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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

LAW OF THE REPUBLIC OF ALBANIA
ON RESTITUTION AND COMPENSATION OF PROPERTY

AS OF 29.7.2004

LAW
No. 9235, dated 29.07.2004¹

ON RESTITUTION AND COMPENSATION OF PROPERTY

In reliance on articles 41, 78, 83 point 1 and 181 of the Constitution, upon the proposal of a group of deputies,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED:

CHAPTER I
GENERAL PROVISIONS

Article 1
Object of the Law

The object of this law is:

- a. the just regulation, according to the criteria of article 41 of the Constitution, of the issues of property rights that have arisen from expropriation, nationalisation or confiscation;
- b. restitution, and when according to this law restitution of property is not possible, compensation;
- c. the procedures for accomplishing restitution and compensation of property and the administrative bodies charged with its completion.

Article 2
Right to Property

Every expropriated subject enjoys the right to request the right of ownership, in compliance with this law, if the property was taken by the state according to legal acts, sub-legal acts, criminal court decisions or in any other unjust form since 29.11.1944, and the restitution or compensation of the property.

Article 3
Definitions

For the implementation of this law, the following terms have these meanings:

1. "Compensation" – means just remuneration, according to the market value of the property at the moment this remuneration is recognised, which is done in accordance with this law;
2. "Property" - means an immovable item as defined in the Civil Code;
3. "Expropriated subject" - means natural or juridical persons or their heirs whose property is nationalized, expropriated, confiscated or taken in any other unjust manner by the state;
4. "Alienation" - means the transfer of ownership or other real rights from one natural or juridical person to another as provided in the Civil Code;
5. "Building site" - means land that is located inside the border line of cities and inhabited zones at the moment this law enters into force. When the inhabited zone does not have a border line, the building site will be considered the surface area occupied by the construction built on it and the functional yard. The surface of this yard is calculated as three times the surface of the construction, but not more than 500 square meters.

¹ Published in Official Journal 61, dated 31.8.2004.

Article 4
Exclusions to this Law

Provisions of this law are not applicable:

- a. for property gained as result of implementation of Law nr.108, dated 29.08.1945 "On Agrarian Reform", with subsequent changes;
- b. for expropriations made against a just compensation and used for a public interest;
- c. for property donated to the state for which official documents exist.

Article 5
Movable Property

The restitution and compensation of movable property will be done with a separate law.

CHAPTER II
RECOGNITION OF THE RIGHT TO OWNERSHIP AND RESTITUTION
OF PROPERTY

Article 6
Recognition of the Right to Ownership and Restitution of Property

1. Ownership to property is recognized and immovable property is restituted without limitation to the expropriated subjects, except for agricultural land, which is restituted or compensated up to 60 ha and when it is defined differently in this law.
2. The expropriated subjects, whose property was flooded as a result of the construction of the hydro-power stations, are treated according to the provisions of this law, except for cases when they have benefited by the law "On expropriations in the public interest".
3. Expropriated subjects who have been compensated in accordance with the laws in force have the right to benefit from this law only for the part of property that has not been restituted or compensated.

Article 7
Property not Subject to Restitution

1. Immovable property is not restituted that serves a public interest and that:
 - a. is used to fulfill obligations of the Albanian state that are a result of treaties and conventions to which our state is a party;
 - b. has investments or is used for the realisation of projects on a territorial or local scale in the field of transportation of any kind, of energy, of telecommunications, of water works of any kind or other investments in the public interest set in accordance with the law "On expropriations in the public interest";
 - c. serves for the preservation of the environment, health, culture and public education or pre-school education;
 - ç. serves the national defense and that is non-transferable;
 - d. is special cultural and historical property as defined according to the legislation in force;
 - dh. is occupied according to the legal acts set forth in Annex 1 of this law, except for the cases when, according to these laws, the state is the owner and the immovable property does not serve the public interest.
2. In cases when it is proposed that immovable properties included in point 1 of this article be alienated, they pass to the expropriated subjects.
3. The properties defined in point 1 of this article are compensated according to the specifications set forth in this law.

