Emőd VERESS[1] – Kinga ILYÉS[2]

Legal Complexities of Agricultural Land Restitution in Romania (1990-2024)[3]

Abstract

The legal and socio-political complexities of agricultural land restitution in Romania reveal a process shaped by conflicting objectives and administrative hurdles. Initiated after the fall of the Soviet-type dictatorship, restitution aimed to address the injustices of collectivization and nationalization under the former regime. Post-World War II agrarian reforms and especially forced collectivization (1949–1962) dismantled private property rights in favour of collective and state ownership. Restitution policies introduced post-1989, starting with Act No. 18/1991 and evolving through subsequent amendments, attempted to reverse these changes. However, the need to balance transitional justice with socio-political stability led to a protracted and inconsistent process. Key issues include legal hurdles in verifying ownership, practical difficulties in returning land, and the influence of political and economic factors on outcomes. Despite substantial progress in returning property to original owners or their heirs, inefficiency and legal ambiguity have left many claims unresolved, undermining public trust in the restoration of property rights.

Keywords: collectivization, agricultural land restitution, property rights, transitional justice, post-communism

1 | Professor of Civil and Comparative Law, Faculty of Law, University of Miskolc, Hungary and at the Department of Law, Sapientia University of Cluj-Napoca, Romania.
2 | PhD. student, Deák Ferenc Doctoral School, Faculty of Law, University of Miskolc, Hungary; Junior Researcher, Central-European Academy; Junior Lecturer, Department of Law, Sapientia University of Cluj-Napoca, Romania.
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1. General Context

In post-World War II East-Central Europe, Romania – as other states of the region – fell under a Soviet-type totalitarian dictatorship.[4] Strangely enough, this regime started with a land reform for the redistribution of agricultural lands to the peasantry's private property. The Agrarian Reform Act No. 187/1945[5] expropriated large estates: about 1.4 million hectares[6] of land were 'expropriated' and 1 million hectares effectively distributed to peasants.[7] From a legal standpoint, this expropriation was effectively a form of nationalization, as no compensation was provided to the former owners. The expropriation targeted properties exceeding 50 hectares, with the surplus being seized by the state. However, the property seizure for redistribution also had a political dimension. Notably, all lands and agricultural properties owned by ethnic Germans – including Romanian citizens of German ethnic origin – who were collectively accused of having collaborated with Nazi Germany (even if no case-by-case verification of this ever took place), were fully expropriated. Additionally, the law targeted the lands and properties of war criminals, those responsible for the country's 'devastation', and those who fled to countries at war with Romania or abroad after 23 August 1944 (the date when Romania broke its alliance with nazi Germany in favour of the Soviet Union). Act No. 177/1947, which provided the interpretation of legal provisions concerning the implementation of agrarian reform, stipulated that the actions taken to carry out the reform, as well as the regulations and supplementary decisions issued by the Ministry of Agriculture and Domains, were considered acts of governance and could not be challenged in court by any means whatsoever.[8]

After World War II, agriculture remained the mainstay of the Romanian economy. The period under analysis is characterised by major structural changes, agriculture being thoroughly marked by the collectivization and nationalization process. This took place between 1949 and 1962 and consisted of the appropriation of private agricultural assets, as well as their incorporation into different new,

4 | The crucial moment marking the start of Soviet influence in Romania was the imposition of the Groza government on 6 March 1945, with Soviet backing. This government, led by Petru Groza, was effectively a pro-communist administration that paved the way to full Soviet control. The transition to a fully-fledged Soviet-type dictatorship culminated in the abdication of King Michael I on 30 December 1947. This event led to the proclamation of the People's Republic of Romania and the consolidation of communist power under the Romanian Workers' Party, with Gheorghe Gheorghiu-Dej becoming the head of the state apparatus. From 1947 onwards, Romania aligned itself closely with the Soviet model, establishing a one-party system, nationalizing industries, and collectivizing agriculture.

5 | Retrieved November 5, 2024, from https://www.cdep.ro/pls/legis/legis_pck.htp_act_text?idt=1569.

6 | A land area of 10,000 square metres constitutes one hectare.

7 | Verdery 2003, 45.

8 | Retrieved November 5, 2024, from https://legislatie.just.ro/public/DetaliiDocument/41.

specific forms of organization (cooperative agricultural enterprises and state-operated agricultural estates). Some estates were divided as these various units were later reorganized. These measures of agrarian reform and land redistribution included forced collectivization as part of the regime's broader strategy to consolidate power, control the peasantry, and restructure the agrarian economy along socialist lines.

The initial land redistribution was a measure intended to win the hearts and minds of the rural population, to thereby legitimise the new regime which was still under formation at that time, to dismantle the existing property structures, and to directly attack the more significant landowners by subverting their main source of income. But this – otherwise partly legitimate – reform was never intended to last. Once the land reform had redistributed land to the peasants, the next phase involved reversing it, by pushing the peasants into *collective farms* (*cooperative agricole de producție*, meaning collective agricultural cooperatives, or 'CAPs' in Romanian).

From a legal point of view, collectivization was a means of property transfer: as peasants were forced into collectives, they were required to transfer their land, livestock, and tools to the collective farms. In Romania, the law and legal doctrine recognised a new form of ownership: *collective property*. Individual property rights over agricultural land were effectively abolished (except in some mountainous areas, where collective farming was less feasible). Theoretically joining the collective was an option, not an obligation. In reality, the state used a combination of propaganda, economic penalties (oppressive taxation, mandatory supply provision to the state etc.), coercion, and at times brutal violence (arrests, imprisonment, deportation, and in some cases, execution) to compel peasants to join collective farms.[9] The *Securitate* (the Department of State Security, the Romanian secret police) played a significant role in suppressing opposition.

