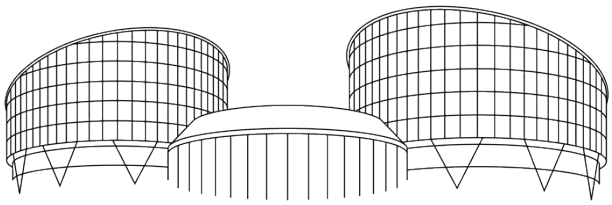

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MARIA ATANASIU AND OTHERS v. ROMANIA

(Applications nos. 30767/05 and 33800/06)

JUDGMENT

STRASBOURG

12 October 2010

FINAL

12/01/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Maria Atanasiu and Others v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Elisabet Fura,
Corneliu Bîrsan,
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Ann Power, *judges,*

and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 8 June and 21 September 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in two applications (nos. 30767/05 and 33800/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Romanian nationals, Mrs Maria Atanasiu and Mrs Ileana Iuliana Poenaru (application no. 30767/05) and Mrs Ileana Florica Solon (application no. 33800/06) ("the applicants"), on 11 August 2005 and 4 August 2006 respectively.

2. Mrs Atanasiu and Mrs Poenaru were represented by Mr C.-L. Popescu and Mr C.-R. Popescu, lawyers practising in Bucharest. Mrs Solon was represented by Ms R.-A. Niculescu-Gorpin and Ms M. Niculescu-Gorpin, lawyers practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu, of the Ministry of Foreign Affairs.

3. The applications were communicated to the Government on 26 May 2006 (application no. 30767/05) and on 27 November 2008 (application no. 33800/06). The applicants and the Government each filed written observations (Rule 59 § 1). The parties replied in writing to each other's observations. In addition, third-party comments were received from the associations *Asociaţia pentru Proprietatea Privată* and *ResRo Interessenvertretung Restitution in Rumänien*, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

4. A hearing took place in public in the Human Rights Building, Strasbourg, on 8 June 2010 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr R.-H. RADU, *Agent*,
Ms I. CAMBREA,
Ms A.-M. VALICA,
Mr D. DUMITRACHE, *Advisers*;

(b) *for the applicants*
Mr C.-L. POPESCU,
Mr C.-R. POPESCU,
Ms R.-A. NICULESCU-GORPIN,
Ms M. NICULESCU-GORPIN, *Counsel*.

5. The Court heard addresses by Mr C.-L. Popescu, Ms R.-A. Niculescu-Gorpin and Ms M. Niculescu-Gorpin for the applicants and Mr R.-H. Radu for the Government. The applicant Ileana Iuliana Poenaru also attended the hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first two applicants, Mrs Maria Atanasiu and Mrs Ileana Iuliana Poenaru, were born in 1912 and 1937 respectively and live in Bucharest. The third applicant, Mrs Ileana Florica Solon, was born in 1935 and lives in Bucharest.

A. The overall background

7. Following the establishment of the communist regime in Romania in 1947, the State proceeded to nationalise buildings and agricultural land on a large scale.

8. One of the nationalisation decrees applicable in relation to immovable property was Decree no. 92/1950, under which buildings belonging to former industrialists, owners of large estates, bankers and owners of large trading enterprises were nationalised. Although this decree did not cover workers, civil servants, academics or retired persons, numerous properties belonging to those social categories were also nationalised. Between 1949 and 1962 virtually all agricultural land passed into the ownership of the agricultural cooperatives.

9. After the fall of the communist regime the State enacted a series of laws aimed at affording redress for breaches of property rights by the former regime.

10. Laws nos. 112/1995 and 10/2001 established the principle of restitution of nationalised immovable property and compensation in cases where restitution was no longer possible. Law no. 112/1995 introduced a cap on compensation, but this was subsequently abolished by Law no. 10/2001.

11. With regard to agricultural land, Laws nos. 18/1991, 169/1997 and 1/2000 increased successively the surface area of land that could be returned to its owners. The last of these laws established a right to compensation in respect of land which could no longer be returned.

12. Law no. 247/2005 harmonised the administrative procedures for restitution of properties covered by the above-mentioned laws.

13. According to a partial calculation made by the Government, over two million claims under the reparation laws have been registered; the amount needed to pay the corresponding compensation is estimated at twenty-one billion euros (EUR).

B. Particular circumstances of the present case

1. Facts concerning application no. 30767/05, lodged by Mrs Maria Atanasiu and Mrs Ileana Iuliana Poenaru

14. In 1950, under Decree no. 92, the State nationalised several buildings belonging to Mr Atanasiu, the first applicant's husband and the second applicant's father. One of the buildings was located at 189 Calea Dorobanţilor in Bucharest.

(a) Attempts to obtain restitution of the building on Calea Dorobanţilor

15. On 15 May 1996, relying on the provisions of Law no. 112/1995, Mr Atanasiu applied to the local board established to deal with applications lodged under that Law, seeking the return of the building. He received no response. On 25 October 1996 Mr Atanasiu died and the applicants were recognised as his sole successors in title.

16. Under the terms of contracts entered into in accordance with Law no. 112/1995, the company managing the building sold the nine flats located therein to the tenants.

17. On 15 November 1999 the applicants lodged a claim with the domestic courts for restitution of the building. They relied on the provisions of ordinary law concerning respect for the right of property and alleged that the nationalisation of the property had infringed Mr Atanasiu's legal rights. Subsequently, on the basis of a letter from Bucharest city council stating

that three of the flats had not been sold, the applicants restricted their claim to that part of the building.

18. In a judgment of 24 March 2000 the Bucharest Court of First Instance allowed the claim and ordered that the above-mentioned part of the building be returned to the applicants. The court held that the building had been nationalised unlawfully since Mr Atanasiu had not belonged to any of the social categories covered by the nationalisation decree and the State could not therefore claim a valid title to the property. Following an appeal and a further appeal (*recurs*) by the city council, the judgment was upheld and became final.

19. The applicants lodged claims in separate proceedings seeking the restitution of the other flats. In total, they obtained five final rulings in the form of judgments of the Bucharest Court of Appeal dated 1 June 2001, 19 May 2004, 1 May 2005, 5 May 2005 and 30 October 2007 directing the purchasers and the local authorities to return seven flats to them. In the case of one other flat they obtained a decision of the Bucharest County Court dated 30 November 2009, still open to appeal, ordering the local authorities to pay them compensation. The last remaining flat in the building is the subject of the present application. Each of the above-mentioned decisions was based on the finding that the building had been nationalised unlawfully.

(b) Steps taken under ordinary law to obtain restitution of flat no. 1

20. On 6 April 2001 the applicants brought an action in the Bucharest County Court seeking to recover possession of flat no. 1. The action was directed against the City of Bucharest, the company which managed the building and the purchasers of the flat, Mr and Mrs G. The applicants also sought to have the contract of sale of 19 December 1996 rescinded.

21. In a judgment of 4 June 2002 the County Court granted the action, declared the sale null and void and ordered the defendants to return the flat to the applicants. The court ruled that the nationalisation of the building had been unlawful and that the contract of sale was not valid.

22. In a judgment of 14 November 2002 the Bucharest Court of Appeal allowed the appeals lodged by the City of Bucharest and Mr and Mrs G. It thus dismissed the applicants' action, holding that the nationalisation had been lawful and that the contract of sale was valid since it complied with the conditions laid down by Law no. 112/1995. The applicants lodged a further appeal.

23. In a final judgment of 11 March 2005 the High Court of Cassation and Justice ("the HCCJ") admitted the appeal for adjudication but dismissed the applicants' arguments and declared their action inadmissible. It considered that the applicants had lodged their action after the date of entry into force of Law no. 10/2001 (see paragraphs 25-27 below) and that after that date they could claim restitution of the flat only in the circumstances and in accordance with the procedure laid down by Law no. 10/2001.

24. As to the application to have the contract of sale rescinded, the HCCJ upheld the reasons given by the Court of Appeal but ruled that, since the applicants' main complaint concerning the restitution of the flat had been dismissed, the application for rescission was likewise inadmissible.

(c) Steps taken under Law no. 10/2001 to obtain restitution of flat no. 1

25. On 9 August 2001, relying on the provisions of Law no. 10/2001, the applicants lodged a claim with Bucharest city council for restitution of the whole of the building located on Calea Dorobanţilor.

26. Having received no reply within the statutory sixty-day time-limit, they brought an action against the city council on 26 July 2002. In a judgment of 10 November 2003 the Bucharest Court of Appeal allowed the action and ordered the city council to give a decision on the applicants' claim. Following a further appeal by the city council the HCCJ dismissed the latter's argument to the effect that the delay had been caused by the applicants' failure to submit a complete file. In a final judgment of 18 April 2005 it upheld the order against the city council and ruled that no fault capable of causing the delay could be attributed to the applicants.

27. On 23 March 2010 the city council wrote to the Romanian Government Agent informing him that consideration of the claim had been suspended pending receipt of the missing documents.

2. Facts concerning application no. 33800/06, lodged by Mrs Ileana Florica Solon

28. In 1950 a plot of land in Craiova belonging to the applicant's parents was nationalised. Part of the land was subsequently turned into a botanic garden and allocated to the University of Craiova, a public higher-education establishment.

29. On 28 June 2001, relying on Law no. 10/2001, the applicant requested the University of Craiova to pay her compensation in respect of the nationalised land. She pointed out that the University's botanic garden occupied 1,950 sq. m out of a total area of 2,140 sq. m.

30. By decision no. 600/A/2001 of 10 July 2001 the University of Craiova rejected the applicant's request on the ground that there were no funds in its budget which could be used for compensation of that kind. The University forwarded her request to the Dolj prefect's office.

(a) Legal proceedings brought by the applicant

31. On 18 July 2001 the applicant brought legal proceedings against the University of Craiova, seeking compensation in respect of the 2,140 sq. m of land, the value of which she estimated at seventy United States dollars (USD) per square metre.

32. At the request of the University, the Dolj County Court, in an interlocutory judgment of 5 December 2002, ordered that the State, represented by the Ministry of Finance, be joined to the proceedings as a defendant.

