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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**ALBANIA**

**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)**

**REPUBLIC OF ALBANIA**  
**National Assembly**

**LAW**  
**No. 133/2015**

**ON THE TREATMENT OF PROPERTY AND FINALIZATION OF THE PROCESS OF**  
**COMPENSATION OF PROPERTY**

Pursuant to articles 41, 78, 83, paragraph 1, and article 181 of the Constitution, with the proposal of the Council of Ministers, the National 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 regulation and provision of a just compensation on the property rights issues raised from the expropriations, nationalizations or confiscations pursuant to the criteria of Article 41 of the Constitution, and Article 1 of Protocol No. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- b) The establishment and management of the Compensation Fund, which shall be used for the compensation of properties;
- c) The establishment of the procedures for the treatment of property and finalization of the process of compensation of properties, as well as the administrative bodies in charge of the application thereof.

**Article 2**  
**Purpose**

The purpose of this Law is:

- a) To finalize, pursuant to this law, the process of treatment of property through recognition and compensation, for entities whose properties have been expropriated, nationalized or confiscated, under any legal/secondary acts, criminal court decision or expropriated by any other unfair means by the state from 29.11.1944;
- b) To regulate and fairly reward on property compensation, to enforce the final decisions on compensation, as well as finalize the process of compensation, within the deadlines specified in this law, through the compensation fund.

### **Article 3 Scope of Application**

1. This law acts on all applications that are under consideration at the ARCP, on the day of entry into force, as well as on all those applications, which will be submitted within the deadlines of this law, regarding the recognition of the right to property.
2. Furthermore this law extends the effects also on the financial evaluation for:
  - a) the execution of all decisions which have not yet been implemented the recognition of the right to compensation, issued by administrative or judicial bodies, in our country;
  - b) including the cases currently under examination in courts of all tiers, in the Supreme Court, as well as in the European Court of Human Rights, pertaining to their financial evaluation.

### **Article 4 Properties that are exempt from treatment**

Are not subject to the provisions of this law:

1. Properties obtained as a result of the implementation of Law no.108 dated 29.08.1945, on the "Agrarian reform", with subsequent amendments;
2. Expropriations against a fair compensation pursuant to the provisions in force at the time of expropriation.
3. Properties donated to the state for which official documents are available.

### **Article 5 Definitions**

For the application of this law, the terms herein shall have the following meaning:

1. **"Property Management Agency (PMA)"** is a public legal entity, dependent on the Minister of Justice, which exercises the duties given thereto under this law.
2. **"Financial Compensation Fund"** is a special fund within the meaning of Article 7 of Law no. 9936, dated 26.06.2008 on the "Management of the budgetary system in the Republic of Albania", which is used for the financial compensation of expropriated subjects, who have been recognized the right to compensation.
3. **"Land Fund"** is the physical property fund with a state owned legal status, which by a decision of the Council of Ministers or the PMA, is made available for the physical compensation of expropriated subjects possessing a final decision on compensation.
4. **"Value map"** means the decision of the Council of Ministers "On adoption of the immovable property value for each Region of the Republic of Albania", which is applicable at the moment of entry into force of this Law.
5. **"Compensation"** means *just* compensation provided according to the procedures defined in this law. The compensation means are "Financial compensation", "Physical compensation from the Land Fund" and "Compensation in nature in the property recognized to the expropriated subject".
6. **"Physical compensation within the boundaries of the property recognized to the expropriated subject"** is the surface of the property that by a final decision will be awarded to the expropriated subjects.
7. **"Building/Facility"** is any object that is built or installed in the territory, with fixed or temporary placement, and which is built under and / or over the surface, pursuant to the legislation in force.
8. **"Property"** is an immovable property under the definitions given in the Civil Code.
9. **"Expropriated Subject"** means legal or natural persons or their heirs whose property was nationalized, expropriated, confiscated or taken in any other unjust way by the state.

10. **“Responsible structures”** are all bodies established by the legislation in force at the time, responsible to act in the area of property restitution and compensation.
11. **“Land”** means the agricultural land, forestland, forests, meadows and pastures, barren land and the land plot.
12. **“Agricultural land”** means land that is located outside the boundaries of cities and residential areas at the time of expropriation, and as such appears in the cadastral records of the state, occupied by crops, orchards, vineyards and olive groves, wherever located and that has fertility as an essential feature.
13. **“Land plot”** is the land located within the boundaries of cities and residential areas at the time of expropriation. When the residential area had no boundaries, a land plot is considered the surface of land occupied by a building constructed thereon and the functional yard. The surface of the latter is calculated as three times the surface of the building, however not more than 500 square meters.
14. **“Industrial plot”** is the land surface area which was outside the boundaries of cities and residential areas at the time of expropriation, on which were built permanent construction facilities for economic purposes or serving their functions.
15. **“Alienation”** is the assignment of a property title or other real rights from a natural or legal person to another, as provided under the Civil Code;
16. **“Evaluation”** is the financial evaluation that the PMA performs on the final decision on compensation, pursuant to the provisions herein.
17. **“Final decision”** within the meaning of this law, is any administrative or judicial decision, which is not subject to a control and review procedure by a higher administrative or judicial authority, including here enforceable decisions, and when the latter have undergone recourse, the decision of the Supreme Court will be considered as final.
18. **“Decision on restitution/compensation”** are the decisions of the former Commissions on Restitution and Compensation of Property, the Regional Local Commissions on Restitution and Compensation of Property and the Agency on Restitution and Compensation of Property.
19. **“Cadastral index”** is any kind of property and the record indexes covered herein, which are land plot, agricultural land, forest, meadow and pasture.
20. **“Cadastral area”** means the division of properties under the map of the Immovable Property Registration Office.

## CHAPTER II RULES ON COMPENSATION

### Article 6 Evaluation Methodology

1. In order to implement, all final decisions on the restitution and compensation of property, they will be subject to evaluation by the PMA, as follows:
  - a. The property recognized for compensation is evaluated under the cadastral index it had at the time of expropriation.
  - b. 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.
2. Final decisions that have recognized only the right to compensation are financially evaluated according to the cadastral index the property had at the time of expropriation pursuant to letter "a" of paragraph 1 of this article.
3. In cases in which the expropriated subjects benefited through a decision compensation or restitution, the difference calculated as per the letter "b" of paragraph 1 is deducted from the assessed value of the property recognized for compensation, calculated according to letter "a" of paragraph 1 herein.

