeping with art. 34 of the Convention to defend their human rights and fundamental liberties. Through the requests addressed to the administrative authorities and national courts, the author of the complaint and subsequently the plaintiffs themselves requested the return of property that had been unjustly seized by the state during the Communist regime. The plaintiffs utilized administrative and legal procedures, invoking the restitution laws adopted after 1989 or the common law provisos concerning the respect for the right to property.

The Court acknowledged that a lack of response on behalf of the administrative authorities to the restitution requests submitted under Law no. 112/1995 and no. 10/2001, to which are added a lack, throughout the period mentioned, of a plan of attack, had compelled the plaintiffs Atanasiu and Poenaru to suffer through a disproportionate burden, thus touching upon the very substance of their rights of access to a court of law.[68] As a result, they noticed a breach of art. 6 and 1 of the Convention with respect to the plaintiffs Atanasiu and Poenaru. The Court appreciated that, in essence, the fact that the plaintiffs did not receive any compensation yet and have been given no assurances in regards to a date when they will receive any, has laid a disproportionate and excessive burden upon them, which is incompatible with the right to respect for their property, guaranteed under art. 1 of Protocol no. 1.[69] Therefore, they decided that a breach of art. 1 of Protocol no. 1 of the Convention had occurred concerning all plaintiffs. Through the *pilot-ruling*, the courts in Strasbourg had decided that Romania must take measures to ensure effective protection of rights as stipulated in art. 1 and 6 of the Convention and art. 1 of Protocol no. 1, when dealing with all cases that are

[60] Hotărârea în Cauza Togănel și Grădinaru împotriva României, Cererea no. 5.691/2003, Hotărârea ECHR/29.06.2006, published in Monitorul Oficial al României/19.05.2008, availabe at https://lege5.ro/Gratuit/gezdenzrhe/hotararea-in-cauza-toganel-si-gradinaru-impotriva-romaniei-din-29062006, accessed May 2019.

[61] Hotărârea din cauza Ruxanda Ionescu contra României, Cererea nr 2608/2002, Hotărâre ECHR/12.10.2006, published in Monitorul Oficial al României, Part I no. 570/20.08.2007, available https://jurisprudentacedo.com/Ruxandra-Ionescu-c.-Romaniei-Imobil-vandut-de-locatari-Actiune-in-revendicare-Decretul-92/1950.html, accessed May 2019.

[62] Hotărârea în Cauza Johanna Huber împotriva României, Cererea nr. 37296/2004, Hotărârea ECHR/21.02.2008, published in Monitorul Oficial al României no. 677/2.10.2008, available at https://hudoc.echr.coe.int/eng#{"fulltext":["Johanna%20Huber%20împotriva%20României"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-122791"]}, accessed May 2019.

[63] *Hotărârea în Cauza Fara împotriva României*, Cererea nr. 30142/2003, Hotărâre definitive ECHR/14.05. 2008, available at https://hudoc.echr.coe.int/eng#{"fulltext":["Fara%20împotriva%20României"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-123943"]}, accessed May 2019.

[64] Hotărârea în Cauza Viașu împotriva României**,** Cererea nr. 75.951/2001, Hotărâre ECHR/9.12.2008, published in Monitorul Oficial al României nr. 361/29.05.2009, available at https://hudoc.echr.coe.int/eng#{"fulltext":["Cauza%20Viașu%20împotriva%20României"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-122644"]}, accessed May 2019.

[65] Hotărârea în Cauza Faimblat împotriva României, Cererea nr. 23.066/2002, Hotărârea ECHR/13.01.2009, published in Monitorul Oficial al României no. 141/6.03.2009, available at https://hudoc.echr.coe.int/eng#{"fulltext":["Faimblat%20împotriva%20României"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-122603"]}, accessed May 2019.

[66] Hotărârea din Cauza Katz împotriva României … op.cit.

[67] Hotărârea în Cauza Maria Atanasiu și alții împotriva României, Cererile nr. 30.767/2005; 33.800/2006, Hotărâre ECHR/12.10.2010, published in Monitorul Oficial no. 778/22.11.2010, available at https://hudoc.echr.coe.int/eng#{"fulltext":["Maria%20Atanasiu%20și%20alții%20împotriva%20României"],"documentcollectionid2":["GRANDCHAMBER","CHAMBER"],"itemid":["001-122762"]}, accessed May 2019.

