



Restitution of Agricultural Immovable Property under Law No 18/1991 and Subsequent Instruments

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Abstract. In this study, we examine the legislative background and the process of post-communist restitution of agricultural immovable property in Romania. We present the historical context of land reform, the legal and political considerations at play when the legislator enacted restitution as well as the effects of these factors on the long-term process of restitution, and the exercise of immovable property rights. We outline the major issues of restitution, including from the perspective of immovable property registration, the various measures used to seize property (such as nationalization and collectivization), and the legislator's choice to accomplish restitution via an administrative procedure by restitution commissions instead of trusting this delicate process to the judiciary. We conclude that, due to the half-hearted commitment of the legislator to property restitution, this measure, similarly to historic land reforms, was destined to fail, while the repercussions of its failure in economic, legal, and political terms are diverse and still unfolding.

Keywords: transitional justice, restitution, agricultural assets, immovable property, agrarian reform, Romania

I. Introduction

The issues of land ownership in Romania have always stood at the confluence of a wide array of competing interests ranging from the purely economic to the social, political, and ethnic.¹ The problem of distribution and redistribution of land has haunted the Romanian polity from before its very emergence as a sovereign state in the latter half of the 19th century² and continues to befuddle policymakers today.

1 van Meurs 1999, Verdery 2003.

2 Nacu 2014.

II. A Brief History of Agrarian Reforms in Romania before Collectivization

II.1. The Agrarian Reform of 1864 and Its Aftermath

Land reform has been on the agenda of most governments of the precursor states that would go on to form modern-day Romania since at least the mid-18th century; however, it came to the fore only following the unification of Moldavia and Wallachia in 1859. Following the first wave of the Agrarian Reform in 1864, which accompanied the liberation of the serfs, the structure of land ownership in the United Principalities and later the Kingdom of Romania continued to be characterized by the preponderance of *latifundia*,³ concentrated in the hands of just a few land owners. After the social upheaval caused by the Peasant Revolt of 1907 – a major rebellion with an anti-Semitic component, which claimed over 11,000 lives –,⁴ the Romanian government was compelled to take measures towards the redistribution of land to ensure social and political stability.

The desired Agrarian Reform, however, was slow in coming: in 1913, the Liberal Party, then headed by Ion I. C. Brătianu, proposed a partial land expropriation to benefit successful smallholders and thereby strengthen the party base.⁵ The stalled effort was given new impetus by Romania's entry into World War One on the 27th of August 1916, closely followed by a string of military defeats, the 'first' Russian Revolution (in February 1917), and the publication of Lenin's April Theses. The resulting rise in socialist agitation among the troops prompted the King of Romania to promise land reform on the 7th of April 1917, mainly to keep up the morale of the peasantry, which comprised the bulk of his armies.⁶ The royal proclamation was supported by both the Liberal and Conservative parties. The fact that at the time Romanian armies were facing impending defeat by the Central Powers (Romania would go on to sign the Treaty of Bucharest on May the 7th 1918, in which it agreed to cease participation in the war) lends nuance to the proclamation: it demonstrates that agricultural reform was only half-heartedly endorsed by the political elite of the time, even as a measure of last resort, and exposes the correlation between the promise of such a reform and its intended goal of stirring up national sentiment.

3 van Meurs 1999.

4 Clark 2015, Eidelberg 1974.

5 Hitchins 2014.

6 van Meurs 1999, Hitchins 2014.

II.2. The Agrarian Reform of 1921

In the end, the fortunes of war favoured Romania: having re-entered the conflict by order of King Ferdinand on the 10th of November 1918,⁷ by the cessation of hostilities, the country was counted among the victors of World War One. As a result of the peace treaties that ended the Great War, Romania had more than doubled its territory with the addition of the Banat, Crişana (also known as ‘Partium’), Transylvania, Bucovina (all former provinces of Austria-Hungary), and Bessarabia (formerly part of Tsarist Russia). The corresponding increase in population – to more than double its pre-war size – also resulted in a sizeable proportion (about 30%) of various national minorities now being Romanian subjects for the first time in the nation’s history.⁸

Land reform began in earnest in 1918 and would go on for decades,⁹ being implemented more harshly¹⁰ in Transylvania and Bessarabia, where many large estates were held by members of ethnic minority groups. After the lengthy expropriation of 6 million hectares of land (i.e. one third of all available arable land in Romania at the time), which lasted¹¹ up to the beginning of the 1940s, 1.4 million peasants were endowed with their own lots. This wave of land reform, made possible in large part by territorial gains resulting from World War One, turned out to be no more than a stopgap measure in service of short-term political gains.

The protracted 1921 Land Reform resulted in the dismantling of economically viable estates, the creation of numerous, economically inefficient, fractured smallholdings and did little either to enable investment in mechanization or to alleviate the economic plight of smallholders.¹² Also, two-thirds of eligible peasants did not actually benefit from its provisions.¹³

II.3. The Agrarian Reform of 1945

The final wave of land redistribution in Romania would occur in the immediate aftermath of the Second World War, in 1945. By the conclusion of this conflict, Romania would lose Bessarabia and Bucovina to the USSR (the former becoming the Republic of Moldova, while the latter part of Ukraine after the collapse of the Soviet Union). This so-called land reform set the stage for the later wholesale nationalization and collectivization of agricultural land, but it was, as to its scope

7 Hitchens 2014.

8 Hitchens 2014.

9 Verdery 2003.

10 van Meurs 1999.

11 Verdery 2003.

12 van Meurs 1999, Nacu 2014, Brooks–Meurs 1994.