4. The evaluation of final decision recognizing the right of compensation is performed taking as reference the cadastral index of the origin of the property, located nearest to the property that will be compensated, based on the land value map at the time of entry into force of this law. If next to the property there are areas within the same distance but with different values, the area with the highest price is taken as reference for the calculation.

5. If the PMA decides on the recognition and compensation in nature in the property of the subject, the property is assessed under paragraph 1. When this assessment shows that the subject receives a property that has a value greater than the property he had at the time of expropriation, then the subject is compensated in nature with the surface corresponding to the evaluation and the rest of the property is transferred to the land fund through a decision of the PMA.

6. The value of shares, bonds, financial compensation or any other form of compensation, including the value of the property gained by provisions of the Law for the allocation of agricultural land, that the subject or the heirs were previously awarded will be deducted from the evaluated amount of compensation.

7. For the decisions on compensation determined in value and still unenforced, for the period from the time of recognition of the right to compensation to receiving the actual compensation, the expropriated subjects will benefit from indexation according to the official value of inflation and banking interest, according to the annual means issued by the Bank of Albania at the time of entry into force of this law.

#### **Article 7**

1. All final decisions that have recognized the right to compensation, and those that will be taken until the conclusion of the process pursuant to this law, shall be enforced while respecting the provisions of this law.

2. The financial evaluation of the final decisions on compensation shall be performed by financially evaluating the property recognized for compensation under Article 6 of the law, pursuant to the following procedure:

a. If the evaluation of the property restituted through a final decision is higher than the estimate of the land recognized for compensation, then the expropriated subject is considered as compensated in full.

b. If the evaluation of the property recognized 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.

c. In the event that a final decision has not held on restitution then the financial evaluation of the property recognized for compensation is performed based on the cadastral index, which the property had at the time of expropriation, pursuant to paragraph 3 of Article 6.

d. In the event that a final decision has not recognized the right to compensation of property, then the decision and relevant documents are filed in line with the legislation on archives.

#### **Article 8**

##### **Compensation and Evaluation Forms**

1. Expropriated subjects are subject to the compensation procedures pursuant to the provisions of this law, based on final decisions on recognition and compensation;

a) in monetary value;

b) in immovable property of any kind, with equal value, owned by the state.

c) with shares in companies with state owned capital, or where the state is co-owner, with an equal value to the immovable property.

d) with the value of facilities, subject to privatization

2. The process of evaluation of the property to be compensated under this article has as a subject:

a) the land;

b) the buildings/facilities.

3. The base Indicators on the value of property are assigned separately for land and buildings/facilities. When a property is a merger of the land and the building/facility, its value is calculated per unit, as the summary of the values of the facility and the land on which it is built.
4. The value of the property to be compensated, is calculated pursuant to the provisions of this law based:
  - a. For the land, on the value map;
  - b. For facilities, on the decision of Council of Ministers on the assessment methodology for immovable properties in the Republic of Albania.

### **CHAPTER III THE COMPENSATION FUND AND PROPERTY RESTITUTION PROCEDURE**

#### **Article 9 Properties Compensation fund**

1. The properties compensation fund is a fund available for the compensation of final compensation decisions, as defined herein, which comprises:
  - a) The Financial Compensation fund;
  - b) The land fund.
2. The Compensation Fund is untouchable. No administrative or judicial authority may dispose of the fund, apart from the subjects mentioned in this law for its administration.

#### **Article 10 Financial fund for compensation**

1. The financial fund of compensation is considered a special fund, in the meaning of Article 7 of Law no. 9936, dated 26.06.2008 "On management of the budget system in the Republic of Albania".  
The procedures for the proposal and adoption of the budget thereof are the same as the ones applicable to the law on State Budget and are presented to the National Assembly together for approval.
2. The property compensation fund is used for the financial compensation of expropriated subjects whose compensation right is recognized through a final decision.
3. The sources of the property compensation fund are:
  - a. Income from the State Budget for the compensation of owners;
  - b. Income from the sale at auction of state-owned properties which are part of the land fund;
  - c. Proceeds received from the transfer of ownership of the building parcels, pursuant to Law no. 9482, dated 03.04.2006, "On the legalization, urbanization and integration of illegal constructions", as amended;
  - d. Other income which, under special laws or bylaws is transferred in the account of the property compensation fund and;
  - e. income from various donors.
4. The property compensation fund is managed by the Properties Management Agency in a special Treasury account at the Bank of Albania. The resources constituting the properties compensation fund, under paragraph 3 of this Article, are cashed and administered, as per their nature, through the treasury system.
5. Notwithstanding the rule provided under Article 5 of the Law no. 9936, dated 26.06.2008 "On management of the budget system in the Republic of Albania", the balance of monetary values, unused in the property compensation fund at the end of a budget year, in the separate account in the Bank of Albania, is deferred in the account for the subsequent year.
6. The accounts of the Property Compensation Fund are reported to the National Assembly as part of the annual consolidated reporting on the State Budget implementation.

7. The expropriated subjects holding a final compensation decision benefit compensation from the Compensation Fund to the extent and under the manner defined herein.
8. The method and procedures for managing the Financial Compensation Fund and rules for the collection and management of resources, which constitute the fund, are regulated pursuant to the legislation in force.

**Article 11**  
**Allocation of the financial compensation fund**

1. The State budget approves annually a financial fund, according to the chart in Appendix 2 of this law, but not less than 50 Billion ALL in 10 years, which will be administered by the Agency, for the implementation of the property restitution process.
2. The PMA publishes in its official website, the Official News Bulletin and /or the media a list of entities that benefit from the property compensation fund in the respective period, guiding the subjects to open bank accounts near second tier bank.
3. The PMA opens accounts near a second tier bank, in which deposits the funds made available for the compensation of properties.
4. The beneficiaries notify the PMA of their bank account information, in which the payments on the compensation shall be conducted.
5. Following the opening of the individual bank account near the bank by the eligible subjects, the PMA orders the bank for the performance of payments from the PMA's account to the account of the beneficiary. The order sent to the bank must contain the name of the beneficiary, the amount awarded as well as the bank account number of the beneficiary.
6. Based on the order of the PMA, the bank performs the transfer of the amount to the respective accounts of the benefiting subjects.
7. The bank account opened on behalf of the PMA, in which are to be deposited the amounts to perform the compensation, is excluded from decisions on blocking and seizures issued by court bailiffs.

