

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**  
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Private properties issues following a change of political regime in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia

Executive summary





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND  
CONSTITUTIONAL AFFAIRS**

**PETITIONS**

# **Private properties issues following the change of political regime in former socialist or communist countries**

## **Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia**

**STUDY**

### **Abstract**

Some transformations occurred in the area of private property ownership following the change of political regime in former socialist or communist countries. The six analysed countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia) illustrate well the whole range of contentious problems in a region where the Communist regimes have varied tremendously in their approach to private property, intensity of social control, repression and overall legitimacy. This diversity of situations poses today different types of dilemmas for the property restitution process and these six countries responded in different manners to these general challenges, in the context of their own peculiar social and economic history.

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## EXECUTIVE SUMMARY

*The restitution of confiscated property to former owners in the ex-communist states of Central and Eastern Europe was a policy decision with momentous consequences, as the level of assets concerned was huge. In addition, and the impact of handing back residential or commercial property to former owners, four decades after nationalization, was difficult to anticipate. The solutions adopted – relatively quickly, or slowly and incoherently, in many stages and spanning a long period of time – were very different from country to country.*

*The historical legacies explain some of these differences in approach. The implementation of the Communist project was uneven and country-specific. In societies with little established aristocracy and fewer large real-estate owners, the nationalization of residential houses and farming land was more difficult to justify in political terms. As such, it took about a decade or more after taking power for the Communist governments to sufficiently consolidate in order to be able to embark upon the expropriation of millions of peasant farmers or urban lower-middle classes. By contrast, large real-estates and the factories tended to be confiscated earlier. In mountainous areas, confiscated property was less frequent than in lower, more productive areas.*

*The determination of the political push towards nationalisation of property, especially in the rural sector, was another diverging factor. At one end of the scale, in Romania or Albania the state took control of almost all properties, either directly or through the cooperatives. By contrast, in Yugoslavia (like in Poland) most of the land had remained in individual family farms during the socialist period. In addition, some regimes (Yugoslavia, Hungary) started to relax central control in the '70s or the '80s, trying to simulate a market economy through "competition" between two or more state-owned enterprises. Therefore, the search for a way to put property into private ownership started earlier in some of the Communist countries, while others remained totally unprepared up until 1989.*

*Still, unlike in the former Soviet Union, in the Western Balkans, Bulgaria and Romania, legal records of previous owners still existed for both commercial and residential property. This meant that the restitution of the actual assets – buildings, land, industrial assets – was a feasible option. In reality, however, there were many practical difficulties. Often the land became unavailable: for example in urban localities which changed and expanded during Communism, when whole neighbourhoods were erased in order to make room for the socialist housing units. Land improvement works, artificial lakes of experimental farms had been laid on top of former plots. In consequence, land swaps of compensation arrangements had to be made.*

*In the countries that pursued this strategy, the restitution did not necessarily lead to land fragmentation, but it may have facilitated the transition from socialist cooperatives to corporate farms. In other countries, such as Romania and Bulgaria (and many in Central Europe), some large state farms were downsized, but managed to survive as corporations. However, in general, the social pressure to dismantle the agro cooperatives was so high that no post-1989 cabinet could have resisted it.*

*There are a number of **fundamental difficulties and dilemmas** the post-Communist governments in Bulgaria, Romania and the Western Balkans had to face:*

- How far back in time should the process go? Should only Communist expropriations (or "collectivization") done through law or decree be considered? Or should cases that occurred during the World War II or immediately after, sometimes through unlawful abuse (like in the case of the Jewish community, but not exclusively) also be included?
- Should former owners be given back their very same physical property, or another one of similar value, or should they be compensated financially instead? In the latter case, should the compensation be in cash, or in vouchers which are the equivalent of shares in some specially-established funds or in existing state companies? Should the amount

of the compensation be at full value, or should it be capped (i.e. some confiscation and redistribution may occur)? Should vouchers be immediately tradable, or must temporary restrictions be imposed?

