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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ALBANIA

AMICUS CURIAE BRIEF FOR THE CONSTITUTIONAL COURT

ON THE RESTITUTION OF PROPERTY

Adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016)

on the basis of comments by

Mr Bogdan AURESCU (Substitute member, Romania)
Mr Christoph GRABENWARTER (member, Austria)
Ms Monika HERMANNS (Substitute member, Germany)

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I. Introduction

1. By letter of 7 July 2016, the President of the Constitutional Court of Albania, Mr Bashkim Dedja, requested an *amicus curiae* brief from the Venice Commission on the conformity of Law no. 133/2015 of the Republic of Albania *"On the treatment of property and finalisation of the process of compensation of property"*[1] (hereinafter, "Law no. 133/2015", CDL-REF(2016)049) with the requirements of Article 1, Protocol No. 1 to the European Convention on Human Rights (hereinafter, the "ECHR") and the respective case-law of the European Court of Human Rights (hereinafter, the "ECtHR").

2. The context of this request is a claim before the Constitutional Court of Albania requesting Law no. 133/2015 to be declared unconstitutional and incompatible with the ECHR and the case law of the ECtHR. In particular, the applicants allege that this Law violates the principle of legal certainty as there is going to be a re-evaluation of final non-executed decisions on compensation or restitution rendered several years ago. The applicants also allege that Law no. 133/2015 violates the principle of equality before the law and non-discrimination, as it orders the re-evaluation of final administrative and judicial decisions on compensation and allege that the scheme provided by this Law to resolve the systemic problem of non-enforcement of decisions on compensation does not guarantee effectiveness, clarity and predictability. They finally allege that Law no. 133/2015 violates the right to property in the context of Article 1, Protocol No. 1 to the ECHR as it has not provided for the real evaluation of property pursuant to final administrative and judicial decisions on compensation.

3. The four questions addressed to the Venice Commission are as follows:

1) *Does this law violate the acquired rights and legitimate expectation referring to the Constitution (Articles 18 and 41) and Article 1 of Protocol No.1 of the* ECHR*? If yes, is this a proportional and justifiable intervention by the law?*
2) *Does it come in conformity with the* ECHR *and recommendation of the* ECtHR *the provision according to which the final unevaluated and non-enforced decisions on compensation be re-evaluated according to a new scheme/formula, which was not known at the time when these decisions have become final?*
3) *Is the new scheme/formula of compensation foreseen just, real and effective?*
4) *Does this law through its scheme/formula resolve in effective and transparent way within a predictable time limit the property issues of subjects who were expropriated during the communist regime in accordance with the recommendations given by* ECtHR *in its pilot judgment Puto v. Albania?"*

4. This is an *amicus curiae* brief for the Constitutional Court of Albania. As such, it does not have the intention of taking a final stand on the issue of the constitutionality of certain provisions of the Law no. 133/2015, but merely to provide the Court with material as to the compatibility of the relevant provisions with European standards, so as to facilitate the Court's consideration of these provisions under the Constitution of Albania. It is the Constitutional Court of Albania that has the final say on the binding interpretation of the Constitution and the compatibility of national laws with this text.

5. This *amicus curiae* brief is based on an unofficial English translation of Law no. 133/2015 and of its explanatory report. Errors may occur in this *amicus curiae* brief as a result of an incorrect or inaccurate translation.

[1] CDL-REF(2016)049, *Law No. 133/2015 on the treatment of property and finalisation of the process of compensation of property and explanatory memorandum and report on the law (explanatory report).*

6. Mr Aurescu, Mr Grabenwarter and Ms Hermanns acted as rapporteurs for this *amicus curiae* brief.

7. This *amicus curiae* brief was drafted on the basis of the rapporteurs' comments and adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016).

II. Background

A. Restitution of property in Albania

8. The restitution of property issue is a longstanding one in Albania. During the communist regime (1944-1992), the Albanian government expropriated thousands of property owners by seizing their plots of land and buildings.

9. Official compensation plans started in the early 1990s, shortly after the collapse of the communist regime. Several laws followed one another in trying to address the restitution of property issue, which meant that the legal framework was constantly changing. A combination of the confusion created over the existing and applicable legal provisions, the inefficiency of the various systems provided and the lack of funds led to the failure of enforcing final, domestic, judicial and administrative decisions on the right of applicants to restitution or compensation for property seized under the communist regime.

