Cuvânt la reuniunea Comitetului pentru Proprietate Privată

La data de 27 ianuarie 2001, am participat, la New York, la reuniunea Comitetului pentru Proprietate Privată, organizatie a proprietarilor deposedati abuziv de statul român, afiliată la Uniunea Internațională a Proprietarilor (reprezentata la reuniune de secretarul general Stratos Paradias). Textul alocutiunii tinuta cu acea ocazie, in romana si engleza, este prezentat mai jos.

Doamnelor si domnilor,
Domnule secretar Stratos Paradias,

Se stie deja, in urma cu putine zile, noile autoritati de la Bucuresti, rezultate din alegerile de la sfarsitul anului trecut, au adoptat o noua lege presupusa a rezolva problema bunurilor confiscate de la cetatenii proprii de catre statul roman comunist. Sunt sigur ca cei mai multi dintre dumneavoastra, direct interesati de tema despre care discutam, stiti deja pe dinafara textul legii. In tara, fortele politice care au votat legea se afla intr-o ofensiva mediatica sustinuta prin care se straduiesc sa convinga ca legea a rezolvat definitiv si deplin echitabil chestiunea proprietatilor confiscate abuziv. Votul final – din Camera Deputatilor, asupra raportului de mediere – a fost de 222 de voturi pentru si 73 impotriva. Alaturi de partidul lui Ion Illiescu, care detine aproape jumatate din locurile din Parlament, au votat si trei din cele patru partide din opozitie – PNL, PD si UDMR. Voturile impotriva au apartinut partidului condus de Corneliu-Vadim Tudor, argumentele tinand de propensiunea populista si impotriva proprietatii private a PRM.

In opinia mea, legea despre care vorbim este departe de a fi rezolvat echitabil chestiunea proprietatilor confiscate in perioada comunista. Nu este aici locul potrivit pentru o analiza exhaustiva a legii. Dealfel, oricat ar fi de aprofundata si de specializata, o asemenea analiza nu ar putea sa fie la fel de elocventa cum se va dovedi nu peste mult timp aplicarea insasi a acestei legi. Pronosticul meu este ca proprietarii vor avea si in continuare grave dificultati in a-si recapata drepturile de care au fost deposedati in mod samavolnic. Ceea ce nu inseamna catusi de putin ca sunt de parere ca ar fi bine ca ei sa renunte la lupta lor.

Ma voi opri foarte pe scurt la cateva din argumentele care ma fac sa nu fiu optimist in privinta noii legi. Mai intai, eu cred ca ea valideaza ceea ce s-a facut rau, dupa 1990, in principal prin Legea nr 112/1995, in materia imobilelor cu destinatia de locuinte. Prin Legea 112 s-a stabilit - cu destul cinism, in opinia mea - ca proprietarii isi pot redobandi casele in doua ipoteze (ambele la fel de absurde prin imposibilitatea lor practica): la data legii respectivele apartamente sa fi fost libere sau proprietarii sa fi locuit in ele. In plus, Legea a stabilit ca chiriasii care ocupa locuinte “nationalizate” le pot cumpara, ceea ce, evident, s-a si intamplat. Surse oficiale de ultima ora indica faptul ca din cele circa 115.000 de asemenea imobile au fost cumparate de fostii chiriasi, pe baza nedreptei Legi 112, mai bine de 90.000. Dupa 1996, pe intreg timpul administratiei fortelor politice autointitulate de dreapta (si anticomuniste) – forte politice sustinute neconditionat si pana la capat de societatea civila, inclusiv de catre A.C. si A.F.D.P.R. - Legea 112 a ramas in vigoare si a continuat sa produca efectele de care am amintit. Lucrul acesta s-a intamplat chiar si impotriva Rezolutiei 1123/1997 a Adunarii Parlamentare a Consiliului Europei, care cerea autoritatilor romanesti ca in materia bunurilor confiscate si expropriate sa procedeze la restituirea *in integrum* a lor iar acolo unde lucrul acesta nu mai era posibil sa asigure o despagubire echitabila. Foarte semnificative sunt si datele pe care organizatorii intalnirii de astazi le-au dat publicitatii recent: in ultimii patru ani au intrat in posesia proprietatii revendicate un numar de 16 proprietari din 2.046 de cazuri inregistrate la Comitetul pentru Proprietate Privata.