[68] Hotărârea în Cauza Maria Atanasiu și alții împotriva României …op.cit. paragraph 123.

[69] Hotărârea în Cauza Maria Atanasiu și alții împotriva României … op.cit. paragraph 193.

similar to that of Maria Atanasiu et. al. *versus Romania* in accordance with the principles that have been consecrated by the Convention, within 18 months from the date when the ruling in question remains final. At the same time, the Court decided to suspend for a period of 18 months from the date when the ruling in question remains final an analysis of all requests that are the result of the same overall issue. In addition, the Romanian state was obligated to pay the plaintiffs Maria Atanasiu and Ileana Iuliana Poenaru the sum of 65000 Euro, for all damages, in addition to any sums that may be due to taxes, to be converted into the local currency of the state against which the complaint had been filed, at the exchange rate for the date when the payment is made. In addition, Romania was obligated to pay the plaintiff Ileana Florica Solon the following sums, to be converted into the local currency of the state against which the complaint had been filed, at the exchange rate for the date when the payment is made: (1) 115000 Euro for all damages, in addition to any sums that may be due to taxes; (ii) 3151.84 Euro, plus any sums that the plaintiff may owe in tax, to cover the cost of litigation.

Romania requested and obtained a continuance until May 12 2013 for the initial deadline, in order to determine an appropriate mechanism that might protect the right to property in accordance with the Convention. In this context, in order for Romania to fulfill its obligation established in the pilot-ruling *Maria Atanasiu et. al. versus Romania*, ***Law no. 165*** was published on May 17 2013 in the Official Monitor no. 278, which was later modified and added to through Law no. 368/2013, GEO no. 115/2013, GEO no. 8/2014, GEO no. 21/2015, GEO no. 65/2015, Law no. 168/2015, GEO no. 66/2015, Law no. 103/2016, GEO no. 98/2016, Law no. 251/2016, Law no. 111/2017, Law no. 149/2017, GEO no. 63/2018 and through Law no. 212/2018. This normative act was adopted in order to finalize the restitution process, in kind or its equivalent, for property that was unjustly seized during the Communist regime in Romania, however *it did not replace the previous restitution laws*, rather it proposed to make them more efficient, to offer an added degree of coherence to the legislative framework with respect to the restitution of property. Art. 2[70] of the law mentions the principles that stand as the basis for granting measures as stipulated in the law:

"a) the principle of prevalence of restitution in kind; b) the principle of equity; c) the principle of transparency of the process through which reparatory measures are established; d) the principles of maintaining just equilibrium between the particular interests of the former owners and the general interest of society."

One can observe that these principles can also be found in part in the *Methodological norms* for unitary application of Law no. 10/2001. The provisos of art.4 of the law that establishes the requests to which this law applies are also relevant. Within the category of requests one can find: requests formulated and submitted within legal timelines, to the legally invested institutions, unresolved when the present law came into effect; the open cases pertaining to the restitution of property taken unjustly; the open cases at CEDO that had been suspended due to the pilot-ruling of October 12 2010, issued in the case *Maria Atanasiu et. al. versus Romania*, when the present law came into effect.

From art. 1 par. 1 and 2 and art. 2 it results that *Law no. 165*[71] has explicitly regulated the principle of prevalence for restitutions in kind, while equivalent restitutions remain incidental in the following two cases: when restitution in kind of the property that was unjustly seized is no longer possible; when the owner has relinquished his rights in accordance with the restitution laws. In this latter case, the only reparatory measure is compensation on the basis of points. However, in the process of applying *Law 165* there were difficulties. Arguments in this sense are the numerous modifications and addendums to the law, as well as court rulings that are constitutionally contentious, when resolving exceptions of unconstitutionality that had been invoked.

