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Requirements of the International Public Law and the European Convention on the Protection of Human Rights for the Restitution of Confiscated Ecclesiastical Property in Romania

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Abstract
1. Guarantees of the international law of expropriation and of the European Convention on the Protection of Human Rights are generally not applicable to confiscations by the communist and the fascist regime in Romania.
2. The Romanian restitution legislation, however, has to comply with the European Convention on the Protection of Human Rights. Therefore, it has to ensure in particular an effective return of confiscated assets.
3. The specific situation of the churches in Romania and the variety of their confiscated property make it seem sensible to regulate their return by special agreements between the state and the churches.

Keywords: international law of expropriation, confiscations, European Convention on the Protection of Human Rights, agreements between the state and the churches

I. Confiscations by the Communist and the Fascist Regime in Romania

In the past century, countless cultural pieces of value have been lost and destroyed not only by war but also through the communist and fascist unjust regimes. By both political and non-political persecution of groups and individuals, the economic fundament for the preservation of cultural values was taken. In both cases, the pieces could not fulfil their original instrumental intent, and so they were left to decay or destruction. As the most organized destruction of this sort, I call to memory the pogrom night of the 9th to 10th of November 1938, where not only

thousands of Jewish business shops were destroyed both in Germany and in Austria, but almost all synagogues were set on fire and burnt to the ground.[1]

In the same manner, the properties of the citizens of Romania and associations thereof were accessed to by the state of Romania under its communist rule. This was done and justified with the intent to impose the ideology and to disempower class and state enemies. Furthermore, these were measures of transformation of property ownership that so created a people's property, then at the disposal of building a socialist state.

As in practically all states that were built on Stalinist structures, the so-called "land reform" was also implemented in Romania following Decree Nr. 187 of March 23rd, 1945[2] of the communist government under Petru Groza. Not only war criminals as such were prosecuted but also farm owners with properties larger than 50 hectares as well as ethnic German farmers who had no proven history of anti-Hitleristic engagement. Although churches were legally and officially excluded from this measurement,[3] they were de facto subjected to them – for all the Protestant Church A.B. in Romania. Furthermore, a nationalization law of June 11th, 1948 ruled the confiscation of all industrial, commercial, trade, and transport companies as well as banks and insurance companies and beyond that all natural resources.[4] Later on, there had been other nationalization decrees. Applicable in relation to immovable property was Decree No 92/1950,[5] under which buildings belonging to former industrialists, owners of land estates, bankers, and owners of large trading enterprises were nationalized. But these measurements were extended to include other large-scale expropriations of personal and private assets including houses and lands. Subsequently, this had led to the expropriation of church assets and church properties.

The assets of religious communities were not only accessed by the Romanian state under the communist rule, but, prior to that, they were also accessed by the Nazis collaborating with Romania, who confiscated the properties of Jewish religious communities for racial reasons.

In 1941, an agreement, the so-called "Gesamtabkommen," was closed between the Protestant national Church and the ethnic "Volksgruppe". At this time, the "Volksgruppe" had already been recognized via Decree No 3884 of November 20th, 1940 as a public corporation by the Romanian Government. Thereafter, according

1 See Graml 1998; Feinermann–Thalmann 1999; Friedländer 2007. 291 sqq.; Barkai 1987. 146. sqq.; Evans 2010. 702. sqq.

2 Monitorul Oficial, Partea I, No 134 of June 13th, 1946.

3 See Art. 8, Decree of March 23rd, 1945.

4 Legea 119/1948 pentru naţionalizarea întreprinderilor industriale, bancare, de asigurări, miniere şi de transporturi din 11 iunie, Monitorul Oficial, Partea I, No 133 from Juni 11th 1948; see: Ließ, 1962, p. 93, 114 et seqq.

5 Decret 92/1950 pentru naţionalizarea unor imobile din 19 aprilie, Buletinul Oficial; No 36 of April 20th, 1950.

to the agreement, the entire church property, except for the paraphernalia for worship, became the property of the "Volksgruppe". The agreement was concluded after a major shift in the church assembly had taken place favouring and co-operating with the "Volksgruppe" and its ideological background. In 1944, per decree, the Romanian King expropriated all Nazi organizations in Romania, including the assets the "Volksgruppe" had taken from the Church in 1941.

