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

Press Release
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# New scheme for restitution of property taken by communist dictatorship found inadequate

In today's **Chamber** judgment[1] in the case of Văleanu and Others v. Romania (application no. 59012/17 and 29 others) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights.

The case concerned restitution of property, which had been nationalised by the communist regime, under the new Law no. 165/2013.

The Court found in particular that even though it had validated the law in question in its *Preda and Others* judgment, the restitution mechanism had nevertheless fallen short of being comprehensively effective and convincingly consistent and had thus placed an excessive individual burden on the applicants.

A legal summary of this case will be available in the Court's database HUDOC (link)

## Principal facts

The applicants are 53 Romanian nationals. Their details are set out in the judgment.

**Background**

After the end of the communist dictatorship in Romania, the State enacted legislation (four Laws between 1991 and 2001) to let people whose property had been nationalised gain redress, ordinarily via restitution or compensation. Local and regional commissions were established to supervise this.

In 2005, a new Central Compensation Board (today the National Commission for Property Compensation), and the National Agency for Property Restitution were established to implement the relevant law.

In its *Maria Atanasiu and Others v. Romania* (nos. 30767/05 and 33800/06) judgment of 2010, the Court found deficiencies in the restitution mechanism. Thus, in 2013 Romania introduced new legislation (Law no. 165/2013) to eliminate these issues. The restitution scheme under that Law was essentially examined and approved by the Court in *Preda and Others v. Romania* (nos. 9584/02 and 7 others). The functioning of that scheme under that Law is the kernel of the applicants' complaints.

**The applicants**

All of the applicants obtained final judgments in their favour for either title deeds to property to be issued to them, or to grant them possession of their property, or compensation decisions.

None of the applicants were issued with title deeds to or given possession of the property despite those final judgments. Some of the applicants asserted that they had not received adequate

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

compensation. In some cases, legal response to the claims was allegedly not received. In three of the cases the applicants' titles to the property were allegedly annulled.

In the applications the amounts of land at issue varied from 0.15 ha in the commune of Scărișoara to 736.9603 ha of forest along with 166.6536 ha of alpine pasture.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), Articles 6 (right to a fair trial), 13 (right to an effective remedy), and 14 (prohibition of discrimination) of the Convention, and Article 1 of Protocol No. 12 (general prohibition of discrimination) the applicants complained, in particular, of their inability to recover nationalised property or obtain compensation, of non-enforcement of domestic-court judgments, of the length of the domestic proceedings and the lack of adequate effective remedies for their property claims.

The applications were lodged with the European Court of Human Rights on various dates between 7 August 2017 and 9 August 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina),
Yonko **Grozev** (Bulgaria),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar.*

## Decision of the Court

### Article 1 of Protocol No. 1

The heirs of the applicants Andone Onu (application no. 32541/18), Marie Danci (no. 20341/19) and Ion Marcea (no. 36372/19) informed the Court of those applicants' deaths and, as their close relatives, were allowed to continue the applications in their stead.

The Court struck applications nos. 25811/19 and 40167/18 off its list of cases, as it considered that they had already been resolved.

The Court noted that in its *Preda and Others* judgment it had reserved the right to review its findings in the future depending on the restitution practices established under the new legislation it had examined in that case.

Concerning **non-enforcement of domestic judgments**, the Court noted the complexity of the restitution process and the multiple reasons given by the Government as to why the judgments may not have been enforced. However, the Court stated that the difficulties had been a result of the legislature's choice of policy, that is to say return of the specific property in question (*restitutio in natura*), and it was incumbent on the authorities to ensure prompt decisions.

Where **compensation** had been ordered, the Court held that the amounts awarded to the applicants were not reasonably reflective of the value of their property, often only a fraction of the market value.

In the cases where the applicants' **titles had been annulled**, the Court found that not compensating the applicants for an annulment which had been caused by the State's failure to comply with the relevant restitution law, had placed an excessive individual burden on the applicants in question.

Another application (no. 31613/19) concerned the effective **loss of use of claims.** The applicant in that case, Cristina-Maria Botez, alleged that the domestic courts had failed to acknowledge her right to compensation for loss of use of a property to which she had long been entitled but not yet granted possession of owing to the deficiencies of the restitution mechanism. The Court found that the outcome of those proceedings had placed a disproportionate and excessive individual burden on her.

Overall, the Court judged that – owing to the prolonged non-enforcement of outstanding judgments given in the applicants' favour and the lack of an effective remedy; the annulment of the applicants' titles on account of the State's failure to correctly implement the applicable law and without any compensation; and the failure of the authorities to ensure that the compensation awarded had been reasonably related to the current value of the property – the restitution mechanism had fallen short of being comprehensively effective and convincingly consistent so as not to place an excessive burden on the applicants. This had been despite the safeguards introduced in legislation and validated *a priori* in the *Preda and Others* judgment.

The Court therefore found a violation of Article 1 of Protocol No. 1 in respect of all the applications which had not been struck off its list of cases.

## Other articles

Concerning the other complaints in the applications (under Articles 6, 13 and 14 and Article 1 of Protocol No. 12), the Court held that there did not appear to have been any violations of the Convention, and so ruled them inadmissible.

## Binding force and implementation of judgments (Article 46)

The Court held that it was crucial that Romania continued its efforts to bring its legislation and practice into line with the Court's findings in the present case and with its relevant case-law, so as to achieve complete compliance with Article 1 of Protocol No. 1 to the Convention and Article 46 of the Convention.

## Just satisfaction (Article 41)

The Court considered that the question of compensation for pecuniary damage was not ready for decision. It reserved decision for a later date, with due regard to any agreement which might be reached between the Government and the respective applicants.

The Court held that Romania was to pay the applicants various amounts of up to 10,000 euros in respect of non-pecuniary damage. Those amounts are set out in the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.