

SECRETARIAT GENERAL
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Communication from the government of Romania in the Străin and others group of cases against Romania (Application No. 57001/00) - draft law.

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Référence du point : 1144e réunion DH (juin 2012)

Communication du gouvernement de la Roumanie relative au groupe d'affaires Străin et autres contre Roumanie (requête n° 57001/00) - projet de loi (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

* In the application of Article 21.b of the rules of procedure of the Committee of Ministers, it is understood that distribution of documents at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers (CM/Del/Dec(2001)772/1.4). / Dans le cadre de l'application de l'article 21.b du Règlement intérieur du Comité des Ministres, il est entendu que la distribution de documents à la demande d'un représentant se fait sous la seule responsabilité dudit représentant, sans préjuger de la position juridique ou politique du Comité des Ministres CM/Del/Dec(2001)772/1.4).



ROUMANIE
Ministère des Affaires Etrangères

DGI

15 MAI 2012

SERVICE DE L'EXECUTION
DES ARRETS DE LA COUR

Service de l'Exécution des Arrêts de la
Cour Européenne des Droits de l'Homme

Agent du Gouvernement
auprès de la Cour Européenne
des Droits de l'Homme

Madame Geneviève Mayer
Chef du Service

Bucarest, le 15 mai 2012

L1/5395

Madame,

Le Gouvernement a l'honneur de vous transmettre ci-joint la traduction en anglais du projet de loi visant la procédure de la compensation pour les immeubles confisqués pendant le régime communiste.

Veillez agréer, Madame, l'expression de ma considération distinguée.

Irina Cambrea,
Co-agente du Gouvernement

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DRAFT LAW

on determining and paying compensation for immovable property wrongfully acquired during the communist regime, compensation to be awarded to Romanian citizens under the provisions of Law No 9/1998 awarding compensation to Romanian citizens for assets acquired by the Bulgarian State following the implementation of the Treaty between Romania and Bulgaria, provisions of Law No 290/2003 awarding redress or compensation to Romanian citizens for assets under their ownership that were seized, confiscated or left in Bessarabia, North Bucovine and Herța County, as well as provisions of Law No 393/2006 awarding compensation to Romanian citizens for assets acquired by the former Kingdom of Serbs, Croats and Slovenes following the implementation of the Protocol concerning several Danube islands and an exchange of localities between Romania and Yugoslavia, concluded in Belgrade on 24 November 1923, and of the Convention between Romania and the Kingdom of Serbs, Croats and Slovenes relative to the regime of property located in the border area, signed in Belgrade on 5 July 1924

CHAPTER 1 General provisions

Article 1 – (1) This law lays down the procedure for determining and paying compensation to persons whose immovable property was wrongfully acquired by the State during the communist regime, as well as to persons subject to the provisions of Law No 9/1998 awarding compensation to Romanian citizens for assets acquired by the Bulgarian State following the implementation of the Treaty between Romania and Bulgaria, the provisions of Law No 290/2003 awarding redress or compensation to Romanian citizens for assets under their ownership that were seized, confiscated or left in Bessarabia, North Bucovine and Herța County, as well as those of Law No 393/2006 awarding compensation to Romanian citizens for assets acquired by the former Kingdom of Serbs, Croats and Slovenes following the implementation of the Protocol concerning several Danube islands and an exchange of localities between Romania and Yugoslavia, concluded in Belgrade on 24 November 1923, and of the Convention between Romania and the Kingdom of Serbs, Croats and Slovenes relative to the regime of property located in the border area, signed in Belgrade on 5 July 1924, together with certain measures for accelerating the settlement of claims lodged by claimants.

(2) With regard to immovable property mentioned in paragraph (1), the only redress consists in awarding compensation determined under this law.

Article 2 – Compensation shall be awarded under this law based on the following principles:

- Predictability;
- Fairness;
- Transparency of the compensation determination process;
- Payment in instalments

Article 3 – For the purposes of this law, the terms below shall have the following meaning:

1. claims – *notifications* filed under Law No 10/2001 on the rules governing immovable property wrongfully acquired (by the State) from 6 March 1945 to 22 December 1989, republished, *claims for restitution* lodged under Government Emergency Ordinance No 94/2000 concerning the restitution of certain immovable property that belonged to the religious denominations in Romania, as amended, confirmed as amended by Law No 501/2002, Government Emergency