13 Verdery 2003.

quite limited, probably owing to its role as a means for the legitimization of the ongoing socialist takeover of the state apparatus.¹⁴

The reform began on the heels of the seizure of power by Petru Groza, which occurred on the 6th of March 1945, aided by Stalin's right-hand man, the then Soviet ambassador to Romania, Andrey Yanuaryevich Vyshinsky.¹⁵ On the 23rd of March 1945, Law no 187/1945 was passed. According to its provisions (Art. 3), all land holdings exceeding 50 hectares would be seized, without compensation, as well as all land regardless of size, belonging to ethnic German 'collaborators'¹⁶ and to those who fled the country either to countries with which Romania was at war or to any other country subsequent to the regal coup d'état of the 23rd of August 1944, which saw the country change sides in the war.¹⁷

The goal of this last measure of land redistribution was multiple: (1) to 'deconstruct'¹⁸ the old social order, (2) to remedy the economic consequences of the 1921 reform, (3) to avoid the creation of a land-owning middle class, (4) to maintain as much as possible the ethnic balance by maintaining proportionality between beneficiaries and so prevent the reform from looking like a land grab (while completely excluding from its benefits the German-speaking minorities), and finally (5) to prepare land ownership structures for collectivization, including by nationalizing forests and non-arable land without any intention of redistributing them.¹⁹

The primary goal of this reform was achieved by expropriating all land owned by some 143,000 landholders without compensation and redistributing a total of 1.5 million hectares among 800,000 peasants with a 75% rate of applications for land being granted, the rest denied. Rural German-speaking minorities were dispossessed of most means of their existence in the process, and the Romanian refugee populations of territories lost to the Soviet Union were resettled in Transylvania and the Banat,²⁰ also in areas formerly inhabited by these minorities. According to Law no 177/1947, any measures taken to accomplish the 1945 land reform were exempted from judicial review.²¹

14 Bottoni 2010.

15 Tismăneanu et al. 2006.

16 Brooks–Meurs 1994.

17 See: Kligman–Verdery 2011.

18 Bottoni 2010.

19 Bottoni 2010.

20 Bottoni 2010.

21 Andreea 2014.

III. What Was Taken and How?

One aspect to take into consideration before we delve into the process and results of post-communist land restitution in Romania is the myriad of measures used to dispossess land owners of the objects of their immovable property rights.²² One would think this was the result of universal nationalization and appropriation of agricultural immovables by the Romanian State. Not so... As Bottoni²³ and Verdery²⁴ correctly identified, the fledgling socialist totalitarian regime could ill afford widespread popular discontent and resistance to its policies; so, it initially acted with self-restraint not only in matters of land reform but also in those of collectivization and nationalization. Collectivization is understood in the following to mean measures for achieving voluntary and coerced creation of collective farms, based on the Soviet kolkhoz model, while nationalization measures by which private property owners were stripped of their property with or without legal basis or any kind of title, in favour of the state or any other legal persons.

III.1. Collectivization

Collectivization in Romania began after the consolidation of the totalitarian rule in 1947, with the stated – and apparently legitimate – goal of modernizing inefficient agricultural structures. Like previous land reforms, it was also preceded by a preparatory phase²⁵ which took the shape of the setting up of collective farms (known by their Romanian abbreviation ‘GAC’, which stood for *Gospodării Agricole Colective*). The process of collectivization was then carried out in three main stages: *stage one* saw the creation of the basic structures (1949–1953), *stage two* (1953–1957) constituted the initial implementation of collectivization, and *stage three* (1957–1962) its finalization.²⁶

The first stage was characterized by the creation of production quotas to be levied on individual farmers, deliberately set at levels impossible to attain in order to press the peasantry into joining collective farms and to persecute the ‘kulaks’.²⁷ During the second stage, pressure was eased and existing collective farms prioritized, while the third stage was characterized by a brutal crackdown on remaining dissenters to collectivization, partly under the influence of the anti-communist uprising, which took place in Hungary in 1956.²⁸

22 Verdery 2003.

23 Bottoni 2010.

24 Verdery 2003.

25 Andreea 2014.

26 Andreea 2014, Verdery 2003.

27 Verdery 2003, Kligman–Verdery 2011.

28 Andreea 2014, Avram–Radu–Bărbieru 2014, Kligman–Verdery 2011.

The legislative framework²⁹ of collectivization reflected a multi-tiered approach of ‘sticks and carrots’ (though mostly ‘sticks’) used to press landholders into joining collective farms. This process was explored in detail by Kligman and Verdery.³⁰ These tiers included several laws on the creation of collectivist structures [such as Decree no 133/1949 on the organization of cooperatives and Decree no 115/1959 for the liquidation of the remnants of any forms of exploitation of man by his fellow man in agriculture (...)] and the above-mentioned norms establishing taxes and oppressive production quotas for privately owned farms (such as decrees 111/1951 and 224/1951), which permitted confiscation of land for unpaid fiscal claims. The process, just like the measures of the 1921 reform, disproportionately affected Transylvania and the Banat but also Dobrogea.³¹

III.2. Nationalization

Such measures of confiscation had a dual purpose: not only did they aid in achieving the aim of collectivization but also hurried the process of nationalization of agricultural property in the name of the ‘people’. This process began in 1948 by means of Decree no 176/1948 for the nationalization of the churches’ agricultural assets used for the financing of schools and progressed by Decree no 83/1949, which instituted state ownership over all large landholdings expropriated according to Law no 187/1945 to strip the so-called ‘kulaks’ of their lands. The implementation of these measures was rife with violence and coercion,³² and so in 1958 decrees 218 and 712 were adopted (the first one published in 1960 and the second one only in 1966 in the Official Journal of Romania). The first decree shortened the statute of limitations for claims to the effect of restitution of unlawfully seized property, while the second one stipulated that all unlawfully seized property belonged to state ownership even though the state did not even bother to respect its own legislation when seizing it. In 1969, a further wave of expropriation followed by means of Decree no 467/1969.