Article 8 Building Sites

1. When a building site has been alienated to third parties and there are no permanent legal buildings on it, it is restituted to the expropriated subjects, whereas the state will return to the third parties the value of the purchase multiplied by the price increase index.
2. When on the building site of an expropriated subject, the state or third parties have made buildings or investments in conformity with legislation in force, they are valued according to the market value at the moment the right of ownership is recognized to the expropriated subject, and the following takes place when:
 - a. the value of the investment is up to 150% of the value of the building site, the property is restituted to the expropriated subject, after the latter pays for the investment made.
 - b. the value of the investment is more than 150% of the value of the building site, the state or third parties retain ownership and the expropriated subject receives compensation according to this law.
3. In cases when constructions have been erected on building sites before 10.8.1991, for which there is no registration of ownership of the site, the person who owns the building is obliged to pay the initial value of the site in accordance with art. 10 of law nr. 7652, dated 23.12.1992 "On privatization of state housing" multiplied by the price increase index.
4. In cases when legal constructions have been erected on a building site which is rented out or given in concession by the state, the owner of the building pays the value of the site upon which the building is erected according to the market value.

Article 9 Housing

1. Houses that are owned by the expropriated subjects shall be freed by the lessees within a period of three years. The lessees continue to pay rent defined by the Council of Ministers up to two years from the date of entry into force of this law. The Council of Ministers must secure housing for the lessees, who enjoy the status of the homeless, through low rent houses, low interest rate loans or houses for which the rent is compensated by the state.
2. In cases when houses have been erected in violation of the legislation in force, their residents have the right to purchase the building site during the process of legalization defined in a special law. The valuation of the building site will be done in accordance with the market value at the moment the legalization of the housing is done.

Article 10 Property No Longer Used for a Public Purpose

When an expropriation was done in the public interest and the State Committee for Restitution and Compensation of Property verifies that the immovable property is no longer used for this purpose, it is restituted to the expropriated subject while the expropriated subject, in case s/he received remuneration, returns to the state the remuneration received.

CHAPTER III COMPENSATION OF PROPERTY

Article 11 Forms of Compensation

1. For property defined in this law, for which physical restitution is impossible, the state compensates the expropriated subjects with one or more of the following forms:
 - a. With other immovable property of the same type of equal value in state ownership;
 - b. With other immovable property of any type of equal value in state ownership;

- c. With shares in companies with state capital or where the state is co-owner with a value equal to the immovable property;
 - ç. With the value of objects that are subject to the process of privatisation;.
 - d. With money.
2. The expropriated subject submits a written request, addressed to the Local Commission for Restitution and Compensation of Property, for the form of compensation to be given. Within 30 days from receipt of the request, the commission, through a reasoned decision, decides to accept or reject the request when the fulfillment of the request is objectively not possible. In this case it offers the expropriated subject another form of compensation, according to the definitions set forth in point 1 of this article. The expropriated subject has the right to submit an appeal to the State Committee for Restitution and Compensation of Property within 30 days from the notification of the decision of the commission for the form of compensation to be given, and in case s/he is not satisfied with the solution, the expropriated subject has the right to appeal to the court within 30 days from the receipt of the written response from the State Committee for Restitution and Compensation of Property.
 3. The remuneration given for compensation purposes is not subject to any fees, taxes or other financial obligations.

Article 12

Location of Physical Compensation

Physical compensation according to article 11 is done within the same administrative-territorial unit (within the village, commune, municipality, district, region), and where this is impossible, in the nearest administrative-territorial unit based on a decision of the State Committee for Restitution and Compensation of Property. For purposes of physical compensation state property in tourist zones will be also used. The areas defined for compensation are announced publicly in the Official Journal, stating their categories (type) as well as their value.