The reason for collectivization was to exert full state control over agricultural production. By organizing agriculture into collective and state farms, the regime could theoretically plan agricultural production, and control and direct the output.[10] In reality, the efficiency of collective agricultural production was far below expectations.[11]

9 | Wealthy peasants or those opposing collectivization were labelled and persecuted as 'kulaks', enemies of the regime.

10 | This was not the sole reason for collectivisation, which was also a means of consolidating political control over the peasantry. However, collectivisation allowed the Romanian government to implement central planning in agriculture, dictating what crops were grown, how land was used, and how agricultural produce was distributed.

11 | For an overview of the Romanian collectivisation process, see Klingman & Verdery 2011. Collectivisation was an enthusiastic goal of the regime, despite the fact that the negative economic effects were already evident from the pre-WWII realities of the Soviet Union. Ideology was more important than economic facts.

The process of collectivization was highly disruptive. It led to significant reductions in agricultural productivity and contributed to food shortages and economic hardship for many peasants. The forced nature of collectivization and the associated repression left deep scars in Romanian rural society, with many peasants losing their traditional way of life. But collectivization was consistent with Marxist-Leninist ideology, which viewed private ownership of land as inherently exploitative and inefficient. The Soviet-type totalitarian dictatorship in Romania sought to create a socialist economy where the means of production, including land, were owned and managed by the state or at least collectively (even if 'collective' management would exist in name only). Beside collectives, state farms were also organised (in Romania these were called *gospodării agricole de stat* or later *întreprinderi agricole de stat*, meaning state-run agricultural enterprises, or 'IASs'), based on the model of '*sovkhozes'* (state-operated agricultural estates), which functioned in part at least with nationalised land.[12]

The period of forced collectivization in Romania started in the late 1940s and lasted until 1962.[13] Most agricultural land had been 'collectivised' and thousands of collective farms were established (in 1970, there were 4,626 agricultural production cooperatives and 370 state agricultural enterprises).[14] Figure 1 shows the distribution of agricultural and arable areas by type of holding. From 1962 to 1989, the share of state-owned farms holding agricultural land remained constant at around 29%. But the largest areas of land were farmed in the cooperative system which held, both in 1962 and in 1989, approximatively 60% of the agricultural areas, but, as data from 1962 shows, 76.4% of arable land. Towards the end of the Soviet-type dictatorship, statistics report the distribution of agricultural area by forms of ownership: public, cooperative, and individual (see the data for 1989).

12 | For an interesting modern investigation of collectivization from the point of view of a legal historian, see Horváth 2024, 620-655. For an analysis of the practical issues of similar collectivisation (the case of Hungary), see also Csák 2006, 49-73. and Csák 2007, 3-20.

13 | The collectivisation process in Romania unfolded in three main stages. The first stage (1949–1953) involved establishing basic structures, where the government imposed unattainable production quotas on individual farmers to coerce them into joining collective farms and to target the 'kulaks' (relatively wealthy peasants). The second stage (1953–1957) focused on easing pressure on the peasantry and strengthening existing collective farms. The final stage (1957–1962) saw a harsh crackdown on remaining opponents of collectivisation, influenced in part by the anti-communist uprising in Hungary in 1956. For further details, see Székely 2018, 65.

14 | România. Un secol de istorie, Date statistice, București, 2018, 208–209.

Figure 1: Distribution of agricultural and arable area by type of holding and type of ownership, 1962 and 1989[15]

Type of holding	1962				1989
	Agricultural Area		Arable Area		Distribution of Agricultural Area
	Thousand Ha	%	Thousand Ha	%	%
A. State-owned agricultural properties, of which:	4,363	29.9	1,781	18.1	29.7
State agricultural enterprises:	1,745	12	1,365	13.9	
B. Agricultural cooperatives:	8,862	60.7	7,524	76.4	60.8
C. Agricultural associations (‘*întovărășiri agricole*’ in Romanian):	415	2.8	149	1.5	
D. Non-cooperative farms (‘individual sector’, in mountain areas):	954	6.6	400	4	9.45
Total agriculture in Romania:	14,594	100	9,854	100	100

Forced collectivization fundamentally reshaped rural life and customs, leading to the disappearance of traditional agrarian practices. The profound connection between people and the land was eroded, severing a bond that had defined rural existence for generations.

Following the regime change in Romania, the issue of reparations for collectivization and nationalization imposed during the Soviet-type totalitarian dictatorship became a significant and contentious topic. As the old regime fell (in 1989), some Romanians believed that justice could only be served by reversing these policies and returning the nationalised and collectivised assets to their original owners or their descendants. The reversal of nationalisation and collectivisation – bearing in mind the topic of this article, essentially the restitution of agricultural land and other assets confiscated during the collectivization period – can be seen as the most just solution. This view was grounded in the belief that those who had been wronged by the Soviet-type regime deserved to have their properties returned. The restitution of these assets could be seen not only as a way to right past wrongs but also as a means to restore the pre-communist social and economic order. Finally, reprivatization was seen as a means to guarantee that there would be no backsliding into the previous economic and social order, for which great temptation still existed for some in the first decade after regime change had

15 | Source: România. Un secol de istorie, Date statistice, București, 2018, 208–209. The data for 1962 is collected from ‘Agricultura României 1944–1964’, Editura Agrosilvica, Bucharest, 53, T43, and for 1989, from the National Institute of Statistics (INS).

taken place. Restitution was seen as a bond, which guaranteed commitment to the capitalist order in which property is sacrosanct.

