A CONSTITUTIONAL PERSPECTIVE ON THE CONTENCIOUS TOPIC OF THE COMPENSATION FOR IMMOVABLE ASSETS ABUSIVELY TAKEN OVER BY THE ROMANIAN STATE DURING THE COMMUNIST REGIME

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Abstract

Through the very Constitution adopted after the fall of the communist regime, the Romanian state, which became, thanks to the Revolution of 1989, a democratic state, governed by the rule of law, assumed the generic obligation to guarantee and protect the right to property. Under the wide dome of this purpose came also the reparation of injustices committed during the totalitarian regime, when numerous immovable assets (buildings and/or lands) were abusively removed from the private property of natural and legal persons and transferred to the property of the state. Starting from the 90s, the Romanian legislator developed a series of normative acts aimed at allowing former owners to regain possession of lost assets or obtain equivalent compensation in their place, when restitution in kind was no longer possible. Although very seductive and promising, this restorative legislation has not always fully achieved its goal. This paper intends to present the evolution of the regulations regarding the way of evaluating the compensation due to former owners or their heirs, analyzing it also through the lens of the ECtHR case-law and the CCR case-law. These two jurisdictions have made an important contribution in terms of rising awareness on the necessity of a fair determination of compensation. Their decisions influenced the Romanian legislator and made it modify several times the system of calculation and evaluation of the compensations. Apparently at this moment it has been reached a system that seems to have fewer shortcomings than the most previous ones, managing to a reasonable extent to offer fair satisfaction to former owners dispossessed during the communist regime.

Keywords: *right to property, restoration legislation, fair compensation, ECtHR case-law, constitutional review.*

1. Introduction

The fall of the communist regime, in December 1989, led to major changes in Romanian legislation, determined by the massive reconfiguration of the entire system of values, by the revelation of new aspirations, by the emergence and development of a new social mentality, freed from the excessive constraints imposed arbitrarily and in a discretionary manner by the authorities of that ill-fated historical period. The adoption of normative regulations adapted to the new realities required a huge creative effort, which aimed, first of all, to eliminate all the injustices committed by the defunct communist regime[1] and to create those legal mechanisms that would give prevalence to the highest extent to the recognition, guarantee, effectiveness and defense of fundamental human rights[2], aiming to achieve a total contrast with the restrictive and totalitarian attitude of the communist State.

One of the most pressing problems at that time was the one regarding the reparation of the injustices generated by the takeover, either abusive or in accordance with the laws specific to that period, of immovable assets, buildings and land, by passing from the private property of natural or legal persons to the property of the State or other entities previously under the strict control of the State[3]. Although the attempt to find the

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[1] On the issue of changing political regimes in various States and the influence on international relations, see R.-M. Popescu, *Drept internațional public. Noțiuni introductive*, Universul Juridic Publishing House, Bucharest, 2023.

[2] For a broad presentation of human rights issues, see C. Bîrsan, *Convenția europeană a drepturilor omului. Comentariu pe articole*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2010, or L.-C. Spătaru-Negură, *Protecția internațională a drepturilor omului*, 2nd ed., Hamangiu Publishing House, Bucharest, 2024.

[3] Regarding the public property right of the State or administrative-territorial units, see E.E. Ștefan, *Drept administrativ. Partea I. Curs universitar*, 4th ed., Universul Juridic Publishing House, Bucharest, 2023.

most effective solutions began shortly after the 1989 Revolution, reality has shown that the problem was much more complex and complicated than the legislator predicted[4]. Over the more than 35 years passed since then, various normative acts have been developed to give satisfaction to the former owners, but, at the same time, to not harm the tenants of the buildings taken over by the State, on the one hand, nor to destabilize the national financial system by paying in a single installment sums of money corresponding to the value of real estate that can no longer be returned in kind, given that, summed up, the monetary compensations amounted to huge sums[5].