Article 13

Valuation of property

1. For the valuation of property that will be compensated, the Local Commission for Restitution and Compensation of Property establishes an expert group. The commission appoints as experts experienced and specially qualified persons in the fields of law, economics and engineering that is related to the process of restitution and compensation of property.
2. The value of the property that is compensated according to this law is calculated based on the market value in accordance with the methodology proposed by the State Committee for Restitution and Compensation of Property and approved by a decision of the Assembly.
3. In carrying out its activities, no member of the state bodies for the process of restitution and compensation of property or of the expert group shall be subject to any conflict of interest defined in the Code of Administrative Procedure.

Article 14

Right of First Refusal (Right of First Purchase)

1. For immovable property occupied by state objects, expropriated subjects have the right of first refusal for these objects when they are privatised.
2. The expropriated subjects shall have the right to waive their right of first refusal and receive compensation based on article 11 of this law.

CHAPTER IV
STATE BODIES FOR THE PROCESS OF RESTITUTION AND COMPENSATION OF
PROPERTY

Article 15
State Committee for Restitution and Compensation of Property

1. The State Committee for Restitution and Compensation of Property is created for the implementation of this law. The State Committee is made up of 5 members who are appointed and dismissed by the Assembly. Two members are proposed by the parliamentary majority and two members are proposed by the parliamentary opposition. One member is proposed by the Council of Ministers to the President of the Republic, who sends the proposal for approval to the Assembly through a decree. The member sent by the President and approved by the Assembly shall be the Chairperson of the State Committee for Restitution and Compensation of Property.
2. A member of the State Committee for Restitution and Compensation of Property can be any Albanian citizen who:
 - a. has a bachelors degree as a lawyer, economist, agronomist or in the engineering field related to the process of restitution and compensation of property;
 - b. has a minimum of 7 years of work experience in the profession;
 - c. enjoys a good reputation and professional capabilities in their field;
 - ç. is not a member of a steering body of any political party;
 - d. has not been found guilty of committing a crime by a final court decision;
 - dh. has not had a disciplinary measure taken against him consisting of his/her dismissal.
 - e. has full capacity to act;
 - ë. does not have a conflict of interest with the position as a member of this Committee.
3. Membership in the State Committee for Restitution and Compensation of Property is incompatible with any other state or political activity.
4. The salary for the members of the State Committee for Restitution and Compensation of Property is equal to the salary of a deputy minister, while that of the chairperson is 10 % higher than the salary of the other members.
5. The member of the State Committee for Restitution and Compensation of Property is dismissed with a decision of the Assembly of Albania, when:
 - a) has not been found guilty by final court decision for committing a criminal offence by a final court decision and/or prohibited or suspended from exercising his/her duty as public servant;
 - b) he/she is physically and mentally incapable of fulfilling his/her duties certified by a medical record or by a court decision;
 - c) misses four or more meetings in a row of the State Committee for Restitution and Compensation of Property without reasonable motives;
 - ç) it is proved that he/she has gained unmerited profits linked to the exercising of his/her competencies;
 - d) violates the article of this law.

No member of the State Committee for Restitution and Compensation of Property can be dismissed for other reasons and procedures that are not mentioned in this item, except for the case when he/she resigns.

Article 16
Competencies of the State Committee for Restitution and Compensation of Property

1. The State Committee for Restitution and Compensation of Property has the following competencies:
 - a. examines and makes decisions for appeals against the decisions of the Local Commissions for Restitution and Compensation of Property, except for the case provided in article 19 of this law;

