...

THE FACTS

1. The applicants, Mr Ion Aurel Manoilescu and Ms Alexandra Maria Dobrescu, are Romanian nationals who were born in 1941 and 1921 respectively. The first applicant lives in Dithmarschen (Germany) and the second in Paris (France). They were represented before the Court by Mr M. Ghiga, a lawyer practising in Bucharest.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

3. The applicants are heirs of A.D., who in 1929 purchased 6,650 sq. m of land in Snagov, near Bucharest, on which he had a house built ("the building in Snagov").

(a) Criminal proceedings against A.D.

4. In a judgment of 26 July 1950, the Bucharest Military Court of First Instance sentenced A.D. to twenty years' imprisonment for subversive activities against the State. In 1963 he died in prison.

5. In a decision of 17 November 1995, the Supreme Court of Justice, on an application by the Procurator-General, quashed that judgment and acquitted A.D. on all the charges on the ground that the essential elements of the offence of which he had been convicted had not been made out.

(b) Transfer of the building in Snagov to the Romanian State

6. In Order no. 4913 of 9 April 1945, made during the Second World War, the building in Snagov was requisitioned by the Romanian State and placed at the disposal of the Allied Control Mission of the Union of Soviet Socialist Republics (USSR).

7. On 2 August 1945, following the Potsdam Conference, Germany was held responsible for the war damage caused to the Allies and was ordered to make reparation through transfers of German assets in foreign countries such as Romania.

8. Law no. 182 of 23 March 1946 on the return to the USSR authorities of German assets in Romanian territory in accordance with the decisions taken at the Potsdam Conference authorised the Romanian Council of Ministers to determine the procedure for returning property to the USSR authorities designated by the Allied Control Commission in Romania.

9. On 30 March and 10 August 1946 the Romanian Council of Ministers decided that assets that belonged to German natural and artificial persons and were registered in the lists kept by the Office for the Administration of War Enemies' Property were to be transferred to the authorities designated by the Allied Control Commission under Law no. 182. Among the immovable property thus transferred to the Soviet authorities was a building at 63 Dr Lister Street in Bucharest, owned by a private individual, Ms L.B.

10. In that context, by order of the Romanian Ministry of the Interior, A.D.'s property was again requisitioned on 24 May 1947. On 27 May 1947 it was allocated to the Soviet Directorate of External Trade.

11. In 1950 the building in question was nationalised by the Romanian State under Decree no. 92/1950 on nationalisation. It was assigned to the USSR embassy in Romania, as is apparent from the lists appended to the decree.

(c) Transfer of the building in Snagov to the USSR

12. In Decree no. 25 of 26 January 1959 the Presidium of the Grand National Assembly of the Romanian People's Republic authorised the Ministry of Foreign Affairs to carry out an exchange of immovable property with the USSR on behalf of the Romanian State. The decree empowered the Ministry to transfer to the USSR title to a number of houses in Snagov (known collectively as “Adesgo”) belonging to the Romanian State and, in return, to receive title to two properties in the USSR's possession in Timişoara and Iaşi. The exchange of property was approved on 2 March 1962 in decision no. 175 of the Council of Ministers of the Romanian People's Republic.

13. In Decree no. 163 of 12 March 1962 the State Council of the Romanian People's Republic authorised a further exchange of property between the Romanian and Soviet States: Romania was granted title to a property at 63 Dr Lister Street in Bucharest (see paragraph 9 above), owned by the Soviet State, which in return obtained title to two detached houses in Snagov (known as “Red Villa” and “Reed Villa”) and the appurtenant 10,560 sq. m of land, owned by the Romanian State.

According to the applicants, “Red Villa” is actually the building in Snagov which belonged to A.D. before being requisitioned and subsequently becoming the property of the Romanian State under Decree no. 92/1950 on nationalisation (see paragraphs 10 and 11 above).

14. In an undated diplomatic note addressed to the Romanian Ministry of Foreign Affairs in reply to a question from Snagov Town Council, the Russian Federation embassy in Bucharest pointed out that under Decree no. 201/1993 issued by President Boris Yeltsin, the Russian Federation had taken over all the rights vested in the USSR in respect of movable and immovable property abroad. It further noted that the Russian Federation now had title in Romania to a housing complex and the appurtenant land in

Snagov. It stated that that title had been confirmed by the Romanian Council of Ministers' decisions of 30 March and 10 August 1946, by Decree no. 25 issued on 26 January 1959 by the Presidium of the Grand National Assembly of the Romanian People's Republic, and by Decree no. 163 issued on 12 March 1962 by the State Council of the Romanian People's Republic (see paragraphs 9, 12 and 13 above).

15. In a letter of 6 April 1994, the mayor of Snagov stated in reply to a question from the first applicant that the Russian Federation embassy in Romania was using the building in Snagov that had belonged to A.D.; an appendix to the nationalisation decree indicated that the embassy had gained possession of the building in issue by virtue of an exchange of immovable property between the Romanian People's Republic and the USSR.

2. Proceedings for restitution of the building in Snagov under Law no. 112/1995

16. In 1996, following the enactment of Law no. 112/1995 on the legal status of residential property that had passed into the ownership of the Romanian State, the first applicant, as A.D.'s heir, lodged an application for restitution of the building in Snagov with the administrative board established to deal with applications lodged in Snagov pursuant to Law no. 112/1995 (“the Administrative Board”).

17. In a decision of 18 June 1997, the Administrative Board allowed his application and ordered the return of all the property in question to him, namely a detached house and the 6,650 sq. m of land on which it was built.

18. A State-owned company, A., applied to the Buftea Court of First Instance for judicial review of that decision. It argued that the building was not designated as residential and had not been vacant on the date on which Law no. 112/1995 had come into force, whereas the Law provided that the administrative authorities empowered to apply it could order the return of property to its owners only if those conditions were met. The applicants applied to intervene in the proceedings, seeking to have A.'s application dismissed on the ground that the building in issue was not managed by that company.

19. In a judgment of 12 January 1998, the Buftea Court of First Instance found for the applicants and dismissed the application by A. on the ground that that company did not have *locus standi* since the building was not managed by it. In the absence of an appeal, that judgment became final.

3. The applicants' attempts to compel the administrative authorities to execute the decision of 18 June 1997

(a) Action against Snagov Town Council and Ilfov County Council under Article 1075 of the Civil Code

20. On an unspecified date the first applicant brought proceedings against Ilfov County Council and Snagov Town Council under Articles 1075 et seq. of the Civil Code, seeking an order requiring them to execute the administrative decision of 18 June 1997 by returning the property in issue to him.

Relying on various documents by means of which he intended to prove that A.D. was the former owner of the property and that he himself was A.D.'s heir, he urged that the restitution should be effective and enforceable against the legal successor of the USSR, notwithstanding the international principles concerning immunity set forth in the 1961 Vienna Convention on Diplomatic Relations.

He submitted that it was impossible for the final administrative decision of 18 June 1997 in his favour to be enforced in the normal manner by bailiffs, in view of the immunity enjoyed by the Russian Federation embassy in Romania with regard to the premises it occupied. Recapitulating the circumstances in which the property had been taken from A.D., he contended that a domestic statute, Law no. 112/1995 – the application of which entailed the return of his property – could not be deprived of effect by securing diplomatic rights to States which, moreover, no longer existed.

