

**DECISION No. 234  
of December, 20, 1999**

**on the issue of unconstitutionality of the provisions  
of the Government Urgency Ordinance No. 13/1998  
regarding restitution of real estate owned by the communities of citizens  
belonging to national minorities in Romania**

Published in the Official Gazette of Romania, Part I, No. 149 of April, 11, 2000

<b>Lucian Mihai</b>	<b>– President</b>
<b>Costică Bulai</b>	<b>– Judge</b>
<b>Constantin Doldur</b>	<b>– Judge</b>
<b>Kozsokár Gábor</b>	<b>– Judge</b>
<b>Ioan Muraru</b>	<b>– Judge</b>
<b>Lucian Stângu</b>	<b>– Judge</b>
<b>Florin Bucur Vasilescu</b>	<b>– Judge</b>
<b>Romul Petru Vonica</b>	<b>– Judge</b>
<b>Paula C. Pantea</b>	<b>– Prosecutor</b>
<b>Mihai Paul Cotta</b>	<b>– Assistant-Magistrate</b>

In motion is the settlement of the objection of unconstitutionality of the provisions of the Government Urgency Ordinance No. 13/1998 regarding the restitution of real estate owned by the communities of citizens belonging to national minorities in Romania, objection raised by S.C. "TIM PRESS" S.A. from Timișoara in the File No. 2185/1998 before the Alba Iulia Court of Appeal – the Civil Division.

The hearings took place in the public session of November 23<sup>rd</sup>, 1999 and were recorded in the interlocutory order of the same date, when the Court, needing time to deliberate, adjourned settlement for December 7<sup>th</sup> 1999 and then for December 20<sup>th</sup> 1999.

THE COURT,

taking into account the documents and the acts of the file, holds as follows:

Through the Interlocutory Order of December 18<sup>th</sup> 1998, the Alba Iulia Court of Appeal – the Civil Division referred to the Constitutional Court the objection of unconstitutionality of the provisions of the Government Urgency Ordinance No. 13/1998 regarding the restitution of real estate owned by the communities of citizens belonging to national minorities in Romania, published in the Official Gazette of Romania, Part I, No. 255 of July 8<sup>th</sup> 1998, objection raised by S.C. "TIM PRESS" S.A. from Timișoara in a civil case dealing with the motion for set-aside submitted by "Casa Maghiară" from Timișoara.

As grounds to the objection, it is asserted that the regulations embodied in the Government Urgency Ordinance No. 13/1998 contradict both the constitutional norms and the essential principles of the rule of law, by coming against Article 114 paragraph (4), Article 41 paragraphs (1) and (2) and Article 135 paragraph (6) of the Constitution, as well as those on the judicial authority, comprised under Title III, chapter VI, Section 1 of the Constitution. Accordingly, it is claimed that despite provisions under Article 114 paragraph (4) of the Constitution, stipulating the urgency ordinances may be adopted by the Government only in exceptional cases, on the date of June 25<sup>th</sup> 1998, when the Urgency Ordinance No. 13/1998 was issued, "there appeared no exceptional objective situation to justify the Government's intervention into the realm of competence of the legislative authority", just as "there was no necessity for urgent measures in order to eliminate or to avoid risks as may be engendered by an exceptional situation", both of which being viewed by the author of the objection, as requirements that should be concurrently met with.

In connection with the violation of Article 41 paragraph (1) and paragraph (2), as well as of Article 135 paragraph (6) of the Constitution, which safeguard the right of property, the protection and inviolability of property, the author of the objection demonstrates that the real estate located in 8, Revoluției 1989 Blvd., Timișoara, as stipulated in item 11 of the annex to the urgency ordinance listing the real estates to be returned, is the private property of S.C.