- b. makes decisions to unify the practices for the process of restitution and compensation of property, on the basis of and for the implementation of the law;
 - c. nominates and dismisses the chairpersons and members of the Local Commissions for Restitution and Compensation of Property;
 - ç. directs and monitors the implementation of this law by the Local Commissions for Restitution and Compensation of Property;
 - d. proposes to the Council of Ministers for approval the draft-budget, organizational structure, organizational chart and salary for the administration of the State Committee for Restitution and Compensation of Property and the Local Commissions for Restitution and Compensation of Property and their administration;
 - dh. collects and analyzes data for the process of restitution and compensation of property and reports to the Assembly at least once per year or as many times as the Assembly requires and also informs the Council of Ministers upon its request;
 - e. approves the Regulation for the Organization and Functioning for the State Committee itself and for the Local Commissions for Restitution and Compensation of Property;
 - ë. defines the necessary documentation based on which the recognition, restitution and compensation of property will be done;
 - f. defines, in co-operation with the Ministry of Finance, the fees for services that will be paid by the expropriated subjects for the process of restitution and compensation of property;
 - g. defines the methods for co-operation between Local Commissions when the property that is to be recognized, restituted or compensated is located in two or more Local Commission jurisdictions;
 - gj. defines the manner for replacement of experts or members of the Local Commissions in cases when they are subject to legal restrictions for the exercise of their duty.
2. The State Committee for Restitution and Compensation of Property verifies the decisions of the Commissions for Restitution and Compensation of Property made according to Law No. 7698, dated 15. 4. 1993 "On restitution and compensation of property to the former owners". The request for verification of the issued decisions must be substantiated and presented by local government bodies or expropriated subjects within 6 months from the entry into force of this law. The commission has the right to abrogate the administrative decision or to request the abrogation of this decision through the judicial process.
3. The State Committee for Restitution and Compensation of Property abrogates the decision of the Local Commissions when:
- a) the Local Commission for Restitution and Compensation of Property has violated the provisions that regulate its jurisdiction and competencies;
 - b) the decision is based on incomplete documentation and verification;
 - c) The necessary documentation based on which the recognition, restitution or compensation of property should have been done.
4. The procedure for restitution and compensation of property is drafted by then State Committee for Restitution and Compensation of Property and shall include:
- a) the legal status of the property that will be used for physical compensation for the expropriated subjects.
 - b) the recognition of the right of ownership for the expropriated subject;
 - c) the approval of preliminary studies for restitution and compensation of property at the regional level by the State Committee for Restitution and Compensation of Property, based on the proposal of the Local Commissions.
 - ç) the publication of the approved decisions on restitution and compensation of property at the regional level in the Official Journal.

Article 17

Local Commissions for Restitution and Compensation of Property

1. Local Commissions for Restitution and Compensation of Property are created and function at the regional level. The territorial competencies of each Commission stretch throughout the territory covered by the respective regions.
2. Local Commissions for Restitution and Compensation of Property are made up of 5 members who are appointed by the State Committee for Restitution and Compensation of Property based on the competition criteria defined in the law "On civil service".
3. A member of the Local Commission for Restitution and Compensation of Property can be any Albanian citizen who:
 - a. has a bachelors degree as a lawyer, economist, agronomist, pedolog or in the engineering field related to the process of restitution and compensation of property;
 - b. has not been found guilty for committing a crime by a final court decision;
 - c. has a minimum of 5 years of work experience in the profession;
 - ç. has not had a disciplinary measure taken against him consisting of his/her dismissal.
 - d. has full capacity to act.
 - dh. has no conflict of interest with the position as a member of the Local Commission.
4. Membership in the Local Committee for Restitution and Compensation of Property is incompatible with any other state or political activity.

Article 18

Competencies of the Local Commissions for Restitution and Compensation of Property