21. The second applicant sought leave to intervene in the proceedings, arguing that as an heir of A.D. she had the same rights as the first applicant.

22. In a judgment of 16 March 1998, the Buftea Court of First Instance allowed the applicants' applications and ordered the respondent authorities to return the property to them. It noted that the relevant decision of 18 June 1997, which had become final, had been given after verification of the legal status of the property and that the respondents could no longer claim that it was administered by the USSR.

(i) First round of appeal proceedings

23. Snagov Town Council appealed against that judgment. It asserted that the building in issue was not owned or administered by it but was used by the Russian Federation embassy, which had informed it that it was the owner of the building in a diplomatic note which the Town Council submitted in evidence (see paragraph 14 above). Emphasising that it was not contesting the applicants' title to the building, the Town Council argued that it lacked the capacity to take the action demanded by the applicants since the property was occupied by the embassy.

The Town Council argued, lastly, that it was impossible to execute the final decision of 18 June 1997, seeing that the bailiffs were also prevented from taking any enforcement measures for similar reasons.

24. In a judgment of 20 November 1998, the Bucharest County Court allowed the Town Council's appeal, quashed the judgment of the Court of First Instance and dismissed the applicants' application as being ill-founded. It noted that the building was not managed by the administrative authorities in question but was used by the Russian Federation embassy in Romania, which had stated in a diplomatic note that it was the owner (see paragraph 14 above). The County Court considered that execution of the administrative decision of 18 June 1997 would amount to breaching the immunity enjoyed by the Russian Federation's diplomatic mission in Romania, and thus directly undermining the Federation's fundamental interests. Lastly, it pointed out that immunity from execution was a principle recognised in international law, legal theory and practice.

25. The applicants appealed against that judgment, submitting that the lower courts had been incorrect in their interpretation of the evidence and of the nature of the legal relationships in the case before them. They argued, in particular, that the requisitioning of the property in issue and its passing into State ownership had been unlawful on the ground that Decree no. 163/1962 on the exchange of property had not been signed and was therefore null and void. They submitted plans showing the location of the property in question and documents concerning the exchange of property between the Soviet and Romanian States (see paragraphs 8, 9, 12 and 13).

26. In a judgment of 26 May 1999, the Bucharest Court of Appeal allowed their appeal, quashed the judgment of 20 November 1998 and remitted the case to the County Court for rehearing. The Court of Appeal asked the court to conduct additional inquiries in order to ascertain the procedure by which the building had become the property of the Romanian State and had been transferred to the Soviet State, and to clarify the legal status of the building at 63 Dr Lister Street, Bucharest, which the USSR had exchanged for the building in issue. The court was also instructed to investigate who had used the building before and after December 1989 and for what purpose.

(ii) Second round of appeal proceedings

27. At the hearing on 4 October 1999, the Bucharest County Court raised of its own motion the objection that the respondent administrative authorities could not be a party to the proceedings as the property was not managed by them. It joined that objection to the merits.

28. In a decision delivered on the same day the court, without having conducted the additional inquiries ordered by the Court of Appeal, allowed the objection and dismissed the applicants' action. It noted that the building in issue had initially been requisitioned and then nationalised in the

circumstances outlined in paragraphs 6 to 11 above, and that it had subsequently become the property of the Soviet State by means of an exchange between the Romanian People's Republic and the USSR, approved by Decree no. 163 of 12 March 1962 (see paragraph 13 above). Observing that the building was now the property of the Russian Federation, the USSR's legal successor, the court considered that the first applicant's application for an order requiring the relevant authorities to return the building in accordance with Article 1075 of the Civil Code had been brought against entities lacking the capacity to take part in the proceedings.

29. The applicants appealed against that judgment, arguing that the court had omitted to take into account either the fact that the property had been taken unlawfully from A.D. or the evidence which they had submitted to that effect (see paragraph 25 *in fine* above).

30. In a judgment of 25 February 2000, against which no ordinary appeal lay, the Bucharest Court of Appeal dismissed their appeal and upheld the judgment of 4 October 1999. It noted, firstly, that the applicants' criticism that the lower court had not taken into account or interpreted correctly the evidence they had submitted was unfounded. It considered in that connection that the building had passed into the ownership of the Romanian State under Decree no. 92/1950 on nationalisation and that the applicants could accordingly not claim that it had been taken unlawfully by the State. It further observed that the Russian Federation's title to the building in issue had been confirmed and that the lower court had consequently been correct in finding that the applicants' action was directed against respondents lacking the capacity to take part in the proceedings.

(iii) Application to set aside

31. On 6 June 2000 the applicants lodged an application to set aside the judgment of 25 February 2000. They submitted that the Court of Appeal had breached Article 315 of the Code of Civil Procedure by overlooking its previous judgment of 26 May 1999 in which it had ordered additional inquiries. They added that the Court of Appeal had omitted to draw any inferences from the evidence they had submitted.

32. In a judgment of 25 October 2000, against which no ordinary appeal lay, the Bucharest Court of Appeal dismissed the applicants' application as being ill-founded. It observed that in its judgment of 26 May 1999 it had not dealt with points of law, so that its decision could not have been binding in the new round of proceedings after the case had been remitted; rather, it had simply requested the lower court to clarify the legal position regarding the building in issue and the entity occupying it. It therefore held that Article 315 of the Code of Civil Procedure had not been breached by the lower court. The Court of Appeal held that the applicants' second complaint was likewise unfounded, seeing that in its judgment of 25 February 2000 on the applicants' appeal it had found that title to the building in question was

vested in the Russian Federation and not in the respondents, thereby settling the dispute in the light of all the evidence before it.

(b) Additional steps taken to obtain restitution of the building

33. On an unspecified date the applicants sent a memorial to the Ambassador of the Russian Federation in Bucharest, requesting him to allow the relevant Romanian authorities to return the building in Snagov to them, as they had inherited it and had been granted restitution of it under Law no. 112/1995. After recapitulating the circumstances that had led to A.D.'s loss of the building (see paragraphs 6-10 above), they argued that the exchange of property between the Romanian and Soviet States under Decree no. 163 of 12 March 1962 had been unlawful and hence void in that, firstly, the decree concerning the exchange had been neither signed nor published and, secondly, the building offered by the Soviet State in return for the building in Snagov had not belonged to a German national, a criterion that would have justified its transfer to the Russian authorities in accordance with the decisions taken at the Potsdam Conference.

The applicants stated, lastly, that they did not wish to be party to a possible dispute with Russia, contending that any such proceedings would be thwarted by the application of the principle of diplomatic immunity enjoyed by the embassy. They argued, however, that that principle should not contravene the domestic legal order, adding that the property in issue was not of any particular practical interest.

