

LAND OWNERSHIP BETWEEN RESTITUTION AND SYSTEMATIC CADASTRE: FROM LAW TO UNLAWFULNESS AND LEGALITY

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ABSTRACT. – **Land Ownership Between Restitution and Systematic Cadastre: From Law to Unlawfulness and Legality.** The study examines the process of restitution and reconstitution of land ownership rights in post-communist Romania, analysing how the land fund legislation and cadastral regulations adopted between 1991 and 2005 produced a cumulative system of conflicts, errors, and unlawfulness. Based on a documentary and analytical methodology, the research identifies normative ambiguities (such as “as a rule, on the former location”), the duality between reconstitution and the constitution of property rights, the lack of cadastral records, uneven administrative implementation, and permissive technical norms as structural factors that produced double PTs, overlapping plots, and discretionary decisions. Applying the principle of cumulative effect, the study shows that the initial dysfunctions amplified over time and were later validated through the instruments of cadastre and land registration, generating an “apparent legality”. The research proposes an explanatory model composed of three mechanisms - the law, unlawfulness, and apparent legality - which provides an integrated interpretation of land-related conflicts and enhances the understanding of the difficulties encountered in implementing the systematic cadastre.

Keywords: *land ownership, restitution, land book, cadastre, land registration.*

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1. INTRODUCTION

The process of restitution and reconstitution of land ownership rights in post-communist Romania represents one of the most extensive and complex legal and administrative transformations of Romanian society.

The restitution of property rights to former owners whose property had been abusively taken by the communist regime installed after 1945 was both an act of historical reparation and a test of legitimacy for the new political regime, which, through this measure, affirmed its orientation toward the rule of law, the market economy, and the protection of private property.

In the context of immense social pressure to redress the abuses generated by the collectivization of land ownership, Law No. 18/1991 was adopted, establishing the legal framework for the restitution of property rights over agricultural and forest land to former owners and their heirs.

At the same time, the law also instituted a mechanism for the constitution of property rights for persons who had no prior rights but were deemed entitled to a form of moral compensation or to measures justified by considerations of social equity.

Law No. 18/1991, in its attempt to create a balance between justice and social equity, set out a series of limitations and prohibitions intended to prevent the “reconstitution” of large land estates and to maintain social stability in rural areas.

Shortcomings in the application of the law, generated by divergent interpretations and non-uniform practices, heightened tensions between former owners and state institutions, which made it necessary to amend the legislation through the adoption of Law No. 169/1997, intended to correct the dysfunctions and unlawfulness that had emerged in the restitution process.

In this context, in 1996 Law No. 7 on cadastre and land registration was adopted, establishing the framework and procedures through which the right conferred by the property title (PT) had to be correlated with its physical location, within a single registry – the land book.

Despite all subsequent amendments and adaptations, including the regulations in the field of cadastre, the implementation of the legislation continued to be marked by ambiguities, arbitrariness, and instances of unlawfulness on the part of the authorities vested with decision-making powers.

In this context, and amid growing social pressure generated by market interests and real estate speculation involving land, the need to complete the legislative framework emerged in the early 2000s.

The new regulation sought to restore property in its historical right by removing the limitations and prohibitions that had remained from the initial stage of the land reform, in the spirit of the principle of *restitutio in integrum*.

After nearly a decade of land reform, Law No. 1/2000 was adopted, bringing a genuine paradigm shift to the process of land restitution by replacing socially oriented compensation with full restitution in kind.

In practice, however, the implementation of the law encountered two major structural problems: 1) the lack of cadastral plans containing the boundaries of the former locations; 2) the overlap between rights already constituted under Law No. 18/1991 and the rights subsequently reconstituted.

During the same period, technical norms were issued regulating the registration and recording of land ownership in the cadastre and land book system.

These regulations, drafted in an attempt to respond to market pressure for secure real estate transactions, introduced simplifications to the technical principles of land measurement, which generated additional problems concerning the accuracy of the land reform.

After 2005, the laws adopted in the field of property restitution no longer played a major role in the restitution process itself, but rather aimed to complete and bring it to a close.