Ordinance No 83/1999 concerning the restitution of certain immovable property that belonged to the communities of citizens belonging to the national minorities of Romania, confirmed as amended by Law No 66/2004, as well as *claims* lodged under the provisions of the Real Property Law No 18/1991, republished, as amended, the provisions of Law No 1/2000 for re-establishing property titles on agricultural and forest lands, required under the provisions of the Real Property Law No 18/1991 and Law No 169/1997 as amended, of Law No 9/1998 awarding compensation to Romanian citizens for assets acquired by the Bulgarian State following the implementation of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940, republished, and those of Law No 290/2003 awarding redress or compensation to Romanian citizens for assets under their ownership that were seized, confiscated or left in Bessarabia, North Bucovine and Herța County following the state of war and the implementation of the Peace Treaty between the Allied and Associated Powers and Romania, signed in Paris on 10 February 1947, as amended, of Law No 393/2006 awarding compensation to Romanian citizens for assets acquired by the former Kingdom of Serbs, Croats and Slovenes following the implementation of the Protocol concerning several Danube islands and an exchange of localities between Romania and Yugoslavia, concluded in Belgrade on 24 November 1923, and of the Convention between Romania and the Kingdom of Serbs, Croats and Slovenes relative to the regime of property located in the border area, signed in Belgrade on 5 July 1924, pending resolution by the statutory bodies or, where appropriate, by the Central Compensation Board;

2. claimants – persons who lodged with the statutory bodies, within the statutory time-limit, claims of the type provided for in paragraph (1), which are still pending on the date of entry into force of this law;

3. entitled persons – persons whose claims were validated in whole or in part, following the entry into force of this law, by the Central Compensation Board or by a court;

4. statutory bodies – the following structures with power to determine the restitution of wrongfully acquired immovable property or to award compensation:

a) a holder unit, within the meaning of the implementing provisions for Law No 10/2001, republished, as well as the implementing provisions for Government Emergency Ordinance No 94/2000, republished, as amended, and of Government Emergency Ordinance No 83/1999, republished;

b) a body in charge of dealing with notifications, within the meaning of the implementing provisions for Law No 10/2001;

c) the local real estate Commission; communal, urban and municipal commissions, set up under the Real Property Law No 18/1991;

d) the County Commission for establishing the private property titles on land, set up under the Real Property Law No 18/1991;

e) the Special Commission set up under Government Emergency Ordinance No 94/2000 concerning the restitution of certain immovable property that belonged to the religious denominations of Romania;

f) the Commissions set up under Law No 9/1998 awarding compensation to Romanian citizens for assets acquired by the Bulgarian State following the implementation of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940, republished, Law No 290/2003 awarding redress or compensation to Romanian citizens for assets under their ownership that were seized, confiscated or left in Bessarabia, North Bucovine and Herța County following the state of war and the implementation of the Peace Treaty between the Allied and Associated Powers and Romania, signed in Paris on 10 February 1947, as amended, as well as, respectively,

Law No 393/2006 awarding compensation to Romanian citizens for assets acquired by the Kingdom of Serbs, Croats and Slovenes following the implementation of the Protocol concerning several Danube islands and an exchange of localities between Romania and Yugoslavia, concluded in Belgrade on 24 November 1923, and of the Convention between Romania and the Kingdom of Serbs, Croats and Slovenes relative to the regime of property located in the border area, signed in Belgrade on 5 July 1924.

5. decisions of statutory bodies – decisions/provisions/orders issued by the statutory bodies referred to at point 4;

6. decision of the Central Compensation Board – a decision validating/invalidating, in whole or in part, a statutory body's decision concerning the existence and scope of the property title and, where appropriate, setting the amount of compensation based on decisions issued by the said bodies and on supporting documents from the files of entitled persons;

7. payment certificates – certificates issued by the National Agency for Property Restitution, on behalf and for the Romanian state, incorporating the holders' claims to receive pecuniary compensation from the Romanian state in cash, in the amounts and according to the time-limits laid down in this law;

8. valuation report – the document embodying the activity of assessing the asset's value, according to the standards corresponding to this activity and to the professional ethics, carried out by licensed evaluators, selected in accordance with the law by the National Agency for Property Restitution;

9. verification report – the report drawn up by the verification commission referred to in Article 10 (1).

Article 4 – The provisions of this law shall apply to persons who lodged with the statutory bodies, within the statutory time-limit, claims that have not been settled prior to the date of entry into force of this law, including persons who brought before the European Court of Human Rights applications whose examination was adjourned pursuant to the pilot judgment adopted in the case of Maria Atanasiu and Others v. Romania.