33. In a judgment of 13 February 2003 the County Court dismissed the applicant's claims as premature, finding that she should have awaited a decision from the prefect's office on her request for compensation. However, the court took the view that the applicant had demonstrated her parents' title to the property and the fact that the land had been wrongfully nationalised.

34. The applicant appealed against that judgment.

35. On 21 November 2003 the Craiova Court of Appeal allowed the applicant's appeal, quashed the first-instance judgment and set aside decision no. 600/A/2001. It based its ruling on a letter from the University of Craiova to the Dolj prefect's office dated 13 November 2003, in which the former had agreed to the award of compensation to the applicant. In the operative part of its decision the Court of Appeal assessed the compensation due to the applicant at USD 70 per square metre, in line with the agreement reached between the parties during the proceedings. The court also stated in its reasoning that the compensation should be paid to the applicant once a special law had been enacted on the terms and procedure governing compensation and the amount of compensation awards.

36. The applicant, the University of Craiova and the Ministry of Finance all lodged further appeals against the decision, on the ground that no agreement had been reached between the parties. The applicant also alleged that the impugned decision did not state which of the two defendants – the University or the Romanian State – was liable for payment.

37. In a final judgment of 30 March 2006 the HCCJ dismissed the appeals and upheld the decision of the Craiova Court of Appeal of 21 November 2003. It took the view that, under section 24 of Law no. 10/2001, the University, which had been using the land claimed by the applicant, was obliged, if restitution was not possible, to make an offer of compensation corresponding to the value of the property and to forward its decision to the Dolj prefect's office.

38. The HCCJ went on to observe that, during the proceedings, the University of Craiova had submitted the letter of 13 November 2003 in which it informed the Dolj prefect's office of its consent to the award of compensation to the applicant in the amount claimed by her. The HCCJ took the view that the content of that letter constituted an offer made in accordance with sections 24 and 36 of Law no. 10/2001 and accepted by the applicant. According to the HCCJ, the offer from the University amounted to acceptance on its part of the applicant's claims. Accordingly, the Court of Appeal had simply noted the fact that the University had taken steps in the course of the proceedings to comply with its statutory obligations.

39. The HCCJ further stated that no specific obligation had been established on the part of the Romanian State, which had been a party to the proceedings, as the actual award of compensation in the amount established was to be made in accordance with the special procedure laid down by Law no. 247/2005.

(b) Administrative follow-up to the judicial proceedings

40. In a decision of 27 January 2006 the University of Craiova made a proposal to the Dolj prefect's office for the applicant to be awarded compensation in respect of the 2,140 sq. m plot of land in accordance with the Craiova Court of Appeal decision of 21 November 2003. The University based its decision on Law no. 10/2001.

41. In reply to a letter dated 24 December 2008 from the National Agency for Property Restitution ("the NAPR") requesting it to take a decision on the basis of Law no. 247/2005, the University of Craiova proposed to the Dolj prefect's office on 24 March 2009 that the applicant be awarded the compensation in question. The University stated that the file would be sent to the Central Compensation Board (*Comisia centrală pentru Stabilirea Despăgubirilor* – "the Central Board").

42. The Central Board did not inform the applicant of any action taken in response to that decision. To date, no compensation has been paid to her.

43. At the hearing of 8 June 2010 the Government stated that the applicant's claim would receive priority treatment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Overview of the main legislative provisions concerning the restitution of properties nationalised before 1989 or, failing restitution, the compensation payable

44. The main legislative provisions in force are described in *Brumărescu v. Romania* [GC], no. 28342/95, §§ 34-35, ECHR 1999-VII; *Străin and Others v. Romania*, no. 57001/00, § 19, ECHR 2005-VII; *Păduraru v. Romania*, no. 63252/00, §§ 23-53, ECHR 2005-XII (extracts); *Viaşu v. Romania*, no. 75951/01, §§ 30-49, 9 December 2008; *Faimblat v. Romania*, no. 23066/02, §§ 16-17, 13 January 2009; *Katz v. Romania*, no. 29739/03, § 11, 20 January 2009; *Tudor Tudor v. Romania*, no. 21911/03, § 21, 24 March 2009; and *Matieş v. Romania*, no. 13202/03, §§ 13-17, 8 June 2010. They can be summarised as follows.

1. Overall framework

45. The Real Property Act (Law no. 18 of 19 February 1991) conferred on former owners and their successors in title the right to partial restitution of agricultural land. The most important amendment to that Act was made by Law no. 1 of 11 January 2000, which raised the ceiling for entitlement to fifty hectares per person in the case of arable land and one hundred hectares per person for pasture land. If restitution was not possible, the beneficiaries were entitled to compensation.

46. In the absence of special legislation laying down rules governing nationalised immovable property, the courts initially considered that they had jurisdiction to examine the issue of the lawfulness of nationalisation decisions and to order that properties be returned to their owners if they were found to have been nationalised unlawfully.

47. The entry into force of Law no. 112 of 25 November 1995 on the legal status of certain residential property authorised the sale of such properties to the tenants. Properties could be returned to the former owners or their successors in title only if the persons concerned were living in the properties as tenants or the properties were unoccupied. If restitution was not possible the former owners could claim compensation, which was capped.

48. As to buildings and land which had belonged to national minority organisations and religious institutions, Government Emergency Ordinances no. 83 of 8 June 1999 and no. 94 of 29 June 2000 provided for them to be returned to their owners or, failing that, for compensation to be awarded.

49. Law no. 10 of 8 February 2001 on the rules governing immovable property wrongfully acquired by the State established the principle of restitution of the properties concerned. In cases where restitution was no longer possible the former owners or their successors in title could claim compensation, which was not capped.

50. Law no. 1 of 30 January 2009 provides that immovable property sold under Law no. 112/1995 may no longer be returned to the former owners and that only alternative measures of redress are possible. The choice between an action for recovery of possession and the special restitution procedure under Law no. 10/2001 has been abolished in favour of the latter.

51. In addition to the properties covered by the above-mentioned legislative provisions, the State undertakes to compensate former owners or their successors in title who lost buildings, land or crops abandoned on certain territories following border changes before and during the Second World War. The administrative procedure for obtaining compensation in respect of such property, provided for by Laws nos. 9/1998, 290/2003 and 393/2006 and coordinated by the NAPR, differs from that for nationalised immovable property, and the necessary funds come out of the State budget.

2. Procedure provided for by Law no. 247/2005 for fixing compensation amounts

52. Law no. 247/2005 on judicial and property reform, which is still in force, made substantial amendments to the existing compensation laws, in particular by introducing a harmonised administrative procedure for claims concerning properties covered by Laws nos. 1/2000 and 10/2000 and by Government Emergency Ordinances nos. 83/1999 and 94/2000.

53. The law in question provides that, where restitution is not possible, the beneficiaries of reparation measures can opt either for compensation in the form of goods and services or for payment of an amount calculated in accordance with "domestic and international practice and standards on compensation for buildings and houses wrongfully acquired by the State".

54. The leading role in implementing this law was entrusted to two newly created structures: the Central Compensation Board (*Comisia centrală pentru Stabilirea Despăgubirilor* – "the Central Board") and the National Agency for Property Restitution (*Autoritatea Naţională pentru Restituirea Proprietăţilor* – "the NAPR").

55. New time-limits were set for lodging claims for restitution or compensation: sixty days for agricultural land and six months for immovable property that had belonged to religious institutions and national minority organisations.

56. The lawfulness of local authority decisions awarding compensation or proposing an award must be reviewed by the prefect, who must then forward the decisions to the Central Board.

57. The provisions governing such review are set out in Government Decree no. 128 of 6 February 2008, according to which, if the prefect considers the decision of the mayor or other local administrative authorities to be unlawful, he may appeal against it in administrative contentious proceedings within one year of the decision.

58. On receipt of the file the Central Board must verify the lawfulness of the decision refusing restitution and subsequently forward the file to "approved assessors" for the purpose of fixing the amount of compensation. On the basis of their report the Central Board either issues a "compensation certificate" or returns the file to the local authorities for fresh examination.

59. Law no. 247/2005 does not lay down time-limits for the processing of files by the Central Board or specify the order in which they should be dealt with. On 28 February 2006 the Central Board decided that files would be processed in random order. On 16 September 2008 it reversed that decision and decided to deal with them in the order in which they were registered.

3. Mechanism established by Law no. 247/2005 for the payment of compensation

60. In order to deal with the payment of compensation awarded by the Central Board, an undertaking for collective investment in transferable securities was set up, known as the *Proprietatea* Fund. Its capital is made up largely of State holdings in various companies.

61. Law no. 247/2005 provided that the *Proprietatea* Fund was to take the necessary steps, within thirty days from its establishment, with a view to having its shares listed on the stock exchange so that the beneficiaries of compensation decisions taken under the restitution laws could sell their shares and receive the proceeds at any time.

62. Since July 2005, Law no. 247/2005 has been amended several times as regards both the operation and financing of the *Proprietatea* Fund and the method of calculating compensation and the procedure for making awards.

63. On 28 June 2007 the Government enacted Emergency Ordinance no. 81/2007 amending the organisation and operation of the *Proprietatea* Fund. Among other measures, the ordinance, which has since been confirmed by Law no. 142 of 12 July 2010, made it possible for beneficiaries from the Fund to receive part of the amount due in cash.

64. Under the terms of Government Decree no. 128 of 6 February 2008 concerning the implementation of Ordinance no. 81/2007, following the issuing of the "compensation certificate" (*titlu de despagubire*) by the Central Board, the person concerned has a choice between receiving part of the amount in cash (up to a limit of 500,000 Romanian lei (RON)) and the remainder in shares, or receiving the entire amount in shares. The preferred option must be notified to the NAPR, which replaces the "compensation certificate" with a "payment certificate" (*titlu de plata*) corresponding to the amount to be paid in cash and a "conversion certificate" (*titlu de conversie*) corresponding to the remainder, to be converted into *Proprietatea* shares.

65. The persons concerned have to make their choice within three years from the issuing of the "compensation certificate" by the Central Board. The corresponding requests are to be examined in chronological order, but no express time-limit is laid down.

66. Cash sums up to and including RON 250,000 must be paid within one year from the date on which the payment certificate is issued; for sums between RON 250,000 and RON 500,000 the time-limit is two years.