It is out of question that the above stated measurements were – except for the agreements of the "Gesamtabkommen" – not only a cause of extreme injustice but were also responsible for the damage and loss of valuable cultural assets. Therefore, restitution is the state's duty not only on a legislative level but rather as an entity acting to protect and keep the cultural heritage of its people alive and, by doing so, building and maintaining its identity.

II. Development of the Restitution Legislation in Romania

However, the Romanian legislation, after the fall of the communist regime, gave proof of the fact that instead of a fair revision of communist injustice mostly the economic interests of the Romanian state and of its former élite, including members of the *securitate*, were in the foreground. Therefore, there were only limited efforts to admit restitutions of confiscated assets. The legislation of 1991 was exclusively in favour of the Romanian citizens and dealt only with assets expropriated after March 23, 1945. The Real Property Act of February 19, 1991[6] confirmed that former owners and their successors were entitled to the right to partial restitution of 10 hectares of agricultural land.

But for many years there had not been any provision for a restitution of other properties, especially of buildings, developed property, building sites, or enterprises. In absence of a special legislation to lay down rules for governing nationalized immovable properties, Romanian courts initially considered that they had the jurisdiction to examine the issue of the lawfulness of nationalization decisions and to order that properties be returned to their owners if they were found to have been nationalized unlawfully.[7]

Years later, the efforts of Romania to join the European Union has changed the legislative situation. At the beginning of the 21st century, several laws allowed the restitution of further properties and finalized legal restrictions on returning of agricultural lands. Through several laws, Romania established

6 Legea Nr. 18/1990 pentru ratificarea convenției cu privire la drepturile copilului din septembrie 27, 1990, Monitorul Oficial, Partea I, No 37 of February 20, 1991.

7 Overview of the Romanian jurisdiction in cases of the absence of a stable legislative framework: ECtHR, Păduraru v. Romania, No 63252/00, § 96; Atanasiu and Others v. Romania, No 30767/05, §§ 71–76.

the principle of restitution of nationalized immovable properties.[8] Where restitution was no longer possible, the legislation provided a complicate system of compensation.[9] At first, it had been restricted, but the restrictions were subsequently abolished. Therefore, the Romanian legislation introduced as a principle a compensation corresponding with the real market value.[10] But these regulations were not applicable to many of the properties under the rule of the former fascist regime in Romania.

In contrast to the legislation of restitution, the entry into force of Act No 112 of November 25th, 1995[11] authorized the sale of certain residential properties to the tenants. Because many confiscated assets had been sold for cheap prices, restitution was no more possible. This is the reason why the state had to pay oftentimes a compensation equal to the current market value of the nationalized property. According to the Romanian Government, the state has to pay an amount of twenty one billion euros,[12] a sum that might be much too high.

In this situation, the Romanian authorities found a lot of possibilities not to effect the restitution or the compensation. Some authorities never answered to a request, others never acted on decisions of restitution or compensation, even when they were final. Therefore, it is to underline that the system of reparation established by the Romanian state in respect of properties nationalized before 1989 was beset by major legislative, judicial, administrative, and budgetary shortcomings.[13]

These are some of the reasons for a recurring and widespread problem of an ineffective system of restitution and compensation in Romania. Therefore, the Romanian legislation had been attacked many times before the European Court of Human Rights.

Against this background it is, at first, of interest to examine the essential international requirements that Romania had to observe in favour of the victims

8 Overview of the Romanian legislation concerning the restitution of properties nationalized before 1989: ECtHR, Brumarescu v. Romania, No 28342/95, §§ 34, 35; Strain and Others, No 57001/00, § 19; Păduraru v. Romania, No 63252/00, §§ 23–53; Atanasiu and Others v. Romania, No 30767/05, §§ 44–59.

9 Legea Nr. 247/2005 privind reforme în domeniile proprietății şi justiției, precum şi unele măsuri adiacente din iulie 19, 2005, Monitorul Oficial, Partea I, No 653 from July 22nd, 2005; overview of further compensation acts: ECtHR, Atanasiu and Others v. Romania, No 30767/05, §§ 60–67.