34. It is not clear from the evidence before the Court whether the applicants received a reply to their request.

35. On an unspecified date the applicants contacted the Ilfov prefect's office. Relying on Law no. 10/2001 on the legal status of immovable property wrongfully seized by the Romanian State between 6 March 1945 and 22 December 1989, they sought restitution of the building in Snagov. In a letter of 27 January 2003 the prefect replied that, by virtue of sections 21 and 25 of Law no. 10/2001 taken together, the authority responsible for restitution of such property was the entity in possession of the building or the council of the district in which the property was situated. He invited the applicants to contact those authorities through the bailiffs at the Buftea Court of First Instance. There is no indication in the evidence before the Court as to whether the applicants acted on that recommendation.

4. The current position regarding the building

36. In a letter dated 23 September 2002, the representative of the Russian Federation at the Court, in reply to a request for information sent under Rule 54 § 2 (a) of the Rules of Court by the Chamber dealing with the case, stated that the Russian Federation, as the USSR's successor in title to all its movable and immovable property abroad, had title in Romania to a housing complex in Snagov and the appurtenant land. He indicated that the

Russian Federation's title to the property had been confirmed by the Romanian Council of Ministers' decisions of 30 March and 10 August 1946, by Decree no. 25 issued on 26 January 1959 by the Presidium of the Grand National Assembly of the Romanian People's Republic, and by Decree no. 163 issued on 12 March 1962 by the State Council of the Romanian People's Republic (see paragraphs 9, 12 and 13 above), as the Russian Federation embassy in Romania had already informed the Romanian Ministry of Foreign Affairs in a diplomatic note (see paragraph 14 above).

37. It appears from the evidence submitted by the applicants that the building in issue is still being used by officials of the Russian Federation embassy in Romania.

B. Relevant international and domestic law

1. Relevant international law

38. The relevant international provisions are as follows:

(a) Vienna Convention of 18 April 1961 on Diplomatic Relations (ratified by Romania by virtue of Decree no. 566/1968, published in the Official Gazette on 8 July 1968)

Article 1

"For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

...

(i) the 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission."

Article 22

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

(b) European Convention on State Immunity (Basle, 16 May 1972) (not signed by Romania)

Article 9

"A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to:

(a) its rights or interests in, or its use or possession of, immovable property; or

(b) its obligations arising out of its rights or interests in, or use or possession of, immovable property

and the property is situated in the territory of the State of the forum."

Article 23

"No measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented thereto in writing in any particular case."

(c) United Nations Convention on Jurisdictional Immunities of States and their Property, December 2004

39. On 2 December 2004 the United Nations General Assembly adopted the Convention on Jurisdictional Immunities of States and their Property, requested the Secretary-General as depositary to open it for signature, and invited States to become parties to it. The relevant provisions of the convention, which is open for signature from 17 January 2005 to 17 January 2007, read as follows:

Article 5 – State immunity

"A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present Convention."

Article 6 – Modalities for giving effect to State immunity

"1. A State shall give effect to State immunity under Article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under Article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

(a) is named as a party to that proceeding; or

(b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State."

Article 13 – Ownership, possession and use of property

"Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or

(c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding up."

Article 19 – State immunity from post-judgment measures of constraint

"No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum ..."

(d) Resolution of the Institute of International Law on immunity of foreign States in relation to questions of jurisdiction and enforcement (Aix-en-Provence session, 1954)

Article 5

"No measures of constraint or preventive attachment may be carried out in respect of property belonging to a foreign State if the property is used for the performance of activities of its Government not connected with any form of economic exploitation."

(e) Resolution of the Institute of International Law on contemporary problems concerning the immunity of States in relation to questions of jurisdiction and enforcement (Basle session, 1991)

Article 4 – Measures of constraint

"1. The property of a foreign State is not subject to any process or order of the courts or other organs of the forum State for the satisfaction or enforcement of a judgment or order, or for the purpose of prejudgment measures in preparation for execution (hereafter referred to as measures of constraint), except as provided for by this Article and by Article 5.

2. The following categories of property of a State in particular are immune from measures of constraint:

(a) property used or set aside for use by the State's diplomatic or consular missions, its special missions or its missions to international organisations;

..."

Article 5 – Consent or waiver

"1. A foreign State may not invoke immunity from jurisdiction or from measures of constraint if it has expressly consented to the exercise of the relevant type of jurisdiction by the relevant court or other organs of the forum State:

(a) by international agreement;

(b) in a written contract;

(c) by a declaration relating to the specific case;

(d) by a voluntary submission to jurisdiction in the form of the institution of proceedings in the relevant organs of the forum State, or of intervention in proceedings for the purpose of pursuing issues related to the merits of those proceedings, or of a comparable step in the proceedings.

2. Consent to the exercise of jurisdiction does not imply consent to measures of constraint, for which separate and explicit consent is required."

2. Relevant domestic law

40. The relevant provisions of domestic law are as follows:

(a) Law no. 112/1995 regulating the legal status of residential property which has passed into State ownership

Section 1

"Individuals who formerly owned residential property which passed lawfully into the ownership of the State or of another artificial person after 6 March 1945 and which was still in the possession of the State or another artificial person on 22 December 1989 shall be entitled to benefit, by way of reparation, from the measures in this Law.

The provisions of this Law shall apply equally to the successors in title of such former owners, subject to existing statutory provisions."

Section 2

"The persons referred to in section 1 shall be entitled to restitution in the form of the restoration to them of the ownership of flats in which they currently live as tenants or which are vacant. In respect of other flats, those persons shall receive compensation ..."

Section 14

"Persons entitled to claim restitution ... shall lodge an application for such purpose ..."

Section 15

"Applications referred to in section 14 above shall be lodged with the administrative board for the district in which the property is situated. They must include full details of the applicants' identity, their status as owner or successor in title, ... certified copies of the documents on the basis of which they intend to prove their ownership or that of the deceased person of whom they are successors in title ... Decisions on restitution of property shall be taken by the county council for the district in which the property is situated."

Section 16

"... The county board for the application of the provisions of this Law shall be composed of: the chairman of the county council, who shall chair the board, the notary public, the head of the county's public finance and State audit department, the head of the county's town planning, public works and regional development department, the head of the county council's legal service, and two or three specialists in leasehold improvements and building and land valuation, assisted by a secretary."

Section 17

"Within sixty days of the date on which they receive proposals from the local boards, the county boards shall determine whether the former owners or their

successors are entitled to the restitution of their property or to compensation, and shall issue decisions to that effect. Such decisions shall be communicated within five days to the former owners or their successors in title ... and to the entities in possession of the property ... The boards' decisions shall be adopted by majority vote."

Section 18

"Decisions of the county boards ... shall be subject to review by the national courts and may be challenged, in accordance with civil law, within thirty days of being communicated."

Section 22

"... On the basis of the decision of the county board or, as the case may be, the final judicial decision, the person granted restitution of the property shall apply to be entered in the land register as the owner.

The decision of the county board or, as the case may be, the final judicial decision shall amount to a document of title to the property."

(b) Government decision no. 20/1996 on the rules for implementing Law no. 112/1995

Paragraph 1

"1. The measures provided for in Law no. 112/1995 by way of reparation shall be available only to the former owners of residential property which passed lawfully as such into the ownership of the State ... and their successors in title ...