67. Under Government Emergency Ordinance no. 62 of 30 June 2010 the payment of cash sums was suspended for a two-year period in order to balance the budget. During that period "compensation certificates" may only be converted into *Proprietatea* shares.

B. Overview of relevant domestic judicial practice

1. The Constitutional Court's position

68. At the request of some members of Parliament the Constitutional Court reviewed the constitutionality of Laws nos. 112/1995, 1/2000, 10/2001 and 247/2005 prior to their entry into force. In decisions given on 19 July 1995, 27 December 1999, 7 February 2001 and 6 July 2005, it held that the laws in question were compatible with the Constitution, with the exception of the provisions of Law no. 112/1995 which reaffirmed the State's ownership of immovable property which it had acquired without title; these provisions also made the adoption of reparation measures conditional on proof that the claimant had his or her permanent residence in Romania.

69. In the context of the review of the constitutionality of the legislation after its entry into force, the Constitutional Court was called upon to rule again on whether some of the provisions were compatible with the Constitution. It dismissed most of the objections as to constitutionality raised in the domestic courts and reaffirmed that the laws in question were compatible with the Constitution.

70. In decision no. 830 of 8 July 2008 the Constitutional Court held that any person who had lodged a claim under Law no. 10/2001 within the statutory time-limit was entitled to reparation measures and in particular to restitution of the property concerned if it had been nationalised unlawfully.

2. Case-law of the domestic courts including the HCCJ

71. After the entry into force of Law no. 112/1995, the practice of the domestic courts was undermined by the absence of a stable legislative framework. The courts gave several different interpretations of concepts such as State “title”, the purchaser's “good faith” and “appearances in law”, and also of the relationship between actions for recovery of possession and the restitution procedures provided for by the special legislation (see *Păduraru*, cited above, § 96).

72. As to the position of the HCCJ concerning the jurisdiction of the domestic courts to determine claims for restitution of nationalised properties in cases where the administrative authorities had failed to respond to the notifications issued under Law no. 10/2001, the full court, in judgment no. 20 of 19 March 2007 published in the Official Gazette on 12 November 2007, held following an appeal in the interests of the law that the domestic courts had jurisdiction to determine the merits of claims and, where appropriate, to order the restitution of the property in question or award statutory compensation.

73. In judgments nos. 53 and 33 of 4 June 2007 and 9 June 2008, published in the Official Gazette on 13 November 2007 and 23 February

2009, the HCCJ, sitting as a full court and again ruling on two appeals in the interests of the law, held that following the entry into force of Law no. 10/2001 actions for recovery of possession of properties expropriated or nationalised before 1989 which had been lodged in parallel with the restitution procedure laid down by Law no. 10/2001 were inadmissible. However, as an exception to that rule the HCCJ held that persons who had a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention could bring an action for recovery of possession provided it did not infringe ownership rights acquired by third parties in good faith.

74. In judgment no. 52 of 4 June 2007, published in the Official Gazette on 22 February 2008, the HCCJ, sitting as a full court and ruling once more on an appeal in the interests of the law, held that the administrative procedure provided for by Law no. 247/2005 did not apply to claims for restitution or compensation already determined by the local administrative authorities under Law no. 10/2001.

75. With regard to local administrative authority decisions granting claims for restitution or compensation under Law no. 10/2001, the HCCJ held that they gave rise to property rights for the persons concerned and that, accordingly, they could no longer be revoked or set aside by the local administrative authorities or the Central Board (judgments nos. 6723 of 17 October 2007 and 6812 of 10 November 2008 of the Civil Division of the HCCJ).

76. As to claims submitted to the Central Board under Law no. 247/2005 on which no decision had been given, the HCCJ ruled that the courts could not take the place of the Central Board in calculating the compensation (judgments nos. 4894 and 5392 of 27 April and 11 May 2009 of the Civil Division of the HCCJ). However, the HCCJ ruled that although the Central Board was not bound by any statutory time-limit in giving its decision it was required to determine claims for restitution or compensation within a "reasonable time" as construed by the case-law of the European Court of Human Rights (judgments nos. 3857 and 3870 of 4 November 2008 of the Administrative and Taxation Disputes Division of the HCCJ).

C. Statistics concerning the *Proprietatea* Fund and the payment of compensation

77. The statistics issued by the NAPR in May 2010 and provided by the Government are as follows:

– 202,782 claims had been registered with the local authorities under Law no. 10/2001. 119,022 files had been examined and an award of compensation had been proposed in 56,000 cases;

– 46,701 files compiled under Law no. 10/2001 and 375 under Government Emergency Ordinances nos. 83/1999 and 94/2000 had been

forwarded to the Central Board, which had issued 10,345 "compensation certificates". The remaining files were under consideration;

– with regard to Laws nos. 18/1991 and 1/2000 concerning agricultural land, according to a partial calculation relating to eight out of forty-one counties, almost one and a half million claims for restitution or compensation had been lodged with the local authorities. A total of 55,271 files compiled under the laws in question had been forwarded to the Central Board, which had granted 21,279 of the claims and had issued 10,915 "compensation certificates". The remaining files were under consideration;

– with regard to claims for restitution of land or compensation under Law no. 247/2005, over 800,000 claims had been registered with the local authorities. Approximately 172,000 of these had been granted and compensation had been proposed;

– of the persons who had received "compensation certificates", 15,059 had opted to receive part of the sum in cash, amounting to a total of about RON 2 billion (approximately EUR 400 million). 3,850 people had received payments totalling about RON 350 million (approximately EUR 80 million).

78. Shares in the *Proprietatea* Fund, in existence since December 2005, are still not listed on the stock exchange. However, since 2007 the Fund has been paying dividends to its shareholders and since March 2008 its shares may be sold by means of direct transactions under the supervision of the stock exchange regulatory authority. By way of example, 206 sales of shares were registered in May 2010.

79. According to the information published on 4 June 2010 by the *Proprietatea* Fund, the Ministry of Finance is the majority shareholder, with 56% of the Fund's shares. A further 12% are held by 103 legal entities, while 31.4% are owned by 3,622 individual shareholders.

80. According to Government estimates a total of EUR 21 billion will be needed to pay the compensation provided for by the compensation laws.

D. Council of Europe materials

81. In Resolution Res(2004)3 on judgments revealing an underlying systemic problem, adopted on 12 May 2004, the Committee of Ministers stated as follows:

> "The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,
>
> ...
>
> Invites the Court:
>
> I. as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of

this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court."

82. Committee of Ministers Recommendation Rec(2004)6 on the improvement of domestic remedies, adopted on 12 May 2004, provides:

"The Committee of Ministers, in accordance with Article 15.b of the Statute of the Council of Europe,

...

Recommends that member states, taking into account the examples of good practice appearing in the appendix:

I. ascertain, through constant review, in the light of case-law of the Court, that domestic remedies exist for anyone with an arguable complaint of a violation of the Convention, and that these remedies are effective, in that they can result in a decision on the merits of the complaint and adequate redress for any violation found;

II. review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court;

III. pay particular attention, in respect of aforementioned items I and II, to the existence of effective remedies in cases of an arguable complaint concerning the excessive length of judicial proceedings;

..."

83. The relevant part of the Appendix to Committee of Ministers Recommendation Rec(2004)6 reads as follows:

"...

13. When a judgment which points to structural or general deficiencies in national law or practice ('pilot case') has been delivered and a large number of applications to the Court concerning the same problem ('repetitive cases') are pending or likely to be lodged, the respondent state should ensure that potential applicants have, where appropriate, an effective remedy allowing them to apply to a competent national authority, which may also apply to current applicants. Such a rapid and effective remedy would enable them to obtain redress at national level, in line with the principle of subsidiarity of the Convention system.

14. The introduction of such a domestic remedy could also significantly reduce the Court's workload. While prompt execution of the pilot judgment remains essential for

solving the structural problem and thus for preventing future applications on the same matter, there may exist a category of people who have already been affected by this problem prior to its resolution. The existence of a remedy aimed at providing redress at national level for this category of people might allow the Court to invite them to have recourse to the new remedy and, if appropriate, declare their applications inadmissible.

15. Several options with this objective are possible, depending, among other things, on the nature of the structural problem in question and on whether the person affected by this problem has applied to the Court or not.

16. In particular, further to a pilot judgment in which a specific structural problem has been found, one alternative might be to adopt an ad hoc approach, whereby the state concerned would assess the appropriateness of introducing a specific remedy or widening an existing remedy by legislation or by judicial interpretation.

17. Within the framework of this case-by-case examination, states might envisage, if this is deemed advisable, the possibility of reopening proceedings similar to those of a pilot case which has established a violation of the Convention, with a view to saving the Court from dealing with these cases and where appropriate to providing speedier redress for the person concerned. The criteria laid out in Recommendation Rec(2000)2 of the Committee of Ministers might serve as a source of inspiration in this regard.

18. When specific remedies are set up following a pilot case, governments should speedily inform the Court so that it can take them into account in its treatment of subsequent repetitive cases.

19. However, it would not be necessary or appropriate to create new remedies, or give existing remedies a certain retroactive effect, following every case in which a Court judgment has identified a structural problem. In certain circumstances, it may be preferable to leave the cases to the examination of the Court, particularly to avoid compelling the applicant to bear the further burden of having once again to exhaust domestic remedies, which, moreover, would not be in place until the adoption of legislative changes.

..."

84. On 2 March 2010, at their 1078th meeting, the Ministers' Deputies responsible for supervising execution of the Court's judgments observed, with reference to the *Străin* and *Viaşu* cases and over a hundred other Romanian cases of the same type, that the issues raised therein reflected a major systemic problem linked in particular to the absence of restitution or compensation in respect of properties which had been nationalised and were subsequently sold by the State to third parties. They took note of the action plan presented by the Romanian authorities on 25 February 2010 and invited them to submit a tentative timetable for adoption of the measures envisaged.

E. Comparative law: restitution and compensation in respect of properties nationalised before 1989 in central and eastern Europe

85. In the years following the Second World War the communist regimes in numerous central and eastern European countries conducted massive programmes of nationalisation and expropriation of immovable property, industrial, banking and commercial structures and, with the exception of Poland, agricultural structures.