“TIM PRESS” S.A., a trading company with joint capital, both State- and private ownership, whose shareholders are the Administration of local press as well as a number of sixty-one natural persons. Under these circumstances, it is claimed that only by a violation of the constitutional provisions has it been decided, under the urgency ordinance criticised, to return to the “Casa Maghiară [Hungarian Home]” from Timișoara, the real estate that is legally owned by S.C. “TIM PRESS” S.A., part of its social capital as a contribution in kind, according to the constituent documents of the company. At the same time, it is alleged that Article 1 of the Government Urgency Ordinance No.13/1998, providing that the real estate listed in the annex shall be returned to title-holders or to their heirs, has annulled the effects of judgment rendered – the Civil Decision No. 480/1998 of the Alba Iulia Court of Appeal – which has irrevocably established there is no succession of rights in the S.C. “Casa Maghiară” S.A., a trading company established under the Civil Sentence No.1568/1994 of the Timișoara Trial Court, in continuance of the former “Casa Maghiară”, anonymous company. Therefore, in the opinion of the author of the objection, it is obvious that the Government was no longer entitled to dispose, by the Government Urgency Ordinance No. 13/1998, the restitution of the real estate located in 8, Revoluției 1989 Blvd., Timișoara.

**The court, expressing its opinion on the objection of unconstitutionality** raised by S.C. “TIM PRESS” S.A. from Timișoara, stated that the objection was founded, as the provisions of the Government Urgency Ordinance No.13/1998 come against Article 114 paragraph (4) of the Constitution because, on the one hand, no exceptional case, that would have justified the adoption of the urgency ordinance, was invoked and, on the other hand, the constitutional requirement to convene the Parliament, on recess at that point in time, was not complied with. Likewise, the court held there was also a violation of Article 41 paragraphs (1) and (2) of the Constitution stipulating the protection and safeguard of the private property right, irrespective of its owner, as well as of Article 135 paragraph (6), subject to which the property is inviolable, under the terms of the law, taking into consideration that, on the date of adoption of the ordinance, the real estate under litigation “was already the property of S.C. “TIM PRESS” S.A. under an irrevocable court decision”.

According to Article 23 paragraph (1) of the Law No. 47 of 1992, the interlocutory order was communicated to the presidents of both Chambers of Parliament and to the Government, to give their viewpoints on the raised objection of unconstitutionality.

**In its viewpoint, the Government asserts** that the raised objection of unconstitutionality is unfounded, as the Urgency Ordinance No. 13/1998 “was issued on July 7<sup>th</sup> 1998, when the Parliament was in extraordinary session, and the promotion of this urgency ordinance was grounded in the substantiation note, which presented the circumstances urging for the adoption of an immediate solution in order to resolve specific situations having caused prejudice to the public interest”. At the same time, it is pointed out that, as has been ruled under the Constitutional Court Decision No. 65/1995, “the reasons that legitimise, from a constitutional viewpoint, the adoption of the urgency ordinance are explicitly presented in the substantiation note of the draft, and not in the text of the normative act adopted”. As to the infringement of Article 41 paragraphs (1) and (2), as well as of Article 135 paragraph (6) of the Constitution, safeguarding the private property right and ensuring equal protection of the property, regardless of its owner, the Government considers that the urgency ordinance decided over the return of real estate listed in the annex “only to the extent to which a governmental commission established their respective successors within the communities, that recovered property rights on the real estate, as listed in the annex, based on substantiated deeds”. It is also asserted that, “from the redaction of the annex itemising the real estate to be restored, it shows that the S.C. «Casa Maghiară» S.A. Timișoara is not listed under item 11 which corresponds to this particular real estate”. As a matter of fact, the Government indicates that “the commission set up under Article 2 of the ordinance, taking into account the absence of documents in certification of a legal successor continuing the «Casa Maghiară» anonymous society, has not made a decision so far”. On the other hand, it is claimed that, according to the urgency ordinance criticised, the commission instituted therein “is not vested with any powers for the recovery of ownership titles”, neither has any possibility to decided over real estate for which there exists no ownership title or where this title has been challenged, “being unable to substitute itself for the competent court”.

**The Presidents of the two Chambers of Parliament** did not submit their viewpoints on the objection of unconstitutionality raised.