However, numerous arguments were raised against the straightforward reversal of nationalization and collectivization. Concentrating on collectivization, one of the primary challenges was the practical difficulty of returning assets that had been extensively fragmented, redistributed, or repurposed over the decades of communist rule. Most of the properties in question had been integrated into large collective farms or state enterprises, making them difficult to disentangle, roll back, and return to individual owners. Former agricultural lands had been developed for public use (extension of settlements, buildings of public institutions etc.).[16]

The legal process of proving ownership and determining rightful heirs was also seen (and proved to be) a procedure fraught with complexity, especially in the areas of the country which lie outside the Carpathians, with landowners' record books still in use instead of the much more modern land registers. Original owners or their descendants sometimes also lacked the necessary documentation, or ownership records had been lost or destroyed. Collectivization of land during the Soviet-type dictatorship was oftentimes implemented by factual dispossession, that is, without a title, or with a title that remained unregistered in the land registers, or the landowners' record books.

Additionally, legal disputes could arise between multiple claimants, leading to protracted litigation. Concerns were also raised by the political left about the social equity of restitution. Returning land to a relatively small group of former owners could exacerbate social inequalities, particularly in rural areas where wealth had been more evenly distributed during the pre-1989 period. This concern appeared to be particularly acute in cases where the original owners were wealthy landowners (sometimes belonging to ethnic minorities), and restitution would result in a concentration of land and resources in the hands of a few.

There was a fear that reversing collectivization could also lead to significant economic disruption. Next to the state-run farms, the collective farms, despite their inefficiency, formed the base of the agrarian economy. Breaking them up could undermine agricultural productivity, disrupt local economies, and lead to unemployment or underemployment among rural workers. As an alternative solution, it was also proposed that, instead of returning properties, a more realistic approach would be to provide financial compensation to former owners. This would avoid the disruption of current land use while still acknowledging and addressing

16 | According to Article 23 of Act No. 18/1991, the land within built-up areas that had been allocated by cooperatives to cooperative members or other eligible individuals for the construction of homes and household outbuildings remained in the ownership of the current holders and was registered as such, even if the land had originally been taken, by any means, from former owners. The former owners were to be compensated with an equivalent piece of land within the built-up area or, if that was not available, with land in the immediate vicinity outside the built-up area.

the injustices of the past. However, the state's capacity to provide compensation was limited by economic constraints.

The Constitutional Court of Romania has affirmed that the scope and extent of restitution or reparatory measures, as well as the decision to implement such measures, fall under the sovereign authority of the legislator. These decisions are made in alignment with the state's economic policy and the reparatory objectives of the law.[17] From the perspective of the temporal conflict of laws and the distinction between rights established under previous legislation and those arising under subsequent laws, the Constitutional Court has emphasised that a later law cannot alter the way a right was constituted under an earlier law, as this would result in retroactive application. Therefore, even if the manner in which the state's property rights were established under former laws does not comply with the current Constitution, those rights formed under the prior legal framework remain unaffected by the enactment of new legislation.[18] (This approach overlooks the fact that the 1945 land reform was in breach of the constitution in force then, as expropriations took place without prior fair compensation, which was still required by the Constitution of 1923 in force until 1948).

The post-communist transition in Romania in general was a complex process. The state adopted an evolutionary approach to the restitution of agricultural land in kind. This process began shortly after the collapse of the dictatorship and remains ongoing. All the difficulties mentioned above were significant, but the critical challenge was the conception and management of the restitution process itself. The complexity of designing a just and effective restitution framework, and the logistical challenge of returning land after decades of state or collective control posed enormous difficulties.

The key dilemmas surrounding the legal design of agricultural property restitution in Romania were multiple. Should the existing situation be maintained, or should reparations be enacted for victims of collectivization or nationalization? Should pecuniary compensation be provided, or should nationalised or collectivised land be returned in kind? Which waves of nationalization or collectivization should be addressed, particularly considering the varying impacts on different ethnic groups, such as those affected by the 1945 reform? Should efforts focus on achieving transitional justice, or should the measures prioritise creating conditions for economically efficient agricultural organization and address socio-economic issues? Should restitution be based on the political will of the elite, or should it involve a more inclusive process that consults a broader segment of the population? Should restitution be preferential, favouring certain groups, or should it aim to be equitable for all affected? Should land be returned in full or only partially? Should land be returned within its historic location, or should alternative

17 | Constitutional Court Decision No. 184/2004, Constitutional Court Decision No. 1285/2008.
18 | Constitutional Court Decision No. 73/1995, Constitutional Court Decision No. 136/1998.

locations be considered? Should the nationalised land of state agricultural enterprises be returned? Should there be restrictions on the sale of returned land assets to prevent further disparities or market disruptions?[19]

2. The Beginnings of Restitution: Act No. 18/1991

The restitution of agricultural and forested lands in Romania occurred gradually. Initially, the Land Act No. 18/1991,[20] in its original form effective from 1991 to 1997, permitted the return of up to 10 hectares of agricultural land and up to 1 hectare of forested land to former owners or their heirs.[21] In the early post-communist period, the government, composed of partial ideological successors to the Soviet-era regime, half-heartedly sought to create a hybrid system that bridged 'socialism' and 'capitalism' and lead to an attempt to balance socialist and capitalist principles, while avoiding the re-establishment of the pre-communist landowning class.[22] This ambiguity reflected the ideological struggle within the government, which aimed at maintaining control while gradually introducing limited market-based reforms.