86. In the early 1990s restitution measures were adopted in many of these countries, whose political and legal situations differed. The detailed arrangements and scope of the measures varied and there were wide differences in the forms of compensation adopted by States.

87. Some States (Azerbaijan, Bosnia and Herzegovina and Georgia) have not enacted any legislation concerning restitution or compensation in respect of properties that were nationalised or confiscated.

88. The legislation in Poland does not establish a general right to restitution or compensation in respect of properties that were confiscated or nationalised. The sole exception concerns the Bug River region and is confined to a right to compensation. In practice, the persons entitled can opt either to have the index-linked value of the abandoned properties deducted from the price of a State-owned property acquired by means of a competitive bidding procedure, or to receive money from the compensation fund. The amount of compensation which claimants may receive is subject to a statutory ceiling of 20% of the current value of the property lost in the Bug River region.

89. The Hungarian legislation on partial compensation for damage caused to citizens' property by the State provides for compensation to be paid in monetary form or in the form of coupons. There is also a statutory cap on compensation.

90. The majority of the countries concerned restrict the right to restitution or compensation to certain categories of properties or claimants. In some countries the legislation lays down time-limits, sometimes very short, for lodging claims.

91. Some countries provide for various forms of restitution and/or compensation by means of so-called “restitution” laws: this is the case in Albania, Bulgaria, Lithuania and “the former Yugoslav Republic of Macedonia”. Others have dealt with the issue of restitution under rehabilitation laws (the Czech Republic, Germany, Moldova, Russia, Slovakia and Ukraine). Finally, the issue is also dealt with under property legislation (Bulgaria, the Czech Republic, Estonia, Germany and Slovenia).

92. In all cases, restitution is not an absolute right and may be subject to numerous conditions and restrictions. The same is true of the right to compensation.

1. Conditions ratione personae

93. Either the former owners or their successors in title (lawful heirs in Albania) may be eligible for restitution or compensation in respect of confiscated or nationalised property. In some countries including the Czech Republic, Estonia, Lithuania, Moldova, Slovakia and Slovenia, the legislation requires the claimant to be a citizen either when the property was confiscated or when the claim for restitution is made, or in some cases even both. In addition, the law in Estonia and Slovakia requires claimants to be permanent residents both when the law entered into force and when the claim for restitution or compensation is made. In those systems where there is a rehabilitation procedure, only persons rehabilitated in accordance with the law may claim restitution of their property. This is the case in the Czech Republic, Germany, Moldova, Russia, Slovakia and Ukraine. In these countries entitlement to restitution or compensation is wholly or partially linked to the rehabilitation of victims of political repression.

2. Categories of properties excluded from restitution

94. The legislation in some countries excludes several categories of properties from restitution or compensation.

95. In some cases the legislation excludes land and buildings the character of which has been altered (Germany); other countries exclude property which has lost its original character (Estonia) or property which has disappeared or been destroyed, as well as properties which have passed into private ownership (Moldova, Russia and Ukraine).

96. In addition, under Estonian law, military property, cultural and social assets and property under State protection, as well as buildings used by the State or local administrative authorities, are excluded from restitution. Under the legislation in Moldova plots of land, forests, perennial plantations and property confiscated on grounds unrelated to political repression are also ineligible for restitution.

97. In Russia and Ukraine properties which were nationalised in accordance with the legislation in force at the time do not qualify for restitution or compensation.

98. In Lithuania restitution is possible only in the case of residential property. The Serbian legislation provides only for partial restitution of agricultural land. Finally, in the Czech Republic and Bulgaria the restitution laws specify the properties which are covered.

3. Temporal restrictions

99. Some legislation imposes temporal restrictions on the lodging of claims for restitution or compensation. This is the case in Albania and Estonia, where former owners were given less than a year in which to lodge a claim, and in the Czech Republic, Slovakia and “the former Yugoslav

Republic of Macedonia" (one year from the date of entry into force of the law on rehabilitation).

100. Elsewhere, the legislation restricts restitution or compensation to properties nationalised or confiscated during a certain period. By way of example, the German compensation scheme is limited to properties nationalised after 1949 but compensation is awarded for properties nationalised between 1945 and 1949 in the Soviet-occupied zone.

4. Forms of compensation and restrictions thereon

101. A number of countries have opted to provide compensation in the form of another property equivalent to that which was nationalised or confiscated (Albania, Bulgaria, Germany, Montenegro and "the former Yugoslav Republic of Macedonia").

102. Where no exchange is possible the legislation allows the person concerned to be provided with a property of a different kind, a sum of money, compensation vouchers (Bulgaria and Hungary), State securities or bonds (Slovenia and "the former Yugoslav Republic of Macedonia") or shares in a public company (Albania and Bulgaria).

103. The amount of compensation is calculated mainly by reference to the market value of the property at the time of the restitution or compensation decision (Albania, Lithuania, Moldova, Montenegro, Poland and Serbia) or at the time the property was confiscated ("the former Yugoslav Republic of Macedonia"), or as otherwise provided by law.

104. Some countries take account of other considerations in addition to the market price. In Albania, when compensation is provided in the form of shares the amount is equal to the value of the property at the time of the decision or the value of the privatised public property.

105. Other factors may also be taken into consideration in determining the amount of compensation. In Germany, for instance, account is taken of the value of the property before expropriation, which is then multiplied by a coefficient laid down by law.

106. In some countries the legislation sets a cap on compensation (Germany, Russia and Ukraine), or provides for payment in instalments (Moldova).

5. Authorities with power to determine restitution or compensation claims

107. The authorities responsible for determining restitution or compensation claims may be judicial or administrative. The most common arrangements include special restitution and compensation boards (Albania, Bulgaria, Moldova and Montenegro), administrative bodies (Lithuania), the Ministry of Finance or Justice, or even the courts (the Czech Republic). In

all the countries surveyed an appeal lies to the administrative or civil courts against the decisions of the administrative bodies.

THE LAW

I. JOINDER OF THE APPLICATIONS

108. The Court considers at the outset that, in the interests of the proper administration of justice, the applications registered under the numbers 30767/05 and 33800/06 should be joined in accordance with Rule 42 § 1 of the Rules of Court, as there is common ground between the facts giving rise to the two cases. As the legislative framework and the administrative practices are similar, the Court is of the view that they can best be analysed by joining the two applications.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

109. The first two applicants, Mrs Atanasiu and Mrs Poenaru, alleged that the dismissal of their action to recover possession of flat no. 1 and of their application to have the contract of sale rescinded had infringed their right of access to a court. The third applicant, Mrs Solon, contended that the length of the restitution proceedings had been excessive. All three applicants relied on Article 6 § 1 of the Convention, which provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

110. The Court notes at the outset that Mrs Solon's main complaint concerns the lack of an effective compensation mechanism; in her submission, this also contributed to the length of the compensation proceedings. As the issue of the length of the proceedings is inherent in that of the effectiveness of the compensation mechanism, the Court will consider this complaint from the standpoint of the right to the peaceful enjoyment of possessions (see paragraphs 150-194 below).

A. Admissibility

111. The Court notes that the complaint raised by Mrs Atanasiu and Mrs Poenaru under Article 6 § 1 of the Convention concerning their alleged lack of access to a court is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

112. Mrs Atanasiu and Mrs Poenaru submitted that, in refusing to examine on the merits their action for recovery of possession of the flat in question, on the ground that they should first have made use of the administrative procedure under Law no. 10/2001, the domestic courts had infringed their right of access to a court. They added that, in seeking restitution of the flat, they had made use of all the remedies available under domestic law, namely an action for recovery of possession and the administrative procedures established by Laws nos. 112/1995 and 10/2001, without ever obtaining a decision on the merits.

(b) The Government

113. In the Government's submission, the dismissal of the action brought by Mrs Atanasiu and Mrs Poenaru had not infringed their right of access to a court but had been prompted by the concern of the domestic courts to maintain consistency in the restitution procedures established by Law no. 10/2001. In any event, the applicants had had full access to a court in the context of the remedies available to them under Law no. 10/2001.

2. The Court's assessment

114. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the “right to a court”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect only.

115. The right of access to the courts secured by Article 6 § 1 of the Convention 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 not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

116. In this context it should be reiterated that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 43-45, ECHR 2001-VIII).

117. As regards Mrs Atanasiu and Mrs Poenaru, the Court observes that they made use of a remedy based on the provisions of Law no. 10/2001 but that the final judgment of 18 April 2005 ordering the city council to reply to them was never enforced, although their claim dated back to 2001. Accordingly, the Court cannot accept the Government's argument that the applicants had enjoyed full access to a court in the context of the remedies provided for by the special reparation laws.

118. As to the action for recovery of possession based on ordinary civil law, the Court considers that its dismissal on grounds of the need to ensure consistency in the application of the reparation laws does not in itself disclose a problem as regards the right of access to a court under Article 6 § 1 of the Convention, provided that the procedure laid down by Law no. 10/2001 can be shown to constitute an effective legal remedy (see *Faimblat*, cited above, § 33).

119. It is clear from domestic practice that at the relevant time the competent authorities repeatedly failed in their obligation to respond to restitution or compensation claims within the sixty-day statutory time-limit. This systemic problem which hampered the operation of the procedure established by Law no. 10/2001 prevented the persons concerned from having the administrative decisions reviewed by the courts as provided for by law.

120. As to the possibility of imposing penalties on the administrative authorities for delays in examining claims, the Court notes that in a judgment of 19 March 2007 the HCCJ sitting as a full court ruled that if the administrative authorities failed to give a reply within the statutory time-limit, the courts had jurisdiction to determine the merits of claims in their place and, where appropriate, to order the restitution of the property in question. This remedy became effective on 12 November 2007, the date of its publication in the Official Gazette (see *Faimblat*, cited above, § 42).

121. In the light of the foregoing the Court concludes that, prior to the date on which the remedy established by the judgment of 19 March 2007 of the HCCJ sitting as a full court became effective, Mrs Atanasiu and Mrs Poenaru had no possibility of claiming restitution of the flat in question in the domestic courts.