2. Residential property which passed lawfully as such into State ownership denotes buildings which were nationalised as buildings intended for residential use pursuant to a statutory provision in force on the date on which they passed into State ownership, such as Decree no. 92/1950 ..."

(c) Government decision no. 11/1997 amending and supplementing the rules for implementing Law no. 112/1995

Paragraph 3

"Section 1 [of Law no. 112/1995] shall be supplemented by the following paragraphs:

4. Residential property which passed into State ownership in breach of the statutory provisions in force on the date in question, or in the absence of any statutory provision forming a legal basis for the State's title to it, shall be deemed to have passed unlawfully into State ownership and to fall outside the scope of Law no. 112/1995.

5. Property falling outside the scope of Law no. 112/1995 and to which the State does not have a valid document of title may be the subject of an application for restitution or compensation under the ordinary procedure."

(d) Law no. 10 of 14 February 2001 on the legal status of immovable property wrongfully seized by the State between 6 March 1945 and 22 December 1989

Section 1

"(1) Immovable property wrongfully seized by the State, a cooperative organisation or any other artificial person between 6 March 1945 and 22 December 1989 and property expropriated under the Requisitions Act (Law no. 139/1940) that has not been returned shall be subject to restitution, normally consisting of the return of the property in question, in accordance with the provisions of this Law.

(2) Where the property cannot be returned, alternative measures of redress shall be taken. Such measures may consist of compensation in the form of other items or services offered in exchange by the occupier, subject to the applicant's consent, the allotment of shares in commercial companies listed on the stock market, securities at face value used exclusively in the privatisation process or pecuniary compensation."

(e) The Civil Code

Article 1075 – Effects of obligations

"Every obligation to do or not to do something shall give rise to compensation in the event of non-performance by the obligor."

(f) The Code of Civil Procedure

41. At the material time Article 315 was worded as follows:

"Where a judgment has been quashed and remitted to the court below, the decision delivered following an appeal as to points of law shall be binding on the lower court."

That provision was amended as follows by Government Emergency Ordinance no. 138/2000:

"Where a judgment has been quashed and remitted to the court below, the decision delivered following an appeal as to points of law and the need to take further evidence shall be binding on the lower court."

COMPLAINTS

42. The applicants complained under Article 5 § 5 of the Convention that A.D.'s detention had been unlawful and that they had not been awarded any compensation as his heirs.

43. Relying on Article 6 § 1 of the Convention, they submitted that they had not been given a fair hearing by the domestic courts that had dealt with their application for an order requiring the administrative authorities to execute the final decision of 18 June 1997. They also complained, among other things, of the manner in which the national courts had interpreted the evidence they had adduced in support of their application. They further submitted that the Bucharest County Court had not carried out the additional inquiries ordered by the Court of Appeal in its judgment of 26 May 1999.

44. The applicants complained, also under Article 6 § 1, that it had been impossible to enforce the administrative decision of 18 June 1997, which had become final as a result of the judgment of 12 January 1998, and held both the Romanian and Russian Governments responsible on that account.

45. They further asserted that the manner in which the Romanian courts had dealt with their application for execution of the decision on the restitution of the building, and their inability to obtain the enforcement of that decision, amounted to a violation by the Romanian and Russian Governments of their right of property under Article 1 of Protocol No. 1.

THE LAW

A. In so far as the application is directed against Romania

1. Admissibility of the complaint under Article 5 of the Convention

46. The applicants complained that A.D. had been detained in contravention of the provisions of Article 5 of the Convention and that they had not been awarded any compensation for the detention, in breach of paragraph 5 of that Article.

47. The Court reiterates at the outset that it has no jurisdiction to examine complaints relating to events that occurred prior to the entry into force of the Convention in respect of the High Contracting Parties concerned. Only a deprivation of liberty occurring after the entry into force of the Convention in respect of the respondent State can be "in contravention" of Article 5 and thus require the State to afford compensation to victims or their heirs under paragraph 5 of that Article (see *Romanescu v. Romania* (dec.), no. 43137/98, 23 October 2001).

48. With regard to the complaint that A.D.'s detention was unlawful, the Court observes that the events alleged by the applicants, assuming that they themselves may be regarded as "victims" within the meaning of Article 34 of the Convention, occurred between 1950 and 1963 – that is, before 20 June 1994, when Romania ratified the Convention. It follows that this

part of the complaint is incompatible *ratione temporis* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

49. Nor does the Court have jurisdiction to examine the alleged infringement of the right guaranteed by Article 5 § 5 of the Convention. That complaint is directly linked to the alleged unlawfulness of A.D.'s detention, the compatibility of which with Article 5 falls outside its jurisdiction (see paragraph 48 *in fine* above). It follows that this part of the complaint is also incompatible *ratione temporis* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Admissibility of the complaint under Article 6 § 1 of the Convention

50. The Court notes that the complaint under Article 6 § 1 of the Convention comprises two distinct limbs: the first concerns the alleged unfairness of the proceedings to obtain an order requiring the authorities to execute the decision in the applicants' favour, and the second concerns the alleged impossibility of enforcing that decision.

(a) Alleged unfairness of the proceedings to obtain an order requiring the national authorities to execute the decision of 18 June 1997

51. The applicants complained of the outcome of the proceedings to obtain an order requiring the authorities to execute the decision of 18 June 1997 and relied on Article 6 § 1 of the Convention, the relevant parts of which provide:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law. ..."

52. They submitted that the Bucharest County Court had not carried out the additional inquiries ordered by the Court of Appeal in its judgment of 26 May 1999 and that the national courts had not taken into consideration the evidence they had adduced in support of their application. In particular, they complained that the courts had omitted to take into account the fact that Decree no. 163 of 12 March 1962 on the exchange of property between the Romanian State and the USSR, of which they had produced a copy, had been void in that it had not been signed by the President of the State Council. In their submission, the courts had also disregarded the fact that the building at 63 Dr Lister Street, Bucharest, offered in exchange by the USSR, had not passed lawfully into the ownership of that State since it had not belonged to a German national and its legal status could therefore not have been subject to the decisions taken at the Potsdam Conference.

53. The Romanian Government disputed those allegations, contending that no breach of Article 6 § 1 of the Convention could be made out in the instant case. Relying on Article 315 of the Code of Civil Procedure as

worded at the material time, they asserted that the County Court had not been obliged to follow the Court of Appeal's directions regarding evidence; such directions would have been binding on the court to which the case had been remitted if they had concerned a point of law, which they had not in this instance. The Government added that the County Court had not examined the merits of the case, but had settled it by raising the absolute objection that the respondent authorities lacked the capacity to take part in the proceedings.

54. The Romanian Government submitted that, as the applicants had brought their action on the basis of Article 1075 of the Civil Code, the courts had not been required to compare the applicants' and the Russian Federation's claims of title to the property in issue; such an obligation would, however, have been incumbent on them had an ordinary action for recovery of possession been brought. They accordingly considered that the County Court had rightly confined itself to observing in the instant case that the Russian Federation was in possession of the property in issue by virtue of a document of title whose validity had not been challenged in the courts and that the property had not belonged to the administrative authorities against which the action had been brought, which had therefore lacked the capacity to take part in the proceedings.

55. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see *Edificaciones March Gallego S.A. v. Spain*, judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 290, § 33). This applies in particular to the interpretation by courts of rules of a procedural nature (see *Pérez de Rada Cavanilles v. Spain*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3255, § 43). The Court's role is confined to ascertaining whether the proceedings considered as a whole, including the way in which the evidence was taken, were fair (see, *mutatis mutandis*, *Edwards v. the United Kingdom*, judgment of 16 December 1992, Series A no. 247-B, pp. 34-35, § 34).

56. As regards the applicants' allegation that the Bucharest County Court had not carried out the additional inquiries ordered by the Court of Appeal in its judgment of 26 May 1999, the Court observes that that complaint was central to their application to have the final judgment of 25 February 2000 set aside (see paragraph 31 above). It has to be recognised that, in its judgment of 25 October 2000, the court of appeal with jurisdiction in the matter ruled that the judgment of 26 May 1999 had not dealt with points of law, so that, in accordance with Article 315 of the Code of Civil Procedure as worded at the material time, it could not have been binding in the new round of proceedings after the case was remitted (see paragraph 32 above); the court accordingly found no breach of the provisions of domestic law. With regard to the second aspect of this complaint, namely the courts'

failure to take into account the evidence adduced by the applicants, the same court of appeal held that it was likewise unfounded in that the court with jurisdiction to examine their application had found that the Russian Federation had title to the building in issue, thereby settling the dispute in the light of all of the evidence before it (see paragraph 32 *in fine* above).

57. The Court itself cannot discern any appearance of arbitrariness either in the national courts' interpretation of the relevant domestic law – in particular, Article 315 of the Code of Civil Procedure as worded at the material time – or in their assessment of the evidence, regard being had to the nature of the action brought before them by the applicants.

58. Lastly, it should be noted that the applicants had the benefit of adversarial proceedings conducted in public, that they were represented by a lawyer of their choosing, that they were able to file any documents they considered useful for their defence, and that their case was heard within a reasonable time, approximately three years for three levels of jurisdiction, and gave rise to decisions containing factual and legal reasons.

59. In conclusion, the Court considers that the proceedings in issue, taken as a whole, were fair within the meaning of Article 6 § 1 of the Convention, and that this part of the complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must therefore be rejected in accordance with Article 35 § 4 of the Convention.

(b) Alleged impossibility of enforcing the decision of 18 June 1997 as upheld by the final judgment of 12 January 1998

(i) The Romanian Government's submissions

60. The Romanian Government submitted that Article 6 § 1 of the Convention only secured the right to the execution of a judicial decision delivered by a body whose independence and impartiality was guaranteed following proceedings offering guarantees of fairness, which had not been the case in this instance. They contended that the decision of 18 June 1997 ordering the return of the property in issue to the applicants had been taken by an administrative authority not satisfying the requirements of independence and impartiality, after proceedings that had not been adversarial in that the Russian Federation had not been invited to take part.

61. The Romanian Government further accepted that the decision in issue, which had ordered the transfer of ownership of property of which the Romanian State was no longer the occupier or owner, had been incorrect. In their submission, there had been an administrative error as a result of the national authorities' negligence in failing to enter the Russian Federation in the land register as the owner and to investigate thoroughly who had title to the building in question before ordering its return to the applicants. As regards the judgment of 12 January 1998, the Government submitted that the Buftea Court of First Instance had not ascertained whether the applicants

were entitled to restitution of the building but had simply dismissed the application by the A. company on procedural grounds relating to its lack of *locus standi*.

62. In the alternative, the Romanian Government submitted that, if Article 6 § 1 of the Convention had been applicable in the instant case, it had not been breached in that the applicants' right of property, as established by the Administrative Board, had been impossible to assert because the building in question was occupied by officials of the Russian Federation embassy. In that connection, the Romanian Government noted that the complaint regarding the applicants' inability to secure the enforcement of the Administrative Board's decision had been examined by a court satisfying the requirements of Article 6 § 1 of the Convention, which had determined the application for enforcement lodged by the applicants under Article 1075 of the Civil Code in decisions that had taken care to uphold the Russian Federation's right of property and the rule of law in a democratic society. The Romanian Government argued, in particular, that the execution of the administrative decision in the applicants' favour, in the absence of a judicial decision invalidating the Russian Federation's title to the same property, would have infringed the foreign State's right of property in a manner contrary to national and European public policy and the principle of the rule of law in a democratic society.

(ii) The applicants' submissions

63. The applicants contested the Romanian Government's arguments, submitting that the decision of 18 June 1997 had been an administrative measure with judicial effect and that its validity had been confirmed in judgments delivered by the Buftea Court of First Instance on 12 January and 16 March 1998 (see paragraphs 19 and 22 above), thereby entitling them to obtain its enforcement.

64. They submitted that the principle of diplomatic immunity in respect of the Russian Federation embassy in Romania should not run counter to the national legal order or entail a breach of domestic law, given the importance of their own right to obtain the enforcement of the decision given in their favour in accordance with Law no. 112/1995.

65. Arguing that the transfer of ownership of the building to the USSR had been unlawful because the President of the State Council had not signed Decree no. 163 of 12 March 1962 (see paragraph 13 above), they submitted that the Romanian State had been under an obligation to make diplomatic approaches to the Russian Federation authorities in order to ensure that the property in issue was returned to them, and criticised its negligence in failing to take such action.

(iii) The Court's assessment

66. Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36). The right to a court is not merely a theoretical right to secure recognition of an entitlement by means of a final decision but also includes the legitimate expectation that the decision will be executed. The effective protection of litigants and the restoration of legality presuppose an obligation on the administrative authorities' part to comply with a judgment delivered by the State's highest administrative court (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports* 1997-II, pp. 510-11, §§ 40 et seq.).

67. In the instant case the applicants complained of the failure to enforce the decision of the Administrative Board set up to implement Law no. 112/1995. Although it was certainly not a "decision or judgment delivered by the State's highest administrative court" (contrast *Hornsby*, cited above, pp. 510-11, § 40), the decision in the applicants' favour was nevertheless taken by the appropriate body established to deal with the restitution of immovable property under Law no. 112/1995 and became final as it was not challenged in the courts by any authorities having *locus standi* (see paragraph 19 above). That decision, moreover, amounted to a document of title to the property since the applicants could use it as a basis for applying to be entered as the owners in the land register without having to institute any further administrative or judicial proceedings (see paragraph 40 (a) *in fine* above). The applicants may accordingly have had a legitimate expectation that it would be enforced.

68. Admittedly, the right of access to a court is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

69. The Court must therefore determine whether the conduct of which the applicants accused the Romanian State – irrespective of whether such conduct may be regarded as a limitation on the right of access to a court, a failure to act, or a combination of the two – was justified in the light of the applicable principles as set out above.