10 Calculation of the compensation in accordance with "domestic and international practice and standards on compensation for buildings and houses wrongfully acquired by the State"; see Act No 247/2005.

11 Legea Nr. 112/1995 pentru reglementarea situației juridice a unor imobile cu destinația de locuințe, trecute în proprietatea statului din noiembrie 25, 1995, Monitorul Oficial, Partea I, No 279 of November 29th, 1995.

12 See ECtHR, Atanasiu and Others v. Romania, No 30767/05, § 80).

13 See the description of the ineffectiveness of the Romanian restitution legislation: ECtHR, Atanasiu and Others v. Romania, No 30767/05, §§ 178–194.

of the communist regime. These are, at first, some principles of international public law, especially of international law of expropriation.[14] In addition, there are requirements of the European Convention for the Protection of Human Rights. They are of essential importance for the Romanian legislation of restitution and compensation.[15]

Also in Germany, there were wrongful statutory acts under the rule of National Socialism and Stalinism/Communism. Therefore, the German legislation may be of interest for the judicial situation in Romania because here can be seen some principles of an effective restitution. That is why they will be mentioned at the end of this article.[16]

III. Provisions of the International Law of Expropriation

The principles of the international law of expropriation are part of the international public law.[17] They recognize the right of every country to organize its own legal system within its own territory. This is called the positive principle of territoriality.[18] In contrast, the negative principle of territoriality means that expropriations outside the territory of the expropriating state are refused to be recognized by the community of nations.[19]

Also, if expropriations of a state are recognized as valid by the community of other nations, they are not irrelevant if the international law of expropriation estimates them as illegal. This is the case if they had been effected without an appropriate compensation or in a discriminatory way against foreign citizens.[20] Then all states whose citizens had suffered of such expropriations have the right to demand a compensation, which then has to be distributed to the persons in question.

Moreover, there is an important exception to the general rule of mutual acceptance of expropriations. If measures of the state had severely injured human rights, generally recognized by the community of nations, they are considered null and void. These rights adhere to mandatory law. They belong to the so-called *ius cogens*. However, the nullity of a special measurement can be adopted only when the community of nations has already agreed to recognize them. For that reason, they do not arise from natural law. They are part of international public law

14 See below III.
15 See below IV.
16 See below V.
17 See Haltern 2014. § 34, rec. 41. sqq.; Herdegen 2013. § 22; Herdegen 2014. § 54.
18 See (German) Bundesverfassungsgericht, BVerfGE 84, 90, 123; (German) Bundesgerichtshof, BGHZ 20, 4, 12; 25, 134, 140, 143; 31, 168, 171; 30, 220, 227; Haltern 2014. § 34, rec. 41. sq.; Herdgen, 2013. § 22, rec. 4.
19 See (German) Bundesgerichtshof, BGHZ 25, 134, 143; Haltern 2014. § 34, rec. 63.
20 Haltern 2014. § 34, rec. 55. sqq.; Herdegen 2014. § 54, rec. 1. sqq.

only if they had been accepted by an international convention for the protection of human rights or by customary international law. The first convention, the General Declaration of Human Rights, was adopted by the General Assembly of the United Nations on December 10th, 1948.[21] Moreover, the *ius cogens* does not cover all human rights but only their central areas.[22] But Romania had to observe it only from the moment this country joined the convention. For this reason, the confiscations of the communist regime which happened in the early 1950s cannot be examined as to whether or not they observed the human rights, generally recognized by the community of nations.

Although many applicants invoke the international law in order to prove that the communist confiscations were null and void and that they therefore have a claim to restitution, it is for that reason irrelevant for the redress of communist injustice.

Moreover, also the European Court of Human Rights decided not to be bound by the rules of International Public Law because it only has to examine whether the member states had observed the provisions of the European Convention for the Protection of Human Rights.[23]

IV. Provisions of the European Convention for the Protection of Human Rights

1. Protection of Property Rights

Further international guarantees derive from special provisions of the European Convention for the Protection of Human Rights.[24] The most important one with respect to the confiscations by the communist and the fascist regimes in Romania is Article 1 of the Protocol to the Convention[25] protecting property rights. It provides verbatim: "Every natural and legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possession except in the public interest and subject to the conditions provided by law and by the general principles of international law."

a) Application of the Convention on Confiscation Acts?