- Related to the point above, how far can we go with the argument that the state is liable and should redress the wrongs committed forty or fifty years ago against some individuals? Do the post-Communist generations have a moral obligation to finance the restitution process fully, or there are other social considerations that should play a role? For example, if a building nationalized in 1950 still exists, but is occupied by many tenants, can it be restored with no restrictions attached to the (inheritors of the) former owner? Can absentee landlords have their land reinstated, even if this would mean evicting families with no title but who have used the land for decades (the case of many Roma communities)? Such concerns of inter-generational redistribution are legitimate in any sort of public policy and made the crux of the argument, even though not always explicitly, when the issue of restitution was discussed in early nineties.
- Can the restitution process follow fully the inheritance rules from the Civil Code, or should eligibility be more restricted, for instance only to the original owners and their children? Should only individuals who are residents of the country be eligible, or should immigrants also qualify?
- Regarding industrial assets or agricultural land, how can the opposing goals of justice and economic efficiency be reconciled, given that restitution is often likely to result in a fragmented and unmanageable ownership structure?
- Finally, can the post-Communist public administrative apparatus be trusted to discharge in a reasonably fair and effective way the daunting task of identifying the lawful owners, assessing properties and compensating eligible individuals for their lost properties? What procedures and institutions need to be created, at the central and local level, to ensure property restitution proceeds accurately and expeditiously?

This study outlines the manner in which six South-Eastern European countries – Romania, Bulgaria, Croatia, Bosnia, Serbia and Albania – responded to these general challenges, in the context of their own peculiar social and economic history. Like Central Europe, they all had to confront these dilemmas in the first years after the fall of the Communist regime, because the longer the process of restitution was dragged out, the more complicated the situation became. The liberalization of the economies after 1990 created a market for all types of assets and as a result of this natural pressure, transactions proliferated, even in situations when ownership rights were not certain. It was obvious from the outset that delays or piecemeal strategies tended to create more conflicts, overlapping property rights and actions in courts.

*The similarities and differences are all highlighted in the study and the answers given to the dilemmas above emphasized. Both nationalisation and restitution policies varied significantly, these variations having an impact also upon the structure of the case-studies presented in this report. The main structure of the case studies includes an overview, the historical background of the expropriation process, the restitution/compensation process and conclusions. However, the inner structure of each topic is not the same for all countries – for instance, some of the countries have adopted legislation for restitution, while others have not.*

*Most of these countries (with the exception of Serbia) attempted to restore in kind or compensate the previous owners for the property confiscated during the communist regime. However, the restitution or compensation process has not been consistent, the procedures (both legal and administrative) have not been coherent, and the process itself has generally been slow. **The main common problems** related to restitution in the six countries under scrutiny, as identified in our analysis, are the following:*

- Belated adoption of property restitution policies;
- Unclear and unpredictable policy on property restitution;

- Weak institutional capacity to implement the policy;
- The emergence of conflicting rights in the same property;
- Ineffective compensation systems.

*All of these problems have caused significant discontent amongst previous owners or current tenants, and generated waves of complaints to external institutions such as the European Court of Human Rights (ECtHR) and petitions to the European Parliament (EP).*

*However, the issue of restitution or compensation for property confiscated by former communist regimes does not fit into the sphere of competences of the European Union, so that any future developments linked to the accession of EU to the ECHR will be completely neutral to it.*

### **- The role of the European Court of Human Rights.**

**The ECtHR** can examine applications only to the extent that they relate to events which occurred after the Convention entered into force. In those cases where the property was confiscated in the interval 1949-1989, that is, long before the date of the entry into force of the Convention with regard to all six States, the Court is not competent *ratione temporis* to examine the circumstances of the expropriation or the continuing effects produced by it up to the present date.

*Therefore, in the absence of domestic legislation providing for restitution or compensation for lost property or of domestic courts' final judgments providing for restitution or compensation, none of those who had lost their possessions before 1989 could have a chance to win before the ECtHR.*

*The judgments finding a violation of Article 1 of Protocol No. 1, in cases of property lost during the communist regime, are not related to the fact of the nationalisation or confiscation by the authoritarian power. Instead, the judgments relate to the failure of the States to comply with their own legislation providing for compensation or restoration of property or with final judicial or administrative decisions restoring property or awarding compensation, rendered by domestic authorities in favour of the applicants, during the period following ratification of the Convention.*

