

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

FOURTH SECTION

CASE OF LUKATS v. ROMANIA

(Application no. 24199/07)

JUDGMENT

STRASBOURG

5 April 2016

FINAL

05/07/2016

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Lukats v. Romania,

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

András Sajó, *President,*
Vincent A. De Gaetano,
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Iulia Antoanella Motoc, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 1 March 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 24199/07) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms Maria Lia Lukats ("the applicant"), on 2 May 2007.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged that the domestic mechanism providing for compensation for lost properties from provinces which were formerly part of Romania was not effective.

4. On 19 March 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1936 and lives in Skokie, USA.

6. On 31 August 1998 the applicant lodged a request with the Bucharest Commission for Implementing Law no. 9/1998 (the County Commission) seeking compensation for assets owned by her ancestors and transferred to the Bulgarian State. On 29 April 2004 the County Commission issued a decision whereby the applicant was entitled to compensation of ROL 4,991,284,506 (approximately EUR 123,500 at the time).

7. Between 2005 and 2008 the applicant lodged several applications with the National Authority for Property Restitution (hereinafter "the National Authority") and the President of Romania for payment of the compensation. On each occasion, the applicant was informed that her file was subject to ratification by the responsible authority for implementing Law no. 9/1998.

8. On 20 February 2009 the National Authority issued the ratification decision, confirming the applicant's entitlement to RON 499,128.43 (approximately EUR 117,000 at the time). The decision mentioned that the payment would be made in two annual instalments, as provided for by the methodological rules for the implementation of the law, in force since 30 November 1998 and amended on 26 October 2007.

9. To date, the applicant has not received the compensation or any indication as to when such compensation would be paid.

II. RELEVANT DOMESTIC LAW

10. For an overall description of the legal framework and of the domestic mechanisms created for the assessment of various types of restitution and compensation claims, see *Maria Atanasiu and Others v. Romania*, nos. 30767/05 and 33800/06, §§ 45-51, 12 October 2010. As mentioned in this pilot judgment, the Romanian State undertook via various international treaties signed at the relevant time the obligation 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 National Authority, differed from that for immovable property nationalised by the communist regime, and the necessary funds came out of the State budget (see *Maria Atanasiu and Others*, cited above, § 51), as also presented succinctly below.

A. Law no. 9/1998

11. Law no. 9/1998 came into force on 14 March 1998 and was amended in 2004 and 2007; it established a compensatory mechanism for Romanian citizens whose immovable properties were confiscated without due compensation under the Treaty of Craiova, signed by Romania and Bulgaria on 7 September 1940 (see paragraph 38 below).

12. The mechanism referred essentially to pecuniary compensation or to the right to shares in State-run companies. The deadline for filing such claims was set in Article 4 § 1 at eighteen months from the entry into force of the law. This deadline was subsequently extended by Law no. 97/2005,

for a period of twelve more months starting with the entry into force of the law on 21 April 2005 and then by Law no. 348/2006, for a period of eighteen more months, starting from the entry into force of the law on 28 July 2006.

13. The bodies in charge of implementing the said Law were the County Commissions established within each county (including Bucharest) under the authority of the Prefect, and the Central Commission for Implementing Law no. 9/1998.

14. Under Article 7 § 1, the County Commissions had responsibility for assessing and dealing with requests for compensation within a maximum of six months following the date of registration. The decisions of the County Commissions were communicated to the claimants and the Central Commission, and they could be challenged by the claimants before the Central Commission within fifteen days. The latter then had to ratify or reject such decisions within sixty days.

In their turn, the decisions adopted by the Central Commission could be challenged before the domestic courts.

15. The methodological rules issued for the implementation of Law no. 9/1998, in force since 30 November 1998, provided for, *inter alia,* a calculation method for the setting of the compensation. This amount was to be updated when payment was made, according to Articles 8, 21 and 27 of the rules, on the basis of the median salary index of the last trimester prior to the moment of the actual payment.

16. In its original version, Article 8 stipulated in its paragraph 3 that

> "(3) Within sixty days of the deadline set out in Article 4 § 1, depending on the total amount of compensation to be granted, a Government Decision will set up payment by instalments, the amounts being adjusted for inflation. The instalments are not to be set for more than two consecutive years."

This paragraph became paragraph 2 from 9 November 1999, and stated as follows:

> "(2) ...when the compensation is paid in the year it was awarded it is granted in the amount validated by the Central Commission, and when it is paid the next year ... it is to be adjusted on the basis of the consumer price index. The payment is to be staggered over a maximum of two years."