The restitution process applied to agricultural land within the assets of agricultural production cooperatives (Article 8).[23] State agricultural enterprises, administering around 30% of arable land, were – initially – maintained in state property, or earmarked for privatization. Significant additional areas, particularly those allocated to agricultural research institutions, were also excluded from this phase of the restitution process.

Restitution was granted to cooperative members who had contributed land to the cooperative or whose land had been taken by the cooperative in any manner, as well as to their heirs according to applicable civil law. Restitution procedures were contingent upon the submission of a written request, and eligibility was restricted

19 | Atuahene 2010, 65–93. and Verdery 2003, 81–84.

20 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/1459. For a general overview of the context, see Verdery 1994, 1071–1109.

21 | It was correctly stated that this act "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 (…): the approach of the legislator was mixed, on the one hand to privatise 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". See Székely 2018, 71.

22 | In Transylvania, concerns about the so-called 'Hungarian threat' – empowering the Hungarian minority through land restitution – further influenced the restitution process, leading to limitations on the amount of land that could be returned.

23 | Terzea 2024, 65–67.

to Romanian citizens, as the 1991 Constitution [Article 41(2)][24] prohibited non-citizens from owning land. Requests had to be submitted at the mayor's office in the locality where the land in question was located [Article 9(3) of Act No. 18/1991], initially within a 30-day period, which was later extended several times, finally until 31 December 1998, after which no further requests were accepted. Subsequent restitution laws (Acts No. 169/1997[25] and 1/2000[26]) allowed for additional restitution but were interpreted to apply only to those who had already filed an initial request under Act No. 18/1991, even if for a smaller area of land. Moreover, the law defined eligible beneficiaries as those "who contributed land to the collective or from whom land was taken in any manner" [Article 8(2)],[27] therefore excluding individuals whose land was seized through indirect means, such as oftentimes unjust criminal convictions, through apparently legal deeds such as donations but in reality obtained through duress, which is difficult to prove, and also through pre-collectivization measures. As a result, the victims of expropriation during the 1945 land reform were not intended to be covered by the restitution provisions.[28]

As shown above, Act No. 18/1991 allowed expressly for land restitution not only to cooperative members but also to their heirs. It should be mentioned that besides restitution, an agrarian reform was also put into force, allowing several categories of persons to apply for agricultural property, such as cooperative members who had not contributed land to the agricultural production cooperatives or had contributed land with an area of less than 5,000 square metres, individuals who had not been cooperative members but had worked in any capacity as employees in the last three years before 1991 in agricultural cooperatives, persons who had been deported by the Soviet-type dictatorship, those who had lost their ability to work, either fully or partially, as a result of participating in the struggle for the victory of the December 1989 Revolution, and heirs of those who had died as a result of participating in the struggle for the victory of the December 1989 Revolution etc.

During the Soviet-type dictatorship, land transactions were prohibited, leading to significant challenges for heirs who often lacked documents to claim their inheritance. Many heirs had not formally accepted their inheritance within the – at the time – 6-month time limit, an obligation otherwise set forth in Romanian civil law under pain of forfeiture of the right to inherit, as agricultural land was not legally inheritable. To request restitution, heirs needed to present proof of succession or evidence of estate acceptance to the restitution commissions. If such evidence was unavailable, submitting a restitution request within the 6-month legal deadline was considered sufficient to establish acceptance. Restitution

24 | Art. 41(2) of the Romanian Constitution of 1991: "Private property is protected equally by law, regardless of who owns it. Foreign citizens and stateless persons cannot acquire ownership of land."
25 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/11908.
26 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/20557.
27 | Terzea 2024, 43–73.
28 | Székely 2018, 72–73.

commissions reviewed the evidence and issued a single property title to all heirs deemed to have accepted the inheritance. However, these commissions were only authorised to recognise the heirs, not to determine their share of the inheritance. This left the division of inheritance rights to courts or notaries, often leading to disputes among family members. To illustrate the complexities arising from the intersection of restitution and inheritance law, it is important to highlight a source of significant familial tension and litigation: the fact that commissions only recognised heirs who submitted restitution claims. Consequently, many individuals who had accepted their inheritance within the legal timeframe prior to the adoption of Act No. 18/1991 – such as those who emigrated during the dictatorship or believed they were covered by claims submitted by other heirs of the same original owner – found themselves excluded from consideration as heirs for restitution purposes. Conversely, individuals who failed to accept their inheritance within the standard six-month civil law period could later benefit from restitution if they submitted claims during the special acceptance period(s) established after Act No. 18/1991 came into effect. This situation created inconsistencies and uncertainties regarding heirship status and eligibility for property restitution.[29]

The minimum amount of land that could be returned was 0.5 hectares per eligible person, with a maximum of 10 hectares per family, measured in arable land equivalents.[30] The law defined a family as comprising spouses and their unmarried children, provided they managed the household together with their parents. The 10-hectare limit was applied to individuals who inherited land from multiple dispossessed owners. This also means that if a person regained property rights in multiple localities, the limit was imposed on the total amount of land, not on a per-locality basis.

As a result, while original owners (or their heirs) could reclaim up to 10 hectares from their former larger estates, the surplus land was returned to others or redistributed, effectively leading to lesser agrarian reform in and of itself.[31] By capping the amount of land returned and redistributing the surplus, the government disregarded historical land ownership patterns and created a fragmented landscape of ownership. This approach rendered the original pre-nationalization land register records irrelevant,[32] compromising the implementation of subsequent, more lenient restitution laws. The attempt to return land at its original, pre-nationalization location, as envisaged in the initial form of the law, became largely impracticable.