*This amounts to the paradoxical, but nevertheless real situation whereby, if a post-communist country refuses to take any steps to address in law the issue of properties nationalized before 1989, the respective state is fully insulated against claims before ECtHR. It is only once a country begins to pass national legislation on the matter that it can be held liable in international courts. However, it must be said that, in spite of this strong institutional incentive for non-action, most post-communist countries in CEE and SEE could not avoid passing some sort of legislation on property restitution, as a result of domestic political pressure. It is the difference in timing and quality among these bodies of national law that explain the wide variation in the number of claims (and, subsequently, successful claims) coming before ECtHR from each state.*

*When comparing the judgments rendered by the Court in cases involving each of the countries, some common patterns emerge for all (or for a subgroup). There are also a relatively less important set of specific features that emerge for each individual country. With regard to those countries that have a significant number of judgments, a leading judgment can be identified. These are normally followed by dozens of similar judgments, which address the same legal issue and give place to well-established case-law.*

**The main issues under the Convention** are the non-enforcement of final judicial decisions; the quashing of final judicial decisions and failure by the courts to respect the finality of judgments; the failure of the domestic authorities to provide compensation to which the applicants were entitled under domestic law; deprivations of property in the context of special protected tenancy and access to court in order to ask for restitution of confiscated property.

### **- The role of the European Union.**

*The countries under scrutiny differ as regards their status vis-à-vis the European Union: Romania and Bulgaria are already members, Croatia is a candidate country, while the other three countries, Albania, Bosnia and Herzegovina and Serbia, are potential candidates. In this respect, it follows that the **European Union has at present different leverage and different mechanisms to influence the process of property restitution in each of them**. The issue of property restitution has been always addressed in country reports of the European Commission from the perspective of human rights; concrete examples of country reports are given in each of the case-studies presented in Part II of the present study.*

*Generally speaking, the leverage of the EU on national policy tends to be stronger in the years before a milestone is reached: either as a condition to be fulfilled before the country can start accession negotiations; or during this process, as a benchmark to be monitored before negotiations can be concluded. However, the peculiarities of property restitution – it is a particularly sensitive national issue in every country, very political in nature, grounded in moral and historical judgements, with a huge amount of resources at stake – and the fact that it exceeds the explicit mandate of the EU, limits the Union to the role of guardian of procedures, rather than reviewer of substance on the national decisions adopted. On the other hand, a reasonable and timely solution to the problem of property in every post-communist state willing to join the EU is crucial, one way or another, as a building block of the rule of law, for which is a membership prerequisite. This is the dilemma confronting the EU institutions: encouraging a fair policy on restitution, but only using indirect instruments for this goal.*

#### **Recommendations:**

*In our opinion, the European Union should continue to use its traditional monitoring mechanisms and conditionality systems to assess the extent to which countries have implemented policies to address the issue of property restitution. In this process, the EU should not limit its assessment to the review of legislation, but should also request concrete action plans with clear benchmarks, budgetary allocations and responsible institutions, once the national governments adopted a law. In other words, the Union cannot impose a solution on Eastern-European societies, but once such a solution has been agreed upon by the legitimate authorities of the particular country, it can request that the government and the administration do not undermine the policy through implementation flaws.*

This would be a good strategy which takes account of a well-known phenomenon: that it is often easier for the national voters and the public to make the government embrace the broad principles of a policy, and even to adopt a law, but much more difficult to monitor their bureaucratic implementation. External monitoring of administrative performance in this field, as well as the performance and fairness of other structures, such as the judiciary, which play a role in the process of property restitution, may make an important contribution to an increased level of accountability in the candidate / prospective candidate country, and thus provide a tool to improve the quality of governance.

As regards the particular case of property restitution, the solutions do not come without significant costs (which in any case would be lower if restitution in kind were the solution adopted by the countries). In this context the EU may explore together with the countries concerned a mechanism for financing such costs in a manner which is both practical and morally acceptable. Various arrangements may be considered, from linking restitution with the privatization process, to mutual funds, selling of state assets, special purpose loans, etc. Due consideration must also be given to the likely implications for the national budgetary deficit.

### **- National cases**

1. The section on **Albania** deals with the complex problem of property restitution in a country that for almost a decade suffered from social turmoil and unstable governments. First, the legal framework has been volatile and incoherent over time. The financial burden that the amount of compensation to former owners would place on the state has never been estimated. Furthermore, as described in the respective section of the study, there have been serious issues regarding the methodology for establishing the compensation sums. The current law on restitution allows for restitution in kind or compensation in cash at the property's market price, and the methodology used to establish the value of compensation has been approved by the National Property Restitution and Compensation Agency. However, this has been criticised by international organisations, because it makes the value of compensation dependant upon the income the property would have generated if it had been in the possession of the rightful owners. The chapter also describes the administrative procedure of the restitution process.