## THE COURT,

having examined the interlocutory order of reference, the viewpoint from the Government, the report drawn up by the judge-rapporteur, the attending party's and the prosecutor's conclusions, the legal provisions criticised as against the Constitution, as well as the Law No. 47 of 1992, holds as follows:

On the grounds of Article 144 letter c) of the Constitution and of Article 23 the Law No. 47 of 1992, the Constitutional Court has been legally vested and is competent to settle the objection of unconstitutionality raised.

The subject matter of the objection is some of the provisions of the Government Urgency Ordinance No.13/1998 on the restitution of real estate owned by the communities of citizens belonging to national minorities in Romania. According to Article 1 of the Urgency Ordinance, "The buildings, together with the corresponding piece of land, as listed in the annex which is an integral part of this urgency ordinance, that had been owned by the communities (organisations, religious denominations) of citizens belonging to national minorities in Romania, and were passed after 1940 into the property of the Romanian State by constraint, confiscation, nationalisation or otherwise tortuous means, shall be returned to the owners or to their successors". Among the seventeen pieces listed in the annex to the urgency ordinance, under item 11 is the real estate located in 8, Revoluției 1989 Blvd., Timișoara, with the following mentions inscribed: owner of the property right – S.C. "TIM PRESS" S.A. from Timișoara; original destination – "Casa Maghiară" of Timișoara; current utilisation – headquarters of the "Renașterea Bănățeană" Editorial office; legal grounds for the transfer into the State's property Decree No. 218/1960, Decree No. 712/1966 and the Law No. 15/1990; claimant for restitution – the Hungarian community in Romania.

To support the objection raised, the author has invoked three reasons of unconstitutionality of provisions of the Government Urgency Ordinance No. 13/1998, as follows:

– The Government has resorted to the procedure of issuing an Urgency Ordinance, although no exceptional objective situation existed to justify the Government's intervention into the realm of competence of the legislative authority, and "there was no need for urgent measures so as to eliminate or avoid risks as may have been caused by an exceptional situation". In the viewpoint of the author of the objection, this has come against provisions under Article 114 paragraph (4) of the Constitution, "In exceptional cases, the Government may adopt urgency ordinances. These ones shall come into force only after they have been submitted to the Parliament for approval. If the Parliament is not in session, it shall be convened compulsorily".

– A second reason of unconstitutionality of the urgency ordinance criticised refers to the violation of the private property right of S.C. "TIM PRESS" S.A. from Timișoara, trading company with joint capital under State and private-ownership, on the real estate whose restitution has been decided contrary to Article 41 paragraphs (1) and (2) and Article 135 paragraph (6) of the Constitution. The texts under Article 41 paragraphs (1) and (2) of the Constitution read as follows:

"(1) The property right, as well as claims upon the State are guaranteed. The law establishes the content and limits of these rights.

(2) The private property is equally protected by law, regardless of its owner.[...]. The text under Article 135 paragraph (6) of the Constitution provides: "The private property is inviolable, under the terms of the law".

– The third reason invoked for stating the objection of unconstitutionality is that the provisions of the urgency ordinance criticised have contravened those under Title III, Chapter VI, Section 1 of the Constitution, on the "Judicial Authority", the Government not having taken regard of the Civil Decision No. 480/1998, adjudicated by the Alba Iulia Court of Appeal in the File No. 680/1998, by which it has been irrevocably established that no succession in rights exists between S.C. "Casa Maghiară" S.A., and the former "Casa Maghiară".

Having examined the provisions of the urgency ordinance whose unconstitutionality is claimed, as against the constitutional provisions, the Constitutional Court holds as follows:

1. The criticism of unconstitutionality of the Government urgency ordinance, about an alleged infringement of Article 114 paragraph (4) of the Constitution, is unfounded.