The nationalization of agricultural immovable assets was also carried out covertly, by making use of the complementary penal measure of confiscation of property from persons convicted of political and non-political crimes, who were often also deported to forced-labour and internment camps.³³ The confines of this article are insufficient to encompass all such measures; we encourage the reader to refer to the bibliography³⁴ section below for further details.

29 For a more detailed description, see: Avram–Radu–Bărbieru 2014.

30 See: Kligman–Verdery 2011.

31 Kligman–Verdery 2011.

32 Kligman–Verdery 2011, Avram–Radu–Bărbieru 2014.

33 Avram–Radu–Bărbieru 2014, Kligman–Verdery 2011, Verdery 2003.

34 See: Baias–Dumitrache–Nicoale 2001.

IV. Partial Conclusions

With regard to the agrarian reforms which occurred prior to the complete installation of the socialist model of economic organization in Romania, we can conclude that: (1) the legislator was mobilized to act on the land distribution issue by sometimes violent expressions of long-standing popular discontent and by the onset and consequences of both World Wars; (2) the reforms were not at all free of ethnic resentment as a mobilizing factor;³⁵ (3) land reforms were mainly considered a means for garnering short-term political support; (4) land reforms did little to increase wealth and combat economic inefficiency, instead leading to small, unfeasible³⁶ farm sizes.

We may also conclude that the measures for the collectivization and nationalization of agricultural immovable assets were elements of a heterogenous process characterized by several legal norms of diverse scopes and effects. To this, we must add the heterogeneity of the structures established as a result of this process,³⁷ manifested in both collective farms (abbreviated in Romanian as CAP, which stands for *Cooperative Agricole de Producție*, literally ‘Agricultural Production Cooperatives’) and later industrialized factory farms based on Western agricultural production models (abbreviated as IAS, *Întreprinderi Agricole de Stat*, literally ‘State Agricultural Enterprises’).

These conclusions are valuable with regard to the future fate of land restitutions in Romania, as we shall observe.

V. A Brief History of the Legal Norms Governing Registration of Ownership over Immovables in Romania

The acquisition of large provinces in the aftermath of World War One resulted in a variety of legal frameworks designed for the regulation of immovable ownership being simultaneously applied to different parts of the Kingdom, and later the Republic of Romania.

Of these regulatory regimes, two are of significance: the norms instituted by the Romanian Civil Code of 1864 in force in the territories of the pre-1918 Kingdom of Romania and those in force in Transylvania, the Banat, the Crișana, and Bucovina at the time of their incorporation into Greater Romania. The noteworthy differences between the two systems can be identified in their

35 van Meurs 1999.

36 Brooks–Meurs 1994, van Meurs 1999, Verdery 2003.

37 Aligica–Dabu 2003. For land distribution between the two forms of farms mentioned below, see: Brooks–Meurs 1994.

precision and efficiency in recording ownership and other (real) property rights constituted over immovables and any transfer of such rights.

The Romanian Civil Code of 1864 provided that the transfer of ownership and other property rights over immovables be registered into *land ownership ledgers* (the so-called ‘registers of transcription and registers of inscription’), kept by local authorities. Any property transfer which took place in an administrative precinct would be recorded into its ledger of inscription in chronological order by a clerk, indicating the name of the parties and identifying the immovable by its general location and by the names of the owners of neighbouring lots. This system was therefore not very well suited to tracing repeated transfers over long periods of time as that would require the reading of the entire ledger (comprising several volumes) used in a given precinct, starting from the institution of this registration system and up to the present day. Due to the difficulty of such an endeavour, it was deemed among lawyers to be the ‘diabolical proof’ (*probatio diabolica*) of ownership. Also, the registration of instruments – by which property rights over immovables were constituted, transferred, or extinguished – into the ledgers would generally not affect the property rights of any parties as any legal consequences were considered to flow directly from the instruments (e.g. deeds) themselves and not their registration, a legal effect called ‘opposability’.³⁸ Owners of immovable property were therefore not compelled to register any such instruments, except for making them known to others and preventing possible cases of fraud: if the same immovable was fraudulently sold to several parties, the first one to register his/her right in the ledger would become the owner.³⁹

The land registration system implemented in Transylvania and the Banat was based on the Austrian *Land Cadastre* and *Land Registry* (the latter known in German as the ‘Grundbuch’, literally: ‘Land Book’), a much more advanced method of keeping track of immovable property rights, still used today. Lisec and Navratil⁴⁰ provide a functional description and historic details of this system. In the *cadastre* system, each separate lot of land was uniquely identified by a ‘cadastral number’ allocated to it at the level of the administrative precinct in which it was located and charted on a topographic map of that precinct. All lots comprising a unitary estate were then registered in the Land Registry of the precinct, each identified by their numbers taken from the cadastre and recorded on a land record sheet, which in turn was also numbered. The totality of these sheets comprised the records of the Land Registry office of the precinct where they were held. No two land record sheets could have the same number in the same precinct.