The 2008 EC Progress Report highlighted that, despite the problems created by the lack of property registration and the legalisation of informal use of land, Albania had registered advances in the restitution process and the enforcement property rights. In the same year, a report issued by the European Parliament on the property restitution process in Albania discussed thoroughly the problems created by the disruptive legal framework and the inefficient institutional setup for the management of property issues after 1990. Its conclusions and recommendations were in line with those of the EC 2009 progress report, according to which Albania showed little progress on issues related to property rights in general. The report urged the adoption of a comprehensive working plan in order to improve the situation regarding property rights.

Another report, made by the Property Restitution and Compensation Agency in October 2009 for the use of the Prime Minister's office, shows that no decisions have been taken after the July 2009, since the deadline stated in the law had not yet been postponed. This means that besides new claims, the Agency will have to provide an answer to pending claims for which the administrative investigation has not yet been finalized. Usually, claims are still pending due to missing documents or procedural mistakes which impeded or delayed the adoption of a final decision. However, human resources are not available to speed up the process or support better communication with beneficiaries. At present, the number of requests is already too large for the current administration to handle.

The lack of personnel is reflected in the number of judicial appeals on property restitution issues. Only one third of all appeals were dealt with so far, which reflects a low capacity, to a large extent due to the lack of trained personnel. This issue needs to be addressed by future reform plans.

Making the process of evaluation of restitution claims more efficient is crucial, since unsolved claims end up in judicial courts, a trend that is accelerating: between August and October 2009, 187 lawsuits were initiated against the Agency's decisions. The demand for highly trained staff is urgent, both for dealing administratively with the files and to represent the state in courts. A property fund out of which compensation in kind could be made does not yet exist. Five years after the adoption of the current law on restitution and compensation, despite additional legal acts that aimed at clarifying the procedure, restitution in kind has never been made.

According to the law, property used in the public interest cannot be returned to its owners. This required initial registration of immovable property that could be used for restitution all over the country. The Albanian Assembly took a recent decision to verify property titles, including those belonging to the State. The institution in charge identified a high level of uncertainty related to registered titles, including the ones in state ownership. Thus, setting up a Property Fund based on the records of the Immoveable Property Registration Office was not legally secure.

A yearly fund for cash compensation was included in the state budget. For 2009 this fund reached 10 million Euros and it was used to cover compensations for 211 out of the 521

owners who had their property rights restored that year. The compensation process is conducted according to the distribution of the claimed land across the value maps of the Agency. These maps need to be continually updated until the final compensation deadline in 2015. Considering the dynamics of the real estate market and of the number of filed and solved claims, the budget required to cover compensation can be expected to grow.

2. The chapter on **Bosnia and Herzegovina** highlights the special situation of a country with split governance. A law on the denationalisation of property seized during the Communist regime was adopted at state level, but immediately suspended, thus producing no legal effects. The study describes the events after World War II and the Bosnian war of the '90s which had important implications for the restitution process, and reviews critically the final draft of the proposed law on denationalisation, as well as the governmental and institutional challenges to the implementation of the proposed law. It examines the existing policy conflicts and problems that the proposed law could aggravate, including the complications arising from the Dayton Peace Accords. Then it moves on to predict the impact of government and administrative corruption in the implementation process.

Even though the current draft form of the restitution law has weak points, they can be addressed in by-laws, codes of conduct, and the administrative tools and mechanisms that do not have to form part of the formal law. Adopting this Law would at least establish an institutional framework, after which there is a six-month period before the actual implementation begins. The adoption of the Denationalisation/Restitution laws in each entity (they are in progress) should be in line with the state level law. The ideal solution, though probably the least likely, would provide that Entity laws be in accordance with the state law, and that they empower the state level law in terms of the speed and quality of implementation. This would be done by creating specific regulations on registering property at municipal/city/district levels and making such data available to the public and all interested parties. New registers of property (a register of confiscated property subject to denationalisation, a register of property that shall be used for the purpose of natural compensation, and a general register of all municipal property) should be put in place in each of the municipalities in Bosnia and Herzegovina or at the cantonal or entity level. Such registers, aside from simple counting of the property, should contain data that is in the possession of the public bodies (location, type and size of the property, under which law the property was confiscated and the legal basis for confiscation, who is in possession of such property or who has occupancy rights and on what basis, approximate commercial value of the property). Such registers should be available to the public as well as to all interested parties. In addition, a combined register of persons and companies that have been compensated for their property through bilateral agreements (such as the Agreement between the U.S. Government and SFRJ) should be established and made available to the public and interested parties.