Law No. 247/2005 regulated compensation for rights that could no longer be restituted in kind, while Laws No. 165/2013 and No. 231/2018 unified the framework of reparatory measures and established the administrative mechanisms necessary for their implementation.

More than three decades after the onset of the land reform, the restitution of property has not yet been completed, even though in the meantime the general cadastre has been introduced and is being carried out systematically.

Even in areas where cadastral works have been completed, a provisional period of three years is prescribed at the level of cadastral sectors or administrative-territorial units, pending the validation of property rights.

The purpose of this paper is to identify the main legal, procedural, and economic causes that have led to errors, unlawfulness, and irregularities in the process of land restitution, and to show, through the lens of the normative framework and administrative practice, the mechanisms through which the process of restitution has deviated from law to "legality."

The hypotheses on which the study is based are: legislative incoherence, the lack of a unified system of cadastral records, non-uniform administrative practice, and speculative economic interest.

2. MATERIALS AND METHODS

2.1. Sources and limits of the research

The sources underpinning the research include the land fund and cadastre legislation from the period 1991–2005 (Law No. 18/1991, Law No. 7/1996, Law No. 169/1997, Law No. 54/1998, and Law No. 1/2000, together with the NOCGC instructions and technical norms of 2000–2001), supplemented by relevant institutional reports (the Ombudsman, RAS) and by specialized scientific studies.

The legislative developments after 2005, although significant for the administrative closure of the restitution process, did not alter the causal structure of the conflicts generated in the earlier stage.

2.2. Identifying the causes of land conflicts

The research is based on a qualitative, documentary–analytical methodology aimed at identifying the causes that generated land conflicts in the process of reconstituting property rights after 1991.

The analysis is explanatory and reconstructive in nature, being grounded in Gunnar Myrdal's principle of the cumulative effect. The cumulative effect is a self-reproducing process which, once set in motion, does not fade through attrition but perpetuates itself, because each normative or administrative stage takes over and validates the errors of the preceding stages.

Cumulative processes cease only through a structural intervention, such as the introduction of cadastre in a systematic manner.

This principle provides a coherent framework for interpreting complex processes in which an initial cause triggers a sequence of interdependent processes whose partial effects add up, intensify, and may, over time, lead to a qualitative and irreversible transformation of the system.

The choice of the cumulative effect principle as the methodological foundation is justified by the nature of the property restitution process, carried out over long periods, through successive acts, and in the absence of effective corrective feedback.

This perspective enables the identification of the deeper causes and amplification mechanisms of conflicts, explaining why the initial dysfunctions multiplied and diversified over time instead of being corrected.

The determination of the causes of the conflicts generated by the process of reconstituting land ownership was conducted through an analytical, documentation-based process structured in four stages.

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1) *Identifying the purpose of each law* - this consisted of content analysis of the legislation. For each law, a documentary synthesis was prepared with the aim of identifying the dominant legislative intent: the reconstitution of former property rights and the creation of new ones (1991); correction, extension, and technical-legal unification (1996–1997); liberalization and full restitution (1998–2000); including the evolution of cadastral regulations (table 1).

2) *Identifying the limitations and contradictions specific to each law* - this involved examining the ambiguity of certain provisions in the land fund legislation, the weak correlation between land fund legislation and the legislation on cadastre and land registration, as well as the collision between possession and ownership or between the regime of private and public property (table 1).

Table 1. Purpose, limitations, and contradictions of the land fund legislation

Phase and legislation	Purpose	Limitations and Contradictions
Phase I Law No. 18/1991	RECONSTITUTION AND CONSTITUTION OF PROPERTY RIGHTS Partial restitution / reconstitution of property rights of agricultural and forest land to former owners. Restitution / reconstitution of property rights limited to 10 ha of agricultural land and 1 ha of forest land. Constitution of property rights. Supporting documents: the agricultural register and CAP records. Equivalence of location.	The phrase “as a rule, on the former location”. Lack of parcel plans and a unified cadastre. Lack of precise boundaries delimitations of the locations. Confusion between the constitution and the reconstitution of property rights.
Phase II Law No. 7/1996, Law No. 169/1997	CADASTRE AND LAND REGISTRATION A unified system of cadastral records and land book. Unification of agricultural registration and cadastral records. CORRECTION AND EXTENSION - RECONSTITUTION OF PROPERTY RIGHTS Extension of reconstitution rights beyond the initial limits. Correction of inequities through the revision of older PTs.	Lack of general cadastre. Discrepancies between the agricultural register and the land book. Limited interest in land registration. Lack of available land. A system of records that was predominantly agricultural rather than cadastral. Unclear procedures for the “revision” of previous PTs. Limited institutional capacity for land registration.
Phase III Law No. 1/2000	RESTITUTIO IN INTEGRUM Priority given to restitution in kind. Extension of restitution to forest land beyond the initial limits.	Reconstitution of property rights primarily on the original site. Imbalance between the public and private interests. Non-systematic general cadastre.