29 | Székely 2018, 78–79.

30 | Terzea 2024, 75.

31 | Act No. 18/1991 allowed for land grants to be allocated to individuals who, although they or their predecessors were not dispossessed of agricultural land during collectivisation, had worked as labourers in the cooperative or held other roles, such as agronomists.

32 | The situation was further complicated by the existence of different property registration systems in various regions of the country, a challenge that persists as efforts to unify and modernise these systems are still ongoing. These complications fall outside the scope of this study, but for a short overview, see Székely 2018, 67–69. and 74–75.

The decision to limit the amount of land eligible for restitution to a minimal quantity was intentionally designed to prevent the re-establishment of a rural middle class. At the same time, the imposition of a 100-hectare cap on land ownership per family, regardless of how the land was acquired, effectively encouraged members of the political elite and of the former rural nomenklatura to exploit their considerable resources to amass as much land as possible.[33]

Additionally, there was significant lobbying for access to higher-quality land. Individuals with political connections in this period were able to manipulate the restitution process, especially before the local and county restitution commissions, to their advantage. Those with connections or influence often secured the best land, rather than receiving their land on its pre-collectivization location. Those without connections were often left with less fertile or less valuable agricultural land. Historical accuracy of ownership was lost forever. The stated intent of the restitution process – to return land to its rightful owners – was undermined. The perception that land restitution was influenced by favouritism weakened public trust in the process. This erosion of trust had broader implications for the legitimacy of the first post-communist governments and their commitment to justice and reform, ultimately leading to their loss of power in 1996. The mismanagement of restitution and failure to meet public expectations was certainly a contributing factor to their loss of political power, though it was not the only one. This political shift resulted in a reform of the restitution legislation, but, by that time, the process had already been compromised.

The restitution process concluded with the issuance of a title of ownership, but the registration in the property records and the precise demarcation of boundaries led to numerous practical challenges and required a considerable amount of time.

Agricultural land restitution has been, and continues to be, an extrajudicial (administrative) procedure.[34] The authority to solve restitution claims resides with restitution commissions established at both local and county levels. A question that has often been overlooked is why lawmakers opted against a judicial process for restitution, one that would involve specialists with legal expertise. The choice of commissions may have been a pragmatic one, aimed at preventing the courts from being overwhelmed. Alternatively, another explanation is that keeping the process within the control of local officials or giving the impression of community-based rather than politically driven decision-making, was a deliberate strategy.[35]

The local commission is chaired by the mayor, with its membership comprising the deputy mayor, the secretary of the administrative-territorial unit (who also serves as the secretary of the commission), a specialist in topography, cadastre, and

33 | van Meurs 1999, 118.
34 | Terzea 2024, 406–510.
35 | Székely 2018, 77.

land organization from the local public authority, an agronomist or horticultural engineer from the same authority, a legal expert from the local public authority, the head of the forestry office or an authorised representative, and two to four elected representatives of the former dispossessed owners or their heirs.[36] As stated, this implied that a commission, predominantly composed of individuals often lacking formal legal training and at times subject to significant biases, was responsible for making restitution decisions. These decisions were based on limited evidence and were susceptible to various pressures exerted by their local communities.[37]

At the local level, communal, town, or municipal commissions were tasked with receiving and analysing applications for the reconstitution of property rights over agricultural and forest lands, excluding those submitted by communes, towns, or municipalities. These commissions verified that applications met the legal conditions set forth in relevant laws, gathering all necessary information and data for this purpose. They determined the size and location of land for which property rights were to be reconstituted or allocated, and when the original site was no longer available, they proposed alternative locations and secured written consent from the former owners or their heirs. Local commissions were also responsible for updating records with entitled individuals and entities following verification, receiving and forwarding appeals from interested parties to the county commission, and preparing final reports on those entitled to land, specifying the size and location based on delimitation and parcelling plans. They recorded titles of ownership issued under specific conditions and could propose the revocation of titles if owners renounced them for legal regularization. After validation by the county commission, local commissions were responsible for physically allocating land to entitled persons, completing possession records, and issuing ownership titles. They monitored ongoing legal cases involving the local commission, recommended procedural actions, and reported any misconduct by commission members to the competent authorities. Additionally, they identified illegally allocated lands and notified the mayor to initiate legal actions for annulment. Local commissions also performed any other duties as stipulated by law and regulations.

County commissions, including the one in Bucharest, had additional responsibilities. They organised training for local commissions, distributed necessary legal materials, maps, and plans, and ensured the smooth operation of these local bodies. They provided guidance and supervision to local commissions, verified the legality of proposals submitted by them, particularly concerning supporting documents, and assessed their pertinence, authenticity, and relevance. County commissions also resolved appeals against decisions made by local commissions, validated or invalidated their proposals, and issued property titles for validated requests. They handled applications for the reconstitution of property rights for communes,

36 | Terzea 2024, 108–113.
37 | Székely 2018, 76.

towns, and municipalities over forested lands and assessed proposals for revoking ownership titles, ensuring the legitimacy of such actions. Moreover, county commissions identified illegally allocated lands and notified the prefect to initiate legal actions for annulment. They continuously monitored the progress of legal cases in which they were involved and made decisions on the necessary actions. Finally, county commissions allocated and demarcated forest land to public entities such as communes, towns, and municipalities and managed applications involving multiple localities within the county, fulfilling all corresponding duties.