… but the Convention only dates from November 9th, 1950 and the First Protocol from March 20th, 1952. Therefore arises the same problem of non-applicability

21 Universal Declaration of Human Rights from December 10th, 1948, UN-Doc. 217/a – (III).
22 (German) Bundesverfassungsgericht, BVerfGE 95, 96, 134. sqq.; 112, 1, 28.
23 ECtHR, Prince Hans-Adam II von Liechtenstein v. Germany, No 42527/98, §§ 79–85.
24 European Convention for the Protection of Human Rights and Fundamental Freedoms.
25 Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

we had to observe in connection with the general principles of human rights recognized by the community of all nations. Consequently, also the European Court of Human Rights held in the case Prince Hans-Adam II of Liechtenstein v. Germany[26] and in many other cases[27] not to be competent *ratione temporis* to examine the circumstances of the expropriations of communist regimes not yet bound by the Convention. The same applies to the continuing effects produced by them up to the present day.[28] This is the result of the fact that no applicant had been able to exercise any owner rights in respect to assets having been expropriated by a communist regime in the early 1950s, when the Convention was not put into force in its country.[29] For that reason, the question never arises as to whether or not an applicant is a holder of existing assets, including claims in respect of which he can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. The hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No 1.

b) Examination of the Romanian Restitution Legislation

But the situation changes completely if a contracting state, having ratified the Convention including Protocol No 1, enacts legislation providing for the full or partial restoration of properties confiscated under a communist regime. Such legislation the Court regarded already in the case Kopecky v. Slovakia[30] as a new property right protected by Article 1 of Protocol No 1. This held the Court where the proprietary interest was in the nature of a claim.

This affirms the Court as to whether it may be regarded as an "asset" because there is sufficient basis in national law. If there are different views of the national law, it is not the task of the Court to decide whether there is such a restoration or not. But the Court admits a sufficient basis in national law where there is a settled case-law of the domestic courts.[31]

In the pilot judgment Anastasiu v. Romania,[32] the Court understood that the Romanian legislation of the years 2000, 2001, and 2005 provided a mechanism of restitution of property and of compensation when restitution had been impossible. Moreover, it found that the Romanian legislation had opted for a compensation equal to the actual market value. That is why the Court affirmed in that case the

26 ECtHR, Prince Hans-Adam II von Liechtenstein v. Germany, No 42527/98, §§ 83–86.
27 ECtHR, Janter v. Slovakia, No 29050/97, § 34; Gratzinger and Gratzingerova v. the Czech Republic, No 39794/ 98, § 69; Kopecky v. Slovakia, No 44912/98, § 35.
28 ECtHR, Prince Hans-Adam II von Liechtenstein v. Germany, No 42527/98, § 85.
29 ECtHR, Prince Hans-Adam II von Liechtenstein v. Germany, No 42527/98, § 85.
30 ECtHR, Kopecky ./. Slovakia, No 44912/98, §§ 42–59.
31 ECtHR, Kopecky ./. Slovakia, No 44912/98, § 54.
32 ECtHR, Anastasiu and Others v. Romania, No 30767/05.

establishment of a new property right on restitution or full compensation by the Romanian legislature.[33]

Therefore, the Court also had to decide the other conditions of the property guaranteed in Article 1 Protocol No 1.[34] These are the following:

– Had the interference by the public authorities with the peaceful enjoyment of possessions been lawful?

– Did the interference pursue a legitimate aim which is in the public interest?

– Was there a "fair balance" between the peaceful enjoyment of possessions and the public interest?

