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***THE EFFECTS OF CLAIMING PROPERTY IN ROMANIA IN THE STRATEGIES  
FOR SUSTAINABLE DEVELOPMENT***

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*Abstract: The challenges of the sustainable development focus on poverty alleviation, food security and economic development in general, targets can not be achieved in the absence of respecting the property rights of individuals, communities, national economy. Ownership is that subjective right, which is the expression of ownership of property, that allows the holder to possess, use and dispose of that asset in his own interest and in compliance with existing legislation. Ownership confers on its holder the possibility absolutely, exclusive and perpetual, within the material and legal limits the exercise of the attributes that can be exercised.*

*Keywords: sustainable development, estate claiming, ECHR enforcement, nationalization, compensation.*

The situation of the buildings confiscated by the totalitarian state from rightful owners, must be resolved in an efficient way for the country's economy, should not suffer major losses, either through cash refunds or through sanctions imposed by the actions directed to the ECHR. By the nationalization carried out in Romania in 1948, private ownership of private interest and public buildings, businesses, vehicles, lands was replaced with the socialist property.

After 1990, they started claims for properties nationalized abusively. The first way is the denationalization of resources is *restitution of the properties to their owners*, when their property can be proven. This means the restitution of the houses property nationalized torn by population, return the factories to their owners or heirs owners who were dispossessed of lands. Given the fact that in Romania during the communist state the problem of nationalized properties has not been resolved in a fair, owners are still waiting for practical solutions. The big number of requests to the European Courts Romania faces Romania with a difficult situation, with major implications for economic and social order.

Restitutions, especially if they directly or mediated, target individuals or legal entities, even if their headquarters is in Romania but don't have Romanian citizenship, affects the amount of national wealth in the sense that these buildings are considered foreign investment in Romania which, are deducted from the national wealth. All residential properties of Romanian citizens from abroad, although they add to national wealth, have volume and value lower than those of foreigners homeowners in Romania.

They used to offset on voucher system - securities on the open market, which can be used for the purchase of properties from the state, including apartments - *restitution instead for the following reasons*: the economic situation at the time, the restitution process would be very long and would have generated a state of uncertainty that would discourage foreign investors avoiding the generation of numerous and lengthy litigations related to property and

that many goods had been privatized or otherwise acquired by third parties in good faith<sup>1</sup> and Hungary introduced a progressively ceiling between 200,000 and 5,000,000 HUF.<sup>2</sup>

Residents of the nationalized houses, even if they have not been part of the previous repressive mechanism, however, do not have a legitimate right to the house; they must, therefore, to return good to the identifiable legitimate owners or to their descendants in the state home was at the time of nationalization, taking into account the depreciation incurred while. To force the rightful owners of the houses to redeem the ouses from the tenants or to accept from them a rent fixed by the state (much below the market) or, in general, a different use from the one they would give to the house, it awould be a violation of their property.

In this situation there is an economic problem of assessment, since it is necessary to estimate the outside market mechanisms, compensations for the victims which would be entitled made by communists and this method does not avoid redistribution as dividends followed by holding come from capitalization of the State assets whose property is presumed to be legitimate, when it is possible that resorting the syndicalist method mentioned in the literature, these assets have been actually already appropriated.

New shareholders will bear the risks, and will enjoy the benefits associated to some economic activities, other than those accompanying the goods have been taken over by the communist state, which will lead to the absence of restitution or to an unearned income. In legal practice in Romania, neither before 1989 nor after, the restitution issue has not found suitable solutions. As a result of unlawful acts of dispossession many owners have been deprived or dispossessed by their goods.

Regarding the restitution process, it ended, in most cases, during 1995 - 1996 in Slovakia and in 1997 - 1998 in the Czech Republic, the number of convictions for violation of the Article 1 of Protocol No. 1 to the Convention being insignificant . In East Germany,<sup>3</sup> the issue of restitution formed a peculiar chapter in the 1990 Unification Treaty. Program was probably the most voluminous in the region, covering about 5 million people (about 20% of the population) and 90% of urbane buildings.<sup>4</sup>

Use, with possession and available form the "content / substance" of ownership, such speakingof the atributes of the property. Begining from the fact that property is inviolable and can not be violated by anyone, we can say that no person may be deprived of the use of his property without infringing his right to his own property, in the right "its substance." Property infringement is "dangerous" and harmful not only to the holder of the right, but even to the whole society, because are prejudiced social, which normally determines the security, maintenance and the compliance with state of the possession of the good. Precisely from this perspective,of the social danger, the legislature intended to prevent the commission of such acts, considering them crimes such as disorder of the possession and disturbance of the use of property.

Whether the act of depriving a person of the use of his property is or not qualified as a crime, in other words, whether that person will respond and prosecutions before the law, the one who contributes to this situation in terms of civil will respond more

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<sup>1</sup> L. Pena, *Restitution of expropriated property in transition countries and in the Republic of Croatia*, Editura Inzenierski Biro, Zagreb, 2000, p. 7.

<sup>2</sup> J. Tucker-Mohl, *Property Rights and Transitional Justice: Restitution in Hungary and East Germany*, în *Property Rights Under Transition*, 1 mai 2005.

<sup>3</sup> L. Pena, *op.cit.*, p.198.

<sup>4</sup> M. Blacksell, K. Born, *Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe*, în *Geographical Journal* nr. 2/2002 (vol.168).

specifically, he will have to compensate the person entitled to the use for damage. Romanian State is the one accused of abuse, is the one to provide fair compensation to those injured, as depriving a person of his use of property - is in the illicit sphere, being unequivocally an unlawful act. Such an act is unlawful, based on a rule, with the value of the principle that "no one is allowed to bring through his act an injury to any other person, or his rights."

Problems of the restitution process were mainly administrative, taking mainly by the lack of clear data on property boundaries, incomplete records and a reluctance of local authorities to surrender, these having considerable discretion in implementation<sup>5</sup>. Although over the years there have been legislative proposals, none of them managed to gather the necessary political support, the only way the former owners had their properties recovered being through normal legal processes<sup>6</sup>.

Romania should no longer be sanctioned by the ECHR so intensely, so it is necessary to create a system that allows on the one hand the solution for those indemnified, but also the maintenance of financial balance by decreasing the number of sanctioning of Romania in the ECHR. The number of requests to the European Courts faces Romania with a difficult situation, with major implications for economic and social order.

Lawyers usually disagree with setting deadlines for judgments or other decisions relating to restitutions. Therefore, it is important for the legal side to consider the saving of time, which is a national resource, there should not be bureaucratic and administrative expenses, including, purchase of litigious rights by law firms, often counterfeit, generating processes and subsequent costs accompanied by time consuming, stress and repeated appeals. Lack of clarity about property rights, following a slower judicial process, in most cases goes to the damage of real estate assets, which implies high costs later.

In this context, it becomes increasingly apparent that the role of the research in the issue of the property claiming is of a great importance and the problems facing Romania can be resolved through basic research, interdisciplinary, which must provide solutions grounded in science to avoid in the future implications that will translate into the loss of significant amounts of time and money, as well as into major social tensions.

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<sup>5</sup> A. Kozminski, Restitution of Private Property. Re-privatization in Central and Eastern Europe, in *Communist and Post-Communist Studies* nr.1/1997 (vol. 30), pp 95-106.

<sup>6</sup> Krakow Post, Debate: Property Restitution: Should Poland Pay?, Friday, September 12, 2008.