Against the decision of the county commission, the dissatisfied party could lodge a complaint with the district court within whose jurisdiction the land was located, within 30 days from the date they became aware of the decision issued by the county commission. The submission of the complaint suspended enforcement. The district court would set a hearing date with notice to the complainant and could request that the county commission designate one of its members to appear at the scheduled hearing to provide explanations. Judicial review was strictly limited to ensuring the correct application of the mandatory provisions of the law concerning the right to obtain a title of ownership, the extent of the land to which the complainant was entitled, and, if applicable, the accuracy of any reduction in this area according to the law. The complaint was initially adjudicated by a panel of two judges, which was reduced to one following reforms of the judiciary in 1997. The decision of the district court was subject to either a single or two appeals, as the case may be. The nature of the appeal, or appeals changed over time: initially an appeal before the county tribunal on point of fact, and of law, was admissible as well as a second appeal before the court of appeals, exclusively on points of law. Between 2005 and 2013 only an appeal on points of law could be exercised before the county tribunal, the decision in the first instance being definitive. Currently the first instance decision is only subject to a sole appeal on points of fact, and of law before the county tribunal.

Based on the court's ruling, the county commission that issued the title was required to modify, replace, or annul it, as appropriate.

3. Regarding the *restitutio in integrum* and its Impossibility: Acts No. 169/1997, No. 1/2000, No. 247/2005, and Subsequent Legal Instruments

The legislature revisited property restitution issues, particularly during the periods when opposition parties – reiterations of historical political parties from the era before the Soviet-type dictatorship – eventually gained power.

The second phase of agricultural land restitution was marked by the enactment of Act No. 169/1997, which served as an amendment to Act No. 18/1991. This

legislation – adopted in the context of a new parliamentary majority and government formed by the reestablished pre WWII political parties – raised the upper limit of restitution to 50 hectares per family for agricultural land and 30 hectares per family for forest land.[38] Families who had previously received 10 hectares under earlier restitution efforts were now eligible to request additional land, up to the new limit of 50 hectares, aligning with the cap established by the 1945 agricultural reform.

The law allowed religious structures to reclaim agricultural land in 1997, with specific limits depending on the type of institution, where parishes could claim up to 10 hectares, monasteries and sketes up to 50 hectares, patriarchal centres up to 200 hectares, and eparchial centres up to 100 hectares. The law required accurate boundary demarcation and the proper registration of land titles. Land had to be accurately measured and recognised by neighbouring landowners before property titles could be issued. The law outlined penalties for non-compliance, including imprisonment for 1 to 5 years for unauthorised land occupation or falsification of statements regarding land holdings. Additionally, administrative and legal procedures were established for resolving disputes and enforcing restitution rights. The implementation of Act No. 169/1997 was complicated by the fact that former state agricultural enterprises had been converted into commercial companies, and land controlled by these companies was not returned to its original owners. In parallel, Act No. 54/1998, which regulated land transactions, stipulated that a family could not acquire more than 200 hectares of land through legal transactions, extending the absolute limit of agricultural land ownership.

The third phase was marked by the adoption of the Act No. 1/2000, the 'Lupu' Act,[39] which again modified the upper limits: a maximum of 50 hectares could be returned for each nationalised/collectivised owner, so one family could inherit from different former owners a total exceeding 50 hectares.[40] Forested lands were returned to former owners or their heirs, up to a maximum of 10 hectares for every dispossessed owner. Thus, the 30-hectare limit established by the previous regulation could actually be exceeded if someone inherited forested land through multiple lines of descent. Certain forested lands with special designations or improvements were exempt from restitution on their original sites, and alternative lands had to be provided. Individuals and legal entities who had submitted claims under Act No. 18/1991, as amended by Act No. 169/1997, were entitled to have their property rights reconstituted on the original plots if they were available. If the original lands were unavailable, alternative lands from state reserves or the local public domain

38 | Terzea 2024, 75. and 378.
39 | Vasile Lupu was a prominent member of the Christian Democratic National Peasants' Party (PNȚCD) and a significant advocate for the rights of former landowners in Romania. He played a crucial role in drafting and promoting Act No. 1/2000, which is why the law is often referred to as 'Legea Lupu', the Lupu Act.
40 | Terzea 2024, 75–77.

were allocated. Certain forest lands with special designations or improvements were exempt from restitution on their original sites, and alternative lands had to be provided. Lands used by research institutes, universities, and other educational institutions remained under public ownership but could be transferred to these entities for educational or research purposes. This law introduced the possibility of compensation if restitution in kind was not feasible (where no land was available). Act No. 1/2000 included strict procedural requirements for verifying claims, including the need for clear documentation, and set up a framework for local and regional commissions to oversee the restitution process.

Article 26 of Act No. 1/2000 dealt with the reconstitution of property rights specifically for members of historical collective ownership associations over forest lands. These associations included commonages (especially in the Szeklerland region of Transylvania inhabited by a Hungarian majority[41]), '*obști de moșneni*' and '*obști de răzeși*' (traditional Romanian land ownership collectives, similar to commonages), and '*păduri grănicerești*' (forests historically attributed to the communities tasked with guarding the borders, set up in the 18th century). The law mandated the issuance of a single property title for the entire collective entity, rather than individual titles to each of the members. It preserved the collective nature of ownership by issuing a single title to the entire group. The total area returned to these collective owners could not exceed the area that was originally owned by them after the agrarian reform of 1921. This limitation served to prevent the expansion of claims beyond what was historically recognised. The share of each entitled member of the collective ownership entity had to be included.