17. Government Decision no. 286/2004, in force since 22 March 2004, provided in its Article 5 that compensation validated by the Central Commission was to be paid in two annual instalments, namely 40% in the year of the payment and 60% the following year, this second instalment being adjusted for inflation as set out in Law no. 9/1998.

18. From 18 October 2004, when Government Decision no. 1643/2004 came into force, the responsibilities of the Central Commission were taken over by the Department for the Application of Law no. 9/1998, functioning within the Prime Minister's Chancellery. The Department forwarded the ratification decisions adopted by the County Commissions for the approval

of the Prime Minister's Head of Chancellery. The Department was further entitled to make a proposal for adjustment of the compensation at the time of the ratification decision, in accordance with Law no. 9/1998.

19. These responsibilities were taken over by the National Authority with effect from the entry into force of Government Decision no. 361/2005, namely on 29 April 2005; this act was modified by Government Decision no. 240/2006 on 27 February 2006.

20. The methodological rules issued for the implementation of Law no. 9/1998, as amended on 26 October 2007 by Government Decision no. 1277/2007, set out in Article 38 § 1 that payment of compensation was to be made by the National Authority as the institution in charge of dealing with all claims lodged under the restitution laws adopted in Romania.

B. Law no. 290/2003

21. Law no. 290/2003, in force with certain amendments since 13 August 2003, provided for compensation for Romanian citizens whose immovable property located in the former provinces of Bessarabia, Northern Bukovina and Hertza, was confiscated without due compensation as a consequence of the state of war and the application of the Paris Peace Treaty signed by Romania with the Allied Powers on 10 February 1947.

The mechanism put in place by the law was similar to that described above in respect of Law no. 9/1998; in addition to the pecuniary compensation, the law provided for granting possession of plots of land equivalent to those that had been confiscated; the bodies in charge of implementing Law no. 290/2003 were the commissions established in accordance with Law no. 9/1998, following the same procedural steps as presented above in respect of the claims lodged under Law no. 9/1998.

The claimants were requested to lodge their applications no later than 1 May 2007.

C. Law no. 393/2006

22. A similar compensation mechanism was put into place by the State with effect from 18 February 2007, when Law no. 393/2006 came into force. The law concerned the granting of compensation to Romanian citizens for their lost property located in the previous Kingdom of Serbs, Croats and Slovenes, under, respectively, the Treaty of Belgrade signed between Romania and Yugoslavia on 24 November 1923, and the Convention between Romania and the above-mentioned Kingdom signed in Belgrade on 5 July 1924.

The County Commissions established pursuant to Law no. 9/1998 had jurisdiction to assess the claimants' requests, which were to be lodged within eighteen months of the law's entering into force. The Department for

the application of Law no. 290/2003 within the National Authority acted in line with the procedures prescribed by Law no. 9/1998 and described above.

D. Emergency Government Ordinance no. 10/2013

23. On 27 February 2013 the Government adopted an ordinance establishing the payment by instalments of compensation granted under Law no. 9/1998, as well as Law no. 290/2003 and Law no. 393/2006. According to the ordinance, the compensation was to be paid from 1 January 2014 by equal annual instalments over a period of ten years, while a single instalment could not be lower than RON 20,000.

The preamble to the ordinance mentioned that its adoption had been determined by difficulties encountered in the payment of compensation, especially in connection with the implications of such payments for the State budget.

24. However, when called to examine the constitutionality of this ordinance, the Romanian Constitutional Court held on 12 December 2013 that the measures adopted by the Government, namely to make payments by instalments over a ten-year period, were in breach of the Constitution, in so far as they placed an excessive and disproportionate burden on claimants entitled to receive compensation from the State. The deadline of ten years was also considered to be unreasonable, in consideration of the financial documents relied on by the Government, which documented the impact on the State budget for a period of five years only.

25. As a consequence of this decision, the ordinance was abrogated on 11 March 2014.

E. Emergency Government Ordinance no. 10/2014

26. Adopted on 14 March 2014, EGO no. 10/2014 suspended for a period of six months the issue by the competent authorities of any decision on claims lodged under Law no. 9/1998 and Law no. 290/2003. The ordinance further suspended for the same period the voluntary payment of compensation already granted under Law no. 9/1998, Law no. 290/2003, and Law no. 393/2006.

F. Law no. 164/2014

27. Law no. 164/2014 concerning measures for the acceleration and finalisation of the process of resolving compensation claims lodged under Law no. 9/1998 and Law no. 290/2003 entered into force on 18 December 2014.