**Article 12**  
**The Land Fund**

1. The Land Fund consists of:
  - a. The Physical Property Fund in each district made available through a Council of Ministers Decision.
  - b. The Physical Property Fund, which through a decision of the PMA, pursuant to Article 6/5 of this law becomes part of the land fund based on the rules established in this law.
  - c. Surfaces remaining free, in informal buildings territories.
  - d. Other surfaces made available through the means provided in law or secondary legislation.
2. The land fund is financially evaluated by the PMA based on the value map at the time of entry into force of this law, within 30 (thirty) days for the funds made available by Decision of the Council of Ministers and immediately for the fund, which is transferred through a PMA decision.
3. Information on this fund is published near the PMA premises and on the official website, immediately after carrying out of the evaluation procedure.

**Article 13**  
**Physical compensation through auction**

1. The PMA, in order to increase the financial resources for the real properties compensation fund, organizes an auction for the sale of a property, part of the land fund. All owners holding a compensation decision financially evaluated by the PMA can participate in the auction. The entities holding an assessment on a final compensation

decision can participate in the auction if they express their will to benefit from the physical compensation fund. The PMA announces the winner in accordance with the legislation in force for public auction, based on the highest bid. In case the bids are of equal value, preference is given to bids within the district, where the property is recognized for compensation and if there are several such offers, the earlier final decision.

2. In case the auction for the sale of property fails twice, for subjects holding a final compensation decision, the PMA performs a public auction for the sale of such property. The PMA organizes the auction in compliance with the legislation in force on public auctions. During the auction procedure, the PMA shall not, in any case, sell the property with the prize value lower than its initial assessment made pursuant to paragraph 2 of Article 12.
3. The Income gained from the sale at auction of the properties, part of the land fund are transferred to the Financial Compensation Fund and are used for the financial compensation of subjects, under the provisions of this law.

#### **Article 14**

##### **Other forms of physical compensation cases**

1. In case that after the public auction, under the provisions of Article 13 herein, the property is not sold, it is used for the physical compensation of subjects holding a final compensation decision.
2. The PMA shall publish on its official website and the Official News Bulletin, for a 45 day period, the property to be used for physical compensation, and during such period it awaits for applications from the subjects holding a final compensation decision. Upon the termination of such 45 day term, the PMA announces, within 30 days the beneficiary, in order of priority specified in paragraph 3 of Article 15 of this law, and follows up with the procedures for physical compensation to the beneficiary.
3. The subject has to attach to the application for physical compensation a declaration in which he waives the remainder of compensation if he is declared a beneficiary.
4. In the event that at the conclusion of this procedure the physical compensation fund is not used entirely, the PMA disposed directly with a physical compensation decision pursuant to the norms of Chapter IV "Examination of untreated applications".
5. The rules and procedures for the implementation of this Article shall be determined by the Council of Ministers.

#### **Article 15**

##### **Deadlines on the financial evaluation of the compensation decisions**

1. Within a period of 3 years from the entry into force and pursuant to this law, the PMA will financially evaluate, all untreated final decisions recognizing the right to compensation.
2. If the Agency does not comply within this period of 3 years the obligation, under paragraph 1 of this Article, the subjects may address the Tirana Administrative Court of First Instance, to carry out the evaluation pursuant to this law.
3. Priority on the financial evaluation shall be given to final decisions in chronological order starting from the earliest decision.

#### **Article 16**

##### **Procedures on registration and enforcement of compensation decisions**

1. The PMA, within 6 months from the date of entry into force of this law, shall publish a register of all final decisions recognizing the right to compensation of property for expropriated subjects. The register must contain information on the missing documents in the decision folder. The registry is published on the website of the PMA, the Official News Bulletin and/or the media. The rules for the creation, maintenance and



administration of the register are determined by the Council of Ministers, on the proposal of the PMA.

2. Interested subjects may complement the documentation requested by the PMA, necessary for the financial assessment of the decision on compensation within a period of 6 months from the date of publication of the registry.
3. In the event that the final administrative decisions have technical/mapping flaws or obvious material errors, then through a request of the subject, the PMA may remedy the defect or correct the error without affecting the contents of the decision, pursuant to the Code of Administrative Procedures of the Republic of Albania.
4. The compensation decision is assessed financially with the minimum price specified in the value map for that administrative unit and for that category of property, if:
  - a) the interested subjects do not submit any documentation necessary for the financial evaluation of the decision within the time-limit defined in paragraph 2 of this Article and;
  - b) It is objectively impossible for the PMA to evaluate the property based on the available documentation.
5. The subjects' compensation starts after the decision on the financial evaluation becomes final. The evaluation becomes final:
  - a) When the deadline defined in section 3 of article 19 of this law has passed and there has been no appeal;
  - b) When the State Advocate's Office and the interested subjects declare that they will not appeal,
  - c) Or in cases there is an appeal, and the examination in courts of all instances including the Supreme Court has been completed.
6. The process of payment on all final decisions that recognized the right of compensation shall be completed within a period of 10 years from the entry into force of this law.
7. The award for compensation purposes is not subject to any taxes or deductions.

#### **Article 17**

##### **Examination of individual/extraordinary requests for financial compensation**

1. From the annual budgetary fund for financial compensation referred to in Article 11, paragraph 1, no more than 1/3 can be used for cases of special applications for financial compensation.
2. Subjects who express willingness to be financially compensated through special applications, can benefit from this fund, as follows:
  - a) When the subject requests to be financially compensated within 1 year, then he receives 20% of the compensation value and foregoes the rest of this value.
  - b) When the subject requests to be financially compensated within 3 years, then he receives 30% of the compensation value and foregoes the rest of this value.
  - c) When the subject requests to be financially compensated within 5 years, then he receives 40% of the compensation value and foregoes the rest of this value.
3. Priority shall be given to applications submitted under letter "a" to applications submitted under letters "b" and "c", and applications submitted under letter "b" to applications submitted under letter "c" of paragraph 2 of this Article. In the applications under the same item, priority shall be given to the earliest final decisions.