The Constitutional Court, in analyzing the accordance to the Constitution of certain provisos of the law, by way of exceptions of unconstitutionality, has ruled the following: Decision no. 88/2014, Decision no. 210/2014, Decision no. 269/2014, Decision no. 686/2014, Decision no. 395/2017, Decision no. 44/2017, Decision no. 671/2017. For example, through *Decision no. 88/2014*[72], the exception of unconstitutionality was deemed admissible and it was noted that the dispositions in art. 4, second thesis, of Law no. 165/2013 are constitutional provided that the terms stipulated by art. 33 of the same law do not also

[70] Articolul 2, Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, published in Monitorul Oficial al României, in force since 16.04.2014, available at https://lege5.ro/Gratuit/gm3dcojzge/legea-nr-165-2013-privind-masurile-pentru-finalizarea-procesului-de-restituire-in-natura-sau-prin-echivalent-a-imobilelor-preluate-in-mod-abuziv-in-perioada-regimului-comunist-in-romania, accessed May 2019.

[71] Decizia nr. 88/2014 referitoare la admiterea excepției de neconstituționalitate a prevederilor art. 4 teza a doua raportate la cele ale art. 33 din Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, published in Monitorul Oficial al României/16.04.2014, available at https://lege5.ro/Gratuit/gm4tkojzgu/decizia-nr-88-2014-referitoare-la-admiterea-exceptiei-de-neconstitutionalitate-a-prevederilor-art-4-teza-a-doua-raportate-la-cele-ale-art-33-din-legea-nr-165-2013-privind-masurile-pentru-finalizarea-p, accessed May 2019.

[72] Decizia nr. 210/2014 referitoare la admiterea excepției de neconstituționalitate a dispozițiilor art. 4 teza a doua raportate la cele ale art. 1 alin. (2) din Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, în redactarea anterioară modificării acestor prevederi prin Legea nr. 368/2013 pentru modificarea și completarea Legii nr. 165/2013, published in Monitorul Oficial al României/05.06.2014, available at https://lege5.ro/Gratuit/gm4tqojvgu/decizia-nr-210-2014-referitoare-la-admiterea-exceptiei-de-neconstitutionalitate-a-dispozitiilor-art-4-teza-a-doua-raportate-la-cele-ale-art-1-alin-2-din-legea-nr-165-2013-privind-masurile-pentru-final, accessed May 2019.

apply to the cases in the matter of the restitution of unjustly seized property, still being discussed in court at the time when the law came into effect. Through Decision no. *210/2014* [73] the exception of unconstitutionality was deemed admissible and it was noted that the dispositions in art. 4, second thesis, in relation to those of art. 1 par. (2) of Law no. 165/2013, in the outline found prior to them being modified by Law no. 368/2013 for the modification and addendum to Law no. 165/2013, are unconstitutional. Through *Decision no. 395/2017*[74] the exception of unconstitutionality was deemed admissible and it was noted that the dispositions of art. 13 par. (1) of Law 165/2013 are constitutional to the extent that the restitution of forest land belonging to the public domain of the state is done only after these lands are passed into the private domain of the state, in accordance with the law. One can also recall *Decision no. 671/2017*[75] through which the exception of unconstitutionality was deemed admissible and where it was observed that the phrase "only after the depletion of the agricultural land affected by the restitutions in kind identified at the local level" in art. 21 par. (4) of Law no. 165/2013 is constitutional to the extent that it does not apply in the hypothetical case where a judge ruling exists that is definite/irreversible through which the courts have granted the restitution of a financial equivalent.

In order to ensure a unitary judicial practice regarding Law no. 165/2013, the ***HCCJ***, in turn, has given its position by means of various decisions on matters of law that had been differently resolved by the courts, through final court decisions. In what follows the decision given in the recourse in the interest of the law will be mentioned. The *Decision no. 12/2018*[76] through which the recourse in the interest of the law was admitted and it was established that in the unitary interpretation and application of the dispositions from art. 1 par. (2) from Law no. 165/2013, with its subsequent changes and additions, corroborated with art. 22^1-22^3 from its norms of application[77], goods different from those mentioned in the list compiled by the certified entity can be granted as compensation as well. This only with the resolution of the request formulated on the basis of Law no. 10/2001, republished, with subsequent changes and additions, if the entitled person proves its available character. Also in order to ensure a unitary judicial practice, the ***HCCJ*** gave its position by means of various decisions related to matters of law, invoked during the judging of a case, and on which the awarding of a solution on the main issue of the given matter on trial depends. In what follows a series of decisions precursory to the deciphering of certain matters of law will be mentioned. *Decision no. 42/2016*[78] through which the formulated complaint was admitted and established in regard to the interpretation and application of the provisions of art. 1 par. (3) and art. 4 thesis I from Law no. 165/2013, with the subsequent changes and additions, by relating to the provisions of art. 1 par. (1) and art. 3 pt. 6 from the same normative act, art. 27 par. (1) from the Law on land resources no. 18/1991, republished, with subsequent changes and additions, and the provisions of art. 1 from Protocol no. 1 additional to the Convention for the protection of human rights and fundamental freedoms.