CHAPTER II

Method for calculating, capping and timing the instalments of compensation

Article 5 – (1) Compensation for immovable property referred to in Law No 10/2001 on the rules governing immovable property wrongfully acquired (by the State) from 6 March 1945 to 22 December 1989, republished, Government Emergency Ordinance No 94/2000 concerning the restitution of certain immovable property that belonged to religious denominations in Romania, as amended, confirmed as amended by Law No 501/2002, Government Emergency Ordinance No 83/1999 concerning the restitution of certain immovable property that belonged to the communities of citizens belonging to the national minorities of Romania, confirmed as amended by Law No 66/2004, as amended, the Real Property Law No 18/1991, republished, as amended, and Law No 1/2000 for re-establishing property titles on agricultural and forest lands, required under the provisions of the Real Property Law No 18/1991 and Law No 169/1997, as amended, shall be set to the actual value of the assets, under Government Ordinance No 24/2011

concerning certain measures related to asset valuation, by licensed evaluators, selected in accordance with the law by the National Agency for Property Restitution.

(2) Compensation claimed under Article 31 of Law No 10/2001 on the rules governing immovable property wrongfully acquired (by the State) from 6 March 1945 to 22 December 1989, republished, are to be determined, depending on the value of recalculated shares based on the value of net assets shown in the last balance sheet, by licensed evaluators, selected in accordance with the law by the National Agency for Property Restitution.

Article 6 – Compensation for Romanian citizens who suffered losses following the implementation of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940, the Peace Treaty between the Allied and Associated Powers and Romania, signed in Paris on 10 February 1947, and, respectively, the Protocol concerning several Danube islands and an exchange of localities between Romania and Yugoslavia, concluded in Belgrade on 24 November 1923 and the Convention between Romania and the Kingdom of Serbs, Croats and Slovenes regarding the regime of property located in the border area, signed in Belgrade on 5 July 1924, shall be determined according to Law No 9/1998 awarding compensation to Romanian citizens for assets acquired by the Bulgarian State following the implementation of the Treaty between Romania and Bulgaria, signed in Craiova on 7 September 1940, republished, Law No 290/2003 awarding redress or compensation to Romanian citizens for assets under their ownership that were seized, confiscated or left in Besarabia, North Bucovine and Herța County following the state of war and the implementation of the Peace Treaty between the Allied and Associated Powers and Romania, signed in Paris on 10 February 1947, as amended, as well as, respectively, Law No 393/2006 awarding compensation to Romanian citizens for assets acquired by the Kingdom of Serbs, Croats and Slovenes following the implementation of the Protocol concerning several Danube islands and an exchange of localities between Romania and Yugoslavia, concluded in Belgrade on 24 November 1923, and of the Convention between Romania and the Kingdom of Serbs, Croats and Slovenes relative to the regime of property located in the border area, signed in Belgrade on 5 July 1924.

Article 7 – (1) Entitled persons shall receive compensation in the amount of 15 % of the value determined under the provisions of Article 5.

(2) The payment of the amounts laid down in paragraph (1) is done in equal annual instalments for a period of 10 years.

(3) The amounts awarded as compensation under this law shall correlate with the last consumer price index notified by the National Institute of Statistics, by reference to the consumer price index determined for the date on which the payment certificate is issued.

(4) The payment certificate shall be issued within 30 days from the date on which the validation decision issued by the Central Compensation Board becomes final.

(5) The payment certificates issued, according to the law, by the National Agency for Property Restitution, are enforceable titles for compensation payments in cash on the dates and according to the methods prescribed by this law.

Article 8 – (1) The amounts laid down in final and irrevocable court judgments and in the compensation certificates issued by the Central Compensation Board, which were issued or, as the case may be, rendered before the date of entry into force of this law and were not enforced, shall be awarded in annual equal instalments for a period of 12 years. The provisions of Article 7 (3) and (5) shall apply accordingly.

(2) The compensation certificates issued by the Central Compensation Board prior to the date of entry into force of this law, in respect of which entitled persons opted for certificates of

conversion in *Proprietatea* Fund shares shall become, as a result of the law, compensation certificates in cash. The provisions of paragraph (1) shall apply accordingly.

Article 9 – (1) Compensation provided for under Article 6 shall be paid in annual equal instalments for a period of 12 years. The provisions of Article 7 (3) and (5) shall apply accordingly.

Article 10 – (1) The valuation reports drawn up under Article 5 by licensed evaluators shall be verified in each case by a verification commission, composed of three licensed evaluators, selected pursuant to the law by the National Agency for Property Restitution.

(2) The licensed evaluators who draw up the valuation reports are not allowed sitting on the verification commission.

CHAPTER III

Measures for accelerating the settlement of claims

Article 11 – (1) There shall be a 60-day time-limit that terminates the right itself, calculated from the date of entry into force of this law, during which those persons, who lodged with statutory bodies, within the statutory time-limit, claims of the type provided for in Article 3 (1), can adduce to the files submitted to the statutory bodies any documents they deem useful for the settlement of the claim.