Legea adoptata de PDSR si aliatii lui de astazi nu rezolva nici ea problemele, ci pur si simplu valideaza, repet, ceea ce s-a facut rau prin Legea 112. Cele 90.000 de chiriasi care au cumparat, la preturi derizorii cel mai adesea, casele proprietarilor deposedati abuziv de bunurile lor raman proprietari. In legatura cu acest aspect, trebuie spus ca explicatiile a ceea ce s-a intamplat tin intr-o masura mult mai mica de cat se crede in general de ideologia fortelor politice implicate. Atunci cand, de exemplu, parlamentarii unui partid intitulat liberal voteaza impotriva proprietatii private alaturi de cei care pretind ca reprezinta stanga politica, explicatiile trebuie cautate in mod

obligatoriu si in alta parte. Felul in care elita politica de dupa 1989 a fost implicata in bine-cunoscutele abuzuri locative - in dosarul “Apartamentul” au fost constatate peste 200 de cazuri in care “s-au produs ilegalitati” de catre inalti demnitari publici – explica chiar si numai partial cele intamplate. Cazurile multora dintre inaltii demnitari apartinand actualei dar si precedentei administratii dovedesc ca in chestiunea dreptului de proprietate privata conduita lor a fost dictata si de interesele lor materiale cele mai directe. Daca noua lege privind bunurile confiscate si expropriate si-ar fi propus cu adevarat sa rezolve problema si sa indrepte ceea ce s-a facut rau, inclusiv prin Legea 112, atunci eu cred ca solutia ar fi fost aceea ca proprietarii de drept care voiau sa-si recapete “in natura” locuintele sa si le poata recapata iar chiriasilor “proprietari” sa le fie restituit pretul platit la cumparare. Dar, este evident, altele au fost dorinta si interesele majoritatii politicienilor romani. Cat despre clauza “bunei credinte”, prevazuta de lege, a cumparatorului de case nationalizate, realitatea viitoare ne va confirma, nu va exista un singur caz in care un asemenea cumparator sa fie dovedit ca nu a fost de “buna credinta”.

In alta ordine de idei, intarzierea cu care a fost adoptata legea face foarte dificile masurile reparatorii in cazurile de nationalizare de catre statul comunist a intreprinderilor industriale, bancare, miniere, de transporturi etc. Un deceniu, de dupa revolutie, de nelegalitati, incorectitudine si lipsa de diligenta in administrarea si privatizarea proprietatii publice a diminuat substantial valoarea economica a intreprinderilor din care proprietarii sunt presupusi a recupera astazi ceea ce le-a fost confiscat in mod abuziv. La fel stau lucrurile si cu privire la principalele masuri reparatorii prin echivalent, stabilite si ele cu destul cinism - acordarea de actiuni la societatile comerciale si titluri de valoare folosite in procesul de privatizare.

In sfarsit, ca sa ma opresc aici cu exemplele, nu poate fi inteles nici de ce in cazul imobilelor ocupate de unitati bugetare, scoli, spitale, partide, proprietarii nu-si pot recupera in natura imobilele. Cand spun asta nu cred ca mai departe solutia era ca de a doua zi proprietarii sa evacueze copiii din scoli si bolnavii din spitale, insa trebuia gandita o modalitate - functionala pentru interesul public si in respectul dreptului de proprietate - in care imobilele respective sa fie restituite proprietarilor iar acestia sa le atribuie in folosinta unitatilor in cauza; de fapt, normal ar fi fost ca lucrul acesta sa se intample numai in cazul unitatilor de utilitatea publica a spitalelor si scolilor si nu al oricaror “unitati bugetare”. Introducerea partidelor in enumerarea amintita este explicata se pare de repetatele informatii aparute in presa potrivit carora sediile principalelor partide se afla in imobile nationalizate. Aici ar mai fi de observat si ca potrivit noii legi, proprietarii nu-si pot recapata aceste imobile, in natura, insa ele pot fi vandute, *nota bene*, inclusiv altcuiva decat celor care le au in prezent in folosinta.