122. The Court accepts that, in the complex and socially sensitive context of Romania's transition to democracy and the reparation of past injustices, which entailed far-reaching economic consequences, the establishment of a legislative framework may have encountered some

difficulties and delays (see, *mutatis mutandis*, *Broniowski v. Poland* [GC], no. 31443/96, § 162, ECHR 2004-V).

123. Nevertheless, the administrative authorities' failure to respond to the restitution claims lodged under Laws nos. 112/1995 and 10/2001, combined with the lack of a remedy during the above-mentioned period, imposed a disproportionate burden on Mrs Atanasiu and Mrs Poenaru and thus impaired the very essence of their right of access to a court.

124. It follows that there has been a violation of Article 6 § 1 of the Convention in respect of Mrs Atanasiu and Mrs Poenaru.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

125. The applicants submitted that their complete inability to obtain restitution of their nationalised properties or to secure compensation amounted to a breach of their right to the peaceful enjoyment of their possessions under 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. Preliminary objection of incompatibility *ratione materiae* with the Convention provisions of the complaint raised by Mrs Atanasiu and Mrs Poenaru

1. The parties' submissions

(a) The Government

126. The Government submitted that Mrs Atanasiu and Mrs Poenaru did not have a "possession" as defined by the Court's case-law.

127. With regard to the right to restitution or compensation in respect of nationalised properties under the domestic legislation, the Government stressed that the reparation laws did not automatically restore the title of former owners of nationalised properties.

128. Neither the finding that a property had been nationalised unlawfully nor the lodging of a restitution or compensation claim was sufficient to conclude that a claim existed which attracted the guarantees of Article 1 of

Protocol No. 1. The right to compensation was subject to compliance with the procedural and substantive requirements laid down by the reparation laws and, in particular, by Law no. 10/2001.

129. In the Government's view, examining whether the claims received conformed to the above-mentioned requirements was a matter exclusively for the competent administrative and judicial authorities. More specifically, an irrevocable claim sufficiently established in domestic law could only be recognised after the prefect's office had reviewed the lawfulness of the decisions taken by the local authorities which examined the compensation claims lodged under Law no. 10/2001 in the first instance.

130. As neither the administrative authorities nor the domestic courts had at any point recognised Mrs Atanasiu and Mrs Poenaru as having a right to restitution or compensation in respect of the flat in question, the Government concluded that the applicants did not have a possession or a claim *vis-à-vis* the State allowing them to argue that they had at least a "legitimate expectation" of effective enjoyment of a possession.

(b) The applicants

131. Mrs Atanasiu and Mrs Poenaru contested the Government's submissions.

132. They were of the view that, in the specific context of Romanian legislation governing the restitution of nationalised properties, the existence of a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention flowed from a combination of three factors: the entry into force of Law no. 10/2001, the wish of the person concerned to take advantage of its provisions, as demonstrated by the lodging of an administrative application, and the failure of the administrative authorities to reply within the statutory time-limit.

133. With regard to their specific situation, Mrs Atanasiu and Mrs Poenaru pointed out that numerous final decisions had been given finding that the nationalisation of the building as a whole had been unlawful and ordering the restitution of the other flats. They therefore submitted that the finding of unlawfulness also applied to flat no. 1. They currently had an existing possession or at least a "legitimate expectation" of securing its return or receiving compensation.

2. The Court's assessment

(a) Principles arising out of the Court's case-law

134. The Court reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of

which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-VII).

135. The Court further observes that Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

136. On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

137. Where the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it (see *Kopecký*, cited above, § 52).

(b) Application of the above-mentioned principles

138. The Court observes that the parties have differing views as to how the provisions of the reparation laws should be interpreted, and in particular as to the point at which persons making claims under those laws possess a right to restitution of the property or compensation.

139. The Court does not consider it necessary to address this issue, which is a matter for domestic theory and practice.

140. It would simply observe that, given the autonomous scope of the notion of "possessions" and the criteria adopted in the Court's case-law, there can be no doubt that an individual has an "existing possession" if the courts, in a final and binding judgment, have recognised his or her title to the property concerned and have explicitly ordered its return in the operative part of the judgment. In this context, a refusal by the administrative authorities to comply with such a judgment amounts to interference with the right to the peaceful enjoyment of possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Păduraru*, cited above, §§ 65 and 75).

141. The Court notes that since the entry into force of Laws nos. 1/2000 and 10/2001 and, most importantly, of Law no. 247/2005, domestic law has provided a mechanism intended to culminate either in restitution of the property concerned or in the awarding of compensation.

142. Consequently, the Court is of the view that, in order for a proprietary interest resulting simply from a finding that the nationalisation

was unlawful to be considered as an "asset" for the purposes of Article 1 of Protocol No. 1, the person concerned must meet the statutory requirements in the context of the procedures established by the reparation laws and must have exhausted the remedies provided for by those laws.

143. In the instant case the Court notes that no domestic court or administrative authority gave a final decision recognising Mrs Atanasiu and Mrs Poenaru as being entitled to restitution of the flat in question. The rulings relied on by the applicants (see paragraph 19 above), despite all finding that the nationalisation of the building as a whole had been unlawful, did not amount to enforceable orders for the restitution of the flat.

144. It follows that the flat in question does not constitute an "existing possession" which could be claimed by the applicants for the purposes of Article 1 of Protocol No. 1.

145. Nevertheless, while the finding by the courts that the building had been wrongfully nationalised did not automatically give rise to a right to return of the property, the Court notes that it did generate entitlement to compensation, given that the final decisions of the domestic courts made clear that the statutory conditions required in order to qualify for reparation measures, namely unlawful nationalisation of the property and proof of status as the successor in title to the former owner, had been met. The Court also attaches importance to the fact that Bucharest city council still refuses to comply with the final judgment of the HCCJ of 18 April 2005, without giving any valid reason.

146. Accordingly, the Court finds that, notwithstanding the city council's failure to give a decision to date, the applicants are at least entitled to compensation. In view of the decisions of the domestic courts, which represent, within the meaning of previous rulings of this Court, "settled case-law of the domestic courts", this claim constitutes a "proprietary interest" which has sufficient basis in domestic law and is covered by the notion of a "possession" under Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Kopecký*, cited above, § 52).

147. It follows that the Government's preliminary objection must be dismissed.

148. Finally, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Admissibility of the complaint raised by Mrs Solon

149. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The Government

150. The Government submitted that the applicants had availed themselves of the possibility of applying to the administrative authorities for compensation under Law no. 10/2001, as amended by Law no. 247/2005.

151. In the Government's view, the mechanism put in place by the latter, entailing creation of the *Proprietatea* Fund, was such as to provide entitled persons with compensation equal to the market value of the property concerned. Since the most recent amendments to Law no. 247/2005, part of the compensation could be paid in cash if the claim did not exceed RON 500,000. Some delays in payment were inevitable given the complexity of the compensation process.

152. As to progress towards getting the *Proprietatea* Fund up and running, the Government indicated in their written observations of 24 April 2009 that the process of assessing the Fund's assets was almost complete, as was the procedure for appointing its administrator.

153. In their observations at the hearing the Government stated that the *Proprietatea* Fund had been paying dividends to its shareholders since 2007. In addition, on 9 September 2010 the Government informed the Court that the *Proprietatea* shareholders had voted on the distribution of dividends for the year 2008/09 and that the Fund's administrator had been instructed to take the necessary steps to have the shares listed on the stock exchange by 22 December 2010.

154. The Government referred to the action plan submitted to the Committee of Ministers on 25 February 2010, aimed at pinpointing how best to make the restitution process more effective. Among the measures being considered were the establishment of an interministerial commission, amendments to the relevant legislation and the organisation of talks with associations and civil society.

155. Referring to the statistics supplied, the Government pointed out that the number of claims was very high (see paragraph 77 above) and that the overall amount of compensation approved represented a considerable budgetary outlay.

156. With regard to the *Solon* case, the Government submitted that, as a result of the appeal lodged against the administrative decision, it had not been possible to validate the applicant's entitlement to compensation until 30 March 2006 (see paragraph 37 above); the length of time prior to the University of Craiova's administrative decision of 24 March 2009 had not been excessive in their view.

157. Furthermore, in the Government's submission, the effectiveness of the compensation mechanism operated through the *Proprietatea* Fund was not relevant in the *Solon* case, given that the amount of compensation at stake did not exceed the RON 500,000 ceiling.

(b) The applicants

158. The applicants contended that the failure to date to return their properties or provide them with compensation was in breach of their right to the peaceful enjoyment of their possessions. They submitted that the compensation mechanism put in place by the domestic legislation was not effective.

(i) Mrs Atanasiu and Mrs Poenaru

159. The applicants stressed the complexity of the restitution laws and the inconsistencies in the legislation and case-law caused by the countless changes which had occurred over a period of almost twenty years.

160. They alleged a twofold violation of Article 1 of Protocol No. 1. Firstly, there had been a substantive violation of that provision on account of the fact that flat no. 1 had been sold unlawfully and in bad faith since the State had been aware of the restitution claim lodged by the rightful owner. Secondly, there had been a procedural violation of their right to the peaceful enjoyment of their possessions as all the administrative and judicial procedures of which they had made use in seeking to recover the property had been ineffective owing to shortcomings in the restitution and compensation mechanism put in place by the State.

(ii) Mrs Solon

161. The applicant stressed that she had received no compensation whatsoever. The Government had not demonstrated the existence of any exceptional circumstance capable of justifying the delay in enacting the reparation laws. The *Proprietatea* Fund was still not operating in such a way as to ensure the effective payment of compensation. That situation was wholly attributable to the State, which was taking an inordinate length of time to adopt the necessary legal and administrative measures to ensure that the right to restitution or compensation was guaranteed in an effective and rapid manner.

2. The Court's assessment

(a) General principles arising out of the Court's case-law

162. The Court deems it necessary first of all to reiterate the principles arising out of its case-law in this sphere.

163. Deprivation of ownership or of another right *in rem* is in principle an instantaneous act and does not produce a continuing situation of "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII).

164. Just as Article 1 of Protocol No. 1 does not guarantee the right to acquire property, it does not impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; and *Jantner*, cited above, § 34).

165. On the other hand, Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII, and *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable in their application (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 109-110, ECHR 2000-I).