70. The applicants considered that their individual right to the enforcement of a domestic decision in which they were acknowledged as the owners of property was of such importance as to prevail over the principles of international law, including the principle of State immunity. The Court is not persuaded by that argument. It reiterates that the Convention has to be interpreted in the light of the rules set out in the Vienna Convention of 23 May 1969 on the Law of Treaties, and that Article 31 § 3 (c) of that treaty indicates that account is to be taken of "any relevant rules of international law applicable in the relations between the parties". The Court must also be mindful of the Convention's special character as a human rights treaty, and of the relevant rules of international law (see, *mutatis mutandis*, *Loizidou v. Turkey* (merits), judgment of 18 December 1996, *Reports* 1996-VI, p. 2231, § 43). The Convention should be interpreted in harmony with other rules of international law of which it forms part, including those relating to the recognition of State immunity.

71. It appears from the facts of the case that the property whose restitution to the applicants was granted by the Administrative Board – in a decision that has not been executed – is assigned to officials of the Russian Federation embassy in Romania and accordingly constitutes "premises of the mission" within the meaning of Article 1 of the Vienna Convention on Diplomatic Relations (see paragraph 38 (a) above). Although the national authorities did not in general rely on the principle of State immunity to justify the court decisions complained of or their own lack of activity, it is clear from the decisions of the Romanian courts and the grounds of appeal submitted by the administrative authorities empowered to execute the decision in the applicants' favour that the non-enforcement of the decision stemmed from a desire not to infringe the rights enjoyed by the Russian Federation over the property in issue (see paragraphs 23, 24, 28 and 30 above).

72. That undoubtedly amounted to an acknowledgment, albeit a somewhat tacit one, of the principle of a foreign State's diplomatic immunity on Romanian soil.

73. It should be noted that all the international legal instruments governing State immunity set forth the general principle that, subject to certain strictly delimited exceptions, foreign States enjoy immunity from execution in the territory of the forum State (see paragraphs 38 and 39 above). The protection thus afforded to foreign States is increased with regard to property belonging to their diplomatic and consular missions in the forum State. The Court notes, in particular, that Article 22 of the Vienna Convention safeguards the inviolability of the premises of missions by prohibiting agents of the receiving State from entering them, except with the consent of the head of the mission, and by placing that State under a special

duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage (see paragraph 38 (a) above).

74. Similarly, Article 5 of the Resolution of the Institute of International Law, which concerns precisely the "immunity of foreign States in relation to questions of jurisdiction and enforcement", makes clear that no measures of constraint or preventive attachment may be carried out in respect of property which belongs to a foreign State and is used for the performance of government activities not connected with any form of economic exploitation (see paragraph 39 (d) above), and Article 22 of the Vienna Convention on Diplomatic Relations stresses that the premises of missions are immune from search, requisition, attachment or execution (see paragraph 38 (b) above). Similar provisions are to be found in the European Convention on State Immunity, Article 23 of which states that no measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented to the measures in writing (see paragraph 38 (d) above).

75. Lastly, the Court notes that Article 19 of the United Nations Convention on Jurisdictional Immunities of States and their Property provides that no post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with proceedings before a court of another State unless and except to the extent that the State has expressly consented or it has been established that the property is specifically in use or intended for use by the State for other than non-commercial government purposes (see paragraph 39 above).

76. None of the evidence before the Court suggests that the property in question has not been used by the foreign State, namely the Russian Federation, in accordance with its sovereign power (*jure imperii*), or that that State has expressly consented to any measures of constraint, such as attachment, arrest or execution, circumstances which would justify lifting its immunity from execution (see paragraphs 38 and 39 above).

77. As regards the applicants' argument that the property in issue was transferred unlawfully to the Russian Federation, and hence to its embassy in Romania, the Court observes that no distinction is made in the relevant provisions of international law on immunity as regards the means, whether lawful or otherwise, by which the property in the forum State intended for use as "premises of the mission" passed into the ownership of the foreign State. It is sufficient for the property to be "used for the purposes of the mission" of the foreign State for the above principles to apply, a condition that appears to have been satisfied in the instant case, seeing that the property in question is used by officials of the Russian Federation embassy in Romania (see paragraph 37 above). Furthermore, the Court observes that the national courts concluded that the Russian Federation likewise had title

to the property, without finding that such title had been obtained unlawfully (see paragraphs 28, 30 and 32 above).

78. The Court has no jurisdiction to examine itself whether the title in question was lawful. Nor can it review the lawfulness of the Administrative Board's decision in the applicants' favour – which the Romanian Government considered to have been incorrect – or carry out a comparison of the two conflicting documents of title to the property in issue, that being the task of the national courts of the forum State in the context of an action for recovery of possession.

79. The issue arising in the present case is not whether such an action could succeed if the applicants brought it in the courts of the forum State. Recent developments in international law admittedly hint at a certain trend, in proceedings of this kind concerning the actual determination of a right or interest of the foreign State in respect of immovable property in the forum State, towards limiting the immunity from jurisdiction which the foreign State may claim in the courts of the forum State (see, for example, Article 9 of the European Convention on State Immunity and Article 13 of the United Nations Convention on Jurisdictional Immunities of States and their Property, cited in paragraphs 38 and 39 above).

The point in issue in the present case is simply whether the Romanian authorities' responsibility may be engaged on account of their refusal to enforce the administrative decision of 18 June 1997 concerning property occupied by the Russian Federation embassy and, more generally, of the fact that they did not take the action sought by the applicants.

80. In this connection, the Court has held that measures taken by a High Contracting Party which reflect generally recognised rules of international law on State immunity cannot generally be regarded as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1 of the Convention. It has also taken the view that, just as the right of access to a court is an inherent part of the fair-trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the community of nations as part of the doctrine of State immunity (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, §§ 52-56, ECHR 2001-XI; *Fogarty v. the United Kingdom* [GC], no. 37112/97, § 36, 21 November 2001; and *McElhinney v. Ireland* [GC], no. 31253/96, § 37, 21 November 2001).

81. There is nothing in the present case to warrant departing from that conclusion. The Court is not aware of any trend in international law towards a relaxation of the rule that foreign States are immune from execution in respect of their property serving as the premises of consular or diplomatic missions in the forum State. Regard being had to the rules of international law set out above, the Romanian Government cannot therefore be required to override against their will the rule of State immunity, which is designed

to ensure the optimum functioning of diplomatic missions (*ne impediatur legatio*) and, more generally, to promote comity and good relations between sovereign States. This is true at least as regards the current state of public international law but does not preclude a development in customary international law or treaty law in the future. Accordingly, neither the decisions in which the national courts refused to order the administrative authorities to take measures of constraint with regard to the property occupied by the Russian Federation embassy in Romania nor the fact that the administrative authorities failed to take the action sought by the applicants can be regarded as an unjustified restriction on the applicants' right of access to a court.

82. It follows that this complaint must be rejected as being manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

3. Admissibility of the complaint under Article 1 of Protocol No. 1

83. The applicants further submitted that their right to the peaceful enjoyment of their possessions had been interfered with on account of their inability to obtain the enforcement of the administrative decision ordering the restitution of their property. They relied on Article 1 of Protocol No. 1, which provides:

> "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."