38 Peptan 2014, Pop 2001.

39 Florea 2017, Pop 2001.

40 Lisec–Navratil 2014.

The land record sheets would indicate all the owners – both past and present – for each lot of each estate in chronological order. The basic unit used by this system was the lot (plot, or parcel) of land, and one estate was usually comprised several plots with possibly different utilizations (i.e. arable lands, pastures, vineyards, orchards, gardens, etc.). This system was considerably more suited to identifying the extent and previous ownership status of immovables. Also, the Land Registry having been used to aid efficient taxation of property, all persons benefiting from property rights over immovables were compelled to register the instruments by which they have acquired these rights as any unregistered instruments could not be invoked against a registered owner or any third party, including authorities charged with collecting fiscal revenue (the so-called constitutive effect of registration). All property rights over immovables therefore flowed from the Land Registry, not directly the titles registered in it.⁴¹

The cadastre and Land Registry system was so advanced that during the drive towards the modernization of Romania in the late 1930s and early 1940s plans were made to extend it to the entire territory of Greater Romania. This goal was set out in Decree with Effect of Law no 115/1938, which would govern the transfer of property rights over immovables in the Land Registry system, but only in the regions where the cadastre was already set up. Replacement of the ledger system was not implemented in the regions where it was prevalent, and it continues to be used to this day (albeit in a digital implementation).

The country would muddle through to the present day with this plurality (ledger, cadastre and Land Registry, Temporary Land Registry) of major immovable property rights registers used in different regions and with different legal effects. The registration of land property transfers in Romania continues to be quasi-optional because of the lack of the constitutive effect. The Law of Implementation enacted for the 2011 New Civil Code, now in effect, provided that the enforcement of compulsory land registration rules (and the constitutive effect) must be delayed until such time as full land registration in a given administrative precinct has been achieved; that is to say, *ad calendas Graecas*.

One further complication of Romanian land registration arises from the fact that the cartographic standards used when compiling topographic maps used for the charting of land plots under the land cadastre system and those used for charting plots during land restitution, based on a land survey of Romania conducted in the 1970s, are quite different. Therefore, the identification of lots subject to restitution on cadastre maps is hindered and requires a specialist surveyor (topographer) to achieve. In the incipient phases of land restitution, the shortage of such surveyors hindered registration of lands returned to former owners.⁴²

41 Pop 2001.

42 Verdery 2003.

VI. Restitution of Agricultural Immovable Property after the Regime Change of 1989

VI.1. Agricultural Immovable Property Restitution and Transitional Justice

It must be stated that the Romanian experience of socialist totalitarianism somewhat differed from that of other Central-Eastern European countries in the more severe privations endured by the population, especially after 1982, due to the economic policies of the Ceaușescu regime, which caused widespread popular discontent, the regime's decidedly un-socialist policy of nationalist agitation, and the violent end to which it succumbed in 1989.⁴³

Therefore, the dilemmas of property restitution as a form of much sought-after transitional justice astutely identified by Atuahene⁴⁴ in her analysis are, if possible, even more acutely valid in the case of Romania than in other countries. This dilemma can be summed up in the following questions:⁴⁵ (1) to maintain the status quo or to enact some form of reparations for the victims of property theft; (2) to grant monetary compensation or give back nationalized or collectivized land; (3) for which of the repeated waves of property nationalization or collectivization should any reparations be granted, knowing that some ethnic groups were more adversely affected than others (especially whether to grant restitution to the victims of the 1945 reform); (4) to create a new property status quo and dispense with any requirement of vindication by means of transitional justice and instead focusing on creating the conditions for economically efficient agricultural organization and alleviating socio-economic woes; (5) most importantly, to base the eventual restorative measures on the political will of the elite or, as Atuahene concludes, on a more inclusive process in which a wider swathe of the population is consulted.

Verdery, while adding⁴⁶ to some of these questions in the Romanian case (raising issues such as: 'should restitution be preferential or equitable', should it be integral or partial, should land be given back within its historic location, should the nationalized land of state agricultural enterprises be returned, should sales of returned land assets be restricted, etc.), explores the complex motivations for which the legislator opted to accomplish restitution the way it did: these measures were important to allay past resentment towards the communist regime but also to ensure foreign actors of the country's commitment to rule of law and respect for property, crucial for attracting⁴⁷ foreign investment. As for

43 Hitchins 2014. On this second point, for a more comprehensive analysis, see also: Verdery 1995.

44 Atuahene 2010.

45 See: Atuahene 2010.

46 Verdery 2003.

47 Aligica–Dabu 2003.

the political goals to be achieved, '[t]hey included issues of historical justice, political expediency, ethnic empowerment, equality, buying off the losers, economic efficiency, distributive effects, and accumulating political capital.'⁴⁸

When facing the choice between enacting some form of reparations and maintaining the status quo, the Romanian government, under a mentality dominated by the logic of privatization,⁴⁹ opted to enact property restitution, leaving compensation as a measure of last resort if restitution is unattainable. This choice was unlike, which was made by many countries⁵⁰ in the region that either opted openly to deny reparations (initially Poland, albeit no collectivization took place there) or to only grant token compensation (Hungary), the latter approach being openly endorsed by the European Court of Human Rights' jurisprudence⁵¹ on matters of compensation. However, the way in which this form of restitution was enacted showed less concerted views on the matter than the desire to accomplish the competing goals enumerated above. As we shall see, the implementation of this measure of restitution was also meant in some way to avoid recreating the status quo ante and instead accomplish a partially new distribution of agricultural immovable property.