28. Article 2 states that the only compensatory measure possible was pecuniary compensation.

29. Article 3 defines the applicability of the law to all claims lodged in due time with the County Commissions and in respect of which no decision has been issued, or in respect of which a decision granting compensation has been issued but no payment has been made, as well as to those claims lodged under Law no. 9/1998 or Law no. 290/2003 that are currently pending before the domestic courts.

30. The law authorises the transfer of all powers of the Central Commission to the National Authority, who shall thus ratify or otherwise any decision taken by the County Commissions on claims lodged under Law no. 9/1998 and Law no. 290/2003. The National Authority is entitled to request further information and documents, from public institutions as well as from claimants, when such documents are missing or are not corroborated.

31. Decisions taken by the National Authority are subject to appeal before the administrative courts.

32. Article 10 of the law sets out the deadlines by which all payments should be made; it provides as follows:

Article 10

"(1) Compensation awarded by decision of the County Commission, by order of the Prime Minister's Head of Chancellery or by a decision of the National Authority for Property Restitution and issued before the entry into force of the present law, shall be paid in equal annual instalments over a period of five years, starting on 1 January 2015;

(2) compensation awarded following a decision adopted after the entry into force of the present law by the National Authority for Property Restitution, ratifying the County Commissions' decisions issued before the entry into force of the present law, shall be paid in equal annual instalments over a period of five years following the year when the decisions were ratified;

(3) compensation granted by means of judgments that became final ... before the entry into force of the present law shall be paid in equal annual instalments over a period of five years, starting on 1 January 2015 ...

(6) the National Authority for Property Restitution shall issue a payment voucher for each annual instalment ...

(7) the amount of one annual instalment shall not be smaller than RON 20,000. If the compensation to be paid is lower than this amount, it shall be paid in full in one instalment only."

Paragraphs 4 and 5 of this Article refer essentially to the manner in which the compensation should be adjusted for inflation, on the basis of the consumer price index, from the moment the decision was issued until the entry into force of the law.

33. Article 12 sets out a 120-day deadline within which the claimants are to supplement their files with further documents, following a written request in that respect sent by the authority. This deadline may be extended once,

for sixty more days, at the request of the claimant, if evidence shows that he/she has taken the necessary steps to obtain the necessary information.

34. Article 13 provides that the County Commissions are bound to issue a decision on the applicants' claims within:

> "a) nine months, if there are less than 500 files pending before them;
>
> b) eighteen months, if the files pending before them are in the range of 501-1000;
>
> c) thirty-six months if they have more than 1000 files pending before them."

This deadline started running on 1 January 2015.

35. Article 14 stipulates that decisions issued by the County Commissions before the entry into force of the present law and already registered with the National Authority should be ratified or otherwise within eighteen months of the entry into force of the law. Decisions issued after the entry into force of the law should be ratified or otherwise by the National Authority within eighteen months of their registration with that authority.

The registration number and the number of files pending with the National Authority shall be published on its web page.

36. Article 15 gives claimants the opportunity to apply to the courts in the event that the above-mentioned deadlines are not complied with.

37. Article 17 of the law sets out several measures meant to increase the efficiency of the compensation procedures, providing, *inter alia*, for a temporary increase of the number of posts available at the National Authority.

III. RELEVANT INTERNATIONAL LAW

38. The Treaty of Craiova was signed on 7 September 1940 by Romania and Bulgaria. Under the terms of this treaty, the signatory parties agreed on the border line that was to be established between the two countries, with particular reference to the territory between the Black Sea and the Danube River (the *Cadrilater*). Section III of the Treaty provided for a mandatory resettlement of Romanian citizens of Bulgarian ethnicity living in Tulcea and Constanţa Districts to Bulgaria, and the resettlement of ethnic Romanians living in Durostor and Caliacra Districts to Romania. Section V of Annex C of the Treaty stipulated that the Romanian State was in charge of compensating those Romanian citizens who, following the mandatory resettlement had to abandon their possessions in the rural areas which were transferred to Bulgaria.

THE LAW

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

39. The applicant submitted that her complete inability to secure the compensation granted to her in 2004 and validated in 2009 amounted to a breach of her right to the peaceful enjoyment of her possessions.

Article 1 of Protocol No. 1 reads as follows:

> "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. Admissibility

40. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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

41. The Government admitted that the decision of the National Authority granting the applicant compensation in an amount of RON 499,128.43 constituted a "possession" within the meaning of Article 1 of Protocol No. 1.