#### **Article 18**

##### **Treatment of cases with overlapping**

1. In cases where are recorded overlapping of the right to compensation, the PMA makes the appropriate assessment, pursuant to this law.
2. The Agency proceeds with the procedures for the enforcement of the decision for the parts that do not overlap. For the overlapping parts, the Agency submits the relevant value in a separate bank account, which after settlement of the issue of overlapping is

paid to the subject. The parties may settle the case of overlapping through agreement or through judicial means.

**Article 19**  
**Appeal against the financial evaluation**

1. Any interested party has the right to appeal against the financial evaluation of the PMA, which establishes the value of the property, to the Administrative Court of Appeal, within 30 (thirty) days of the publication, and only for the amount of compensation value.
2. The PMA publishes the decisions pursuant to the provisions of the Code of Administrative Procedures.
3. Upon the termination of the 30 days period, if the interested subject has raised no appeal, the assessment of the final compensation decision is enforced by the PMA pursuant to the provisions of this law.

**CHAPTER IV**  
**EXAMINATION OF UNTREATED CLAIMS**

**Article 20**  
**Untreated Claims**

Applications submitted before the entry into force of this law, as well as applications submitted within the time limits specified in this law, which are not categorized in the properties determined in Articles 4 and 25, shall be subject to the treatment of the property through the recognition of the right of the expropriated subjects through a decision of the PMA, and their compensation pursuant this law. In any case, where possible priority is given to compensation in nature at his own property, through a decision of the PMA.

**Article 21**  
**The compensation in nature at the property of the expropriated subject**

1. Expropriated subjects are recognized the right of ownership and are physically compensated real estate without limitation, within the recognized property, free properties, pursuant to the provisions of this law, except for agricultural land, which is physically compensated up to 100 hectares;
2. If the expropriated subject (his heirs) has benefited from the legal provisions for the allocation of agricultural land, then the value of land that is physically compensated in the recognized land or in any other way, is calculated as the difference between the value that he would have benefited in the conditions of not benefiting from the legal provisions for the allocation of agricultural land and the value for the surface that each of the subjects or their heirs have benefited from the implementation of this law.
3. In case that the alleged property is categorized as property that can not be physically compensated and the expropriated subject (his heirs) has benefited from the legal provisions for the allocation of agricultural land, then to the value of compensation under this law, is deducted the value of the property for the surface on which each of expropriated subjects or their heirs have benefited from the legal provisions for the allocation of agricultural land.
4. In any case, in determining the value of the property for compensation, is taken into consideration every deductible benefit in the amount of compensation pursuant to this law.
5. The expropriated subjects are physically compensated, according to the criteria of this law even on real estate, the land located within the tourist territories, when these properties are not occupied, as determined by paragraph 1 of Article 25 of this law. The determination of touristic territories, for the purposes of application of this law, is performed by the Council of Ministers.

6. The expropriated subjects are physically compensated the real estate owned or under the administration of state institutions that are outside the destination of their activity and do not perform a public function, as well as when these properties are not occupied, pursuant to the provisions of paragraph 1 of Article 25 of this law.
7. The plot of land occupied by state-owned buildings, on which permanent and legitimate state owned buildings have been constructed, is treated under the provisions of this law.
8. The expropriated subjects, whose properties were flooded by the construction of hydro energetic power plants are treated under the provisions of this law, unless they have benefited under the legislation for expropriations for public interest.
9. Expropriated subjects treated with restitution and compensation under the laws, which have treated the process of restitution and compensation, during the years, are entitled to benefit from this law only as so far as the part of the property which remains unrestituted or uncompensated.
10. In cases where one or more heirs have benefited from the legal provisions for the allocation of agricultural land, the PMA guides the subjects to conduct the division and positioning of their respectively owned parts through an agreement.

**Article 22**  
**Right of First Refusal**

1. If cases where the ownership or management of state objects built on land recognized for compensation with a final decision determining the right of first refusal, is transferred to another state institution, the right of first refusal is not extinguished.
2. For immovable properties occupied by state objects, the expropriated subjects have the right of first refusal for these objects, when they are privatized. The expropriated subjects have the right to waive the right of first refusal against compensation according to the rules specified in this law, within 1 year from the publication of the Register, pursuant to this law. This term is preclusive.
3. The right of first refusal is recorded near the Immovable Properties Registration Office.

**Article 23**  
**Land granted for use**

The lands granted for use, leased or in any other means by the state, when free in the meaning of article 25 of this law, are to be compensated to the expropriated subject pursuant to the conditions and criteria set forth in this law. The beneficiary is in any case obliged to respect the existing legal relationships.

**Article 24**  
**Treatment of property in lands occupied by buildings**

1. For applications submitted under Article 21 of this Law, in declared areas as informal through primary and secondary legislation, the applicants are recognized the right to compensation for the occupied property, pursuant to the criteria of this law. Within the territories declared as informal compensation in nature is not allowed.
2. The PMA, in other territories with objects, as far as possible, treats with compensation in nature within the property recognized to the applicants for the part of the property, which is free. Compensation in nature is not permitted under the land of the buildings and in a surrounding functional space necessary to serve the object.
3. The PMA and ALUIZNI act in their decision on the same map, unified and published electronically, which becomes operational within 3 months from the entry into force of this law. The PMA, in each case, verifies the property where it is.
4. The proceeds received from the transfer of ownership of the building parcel, pursuant to Law no. 9482, dated 03.04.2006, "On the legalization, urbanization and integration of illegal constructions", as amended, are transferred to the account of the PMA, which distributes them according to the value of the approved compensation.

5. The Council of Ministers, on the proposal of the Minister of Finance, on the basis of income received, pursuant to letter "c" of paragraph 3 of Article 10 of this Law, approves the amount available to the subjects, referred to in point 5 of this Article as well as the time period for the benefit of this amount.
6. Subjects who have been granted the right to compensation in accordance with law no. 9482, dated 03.04.2006, for "legalization, urbanization and integration of illegal constructions", as amended, receive compensation, depending on the income received from the transfer of ownership of construction sites, pursuant to paragraph 4 of this article.
7. Following the payment of the compensation value, the remainder of the fund is transferred to the financial compensation fund for expropriated subjects, pursuant to paragraph 3<sup>o</sup>c of Article 10 herein.