The legality of the interference with the peaceful enjoyment of possessions has to be sufficiently accessible, precise, and foreseeable.[35] For the other conditions, the national authorities enjoy a certain margin of appreciation. The Court also held that the notion of "public interest" is necessarily extensive.[36]

Therefore, the Court accepts every decision of the national authorities unless it is manifestly without reasonable foundation.[37] In addition, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realized by any measure applied by the State.[38] All these principles also apply to fundamental changes in the country's system, even if the Court understands that a procession of transforming the economy and legal system is an exceptionally difficult exercise.[39]

For these reasons, the Court demands that a restitution system grant a compensation which is "reasonably related" to the value of the confiscated asset.[40] In many cases, the Court also accepted that legislation reduced – even substantially – the levels of compensation.[41] Here, the Court even allowed decisions of the national legislation where it was obvious that there was no reasonable relation. This is true, for instance, for the German legislation, which – generally spoken – provides a compensation of 30% for smaller assets but only 3 to 10% of the market value for bigger assets. However, the Court

33 ECtHR, Anastasiu and Others v. Romania, No 30767/05, §§ 162–193.

34 ECtHR, Beyeler v. Italy, No 33202/96, §§ 109–110; Anastasiu and Others v. Romania, No 30767/05, §§ 163–168; see also: Grabenwarter, 2014, Art. 1 Prot. No 1, rec. 8 et seqq.; Kaiser, in: Karpenstein/Mayer, 2015, Art. 1 ZP I, rec. 34. sqq.

35 ECtHR, Anastasiu and Others v. Romania, No 30767/05, § 165.

36 ECtHR, Anastasiu and Others v. Romania, No 30767/05, §§ 169–173; Broniowski v. Poland, No 31443/96, § 182.

37 ECtHR, Broniowski v. Poland, No 31443/96, § 149.

38 ECtHR, Anastasiu and Others v. Romania, No 30767/05, § 167.

39 ECtHR, Anastasiu and Others v. Romania, No 30767/05, § 169. sq.; Broniowski v. Poland, No 31443/96, § 149.

40 ECtHR, Anastasiu and Others v. Romania, No 30767/05, § 174; Broniowski v. Poland, No 31443/96, § 186: total lack of compensation only exceptionally justifiable.

41 ECtHR, Anastasiu and Others v. Romania, No 30767/05, §§ 101–106, 174 et seqq.; Scordino v. Italy, No 36813/97, §§ 95 et seq.; Broniowski v. Poland, No 31443/96, § 183; Wolkenburg and Others v. Poland, No 50003/99, § 63.

accepted even such a distortion between restitution and compensation in the case Maltzahn v. Germany.[42]

But if the legislation establishes a system with a full compensation like in Romania, a total lack of compensation would be deemed as unreasonable.[43]

Therefore, the pilot judgement Anastasiu v. Romania held that there had been a violation of Article 1 of Protocol No 1 of the Convention and that Romania must take measures within the delay of 18 months to ensure an effective protection of the rights guaranteed by Article 6, § 1 of the Convention and Article 1 of Protocol No 1.[44]

As a reaction to the pilot judgement, the Romanian Parliament passed Law No 165/2013,[45] put into force on May 20th, 2013, which had been prepared with the collaboration of organs of the Court.

The main principles of the new law are as follows:[46]

– It establishes strict and realistic delays for every administrative decision.

– It guarantees as a general principle the restitution in nature and a stable, predictable system of reparations in cases where a restitution is not possible.

– It creates new structures for land registration.

– All actual procedures will be suspended until the centralization of inventories are finished.

– If there are several claims for the same property, the Commission of Restitution will cancel the last claims.

– Furthermore, it will be granted that there will be a full compensation corresponding to the market value.

– The law creates a predictable system for the valuation of immovable property.

– The value of an immovable property will be fixed at the date of the enactment of the law, based on the evaluation table for immovable properties, which are also used by notaries.

Finally, the law introduced a new compensation procedure involving a points system that entitled claimants to take part in public auctions.[47] Where the points were not used to purchase property at an auction, the law permitted an award of monetary compensation. The amount is calculated on the basis of the market value of the property in question and is payable in instalments.[48]

42 ECtHR, Maltzahn and Others v. Germany, No 71916/01, §§ 90–94.

43 ECtHR, Anastasiu and Others v. Romania, No 30767/05, §§ 174, 178–192; Broniowski v. Poland, No 31443/96, § 149.

44 ECtHR, Anastasiu and Others v. Romania, No 30767/05, § 193. sq.

45 Legea nr. 165/2013 privind măsurile pentru finalizerea procesului de restituire, in natură sau prin echivalent, a imobilelor preluate în mod abuziv în perioada regimului comunist în România din mai 16, 2013, Monitorul Oficial, Partea I, No 278 from May 17th, 2013.