(a) The Romanian Government's submissions

84. The Romanian Government submitted that Article 1 of Protocol No. 1 was not applicable in the instant case, since the applicants had not had a "possession" within the meaning of that provision. They contended that the applicants were relying on a decision given by an administrative body after proceedings which had not offered the guarantees of a fair hearing and had not been adversarial as the entity occupying the property in issue, namely the Russian Federation embassy, had not been invited to take part. They reiterated that the decision had been incorrect and added that the applicants had not at any time occupied the property in issue or paid any taxes on it (in contrast to the position in *Brumărescu v. Romania* [GC], no. 28342/95, § 77, ECHR 1999-VII). Relying on *Constandache v. Romania* ((dec.), no. 46312/99, 11 June 2002), they further submitted that the applicants could not allege a breach of the Convention on the basis of

the act of nationalisation itself and noted that the Administrative Board's decision had not been retrospective, since Law no. 112/1995 had effectively created a new right of property distinct from the one vested in A.D.

85. In the alternative, the Romanian Government submitted that no breach of Article 1 of Protocol No. 1 could be made out in respect of the applicants. They argued that the non-enforcement of the Administrative Board's decision had pursued a legitimate aim in the public interest, that of satisfying the need to respect the Russian Federation's rights over the property in question, since it had had both the appearance of ownership of the property and effective possession of it for more than thirty years. The Administrative Board's decision could not have been enforced in the absence of a final judicial decision invalidating the Russian Federation's title to the property. The national courts' decisions to dismiss the applicants' application for an order requiring Ilfov County Council and Snagov Town Council to execute the administrative decision of 18 June 1997 had been the only means available to the Romanian authorities to attain the public-interest aim being pursued.

(b) The applicants' submissions

86. The applicants disputed the Romanian Government's arguments. Recapitulating the circumstances in which the building had been taken from A.D. (see paragraphs 6-13 above), they argued that the failure to execute the Romanian authorities' decision returning the building to them amounted to an infringement of their right of property under Article 1 of Protocol No. 1.

87. The applicants reiterated the arguments they had submitted in respect of Article 6 § 1 (see paragraphs 63-65 above), maintaining in particular that the transfer of ownership of the building to the USSR had been unlawful and that the principle of diplomatic immunity enjoyed by the Russian Federation embassy in Romania should not run counter to the national legal order or entail a breach of domestic law.

(c) The Court's assessment

88. The Court considers that the administrative decision in which the applicants' title to immovable property was upheld amounted to a claim against the Romanian State that may be said to have been sufficiently established to qualify as an “asset” attracting the protection of Article 1 of Protocol No. 1. What the applicants were relying on was not a mere hope of restitution or a conditional claim whose fulfilment was subject to certain statutory requirements (in contrast to the position in *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, §§ 71-73, ECHR 2002-VII, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 58, ECHR 2004-IX), but a decision which had become final as it had not been challenged in the courts by the competent authorities (see paragraph 19 above) and which had been taken by the administrative authority

empowered to order the restitution of property under Law no. 112/1995. As to the Romanian Government's contention that that decision was incorrect, it must be emphasised that the administrative authority responsible for implementing the Law was required to ensure that the relevant conditions were satisfied before choosing which of the compensatory measures provided for in the Law was applicable in a particular situation.

89. Furthermore, the administrative decision in the applicants' favour was not invalidated by any subsequent judicial decision. In so far as it had become final, it amounted to a document of title to the property and the applicants could use it as a basis for applying to be entered in the land register as the owners without having to institute any further administrative or judicial proceedings (see paragraph 40 above, in particular section 22 of Law no. 112/1995). The decision must therefore be considered to have reasonably founded a legitimate expectation on their part of being able to recover possession of the building.

90. In this connection, the Court notes that the applicants complained not of a particular act by the Romanian authorities but rather of their failure to act and their refusal to take steps to ensure that the property was actually returned to them. Indeed, it was not disputed that the applicants were unable to secure possession of the property because the relevant administrative authorities claimed that they had no capacity to take such action and, as the Romanian Government argued before the Court, because it was allegedly impossible to initiate enforcement proceedings since the building in question was in the possession of the Russian Federation embassy in Romania.

91. The Court will ascertain, in the light of the general principle of the peaceful enjoyment of property laid down in the first sentence of the first paragraph of Article 1 of Protocol No. 1, whether the Romanian authorities, in refraining from taking the action sought by the applicants, struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, among many other authorities, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69).

92. In the instant case the Court has already found that the national authorities' refusal of the applicants' application for an order requiring the enforcement of the Administrative Board's decision in their favour did not constitute a disproportionate restriction on their right of access to a court under Article 6 § 1 of the Convention (see paragraph 81 above). It stressed in that connection that the Romanian Government could not be required to override the principle of State immunity against their will and to compromise good international relations in order to secure to the applicants the enforcement of a decision given in administrative proceedings instituted under Law no. 112/1995. That consideration is also valid in the examination of this complaint.

93. The Court is in no doubt, having regard to the circumstances of the case, that the omission by the relevant authorities of the Romanian State to take enforcement measures was "in the public interest" in view of the need to avoid disrupting relations between Romania and the Russian Federation and hindering the proper functioning of that foreign State's diplomatic mission in Romania. Furthermore, the Russian Federation had notified the Romanian State, through the Romanian Ministry of Foreign Affairs, that it had title to the building in issue (see paragraph 14 above). It must also be noted that the national courts dismissed the applicants' attempts to secure enforcement, finding that the Russian Federation had title to the property in question (see paragraphs 28, 30 and 32 above). Although the applicants maintained that that title was unlawful, the Court notes that to date it has not been invalidated by any final judicial decision.

94. Although the Court can accept that the failure over a period of several years to enforce the final administrative decision in the applicants' favour must have caused them a feeling of injustice and frustration, they have nevertheless not lost their claim against the Romanian State. Contrary to what the Romanian Government argued, the Court notes that no domestic court has invalidated the applicants' title to the property in issue. It observes in this connection that the national courts simply refused their request for enforcement measures on the ground that the respondent Romanian authorities lacked the capacity to take part in the proceedings, without examining – because of the legal nature of the action brought by the applicants in the national courts – the validity of the conflicting documents of title or comparing them (see paragraphs 28, 30 and 32 above).

95. Nor can the applicants' title to the property in question have expired with the passing of time; it cannot be ruled out that the decision may be enforced at a later date, for example if the foreign State enjoying immunity from execution gave its consent to the taking of measures of constraint by the authorities of the forum State, thereby voluntarily waiving the application of the international provisions in its favour, a possibility expressly provided for by the relevant provisions of international law (see paragraphs 38 and 39 above, in particular Article 5 of the Resolution of the Institute of International Law on immunity of foreign States in relation to questions of jurisdiction and enforcement and Article 23 of the European Convention on State Immunity).

96. The Court notes, lastly, that in so far as the applicants maintain that their property was taken from them unlawfully, the recent Law no. 10 of 14 February 2001 on the legal status of immovable property wrongfully seized by the State between 6 March 1945 and 22 December 1989 entitles them, if not to restitution of the property itself – which, indeed, they appear to have sought, albeit without success, from the Ilfov prefect's office (see paragraph 35 above) – at least to alternative measures by way of reparation, including compensation in the form of other items, the allotment of shares

in commercial companies listed on the stock market, securities at face value used exclusively in the privatisation process, or pecuniary compensation, as section 1 of the Law provides (see paragraph 40 (d) above).