The fourth phase of restitution was initiated by Act No. 247/2005,[42] which declared the principle of *restitutio in integrum* for forests (restoration to the original state, i.e. the one after the 1945 land reform).[43] For agricultural land, the 50 hectares cap per dispossessed owner remained in force. Restitution in the original locations could not be implemented in practice due to the application of previous restitution regulations. This amendment to Act No. 18/1991 facilitated the restitution of nationalised agricultural land, irrespective of whether it had been collectivised, but conditioned to the existence of a prior claim for restitution. While it permitted the submission of additional evidence for consideration during the restitution process, it did not initiate a new round of restitution claims.[44]

41 | This may explain why the Romanian state is currently attempting to reverse these restitutions, primarily arguing that the lands seized during the 1921 land reform are not subject to restitution, and that commonage forest lands were returned in their pre-1921 state. However, this approach fails to acknowledge that the expropriations carried out against communal ownership under the 1921 agrarian reform were, in practice, not fully executed, as the compensations were never paid. Consequently, the actual nationalisation only occurred during the Soviet-type dictatorship. Cases of this nature are being adjudicated in Romanian courts as of the manuscript's closure (August 2024).
42 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/63447.
43 | Terzea, 662.
44 | Székely 2018, 80.

This legislation established the right of individuals whose agricultural land had been unlawfully confiscated – either by agricultural production cooperatives or by the state without a valid legal title – to regain possession of their property.[45] Specifically, this provision addressed the issue of land seized through means that did not comply with the legal provisions in force at the time of cooperativisation or nationalization. The phrase 'returned by the effect of law' or automatically reverted indicated that, because the land had been taken without a valid title, the ownership was never legally lost. Therefore, the restoration of ownership rights occurred automatically (*ope legis*), as long as the land had not been legally allocated to other individuals under valid legal provisions. In such cases, the property document ('title') issued by the prefect, based on the proposal of the local land restitution commission served as a confirmation of existing property rights rather than constituting new rights of ownership. The law allowed affected individuals to submit claims for property reconstitution at any time.

As stated above, according to these legal provisions, land that had been unlawfully taken by agricultural production cooperatives, without proper registration, or seized by the state without a valid title, was to be returned in kind to the original owners or their heirs, provided that it had not been legally allocated to other persons in accordance with land legislation. To clarify the term 'legally allocated to other persons', reference had to be made to Article II of Act No. 169/1997 and Article 2(2) of Act No. 1/2000, which acknowledged the validity of acts of reconstitution or constitution of property rights that had been issued 'in compliance with the provisions of the Act No. 18/1991.' Therefore, a systematic interpretation of the land legislation revealed that the phrase 'legally allocated to other persons' pertained only to compliance with the land laws, not with other legal provisions. As a result, land that had been allocated to other persons under regulations outside of Act No. 18/1991 (e.g., certificates of ownership issued to commercial companies under Act No. 15/1990) could still be returned to the original owners. The state was required to recognise their status as owners, and any further patrimonial relationships between the former owners and the commercial companies holding the land were to be regulated under common property law principles.

However, there was also a contrasting legal interpretation that the expression 'legally allocated to other persons' did not distinguish between natural or legal persons and that land referred to in Article $11(2^1)$ of Act No. 18/1991 could be considered legally allocated to other persons, whether or not the allocation complied with the land laws, as long as it was based on other normative acts such as Act No. 15/1990 and Government Decision No. 834/1991 during the privatization process. Therefore, this interpretation posited that such land could not be returned in kind to the former owners.

45 | Article 11(21) of Act No. 18/1991, as amended by Title IV, Article I, Point 2 of Act No. 247/2005.

For the application of Article 11(2^1) of Act No. 18/1991, the interested person had to prove that, at the time of the enactment of this legislation, the land in question was in the possession of the former cooperative. If, at that time, the land was no longer in the cooperative's possession but had been transferred to a state entity, these provisions did not apply. Instead, the provisions of Article 37 of the same act would be applied, regarding the status of individuals as shareholders whose land had passed into state ownership due to special laws and was under the administration of state agricultural units. The Cluj-Napoca Court of Appeal supported this interpretation in Decision No. 1427/R/01.06.2006, which upheld the decision to annul the ownership titles issued to natural persons in favour of a commercial company. The court held that, under Article 20(2) of Act No. 15/1990, assets within the patrimony of a company reorganised from a former state enterprise became its rightful property, except for those acquired with another legal title. Therefore, the certificate of ownership (the evidence for the company's property) was only declarative and not constitutive of rights.[46]

Also, for the application of Article 11(2^1) of Act No. 18/1991, the petitioner had to prove that the land was taken without a valid title. The burden of proof was on the petitioner. In this context, the Cluj County Tribunal in Decision No. 808/R/13.08.2008 rejected the petitioner's appeal, affirming that no evidence was provided to show that the land was taken without a valid title, even if it was seized through Decree No. 223/1974 without compensation.

The conclusion of the restitution process was envisioned by the Act 165/2013,[47] but the process is still ongoing in 2024. This piece of legislation was adopted as the effect of the Maria Athanasiu pilot judgment, issued by the European Court of Human Rights (ECtHR). This judgment addressed systemic issues in Romania's handling of property restitution and compensation claims, particularly concerning delays, inconsistent legal practices, and lack of effective remedies for claimants. As a result, the Romanian government was compelled to reform its restitution system to comply with the ECtHR's standards.