Si totusi, intrebarea principala este aceasta: ce pot sa faca proprietarii si organizatiile lor intr-o asemenea situatie? Personal cred ca revendicarile in justitie trebuie sa continue. In fata instantelor de judecata poate fi adusa in discutie inclusiv neconstitutionalitatea noii legi. In legatura cu dispozitiile constitutionale as vrea sa fac o scurta paranteza. De-a lungul ultimilor ani, in Romania a fost inventata de catre cei interesati o falsa problema (raspandita cu candoare de cei neatenti), anume ca pentru a putea fi rezolvata chestiunea proprietatii, este nevoie ca mai intai sa fie modificata Constitutia, care ar ocroti doar si nu ar si garanta acest tip de proprietate. Numai ca - am spus lucrul acesta si la Congresul din septembrie trecut de la Bucuresti - in cuprinsul articolului referitor la proprietatea privata si intitulat “Protectia proprietatii private”, se vorbeste in termeni lipsiti de orice echivoc despre garantarea proprietatii: citez – “Dreptul de proprietate, precum si creantele asupra statului, sunt garantate”. Multi dintre cei prezenti aici, deposedati in mod abuziv de catre statul comunist de proprietatile lor, au fost purtati pe drumuri de autoritatile si instantele romanesti timp de zece ani cu toate pretextele posibile din lume. Nu exista insa nici un caz – iar daca exista rog sa fiu corectat - in care sa se fi raspuns: “Nu va restituim proprietatea la care aveti dreptul pentru ca Constitutia nu ne permite, intrucat ea ocroteste doar si nu se si garanteaza proprietatea privata”. In plus, daca am avea timp de pierdut si chiar am vrea sa intram in logica inventatorilor de false probleme, ar trebui sa ajungem la concluzia ca nu doar Constitutia Romaniei trebuie modificata, dar si Primul protocol al Conventiei europene a drepturilor omului (CEDO), al carei prim articol este intitulat si el, la fel, “Protectia

proprietatii" si nu "Garantarea proprietatii". Revenind insa, cred ca textul legii trebuie contestat pentru dezacordul sau evident cu principiile constitutionale privind protectia proprietatii private. In plus, in opinia mea, proprietarii justitiabili sunt legitimi sa invoce in interesul lor dispozitiile art 20 din Constitutia Romaniei potrivit carora: "Daca exista neconcordante intre pactele si tratatele privitoare la drepturile fundamentale ale omului, la care Romania este parte, si legile interne, au prioritate reglementarile internationale". Or legea despre care vorbim este practic de la un capat la celalalt plina de "neconcordante" cu Primul protocol aditional la CEDO – ratificat de Romania la 20.06.1994 - articolul 1 ("Protectia proprietatii"): "Nimeni nu poate fi lipsit de proprietatea sa decat pentru cauza de utilitate publica si in conditiile prevazute de lege si de principiile generale ale dreptului international". Proprietarii au in opinia mea datoria de a mai prezuma inca o data, chiar si in acest al treisprezecelea ceas, buna credinta a autoritatilor din tara lor. In consecinta, ei au de urmat toate caile legale – administrative si judiciare – prevazute de legea romana. Iar in cazul in care se va dovedi inca o data ca dreptul de proprietate este in Romania un simplu enunt constitutional, pe care politicienii il trateaza in orice alt mod posibil si nu asa cum ar trebui tratat intr-un stat de drept - intemeiat pe respectul fata de valorile drepturilor si libertatilor cetatenesti fundamentale - proprietarii au intreaga legitimitate, nu doar legala dar si morala, de a se plange institutiilor internationale de comportamentul statului roman.

Conventia Europeana a Drepturilor Omului, Primul protocol aditional al acesteia, reprezinta un instrument eficace la dispozitia proprietarilor care nu si-au recapatat drepturile nici dupa epuizarea cailor de recurs prevazute de legea romana. Primul protocol aditional si Rezolutia 1123/1997 a Adunarii Parlamentare a Consiliului Europei reprezinta doua intemeieri cat se poate de solide pentru fiecare din proprietarii nevoiti sa se planga Curtii de la Strasbourg. In plus de aceasta, cred ca organizatiile proprietarilor vor trebui sa aiba in vedere si alte tipuri de demersuri pentru a determina statul roman la o atitudine conforma depotriva cu Constitutia proprie si cu obligatiile pe care si le-a asumat si si le asuma ca membru ori ca "aspirant" la calitatea de membru al unor organizatii internationale. Repet, Romania nu a facut – din pacate nu doar in privinta dreptului de proprietate - ceea ce avea obligatia sa faca pentru aducerea la indeplinire a Rezolutiei 1123. Anticipandu-se parca aceasta situatie, atunci cand a adoptat aceasta Rezolutie, APCE a avut in vedere redeschiderea procedurilor de monitorizare fata de Romania daca conditiile prevazute in Rezolutie nu vor fi satisfacute de statul roman. Organizatiile proprietarilor vor putea deci sa aiba in vedere inclusiv normele si mecanismele instituite prin Rezolutia 1031/1994 (cu privire la obligatia statelor membre de a-si respecta obligatiile conform Statutului Consiliului Europei, CEDO si a celorlalte conventii la care sunt parte) si Rezolutia 1115/1997 (cu privire la procedurile de monitorizare a statelor membre si de constituire a Comisiei pentru onorarea obligatiilor si angajamentelor de catre statele membre ale CE – Comisia de monitorizare).