97. In those circumstances, the fact that the Romanian authorities omitted to take steps to restore possession of the property in issue to the applicants – on "public interest" grounds directly linked to observance of the principle of State immunity, universally enshrined in both conventional and customary international law – did not upset the requisite balance between the protection of the individual right to the peaceful enjoyment of possessions and the requirements of the general interest.

98. It follows that this complaint must be rejected as being manifestly ill-founded, in accordance with Article 35 §§ 3 and 4 of the Convention.

B. In so far as the application is directed against Russia

99. The applicants alleged that the Russian State had infringed their right to enforcement of a final judicial decision in their favour, as guaranteed by Article 6 § 1 of the Convention. They submitted that the outcome of the proceedings they had instituted in the national courts with a view to securing the enforcement of the final decision in question, and, more generally, their inability to secure the return of their property, amounted to unjustified interference by the Russian Government with their right to the peaceful enjoyment of their possessions under Article 1 of Protocol No. 1. Lastly, they argued that the property belonging to A.D. had been unlawfully transferred to the USSR.

100. The Court must first determine whether the facts complained of by the applicants are such as to engage the responsibility of the Russian Federation under the Convention. As it has consistently held, the responsibility of a State is engaged if a violation of one of the rights and freedoms defined in the Convention is the result of a breach of Article 1, by which "[t]he High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention" (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 57, §§ 25-26). The Court must therefore determine whether the applicants were "within the jurisdiction" of the Russian Federation within the meaning of that provision. In other words, it must be established whether, despite the fact that the proceedings in issue did not take place on that State's soil, the Russian Federation may be held responsible for their outcome and for the alleged impossibility of enforcing the Romanian authorities' decision in the applicants' favour.

101. The Court reiterates that, from the standpoint of public international law, the jurisdictional competence of a State is primarily territorial. The case-law of the Court shows that it has only exceptionally acknowledged that a Contracting State has exercised its jurisdiction extraterritorially: it has

done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the government of that territory, exercises some or all of the public powers normally to be exercised by that government (see *Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240, p. 29, § 91, and *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, § 71, ECHR 2001-XII). It recently broadened the scope of that principle by indicating that even in the absence of effective control of a territory outside its borders, the State still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 331, ECHR 2004-VII).

102. In line with this approach, the Court has found that the participation of a State in the defence of proceedings against it in another State does not, without more, amount to an exercise of extraterritorial jurisdiction (see *McElhinney v. Ireland and the United Kingdom* (dec.) [GC], no. 31253/96, 9 February 2000). The Court held in that connection:

> "In so far as the applicant complains under Article 6 ... about the stance taken by the Government of the United Kingdom in the Irish proceedings, the Court does not consider it necessary to address in the abstract the question of whether the actions of a Government as a litigant before the courts of another Contracting State can engage its responsibility under Article 6 ... The Court considers that, in the particular circumstances of the case, the fact that the United Kingdom Government raised the defence of sovereign immunity before the Irish courts, where the applicant had decided to sue, does not suffice to bring him within the jurisdiction of the United Kingdom within the meaning of Article 1 of the Convention."

103. The Court reaffirmed that finding in *Kalogeropoulou and Others v. Greece and Germany* ((dec.), no. 59021/00, ECHR 2002-X). As the case concerned a civil action brought by the applicants in the Greek courts with a view to obtaining compensation from the German State, the Court held that the German State's responsibility could not be engaged in respect of the Greek Minister of Justice's refusal to allow enforcement proceedings to be instituted and of the confirmation of that decision by the judgments of the Greek courts, on the ground that the applicants had failed to show that they were capable of coming within Germany's jurisdiction for the purposes of Article 1 of the Convention:

> "... the proceedings were conducted exclusively in Greece and the Greek courts were the only bodies with sovereign power over the applicants. It is clear that the German courts had no direct or indirect influence over the decisions and judgments delivered in Greece. ... Germany's responsibility cannot be engaged in respect of the situation of which the applicants complain, namely the [Greek] Minister of Justice's refusal to allow them to institute enforcement proceedings and the confirmation of

that decision by the judgments of the Greek courts. Germany was the defendant to an action brought by the applicants in the Greek courts. In that respect it could be likened to a private individual against whom proceedings are instituted."

104. It is clear from the circumstances of the present case that the applicants were likewise not within the Russian Federation's jurisdiction. It must be acknowledged that that State did not exercise any jurisdiction over the applicants: it was not the defendant in the civil action brought by the applicants in the Romanian courts to enforce the final administrative decision in their favour, nor did it intervene in the proceedings to raise the defence of sovereign immunity (contrast *McElhinney* and *Kalogeropoulou and Others*, cited above); the proceedings in issue were conducted exclusively in Romanian territory; the Romanian courts were the only bodies with sovereign power over the applicants; and the Russian Federation authorities had no direct or indirect influence over the decisions and judgments delivered in Romania.

105. The fact that the applicants informed the Ambassador of the Russian Federation that a decision had been given in their favour for the return of a building occupied by that foreign State's embassy and that the embassy informed the Snagov Administrative Board – through the Romanian Ministry of Foreign Affairs but without intervening in the proceedings in issue – that it considered itself to be the owner of several buildings in Snagov, including the one whose restitution to the applicants had been ordered, does not suffice to bring them within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention. There is no other factor justifying a different conclusion.

106. It follows that the Russian Federation's responsibility cannot be engaged in respect of the situation of which the applicants complain, namely the Romanian authorities' refusal to execute the administrative decision in their favour and the judgments in which the Romanian courts dismissed their application for enforcement measures on the ground that the respondent authorities did not have the capacity to take part in the proceedings.

107. Nor can the Russian Federation's responsibility be engaged under Article 1 of the Convention by any failure to comply with its positive obligation to secure the Convention rights relied on by the applicants. The Russian Federation cannot be criticised for not taking positive steps, such as intervening in the court proceedings instituted by the applicants on account of the Romanian administrative authorities' failure to execute the decision in their favour, or giving its prior consent to any measures of constraint. Although it was "in its power" to take such measures (see *Ilaşcu and Others*, cited above, § 331), requiring the Russian Federation to take them would unquestionably be contrary to existing international public policy as it would mean waiving that State's entitlement to foreign sovereign immunity, a principle which, however, is universally accepted in

international law (see paragraphs 38 and 39 above) and pursues the legitimate aim of safeguarding comity and good relations between States.

108. In the light of the foregoing, the Court considers that the applicants have not shown that they were capable of coming "within the jurisdiction" of the Russian Federation. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

109. Lastly, as to the applicants' argument that the transfer to the Soviet authorities of the property belonging to A.D. had been unlawful, the Court notes that the exchange of property between the Romanian and Soviet States, which the applicants considered to have been null and void, took place in 1962, having been authorised by Decree no. 163, issued by the State Council of the Romanian People's Republic on 12 March 1962, in other words before 5 May 1998, the date on which the Russian Federation ratified the Convention and Protocol No. 1.

110. It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.