VI.2. Law No 18/1991

Law no 18/1991, the Law Regarding Agricultural Land, was the means chosen by the legislator to accomplish the restitution of agricultural immovables. Adopted in a climate of political and administrative breakdown, when some farmers were already dismantling the infrastructure of the collectives and seizing (back) land on their own initiative, and victim to competing and contradictory⁵² interests, it was not a dedicated measure of restitution but contained – and still contains – the general norms of agricultural land use in Romania. By opting to append restitution norms to a law on general land use, the legislator left the impression that restitution was not the main reason for enacting this law, and this first impression seems confirmed by the literature: the approach of the legislator was mixed, on the one hand, to privatize land in a way somewhat similar to the management–employee buyout (MEBO) model initially meant to set the stage for more efficient land use by encouraging the creation of modern agri-business companies, while, on the other hand, also achieving restitution as a measure of transitional justice and as a measure of property redistribution.⁵³ This approach, which mixed a bit of economic and social policy with a bit of restorative justice, resulted in a bit of a mess when it came to the actual commencement of land restitution.

48 Verderey 2003.

49 Aligica–Dabu 2003.

50 See: Verderey 2003, Bornstein 1997.

51 See: Fisher–Jaffe 2000, Allen 2006.

52 Verderey 2003.

53 Aligica–Dabu 2003.

VI.2.1. *What Was to Be Given Back and Where? Who Would Stand to Benefit?*

To begin with, Law no 18/1991 (Art. 8) only provided for the restitution of *collectivized* land [i.e. land belonging to the by then practically defunct agricultural production cooperatives, not to the state-owned agricultural enterprises, nor other agricultural assets such as tractors or combine-harvesters needed to work the land, which were meant to be attributed later to the agri-business enterprises – agricultural companies (associations) – to be established upon the ashes of the former collective farms, a result which for some time failed⁵⁴ to materialize]. It also provided for land grants to be apportioned to certain persons even if they or their predecessors were not dispossessed of agricultural land during collectivization if they worked as labourers in the cooperative or had other roles such as agronomists.⁵⁵ This measure of land grants was not as widely applied as the legislator would have desired, and the lack of agricultural equipment restitution, in lieu of which more or less useless vouchers were handed out, to be used by farmers to later acquire shares in the newly formed agricultural businesses resulted in the restitution of land without any useful means to cultivate it, thereby exposing the owners to the whim of those who owned agricultural machinery, sometimes the ‘apparatchiks’ of the old regime and the former personnel of the despised collectives.⁵⁶ As a result, though agricultural associations were formed, they were rapidly captured and exploited by those who controlled vital means of agricultural production other than the land itself.⁵⁷ This state of affairs also led to voluntary ‘re-collectivization’ by some households,⁵⁸ including by banding together and farming in common, and to the rise of the rural ‘entrepratchik’,⁵⁹ the economically successful, former communist-turned-entrepreneur farmer.

Restitution was conditional upon submitting a written claim, thereby excluding persons who have emigrated since collectivization, while the 1991 Constitution [Art. 41, para (2)] barred all persons without Romanian citizenship from owning land, and Law no 18/1991 reiterated this prohibition.⁶⁰ Therefore, restitution was principally aimed at Romanian citizens living in Romania who had the effective means to participate in the procedure. The claim had to be submitted to the mayor’s office of the local administrative authority in the precinct in which the land requested for restitution was found [Art. 9, para (3)], in a time limit of

54 See: Aligica–Dabu 2003.

55 Verdery 1994.

56 Verdery 2003.

57 Verdery 2003.

58 Brooks–Meurs 1994.

59 Verdery 1994.

60 Not unlike most other measures of restorative justice in the region. See: Karadjova 2004.

initially just 30 days, which was successively extended until the 31st of December 1998, after which any further claims became time-barred.

Later measures of restitution (laws no 169/1997 and 1/2000 – see below) which permitted submitting subsequent claims would be construed as referring only to persons who have already submitted a (possibly smaller) claim for restitution under Law no 18/1991.

Furthermore, by its reference to the beneficiaries of restitution as those ‘who brought land into the collective or from whom land was taken in any way’ [Law no 18/1991, Art. 8, para (2)], the law failed to: (1) explicitly enumerate which of the victims of numerous, heterogenous consecutive waves of dispossession would benefit from restitution, (2) benefit those from whom land was taken by covert means of collectivization or nationalization such as unjust criminal conviction, and (3) mention measures prior to collectivization, thereby excluding⁶¹ from its benefits the victims of expropriation during the reform of 1945.⁶²

The explicit reference to cooperatives meant that no land belonging to state agricultural enterprises and no land which was nationalized for other purposes was to be (initially) returned, regardless of its agricultural nature. The former occupied around 30% of Romanian arable land, while the latter also constituted significant areas, especially attributed to various industrial and agricultural research establishments.

The law also limited the amount of land subject to restitution, initially to just 10 hectares per family, while also setting a minimal limit of 0.5 hectares to be returned and defining family as spouses and their children – the latter only if they are part of the same household as their parents. It was suggested in the literature that capping the area of land to be returned at such a low amount was a deliberate measure to prevent the emergence of a rural middle-class, while setting an upper limit on land ownership (regardless of the mode of acquisition) of 100 hectares per family was an invitation to the former members of the *nomenklatura* to obtain as much land as possible by use of their disproportional resources.⁶³

The problem of where land should be returned was left open by the legislator, as Law no 18/1991 stated only that ‘as a rule’ restitution should occur on the old sites, where the collectivized plots lay.⁶⁴ As the legislator failed to elaborate on the exceptions to the rule, this simple omission resulted in interminable litigations between those who received restitution, or land grants comprising other people’s former property, and the pre-collectivization owners of the lands returned or granted to them.

61 Verdery 2003, van Meurs 1999.

62 For a comparative context regarding the legislator’s motivations for such a solution in the case of other measures of restitution, see: Karadjova 2004.