166. Furthermore, any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. By the same token, in cases involving a positive duty, there must be a legitimate justification for the State's inaction. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property, including deprivation and restitution of property. Here, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.

Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property or affording publicly funded compensation for expropriated property will commonly involve consideration of political, economic and social issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has declared that it will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *James and Others v. the United Kingdom*, 21 February

1986, § 46, Series A no. 98; *Former King of Greece and Others*, cited above, § 87; and *Broniowski*, cited above, § 149).

167. Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike 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. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measures applied by the State, including measures depriving a person of his of her possessions. In each case involving the alleged violation of that Article the Court must, therefore, ascertain whether by reason of the State's action or inaction the person concerned had to bear a disproportionate and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 73, Series A no. 52).

168. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the relevant compensation terms – if the situation is akin to the taking of property – but also the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State's conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Vasilescu v. Romania*, 22 May 1998, § 51, *Reports of Judgments and Decisions* 1998-III).

(b) Application of the above-mentioned principles to cases concerning reparation measures in a context of political and economic reform

169. The Court has also held that the above-mentioned principles apply to such fundamental changes of a country's system as the transition from a totalitarian regime to a democratic form of government and the reform of the State's political, legal and economic structure, phenomena which inevitably involve the enactment of large-scale economic and social legislation (see *Broniowski*, cited above, § 149).

170. Restitution legislation of wide sweep, in particular if it implements a programme of social and economic reform, is hardly capable of doing entire justice in the diverse circumstances of the very large number of different individuals concerned. It is in the first place for the domestic authorities, and in particular Parliament, to assess the advantages and disadvantages involved in the various legislative alternatives available, bearing in mind that this is a policy decision (see *James and Others*, cited

above, §§ 68-69, and, *mutatis mutandis*, *Olaru and Others v. Moldova*, nos. 476/07, 22539/05, 17911/08 and 13136/07, § 55, 28 July 2009).

171. The Court has already acknowledged that balancing the rights at stake, as well as the gains and losses of the different persons affected by the process of transforming the State's economy and legal system, is an exceptionally difficult exercise.

172. In such circumstances, the national authorities must have a considerable margin of appreciation in selecting not only the measures to regulate ownership relations within the country, but also the appropriate time for their implementation.

173. Nevertheless, that margin, however considerable, is not unlimited, and the exercise of the State's discretion, even in the context of the most complex reform of the State, cannot entail consequences at variance with Convention standards (see *Broniowski*, cited above, § 182).

174. Under Article 1 of Protocol No. 1 the State is entitled to expropriate property – including any compensatory entitlement granted by legislation – and to reduce, even substantially, levels of compensation under legislative schemes. What Article 1 of Protocol No. 1 requires is that the amount of compensation granted for property taken by the State be "reasonably related" to its value. A total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only exceptionally (see *Broniowski*, cited above, § 186).

175. Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances – less than full compensation does not make the taking of a person's property *eo ipso* wrongful in every case. In particular, legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *James and Others*, cited above, § 54; *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 120, Series A no. 102; and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 95 et seq., ECHR 2006-V).

176. Thus, in *Broniowski* and in *Wolkenberg*, the Court expressly accepted that the radical reform of Poland's political and economic system, as well as the state of its finances, might justify stringent limitations on compensation for the Bug River claimants (see *Broniowski*, cited above, § 183, and *Wolkenberg and Others v. Poland* (dec.), no. 50003/99, § 63, ECHR 2007-XIV (extracts)).

177. Moreover, it is evident from the Court's case-law that while restitution laws implemented to mitigate the consequences of mass infringements of property rights caused, for example, by communist regimes, may have been found to pursue a legitimate aim, the Court has nevertheless considered it necessary to ensure that the attenuation of those old injuries does not create disproportionate new wrongs (see, for example,

Pincová and Pinc v. the Czech Republic, no. 36548/97, § 58, ECHR 2002-VIII).

(c) Application of the above-mentioned principles in the present case

178. The Court observes first of all that in enacting special legislation on restitution and compensation the Romanian State – unlike other States which underwent a similar change of political regime in 1989 (see paragraphs 85-107 above) – opted for the principle of full compensation in respect of properties expropriated during the communist era. Thus, in the case of properties which, like the applicants', were expropriated some sixty years ago, the Romanian legislation provides, where the property cannot be returned, for the payment of compensation equal to the current market value of the nationalised property.

179. The Court refers to its case-law concerning interference with the right to the peaceful enjoyment of the possessions of persons entitled to compensation in respect of property which can no longer be restored to them (see, in particular, *Străin*, cited above; *Matache and Others v. Romania*, no. 38113/02, 19 October 2006; *Viaşu*, cited above; and *Katz*, cited above).

180. It refers in particular to its finding in *Viaşu* (cited above, §§ 59-60) to the effect that an administrative decision by the local authority recognising the applicant's entitlement to compensation was sufficient to give rise to a "proprietary interest" protected by Article 1 of Protocol No. 1 and that, consequently, the failure to enforce that decision amounted to interference within the meaning of the first sentence of the first paragraph of that Article (see also *Marin and Gheorghe Rădulescu v. Romania*, no. 15851/06, §§ 20-22, 27 May 2010).

181. By the same token, failure to enforce an administrative decision recognising entitlement to compensation and fixing the amount constitutes interference within the meaning of the first sentence of the first paragraph of that Article (see *Elias v. Romania*, no. 32800/02, § 21, 12 May 2009).

182. *A fortiori*, failure to enforce a court decision recognising entitlement to compensation, even where the amount of the award has not been fixed, will constitute interference with the right to the peaceful enjoyment of possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Deneş and Others v. Romania*, no. 25862/03, §§ 46-47, 3 March 2009).

183. In *Viaşu*, the Court found a violation of the applicant's right to the peaceful enjoyment of his possessions in view of the ineffectiveness of the restitution system and, in particular, of delays in the procedure for payment of compensation.

184. Specifically, the Court observed that the persons concerned had not been given any guarantees as to the length or outcome of the proceedings before the Central Board. It further noted that the *Proprietatea* Fund did not

operate in a manner that could be said to allow the effective award of compensation to all those persons entitled under the reparation laws who had opted to receive shares (see, among other authorities, *Viaşu*, §§ 71-72, and *Matache and Others*, § 42, both cited above). Hence, the State's inaction was not justified on legitimate public-interest grounds in accordance with the principles outlined at paragraphs 162-168 above.

185. In the instant case the Court notes, as regards Mrs Atanasiu and Mrs Poenaru, that, despite their having obtained several final court decisions (see paragraph 19 above) to the effect that their property had been unlawfully expropriated and that, in a final judgment of 18 April 2005, the local administrative authority was ordered to give a decision on their claim, the decisions in question have still not been enforced.

186. The Court also observes, with regard to Mrs Solon, that despite the fact that she obtained, on 30 March 2006, a final court decision fixing the amount of compensation, followed, on 24 March 2009, by an administrative decision confirming her entitlement, these decisions have not been enforced to date.

187. The Government referred principally to the large number of claims for compensation similar to those lodged by the applicants, which had resulted in more cumbersome administrative procedures, longer processing and payment times and significant budgetary outlay.

188. Thus, the Court finds itself faced with cases burdened with a political, historical and factual complexity flowing from a problem that should have been resolved by all the authorities assuming full responsibility for finding a solution. This reality must inform the Court's interpretation and application of the Convention, which cannot be either static or blind to concrete factual circumstances.

189. The factual reasons given by the Government are not open to doubt. However, the Court considers that insufficient legislative and administrative measures were adopted in the circumstances, capable of providing all parties concerned by the restitution process with a coherent and foreseeable solution proportionate to the public-interest aims pursued.

190. As to the Government's action plan, the Court notes that it was not submitted to the Committee of Ministers until early 2010. Although it proposes some interesting solutions, there is as yet no timetable for their adoption (see paragraph 154 above).

191. As regards recent progress in relation to the *Proprietatea* Fund referred to by the Government, the Court observes that, as matters stand, of a total of over 68,000 claimants registered with the Central Board, only around 3,500 have had their claims converted into shares in the Fund, and it is still not possible to trade in these shares on the stock market.

192. After examining all the evidence in its possession in the light of the principles articulated in its case-law, the Court considers that the

Government have not put forward any fact or argument capable of justifying the failure to secure the applicants' right to compensation.

193. It takes the view that in the instant case the fact that the applicants have obtained no compensation to date and have no certainty as to when they might receive it has imposed on them a disproportionate and excessive burden which is incompatible with the right to the peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1.

194. Accordingly, there has been a violation of that provision in the present case.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

195. Article 46 provides:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. Submissions of the parties and the third-party interveners

1. The parties

196. The applicants contended that although the process of adopting measures of redress in respect of expropriations of property prior to 1989 had begun twenty years earlier, it was still not completed. The relevant legislation had been amended on several occasions, with the result that the process had become more and more complicated.

197. Accordingly, they submitted that the lack of an adequate response on the part of the domestic authorities following the Court's findings in the *Viaşu*, *Katz* and *Faimblat* judgments, cited above, was such as to impair the subsidiary character of the system of supervision established by the Convention.

198. The Government submitted that a series of major problems had slowed down the process of providing restitution or compensation in respect of nationalised properties. They stressed the scale of the phenomenon of nationalisation during the communist era and the variety of properties covered by the restitution laws.

199. Furthermore, they were confronted with a large number of restitution and compensation claims from former owners and their heirs.

200. The Government further submitted that the large number of compensation claims was compounded by the fact that the laws in force required full compensation to be awarded. According to estimates, the

amount needed to pay that compensation was EUR 21 billion. They pointed out in that context that Romania's GDP had been EUR 120 billion in 2009. The amount of compensation actually paid out to date was around EUR 84 million.

201. As to the possibility provided for by the law of awarding compensation in the form of goods or services, the Government maintained that this could be applied only on a very limited basis in view of the shortage of available properties and the limited public reserves of land belonging to the municipalities.

202. The Government also cited the lack of Land Registry records and of any inventory of State-owned property as sources of difficulty in establishing a restitution and compensation mechanism.