(2) In respect of files pending before the Central Compensation Board on the date of entry into force of this law, the supporting documents referred to in paragraph (1) are to be submitted to the Secretariat of the Central Compensation Board.

(3) The time-limit referred to in paragraph (1) may be extended at the written request of the claimant or his/her legal representative, by decision of the head of the statutory body or of a person he or she authorised to do so, only once and for a duration of 30 days, in case the claimant gives evidence of taking measures to supplement the file requiring the input of other institutions.

(4) The request for extension of the time-limit referred to in paragraph (3) shall be lodged within the time-limit referred to in paragraph (1) and accompanied by evidence of the measures undertaken.

(5) The Ministry of Administration and Interior, prefectures as well as local public administration authorities have the obligation to post at their offices, as well as on their web pages, the legal provisions regarding the time-limits for exercising the rights laid down in this law.

Article 12 – At the request of the claimants, the institutions holding supporting documents that can be used as evidence for the claims have the obligation to issue them within 30 days from the date of registration of the request.

Article 13 – (1) Based on the supporting documents from the files of the claimants, the Central Compensation Board shall adopt a decision validating/invalidating, either in whole or in part, the proposals made in the decisions of the statutory bodies, verifying the following aspects:

- a) the existence in the file of documents proving the property title to the immovable property for which compensation is proposed;
- b) the existence in the file of documents proving the wrongful acquisition of the immovable property for which compensation is proposed;
- c) the existence in the file of documents proving the quality of entitled person, former owner or heir thereto;
- d) the existence of the valuation report;

e) the existence of the verification report.

(2) In case of validation, in whole or in part, the Central Compensation Board shall approve the amount of compensation determined under this law.

Article 14 – (1) Statutory bodies have the obligation to examine registered claims that were not processed prior to the date of entry into force of this law and to adopt decisions on their admissibility/dismissal as follows:

a) within 12 months, statutory bodies still having to process a number of up to 2 500 claims;

b) within 24 months, statutory bodies still having to process a number between 2 500 and 5 000 claims;

c) within 48 months, statutory bodies still having to process a number exceeding 5 000 claims.

(2) The time-limits prescribed in paragraph (1) start on the date of entry into force of this law.

(3) Statutory bodies referred to in paragraph (1) have the obligation to determine the number of pending registered claims, to post this information at their offices and at the city hall to whose territorial jurisdiction the immovable property was assigned, as well as to transmit them to the National Agency for Property Restitution. The data transmitted by the statutory bodies referred to in paragraph (1) shall be centralised and published on the web page of the National Agency for Property Restitution.

(4) Claims shall be analysed in the order in which they were registered with the bodies referred to in paragraph (1).

(5) Where a claim is admitted, the statutory bodies shall decide on the existence and scope of the property title and shall submit the file to the Central Compensation Board to approve the compensation in accordance with this law.

Article 15 – (1) The decision to dismiss a claim, issued by a statutory body, can be contested by the claimant at the civil division of the county court where the statutory body responsible for settling the claim is assigned, within 30 days from the date of its communication.

(2) Where the statutory body does not adopt a decision within the time-limit under Article 14, the claimant may bring the case before the court referred to in paragraph (1) within 18 months from the expiry of the statutory time-limits for the settlement of claims.

(3) In the cases referred to in paragraphs (1) and (2), the court shall rule on the existence and scope of the property title and shall transmit to the National Agency for Property Restitution a copy of the judgment in order to determine the amount of compensation pursuant to this law.

(4) Court judgments delivered under paragraphs (1) and (2) are subject to appeal, in the material competence of the Court of Appeal.

(5) Claims or legal proceedings under paragraphs (1), (2) and (4) are exempted from the payment of stamp duty.

Article 16 – (1) The files before the Central Compensation Board, still pending prior to the date of entry into force of this law are to be settled within 60 months from the date of entry into force of this law.

(2) The files that will be sent to the Central Compensation Board after the date of entry into force of this law are to be settled within 36 months from the date when the file was registered with the Secretariat of the Central Compensation Board.

(3) Pending resolution, the claims will be processed in the order in which they were registered with the Central Compensation Board.

(4) For entitled persons' information, the number and date of registration of the files referred to in paragraphs (1) and (2) with the Central Compensation Board shall be published on the web page of the National Agency for Property Restitution and posted at its office.

Article 17 – (1) The Central Compensation Board’s decision shall provide reasons and shall be transmitted to entitled persons as well as to the issuing bodies, within 60 days from its adoption.