Municipalities should be required by law to establish registers of property which is unaccounted for and to provide a binding deadline within the law for starting the procedure before the court by the relevant public office (public defender) in the name of the targeted municipality, and stating that all property which remains unaccounted for after the deadline belongs to the State of Bosnia and Herzegovina.

Transparency and access to data should be improved in the policy-making process at all levels (draft laws, future by-laws and other relevant policy documents, registers of property subject to restitution law, decisions in the process of denationalisation as well as statistical and other relevant data). Integrity and anti-corruption measures should be imbedded either in the law or by-laws and codes of conduct of relevant bodies, as requested in the implementation of the Dayton package of property laws. Special attention should be given to conflict of interest-related issues in the appointment of members of the municipal commissions, as well as the appointment of members of the Appellate Commission, with both soft (prevention) and hard (ban on appointment to public service employment) measures against those that breach the codes of conduct or other similar instruments.

*The international community should give special attention to the issue, as it is one of the last issues to be resolved in Bosnia and Herzegovina preceding the development of a free market – corruption aside. Therefore, the denationalisation issue, as well as effective, timely, fair and just implementation of the Law and international treaties, should become a criterion for Bosnian progress in accession to the EU.*

By the end of the denationalisation process, Bosnia and Herzegovina should consider a special approach to the property that belonged to victims of the Holocaust or the last war in Bosnia and Herzegovina. Even though the country is in a difficult economic situation, no state should benefit from sufferings of the past. Such measures pay tribute to the victims of tragic historical events, and at the same time prevent special interests within the State from making money and taking precedence over the interests of all citizens. In complex situations, the tenants should be given the right to buy such apartments as guaranteed under the law. Bosnia and Herzegovina can consider a solution similar to the one in Macedonia, and create a fund from the money received through the sale of public property to be used for paying compensation to victims and their descendents. The fact that proper and fair denationalisation is not a condition for the BiH roadmap to the EU raises suspicions that this matter will never be adequately or fairly resolved. Since there is almost no leverage from the international community in relation to denationalisation policies, it is expected by many that the final outcome of denationalisation will be a failure.

*3. In the chapter on **Bulgaria**, we describe and analyse the restitution process against its historical and political background. The process of nationalisation of agricultural land, or urban, industrial and other property in the early communist period and the subsequent practices of alienation of property are also briefly presented in order to facilitate the understanding of subsequent developments. The legislation, the judicial practice and the decisions of the Bulgarian Constitutional Court on the property restitution in the transition period are discussed in detail. The social, economic and urban development consequences of this process are also outlined with a special attention given to the minorities, with an emphasis on the restitution of property to the Bulgarian ethnic Turks.*

The restitution of property in Bulgaria over the last twenty years has been one of the most consequential and complex social processes. It has been both shaped by, and has itself shaped Bulgarian politics. Issues of the balance between retributive justice and the general public good, issues of evaluation of the past and projections for the future, and indeed issues of political identity were all entangled in this process. Therefore, any overall judgement is necessarily partial and controversial. One thing is clear, however: the process of restitution has determined the outlook of contemporary Bulgaria in a variety of important ways.

In terms of economic efficiency, the restitution of agricultural lands in their real boundaries has fragmented the plots, and has created a serious need for the consolidation of land. Bulgarian agriculture, partly as a result of this fragmentation, has been one of the sectors facing the most severe difficulties of recovery following the crisis of the 1990s. This fragmentation also creates problems in absorbing the EU funding in the sector.