Basically, two major methods of reparation were therefore instituted: by restitution in kind and by the award of compensation in monetary equivalent or equivalent consisting of other goods of the same value. The determination of the amount of these compensations raised serious misunderstandings and dissatisfaction in practice, the persons entitled to restitution criticizing their unfair nature[6], determined by the defective way of evaluating real estate in order to establish compensations. These compensations have been considered by the interested persons - former owners or their heirs - totally unsatisfactory and not entirely covering.

The present work aims to analyze, through the prism of the CCR case-law and that of the ECtHR, the multiple legislative changes through which the Romanian legislator tried to solve this thorny problem[7]. The influence of the decisions handed down by the two jurisdictions was indisputable, successively shaping the normative solutions proposed by the legislator. The difficulty of this legislative approach has been noted and emphasized by both courts, but it cannot be a reason for the legislator to give up looking for the most appropriate solution, which would lead to the satisfaction of interests in the competition.

2. Relevant milestones from the restorative legislation adopted after the fall of the communist regime

Given the fact that, after the fall of the communist regime, the Romanian State reconfigured its entire legislation in such a way as to correspond to the democratic standards characteristic of a rule of law, among the most important measures were those related to the protection and guarantee of fundamental human rights, including the right to private property. It was enshrined at the constitutional level, thus giving it the importance it deserves and which during the previous regime was almost entirely denied.

In the matter of the restitution of property taken over abusively by the Romanian state during the communist regime, a first regulation was adopted even before the entry into force of the Constitution of December 8, 1991, which replaced the old socialist constitution. Such haste demonstrates the impatience that was felt at that time throughout society regarding the resolution of this issue. It is about the Land Fund Law no. 18/1991[8], which aimed at establishing or reconstituting the right of private ownership over the lands which at the moment of the fall of the communist regime were part of the patrimony of agricultural production cooperatives[9].

Then followed Law no. 112/1995 for the regulation of the legal situation of certain buildings intended for housing, which were transferred previously, after March 6, 1945, to the ownership of the State and which were in the possession of the State or other legal entities on December 22, 1989[10]. This law offered former owners –

[4] The origin of regulations regarding the right to property lays in Roman Law. For details on these aspects, see E. Anghel, *Drept privat roman. Izvoare, procedură civilă, persoane, bunuri*, Universul Juridic Publishing House, Bucharest, 2011, and for a suggestive image of the historical evolution of the way the right to property was approached, from a legal point of view, in the Romanian legal system, see C. Ene-Dinu, *Istoria statului și dreptului românesc*, Universul Juridic Publishing House, Bucharest, 2020.

[5] For further details, see also V. Bărbățeanu, *Evoluția reglementărilor legale referitoare la restituirea imobilelor preluate în mod abuziv de statul român în timpul regimului comunist, cu privire specială asupra problematicii dreptului de proprietate al cetățenilor străini / The evolution of legal regulations regarding the restitution of real estate taken over abusively by the Romanian state during the communist regime, with special regard tothe issue of the property of foreign citizens*, article published in the proceedings of the Conference „Dezvoltarea economico-socială durabilă a euroregiunilor şi a zonelor transfrontaliere", Iași, Romania, 28.10.2022, organized by Institutul de Cercetări Economice şi Sociale „Gheorghe Zane", Iaşi, published at Performantica Publishing House, 2022, p. 21-32.

[6] For a very interesting analysis of the concept of equity, see E. Anghel, *Principiile dreptului*, Universul Juridic Publishing House, Bucharest, 2025.

[7] Regarding this vast issue, see also I. Gulie, *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 – repere ale jurisprudenţei Curţii Constituționale*, in Buletinul Curții Constituționale no. 1/2015, and V. Bărbățeanu, *Legea nr.165/2013 din nou sub lupa controlului de constituționalitate. Dezvoltări jurisprudențiale*, in Buletinul Curții Constituționale no. 2/2017.

[8] Republished in the Official Gazette of Romania no. 1/05.01.1998.

[9] See Chapter II of Law no. 18/1991.