(2) In case of discrepancies between the area of the immovable property for which compensation is proposed by decision issued by statutory bodies and the one indicated in the documents based on which the wrongful acquisition was ordered, the valuation shall be carried out by taking into consideration the area for which there is evidence of the wrongful acquisition by the state.

(3) In case there is evidence of the title to the property, but the documents in the restitution file cannot determine the area of the construction for which compensation is proposed, the amount of compensation is fixed, equal to the equivalent in Romanian lei of a sum of 500 Euros on the date when the Central Compensation Board’s decision was issued. The sum shall be paid in a single instalment within 30 days from the date on which the payment certificate under Article 7 (4) is issued.

Article 18 – (1) The Central Compensation Board’s decision can be contested before the civil division of the county court where the statutory body responsible for settling the notification is assigned within 30 days from its communication.

(2) In case the Central Compensation Board does not adopt a decision within the time-limits under Article 16, the entitled person may bring the case before the court referred to in paragraph (1) within 18 months from the expiry of the statutory time-limits for the settlement of claims.

(3) In case the Central Compensation Board’s decision referred to in paragraph (1) is repealed, as well as in the case referred to in paragraph (2), the court shall rule on the existence and scope of the property title and, where appropriate, decide the amount of compensation under the provisions of Article 5 in this law.

(4) Court decisions delivered under paragraphs (1) and (2) are subject to appeal, in the material competence of the Court of Appeal.

(5) Claims or legal proceedings under paragraphs (1), (2) and (4) are exempted from the payment of stamp duty.

CHAPTER 4 **Transitory and final provisions**

Article 19 – Within 60 days from the date of entry into force of this law, the Government shall issue implementing provisions for this law. Pending their approval, the implementing provisions issued for the restitution laws remain applicable inasmuch as they do not contravene the provisions of this law.

Article 20 – On the date of entry into force of this law, Article 50¹ in Law No 10/2001 on the rules governing immovable property wrongfully acquired (by the State) from 6 March 1945 to 22 December 1989, republished, as amended, is hereby amended and worded as follows:

“Article 50¹ – The owners whose sale contracts concluded pursuant to Law No 112/1995, as amended, were voided by final and irrevocable court decisions have the right to the restitution of the price paid, updated in line with the consumer price index notified by the National Institute of Statistics.”

Article 21 – (1) On the date of entry into force of this law, Article 16 (2¹) and (2²) in Title VII “Rules for determining and paying compensation” in Law No 247/2005 on judicial and property reform, as well as several accompanying measures, as amended, as well as any provisions contrary to this law, are hereby repealed.

(2) The files transmitted by statutory bodies to prefectures in order to obtain confirmation of lawfulness shall be transmitted to the National Agency for Property Restitution within 3 months from the date of entry into force of this law.

Article 22 – (1) On the date of entry into force of this law, the provisions concerning the restitution in kind and the compensation with other equivalent assets or services referred to in Law No 10/2001 on the rules governing immovable property wrongfully acquired (by the State) from 6 March 1945 to 22 December 1989, republished, Government Emergency Ordinance No 94/2000 concerning the restitution of certain immovable property belonging to the religious denominations of Romania, as amended, confirmed as amended by Law No 501/2002, Government Emergency Ordinance No 83/1999 concerning the restitution of certain immovable property that belonged to the communities of citizens belonging to the national minorities of Romania, confirmed as amended by Law No 66/2004, as amended, the Real Property Law No 18/1991, republished, as subsequently amended, Law No 1/2000 for re-establishing property titles on agricultural and forest lands, required under the provisions of the Real Property Law No 18/1991 and Law No 169/1997 as amended, as well as Law No 290/2003 awarding redress or compensation to Romanian citizens for assets under their ownership that were seized, confiscated or left in Bessarabia, North Bucovine and Herța County, are hereby repealed.

(2) On the date of entry into force of this law, point 18^{2.5} in Government Decision No 1095/2005 approving the implementation provisions for Title VII “Rules for determining and paying compensation” corresponding to wrongfully acquired immovable property in Law No 247/2005 on judicial and property reform, as well as several accompanying measures, as amended, are hereby repealed.

Article 23 – This law does not relieve the claimants from the effects of the expiry of statutory time-limits and does not establish new rights in addition to those arising from the implementation of the laws referred to in Article 5 (1).

Article 24 – On the date of entry into force of this law, any contrary provisions are hereby repealed.

Article 25 – Payment certificates for the amounts laid down in Article 8 shall be issued within 6 months from the date of entry into force of this law, in the order in which the entitled persons registered their option requests with the National Agency for Property Restitution.

Article 26 – This law shall enter into force within 15 days from the day of its publication in the *Official Journal of Romania*.