63 van Meurs 1999, Aligica–Dabu 2003.

64 Verdery 2003.

The situation was complicated by the initial intention of the legislator to create a new land cadastre prior to restitution (in keeping with the principles of the Austro-Hungarian-style land registration system), which was undermined by fears that this may only prove to be a delaying tactic and subvert restitution altogether.⁶⁵ Therefore, this last initiative was promptly dropped from the final draft of the law.

The consequences of the lack of a clear rule for the restitution of land in its initial location, the absence of a unitary system of land registration throughout the country, able to clearly define the physical boundaries of that initial location, and consequently where restitution should occur would result in the utter subversion of the above mentioned 'rule'. Since the Land Register and corresponding cadastre were never implemented in a large part of the country, the legislator could not use this system to chart and demarcate lands subject to restitution. It therefore turned to a countrywide cartographic survey conducted in the 1970s using different geodetic standards as compared to those of the cadastre to topographically chart the plots subject to restitution.

Any agricultural land which was built over would be considered as always having constituted the property of the cooperative members whose buildings were erected upon it (Art. 23). This resulted in the added complication of making Law no 18/1991 applicable inside the boundaries of urban and rural settlements, not just to lands outside the communal, town, or city limits. Thereby, property titles could be and are still being emitted, which justify ownership not just of land but also of buildings to the benefit of the persons to whom the land was attributed to be built upon. Due to the difficulty of immovable rights registration and the plurality of registration systems, this practice may result in a dual title (in Transylvania: constitutive registration in the Land Register, and land property titles issued during restitution) granted for the same plot of land, sometimes to the benefit of different people. In such cases, the property title issued under Law no 18/1991 trumps all other titles, thereby benefiting the builder to the detriment of the previous owner, a situation which further encourages litigation.

VI.2.2. Multiple Land Registers

All land restitution titles in areas of the country where the Austro-Hungarian Land Register was used must be 'translated' according to the standards of the old cadastre to find out whether they infringe on property rights gained by owners prior to the entry into force of Law no 7/1996 regarding the Land Register.

This later law, enacted in part to curb the chaos which resulted from restitution, provided that land ownership registration would no longer have a constitutive effect but would only result in the opposability of registered immovable ownership

⁶⁵ Verderer 2003.

towards third parties, the immovable property rights themselves flowing from the title by which such ownership was obtained (including the land restitution titles provided during restitution), just as in the old ledger system.

Law no 7/1996 set up a new land registration system based on the Austro-Hungarian model and also comprised a topographic map (the 'new' cadastre) – which now operated based on updated 1970s cartographic standards but by transforming maps compiled in the initial cadastre system – and a new, so-called non-definitive Land Register. All registration into this 'new' cadastre and register would result in the charting of plots on new maps and the registration of owners on 'non-definitive' land register pages, earmarked to become 'definitive' once the entire country has been surveyed. The Romanian National Agency of the Cadastre and Land Records keeps a rolling tally of this still ongoing survey, which now stands at around 27%.

Instead of correcting the problems of dual titles, this plurality of registers in Transylvania, the Banat, and Crişana resulted in the following possible situation: one plot of land registered to the name of a certain owner according to the 'old' Land Register may have a separate legal existence in the 'new' Land Register after it was subject to restitution to a person other than the owner stated in the 'old' Register. Since registration in the 'old' register was constitutive of property, while registration in the 'new' register only results in the publicity of ownership which flows from the land restitution title, it is entirely conceivable that a plot of land has two legitimate owners based on two titles, in which case the courts must decide between the 'strength' of two competing but for all intents and purposes equal titles. This procedure, called 'the comparison of titles', may have an excessive duration.

VI.2.3. Restitution by Commission

Restitution under Law no 18/1991 would take place according to an extra-judicial procedure and claims for restitution would be resolved by restitution commissions established by that Law, based on several types of evidence, including documents and witness statements.⁶⁶ Article 10 of the law, which dealt with this question only, provided that documentary evidence was to be preferred to witness statements and 'other' evidence. The legislator had to consider both the chaotic way in which land was initially seized (with or without title, sometimes just by brute force) but also the fact that during the decades that passed between collectivization and restitution both of the country's main land ownership registration systems have fallen into disuse as most agricultural land was deemed to no longer constitute private property and was barred from legal

66 See: Verdery 2003.

circulation.⁶⁷ The land ownership ledger system also showed the added problem of being quasi-impossible to properly search.

This restitution procedure was undertaken by land restitution commissions set up at the levels of all local administrative precincts (county, city/town/commune, and in the case of communes comprising several villages, also at the village level). Headed by the mayor in the latter two cases, and comprising the mayor, three locally elected members, an agronomist and a surveyor at the village level, as well as supplementary members at the commune/town/city and county levels (including jurists, agronomists, forestry personnel) operated with utmost autonomy with no time limit on their activity and with close to no judicial oversight, subject only to the possible removal of the mayor at the next local elections.⁶⁸ This meant that a commission comprised of people usually without formal legal training and at times thoroughly biased would have to decide on restitution, based on scarce evidence and subject to all the pressures exerted by their local communities. The election process of commission members offered no guarantees of independence or impartiality, and their activity was characterized by sometimes blatant abuse.⁶⁹

As Verdery aptly describes⁷⁰ in some detail, using the results of research conducted in the commune of Aurel Vlaicu (in Transylvania), the problems which stemmed from this model of restitution were innumerable: (1) it resulted in a general souring of relations between former and current owners competing for restitution, for better-quality land, or simply for more of it, (2) thereby it effectively sounded the death knell for the rural culture of cooperation towards common goals and the sense of community which until then still permeated the Romanian countryside, (3) it transformed age-old mentalities linked to land ownership and agriculture, (4) it led to the economic empowerment of those with agricultural machinery and the exploitation of those without, (5) it resulted in an epidemic of cronyism and mafia-like behaviour in the activities of the restitution commissions,⁷¹ (6) it fanned corruption and collusion, (7) it fuelled inter-ethnic strife,⁷² (8) it contributed in no measurable way, shape, or form to increasing the efficiency of agriculture and lifting the rural population out of poverty,⁷³ and finally (9) it served to almost unanimously disappoint all parties involved, resulting in disillusionment with (transitional) justice, the free market, and ultimately democracy.