[73] Decizia nr. 395/2017 referitoare la excepția de neconstituționalitate a prevederilor art. 13 alin. (1) și (3) din Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, published in Monitorul Oficial al României/18.07.2017, available at https://lege5.ro/Gratuit/ge3dombugiya/decizia-nr-395-2017-referitoare-la-exceptia-de-neconstitutionalitate-a-prevederilor-art-13-alin-1-si-3-din-legea-nr-165-2013-privind-masurile-pentru-finalizarea-procesului-de-restituire-in-natura-sau-, accessed May 2019.

[74] Decizia nr. 671/2017 referitoare la excepția de neconstituționalitate a prevederilor art. 21 alin. (4) și art. 41 alin. (5) din Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, published in Monitorul Oficial al României/21.12.2017, available at https://lege5.ro/Gratuit/gi3dimrygi4a/decizia-nr-671-2017-referitoare-la-exceptia-de-neconstitutionalitate-a-prevederilor-art-21-alin-4-si-art-41-alin-5-din-legea-nr-165-2013-privind-masurile-pentru-finalizarea-procesului-de-restituire-in, accessed May 2019.

[75] Decizia nr. 12/2018 privind examinarea recursului în interesul legii declarat de Colegiul de conducere al Curții de Apel Cluj referitor la interpretarea dispozițiilor Legii nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, cu modificările și completările ulterioare (Legea nr. 165/2013), referitoare la posibilitatea acordării în compensare, pentru imobilele preluate abuziv, și a altor bunuri decât cele înscrise pe lista bunurilor întocmită în conformitate cu dispozițiile art. 22^1 alin. (5) din Normele de aplicare a Legii nr. 165/2013, aprobate prin Hotărârea Guvernului nr. 401/2013 (Normele de aplicare a Legii nr. 165/2013), astfel cum au fost completate prin Hotărârea Guvernului nr. 89/2014, published in Monitorul Oficial al României/06.07.2018, available at https://lege5.ro/Gratuit/gi4doojwguyq/decizia-nr-12-2018-privind-examinarea-recursului-in-interesul-legii-declarat-de-colegiul-de-conducere-al-curtii-de-apel-cluj-referitor-la-interpretarea-dispozitiilor-legii-nr-165-2013-privind-masurile, accessed May 2019.

[76] Normele de aplicare a Legii nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România din 19.06.2013, published in Monitorul Oficial al României/29.06.2013, available at https://lege5.ro/Gratuit/gm3tcnzzg4/normele-de-aplicare-a-legii-nr-165-2013-privind-masurile-pentru-finalizarea-procesului-de-restituire-in-natura-sau-prin-echivalent-a-imobilelor-preluate-in-mod-abuziv-in-perioada-regimului-comunist-in, accessed May 2019.

[77] Decizia nr. 42/2016 referitoare la respingerea excepției de neconstituționalitate a dispozițiilor art. 35 alin. (2) din Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, published in Monitorul Oficial al României/26.04.2016, available at https://lege5.ro/Gratuit/geydmmrqha3q/decizia-nr-42-2016-referitoare-la-respingerea-exceptiei-de-neconstitutionalitate-a-dispozitiilor-art-35-alin-2-din-legea-nr-165-2013-privind-masurile-pentru-finalizarea-procesului-de-restituire-in-nat, accessed May 2019.

[78] Decizia nr. 40/2016 privind examinarea sesizării formulate de Curtea de Apel Constanța - Secția I civilă, în vederea pronunțării unei hotărâri prealabile cu privire la art. 41 alin. (1) din Legea nr. 165/2013, published in Monitorul Oficial al României/08.12.2016, available at https://lege5.ro/Gratuit/geztomjqg44a/decizia-nr-40-2016-privind-examinarea-sesizarii-formulate-de-curtea-de-apel-constanta-sectia-i-civila-in-vederea-pronuntarii-unei-hotarari-prealabile-cu-privire-la-art-41-alin-1-din-legea-nr-165-2013, accessed May 2019.