[10] Republished in the Official Gazette of Romania no. 279/29.11.1995.

natural persons – the right to benefit from a series of remedial measures. Thus, these people were able to obtain restitution in kind, by regaining ownership of the apartments where they lived as tenants or those that were free, and for the other apartments, so those which were not free, they received compensation. The Constitutional Court held[11] that Law no. 112/1995 carries out, with specific means and taking into account the economic and social realities existing at that time, a repair for the benefit of the former owners, natural persons.

Regarding the restitution of forests, a special law was adopted, Law no. 1/2000 for the reconstitution of the right of ownership over agricultural and forestry lands[12]. Also, the separate legal regulations took into account the assets that belonged to national minorities (GEO no. 83/1999 regarding the restoration of some immovable assets that belonged to the communities of citizens belonging to national minorities in Romania[13]), and the assets of religious cults (GEO no. 94/2000 regarding the retrocession of some immovable assets that belonged to religious cults in Romania[14]).

The law that tried to solve the issue in question in the most efficient way was Law no. 10/2001 on the legal regime of the immovable assets taken over abusively between March 6, 1945 and December 22, 1989[15]. This was dedicated to land and buildings located within the built-up areas of localities and established the rule of restitution in kind of properties, but it also covered the situation where the restitution in kind was not possible, that was, for example, in the case of demolished buildings or of lands on which other constructions have been built in the meantime. For such situations, Law no. 10/2001 specified that reparative measures would be established by equivalent, namely compensation with other goods or services offered in equivalent by the entity invested, according to this law, with the resolution of the request of the entitled person, or compensatory measures under the conditions of the special provisions regarding the regime of establishing and paying compensation for properties taken over abusively.

These special provisions referred to in Law no. 10/2001 were represented by Law no. 247/2005 on the reform in the fields of property and justice, as well as some adjacent measures[16]. In its 7th Title, this law regulated the sources of financing, the amount and the procedure for granting compensation for real estate that cannot be returned in kind. In order to analyze and establish the final amount of compensation to be granted according to the provisions of the aforementioned law, the Central Commission for Establishing Compensation was founded under the Prime Minister's Chancellery. Its main task was to order the issuance of decisions regarding the granting of compensation titles.

The amount of these compensations was established on the basis of a valuation report drawn up by an expert appraiser, who, for this purpose, related to the circulation value of the respective real estate, according to International Valuation Standards. After issuing the related compensation titles, the National Authority for the Restitution of Properties issued, based on them and on the options of the entitled persons, a payment title or, as the case may be, a payment title and a conversion title into shares to the „Proprietatea" Fund. This „Proprietatea" Fund represented the entity intended to pay in equivalent the compensations related to the real estates abusively taken over by the Romanian State[17], established as a result of the fact that, as payment titles were issued, it was noted the insufficiency of the funds necessary for the cash payment of the compensations established on the basis of the compensation titles and the significant impact on the state budget.

Therefore, a new way of valuing compensation was created, by converting the compensation title issued into shares in the „Proprietatea" Fund[18]. Thus, if the compensation payment title was issued for a maximum amount of 500,000 lei (RON), the holders of the compensation title could opt for compensation exclusively in cash or exclusively in shares in the „Proprietatea" Fund. If the compensation title was issued for an amount exceeding 500,000 lei, the holders of the compensation title could opt either exclusively for receiving shares issued by the „Proprietatea" Fund, or for receiving payment titles, within the limit of 500,000 lei and, up to the total compensation granted by the compensation title, for shares issued by the „Proprietatea" Fund.

[11] CCR dec. no. 73/19.07.1995, published in the Official Gazette of Romania no. 177/08.08.1995.
[12] Published in the Official Gazette of Romania no. 8/12.01.2000.
[13] Republished in the Official Gazette of Romania no. 797/01.09.2005.
[14] Republished in the Official Gazette of Romania no. 797/01.09.2005.
[15] Republished in the Official Gazette of Romania no. 798/02.09.2005.
[16] Published in the Official Gazette of Romania no. 653/22.07.2005.
[17] Art. 3 letter b) of the 7th Title of Law no. 247/2005.
[18] CCR dec. no. 475/25.06.2020, published in the Official Gazette of Romania no. 1158/01.12.2020, para. 16.