10. This lack of an effective remedy on the national level led to a large number of judgments by the ECtHR condemning Albania for violations of Article 1 of Protocol No.1 to the ECHR and Articles 6 and 13 of the ECHR. In particular, two groups of judgments have been rendered by the ECtHR: one is referred to as the *Driza* group[2] and the other as the *Manushaqe* group.[3] The Driza group of cases started in 2006 and concerned the non-enforcement of judgments and administrative decisions in restitution of property cases and in 2012, taking into account the scale of the problem in Albania, the ECtHR issued a pilot judgment, *Manushaqe Puto and Others v. Albania,*[4] in which it found that: "*In the circumstances of the instant case, final and enforceable Commission decisions in favour of the applicants remained unenforced for periods varying between 15 and 17 years.*"[5] The ECtHR called upon the Albanian authorities to "*take general measures, as a matter of urgency, in order to secure in an effective manner the right to compensation*".[6] It also stressed that "*the respondent State should avoid frequent changes of the legislation and carefully examine all legal and financial implications before introducing further modifications.*"[7]

11. Today, there are around 230 cases still pending before the ECtHR[8] and over 15 cases (and increasing) are currently supervised by the Committee of Ministers of the Council of

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[2] Driza v. Albania, no. 3371/02 (13 November 2007); Beshiri and Others v. Albania, no. 7350/03 (22 August 2006); Bushati and Others v. Albania, no. 6397/04 (8 December 2009); Caush Driza v. Albania, no. 10810/05 (15 March 2011); Delvina v. Albania, no.49106/06 (8 March 2011; 21 May 2013); Eltari v. Albania, no. 16530/06 (8 March 2011; 10 June 2014); Hamzaraj No. 1 v. Albania, no. 45264/04 (3 February 2009); Nuri v. Albania, no. 12306/04 (3 February 2009); Ramadhi and 5 Others v. Albania, no. 38222/02 (13 November 2007); Vrioni and Others v. Albania, no. 35720/04+ (29 September 2009; 7 December 2010); Siliqi and Others v. Albania, no. 37295/05+ (10 March 2015).

[3] *Manushaqe Puto and Others v. Albania*, nos. 604/07+ (31 July 2012); Karagjozi and Others *v. Albania, nos. 25408/06+ (8 April 2014); Luli v. Albania, no. 30601/08 (15 September 2015); Metalla and Others v. Albania, nos. 30264/08+ (16 July 2015); Sharra and Others v. Albania, nos. 25038/08+ (10 November 2015).*

[4] *Manushaqe Puto and Others v. Albania*, nos. 604/07, 43628/07, 46684/07 and 34770/09, 31 July 2012.

[5] *Ibidem*, §97.

[6] *Ibidem*, §110.

[7] *Ibidem*, §110.

[8] Official data prepared by the Registry of the European Court of Human Rights, with the caveat that these numbers are constantly increasing, as former owners continue to lodge applications.

Europe. It is estimated that some 40 000 cases are pending before judicial and administrative courts in Albania.[9]

12. Following the *Manushaqe* pilot judgment, the Albanian government adopted an action plan, setting out a comprehensive list of measures aimed at introducing an effective compensation scheme by June 2015.[10]

B. Relevant domestic constitutional and legal framework

1. Relevant provisions of the Constitution of Albania

13. According to the request received by the Venice Commission, the relevant constitutional provisions are Articles 18 and 41 of the Constitution of Albania.