46 See ECtHR, Preda v. Romania, No 9584/02, §§ 68, 74, 117–129.

47 ECtHR, Preda v. Romania, No 9584/02, § 79.

48 ECtHR, Preda v. Romania, No 9584/02, § 87.

In the case Preda v. Romania,[49] the Court considered on April 29th, 2014 that the law in question provided, in principle, an accessible and effective framework of redress for alleged violations of the right of peaceful enjoyment of possessions. However, it found that the law did not contain any provisions capable of affording redress in cases where there were multiple documents of title for the same building.[50] Moreover, the Court held that it is up to the claimants – who were not subject to these specific problems – to make use of the framework of the Law. Therefore, the Court rejected these complaints for failure to exhaust domestic remedies.[51]

2. Fair and Public Hearing within a Reasonable Time

As a consequence of the judgement, Preda v. Romania applicants must sue first in Romanian courts. Complaint to the European Court of Human Rights without completed proceedings before the Romanian Courts is regularly inadmissible. Based on experience with the Romanian judiciary of the past 25 years, it is not excluded that the courts do not decide effectively on return claims. The right to a fair and public hearing within a reasonable time – as it is granted by Art. 6, § 1 of the Convention – will probably permit to apply to the Court before the restitution proceedings in Romania would be completed.[52] It provides verbatim: "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time."

V. Foray: Principles of German Restitution Legislation

For a comparison with the situation in Romania, it may be interesting to finally touch upon some principles of German restitution legislation. Here it is important to note that the German Democratic Republic and the Federal German Republic had already come to an agreement on the key points concerning the restitution and the compensation before the reunification of the two republics cleared away the expropriation enacted by the communist regime of the GDR.[53] These were written and included in the so-called *Einigungsvertrag*, the Treaty of Unification.[54] These key points state as follows:

49 ECtHR, Preda v. Romania, No 9584/02, §§ 117–129, 132.
50 ECtHR, Preda v. Romania, No 9584/02, §§ 130. sq.
51 ECtHR, Preda v. Romania, No 9584/02, § 179.
52 See ECtHR Anastasiu and Others v. Romania, No 30767/05, §§ 114–123.
53 Common Statement of the Governments of the Federal Republic of Germany and the Democratic Republic of Germany on the Settlement of Open Property Issues of June 15th, 1990 – Gemeinsame Erklärung.
54 See Art. 41, par. 1 – Treaty of Unification of August 31st, 1990 (BGBl. II, p. 885) – Einigungsvertrag.

All assets are to be returned which had been expropriated without any compensation or in a discriminatory or unlawful manner.[55] A restitution is excluded especially if an immovable asset was purchased bona fide by a citizen of the GDR before October 18th, 1989,[56] if the asset in question was used for an important public interest[57] or if it was needed for a special investment purpose, while the beneficiary had no possibility for such an investment.[58] But expropriations under the Soviet occupation regime give only a right to indemnifications,[59] which may also be a reacquisition of the lost asset or even a restitution of movable property.[60] If the loss of the property was part of the measures of a political prosecution, especially of a politically motivated criminal prosecution, the victim thereof should be rehabilitated.[61] As a result of a rehabilitation, a loss of property under the regime of the Soviet occupation should be also refunded.[62]

These principles were quickly transformed into applicable law in the Federal Republic of Germany. In 1990, as part of the treaty of unification, the property act came into effect.[63] The already adopted criminal rehabilitation act by the GDR continued to exist in the FRG, and it was brought into force again, in a new version in 1992.[64] The Compensation Act,[65] which deals with compensation in cases where restitution is impossible,[66] and the Indemnification Act for expropriations under the Soviet occupation[67] were adopted in 1994. In the same year, the German Parliament passed the Administrative Rehabilitation Act.[68]

The essential difference from the Romanian legislation is obvious. The German law as a whole was declared much earlier. It generally applies to every loss of property contrary to the rule of law and establishes entitlements to their restitution. By contrast, the Romanian law initially offered the return of a very limited extent of agricultural lands and only for certain groups of people. The further development of the return legislation was unclear and arbitrary.