1. Local Commissions for Restitution and Compensation of Property have the following competencies:
 - a. verify the truth of documents submitted by expropriated subjects and compare them with legal acts, sub-legal acts and criminal court decisions, according to article 2 of this law, that have served as the basis for the expropriation, nationalization, confiscation of property, or the taking of property by the state;
 - b. verify and calculate the financial obligations of the state for the expropriated subjects or third parties as defined in this law;
 - c. nominate experts who help the Commission with technical issues during the process of recognition, restitution and compensation of property;
 - ç. confirm the ownership right of expropriated subjects, issuing the respective documentation for the recognition, the size and method of restitution or compensation according to the model set forth by the State Committee for Restitution and Compensation of Property;
 - d. order institutions that administer state or public property to submit documents or data which they consider necessary;
 - dh. define cases which do not benefit from this law, in accordance with the law and on the basis of documentation.
2. Decisions by the Local Commissions for Restitution and Compensation of Property shall be in writing, made during its meetings, reasoned and include other requirements foreseen in the Code of Administrative Procedure.
3. While defining property restitution or compensation, the Local Commissions shall base their work on a written certificate from the Immovable Property Registration Office regarding the legal status of the immovable property that will be restituted or the legal status of the property with which the expropriated subject will be compensated. The request to the Immovable Property Registration Office is addressed by the chairperson of the Local Commission in writing and before the Commission makes a decision. The Immovable Property Registration Office shall issue a written response within 5 working days from submission of the request and its written response shall be deposited in the respective file.
4. If at the end of the term for appeal, according to this law, no appeal has been filed, the Commissions shall send an original copy of their decisions for the recognition, restitution or compensation of property to the Immovable Property Registration Office.

Article 19
Time Limits

1. Expropriated subjects have the right to submit any new requests to gain the rights foreseen in this law within 1 year from the date of entry into force of this law.
2. Local Commissions for Restitution and Compensation of Property first recognize the right of ownership and restitute the property within 45 days from submission of the request. The decision for recognition or restitution of property is made public. After the expiration of this deadline, the Local Commissions compensate within 45 days the property which cannot be restituted according to this law. In cases when, within this term, it is impossible for Local Commissions to decide with a reasoned decision they can postpone the time period but only for a period not more than 30 days.
3. In cases when the Local Commissions do not issue a decision within the period defined in point 2 of this article, the State Committee for Restitution and Compensation of Property reaches the decision within 30 days upon the termination of the time period defined in point 2 of this article.
4. If no appeal is presented against the decision issued by the Local Commission or the State Committee for Restitution and Compensation of Property within the terms provided in this law, this decision constitutes an executive title. The bailiff offices are in charge of its execution according to the regulations provided in the Code of Civil Procedure.

Article 20
The right to appeal

1. Expropriated subjects are entitled to appeal to the State Committee for Restitution and Compensation of Property against a decision of the Local Commission, within the limits and manners provided in the Code of Administrative Procedure.
2. The State Committee for Restitution and Compensation of Property shall issue a decision on the appeal within 30 days from the moment the complaint is filed, leaving it in force or returning the case for review to the Local Commission for Restitution and Compensation of Property.

CHAPTER V
FINAL DISPOSITIONS

Article 21
Establishment and Functioning of Commissions

1. The subjects defined in article 15 propose the candidates for members of the State Committee for Restitution and Compensation of Property to the Assembly within 30 days from entry into force of this law. The Assembly appoints the members of the State Committee within 30 days after the names of all candidates have been submitted.
2. The State Committee for Restitution and Compensation of Property, within 30 days from its appointment, appoints the members of the Local Commissions for Restitution and Compensation of Property. Within 60 days from the date this law enters into force, the Council of Ministers takes measures and secures the budget and office space for the State Committee and Local Commissions for Restitution and Compensation of Property.
3. Expropriated subjects present their requests for the recognition, restitution or compensation of property 90 days after the entry into force of this law.

Article 22

Previous Decisions

1. When the files submitted to the Local Commissions for Restitution and Compensation of Property, created according to Law nr. 7698, dated 15.4.1993 "On restitution and compensation of property to the former owners", contain the necessary documentation for verification of the property to be gained from this law, the expropriated subject submits only a written request for recognition, restitution or compensation of the remaining part of the immovable property. Decisions that were issued based on Law nr. 7699, dated 21.04.1993 "On compensation in value or with sites to ex-owners of agricultural land, pastures, meadows, forestry land and forests" which have not been implemented, are considered valid as to the recognition of the right of ownership, and the Local Commission defines whether restitution of the immovable property is possible or else its compensation.
2. The process of restitution and compensation of property re-starts in the manner, form and conditions set forth in this law.