14. Article 18 stipulates that: *"1). All are equal before the law. 2). No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage. 3). No one may be discriminated against for the reasons mentioned in paragraph 2 without a reasonable and objective justification."*

15. Article 41 stipulates that: *1). The right of private property is guaranteed. 2). Property may be acquired by gift, inheritance, purchase, or any other classical means provided by the Civil Code. 3). The law may provide for expropriations or limitations in the exercise of a property right only in the public interest. 4). Expropriations or limitations of a property right that amount to expropriation are permitted only against fair compensation. 5). In the case of disagreements related to the amount of compensation, a complaint may be filed in court."*

2. Law no. 133/2015

16. Law no. 133/2015 was adopted by the Albanian Parliament on 5 December 2015[11] and, according to the explanatory report to this Law, *"[t]he Law [No. 133/2015] is proposed to focus on the protection and guaranteeing the constitutional right of ownership, to ensure it[s] restoration in cases of unfair removal, in accordance with the principle of legal certainty and the rule of law, and the exercise of the right to expropriation of property following fair compensation and in complete balance with the public interest".*

17. According to Article 2, this Law intends to cover all types of expropriation, nationalisation or confiscation "*under any legal/secondary acts, criminal court decision or expropriated by any other unfair means by the state from 29.11.1944*" (Article 2.1). It applies not only to all the applications that are under consideration by the Agency on Restitution and Compensation of Property (Article 32 of Law no. 133/2015 turned this Agency into the "Property Management Agency") on the day of its entry into force, but also to those applications, which will be submitted within the deadline provided by the Law (Article 3.1). Furthermore, the Law extends its effects to the financial evaluation of all administrative or judicial decisions on the recognition of the right to compensation, which have not yet been implemented, including the cases

[9] See Document of the Committee of Ministers H/Exec (2015) 16, 2 June 2015: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805ab71e

[10] H/Exec(2016)16E, *op.cit*.

[11] The action plan and its implementation have been welcomed by the Committee of Ministers in its 1230th meeting in June 2015, see Committee of Ministers, 1243rd meeting – 8-9 December 2015, Item H46-1, *Manushaqe Puto and others and Driza group v. Albania (Applications Nos. 604/07, 33771/02)*, Supervision of the execution of the Court's judgments, Available at: https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2015)1243/H46-1&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

currently under examination before courts of all tiers, before the Supreme Court, as well as before the European Court of Human Rights (Article 3.2).

18. Law no. 133/2015 also aims to resolve the administrative problems concerning the effective restitution of property and the respective legal framework, which has not met the criteria established by the ECtHR. The above-mentioned *Manushaqe*-judgment is considered as an *"initial push for the initiative of new legislation"*.

19. Law no. 133/2015's core provision is Article 6.1 on all final decisions on the restitution and compensation of property. According to this provision, property recognised for compensation is evaluated under the cadastral index it had at the time it was expropriated (a). The restituted property is evaluated by determining the differences that will result between its value pursuant to the current cadastral index and the value of the property pursuant to the cadastral index at the time of expropriation (b). Under Article 6.2, final decisions that have only recognised the right to compensation are financially evaluated according to the property's cadastral index value at the time of expropriation, pursuant to Article 6.1.a. Under Article 6.3, in cases where the expropriated subjects benefited from a decision on compensation or restitution, the difference calculated as per Article 6.1.b is deducted from the assessed value of the property recognised for compensation, calculated according to Article 6.1.a.

20. According to Article 7, the financial evaluation of the final decisions on compensation shall be performed by financially evaluating the property recognised for compensation under Article 6, pursuant to the following procedure: If the evaluation of the property restituted through a final decision is higher than the estimate of the land recognised for compensation, then the expropriated subject is considered as compensated in full (a). If the evaluation of the property recognised for compensation is greater than the evaluation of the restituted land, then the subject is compensated for the difference, pursuant to the provisions of this Law (b). In the event that a final decision on restitution has not been rendered, then the financial evaluation of the property recognised for compensation is performed based on the property's cadastral index value at the time of expropriation, pursuant to Article 6.3 (c).

21. A compensation fund was created *ad hoc* to implement the compensation scheme, to enforce the 26 357 final decisions that have recognised the right to compensation of expropriated subjects from between 1993 up to 2015, in addition to the 11 131 unaddressed and new applications. While the final decisions only need the determination of the economic value for the compensation, the process will be different for the unaddressed and new applications, which will have to undergo the same procedure that has already been used for the final decisions.[12]

22. Three by-laws on the "Organisation and functioning of the Property Management Agency", on the "Treatment of applications for recognition of property and compensation" and on "Rules and procedure for the valuation and allocation of the financial and real estate fund for the compensation of property" were adopted on 23 March 2016, in line with Article 37 (on by-laws) of Law no. 133/2015.