In Germany, return requests could be submitted within a period of two years.[69] The deadline for submitting requests for asset losses through measures of political

55 No. 3 Common Statement of June 15th, 1990.
56 No. 3 lit. b Common Statement of June 15th, 1990.
57 No. 3 lit. a Common Statement of June 15th, 1990.
58 Art. 41 par. 2 – Treaty of Unification of August 31st, 1990.
59 No 1 Common Statement of June 15th, 1990.
60 (German) Bundesverfassungsgericht, BVerfGE 84, 90, 127. sq.; 94, 12, 46. sq.
61 No 9 Common Statement of June 15th, 1990.
62 See Wasmuth, NJW 2015, 3697, 3698. sqq.
63 From August 31st, 1990 (BGBl. I, p. 885, 1159) – Vermögensgesetz.
64 From October 29th, 1990 (BGBl. I, p. 1814) – Strafrechtliches Rehabilitierungsgesetz.
65 From September 27th, 1990 (BGBl. I, p. 2624) – Entschädigungsgesetz.
66 § 1, par 1 Compensation Act.
67 From September 27th, 1994 (BGBl. I, p. 2464).
68 From June 23rd, 1994 (BGBl. I, p. 1311) – Verwaltungsrechtliches Rehabilitierungsgesetz.
69 See § 30a, par. 1 – Property Act.

persecution is December 31st, 2019.[70] In Romania, on the other hand, the time limit was only a maximum of six months. During this time, all the necessary documents had to be submitted, which was also not the case in Germany.

Another essential difference was that in Germany assets involved in a return claim could not be sold or burdened.[71] This was explicitly forbidden to the current owner. All sales and transfers of immovable property in the territory of the former GDR needed a government authorization prior to sale or burden.[72] This was only granted after the land was found clear of any redress demand. In the illegal cases of sale or long-term loan burden, the claimant was eligible for the sales price[73] or in business cases even for the actual market value. In addition, the claimant could demand further compensations.

But in Romania there has never been such a legal prohibition for the current owner of a wrongfully expropriated asset to sell it. Therefore, lots of assets have been sold, in many cases, for an extremely favourable price. This oftentimes has been in favour of the former elites of the communist regime. This is the reason why in Romania there has been an unjustified personal enrichment of wide circles of former communist functionaries at the expense of victims of the former regime. The possibility of the Romanian law to file a nullity action has been in many cases no real instrument in prohibiting the described enrichment.

VI. Final Annotation

Especially for the churches, the knowledge of a required further engagement with the communist injustice may be combined with a speciality of German law. In contrast to the legal situation in France, there is no strict separation between the state and the churches. Therefore, the churches, as well as other organizations dealing with cultural, social, or educational tasks, are sponsored by the state. In Germany, this is granted by various concordats and church agreements. They have their origin in the German secularization of the early 19th century and in the so-called Reichsdeputationshauptschluß,[74] which means in English the "Final Recess of the Imperial Deputation". The recess was adopted on February 25th, 1802 and was followed by agreements between the states and the churches regulating permanent compensations for the loss of ecclesiastic property, payable until today. So, may the injustice of the communist regime that remains for the churches in Romania also after the legislation of the last 25 years, and the

70 § 7, par. 1 – Criminal Rehabilitation Act; § 9, par. 3 – Administrative Rehabilitation Act.
71 § 3, par. 3 – Property Act; §§ 1. sqq. Land Transaction Act of April 18th, 1991 (BGBl. I, p. 899) – Grundstücksverkehrsordnung.
72 § 2 Land Transaction Act.
73 § 3 par. 4 Property Act.
74 Protokoll der außerordentlichen Reichsdeputation zu Regensburg, 1803. tom. 2, 841. sqq.

remaining problems in teh application of the curently applicable law be the beginning of agreements with the Romanian State, to secure a permanent and substantial promotion of their cultural, social, and religious duties in the future.

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