#### **Article 25**

##### **Properties not subject to physical compensation**

1. Are not subject to physical compensation immovable properties, which:
  - a. Serve a public interest, pursuant to limitations provided by law;
  - b. Serve to the fulfilment of the obligations of the Albanian state, which arise under treaties and conventions to which our country is a Party;
  - c. Are public and unalienable property pursuant to law and secondary legislation;
  - d. Occupied pursuant to legal acts, provided in Annex 1 of this law.
2. In case the properties, referred to in paragraph 1 of this article, are proposed to be alienated, they are transferred to the expropriated subjects when the latter are not compensated for that property. In these cases the properties are compensated pursuant to this law.

### **CHAPTER V**

#### **STATE BODIES IN CHARGE OF THE PROPERTY TREATMENT PROCESS**

##### **Article 26**

##### **Property Management Agency**

1. The Properties Management Agency, a legal public entity, dependent on the Minister of Justice, hereinafter referred to as the PMA, with the headquarters in Tirana, shall be in charge of the implementation of this law. The PMA carries out the following tasks and duties:
  - a) Finalizes within the legal deadline the examination of the applications of the expropriated subjects on the treatment of property for which no decision has been held, while checking, evaluating and confirming:
    - i. The entire documentation submitted by the expropriated subjects and the compliance thereof with the criteria provided under this law;
    - ii. The accuracy of the documentation submitted by the expropriated entities, by checking thereof with the laws and bylaws or judicial decisions, in compliance with article 2 herein, which have been used as a basis for expropriation, nationalization, confiscation or unfair appropriation of property by the state.

Following the control, assessment and examination of claims, pursuant to the definitions of the above letter "a" clause "1", the Director General of the PMA issues a decision within the term defined in Article 33 of this law on:

- Dismissing the claim;
- Recognition, as appropriate, of the right of ownership, physical compensation within the boundaries of the recognized property or compensation from the land fund or the financial compensation for the property and other real rights, pursuant to this law.

- b) Accepts, examines and assesses the applications to benefit the recognized right to compensation, according to this law and bylaws in force.
  - c) Verifies and calculates the financial obligations of the state towards expropriated subjects or third parties, under the provisions of this law.
  - d) Deposits for registration near the registers of immovable property all the decisions dealing with property.
  - e) Any other duty provided by this law and the secondary acts issued for its implementation
2. The Council of Ministers, within 30 days from the entry into force of this law, shall adopt the list of documents required for the process of treatment of property under this law.
  3. Within 6 months of the entry into force of this law, the Council of Ministers adopts, through a decision, the establishment of an Inter-institutional commission presided by the Vice Prime Minister with representation from the Ministry of Justice, Ministry of Urban Development, Ministry of Economic Development, Tourism, Trade and Enterprise, Ministry of Defense, Ministry of Agriculture, Rural Development and Water Management, Ministry of Internal Affairs, Ministry of Environment. The Commission will lead the work on the identification of state property that can be transferred and become part of the property compensation fund. The Commission performs the identification of the properties and proposes to the Council of Ministers the transfer of these properties to the Land Fund. The PMA raises and leads a Technical Secretariat to support the commission's work. The organization and functioning of this process is provided by the Decision of the Council of Ministers for the establishment of the Commission.
  4. The PMA reports annually to the Parliamentary Committee for Legal Issues, Public Administration and Human Rights on the implementation of this law. If necessary, the representative institutions in the inter-institutional Commission, established under paragraph 3 of this Article also report before this Parliamentary Committee.
  5. The organization and functioning of the PMA is established through a decision of the Council of Ministers, within 1 month of entry into force of this law.
  6. The tariffs for the procedures of compensation of properties are established under a joint order of the Minister of Justice and the Minister of Finance.

#### **Article 27** **Treatment of applications**

1. The PMA examines the submitted applications, which are untreated pursuant to the norms of this law. Within the preclusive period of 90 (ninety) days from the date of entry in force of the law, the interested subjects may apply regarding the recognition of property. This deadline cannot be extended or reinstated by the judiciary or any other administrative authority.
2. The PMA shall examine all applications for compensation under the procedures and terms provided for in Chapter III of this law.
3. Pursuant to this law, all applications based only on decisions on proof of legal fact, in terms of Article 388 of the Code of Civil Procedures, are rejected by the PMA through a decision.
4. The PMA during the examination of the unhandled applications applies the rules established by this law and during treatment performs the evaluation of the property pursuant to Articles 6 and 7 of this law.
5. The Director General of the PMA, for the implementation of the responsibilities delegated by this law, holds through decisions. The decisions given by the Director General of the Agency, under this article shall be in writing, reasoned, signed by the head of the institution and shall fulfill the requirements on the administrative act, provided by the Code of Administrative Procedures of the Republic of Albania. When the decision is not appealed within the deadline provided by this law, it constitutes an executive title.

**Article 28****Procedures for collection, processing and administration of the acts of the expropriated subjects during the processing of the applications**