III. Assessment

23. The Constitutional Court has put four questions to the Venice Commission. The Commission will reply to the substance of these questions, but not necessarily in the order in which they were asked, notably because a large part of the answer to questions 3 and 4 falls under questions 1 and 2.

[12] CDL-REF(2016)049, pp. 59-60.

24. The gist of the four questions relates to the compatibility of Law no. 133/2015 with (the Constitution and) Article 1 of Protocol No. 1 to the ECHR, which provides:

> *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. 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 law.*
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

A. Whether there was an interference

25. According to the ECtHR, an applicant can allege a violation of Article 1 of Protocol No. 1 only insofar as the impugned decision relates to his or her "possessions", within the meaning of this provision.

26. The wording "*peaceful enjoyment of his possessions*" and *"droit au respect de ses biens"* in the authentic language versions of the Protocol express a broad international legal concept of property comprising all "acquired" rights that constitute assets.[13] The scope of protection of Article 1 of Protocol No. 1 includes, at any rate, claims awarded to an individual by a "*final and binding*" judgment or arbitration award.[14] Furthermore, it comprises claims in respect of which a person has "*legitimate expectations of obtaining effective enjoyment of a property right*".[15] In order to determine whether or not such "legitimate expectations" exist, the ECtHR does not consider a "genuine dispute" or an "arguable claim" as criteria, but requires that the claim have a sufficient basis in national law. An example of this is settled case law by domestic courts confirming the claim.[16] The mere hope of securing an asset is not sufficient to establish property within the meaning of Article 1 Protocol No.1 to the ECHR.[17] Thus, the mere hope that a claim might be acknowledged in a pending case does not give rise to "legitimate expectations".[18]

27. A claim to property restitution may also give rise to "legitimate expectations".[19] "*Legitimate expectations*" protected by Article 1 of Protocol No.1 arise, in particular, where a State, subsequent to the transition from a socialist system to a market economy, enacts legislation establishing claims to restitution or compensation. [20] This is because, according to the ECtHR, "*Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to return property which was transferred to them before they ratified the Convention*",[21] but, "*once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1*" [22] (emphasis added).

28. According to Article 3 (see above) of and the explanatory report[23] to Law no. 133/2015, this Law is to apply to all applications examined by the Property Management Agency, on the day of its entry into force, as well as all those applications that will be submitted within the terms of this Law as regards the recognition of the right to property, and will extend its effects, even on

[13] ECtHR 26.6.1986, No. 8543/79 and others, *Van Marle/Netherlands*, § 41.
[14] ECtHR 9.12.1994, No. 13427/87, *Stran Greek Refineries/Greece*, § 59 sq.
[15] ECtHR 28.9.2004 (GC), No. 44912/98, *Kopecký/Slovakia,* § 35.
[16] *Ibidem*, § 45 sq.
[17] ECtHR 23.10.2012, No. 34880/12, *Ramaer and Van Willigen/Netherlands*, § 81.
[18] ECtHR 13.12.2000 (GC), No. 33071/96, *Malhous/Czech Republic*.
[19] EComHR 16.4.1998, No. 37912/97, *Gospodinova/Bulgaria*.
[20] ECtHR 28.9.2004 (GC), No. 44912/98, *Kopecký/Slovakia*, § 38.
[21] *Maria Atanasiu and Others v. Romania*, op. cit., §135.
[22] *Ibidem*, §136.
[23] p. 47.

the evaluation and enforcement of all decisions on the recognition of the right to compensation, taken by administrative bodies or judicial authorities, including those which are examined by courts, the Supreme Court of Albania, as well as the ECtHR.