67 See: Verdery 1994.

68 Verdery 2003.

69 For several examples of the illegal 'stretching' of land surfaces, even to the amount of several hectares, see: Verdery 1994.

70 Verdery 2003.

71 Verdery 1994.

72 Verdery 2003.

73 See: Otiman 2012, Verdery 2003, van Meurs 1999, Aligica-Dabu 2003.

One question, largely left unasked, is why the legislator did not choose to implement a court procedure for restitution, subject to oversight by an appeal process conducted by specialized personnel with knowledge of the law. One possible answer is slightly hinted⁷⁴ at in the literature by references to the wave of litigation which resulted from the 1921 Reform and which was only averted after the 1945 Reform and collectivization by legal measures designed explicitly to suppress the exercise of judicial remedies. This explanation would be simple: commissions were considered the better option to avoid clogging up the courts. Another possible explanation which is more widely explored⁷⁵ is to keep the process in the hands of the apparatchiks or to create the appearance of popular and not political control during the implementation of such a crucial measure of transitional justice.

To these, the author of this study would like to add some further considerations: by placing control over such a fundamental element of the economy as land ownership to laypersons' commissions instead of courts, the authority of the judiciary in matters of property rights could be effectively undercut. The Romanian Constitution of 1991 in Article 41, para (2) only committed the state to protecting (preserving) private property, falling short of guaranteeing it; this provision caused heated debate⁷⁶ during the adoption of the Constitution and was later amended to include an explicit guarantee in 2003. In such a climate, the courts of the transition period, as final arbiters of private property rights hitherto unrecognized by the previous regime, might have acted with a more legalistic attitude and liberal zeal than politically controlled local committees. They might have administered the restitution process with some degree of impartiality and professionalism. The period of political upheaval experienced in the early 1990s in Romania would have been incompatible with such excesses of legalism and invocations of property rights in court. If control over such a fundamental right as agricultural land ownership could be removed from under judicial oversight, other important measures of transitional justice, such as reparations for measures taken by the totalitarian regime, and the restitution of non-agricultural property (also accomplished by commissions under later instruments such as Law no 10/2001) could also be codified by eluding trial in courts, which were and remain subject to international monitoring, thereby preserving plausible deniability for any eventual failure of restitution or the myriad of illegalities perpetrated during the process as well as its unjust results.

For a regime not intent on exaggerating checks and balances, the choice to keep restitution as close to 'the people' as possible was a natural one. There may have been some merit in the view of the transitional elite to avoiding strengthening

74 Verderey 2003.

75 See: Verderey 2003.

76 See: Stănescu-Stanciu–Neacșu 2015.

legal consciousness among the populace, as contesting state measures regarding property seizure in court was already known to have this result even during the darkest days of totalitarianism.⁷⁷ Also, a restitution process placed at the disposal of the courts would have presupposed a moral condemnation of the regime which perpetrated land theft [something which did not occur until the drafting of the Final Report of the Tismăneanu Commission⁷⁸ – and even then only with great difficulty], as the measures of collectivization would have been undone in a way which would have underscored their illegality and would have granted the process an additional moral undertone.⁷⁹ As Barkan aptly states,⁸⁰ all measures of restorative justice, all the more property restitution require a conversation between perpetrators and victims of historical injustice. This was just the kind of conversation the Romanian legislator keenly wanted to avoid, especially in the period of political and ethnic tensions bordering on unrest, which marked the early years of transition.

VI.2.4. Restitution to the Heirs of Deceased Owners

Since land restitution was possible not only to the benefit of members of the cooperatives but also their heirs, Law no 18/1991 (Art. 13) had to deal with the prospect of such heirs submitting claims for restitution based on the rights of their predecessors. These situations had the added complication that land circulation was prohibited during communism, so heirs could oftentimes produce no wills or certificates of succession for these lands, and sometimes they have not even accepted the estate of their predecessors either as agricultural land – in principle – could not be legally inherited, and such estates rarely contained anything else of value.

Such heirs needed to produce to the restitution commission a title justifying their succession or any evidence which demonstrated that they accepted the estate. In lack of such evidence, the restitution claim itself was considered as acceptance of the estate if it was handed in during the six-month time limit stipulated for such acts of acceptance, counted from the entry into force of the restitution law. The restitution commissions were left to evaluate evidence for acceptance of the estate and would issue property titles to the names of all heirs they deemed to have accepted it, if they could produce a will, judicial decision, certificate of succession, or other evidence to this effect. Strangely, while allowing commissions to establish if someone was an heir, Law no 18/1991 did not allow them to determine the shares of the inheritance they were entitled to and grant them restitution in view of such shares. Therefore, the titles for restitution had to

77 See: Șerban 2014, Verdery 2003.

78 See: Tismăneanu et al. 2006.

79 See: Barkan 2001.

80 Barkan 2001.

be issued to the name of all heirs deemed by the commission to have accepted the inheritance, leaving courts of justice or notaries public to sort out the ‘*minutiae*’ constituted by the yet unknown extent of their inheritance rights and the kinfolk of the deceased to squabble over them.⁸¹

VI.3. Fine-Tuning Restitution by Other Instruments

As the political upheaval which characterized the immediate aftermath of the collapse of the totalitarian regime subsided, the legislator revisited the issues of property restitution, especially on the occasions when the opposition parties of the early transition period finally ascended to power, in the latter half of the 1990s and again in 2004.