As it results from the Substantiation Note attached to the Government Urgency Ordinance No. 13 of July 7<sup>th</sup> 1998, an "exceptional case" upon which, subject to the constitutional text, the Government is conditional when resorting to this method of legislative delegation, is justified by numerous approaches made by persons, after the fall of the communist regime, in order to see restored the real estate which had been confiscated or

nationalised by the totalitarian regimes after 1940, as well as by “obligations undertaken by Romania, among which the restitution of the property of the communities of citizens belonging to national minorities”, also stipulated in “reports from international organisations”. In the substantiation note it is also stated: “At the same time, until more general regulations are passed to resolve this situation by law, as was affirmed in the spring session of the Parliamentary Assembly of the Council of Europe, the Government has envisaged restitution of a few items of real estate with a symbolic value, just as it did in the case of real estate belonging to the Jewish community, through the Law No. 140 of 1997 on the approval of the Urgency Ordinance No. 21/1997”.

The Constitutional Court finds that the elements included in the substantiation note to the ordinance, corroborated with the conspicuous delay of measures for the restitution of real estate abusively taken over by the regime of communist dictatorship, are such to justify the issuance of the urgency ordinance under the terms provided under Article 114 paragraph (4) first thesis of the Constitution.

As regards the coming into force of the urgency ordinance, the Constitutional Court finds, from the communications forwarded by the Chamber of Deputies and the Senate of Romania, that the urgency ordinance was deposited by the Government with the two Chambers of Parliament on July 7<sup>th</sup> 1998 and, respectively, July 8<sup>th</sup> 1998. From the document recording the Government's viewpoint on the objection of unconstitutionality, it follows that at that time, the Parliament was in extraordinary session. Consequently, a violation of Article 114 paragraph (4) final thesis of the Constitution cannot be sustained.

2. About the criticism of unconstitutionality of the Government Urgency Ordinance No. 13/1998, in what regards the real estate owned author of the objection, the trading company “TIM PRESS” S.A. from Timișoara, claiming infringement of Article 41 paragraphs (1) and (2) of the Constitution, which enshrine the safeguard of the property right and equal protection of the private property by law, regardless of its owner, as well as of Article 135 paragraph (6) of the Constitution, which provide the inviolability of the private property, the Constitutional Court holds it is founded, for the following reasons:

Under the Government Urgency Ordinance No.13/1998, the Government has decided to restitution to the former owners – communities of citizens belonging to national minorities in Romania – the real estate listed in the annex, which is an integral part thereof. Most of the real estate listed under the seventeen items of the annex to the ordinance belonged, according to the mentions inscribed in the annex, to the State or to public central or local authorities. From among the six real estates returned to the Hungarian community in Romania, the one real estate under item 11 of the annex to the ordinance, located in Timișoara, 8, Revoluției 1989 Blvd., is presently held under the title of owner of the property right, by the Trading Company “TIM PRESS” S.A. According to the records under the 6<sup>th</sup> column of the annex to the ordinance, item 11 indicates, under the title based on which the real estate had been transferred into the State property, the Decrees No. 218/1960 and No. 712/1966 as well as the Law No. 15/1990.

As is known, by the effect of the Decree No.218/1960 amending the Decree No. 167/1958 on statute of limitations, and of the Decree No. 712/1966 on the assets which fall under Article III of the Decree No. 218/1960, it was meant to give an appearance of legality to the abuse committed to the detriment of private property, establishing as being taken into the State's property those assets which had been entered into its possession before the publication of the Decree No. 218/1960, either without a title, or within the procedure prescribed by the Decree No. 111/1951 regulating the situation of assets of any kind subjected to confiscation, confiscated as without heirs or estate-holder, as well as of assets of no more use to budgetary institutions.