They further argued that in compliance with the relevant provisions of Law no. 164/2014 all decisions granting compensation to claimants are to be enforced, payment to be made in equal annual instalments over a period of five years, starting from 1 January 2015.

42. In this context the Government argued that the new law, in force since 18 December 2014, put in place an effective mechanism for payment of compensation to those so entitled under Law no. 9/1998 and Law no. 290/2003.

In support of this assertion they contended that firstly Law no. 164/2014 instituted specific and precise deadlines for assessment of files submitted by claimants throughout the decision-making process.

Thus, the claimants had 120 days to submit any supplementary documents at the request of the authorities. This delay could be extended by another sixty days if the claimant was not able for objective reasons to obtain the documents required. The authorities responsible for delivery of copies of the requested documents needed to do so within thirty days.

All files were to be decided upon in chronological order, in order of the moment when they were lodged.

Assessment of files lodged by claimants was to be completed by the County Commissions within nine, eighteen or thirty-six months, depending on the number of files pending before them from 1 January 2015.

In its turn, the National Authority was obliged to issue a decision ratifying the decision or not within eighteen months, calculated either from 1 January 2015 for those files already pending before it, or from the date of registration with the Authority for all other files.

The law further set out a specific deadline for challenges to the decisions of the administrative authorities before the courts; this was thirty days from the date of delivery of the decision to the claimant.

The claimants were also entitled to complain before the courts if the administrative authorities failed to respond to their request.

43. The Government argued that the financial impact on the country's budget of the decisions taken under Law no. 9/1998 and Law no. 290/2003 was substantial; they contended that the estimated value of the compensation to be granted in the pending files was RON 0.8 billion; the value of the compensation already established before the entry into force of the law was RON 1.1 billion, while the amounts to be granted pursuant to final judgments was RON 100 million. The amounts to be granted following adjustment of the initial sum for inflation were estimated at RON 240 million.

44. Concerning the actual payment of the compensation, the Government contended that in view of the need to ensure a fair balance between the public interest and the individual interest of the claimant in the general context of the financial difficulties which had arisen as a result of the high level of compensation to be paid pursuant to all restitution laws, the new law no. 164/2014 set out a system of payment by equal annual instalments.

The instalments were thus established for a period of five years, starting either on 1 January 2015 for decisions rendered before the entry into force of the law, or from the year following the one when the National Authority issued its decision.

Payment was to be made by the Ministry of Public Finances annually, within 180 days of the date of issue of the annual payment voucher by the National Authority.

The compensation due in accordance with judicial or administrative decisions issued before the entry into force of the law was to be adjusted for the consumer price index for the relevant period.

The law further provided that the forced enforcement of all outstanding decisions was suspended until the moment when they were to be paid, as stated on the payment voucher issued by the National Authority. This measure was necessary, in the Government's view, to eliminate any potential blockage in the activity of the relevant domestic authorities, which would otherwise be forced to deploy essential resources for those enforcement proceedings.

45. The law further provided for supplementary financial and human resources to be deployed for the benefit of the National Authority for a period of thirty-six months this measure being aimed at rendering the decision-making process more efficient.

46. In conclusion the Government maintained that Law no. 164/2014 constituted an effective, transparent and fair mechanism for the assessment of all claims lodged under Law no. 9/1998 and Law no. 290/2003.

The Court was thus asked to find no violation of Article 1 of Protocol No. 1 in the applicant's case, given that she was to receive the compensation within the deadlines prescribed by the new law.

47. While pointing out that she had still not received any compensation, the applicant has not commented on the Government's submissions.

(b) The Court's assessment

48. In its pilot judgment of *Maria Atanasiu and Others* (cited above, §§ 164-68), the Court has summarised the relevant principles in respect of the application of Article 1 of Protocol No 1 to reparation measures, as follows:

> "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 and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II (extracts); and *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).
>
> 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 v. Poland* [GC], no. 31443/96, § 149, ECHR 2004-V).

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 or 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)."

49. The facts of the present case may well be examined in terms of a hindrance to the effective exercise of the right protected by Article 1 of Protocol No. 1 or in terms of a failure to secure the implementation of that right.

Having regard to the particular circumstances of the present case, the Court considers it necessary to determine whether the conduct of the Romanian authorities – regardless of whether that conduct may be characterised as an interference or as a failure to act, or a combination of both – was justifiable in the light of the applicable principles set out above (see also *Broniowski* [GC], cited above, § 146).