*The benefits of the restitution process should therefore be searched for mostly in the area of social (retributive) justice and the legitimacy of the transition to liberal-democracy and market economy. Here, the restitution efforts of the political elite indeed created a significant constituency of owners supporting the political transformation.*

*4. The chapter on **Croatia** reviews the various positions of the European bodies and other international organisations such as the Organisation for Security and Cooperation in Europe (OSCE), EctHR etc, in relation to the process of restitution and compensation. It further covers the legal framework and analyses, critically the Law on Compensation, which was weakened by the inherent conflict of interest of the County Administration Offices. There are also important issues with the implementation of the legal framework: the slow pace of*

*procedures in the County Administration Offices and the decisions taken by the national courts that affect the process of restitution and compensation.*

*A number of problems stem from the choice of the County Public Administration Offices as the responsible body for the arbitration of claims to restitution and compensation: (i) the inherent conflict of interest; (ii) the different principles applied to the administrative procedure, and (iii) the slow pace of the procedure. The conflict of interest problem poses the greatest threat to the just settlement of claims for restitution and compensation. However, it is also the most difficult to change at this point in time, because 71% of all cases have already been settled by this administrative mechanism. The recommendation here must then be generalized to the politics of the Republic of Croatia in the future. A possible solution to prevent future conflict of interest problems could be the introduction of a practice that would permit the Committee for the Prevention of the Conflict of Interest to consider and point out any potential areas of concern before any act of legislation is presented to the Parliament. Of course, the Committee would not have the power to change the legislation but at least it would have oversight and whistle-blower status. This would also work towards giving the Committee a more prominent position within the structure of government.*

*The problem of the different principles of procedure being applied in different counties could be solved by the legislature opting to pass additional regulations and amend the contradictory wording in the Law on Compensation. This type of solution should at least be contemplated for the most contentious issues. The less controversial issues must continue to rely on the Administrative Court for their resolution as foreseen by the legislative framework.*

*The third problem of the slow pace of the administrative procedures calls for Government pressure to be placed on the counties to complete the administrative stage of the process of restitution and compensation. The European Commission and the European Parliament could also encourage the Croatian Government to complete the process.*

*The last recommendation is based on the general problem of ownership and tenancy rights. These problems can be partially remedied by a proactive organisational policy by the Republic of Croatia. Three different registers for the categorisation of property for the restitution and compensation process could be created: (i) one register would document the current property whose restitution is requested; (ii) the second register would document the property that is set aside for compensation by the state or counties; (iii) the third register would document the current owners of the property whose restitution is requested and when these ownership rights were gained.*

*These three registers would avoid a plethora of problems that surround the tenancy and ownership issues: tenants who have requested to be granted ownership rights of privately owned apartments could be easily identified. These cases would obviously be dismissed because they are based on a basic misunderstanding of the Croatian civil law. The second problem that would be solved is that the tenants who have legitimately requested ownership rights for state owned apartments could also be easily identified. The conclusion of these cases would then depend on the pace of the administrative procedure. The tenants in these cases would receive the right to purchase the property and the original owner would receive compensation.*

*The third problem that would be placed in a clearer light is the minority of cases where corruption or a conflict of interest within the legal or administrative bodies is in question. The cross referencing of the first and third register would clearly identify the property that has been given to individuals through illicit means. Since the third register would contain both the owner and the date that their ownership rights were granted, this would set the stage for a more detailed investigation by the authorities of those individuals who gained property without proper tenancy rights or the rights to restitution and compensation. This final recommendation would require political action to regulate and sanction corruption within the Republic of Croatia.*

5. **Romania** is distinctive among the other countries in the region because of the combination of widespread nationalisation, high expectations – the target was *restitutio in integrum* – and weak institutions to implement these challenging tasks. The restitution policy was designed and re-designed gradually, over a period of almost 20 years, so it lacked a coherent vision. The report highlights the frequent changes in legislation which lead to overlapping entitlements provided by the law at various moments in time. The outcome was a slow process with a disjointed practice both in administration and judiciary. The restitution in kind of agricultural land and forestry is slowly coming to an end. However, the process of compensation for the claims that could not be addressed in this way is an extremely protracted one. The restitution of urban property has barely reached half way, again with a major delay in providing compensations. The prospects are not encouraging because at the current pace the restitution process is likely to be prolonged over several decades.

The poor implementation of its restitution policy made Romania a leader in the number of cases taken to the ECtHR and also in the number of sanctions applied in respect of property issues. The failure of the administration and judiciary to comply with the rules created by this intricate framework and the different interpretation given to the rules triggered a clear reaction from the international organisations Romania adhered to, especially the ECtHR.