Thus it was decided that in the case where the owner has estranged the rights that he/she is entitled to according to the law on property restitution, and the request for restoration formulated under the law on land resources was not resolved through the issue of the property title or through compensation in the benefit of the original owner, their heirs or to a third party acquirer until Law no. 165/2013 came into effect, the assignee, as a person entitled to reparatory measures, has the exclusive tight to the reparatory measure provided by the new law on reparations consisting in compensations through points according to art. 24 par. (2) - (4) from Law no. 165/2013, with its subsequent changes and additions. The *Decision 40/2016* [79] through which the formulated complaint was admitted and established that the provisions of art. 41 par. (1) from the Law no. 165/2013, with its subsequent changes and additions, are not applicable to the entitled individuals or to their authors who have obtained compensation titles issues by the Central Commission for Establishing Compensations before Law 165/2013 came into effect and who have not followed the administrative procedure stipulated in chapter V^1 section 1 from title VII of Law no. 247/2005 regarding reform in the fields of property and justice, as well as certain adjacent measures, with subsequent changes and additions, not respecting the deadlines regarding capitalizing on these titles. The *Decision no. 25/2016* through which the formulated complaint was admitted and established in regard to the interpretation of the provisions of art. 1 par. (2) in relation to art. 12 from Law no. 165/2013, as they were modified through Law no. 368/2013 meant to modify and supplement Law no. 165/2013, and to art. 22^1 - 22^3 from the *Application norms of Law no. 165/2013*[80]. It was decided that the goods that can be given as compensation are parcels, with or without constructions on them, and constructions that are finalized or not, no matter the category of the buildings for which the notification was formulated under Law no. 10/2001 regarding the judicial state of certain buildings taken over abusively during 6 March 1945-22 December 1989, republished, with its subsequent changes and additions, while the provisions of art. 12 from Law no. 165/2013, with its subsequent changes and additions, are not applicable.

On 29 April 2014, in the case of *Preda et al. versus Romania*[81] (requests no. 9584/02, 33514/02, 38052/02, 2582/03, 29652/03,3736/03,17750/03 și 28688/04), CEDO showed that a judicial and administrative practice in the application of Law no. 165/2013 has not yet been developed, since the law had only been adopted recently. Moreover, it appreciated that the doubts expressed by the plaintiffs in regard to the chancess of success of the new internal legislative instrument cannot change this conclusion. The court thus concluded that, except in the situations where there are several property titles that coexist for the same building, *Law no. 165/2013 offers*, in principle, to Romanians answerable to the law *the possibility to obtain a resolution for the complaints at an internal level*, a possibilitity that the Romanian state should use. However, on 26 February 2019, in the case of *Ana Ionescu et al. versus Romania*[82], CEDO condemned the Romanian state to 2.731.632 Euro for not respecting the right to property. The court concluded that through the application of Law no. 165/2013 an efficient remedy for granting reparatory measures for buildings taken over abusively by the communist state is not ensured.

5. Conclusions

Rehabilitation presupposes the victim's "return" to the state before the abuse, whether it is about recovering social or political rights, or material goods. In Romania, after the 89 Revolution what was desired was the configuration of a democratic society, based on respect for the law and for human rights. The victims who were dispossessed of properties and of their right over them during the communist period, wanted a *restoration of rights* and a *recovery of properties*.

