



TO THE GOVERNMENT OF PORTUGAL  
PRIME MINISTER MR PEDRO PASSOS COELHO

as well as  
TO THE MINISTER OF FOREIGN AFFAIRS  
MR PAULO PORTAS

and  
TO THE MINISTER OF JUSTICE  
Ms PAULA TEIXEIRA DA CRUZ

**We urge you to declare yourself bindingly  
against the abolition of the right of property,  
– European Convention on Human Rights, Pro-  
tocol 1, Article 1 –, and to do everything in your  
power to protect the human right of property!**

**Only your intervention can save the human right of property.**

Königsbrunn, 31.07.2012

## PETITION

### Against “substantial reduction of reparations” regarding Expropriation

On May 30, 2012 the European Court of Human Rights, ECHR, addressed an unambiguous memorandum to the Council of Europe regarding its pilot judgment against Romania dated October 12, 2010 and thus overruling the human right to protection of property by stating that:

*“The State is entitled to expropriate property – including any compensatory entitlement granted by legislation – and **to reduce, even substantially, levels of compensation** under legislative schemes.”*

This license to expropriation without consequences – as “substantially reduced” restitutions/compensations could be as well of a symbolic nature! – was presented to deputies of the Council of Europe during their session of June 4 – 6 June, 2012 and released for publication thereafter.

ECHR violates thus the European Convention of Human Rights that rules, among others:

#### **“Article 17 – Prohibition of abuse of rights**

*Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”*

It is a misapprehension to think that the ruling of ECHR to allow governments to arbitrarily apply the pilot judgment would be a special regulation only valid for Romania because this would infringe Article 14 of the Convention regarding prohibition of discrimination. For this reason, one has to assume that ECHR passed a verdict establishing a principle which entitles all signatory members of the European Convention for the Protection of Human Rights and Fundamental Freedoms to handle the right of property of its citizens at its own discretion, moreover to deprive the latter of their property right. With regard to the Constitution of Romania, Article 44, which concerns the protection of property, expropriations are firmly forbidden and it foresees in case of public usage of properties a fair and preliminary compensation, before the act of the expropriation.



The ECHR, whose duty is to protect the human rights of 800 Million people of the 47 member states, justifies its endeavor to render Article 1 of the first supplementary protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms into a license for national expropriations as follows:

*“Setting a cap on compensation awards and paying them in installments 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.” (Pilot Sentence §235).”*

This way of reasoning is profoundly in contradiction of the principles of human rights. Especially with regard to Romania, where since 1989 a corrupt political class rules over its citizens, the present pilot sentence has to be considered as irresponsible, the more so because the unlawfully misappropriated assets have served for 23 years as an economic basis for the old clique in selling off the country for their own benefit.

**It is not in the interest of the public and contradicts the fundamental logic of the principles of justice within a democracy if misappropriation is performed under the pretext of general interest. The less so is it in accordance with the public interest if such seized property serves the exclusive interests of individuals!**

The above mentioned interpretation of Article 1 of the first supplementary protocol violates not only the European Convention for the Protection of Human Rights and Fundamental Freedoms but also protects, especially in the case of Romania, a stratum of society, the communists, who have never been deprived of their power, against their victims. Furthermore, the ECHR encourages the political class in Romania and their protégés to participate in this, which cannot be the overall interest, either. For the same reason, the economic development is stagnant whereas foreign investors have to be apprehensive of the fact that their property could be seized as well.

For the above reasons, I urge you as a Member of the Council of Europe and of the ECHR, to fulfill your responsibility for the protection of the human rights, to declare yourself bindingly **against the abolition of the right of property** and to do everything in your power to prevent the current undermining or even the repeal of the human right to own property in the territory of the EU Convention!