As regards the Law No. 15/1990 on the reorganisation of the State-owned economic units as self-managed State-run businesses and trading companies, also mentioned in the annex, as grounding of the State property, the Court observes that such does not represent, in reality, by any of its provisions, a legal act based on which the real estate had been transferred into the State property, but a normative act subject to which the trading companies, established through the transformation of the former State-owned economic units, have become owners on the assets in their possession, as is provided by the provisions under Article 20 paragraph (2) of the law. According to this text, “the assets from the patrimony of the trading companies shall be their property, except those acquired under another title”. As such, this legal text was time and again submitted to the review of constitutionality, each time the Court establishing it does not contravene any of the provisions of the Constitution. It is worthwhile mentioning, as an example, the Decision of the Plenary

Constitutional Court No. 1/1993, published in the Official Gazette of Romania, Part I, No. 232 of September 27<sup>th</sup> 1993 whereby it established that “the assets of the self-managed State-run businesses and of the trading companies do not constitute State-owned, but private property, even where the State has the majority of the social capital of a trading company”, the Decision No.37 of April 3<sup>th</sup> 1996, published in the Official Gazette of Romania, Part I, No. 141, of July 8<sup>th</sup> 1996, and also the Decision No. 9 of January 22<sup>nd</sup> 1997, published in the Official Gazette of Romania, Part I, No. 141 of July 7<sup>th</sup> 1997. At the same time, by its Decision No. 18 of March 14<sup>th</sup> 1994, published in the Official Gazette of Romania, Part I, No. 343 of December 12<sup>th</sup> 1994, the Constitutional Court established that “the self-managed State-run businesses and of the trading companies do not constitute State-owned, but private property because, according to Article 5 and Article 20 paragraph (2) of the Law No. 15/1990, the owner of the property right is the self-managed State-run business or the trading company, while the State is but a mere shareholder owning a quota-share of the social capital which does not confound with the legal person’s assets and liabilities [...]”.

Therefore, the circumstance that the trading company “TIM PRESS” S.A. from Timișoara also has the State as one among its shareholders, besides number of natural persons, does not entail any consequence as regards the owner of the property right, and the type of property on that respective real estate. Under these terms, it follows that the real estate located in Timișoara, 8, Revoluției 1989 Blvd., being part of the assets of the trading company “TIM PRESS” S.A., is the private property of the aforesaid trading company and benefits from the protection of private property as instituted by Article 41 paragraphs (1) and (2) as well as by Article 135 paragraph (6) of the Constitution.

Therefore, the Government is not in a position to decide, by an urgency ordinance, on this asset, no longer owned by the State.

Likewise, the Constitutional Court holds that, according to constitutional rules over property rights, nationalisation is inadmissible. A forced transfer of certain assets of private property into the State property is only possible by expropriation, under the conditions provided under Article 41 paragraphs (3) and (5) of the Constitution, or by confiscation, in the case of goods and assets intended for, used, or resulted from offences or misdemeanours, under the terms provided by paragraph (8) of the same article. These constitutional provisions are as many guarantees of the private property right, which cannot be eluded by resorting to the procedure of an urgency ordinance, even though, as is obvious, the right of the Hungarian community to receive compensation for injustice done through the abusive transfer of the real estate in litigation into the State property, during the communist regime, is unquestionable.

In a State governed by the rule of law, such as Romania is, according to Article 1 paragraph (3) of the Constitution, reparation for injustice can be made only by resorting to legal procedures that do not come against any of the constitutional provisions and the obligations deriving from the international treaties and documents that the Romanian State has pledged to fulfil, the observance of which is compulsory, according to Articles 11 and 20 of the Constitution. In this respect, the Court finds there are incident provisions under Article 17 of the Universal Declaration of Human Rights that, after proclaiming “Everyone has the right to own property alone as well as in association with others”, provides that „No one shall be arbitrarily deprived of his property”. Likewise, the Additional Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Romania through the Law No. 30/1994, published in the Official Gazette of Romania, Part I, No. 135 of May 31<sup>st</sup> 1994, provides under Article 1 paragraph (1) that “Every natural or legal person is entitled to the peaceful enjoyment of his possession. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international laws”.

Ascertaining the consistency between Article 41 paragraphs (1) and (2) and Article 135 paragraph (6) of the Constitution, on the one hand, and provisions of the aforesaid international documents, the Court holds that the Government Urgency Ordinance No. 13/1998 is unconstitutional in what regards the restitution, upon request addressed by the Hungarian community in Romania, of the real estate located in Timișoara, 8, Revoluției 1989 Blvd., whose title-holder of the property right is the trading company “TIM PRESS” S.A. from Timișoara, and is listed under item 11 of the annex to this ordinance.