Instructions/ NOCGC Technical Norms 2000/2001	Reconstitution of property rights carried out on land owned by the state. Supporting documents: land book.	Confusion between agricultural land and forest land.
	Introduction of compensation mechanisms.	Lack of correlation between the data of Romsilva, the State Domains Agency, and local commissions.
	FACILITATING LAND REGISTRATION	Topographic surveys carried out without a national reference system (Stereo 70).
	Non-definitive land book. Provisional cadastral number. Complementary local reference system.	

Source: the authors

3) *Identification of conflicts and incidents*, a stage in which, based on the bibliography, the conflicts and incidents arising in the process of applying the laws were collected and empirically classified.

The results were synthesized into an analytical inventory of conflicts and incidents, organized into thematic categories (table 2).

4) *Determining the causes of the conflicts and incidents*. Within the content analysis, three major categories of causes were identified and classified according to their dominant nature, as follows:

- Normative causes, deriving from the content of the laws - ambiguities of wording, contradictions between normative acts, or lack of correlation between successive legal regimes.

- Procedural causes reflecting dysfunctions in the implementation process: administrative errors, forgery, divergent interpretations, and limited judicial review procedures.

- Economic and market-related causes, determined by market pressure and speculative interests regarding land with high potential for capitalization.

In practice, each conflict/incident was associated with one or more causes depending on its complexity (table 2). The three types of causes follow a coherent evolution and amplify conflicts through the cumulative effect of imperfect norms, defective procedures, and economic and speculative interests.

Table 2. Inventory of Conflicts and Incidents. Legend: ■ – Normative cause, ● – Procedural cause, ▲ – Economic and market-related cause

Thematic Categories	Type of Incident, Conflict or Illegality	Causes
Double PTs and overlapping parcels	Duplicated PTs	■ ●
	Overlapping locations/parcels	■ ● ▲
	Reconstitution of property rights on occupied land	■ ● ▲
Wrong or illegal PTs	Erroneous drafting of PTs	●
	Issuance of PTs to persons without legal entitlement	▲ ●

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Thematic Categories	Type of Incident, Conflict or Illegality	Causes
Wrong locations and cadastral errors	Reconstitution of property rights on the basis of incomplete documentation	▲ ●
	Legally unfounded PTs	▲ ●
	Incorrect neighbours / boundary errors	●
	Lack of available land	■
	Equivalent locations	■ ▲
Alienations, assignments, and fraud	Different locations for possession and land book	■ ▲
	Assignment of reconstitution rights prior to the issuance of the property PT	▲
	Sales without PT / handwritten preliminary contracts	■ ▲
	Sales of PTs / handwritten contracts	■ ▲
	Circumventing the law through notarial acts	▲
Litigation, conflicts, and administrative blockages	False statements	▲
	Delays in placing owners in possession	▲ ●
	Failure to enforce court judgments	▲
	Unvalidated / incomplete applications	● ▲
	Non-uniform application of the law	■ ● ▲

Source: the authors

2.3. The mechanism of land conflict



Fig. 1. The generation and closure of the land conflict. *Source: the authors*

Approached through the lens of cumulative effects, the land conflict is understood as an evolutionary process in which each stage carries forward and amplifies the dysfunctions of the previous one.

Thus, the conflict is generated by ambiguities and inconsistencies in the legal norms, intensified by uneven administrative and judicial procedures, amplified by market pressure and economic interests, and ultimately closed through the legality conferred by systematic cadastre through land registration. The result is a new, unitary and secured model for proving land ownership - the integrated cadastre and land book (fig. 1).