With best regards,

ResRo – Interessenvertretung Restitution in Rumänien e.V.  
Karin Decker-That, president



## ADDENDA

### **1. ECHR Pilot Judgment** in the Case of MARIA ATANASIU and Others v. Romania

>> [www](#) , of October 12, 2010:

“§ 174. Under Article 1 of Protocol No. 1 the State is entitled to expropriate property – including any compensatory entitlement granted by legislation – and to reduce, even substantially, levels of compensation under legislative schemes. What Article 1 of Protocol No. 1 requires is that the amount of compensation granted for property taken by the State be “reasonably related” to its value. A total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only exceptionally (see Broniowski, cited above, § 186).

§ 235. At the same time, the Court considers that further examples of good practice and legislative adjustment provided by other signatory States, which are compatible with the principles laid down in the Convention and its Protocols, could provide a source of inspiration to the respondent Government (see, in particular, Broniowski and Wolkenberg, both cited above). Hence, an overhaul of the legislation in order to create clear and simplified rules of procedure would make the compensation scheme more foreseeable in its application compared with the present system, the provisions governing which are contained in a number of different laws, ordinances and decrees. Setting a cap on compensation awards and paying them 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.”

### **2. Memorandum CM/Inf/DH(2012)18**, >> [www](#) or as >> [PDF](#) , of ECHR Executive Committee of May 30, 2012 relevant extract for the legalization of expropriations:

“28. Assessment: the State is entitled to expropriate property – including any compensatory entitlement granted by legislation – and to reduce, even substantially, levels of compensation under legislative schemes.”

### **3. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms**, >> [www](#) *This does not imply the state’s license to expropriation which could be made legal by ways of “substantially reduced” recompensations:*

“Art. 1 – Protection of property:

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.”

### **4. Convention for the Protection of Human Rights and Fundamental Freedoms**, >> [www](#)

“Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”



**5. The Constitution of Romania, >> [www](#)** , breached by the ECHR Pilot Judgment in the Case of MARIA ATANASIU and Others v. Romania:

“Article 44

(1) The right of property, as well as the debts incurring on the State are guaranteed. The content and limitations of these rights shall be established by law.

(2) Private property shall be equally guaranteed and protected by the law, irrespective of its owner. Foreign citizens and stateless persons shall only acquire the right to private property of land under the terms resulting from Romania’s accession to the European Union and other international treaties Romania is a party to, on a mutual basis, under the terms stipulated by an organic law, as well as a result of lawful inheritance.

(3) No one shall be expropriated, except on grounds of public utility, established according to the law, against just compensation paid in advance.

(4) The nationalization or any other measures of forcible transfer of assets to public property based on the owners’ social, ethnic, religious, political, or other discriminatory features.

(5) For projects of general interest, the public authorities are entitled to use the subsoil of any real estate with the obligation to pay compensation to its owner for the damages caused to the soil, plantations or buildings, as well as for other damages imputable to these authorities.

(6) Compensation provided under paragraphs (3) and (5) shall be agreed upon with the owner, or by the decision of the court when a settlement cannot be reached.

(7) The right of property compels to the observance of duties relating to environmental protection and ensurance of neighbourliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom.

(8) Legally acquired assets shall not be confiscated. Legality of acquirement shall be presumed.

(9) Any goods intended for, used or resulting from a criminal or minor offence may be confiscated only in accordance with the provisions of the law.”

**6. Formula how to enforce unpopular provisions in the EU; - Spiegel: “Die Brüsseler Republik”, >> [www](#)** dated December 27, 1999:

“Jean-Claude Juncker is a smart mind. ‚We decide something, float it and wait for some time what happens,‘ reveals Luxembourg’s premier with regard to the tricks EU presidents and premiers are encouraged to use. ‚Is there no big upheaval because the majority does not even understand what was decided, then we go on – step by step, until there’s no return.“

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**Concluding remarks**

Human rights are universal, indivisible and inalienable. They protect the values of our community against corruption, governmental arbitrariness and ethical decline. Therefore, their unconditional compliance is not negotiable.

The European Court of Human Rights shall not offer compromise solutions to states with laws and jurisprudence contrary to the Convention, because attenuated human rights are useless..