50. The Court must therefore establish whether a fair balance was struck between the demands of the general interest of the community and the requirements of protection of the individual's fundamental rights. In the circumstances of the instant case, the Court is called upon to determine whether the time necessary for the domestic authorities to pay the applicant compensation to which she was entitled disturbed that balance and whether it placed an excessive burden on her.

The Court considers however that the applicant's claims should also be looked at from a more general perspective. The obligation to compensate,

undertaken by the Romanian State under various international treaties or via specific domestic legal provisions (see paragraph 10 above) concerned not only the applicant, but also many other Romanian citizens who had suffered considerable material losses caused by, generally, expropriation and nationalisation both before and after the war and under totalitarian regimes. In the circumstances, the State, in implementing the impugned legislation, had had to take into account the interests of others and of society as a whole. The Court therefore considers it necessary to examine the case also from the perspective of the general measures that were taken in the interest of other potentially affected individuals (see, *mutatis mutandis*, *Wolkenberg v. Poland* (dec.), no. 50003/99, § 35, 4 December 2007).

51. The Court cannot ignore that in this general context the Romanian authorities have had to put forward efforts on a larger scale, mainly in response to the requirements set out in the pilot judgment, according to which "in view of the large number of problems besetting the restitution and compensation mechanism" the State was bound to "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" (see *Maria Atanasiu and Others*, cited above, § 228).

Consequently, on 15 May 2013 Law no. 165/2013 was adopted. It established a mechanism which, when under the scrutiny of the Court, was found to offer a range of effective remedies that needed to be exhausted by the majority of the claimants seeking either restitution or compensation for their immovable property taken over under the communist regime (see *Preda and Others v. Romania*, nos. 9584/02, 33514/02, 38052/02, 25821/03, 29652/03, 3736/03, 17750/03 and 28688/04, §§ 134-40, 29 April 2014). Within this mechanism, a crucial role was delegated to the National Authority (ibidem, §§ 82-89), which remained the single body with the authority to ratify or otherwise decisions taken in respect of all types of restitution claims and to issue, where applicable, payment vouchers to those entitled, including therefore those who fell under the provisions of Law no. 9/1998.

52. The Court reiterates that in view of the large number of people affected by the restitution mechanism in general and the far-reaching consequences of such a scheme, which has a considerable impact on the country as a whole (see also paragraph 43 above), the national authorities must be allowed to retain full discretion in choosing the general measures to be laid down in the domestic legal system in order to prevent or to provide redress for any breaches of these persons' rights (see *Maria Atanasiu and Others*, cited above, § 236).

53. Turning to the mechanism set out by Law no. 9/1998, the Court refers to paragraphs 11-37 above, describing the relevant successive

legislative amendments with impact on the functioning of the mechanism in question.

These changes essentially concerned, on the one hand, the deadlines for claimants to lodge their requests before the relevant authorities and the extension of those deadlines, and, on the other hand, the consequent shifts of decision-making responsibilities from one administrative body to another, starting with the Central Commission, continuing with the Department for the application of Law no. 9/1998 within the Prime Minister's Chancellery, and ending with the National Authority.

54. The Court takes note of the Romanian authorities' constructive attempts of 2013 and 2014 to improve and increase the efficiency of the relevant compensation mechanism by adopting measures seeking to continue payments while also maintaining a proper budgetary balance. Such measures included payment by instalments and temporary suspension of both the issue of payment orders and of voluntary payments.

55. Following the Romanian Constitutional Court's intervention of 12 December 2013, which considered the ten-year period in which the payments were to be made unreasonable, the Romanian authorities adopted a new law, namely Law no. 164/2014, which provided for a five-year instalment payment plan, while also providing for a mechanism for the proper adjustment of the amounts granted as compensation in relation to the consumer price index.

56. This law came into force on 18 December 2014. It prescribed, as the Government also contended, binding time-limits for each administrative step, as well as opportunities for an effective review by the courts in case of non-compliance on the part of the responsible authorities (see paragraphs 27-37 above).

57. The Court therefore sees no reason to consider at this stage that the procedure set out by the new law, as described above, would lack clarity and foreseeability.

58. Furthermore, concerning the actual payment mechanism, the Court has already held that, in principle, paying compensation awards 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 (see *Maria Atanasiu and Others*, cited above, § 235), so long as the authorities manage to implement and enforce such measures with the required diligence (see *Preda and Others*, cited above, § 128).