3. RESULTS AND DISCUSSION

3.1 The main causes that generated the conflicts and incidents

1) *Normative ambiguity* – “as a rule, on the former location” - provided by Art. 13 of Law No. 18/1991 and Art. 2(1) of Law No. 1/2000.

This provision introduced a contradiction between the declared intention to restore property “on the former locations” and the conditions that relativize this rule. Law No. 18/1991 assigns an indicative value to the former location by adding the phrase “as a rule”, while Law No. 1/2000 conditions the application of restitution on the original site on the existence of available land.

The ambiguous wording allowed divergent interpretations: in some cases, the reconstitution of property rights took place on the original site, while in others it did not.

Therefore, the combination of unclear wording (“as a rule”) and the condition regarding the land status (“if it is available”) became the main source of conflicts concerning the restitution of property - both between former owners and the state, and among different beneficiaries of rights - leading to overlapping locations and the issuance of double PTs.

2) *Constitution of property rights* – the dual character of Law No. 18/1991

The addition of compensatory elements to the reparatory character of the law transformed it into a social instrument for the constitution of property rights.

Instead of re-establishing the legal order of property, the measure produced a redistribution of it, mixing rights reconstituted with those newly created by law.

In practice, land allocated through the constitution of property rights often overlapped with land claimed through reconstitution, generating conflicts between former owners and the beneficiaries of the newly created rights.

3) *Supporting documents for proving ownership – without proof hierarchy* (Art. 10 and 12 of Law No. 18/1991, corroborated with Art. 9(5) of Law No. 169/1997 and Art. 6 of Law No. 1/2000).

The documents and evidentiary means for reconstituting property rights included, from the outset, a wide range of documents maintained by all land fund laws, though prioritized differently.

No law expressly established a hierarchy of evidentiary weight among these documents, which enabled uneven interpretation and application.

Law No. 18/1991, Art. 10 explicitly states that “the area brought into the cooperative is the one resulting from the cooperative’s records...”. Consequently, the reconstitution of property rights was carried out on the basis of the agricultural registers and CAP records. In contrast, Art. 2(1) of Law No. 1/2000 stipulates that “the reconstitution of ownership shall be carried out on the former locations...”, implicitly establishing the land book as the primary evidentiary source.

4) *Restitutio in integrum* (Arts. 2, 3, 6, 8, 16, 24 of Law No. 1/2000).

The diversity of formulations contained in Law No. 1/2000 regarding the manner of reconstituting property rights (“on the former locations”, “in full”, “in kind”, “for the difference between the area previously owned and the 10 ha limit”) allowed local authorities to apply the law arbitrarily, adapting its interpretation to the situation of available land - including land belonging to the state - as well as to social pressure or local interests.

Art. 6(3) of Law No. 1/2000 explicitly provides that, in situations where a plot of land is claimed simultaneously by the former owner dispossessed abusively and by the person subsequently endowed with the same land, both applicants shall have the land restituted in kind.

5) *Exceptional use of the local reference system* (Art. 13.2.2 of the Technical Norms for the Introduction of the General Cadastre - NOCGC, 2001).

The technical norms provided that if the geodetic network points were located more than 3 km apart and the area was less than 10 ha, measurements could be carried out using a local system.

Consequently, topographic surveys were performed using local reference systems with arbitrary origins and orientations.

The site and boundary plans produced under these conditions were no longer mutually comparable, resulting in situations where two neighboring parcels were represented in different positions, generating gaps and overlaps between parcels.

Since the measurements were not systematically correlated at the level of the cadastral sector, the works executed in the local system relied on information provided by landowners regarding the position, orientation, and neighboring boundaries of the plot.

Therefore, the preference for a particular location was effectively secured through registration in the land book.

6) *Interpretation of the provision “as a rule, on the former location”*

In interpreting Law No. 18/1991, the former location was established with reference to the agricultural register and the parcel plan, whereas under Law No. 1/2000, it is determined by reference to cadastral records and the land book.

The wording “as a rule”, introduced by Law No. 18/1991 and later reiterated in Law No. 1/2000, transformed the exception into the rule, allowing local land commission authorities to apply the principle of reconstituting property rights in an arbitrary and interest-driven manner, relocating land to other areas and invoking the lack of available land or the impossibility of restitution.