29. Under the Law, the final administrative or judicial decisions containing a specific amount of compensation to be granted, but are not yet enforced, will not be reassessed. Accordingly, although in these cases there is indisputably a "legitimate expectation", there is no "interference" within the meaning of Article 1 of Protocol No. 1 to the ECHR, as long as these decisions are duly enforced. In this context, it should be reminded that the ECtHR has stated that a lack of funds or other resources cannot be a reason for the country not to honour its obligation under the ECHR to ensure compliance with a final decision within a reasonable time.[24]

30. As concerns decisions which determine restitution or compensation only on the surface and not on financial worth, it is not clear in how far a legitimate expectation arises. The explanatory report to Law no. 133/2015[25] argues that a final compensation scheme, which could raise "legitimate expectations" to a specific amount of compensation, has never been established. As to persons or entities that have not yet received a final decision from the administrative body or court recognising the right to restitution or compensation, the Albanian government refers to the case of *Bici v. Albania*[26] to justify that these persons or entities do not own property nor have they created legitimate expectations since their right is not known at the local level.[27]

31. However, the new compensation scheme implemented by Law no. 133/2015 has changed the evaluation method. The main element of the evaluation of financial compensation is the value of the property under the cadastral index it had at the time of expropriation. This approach differs from previous legislation and could lead to lower compensation. The previous laws: the Property Act of 1993, that of 2004 and that of 2006 foresaw a higher compensation scheme than Law no. 133/2015.[28] It could therefore be argued that the former laws created expectations to receive compensation equivalent to the market value of the property at the time of the decision on compensation. Even if lower compensation cannot be qualified as formal expropriation, it may well qualify as an "*other interference*" which is a catch-all provision laid down in Article 1, Protocol No.1.[29]

B. Whether the interference was in accordance with the law

32. Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful.[30] The principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable in their application.[31]

33. In the present case, the interference has a clear legal basis in Law no. 133/2015. The three relevant by-laws duly complement Law no. 133/2015. Accordingly, there appears to be a sufficiently clear and detailed legal basis for the interference at issue.

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[24] *Manushaqe Puto and Others v. Albania*, op. cit., §96.
[25] p. 45.
[26] Bici v. Albania, no. 5250/07, §§ 49 – 52, 3 December 2015.
[27] Report for the Law "on the treatment of property and finalization of the process of compensation of property", p. 5-6, 45.
[28] *Ramadhi and Others v. Albania*, no. 38222/02, §§ 24 - 30, 13 November 2007; *Manushaqe Puto and Others v. Albania*, op. cit., § 25-26.
[29] *Grabenwarter*, European Convention on Human Rights – Commentary, 2014, p. 374.
[30] See Former King of Greece and Others v. Greece [GC], no. 25701/94, § 79, ECHR 2000-XII, and Latridis v. Greece [GC], no. 31107/96, § 58, ECHR 1999-II.
[31] See Beyeler v. Italy [GC], no. 33202/96, §§ 109-110, ECHR 2000-I.

C. Whether the interference pursues a legitimate aim

34. States enjoy a wide margin of appreciation in determining what is in the public interest, in particular under Article 1 of Protocol No.1 and especially when implementing social and economic policies. It is only the deprivation of possessions which is manifestly without reasonable foundation that does not satisfy the public interest requirements.[32] The ECtHR recognises that, "*because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest".[…]{I}t is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property, including deprivation and restitution of property. Here[…] the national authorities accordingly enjoy a certain margin of appreciation.*"[33]

35. According to Article 2 of Law no. 133/2015, the purpose of this Law is to finalise the process of treatment of property through recognition and compensation, for entities whose properties have been expropriated, nationalised or confiscated, under any legal/secondary acts, criminal court decision or expropriated by any other unfair means by the state from 29.11.1944 (a) and to regulate and fairly reward on property compensation, to enforce the final decisions on compensation, as well as finalise the process of compensation, within the deadlines specified in this Law, through the compensation fund (b).

36. These aims seem to be legitimate; set against the background of the various problems concerning the effective completion of restitution and compensation in Albania, the intentions of Law no. 133/2015 therefore appear to be in the public interest within the meaning of Article 1 of Protocol No. 1.[34]

D. Whether the interference is proportionate

37. The principle of proportionality between the means employed and the aim sought to be achieved must be respected.[35] This requires that the measures of deprivation of possessions be suitable to achieve the aim pursued. Specific questions of proportionality arise where a transition from a socialist system of property ownership to a free and democratic order and market economy has taken place. The enactment of laws providing for rehabilitation, restitution of confiscated property or compensation for such property (deprived of the proprietors under the preceding communist regime) obviously involves comprehensive consideration of various issues of a moral, legal, political and economic nature. Hence, Member States' authorities have a wide margin of appreciation in this regard.[36] As the case-law shows, the ECtHR still exercises its competence to judicial review and identifies violations of the right to property in this category.[37]