59. Having regard to the general social and financial context presented above (see in particular paragraphs 43 and 51 above), as well as to the above-mentioned specificities of the newly launched compensation scheme, the Court considers that by adopting Law no. 164/2014 the Romanian authorities have in principle put in place a mechanism able to offer redress in respect of all claims lodged under Law no. 9/1998 and Law no. 290/2003

(see, *mutatis mutandis*, *Mutishev and Others v. Bulgaria* (just satisfaction), no. 18967/03, § 38, 28 February 2012).

60. Turning to the present case, the Court observes that the administrative authorities issued a decision in 2004 acknowledging the applicant's entitlement to compensation. This decision was ratified in 2009 by the National Authority.

61. The Court can accept the Government's contention that payments of the amounts granted to various claimants as compensation was delayed on account of the consequent legislative changes in this field, which themselves were attempts to render more efficient the payment mechanism in a general context of financial difficulties (see paragraphs 23 and 43-44 above).

In this context, the Court considers that the authorities' similar conduct in respect of the applicant cannot be regarded as lacking justification.

Furthermore, the Court notes that in accordance with the new Law no. 164/2014, the compensation to be granted to the applicant is to be paid in five equal annual instalments, starting on 1 January 2015, following adjustment of the amount in line with the consumer price index (see, by contrast, *Đurić and Others v. Bosnia and Herzegovina*, nos. 79867/12, 79873/12, 80027/12, 80182/12, 80203/12 and 115/13, § 30, 20 January 2015).

62. In so far as the State ensures that payment to the applicant is made in the conditions prescribed by law, and having regard also to its conclusions drawn in paragraphs 58-59 above, the Court holds that the burden on the applicant cannot be considered to have been either disproportionate or excessive. A fair balance between the general and the individual interest has thus been struck.

Accordingly, there has been no violation of Article 1 of Protocol No 1 to the Convention.

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

63. The applicant further alleged that the authorities' prolonged failure to deal with her claims infringed both her right of access to a court, as well as the right to have her case heard within a reasonable time.

Article 6 of the Convention, in so far as relevant, reads as follows:

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

A. The parties' submissions

64. The Government submitted that given that the applicant's compensation claims have never been brought before a court Article 6 did

not apply, the proceedings pending before the administrative bodies falling thus outside the scope of this Article.

65. The Government further mentioned that the applicant could have lodged a request with the administrative courts, asking them to oblige the National Authority to reply to her claims. Given that the applicant had not pursued this remedy, her complaints under Article 6 were to be dismissed for non-exhaustion.

66. The applicant has not submitted any comments in reply.

B. The Court's assessment

67. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("*contestation*" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play.

In this regard, the character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, and so on) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, and so forth) are not of decisive consequence (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, §§ 42-43, ECHR 2015).

68. Furthermore, the Court has recognised that in administrative proceedings the period to be taken into consideration may even start to run prior to the court proceedings, if however preliminary administrative proceedings were a precondition of the former (see, among other authorities, *Nichifor v. Romania (no. 1)*, no. 62276/00, § 23, 13 July 2006).

69. Turning to the present case, the Court notes that the applicant's right to compensation pursuant to Law no. 9/1998 was firstly set out in the decision issued by the Bucharest County Commission on 29 April 2004 and then confirmed by the National Authority's decision of 20 February 2009 (see paragraphs 6 and 8 above).

It further notes that to date no other decision has been given and the compensation has not been paid to the applicant. At the same time, the Court cannot ignore the fact that the applicant has never had recourse to the domestic administrative courts, whether to oblige the administrative authorities to issue their decision more speedily, as argued by the Government, or, after 2009, to have them act in relation to the non-enforcement of the outstanding decision.

70. The Court therefore considers that in such circumstances, no "dispute" within the meaning of Article 6 § 1 arises in respect of the impugned proceedings, which are still pending before the administrative bodies, without ever reaching the judicial stage before a "tribunal" (see *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001 and *Šikić v. Croatia*, no. 9143/08, § 34, 15 July 2010).

71. In these circumstances, the Government's preliminary objection concerning the inapplicability of Article 6 to the compensation proceedings lodged by the applicant before the domestic administrative authorities must be allowed.

72. It follows that the applicant's complaints under Article 6 are inadmissible as incompatible *ratione materiae* with the provisions of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the applicant's complaints under Article 6 of the Convention inadmissible;

2. *Declares* the applicant's complaint under Article 1 of Protocol No. 1 to the Convention admissible;

3. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Done in English, and notified in writing on 5 April 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	András Sajó
Deputy Registrar	President