The non-mandatory nature of these provisions led to unequal treatment of former owners, generating dissatisfaction, disputes regarding location, and significant differences in the economic value of the restituted land, as well as inconsistencies between the area recorded in documents and the area actually restored.

In practice, these interpretations created difficulties in land registration, in the civil circulation of land, and in the subsequent process of systematic cadastre.

7) *Limitation of judicial proceedings*

The limitation of judicial proceedings, established by Art. 11 of Law No. 18/1991, restricted the competence of the courts to the formal verification of compliance with the mandatory provisions of the law, without the possibility of re-examining substantive, technical or cadastral aspects of the restitution.

Consequently, the courts cannot order the actual reconstitution on the original site, the rectification of locations, or the correction of measurement errors; they may only oblige the land fund commissions to re-examine the case.

8) *Delaying and strategically postponing the restitution process*

Local commissions and officials unjustifiably postponed the settlement of applications. Thus, after months or even years of delay, invoking the lack of documents or cadastral verifications, local authorities indirectly prompted former owners to cede their rights to intermediaries who offered derisory amounts.

These intermediaries - often lawyers, valuers, or politically connected “consultants” - subsequently obtained approval for restitution within a short period and capitalized on the rights acquired (RAS, 2008).

Delays and strategic postponements in the process were not simply administrative dysfunctions but deliberate mechanisms through which cases were filtered by local clientelist networks, making access to property restitution depend more on local connections than on the right itself (RAS, 2008).

9) *Insufficiency of cadastral and land book records*

The lack of a cadastre meant that the restitution in kind was carried out in an arbitrary and discretionary manner; locations were determined more by approximation than by cartographic evidence or reliable cadastral delimitations (Gherheș et al, 2025; Grecea et al, 2013).

At the same time, the lack of coherent cadastral records constituted one of the fundamental preconditions for real estate speculation in Romania after 1990. In the absence of unified topographic data regarding property boundaries and locations, local administrations performed approximate restitutions, relying on old agricultural registers, geodesically uncorrelated sketches, or simple statements from the neighbors (Gherheș et al, 2025; Grecea et al, 2013; RAS, 2008).

This technical uncertainty allowed the deliberate issuance of double PTs, overlapping locations, and intentionally erroneous land allocations - either to block restitution or to create new opportunities for litigious transactions (Gherheș et al, 2025; Grecea et al, 2013; RAS, 2008).

In many cases, highly valued land was declared “occupied” and replaced with peripheral locations. Therefore, the lack of cadastre did not represent merely a technical shortcoming in the restitution process, but a facilitating factor of systemic real estate speculation.

10) *Discretionary exploitation of institutional information by commission members*

Privileged access to institutional information held by members of the local commissions or by institutions managing state-owned properties (for example, Romsilva) was frequently used for speculative purposes.

Members of these commissions, or affiliated persons, capitalized on confidential information regarding available locations, the status of files, or intentions to alienate property, steering procedures in favor of privileged beneficiaries (Gherheș et al, 2025; Grecea et al, 2013; RAS, 2008).

By controlling the decision-making circuit and access to cadastral data, these actors were able to anticipate or influence the allocation of land, obtaining direct or indirect material advantages.

The RAS report underscores that the restitution process was often distorted by local interests and clientelist networks that exploited privileged access to information for property accumulation and real estate profit (RAS, 2008).

11) *Judicial “authentication” of handwritten deeds of alienation*

The judicial practice of recognizing handwritten acts was fully exploited by the market. Thus, agreements, payment receipts, and promises of sale were concluded through which both land PTs and rights based on documents preceding the issuance of the PT were traded (RAS, 2008; Șăuca, 2019).

The phenomenon acquired considerable scale, and real estate speculators used this procedure to obtain, through court judgments, the validation and legalization of transactions initially concluded informally (Frîncu, 2019; RAS, 2008; Șăuca, 2019).

This practice resulted in PTs being issued or entered in the land book at preferential locations, chosen not according to the actual legal situation of the land, but according to the interests of those who controlled the information and the validation procedure.