*The most important idea that emerges from this research is the fact that a lack of political vision and frequent changes in the legal framework were the main causes of the existing uncertainties regarding the restitution of property. Therefore, there is an obvious need for the political class to refrain from major policy shift. The key word should be consolidation of the legal framework by a clear-cut interpretation of the law by the Constitutional and High Courts, in order to provide the lower courts with the necessary basis for a unitary practice.*

*Secondly, increasing the capacity of the administrative bodies in charge of restitution should become a priority. Institutional audits for the central level, Bucharest City Hall and other lagging institutions are recommended to find pragmatic ways for speeding up the bureaucratic process by eliminating redundant checks and streamlining the procedures. The compensation mechanism should become truly effective. Payment titles should be directly enforceable, and the Proprietatea Fund should be listed on the stock market as soon as possible.*

*Another important aspect to be considered is the capacity of the state to pay the promised compensation. The economic crisis greatly affected the Romanian treasury, the public budget facing high deficits and lower incomes at a time when the social expenditure is on the rise. As the payment of compensation is already a cumbersome process, it is not advisable that budgetary constraints should add to this delay. In addition, the value at which the shares in the Proprietatea Fund are traded now on the unregulated market indicates that the real price of the shares may be significantly lower than the nominal value used for compensation. As compensation will be at the trading value, a higher rate of transfer of the shares owned by the state to private recipients should be anticipated. The Fund has already transferred about 40% of the value of assets into titles to claimants.*

*Under these circumstances, it is advisable to have more restitution in kind or compensation by other properties of equivalent value, which are not claimed back by former owners. However, the lagging local authorities, such as Bucharest, have not finalised an inventory of properties, although the deadline provided by the applicable law expired years ago. A better enforcement of such laws and an improvement in the performance of other institutions, such as cadastre or archives, are crucial for reducing the total monetary cost of the restitution process to the rest of the society, by maximizing the in-kind or equivalent options.*

6. In **Serbia**, property restitution has not yet been fully addressed in legislation or administrative practice, but similar issues are expected to arise if the country's government makes the same mistakes as its neighbours in designing the restitution/compensation policy. The first step towards denationalisation was the Law on Declaring and Registration

of Seized Property in 2005. The Law regulated the procedure for declaring and registering seized property, as a first step in the process of returning property to its owners. The purpose of this was to quantify the property seized by means of nationalisation, expropriation, confiscation etc, applied after 1945 in Serbia, in order to establish the appropriate manner of returning it to the owners by enacting the law on denationalisation.

*About 73,000 applications were filed within the deadline, and some more submitted after the deadline with the expectation that it would be extended. Until September 2009 it is estimated that around 76,000 claims, submitted by approximately 130,000 individuals, were collected. There are 49,400 applications containing the requested documentation, and 16,100 without sufficient data for identification of the nationalised property.*

*In 2007, Serbia produced a second important draft law, this time called by its proper name: the Law on Denationalisation. It entered the adoption procedure, it was accepted by the Government of Serbia and released for public debate. However, during the public debate many objections were raised, such as those relating to violation of the rights of current owners, as the law provided for the seizure of assets from the current owners without compensation. It also contained provisions on the restitution of construction land by establishing a dual ownership between the building owners and land owners. Following sharp criticism during the public debate, the Government withdrew the draft law from the legislative procedure.*

Such delay of almost two decades is likely to make Serbia a very special showcase for the difficulties of the restitution process in South-Eastern Europe. The market pressure has produced situations which, after successive transactions, will prove difficult to disentangle. In addition, the government is pressed to come with a separate law, dealing with the division of public property between the state and Serbia's 174 municipalities. It plans to do this in 2010, largely because without clarifying the situation of municipal property, many investment projects, including those financed by the EU, cannot proceed. However, securing municipal property by law, before the broad framework of restitution is set, is likely to complicate the matter further.

The assessments as to the financial implications of restitution or compensation are rather blurry and give rise to disputes between various stakeholders and the Government. Restitution in kind could decrease the direct financial costs to society, as this method would eliminate monetary compensation. However, the longer the issue drags on, the more difficult will become to make use of the mechanism, as Serbia delays a clear decision on this matter.



DIRECTORATE-GENERAL FOR INTERNAL POLICIES

## POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

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