203. As to the measures to be adopted in the context of Article 46 of the Convention, the Government acknowledged the importance of making the system of restitution more effective. A working party had been established in 2009 made up of representatives of the Government Agent, the *Proprietatea* Fund, the NAPR and the Finance and Justice Ministries. Furthermore, an action plan had been submitted to the Committee of Ministers of the Council of Europe on 25 February 2010, comprising the following elements:

– creation of an interministerial commission aimed at pinpointing the best means of finalising the property restitution process;

– amendment of the legislation on restitution of nationalised property in order to simplify the process and make it more effective. The most important proposals concerned the setting of time-limits for each administrative stage in the procedure and the introduction of penalties for failure to comply, an increase in the surface area of land which could be returned and an increase in the number of staff working on restitution cases;

– approval by Parliament of Government Emergency Ordinance no. 81/2007 on speeding up the procedure for awarding compensation;

– organisation of talks with associations of former owners and representatives of civil society.

204. With regard to possible changes to the level of compensation awards, the Government saw the so-called “Polish solution” adopted in the wake of the *Broniowski* judgment as a possible working hypothesis, although it had to be borne in mind that this approach might not be favourably received by the persons concerned.

205. Lastly, the Government submitted that in situations such as the one facing Romania, involving a wide-reaching legislative scheme with significant economic impact for the country as a whole, the national authorities must have considerable discretion in selecting the measures to secure respect for property rights and must be able to take the time necessary for their implementation. In the present case the State had clearly become a victim of its own good intentions.

206. The Government therefore requested the Court to assist them in tackling the problem by indicating as clearly as possible the course of action to be followed and by adjourning examination of all pending cases of a similar nature in order to enable them to put the appropriate measures in place.

2. The third-party interveners

207. The association *Asociaţia pentru Proprietatea Privată* submitted that the system of reparation established by the Romanian State in respect of property nationalised before 1989 was beset by major legislative, judicial, administrative and budgetary failings. The "reparation" laws served no purpose in so far as a simpler and more foreseeable solution had been available all along under ordinary law, in the form of an action for recovery of possession.

208. The association argued that a reduction in the level of compensation could not be justified by an alleged shortage of budgetary funds and would be liable to compromise the legitimate expectations which the current legislation had raised among those concerned. Any such reduction would also be in breach of the principle that legislation should not have retrospective effect and the principle of non-discrimination, given that thousands of people in a similar situation to those still awaiting compensation had already received compensation equal to the market value of the properties that had belonged to them.

209. The association *ResRo Interessenvertretung Restitution in Rumänien* made broadly similar submissions, adding that the current restitution and compensation system was very slow and therefore ineffective. Moreover, the administrative authorities involved in the process refused to publish activity reports, with the result that the process lacked transparency.

B. The Court's assessment

1. General principles

210. The Court points out that by Article 46 of the Convention the High Contracting Parties undertook to abide by the final judgments of the Court in any case to which they were parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction under Article 41, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual

measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects.

211. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Lukenda v. Slovenia*, no. 23032/02, § 94, ECHR 2005-X; and *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, 4 December 2008).

212. The object of the Court's designating a case for the "pilot-judgment procedure" is to facilitate the speediest and most effective resolution of a dysfunction affecting the protection of the Convention right in question in the national legal order. One of the relevant factors considered by the Court in devising and applying that procedure has been the growing threat to the Convention system resulting from large numbers of repetitive cases that derive from, among other things, the same structural or systemic problem.

213. The pilot-judgment procedure is primarily designed to assist the Contracting States in fulfilling their role in the Convention system by resolving such problems at national level, thereby securing to the persons concerned the Convention rights and freedoms as required by Article 1 of the Convention, offering to them more rapid redress and, at the same time, easing the burden on the Court (see *Broniowski v. Poland* (friendly settlement) [GC], no. 31443/96, § 35, ECHR 2005-IX, and *Hutten-Czapska v. Poland* [GC], no. 35014/97, §§ 231-234, ECHR 2006-VIII).

214. It is inherent in the pilot-judgment procedure that the Court's assessment of the situation complained of in a "pilot" case necessarily extends beyond the sole interests of the individual applicant. It requires the Court to identify, as far as possible, the causes of the structural problem and to examine the case also from the perspective of the general measures that need to be taken in the interest of other potentially affected persons (see *Wolkenberg and Others*, cited above, § 35, and, *mutatis mutandis*, *Olaru and Others*, cited above, § 54).

2. Application of the above-mentioned principles in the present case

(a) Application of the pilot-judgment procedure in the present case

215. The Court notes that, unlike *Broniowski* and *Hutten-Czapska*, both cited above, in which the failings in the domestic legal order were identified for the first time, the present case comes to be considered after several judgments in which the Court has already found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the shortcomings in the Romanian system of restitution and compensation (see,

to the same effect, *Burdov v. Russia (no. 2)*, no. 33509/04, § 129, ECHR 2009-..., and *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 83, ECHR 2009-... (extracts).

216. The Court observes that it is clear from the present case that the ineffectiveness of the compensation and restitution mechanism continues to pose a recurrent and large-scale problem in Romania. This situation persists in spite of the adoption of the *Viaşu*, *Faimblat* and *Katz* judgments, cited above, in which the Court indicated to the Government that general measures were needed in order to guarantee the right to restitution in an effective and rapid manner.

217. Since those judgments the number of findings of a violation of the Convention has been constantly on the increase, and several hundred more similar applications are pending before the Court, which are liable to give rise to further judgments finding a breach of the Convention. This is not only an aggravating factor as regards the State's responsibility under the Convention for an existing or past state of affairs, but also represents a threat to the future effectiveness of the Convention machinery (see, *mutatis mutandis*, *Burdov (no. 2)*, cited above, §§ 129-130, and *Yuriy Nikolayevich Ivanov*, cited above, § 86).

218. In view of this situation the Court considers that the present case is suitable for the application of the pilot-judgment procedure as established in the *Broniowski* and *Hutten-Czapska* judgments, cited above, and also in *Burdov (no. 2)*, cited above, §§ 129-130, *Yuriy Nikolayevich Ivanov*, cited above, § 81, and *Olaru and Others*, cited above, § 59.

(b) Existence of a practice incompatible with the Convention

219. The judgments already given identify some causes of the problems as regards the legislation and administrative practice which, in addition to the difficulties pointed out by the Government, have affected and may continue to affect large numbers of persons (see paragraphs 198-202 above).

220. The main cause appears to be the gradual extension of the scope of the reparation laws to include virtually all nationalised immovable property, compounded by the absence of a cap on compensation.

221. The complexity of the legislative provisions and the changes made to them have resulted in inconsistent judicial practice and in a general lack of legal certainty as to the interpretation of the core concepts in relation to the rights of former owners, the State and third parties who acquired nationalised properties (see *Păduraru*, cited above, §§ 94 et seq.).

222. The Court notes that the domestic authorities, faced with the multiplicity of restitution procedures, responded by enacting Law no. 247/2005 establishing a single administrative procedure for claiming compensation, applicable to all the properties concerned.

223. This harmonisation, which represents a step in the right direction by putting in place simplified procedures, would be effective if the

competent authorities, and in particular the Central Board, had sufficient human and material resources at their disposal to cope with the tasks facing them.

224. In that context the Court takes note of the fact that the Central Board, faced with a substantial workload from the outset, initially dealt with files in random order. Although the criteria for examining claims were amended, by May 2010 only 21,260 out of a total of 68,355 cases registered with the Board had resulted in a decision awarding a "compensation certificate", and fewer than 4,000 payments had been made (see paragraph 77 above).

225. The absence of any time-limit for the processing of claims by the Central Board is another weak point in the domestic compensation mechanism, identified by the Court in *Faimblat*, cited above, and acknowledged by the HCCJ. The latter criticised the Central Board's lack of expedition and ordered it to examine the claims submitted to it within a "reasonable time" (see paragraph 76 above).

226. However, in the absence of a binding statutory time-limit, the Court considers that the above-mentioned requirement is in danger of remaining theoretical and illusory and that the right of access to a court in order to complain of delays on the part of the Central Board is liable to be deprived of its substance.

227. Lastly, the Court notes the very considerable burden on the State budget which the legislation on nationalised property represents, and which the Government concedes to be onerous. Nevertheless, it is struck by the slow rate of progress towards having the *Proprietatea* Fund floated on the stock exchange, despite the fact that the flotation was due to take place in 2005 and that the trading of shares would enable some of the claims from persons in receipt of "compensation certificates" to be dealt with through the stock market, thus easing pressure on the budget.

228. In view of the large number of problems besetting the restitution and compensation mechanism, which have persisted after the adoption of the *Viaşu*, *Faimblat* and *Katz* judgments, the Court considers it imperative that the State take general measures as a matter of urgency capable of guaranteeing in an effective manner the right to restitution or compensation while striking a fair balance between the different interests at stake.

(c) General measures

229. As regards the measures designed to guarantee the effectiveness of the Convention machinery, the Court would draw attention to Resolution Res(2004)3 and Recommendation Rec(2004)6, adopted by the Committee of Ministers of the Council of Europe on 12 May 2004 (see paragraphs 81-83 above).

230. Although it is in principle not for the Court to determine what remedial measures may be appropriate to satisfy the respondent State's

obligations under Article 46 of the Convention, it considers it necessary, in order to provide the assistance requested by the respondent State, to suggest, on a purely indicative basis, the type of measures which the Romanian authorities might take in order to put an end to the structural situation concerned.

231. As the Court previously stated in *Viaşu*, cited above, the respondent State must first and foremost either remove all obstacles to the effective exercise of the right in question by the large numbers of persons who, like the applicants, are affected by the situation found by the Court to be incompatible with the Convention, or, failing that, it must provide appropriate redress (see, *mutatis mutandis*, *Yuriy Nikolayevich Ivanov*, cited above, § 94).

232. The respondent State must therefore ensure, by means of the appropriate legal and administrative measures, respect for the ownership rights of all persons in a similar situation to that of the applicants, taking into account the principles of the Court's case-law concerning the application of Article 1 of Protocol No. 1 (see paragraphs 162-177 above). These aims could be achieved, for instance, by amending the current restitution mechanism, in which the Court has identified certain weaknesses, and establishing simplified and effective procedures as a matter of urgency on the basis of legislation and of coherent judicial and administrative practice, with a view to striking a fair balance between the various interests at stake (see *Viaşu*, cited above, § 83).