38. As pointed out above, the provisions of Law no. 133/2015 could lead to lowering the amount of compensation paid to former owners. In the ECtHR's case-law,[38] an extreme disproportion between the official cadastral value of the property and the compensation paid to the formal owners could amount to a complete lack of compensation, which can be justified

[32] ECtHR 28.7.1999 (GC), No. 22774/93, *Immobiliare Saffi/Italia*, § 49; Jahn v. German, § 91; James and Others v. UK, §46; The former King of Greece and Others v. Greece, §87; Zvolský and Zvolská v. the Czech Republic, §67.
[33] *Maria Atanasiu and Others v. Romania*, op. cit., §166; See also *Kopecký v. Slovakia* [GC], op. cit. §37.
[34] See ECtHR 31.7.2012 (GC), No. 604/07 and others, *Manushaqe Puto and others/Albania*, § 110.
[35] ECtHR 28.5.1985, No. 8225/78, *Ashingdane/United Kingdom*, § 57.
[36] ECtHR 28.9.2004 (GC), No. 44912/98, *Kopecký/Slovakia*, § 37.
[37] *Grabenwarter*, Convention, p. 376.
[38] ECtHR (GC) 25.10.2012, *Vistiņš and Perepjolkins/Latvia*, § 112 sq.

only in very exceptional situations.[39] Therefore, an evaluation of proportionality has to take into account the frequent legislative changes concerning restitution and compensation issues as well as the mere problems of rendering final decisions in this area.

39. The ECtHR has called on Albania to find a compensation method which will provide for a fair, transparent, equal and economically feasible solution, which can be easily implemented to solve, once and for all, the longstanding restitution of property and compensation problem.[40] Any possible discrimination in the compensation process must be avoided and any procedure regarding the evaluation of pending claims must not put an excessive burden on the claimants.

40. As can be seen from the *Manushaqe* judgment,[41] the ECtHR is well aware of the special situation in Albania and is ready to take it into account when assessing Albania's legal situation in a new set of proceedings after the Constitutional Court has decided the case. In this respect, the thorough analysis in the explanatory report to Law no. 133/2015 will be taken into account in favour of the proportionality of the interference in the rights of owners. Moreover, the high number of pending cases (approximately 40 000) is an established and non-disputed factor. This is another element that will give the national legislature a certain margin of appreciation, as long as it is determined to settle the issue in a non-discriminatory and final manner.

41. In the Albanian context, the government calculated that, if compensation were to take place under the previous law, it would cost 814 billion Albanian Leks (almost six billion euros), and the process of compensation would take 2 713 years (with a budget of 300 million Albanian Leks per year). Under the new compensation scheme, the compensation issue could be solved with the amount of 50 billion Albanian Leks within a period of 10 years.[42] In addition, previous laws (Property Acts of 1993, 2004, 2006) have not managed to address the problem of the restitution or compensation of properties effectively, mainly due to financial issues, but also to illegal settlements on the land or to the inefficiency of the institutions. This resulted in a great backlog of cases reaching, as mentioned above, around 40 000 cases on the national level.

42. It is Article 11 of Law no. 133/2015 which provides for a financial fund of 50 billion Albanian Leks within 10 years. However, no explanation is provided as to how this amount was determined, taking into account the state budget as a whole and the Albanian GDP. In addition, Law no. 133/2015 does not provide for an estimation of the revenues of the auctions of the properties (Article 13 of Law no. 133/2015). The costs which will be incurred by the State for human resources, material, coordination between institutions and the appeals mechanism must also be considered as well as future economic development and the related tax revenue.

43. In the *Manushaqe* judgment, the ECtHR had underlined the importance of setting realistic statutory and binding time-limits in respect of every step of the process.[43] To this end, Law no. 133/2015 has provided clear deadlines for the implementation of secondary legislation (see above for the three by-laws) as well as for all steps in the procedure (from the application to the appeals) and the activities of the Property Management Agency. This is a very positive step, although no explanation is provided as to how these deadlines were calculated and why they are deemed realistic.