The fact that Article 3 of the ordinance (mistakenly numbered as Article 2) provides that “The transfer of the property right on the real estate provided under Article 1 shall be accomplished on the date of concluding the delivery-receipt protocols between the present holders of the real estate and the determined successors, with explicit mention of the rights of the present holders”, which

may also suggest potential compensation, is not such as to modify the conclusion reached, about the unconstitutionality of the urgency ordinance on the restitution of the aforesaid real estate, this because, subject to Article 41 paragraph (3) of the Constitution "No one may be expropriated unless for cause of public utility, established according to the law, with just and prior compensation". These constitutional requirements have not been met with in this case since, on the one hand, the conditions and the procedure provided by Law No.33/1994 on expropriation for a cause of public utility were not fulfilled and, on the other hand, the pay compensation, on the assumption that it has been the intention of the issuer of the urgency ordinance to pay such, and that such have been accepted by the present holder of the real estate, had not been granted in advance, as prescribed by Article 41 paragraph (3) of the Constitution.

It becomes evident, under the existing circumstances, that the Government has a possibility to identify a constitutional solution for the transfer of the property right of the trading company, now the current holder of the aforesaid real estate, over to the State, thereafter to dispose, as a lawful owner, on the restitution of the real estate to the former owner, from whose possession the respective asset had been abusively taken by the communist State.

3. As regards the third reason of unconstitutionality invoked by the author of the objection, in the sense that the urgency ordinance criticised "has trespassed against the judicial authority as enshrined by Chapter VI, Section 1 of the Constitution", in that the "Government annulled the effects of a court decision" that has irrevocably established the inexistence of a succession in rights between the Trading Company "Casa Maghiară" S.A. and the former Company "Casa Maghiară", the Court finds that this piece of criticism is patently unfounded. From the examination of the Government Urgency Ordinance No. 13/1998, including annex, it does not result that the real estate would be intended for restitution to the trading company "Casa Maghiară" S.A. from Timișoara. As mentioned above, under item 11 of the annex to the ordinance, in the column indicating the claimant of the real estate, mention is made of the Hungarian community in Romania, and not the trading company „Casa Maghiară” S.A., a legal entity and one of the litigant parties in the File settled by the civil Decision No. 480/1998 of the Alba Iulia Court of Appeal.

Under these circumstances, the express appeal to the Government Urgency Ordinance No. 13/1998 to be the grounds in support of a motion for setting-aside the civil Decision No. 480/1998 rendered by the Alba Iulia Court of Appeal, is not such as to confirm any interference of the executive, into the judicial authority.

For the reasons set forth herein, on the grounds of Article 41 paragraphs (1) and (2), of Article 135 paragraph (6), of Article 144 letter c) and Article 145 paragraph (2) of the Constitution, as well as of Article 13 paragraph (1) letter A) c), Article 23 and Article 25 paragraph (1) of the Law No. 47/1992, by a majority vote,

THE COURT  
In the name of the law  
DECIDES:

Admits, in part, the objection of unconstitutionality of the provisions of the Government Urgency Ordinance No.13/1998 on the restitution of certain real estates owned by the communities of citizens belonging to the national minorities in Romania, objection raised by S.C. "TIM PRESS" S.A. from Timișoara in the File No. 2185/1998 of the Alba Iulia Court of Appeal – the Civil Division.

Finds that the provisions of the Government Urgency Ordinance No. 13/1998 are unconstitutional in what concerns the restitution to the Hungarian community in Romania, of the real estate located in Timisoara, 8, Revoluției 1989 Blvd., owned by the Trading Company "TIM PRESS" S.A. from Timișoara and provided under item 11 of the annex that is part of the ordinance.

Final and binding.

The decision will be forwarded to both Chambers of Parliament and to the Government.

Delivered in public session on December 20<sup>th</sup>, 1999.