Sunt desigur suficiente date care ne arata ca in ultimul deceniu oamenii politici de la Bucuresti au tratat nu o data inadecvat obligatiile asumate de statul roman prin tratatele si intelegerile facute cu organizatiile comunitatii internationale. Nu avem motive sa credem ca in perioada urmatoare comportamentul lor va cunoaste vreun salt spectaculos. Cu toate acestea, calendarul tot mai strans al discutiilor cu Uniunea Europeana si cu NATO sugereaza faptul ca tara noastra este tot mai aproape de momentul adevarului, in care optiunea pentru anumite valori si pentru integrarea in comunitatea democratiilor prospere nu va mai putea fi verificata altfel decat prin comportamente si decizii foarte concrete. Cine sustine ca Romania va putea intra in UE si in NATO cu restante majore la capitolul respectarii drepturilor si libertatilor fundamentale (eventual si monitorizata pentru aceasta) nu poate fi decat ori de rea credinta ori foarte de naiv. Tot ceea ce putem spera este ca aceia de care depinde destinul Romaniei sa nu apartina, totusi, nici unei categorii, nici celeilalte.

New York, 27 ianuarie 2001

Ladies and gentlemen
Mr. Secretary General Stratos Paradias

It is well known that several days ago, the newly elected Romanian Parliament has adopted a law supposedly aimed at solving old abuses perpetuated by the communist state against some of its own citizens. Many of you have already memorized this new law, by now. In Romania the politicians that imposed this law on its citizens, are busy in a media campaign to communicate that this law will redress old abuses in an equitable and final manner. The final vote on the meditation report, in the Chamber of Deputies, was 222 votes for and 73 against. The Liberal Party (PNL), the Democratic Party (PD) and the Democratic Union of Hungarians from Romania (UDMR) have voted with the party that holds almost half of the seats in the Romanian Parliament (PDSR). The votes against were casted by the party of Corneliu – Vadim Tudor, his arguments being against the restitution of any confiscated property.

In my opinion, this law is far from being able to provide an equitable solution to the nationalized and confiscated property problem. We do not have the time for an exhaustive analysis. Regardless of the results of our study, the results will be obvious in a short while of application of this law. My guess is that the rightful owner will have just as many or more major difficulties in their effort to recover what was taken in an abusive manner. This does not mean at all, suggesting giving up this effort. I will stop succinctly at few arguments that make me believe that the one can not be optimistic regarding this law. First of all I believe that this law validates all that was done wrong after 1990, mainly under the law 112/1995 concerning the buildings used as housing. Law 112/1995 established –cynically enough in my opinion – that the rightful owner can claim his property if the owner was the occupant of his confiscated house or the property was vacant at the date the law was issued.

Moreover, the law established that the tenants of “nationalized” housing could purchase them and this obviously happened. Officially, from approximately 115,000 of such buildings that fell under the jurisdiction of law 122/1995, more than 90,000 were sold, many even in violation of the provision of this law. After 1996, during the administration of the so-called center-right (anticommunist) coalition that came into power as of result of support given by the civil society and even organizations such the Civic Alliance (AC) and the Association of Former Political Prisoners (AFDPR), law 112 was applied with zeal.

This occurred, contrary to resolution 1123/1997 of the parliamentary Assembly of the council of Europe that demanded restitution in integrum for the confiscated properties and a just compensation for the properties that were impossible to returned. Of important significance, is the information released by the Romanian American Committee for Private property that shows that only 19 properties were returned to the rightful owner in the last 4 years, from 2,046 cases registered.

The law just adopted by PDSR and its allies validates the wrongs done through law 112/1995. The over 90,000 tenants that “purchased” nationalized properties at prices indicating that property is stolen, will continue to hold these goods. When a political party that calls itself liberal votes against the principles of private property, being on the same side with the party that is well known as a left wing party, one must look for an explanation, somewhere. The political elite after 1989 is the main beneficiary in a long chain of events that led to the well-known abuses illustrated and documented in the file called “The Apartment”. More than 200 high-ranking officials grabbed some of the best “available” villas, houses and apartments, many of them committing illegalities. Politicians belonging to all political parties together with their clientele applied the same methods and procedures to benefit materially from this vacuum of legality. If this last law intended to correct the abuses of the past, the first measure taken would have been to reimburse to “purchaser” its ridiculously low price, plus interest, to reinstate the rightful owner and provide loans and other state subsidies to help tenants become home owners. Instead, the notion of “well intended buyer” has been introduced to perpetuate the illegal possession of confiscated

properties by tenants. It is easy to predict that the justice will not find even a single "ill intended buyer" and the higher in rank the new owner, the higher the chance that he or she was "well intended".