Article 32(1) of Act No. 165/2013 stated instituted a 90-day period during which individuals who considered themselves entitled to restitution could submit additional documents or evidence to complete their existing restitution claims. However, this period could be extended by another 60 days upon written request, effectively providing up to 150 days in total under certain circumstances.

The primary method of restitution according to Act No. 165/2013 was the return of properties in their original form, if possible. If returning the property was not possible, compensation was provided through a points system. These points represented a value in Romanian currency and could be used in public auctions or converted into cash. The law reformed local and national committees responsible

46 | For further details, see Terzea 2024, 69–73.
47 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocument/169278.

for evaluating claims, managing available land, and overseeing the restitution process. Strict deadlines were set for local and national authorities to complete the restitution process. A belated rule stated that claims must be addressed based on the order in which they were registered, which promoted fairness and transparency in the process (Article 12). Additionally, it provided the former owners or their heirs with the right to refuse the proposed land, which could help in cases where the land offered was not suitable or equivalent to the original property.

Article 8(1) of Act No. 165/2013 stipulated that within 120 days from the date the law came into effect, local land commissions were required to centralise all unresolved restitution claims to determine the land area needed to complete the restitution process. This 120-day period was intended to be crucial for organizing and streamlining the restitution process, ensuring that all legitimate claims were accounted for and that the appropriate land allocations were made. However, this timeline proved impractical, leading to multiple extensions (the final one lasting until January 2018) before ultimately being repealed.

Act No. 165/2013 constituted a new regulatory framework aimed at speeding up the process of restitution of immovable property (land but also buildings). But, although the new regulatory framework was adopted to implement the case law of the ECtHR, due to the defective way in which it was drafted, it did not ensure the clarity and predictability of the rules established by this act, which would safeguard the guarantee and effectiveness of the rights conferred by it.

For these reasons, in view of the fact that some of the provisions of Act No. 165/2013 violated the rules of legislative technique established by Act No. 24/2000 (republished),[48] it was necessary to amend and supplement Act No. 165/2013, in order to correlate some of its rules with the other texts of the same law. In the same context, it was also necessary to amend and supplement Act No. 165/2013, in line with the other special normative acts on the restitution of immovable property, as well as in line with the provisions of the (European) Convention on Human Rights and Fundamental Freedoms and the case law of the ECtHR.[49] This further accentuated legislative instability.

4. Conclusions

As stated correctly, chief among the difficulties were 'the myriads 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

48 | Retrieved November 5, 2024, from https://legislatie.just.ro/Public/DetaliiDocumentAfis/21698.
49 | Puie 2014, 116–134.

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 that is far from being finalised.'[50]

Although the process of restitution took more than thirty years and faced challenges such as delays, legal complications, and administrative disarray, a substantial portion of agricultural property was eventually returned to its original owners or their descendants. The process was highly suboptimal and could have been handled with far greater efficiency, equity, and impartiality.

After 1989, the land reform, which reconstituted farmers' property rights, brought about major structural changes, resulting in a large number of holdings – 4.299 million – with an average size of 3.45 hectares.[51] Precise statistical data on the restitution of agricultural land and forests is not available and requires further research beyond the scope of this article. However, an investigation conducted by the Romanian Ombudsman (the People's Advocate), revealed that by September 2021, the number of unresolved restitution claims exceeded half a million. The following figure highlights the significant backlog and administrative challenges faced in the restitution process.

Figure 2. Status of unresolved restitution requests (2021)[52]

Total unresolved restitution requests	Total unresolved requests for agricultural land	Total unresolved requests for forested land	Required agricultural land area (Ha)	Required forested land area (Ha)	Total number of requests validated for restitution through pecuniary compensation	Total number of unresolved compensation requests
603,402	467,212	150,636	993,380.23	612,726.75	52,522	19,118

The absence of a unified and all-encompassing framework for restitution from the beginning resulted in a disjointed approach. The lack of a definitive and uniform methodology caused divergent understandings of the legislation in many areas, leading to inconsistent and frequently capricious consequences. A multitude of individuals encountered a difficult bureaucratic system that was inadequately prepared to manage the large number of demands for reparation. The process was frequently hindered by insufficient resources and a lack of political determination to prioritise the settlement. The continual revisions to restitution legislation, combined with frequent fluctuations in government policies, resulted in an unstable

50 | Székely 2018, 81.
51 | România. Un secol de istorie, Date statistice, București, 2018, 208–209.
52 | Avocatul Poporului: Raport special privind respectarea dreptului de proprietate în procesul de reconstituire/constituire a dreptului de proprietate privată asupra terenurilor agricole și forestiere, București, 2022, 41. The report contains data collected at county level.

legal framework. Not only did this extend the duration of the process, but it also generated uncertainty and distrust among claimants, a significant number of whom believed that their claims were being unfairly delayed or disregarded.

The restitution process encountered substantial challenges with openness and corruption. The distribution of returned properties was not consistently carried out with transparency, resulting in allegations of fraud and corruption. Occasionally, properties were restored to persons with political connections. The process's inefficiencies resulted in substantial financial and societal costs. Extended litigation depleted the financial assets of both the claimants and the government, while the ambiguity surrounding property rights hindered economic progress in the impacted regions.

The restitution procedure ultimately recovered a significant amount of agricultural property, but it did so in a manner that was frequently inefficient, unfair, and burdened with unneeded complexities. By implementing improved strategic planning, robust legal frameworks, and dedication to openness and equity, the process could have been conducted in a manner that genuinely achieved more justice for individuals impacted by the past wrongs of property confiscation. Historical injustice, it seems, cannot be undone perfectly.

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