3. Current legislative solutions

However, this system did not have the expected efficiency, its cumbersome nature being signaled and sanctioned even by the ECtHR through the Pilot dec. of 12 October 2010 delivered in the *Case Maria Atanasiu and Others v. Romania*, in which it held that „it is imperative that the State urgently take measures of a general nature, which may lead to the effective realization of the right to restitution or compensation, maintaining a fair balance between the various interests at stake", for example „by amending the current restitution mechanism (...) and by urgently implementing simplified and efficient measures, based on legislative measures and on a coherent judicial and administrative practice, which may maintain a fair balance between the various interests at stake". The aforementioned pilot decision was delivered by the Strasbourg Court in the context of approximately 3,000 cases pending before it in which the Romanian State was the defendant, concerning the issue of non-compliance with the right to private property and the right to a fair trial, cases that the European Court deemed useful to resolve together.

As such, there was adopted Law no. 165/2013 on the measures for completing the process of restitution, in kind or by equivalent, of real estate taken over abusively during the communist regime in Romania[19], through which the Romanian legislator opted for a different way of granting reparative measures in equivalent that can be offered in the situation where the restitution in kind of the real estate is no longer possible. Thus, it has been introduced the measure of compensation through points, one point having the value of 1 leu (RON), granting the entitled persons a number of points corresponding to the value of the requested real estate, which will subsequently be converted into money. As regards the former owner or his/her legal or testamentary heirs, the points established by the compensation decision issued cannot be affected by capping measures. In contrast, in cases where compensatory measures are granted to the assignees of disputed rights, the number of points granted is equal to the sum of the price paid to the former owner or his/her legal or testamentary heirs for the transaction of the property right plus a percentage of 15% of the difference up to the value of the property, according to art. 24 of the aforementioned law.

In the initial version of the law, the valuation of the property subject to the decision was made by applying the notarial scale valid on the date of entry into force of Law no. 165/2013. However, since the duration of the administrative and, possibly, judicial procedures that must be completed until the actual receipt of compensation has proven to be still quite long, the entitled persons have expressed their dissatisfaction with the possible decrease in the amount of compensation granted, given that the benchmark remained fixed to the notarial scale valid in 2013, while in the following years the notarial scales indicated other, higher values.

Noting the explanatory memorandum of Law no. 165/2013, the Constitutional Court responded to these criticisms, showing that the granting of compensatory measures for properties impossible to be returned in kind, by applying, to their valuation, the notarial scale valid on the date of entry into force of Law No. 165/2013, as provided for in art. 21 para. (6) thereof, represents the way in which the Romanian legislator understood to transpose into national legislation the requirements and recommendations expressed by the ECtHR in its caselaw on the matter of property restitution. Thus, the Constitutional Court noted that, by the judgment delivered in the *Case Maria Atanasiu and Others v. Romania*, within the framework of the general measures suggested for guidance, the European Court of Human Rights took note with interest of the proposal advanced by the Romanian Government in its action plan, aimed at establishing binding deadlines for all administrative stages, showing that such a measure could have a positive impact on the efficiency of the compensation mechanism if it was realistic and backed by effective judicial control. The Constitutional Court also noted that the aforementioned pilot judgment left the Romanian State a wide margin of appreciation as to the means by which to fulfil the legal obligations imposed and to guarantee respect for patrimonial rights by regulating the property relations in question. At the same time, the aforementioned pilot decision gave the Romanian State the responsibility to implement simplified and efficient procedures, based on legislative measures and coherent judicial and administrative practice, as well as to adopt clear and simplified procedural rules, which would give the compensation system increased predictability.

At the same time, the Constitutional Court appealed to the caselaw of the Strasbourg Court, which recalled that imperatives of general interest may advocate compensation lower than the real market value of the property, provided that the amount paid is reasonably related to the value of the property (Judgment of 21

[19] Published in the Official Gazette of Romania no. 278/17.05.2013.

February 1986, delivered in the *Case James and Others v. the United Kingdom*, para. 54, Judgment of 8 July 1986, delivered in the *Case Lithgow and Others v. the United Kingdom*, para. 120, or Judgment of 29 March 2006, delivered in the *Case Scordino v. Italy* (no. 1), para. 95 *et seq.*).