1. The collection, processing and management of the expropriated subjects' acts during the applications handling process, is performed according to these procedures:
  - a. For the new applications, which will be deposited from the date of entry into force of this law until closing of the preclusive period of 90 (ninety) days, the expropriated subjects shall meet the following requirements:
    - i. The form for applying for recognition and compensation, which must be signed by the expropriated subject or his authorized representative. The form contains a warning that the law assigns responsibility to the applicant in case of declaration of false facts or deposit of forged documents.
    - ii. Legal documentation
    - iii. Cartographic documentation pursuant to the requirements to be set for their submission.
  - b. For the applications submitted for handling before the entry into force of this law and with no decision, the PMA immediately begins their examination as follows:
    - i. Within 30 days of the entry into force of this law, it creates the register of applications lacking a decision based on the chronological order of their application to the responsible structures, at the time of their submission based on the regional level.
    - ii. Within 90 days of the entry into force of this law, starts the process of notification of the expropriated subjects on the documentation that must be completed according to the requirements set forth by the decision of the Director General of the PMA pursuant to the priority specified in paragraph 3 of Article 15 herein.
    - iii. The procedures for collection, processing and managing of the acts of the expropriated subjects during treatment of the applications are subject to the provisions of the Administrative Procedures Code.
2. The Director General of the PMA, within 30 days of the entry into force of this law, adopts the standard form referred to in paragraph 1/a/i of this Article, and within 60 days adopts the requirements for eligibility for unhandled applications under paragraph 1/b/iii of this Article.
3. Every expropriated subject has the right to be issued, by the Office of Protocol of the PMA the relevant certification for the protocol number of the registered file, which shows the date of submission of the application and its documentation.
4. The applications of the expropriated subjects, which are deposited through the postal service and have lacks in their accompanying documentation, which makes it impossible to evaluate them, shall be returned to the applicant at the provided address, requesting the detailed complement of the documentation. The application, which lacks the correct postal address, is deemed as not grounded and is reactivated only with the interest of the applicant near the offices of the PMA. At the time of determination by the relevant structures of the PMA, is made a public announcement near the premises of the PMA and the local government units, where the property subject to a claim is situated. The application of the interested subject is accepted within 3 months from the date of determination, otherwise the application of the subject is not accepted, through a decision of the Director General of the PMA.
5. The PMA shall receive and administer the applications of the expropriated subjects against the tariffs determined by the joint order of the Minister of Justice and Minister of Finance.

**Article 29**  
**Appeal**

The interested parties and the State Advocate Office have the right to file an appeal against the decision of the PMA on the recognition of the right, within 30 days from notification of

such decision, to the Appeals Court, pursuant to the rules of the Code of Civil Procedures of the Republic of Albania.

### **Article 30 Registration of the decision**

1. When the decision taken under this law becomes final, the Agency or any interested party addresses it to the Immovable Property Registration Office for registration.
2. Regarding the decisions that have not been provided with a final form due to amendments to the law, the Agency makes the necessary verifications if there has been an appeal within the legal deadline, otherwise these decisions are considered final.
3. The decisions on the right of first refusal option, which have been verified by the Agency following the completion of the register, are to be sent to the Immovable Property Registration Office within a month from the date of verification and in any case within 18 month from the entry into force of this law. The Office shall record them without applying any fines, interests or charges. The interested entities are responsible for the submission of relevant necessary documents required by the Immovable Property Registration Office to support the registration of the decision. The same applies to the compensation decisions.
4. Any court decision amending the PMA decision on restitution/compensation or the value of compensation is notified to the Agency and is recorded in the relevant decisions register, which is kept by the Agency. This register is coordinated with the current register of decisions of the PMA and other previous agencies responsible for restitution and compensation of property.

### **Article 31 Administrative offences**

1. For the purposes of this law, the following offenses, whether or not constitute a criminal offense, constitute an administrative offense and are punishable as follows:
  - a) Violation of the laws and regulations for the administration of the compensation fund shall be punished with an administrative fine from 200,000 (two hundred thousand) to 800,000 (eight hundred thousand) ALL;
  - b) Violation of the legal provisions and regulations for the respect of the deadlines and procedures for physical compensation through auction, other cases of physical compensation, the financial evaluation of decisions on compensation, compensation in nature in the property of the expropriated subject, the examination of untreated applications and every deadline and other mandatory procedures provided for in this law, shall be punished with an administrative fine from 50,000 (fifty thousand) to 300,000 (three hundred thousand) ALL.
2. The fine is determined, in each case, in proportion to the established nature of the offense, responsibility and participation in decision-making of the officer or the offender and whether the offender is a recidivist. In case of repetition of the offense, the offender shall be punished with a fine of twice the value.
3. The power to review administrative offenses provided for in this article belongs to:
  - a) The Director General of the PMA when the violation was committed by his subordinates;
  - b) The Administrative Court when the offense was committed by the Director General of the PMA;
4. The procedures for the finding of the violation, the notification of the offender, the decision, appeal and other administrative measures against violations of this law, as well as execution of the sentence, are regulated by the law in force on administrative offenses.

## **CHAPTER VI**

### **FINAL PROVISIONS**

#### **Article 32 Transitory provision**

1. With the entry into force of this law the Agency on Restitution and Compensation of Property is transformed into the Property Management Agency,
2. The ARCP shall continue to operate under the existing structure, until the approval of the manner of organization and functioning of the PMA, as provided in paragraph 4 of Article 26 of this law and the approval of the organizational structure pursuant to the legislation in force.
3. The administrative documentation files, which are under examination and follow-up by the ARCP, shall be transferred for their administration and further follow-up by the PMA.
4. The archives, the means of work and logistics of the ARCP offices, established and administered according to the law, are transferred under the administration of the PMA.
5. The budget funds planned for the Agency on Restitution and Compensation of Property, upon the entry into force of this law, are transferred to the accounts of the PMA.
6. The PMA digitalises the cartographic information of all final decisions on restitution and compensation of property.

#### **Article 33**

#### **Applications for treatment of the surface left untreated through previous decisions due to legal limitations of the time**

Applications submitted, based on article 22 of Law No. 9235, dated 29.07.2004 for "The restitution and compensation of property" will be managed in the manner, form and conditions provided by this law.

#### **Article 34**

#### **Deadline for finalization of the process**

1. The process of examination of the files submitted before the entry into force of this law and which are still under examination by the Agency shall be finalized within 3 years from the entry into force of this law. The process of allocation of property compensation fund shall continue until, pursuant to the provisions of this law all former-owners holding a final compensation decision are compensated, and pursuant to the deadline provided in paragraph 6 of Article 16 herein.
2. If the PMA does not comply with the obligation to address the applications specified in paragraph 1 of this Article, within 3 years, the subject may address the Court of First Instance, on their applications pursuant to this law.

#### **Article 35**

#### **Retention of Documents**

The documentation for the process of recognition and compensation of property is retained under the legislation in force on archives. Upon the termination of the process, pursuant to Article 33 of this law, such documentation is submitted to the General Directorate of Archives.