Law no 169/1997 was passed for the amendment of Law no 18/1991 in order to clarify some provisions and extend some rights which could be reconstituted under Law no 18/1991. Those households which received their maximum of 10 hectares could, as an effect of Law no 169/1997, request further restitution up to the limit of 50 hectares per family, the upper limit⁸² set by the 1945 Agricultural Reform. Other amendments introduced by Law no 169/1997 allowed for the restitution of church property, beyond the initial limits of 5 or 10 hectares respectively, depending on the type of property. Finally, it clarified the procedure by which property titles were to be issued to persons who erected buildings on collectivized land attributed to them by the defunct cooperatives.

Another major reform was instituted by means of Law no 1/2000 (later extensively amended by Law no 247/2005). The aim of this instrument was to facilitate restitution of agricultural immovable property, but also other immovable assets, mainly forests. Principal among its provisions were: (1) the possibility for the claimants to benefit from the restitution of nationalized lands, not just those that were collectivized (even if such a land had various uses), (2) restitution on the previously owned plots if these were free of constructions and not already attributed (though this provision was quickly repealed in 2001 and was only reintroduced by Law no 247/2005), (3) restitution of land from the state preserve, (4) restitution of pastures and fields, (5) restitution of lands at the perimeter of research stations, etc. This law also allowed for the reconstitution of communal ownership organizations for the management of pastures and fields, which were disbanded during collectivization, and for these reconstituted organizations to benefit from restitution on behalf of their previous members.

Later, Law no 10/2001 for the restitution of nationalized property comprising structures allowed for the restitution of property rights over agricultural buildings (such as storage facilities, mills, holding pens, silos, etc.) but also

81 See: Verdery 1994.

82 Aligica–Dabu 2003.

of living quarters and administrative buildings, including those that were parts of farms. This measure of restitution brought about further difficulties in implementation, comparable to – if not worse than – those raised by the application of Law no 18/1991.⁸³ As a novelty, when compared to other previous instruments, in the case of agricultural buildings, this law allowed persons to benefit even if they have not submitted restitution claims under Law no 18/1991 or subsequent instruments.

Meant to finalize the restitution process in the spirit of *restitutio in integrum*, in 2005, Law no 247/2005 was passed. This instrument, which amended Law no 18/1991, called for the restitution of nationalized agricultural property regardless whether it was collectivized or not, but only if a request for restitution was previously made under Law no 18/1991 or other instruments to that effect. It allowed the supplementing of evidence to be considered during restitution but did not herald a new wave of restitution in and of itself, as many had hoped.

Exhausted by the entire restitution process and under pressure from the European Court of Human Rights, which in the cases of *Maria Atanasiu and Others v Romania* (nos 30767/05 and 33800/06) unanimously passed a pilot judgement on the 12th of October 2010 to the effect of ordering Romania to enact legislation to resolve long-standing claims for restitution, the legislator passed Law no 165/2013.⁸⁴ Article 12, para (3) of this instrument provided a new procedure to resolve the claims of those who could not receive restitution of their lots in their initial locations, by requiring that their requests be solved in the order in which they were submitted.

It also instituted a statutory time limit for the completion of restitution-requesting documentations, setting a period of 120 days (subject to a single possible extension of 60 days) for claimants to hand in any documents which were requested from them by the commissions, under pain of having their claims rejected, as time-barred. Law no 165/2013 also provided a statutory time limit by which an inventory of all lands available for restitution should have been compiled in all administrative precincts,⁸⁵ which was extended several times, lastly until the 1st of January 2018 before being repealed. Finally, this law provided a somewhat unitary framework for compensation of victims of ‘abusive’ communist nationalizations and collectivization, without considering the fact that Law no 18/1991 did not require that collectivization be committed as an abuse and was not just a vehicle⁸⁶ for transitional justice but also a means of redistributing the land and of privatization.

83 See: Roşu 2014, 2015.

84 For details, see: Puie 2013.

85 Puie 2013.

86 Puie 2013.

VII. Final Conclusions

As we have seen, the Romanian legislator, when enacting and implementing the various measures and instruments aimed at the post-communist restitution of agricultural immovable property, was beset by the same difficulties that have plagued agrarian reform throughout the existence of the Romanian State. Chief among these was the myriad of competing interests to be appeased: a token measure of transitional justice had to be enacted, without upsetting existing political, economic, and ethnic power structures while still achieving privatization and stimulation of the economy. Evidently, such an approach was destined to fail because of the competing goals set. The result is a nearly three-decade state of continued chaos, reform, and the lack of it, constant reprimands from national and international structures such as the European Court of Human Rights, rural poverty, property uncertainty, and a non-transparent process of restitution far from being finalized.

As Verdery and Atuahene have shown in their works, the former based on the Romanian restitution experience, the latter on African processes of transitional justice, the coexistence of competing priorities, overpowering interests of the transitional elite, and a lack of social dialogue prior to the implementation of measures of transitional, restorative justice may result in such inconclusive and widely condemned results.

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