In order to respond to the first objective established in this paper, we will appeal to mentioning Pablo de Grieff, specialist in TJ. He[83] mentions two reasons for which outlining a reparations design cannot be conceived in a limited manner, but by taking into account the society's political and social projects. A first argument would be the fact that the attorneys' work is concentrated around the behaviors that are exceptions to the norms that ensure social order. The law treaties are conceived to individually respond to human rights violations. However, in the case of a totalitarian regime such as the one in Romania, grave human rights violations did not represent an exception, but a generalized and frequent act. This is why the conception of a unilateral, limited system of reparation was not welcome or recommended, its articulation in the social and political framework would be more appropriate. A second argument focuses on the

[79] Decizia nr. 25/2016 privind examinarea sesizării formulate de Curtea de Apel Craiova - Secția I civilă, în Dosarul nr. 2.078/104/2015, in force since 14.11.2016, published in Monitorul Oficial, Part I no. 912/14.11. 2016, available at https://lege5.ro/Gratuit/geztinrxgi3q/decizia-nr-25-2016-privind-examinarea-sesizarii-formulate-de-curtea-de-apel-craiova-sectia-i-civila-in-dosarul-nr-2078-104-2015, accessed May 2019.

[80] Normele de aplicare a Legii nr. 165/2013 … op.cit.

[81] Hotărârea în Cauza Preda și alții împotriva României, Cereri nr. 9584/2002; 33514/2002; 38052/2002; 2582/2003; 29652/2003; 3736/2003,17750/2003; 28688/2004, Hotărâre definitivă ECHR/ 29.07. 2014, published in www.scj.ro no. 223/29.04. 2014, available at https://hudoc.echr.coe.int/eng#{"itemid":["001-142671"]}, accessed May 2019.

[82] Hotărârea în Cauza Ana Ionescu și alții împotriva României, Cererea nr. 19788/03 și alte 18 cereri, Hotărâre ECHR/ 26.02. 2019, available at http://ier.gov.ro/wp-content/uploads/2019/03/Ana-Ionescu-si-altii-impotriva-Romaniei.pdf, accessed May 2019.

[83] Pablo De Grieff "Justice and Reparations"… op.cit.

implementation of the reparations program. In the case where it is supported by the project of societal change, being one of its components, the possibility for it being implemented is higher. The purposes of reparations contain in themselves more than the satisfaction of individual necessities, more than a package of administrative measures. The reparations programs presuppose precisely desiderata such as recognition, civic trust, and solidarity. In the cases of generalized abuses such as those that took place in Romania, the expectations regarding the reparations packages are not to rectify just the particular cases, but also the preconditions of a rule of law, an objective that brings with itself a public, collective dimension, an idea that is found as well in the holistic approach promoted within the General theory of law.

It is true that there were two Truth Commissions that operated in Romania: the Presidential Commission for the Analysis of the Communist Dictatorship in Romania in 2006 for a period of six months, and the International Commission for Studying the Holocaust in Romania in 2004 for a year. Just as it is mentioned in studies on Transitional Justice mention, the truth and reconciliation commissions can generate more positive effects if they are created immediately after the installment of the new regime. The truth and reconciliation commissions represent a central element of the TJ process, which has the role of facilitating according to case, during transitional periods, the crossing from totalitarian regimes to democratic ones, from a state of conflict to a peace one. In the case of Romania, the reports of the two truth commissions recommend individual and collective reparations programs for the victims who were dispossessed of properties in the old regime. Considering that the two commissions operated after 5, and 6 years respectively from the 89 Revolution, it cannot be stated that the recovery of properties was established as a program taken on during a TJ process.

Thus it remained more on the shoulders of those harmed, of the victims of the old regime to put in the efforts to recover their properties. In this endeavor, as it can be deduced from the present analysis, the victims were confronted with a legislation that is in a constant change, with a lack of unity in jurisprudence, with certain syncopes in the implementation of court decisions. In an attempt to become rehabilitated, the victims appealed to both national courts and to CEDO. The present research reveals how in the case of both law no. 10/2001 and law no. 165/2013 there were numerous changes and additions that took place and there were numerous decisions given regarding the unconstitutionality of certain provisions from the laws, in the recourse in the interest of the law and in order to decipher various law matters. Moreover, the abundance of appeals made by plaintiffs to CEDO and to courts of constitutional law presents in turn a hidden risk. Sadurski[84] considers that the strong system of judicial revision can have negative connotations, with the risk for the discourse on rights to be translated from the public setting to the small, specialized world of constitutional experts. It is concluded that the legislative, political, technical and administrative limitations in the field of property restitutions in Romania have lead in many of the cases to the fragmenting of the reparations and to moving away both from the concrete form of the size of the compensation and from its symbolic meaning.