The Constitutional Court also noted, by dec. no. 269 of May 7, 2014, that the manner of redressing injustices and abuses in past legislation is at the exclusive discretion of the legislator, and the criticized legal provisions are in accordance with those of art. 44 para. (1) second sentence of the Constitution, according to which the content and limits of the right to property are established by law[20].

Following the adoption of Law no. 165/2013, the ECtHR considered, by its Judgment of 29 April 2014, delivered in the *Case Preda and Others v. Romania*, taking into account the margin of appreciation of the Romanian State and the guarantees established by Law no. 165/2013, namely the clear and foreseeable procedural rules, accompanied by binding deadlines and effective judicial review, that the aforementioned law offers, in principle, an accessible and effective framework for redressing criticisms relating to the infringements of the right to peaceful enjoyment of possessions within the meaning of art. 1 of the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms resulting from the application of restitution laws (para. 129)[21].

However, it was obvious that there have been numerous situations in which the entitled persons have considered that the compensations calculated in the shown manner – meaning by reference to the notarial scales applicable in 2013 – is greatly diminished by reference to the circulation value of the properties from the moment of the actual obtaining of the compensation, sometimes many years later. Despite these dissatisfactions, the Romanian legislator has resorted to an adjustment of the evaluation method, establishing, by Law no. 111/2017[22], that the evaluation of the property that is the subject of the point compensation decision is made not only by applying the notarial scale valid on the date of entry into force of Law no. 165/2013, but also by considering the technical characteristics of the property and the category of use on the date of its takeover", so without taking into account any improvements that it has gained over time.

This newly introduced phrase was, however, declared unconstitutional by the Constitutional Court which, by dec. no. 43 of February 18, 2025, not yet published in the Official Gazette of Romania, assessed[23], mainly, that, by relating the method of calculating the compensation owed by the state for the properties in question to the technical characteristics and the category of use that they had at the date of the abusive takeover, the provisions of art. 44 para. (1) and (2) of the Constitution relating to the equal guarantee and protection of the right to private property were violated. In this regard, the Court held, in accordance with the recent ECtHR case-law– represented by the two Judgments of 8 November 2022 and 7 January 2025, delivered in the *Case Văleanu and Others v. Romania* –, that the phrase contained in the criticized legal provisions generates inequities between the beneficiaries of the law, since, on the one hand, it may raise difficult and controversial issues in practice, due to the sometimes insufficiently relevant information regarding the exact description of the property at the time of the abusive takeover, and, on the other hand, as a result of the inherent urban developments that have occurred in the meantime. However, in order for the compensation awarded to remain equivalent to the value of the property in kind, it cannot ignore such developments.

Hence, the Court referred to a recent case-law of the Strasbourg Court, namely the Judgment of 8 November 2022, delivered in the *Case Văleanu and Others v. Romania*, in which it assessed, with regard to the method of restitution after a considerable period of time had passed since the entry into force of Law no. 165/2013, that „the authorities did not ensure that the compensation awarded was reasonably related to the current value of the properties" (para. 262). In the same sense, the ECtHR found (para. 236) that the reference to the aforementioned criteria, together with the long delays on the part of the authorities in finalizing the compensation claims, may cause the level of compensation to no longer be reasonably aligned with the real value of the property in the absence of other elements capable of compensating, at least partially, the long

[20] See, in this regard, CCR dec. no. 202/18.04.2013, published in the Official Gazette of Romania no. 365/19.06.2013.

[21] CCR dec. no. 714/09.12.2014, published in the Official Gazette of Romania no. 96/05.02.2015, para. 19.

[22] Law no. 111/2017 on the approval of GEO no. 98/2016 for the extension of certain deadlines, the establishment of new deadlines, regarding some measures for the completion of the activities included in the contracts concluded under the Loan Agreement between Romania and the International Bank for Reconstruction and Development for the financing of the Judicial System Reform Project, signed in Bucharest on January 27, 2006, ratified by Law no. 205/2006, as well as for the amendment and completion of certain normative acts, published in the Official Gazette of Romania no. 399/26.05.2017.