233. Balancing the rights at stake, as well as the gains and losses of the different persons affected by the process of transforming the State's economy and legal system, is an exceptionally difficult exercise involving a number of different domestic authorities. The Court therefore considers that the respondent State must have a considerable margin of appreciation in selecting the measures to secure respect for property rights or to regulate ownership relations within the country, and in their implementation (see paragraphs 169-177 above).

234. The Court notes with interest the proposal put forward by the Government in its action plan, aimed at laying down binding time-limits for each administrative step. Such time-limits, provided that they are realistic and are accompanied by effective review by the courts, could have a positive impact on the effectiveness of the compensation mechanism.

235. At the same time, the Court considers that further examples of good practice and legislative adjustment provided by other signatory States, which are compatible with the principles laid down in the Convention and its Protocols, could provide a source of inspiration to the respondent Government (see, in particular, *Broniowski* and *Wolkenberg*, both cited above). Hence, an overhaul of the legislation in order to create clear and simplified rules of procedure would make the compensation scheme more foreseeable in its application compared with the present system, the

provisions governing which are contained in a number of different laws, ordinances and decrees. Setting a cap on compensation awards and paying them in instalments over a longer period might also help to strike a fair balance between the interests of former owners and the general interest of the community.

236. In view of the large number of persons affected and the far-reaching consequences of such a scheme, which has a considerable impact on the country as a whole, the national authorities retain full discretion in choosing, subject to supervision by the Committee of Ministers, the general measures to be laid down in the domestic legal system in order to put an end to the violations found by the Court.

(d) Procedure to be followed in similar cases

237. The Court reiterates that the aim of the pilot-judgment procedure is to allow the speediest possible redress to be granted at domestic level to all the individuals suffering from the structural problem identified in the pilot judgment. It may therefore be decided, in the pilot judgment, to adjourn consideration of all the applications which are similar in substance pending the adoption of general measures to remedy the aforesaid structural problem (see *Yuriy Nikolayevich Ivanov*, cited above, § 95; *Broniowski*, cited above, § 198; and *Xenides-Arestis v. Turkey*, no. 46347/99, § 50, 22 December 2005).

238. In that regard the Court considered it necessary, in some of its previous pilot judgments, to adopt a different approach depending on whether the application had been lodged before or after delivery of the pilot judgment (see *Burdov (no. 2)*, cited above, §§ 143-146, and *Olaru and Others*, cited above, § 60).

239. With regard to the first category of applications, the Court took the view that the applicants could be invited to submit their complaints first of all to the domestic authorities. As to the second category, it considered that it would be unfair to ask applicants to resubmit their grievances to the domestic authorities, given that they had already suffered the consequences of the violation of their Convention rights for several years.

240. In all cases, the consideration of similar cases was adjourned pending the adoption of general measures, either for one year (see *Burdov (no. 2)*, cited above, § 143; *Yuriy Nikolayevich Ivanov*, cited above, § 96; and *Olaru and Others*, cited above, § 61), or for six months (see *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 65, 3 November 2009).

241. Bearing in mind the very large number of applications against Romania concerning the same type of case, the Court decides to adjourn consideration of all the applications stemming from the same general problem for eighteen months from the date on which the present judgment becomes final, pending the adoption by the Romanian authorities of

measures capable of offering adequate redress to all the persons affected by the reparation laws.

242. This decision is without prejudice to the Court's power to declare inadmissible any such case or to take note of a friendly settlement between the parties in accordance with Articles 37 or 39 of the Convention (see *Burdov (no. 2)*, cited above, §§ 144-146, and *Olaru*, cited above, § 61).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

243. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

244. The first two applicants, Mrs Maria Atanasiu and Mrs Ileana Iuliana Poenaru, claimed restitution of the flat in question or an award of 82,000 euros (EUR) for alleged pecuniary damage, representing the value of the flat as established by a property expert in October 2006. They claimed EUR 8,200 in respect of non-pecuniary damage.

245. The third applicant, Mrs Ileana Florica Solon, claimed EUR 832,684 for pecuniary damage, equivalent to the market value of the land which was the subject of her reparation claim. In support of her claims, she submitted to the Court two valuation reports drawn up by two property experts in January and February 2009. The first report valued the land at 3,397,785 Romanian lei (RON), or EUR 802,500 according to the exchange rate used in the same report, while the second valued it at RON 3,699,852, or EUR 860,280. Mrs Solon maintained that the alleged violations had caused her uncertainty and frustration. She claimed EUR 7,000 in respect of non-pecuniary damage.

246. The Government contested the applicants' claims.

247. With regard to the claim submitted by Mrs Atanasiu and Mrs Poenaru, they stressed that no court or administrative authority had given a final decision recognising the applicants as being entitled to restitution of the flat in question. As to the value of the flat, they maintained, relying on the conclusions of an expert report dated November 2006, that its market value was EUR 39,603.

248. As to Mrs Solon's claim, the Government pointed out that the level of compensation fixed by the judgment of the Craiova Court of Appeal of 21 November 2003 and subsequently by the HCCJ judgment of 30 March 2006 had been seventy United States dollars (USD) per square metre. They further observed that, while those judgments referred to an area of

2,140 sq. m of land, the applicant had indicated in her application form that the land in question covered an area of only 1,932 sq. m. In their submission, the subject matter of the application was thereby limited to the value of 1,932 sq. m of land.

249. As to the non-pecuniary damage claimed by the three applicants, the Government submitted that the finding of a violation would constitute sufficient just satisfaction.

250. The Court recalls that it has found a violation of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 on account of the authorities' failure to decide promptly on the applicants' claims and to calculate and pay the compensation due. In view of the nature of the violations found, the Court considers that the applicants suffered pecuniary and non-pecuniary damage.

251. As regards the claim made by Mrs Atanasiu and Mrs Poenaru, the Court notes the disparity between the applicants' estimate as to the value of the flat and that advanced by the Government.

252. As far as Mrs Solon's claim is concerned, the Court observes that she obtained a final judgment awarding her compensation calculated at USD 70 per square metre in respect of 2,140 sq. m of land.

253. In view of the ineffective nature of the current system of restitution and having regard, in particular, to the age of the applicants and the fact that it is now over nine years since they began administrative proceedings, the Court, without prejudging possible future developments with regard to the compensation mechanism, considers it reasonable to award the applicants a sum which would represent a final and exhaustive settlement of the present case.

254. On the basis of the evidence in its possession and ruling on an equitable basis as required by Article 41 of the Convention, the Court awards, for all heads of damage, EUR 65,000 to Mrs Atanasiu and Mrs Poenaru and EUR 115,000 to Mrs Solon.

B. Costs and expenses

255. Mrs Atanasiu and Mrs Poenaru claimed RON 1,350 for the costs and expenses incurred before the Court, including approximately EUR 100 in symbolic fees for their lawyer, Mr C.-L. Popescu, who had acted for them on a *pro bono* basis. On 5 April 2010 they also claimed reimbursement of RON 677.26, representing the postage costs incurred in submitting additional observations ahead of the hearing of 8 June 2010.

256. Mrs Solon claimed EUR 6,696.18 for costs and expenses incurred before the Court. She provided supporting documents for her lawyer's fees, amounting to EUR 6,000, and for postage and translation costs and the fees of the property experts, amounting to EUR 696.18. On 2 June 2010 she also requested reimbursement of the costs and expenses incurred in connection

with the Court hearing of 8 June 2010, namely EUR 2,150 in lawyer's fees and a total of EUR 1,331.52 to cover the latter's travel and accommodation costs.

257. The Government did not object to the reimbursement of costs and expenses provided that they were genuine, substantiated, necessary and reasonable.

258. However, they considered the fees charged by Mrs Solon's lawyer to be excessive and claimed that the applicant had not submitted a summary of the number of hours worked by her counsel. They further contended that the fees of the property experts were unrelated to the present case, given that the applicant could not claim a debt in her favour in respect of which a method of calculation had already been established by a final judicial decision.

259. The Court, in accordance with its case-law, must ascertain whether the costs and expenses claimed were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

260. As regards the sum claimed by Mrs Atanasiu and Mrs Poenaru, the amount of EUR 1,770.66 received by way of legal aid from the Council of Europe covers the costs and expenses claimed. Accordingly, the Court rejects the applicants' claim under this head.

261. As to Mrs Solon, having regard to the criteria established by its case-law and in the absence of a detailed breakdown of the hours worked by the lawyer representing her, the Court awards her EUR 5,000 for costs and expenses, less the EUR 1,848.16 received by way of legal aid from the Council of Europe, leaving an amount of EUR 3,151.84 to be paid.

C. Default interest

262. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the applicants Maria Atanasiu and Ileana Iuliana Poenaru;

4. *Holds* that it is not necessary to examine separately the complaint under Article 6 § 1 of the Convention in respect of the applicant Ileana Florica Solon;

5. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention in respect of all the applicants;

6. *Holds* that the respondent State must take measures to ensure effective protection of the rights guaranteed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, in the context of all the cases similar to the present case, in accordance with the principles enshrined in the Convention (see paragraphs 229-236 above). These measures must be put in place within eighteen months from the date on which the present judgment becomes final;

7. *Decides* to adjourn, for eighteen months from the date on which the present judgment becomes final, examination of all applications stemming from the same general problem, without prejudice to the Court's power to declare inadmissible any such case or to take note of a friendly settlement between the parties in accordance with Articles 37 or 39 of the Convention;

8. *Holds*

(a) that the respondent State is to pay the applicants Maria Atanasiu and Ileana Iuliana Poenaru jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 65,000 (sixty-five thousand euros) in respect of all heads of damage combined, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that the respondent State is to pay the applicant Ileana Florica Solon, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 115,000 (one hundred and fifteen thousand euros), plus any tax that may be chargeable, in respect of all heads of damage combined;

(ii) EUR 3,151.84 (three thousand one hundred and fifty-one euros eighty-four cents), plus any tax that may be chargeable, in respect of costs and expenses;

(c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 12 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President