The deliberate delay in coming up with the law makes it very difficult to calculate proper compensation for other nationalized goods as industrial or commercial companies, banks, insurance companies, etc. More than 10 years after the revolution, after years of neglect, illegalities, abuses and selective privatization the true value of any company has been drastically reduced, many of them being in danger of bankruptcy. One of the methods of compensation prescribed by this law is a share in such companies. Privatized or not, most of them will not be around in few years, while our houses will stand up under "new ownership". It is hard to explain why buildings housing political parties, schools, hospitals, and other entities financed by state could not be returned to the rightful owner. A grace period could have been established and agreed upon, until the tenant found another rental property. During this period the state should have been paying rent. Just naming the political parties between the beneficiaries of this new law shows that most of them are housed in buildings that were nationalized or confiscated. Moreover, in many instances the rightful owner can not and will not receive his or her property back, but the property can be sold theoretically to anyone except the rightful owner.

Can we call this a restitution law? The main question is what can the rightful owner do under the present circumstances? Personally I believe that the challenge of state ownership must continue through the courts system. The constitutionality of this law must be challenged. During the past several years a false problem has been discussed, namely that the Constitution should be amended to guarantee the private property and not just protect it. As I mentioned during the September Owner Congress in Bucharest the article referring to the "protection of private property" in the Constitution states: "The right to property, as well as the state obligations are guaranteed". This need to amend or change the constitution in order to regain the nationalized property is a false requirement, created to confuse the issue. No one can say that the nationalized or confiscated property can not be returned because the Constitution just protects the private property not guarantee it. The first article of the European Convention for Human Rights (ECHR) is called "Protection of Property" not "Guarantee of Property"

I believe that the text of the law must be contested for its lack of conformance with the Constitution, regarding the rights related to the private property. Furthermore, I suggest that the rightful owners may invoke or refer to the Article 20 of the Romanian Constitution. It states: "If there are discrepancies between the pacts or treaties regarding the fundamental human rights, of which Romania is a part of, and the internal laws, the international regulations have priority". The law that makes the subject of today's meeting is contrary to the international regulations from one end to the other. The first additional Protocol of ECHR ratified by Romania on June 20, 1994 states: "No one's property can be taken except for public utility needs, under the conditions established by law and general principles of international law". Rightful owners, in my opinion, should question, even at this late moment, the good intentions of the Romania authorities. In Romania you have exhausted all the legal avenues where the right to property is just a simple Constitutional statement, manipulated by the politicians and the legal system, at their will. Under these circumstances you are entitled to, and you have the legitimacy and the moral obligation to address the international organizations based on the lack of respect by the Romanian State, regarding the elementary rights and freedoms of the individual.

The European Convention of Human Rights through the first additional protocol represents an effective tool that may be used by the property owner that could not recover his/her property in Romania. The first additional protocol and Resolution 1123/1997 of the Parliamentary Assembly of the Council of Europe represent two solid pillars in the arguments favoring the return of illegality confiscated property, at the European Court in Strasbourg. Other avenues available to the property owner associations are, challenging the application and enforcement of the

Romanian Constitution and obligations the state has, in front of international organizations at which Romania aspire to become a member.

Your organizations should consider the mechanism available under Resolution 1123 for reintroduction of monitoring of Romania if the fundamental rights continue to be ignored. Another possible approach is to invoke the norms and mechanism established through Resolution 1031/1994 (regarding the obligations of the member states as prescribed by the Council of Europe Statute, Council of Europe Human Rights Statute and other conventions. Romania is part of and Resolution 1115/1997 (regarding procedures for monitoring member states and establishing the commission observing the honoring of Council of Europe member states – Monitoring Commission).

Of course, there is enough evidence that in the last 10 years the politicians from Bucharest did not fulfil the obligations assumed by the Romanian State under various international treaties and conventions. There is no reason to believe that in the near future we will witness spectacular changes. But, due to the more frequent and intensified talks with the European Union and NATO, it is suggested that Romania is approaching the moment of truth. Now is the time to opt for the western values, for the European integration and prosperity and this must be done with more than promises. Romania could be admitted in the European Union and NATO only after serious steps will be taken to implement what was promised until now.

New York, January 27, 2001