**Article 36**  
**Inter Institutional Cooperation**

1. The Agency, for the purpose of the property recognition and compensation process, shall coordinate its activity with the Immovable Property Registration Office, the Agency for the Legalization and Urban Planning of Informal Areas and Buildings, the Directorate of Management of Public Property, the State Advocate Office, the State Authority for Geospatial Information (ASIG), the State Archive, the Central Technical Building Archive, local government institutions and any other state institution whose activity is responsible for this process. Any state institution which activity is relevant or which is responsible for the process of recognition, restitution and compensation of property is obliged to cooperate and provide free of any fees, information or documentation required by the Agency and also to communicate the grounds of failure for not meeting a required or recommended measure.
2. The Council of Ministers, through decision, defines the detailed rules on the procedure of cooperation and coordination of the activity of the Agency with other state institutions.

**Article 37**  
**Bylaws**

Within 6 months from the entry into force of this law, the Council of Ministers shall issue the bylaws necessary for its implementation. Until the issuance of these acts, the existing secondary legislation remains in force, for as long as they do not contradict this law.

**Article 38**  
**Abrogation**

Upon entry into force of this law, Law no. 9235, dated 29.07.2004 "On restitution and compensation of property", Law No. 10239, dated 25.02.2010 "On creation of the special fund for compensation of property", and any other provisions contrary to this law are abrogated.

**Article 39**  
**Entry into force**

This law enters into force 15 days after its publication in the Official Gazette.

C H A I R M A N  
I L I R M E T A

Approved on 5.12.2015

**ANNEX 1**

1. Law No. 7501, dated 19.07.1991, "On Land".
2. Law no. 7512, dated 10.08.1991 "On sanctioning and protection of private property and free initiative, private independent activities and privatization".
3. Decree of the President of the Republic no. 378, dated 2.12.1992 "On granting of studios to painters and sculptors"
4. Law no. 7652 dated 23.12.1992 "On privatization of state dwelling places";
5. Law no. 7665 dated 21. 1 1993 "On development of areas with tourism priority";

6. Law no.8312, dated 26.03.1993 "On undivided agricultural land";
7. Law no. 7698 dated 15.04.1993 "On restitution and compensation of property to former owners"
8. Law no. 7980, dated 27.07.1995 "On acquisition of lands"
9. Law no. 7983, dated 27.07.1995 "On acquisition of agricultural land, pastures and meadows";
10. Law no. 8053, dated 21.12.1995, "On assigning the property of agricultural land free of charge"
11. Law no.8337, dated 30.04.1998 "On assigning the property of the agricultural land, pastures and meadows";
12. Decision of the Council of Ministers no. 452, dated 17.10.1992, "On Restructuring of Agricultural Enterprises".
13. Law no. 8743, dated 22.02.2001, "On the State's immovable property".
14. Law no. 9482, dated 03.04.2006, "On the legalization, urbanization and integration of illegal constructions", as amended.

## ANNEX 2

<b>Budgetary Year</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>	<b>Year 9</b>	<b>Year 10</b>	<b>Total</b>
Billions/ALL	3.00	3.33	3.69	4.10	4.54	5.04	5.59	6.20	6.88	7.63	50

The values provided in this appendix are in billions of ALL.

## **REPORT ON THE LAW (EXPLANATORY REPORT)**

### **REPORT FOR THE LAW**

#### **“ON THE TREATMENT OF PROPERTY AND FINALIZATION OF THE PROCESS OF COMPENSATION OF PROPERTY**

##### **I. PURPOSE OF THE LAW AND OBJECTIVES TO BE ACHIEVED**

From 2005 until today, financial compensation for the building plot land was applied as a way of compensation to former owners. This compensation has managed to repay a portion of the owners with compensation for part of the plot of 200-500 m<sup>2</sup> (depending on the area recognized for compensation) and by chronological order of the decision, has reached the year 1994. As for agricultural land, any compensation procedure has yet to begin. Clearly, the formula used for the compensation of former owners is not effective.

The legal framework for restitution / compensation of property has changed constantly, bringing the objections of the relevant stakeholders, objections which since concern a constitutional right, such as the right to private property, have addressed for solution the Constitutional Court. In reference to the practice of the Constitutional Court, the ARCP has analyzed the legal and regulatory framework in force and has reached the conclusions and suggestions proposed by this bill.

The current legal framework provides some forms of compensation, as well as the previous legal framework (Law 7698/1993 and by-laws for its implementation), thus the decisions taken during the years have set out the various forms of compensation.

The proposal by the bill, referring also to the decisions of the Constitutional Court and the ECtHR's case law, is introduced in order to resolve the issue of former owners, eliminating in the law and practice the bureaucratic delays, and to bring equality to all former owners whose property has been recognized for compensation, despite the cadastral value of the immovable property that has been recognized, with a view to the realization of fair compensation, pursuant to the social and economic conditions of the state. The Constitutional Court, at the same time, noted that the repeal of legislation passed by the communist regime for 50 years, can not lead to the restoration of property relations as they were in 1944, as the full compensation of the damage suffered, due to objective changes in time and justified legal reasons. However, this law finds a balance between the public interest and the right to property. The principle is not the erasure of all injustice, but its reduction to the possible minimum, always within the social and economic conditions and opportunities of our country.

The Law has been prepared taking as reference the pilot judgment of the ECtHR and the practice of the Constitutional Court, while respecting the recommendations and the relevant principles and concluding with:

- An effective and realistic formula for the compensation of the owners.
- A reasonable and defined timescale for the finalization of the entire process.
- A fair solution, while respecting the constitutional norms for all owners, but also for all citizens, taking into account the public interest.

## **II. ASSESSMENT OF THE DRAFT LAW BASED ON THE POLITICAL PROGRAM OF THE COUNCIL OF MINISTERS, WITH THE ANALYTICAL PROGRAM OF THE ACTS AND OTHER POLITICAL DOCUMENTS**

The political program of the Council of Ministers has explicitly provided that:

For the new government, there will not exist the term "former owner". This is not an issue of terms, but a matter of strategy in solving problems. Albanians will all be property owners with legitimate properties. The government will solve the issue of former owners by:

- i. specifying the compensation fund for former owners, which will operate in a transparent manner under clear and equal a scheme for all concerned parties; and
- ii. eliminating in law and in practice bureaucratic delays as a basis for corruption related to the process of restitution and compensation of property;
- iii. steering the privatization of public assets towards the compensation of former owners.