[23] As stated in the press release issued by the Constitutional Court on that occasion, available at *https://www.ccr.ro/comunicat-de-presa-18-februarie-2025/*.

period during which the applicants were deprived of their properties, but, first and foremost, the long period during which they tried to recover their properties since the entry into force of the laws on restitution.

The Strasbourg Court also noted (para. 238) that the new valuation system, which is based, in part, on data that were relevant over 50 years ago, may raise difficult and controversial issues in practice, because of the sometimes insufficiently relevant information regarding the exact description of the property at the time of expropriation, due, inter alia, to inherent urban developments that have taken place in the meantime, which must have had an impact at least on the land use category.

The European Court also indicated (para. 239) that it cannot lose sight of the fact that, if restitution in kind had been possible, the applicants would have received possession of a property that would have included at least part of the developments that would have taken place over the time, whether of a general nature (urban planning policy) or of a special nature (for example, redevelopments or renovations); it follows that, in order for the compensation awarded to remain equivalent to the value of the property in kind, it cannot ignore such developments.

In view of these findings of the ECtHR, the solution pronounced by CCR, of admitting the exception of unconstitutionality and finding the unconstitutionality of the phrase „taking into account the technical characteristics of the property and the category of use at the date of its takeover" in art. 21 para. (6) of Law no. 165/2013, appeared as obvious and rightful.

Currently, the legislator has managed to correct, at least partially, these shortcomings, amending the criticized legal text through Law no. 193/2021[24] and establishing that the evaluation of real estate for which compensation is granted is expressed in points and is done by applying the notarial scale valid for the year preceding the issuance of the decision by the National Commission for Real Estate Compensation. The taking into account the technical characteristics of the real estate and the category of use at the date of its takeover is still comprised in the normative provisions, but they have to be read in the light of the forementioned decision of the Constitutional Court.

4. Conclusions

The issue of reparations granted to former owners or their heirs for properties that were forcibly taken over by the Romanian State during the communist regime does not seem to have found a judicious solution that would fully satisfy the interests of all persons deprived of property during that period. The causes are multiple, starting with the huge financial effort of the Romanian State, continuing with the excessive duration of administrative procedures, followed, possibly, by judicial procedures aimed at correcting the solutions pronounced by the administrative entities, and culminating with the unexpected diversity of practical, concrete situations met in reality, which made the restitution process an extremely difficult task for the Romanian State and, at the same time, particularly frustrating for the entitled persons. This paper has intended to present the difficulties that the Romanian legislator has faced in the numerous attempts to find the optimal solution to reconcile all the competing interests. The contribution of the CCR case-law[25] and the ECtHR case-law was, without any doubt, decisive, guiding the normative option and establishing certain benchmarks to be taken into account in the development of regulations that are most appropriate for solving this vast and complex issue.

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[24] Law no. 193/2021 on the approval of GEO no. 72/2020 for the suspension of the application of the provisions of art. 21 para. (6) of Law no. 165/2013, published in the Official Gazette of Romania no. 681/09.07.2021.

[25] For details regarding the procedural rules applicable in the exercise of the powers of the Constitutional Court, see I. Muraru, N.M. Vlădoiu, *Contencios constituțional. Proceduri și teorie*, 2nd ed., Hamangiu Publishing House, Bucharest, 2019; B. Karoly, M.S. Costinescu, *Controlul de constituționalitate în Romania. Excepția de neconstituționalitate*, Hamangiu Publishing House, Bucharest, 2020, T. Toader, M. Safta, *Contencios constituțional*, 2nd ed., Hamangiu Publishing House, Bucharest, 2020, S.G. Barbu, A. Muraru, V. Bărbățeanu, *Elemente de contencios constituțional*, C.H. Beck Publishing House, Bucharest, 2021, E.S. Tănăsescu, *Contencios constituțional*, C.H. Beck Publishing House, Bucharest, 2025.

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