Article 23

Fund of Compensation

1. The Property Compensation Fund is created for the implementation of financial compensation. This fund consists of budgetary incomes, incomes created by this law and incomes from different donors.
2. Starting from 2005 and for a subsequent period of ten years, the Assembly, at the proposal of the Council of Ministers, defines a Compensation Fund administered by the State Committee for Restitution and Compensation of Property for monetary compensation to expropriated subjects. For the period from the recognition of the right of ownership to receiving compensation in cash, the expropriated subject is also entitled to receive the bank interest rate calculated according to the annual average rate issued by the Bank of Albania.
3. Based on the decision of the Local Commissions for Restitution and Compensation of Property or by a court decision, and by its own order, the State Committee for Restitution and Compensation of Property divides the Compensation Fund proportionally.

Article 24

Termination of the Process

The process of recognition, restitution and compensation of immovable property ends on 31.12.2006, except for the completion of payments for compensation, which shall end within the term defined in article 23 of this law.

Article 25

Use of state documents

For the implementation of this law, within 30 days from the submission of a request, state institutions shall make available copies of all documentation in their possession to the expropriated subjects and to the state commissions, for a fee.

Article 26

Keeping Documentation

Documentation for the process of recognition, restitution and compensation of property is kept according to the legislation on archives. Upon the termination of the process, according to article 24, this documentation is submitted to the Central State Archive.

Article 27
Auditing

An economic and financial audit of the activity of the State Commission for Restitution and Compensation of Property and of the Local Commissions is conducted by the High State Auditor at least once every six months. Audit results are always made public.

Article 28
Transitory provision

Until the process of restitution and compensation of property is finished the bodies responsible for public administration are prohibited from entering into possession or ownership contracts with third parties for land which is in state ownership.

Article 29
Sub-legal acts

The Council of Ministers shall issue the necessary sub-legal acts for the implementation of this law within 90 days from the entry into force of this law.

Article 30
Abrogation

Law nr. 7698, dated 15. 04. 1993 "On restitution and compensation of property to the former owners", with subsequent amendments, Law nr. 7699, dated 21.04.1993 "On compensation in value of former owners of agricultural land, pastures, meadows, forestry land and forests", Decree nr. 1254, dated 19.10.1995 "On compensation of the former owners of agricultural land and non-agricultural land and occupied building sites, with sites in tourist lands and in the inhabited zones", article 10 of Law nr. 8030, dated 15. 11. 1995 "On the state contribution for unsheltered households", and letter ç of article 7 and article 13 of the Law No. 7665, dated 21. 1 1993 "On devepoment of zones that have priority in the development of tourism" and any other provision which is in violation with this law, are abrogated.

Article 31
Entrance in Force

This law enters in force 15 days after being published in the Official Journal.

Speaker
Servet Pëllumbi

ANNEX 1

1. Law nr. 7501, dated 19.07.1991 'On land'
2. Law nr. 7512, dated 10.08.1991 "On sanctioning and protecting private property and free initiative, private independent activities and privatization"
3. Decree of the President of the Republic nr. 378, dated 2.12.1992 "On giving working studios to painters and sculptors"
4. Law nr. 7652, dated 23.12.1992 "On privatization of state housing"
5. Law nr. 7665, dated 21.01.1993 "On devepoment of zones that have priority in the development of tourism"
6. Law nr. 7698, dated 15.04.1993 "On restitution and compensation of property to former owners"
7. Law nr. 7980, dated 27.07.1995 "On buying and selling building sites"

8. Law nr. 8053, dated 21.12.1995 "On granting ownership of agricultural land without compensation"
9. Law nr. 8312, dated 26.03.1998 "On undivided agricultural land"