3.2. Discussion

The results of the research confirm that the process of reconstituting land ownership in post-communist Romania evolved as a cumulative mechanism of generating, amplifying, and consolidating conflicts, determined by the interaction between normative ambiguity, non-uniform procedures, and economic pressure.

Thus, the combination of reconstituting property rights with the allocation of land to persons without prior rights did not rigorously distinguish between the historical right and the possession recorded in the agricultural registers.

The overlap between restitution and social compensation - structurally competing processes applied simultaneously to the same land fund - could lead to nothing other than conflict.

At the same time, the radical paradigm shift introduced by Law No. 1/2000 was not a remedial solution; on the contrary, it deepened the conflict in the field of land restitution.

The introduction of the *restitutio in integrum* principle had the effect of prioritizing restitution in kind, on the original site, over the property rights that had already been reconstituted under Law No. 18/1991.

Unrealistically, the law presumed the existence of cadastral records capable of identifying the former locations, whereas in reality such documents were absent across most of Romania.

The compromise solutions concerning cadastral records - such as non-definitive land books and the local reference system - undermined the purpose of the cadastre law and became instruments through which unlawfulness was granted an appearance of legality.

The analysis of the causes of land-related conflicts shows that, in the process of reconstituting property, three mechanisms operated simultaneously and complementarily:

1) *The law* - dominated by a moral intention but lacking the technical infrastructure, whereby restitution was carried out on the basis of incomplete documents and without cadastral support.

2) *Unlawfulness* - a mechanism that transformed restitution into a source of capitalization through abuses, illegalities, and errors.

3) *Apparent legality* - the result through which speculative restitutions were subsequently consolidated legally, through land registration and by introducing the land into civil circulation.

From this perspective, the results of the study are both complementary to and consistent with the existing literature, since the applied methodology, the cumulative analysis of cause - mechanism - outcome, does not contradict earlier contributions but reorganizes them into a unified explanatory framework.

This approach makes it possible to move beyond the descriptive level of incidents and reinterpret them as structural effects of the land reform.

The causal chain identified in the study - normative ambiguities, discretionary administrative practices, and the lack of a general cadastre - finds its direct counterpart in the analyses of Medeanu and Ioja (2005) and Gherheș et al. (2025), who document the errors and omissions that emerged in the application of Law No. 18/1991.

The overlap of restitution paradigms is supported by Herța (2014), who describes the restitution of forest property as a hybrid system resulting from the interference of socialist and liberal logics - an observation that reinforces this study's interpretation of the distorted continuity of the reform (Herța, 2014).

The thesis regarding the role of the early circulation of rights in transforming the abuse of confiscation into the abuse of restitution is confirmed by the contributions of Sauca (2019) and by the analysis conducted by Frâncu (2019), which show how pre-title documents were converted, through judicial authentication, into transfer instruments with definitive effects.

The finding that delays, refusals and administrative blockages represent structural mechanisms rather than mere deviations is supported by the RAS Report (2008) and by the Ombudsman (2022), both of which describe the same logic of institutional preservation of power over former owners.

Finally, the analysis concerning the persistence of the asymmetric relationship between the state and the owner is found in constitutional literature, which highlights the tension between the public interest and the individual right - a tension that is extended here from the normative sphere to the procedural and technical spheres (Ombudsman, 2022).

This shows that the reconstitution of property rights did not reverse the power relations but merely substituted the abuse of confiscation with the abuse of restitution: the same victims (the owners) and the same abuser (the state).

The results of the study are not only a critical analysis of the restitution process but also a practical tool for understanding the technical and legal issues encountered in the implementation of systematic cadastre. Concretely, the study provides a synthesis of the main causes of land conflicts and of the mechanisms through which they were produced.

4. CONCLUSIONS

The general conclusion of the study is that the process of reconstituting land ownership in Romania generated structural conflicts, caused by ambiguous laws and non-uniform application, over which economic and market interests were superimposed, all against the background of lacking cadastral records.

The research identifies three mechanisms - the law, unlawfulness, and apparent legality - which together form the coherent model of land-related conflicts and explain how the restitution process was transformed into a “post-factum legality” subsequently consolidated through systematic cadastre.

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