References

- De Fayter Koen, Parmentier Stephan, Bossuyt Marc & Lemmens Paul (eds) *Out of the Ashes: Reparations for Victims of Gross and Sistematic Human Rights Violations* (Cambridge: Intersentia, 2005).
- du Plessis Max & Peté Stephen *Repairing the past? International Perspective on Reparations for Gross Human Rights Abses* (Cambridge: Intersentia, 2007).
- De Grieff, Pablo "Justice and Reparations", in Pablo de Grieff (ed) *The handbook of Reparations* (Oxford: Oxford University Press, 2006).
- Ester Jon *Retribution and Reparation in the transition to Democracy* (Cambridge: Cambridge University Press, 2006).
- Hayner, Priscilla B. (ed) *Unspeakable Truths: Transitional Justice and the challenge of Truth Commissions*, (New York: Routledge, 2snd ed 2011).
- Ksongor, Kuti, "Post-Communist Property Reparations: Fulfilling the Promises of the Rule of Law", *Acta Juridica Hungarica*, 2007, 48(2): 169-188.
- Posner, Eric A. & Vermeule, Adrian "Transitional Justice as Ordinary Justice", *Harvard Law Rewiev*, 2003, 117(3): 761-825.
- Wemmers, Jo Anne M. (ed) *Reparation for Victims of Crimes against Humanity: The Healing Role of Reparation* (London: Routledge, 2014).
- *Rome Statute of the International Criminal Court* (Strasbourg: ICC, 2011).
- UN General Assembly Resolution, *International Convenant on Civil and Political Rights* (A/RES/2200, 1966).
- UN General Assembly Resolution, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International HumanitarianLaw* (A/RES/60/167 din 2005).

[84] Kuti Ksongor, "Post-Communist Property Reparations: Fulfilling the Promises of the Rule of Law" … op.cit.

- UN, *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* , *General Comment No. 3 of the Committee against Torture Implementation of article 14 by States parties* (CAT/C/GC/3 din 2012).
- *Legea nr. 10/2001 privind regimul juridic al unor imobile preluate în mod abuziv în perioada 6 martie 1945 - 22 decembrie 1989*, published in Monitorul Oficial al României, in force since 14 februarie 2001, applicable form starting with 02. 09. 2005.
- *Legea nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România, published in Monitorul Oficial al României,* in force since 16.04.2014.
- *Norma metodologică de aplicare unitară a Legii nr. 10/2001 privind regimul juridic al unor imobile preluate în mod abuziv în perioada 6 martie 1945-22 decembrie 1989 din 07.03.2007*, in force since 03.04.2017, ublished in Monitorul Oficial, Part I no. 227/03.04.2017.
- *Normele de aplicare a Legii nr. 165/2013 privind măsurile pentru finalizarea procesului de restituire, în natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România din 19.06.2013,* published in Monitorul Oficial al României/29.06.2013.
- *Hotărârea în cauza Străin şi alţii împotriva României*, Cerere no. 57001/2000, final Judgment ECHR/30.11.2005, published in Monitorul Oficial al României/02.02. 2006.
- *Hotărârea în Cauza Păduraru împotriva României*, Cerere nr. 63252/2000, ECHR Judgment/ 01.12.2005, published in Monitorul Oficial al României, Part I nr. 514 from 14.06.2006.
- *Hotărârea în Cauza Maria Atanasiu şi alţii împotriva României*, Cererile nr. 30.767/2005 şi 33.800/2006, Hotărâre ECHR/12.10.2010, published in Monitorul Oficial nr. 778/22.11.2010.
- *Hotărârea în Cauza Preda şi alţii împotriva României*, Cereri nr. 9584/2002; 33514/2002; 38052/2002; 2582/2003; 29652/2003; 3736/2003,17750/2003; 28688/2004, Hotărâre definitivă ECHR/ 29.07. 2014, published in www.scj.ro no. 223/29.04. 2014.
- *Hotărârea în Cauza Ana Ionescu şi alţii împotriva României*, Cererea nr. 19788/03 și alte 18 cereri, Hotărâre ECHR/ 26.02. 2019, available at http://ier.gov.ro/wp-content/uploads/2019/03/Ana-Ionescu-si-altii-impotriva-Romaniei.pdf, accessed May 2019.