44. In conclusion, taking the specific situation of Albania into account, it can well be argued that a new and effective legal framework, which may lead to a lower amount of compensation for the former owners, meets the requirement of proportionality as set out in Article 1 Protocol No.1 to the ECHR. In particular, it seems reasonable that Law no. 133/2015 refer to the cadastral categorisation of the property at the time of the expropriation without being regarded as an

[39] *Vistiņš and Perepjolkins v. Latvia* [GC], op. cit., §119.
[40] *Manushaqe Puto and Others v. Albania*, op.cit., §§110-118.
[41] ECtHR 31.7.2012 (GC), No. 604/07 and others, *Manushaqe Puto and others/Albania*, § 110 sq.
[42] CDL-REF(2016)049, op.cit., p. 59.
[43] *Manushaqe Puto and Others v. Albania*, op.cit., §116

extreme disproportion between the official cadastral value of the land and the compensation paid to former owners.

IV. Conclusions

45. This is an *amicus curiae* brief for the Constitutional Court of Albania. As such, it does not have the intention of taking a final stand on the issue of the constitutionality of certain provisions of Albanian Law no. 133/2015 *"On the treatment of property and finalisation of the process of compensation of property"*, but merely to provide the Constitutional Court of Albania with material as to the compatibility of the relevant provisions with European standards, so as to facilitate the Court's consideration of these provisions under the Constitution of Albania. It is the Constitutional Court of Albania that has the final say on the binding interpretation of the Constitution and the compatibility of national laws with this text.

46. The Constitutional Court has put four questions to the Venice Commission, the gist of which relate to the compatibility of Law no. 133/2015 with (the Constitution and) Article 1 of Protocol No. 1 to the ECHR.

47. Albania's restitution or compensation of property issue has led to administrative or judicial decisions, which in turn have led to several different situations:

48. Final administrative or judicial decisions, which contain a specific amount of compensation to be granted, but which have not yet been enforced, indisputably raise a "legitimate expectation" and will not be reassessed under Law no. 133/2015. In these cases, there is no "interference" within the meaning of Article 1 of Protocol No. 1 to the ECHR, as long as these decisions are duly enforced.

49. As regards decisions which determine restitution or compensation only on the surface and not on financial worth, it is not clear in how far a legitimate expectation arises.

50. However, Law no. 133/2015's new compensation scheme changed the evaluation method, which could lead to lower compensation. Even if lower compensation cannot be qualified as formal expropriation, it may well qualify as an "*other interference*" under Article 1 of Protocol No.1 to the ECHR.

51. The interference, nonetheless, has a clear legal basis in Law no. 133/2015 (and the three relevant by-laws duly complement Law no. 133/2015). There appears therefore to be a sufficiently clear and detailed legal basis for the interference at issue.

52. The interference also appears to pursue a legitimate aim, as the purpose of Law no. 133/2015 is effectively to finalise the process of treatment of property through recognition and compensation. Set against the background of the various problems concerning the effective completion of restitution and compensation in Albania, the intentions of Law no. 133/2015 also appear to be in the public interest within the meaning of Article 1 of Protocol No. 1 to the ECHR.

53. The interference is proportionate if the financial fund of 50 billion Albanian Leks attributed to the compensation scheme over a period of 10 years has been carefully determined in the light of the state budget as a whole and the Albanian GDP.

54. In Albania's specific situation, it can well be argued that a new and effective legal framework provided by Law no.133/2015, which may lead to a lower amount of compensation paid to the former owners, nevertheless meets the requirement of proportionality as set out in Article 1 of Protocol No.1 to the ECHR. In particular, it seems reasonable that Law no. 133/2015 refer to the cadastral categorisation of the property at the time of the expropriation

without being regarded as an extreme disproportion between the official cadastral value of the land and the compensation paid to the former owners.

55. The elements above are intended to help the Constitutional Court make an abstract assessment of the Law. However, the question of whether or not compensation for expropriated property in Albania meets the requirements of Article 1 of Protocol No. 1 to the ECHR will ultimately depend on the effective implementation of Law no. 133/2015 and its execution by the national authorities. It will be the Albanian authorities' task to ensure that the aims of Law no.133/2015 do not remain theoretical.

56. The Venice Commission remains at the disposal of the Constitutional Court of Albania for any future assistance it may need.