To efficiently solve the issue of restitution and compensation to the heirs of the owners, the Government was committed to begin working with the conduction of a thorough and comprehensive analysis of the legal framework in force for the restitution and compensation of property and the institutions responsible for its implementation. This analysis identified the real problems that hinder this process and, following this, all analytical findings were presented in several consultative tables attended by the respective state institutions and stakeholders. At the conclusion of this process and after consultations with local and foreign experts was concluded that this legislative initiative was recommended to complete the process of restitution and compensation within an appropriate time frame, in response to the recommendations of the European Court of Human Rights.

This law comes especially as proof of the commitment of the government to the finalization of the process of property restitution and compensation, process that has been delayed for years. This proposed initiative follows the request and proposals of the ARCP.

## **III. THE ARGUMENT OF THE DRAFT LAW ON THE ADVANTAGES, PROBLEMS, THE EXPECTED EFFECTS**

The Albanian Government, having found the approval and encouragement of the international organizations, most notably, the Committee of Ministers of the Council of Europe and the European Union has started with intensity and dedication the drafting of the legal framework and the creation of the appropriate structures.

As a roadmap for the next steps serve not only the directives of the European Court of Human Rights in "Manushaqe Puto and others v. Albania" and the directives of the Committee of Ministers of the Council of Europe and the European Union in their international acts, but also the latter case law of the ECtHR, for similar situations.

The Law is proposed to focus on the protection and guaranteeing the constitutional right of ownership, to ensure its 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.

The approval of this law intends to give the possibility to the former owners of immovable properties, to restore the denied rights of ownership during the communism regime.

It is true that the law that has been repealed had deadlines for the completion of the process, but has not been determined the annual fund that must be allocated to realize the

compensation of property. This is a further guarantee that the Law gives for the security of the process, in order for this process to be completed within the deadlines.

The law is a highly clear efficient and adaptive for the following reasons:

- It clearly defines the competent authority that will manage this process.
- It determines the finalization of the examination and issuance of decisions on applications that are not covered within a 3 year period. termination of the financial evaluation of the compensation decisions,
- It determines the financial evaluation of the compensation decisions,
- It determines the removal of the application procedures,
- It determines the completion of the liquidation of all compensation decisions within a period of 10 years, guaranteeing the fulfillment of this obligation through an annual financial fund specified in the draft, as well as the land fund also defined in the draft.
- Provision by law of the structure of Property Management Agency.

In this context, the budgetary policies of the Council of Ministers should, in the budget of 2016, provide for an increase in human resources for the Agency, at least for the first 5 years from the entry into force of this law.

For these reasons, this draft is highly effective and realistic in resolving the issue of property restitution and compensation, by increasing the expectations of the beneficiaries compared to any law or norm applied to date.

The Committee of Ministers of the Council of Europe in its 1243rd meeting, on 8-10 December 2016, in recognition of the steps taken by the Albanian authorities<sup>1</sup>, has held that:

***The law setting up a compensation scheme for property expropriated during the communist regime, which appears to be a very positive step towards putting an end to the longstanding failure to compensate or return property to former owners;*** and invited the authorities to inform the Committee as soon as it enters into force.”

#### **IV. ASSESSMENT OF LEGALITY, CONSTITUTIONALITY AND EFFECTIVE HARMONIZATION WITH NATIONAL AND INTERNATIONAL LEGISLATION IN FORCE**

Pursuant to Article 26 of Law no. 9000, dated 30.01.2003 "On the organization and functioning of the Council of Ministers", the Minister of Justice, is the authority delegated for the proposal of this draft law. Hence, the proposed initiative is presented as an initiative for examination and approval by the Council of Ministers, pursuant to Articles 78 and 83, paragraph 1, of the Constitution.

With regard to the constitutionality and harmonization with international legislation, the draft law is introduced in response to the necessity to address the situation of violation of human rights and fundamental freedoms as found by the European Court of Human Rights (Strasbourg Court) created by the current provisions of the law on property restitution and compensation, in the pilot judgment *Manushaqe Puto and Others v. Albania*.

This Court as well as the international standards in the field of human rights require a final solution on this matter and especially the undertaking by the Government of the obligations deriving from this process and the creation of an effective domestic mechanism, able to provide a final solution to the situation of violation of these rights.

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<sup>1</sup> <https://wcd.coe.int/ViewDoc.jsp?Ref=DEL1243&Language=lanEnglish&Site=CM&Lang=en>

The Law is based on Articles 41 and 181 of the Constitution of the Republic, considering that Article 181 of the Constitution is also a permissive provision for legislative changes on issues related to expropriations and confiscations carried out before the adoption of the Constitution and just satisfaction. The draft law also takes into consideration the entirety of the constitutional decision-making, which have oriented towards the respect of fundamental principles in the drafting of legislation of this nature.

Law No. 133/2015 "For the Treatment of Property and the Finalization of the Process of Compensation of Property" provides that the Agency for Restitution and Compensation of Property is transformed in Properties Management Agency.

For applications submitted under Article 22 of Law No. 9235, dated 29.07.2004 "For Property Restitution and Compensation" will be proceeded in the manner, form and conditions provided by Law No. 133/2015 "On the Treatment of Property and Finalization of the Process of Compensation of Property".

The main objective of the Law Nr. 133/2015 "On the Treatment of Property and Finalization of the Process of Compensation of Property" is to finalize the problems carried over the years, proposing a real and effective compensation mechanism, which aims to establish a fair balance between the interests of owners that are subject to this law and the public interest.

The existing legal framework for the restitution and compensation of property, beyond the bad manners administration was characterized by deficiencies that contradicted the principles of legal certainty, equality, proportionality, lack of effective implementation of the law, the impossibility of response timing or non-execution decisions.

The ECtHR, through general measures, guided towards the undertaking of legal initiatives and creating the appropriate mechanisms for the realization of human rights and standards of the European Convention "On the Protection of Human Rights and Fundamental Freedoms".

In this framework, based on the decisions of the Constitutional Court, the ECtHR judgments, from "Gjonbocari and Others against Albania", to "Manushaqe Puto and Others v Albania", the best practices of the ECtHR such as "Maria Atanasiu and Others v Romania" etc., pursuant to the Action Plans and continuous monitoring of the Committee of Ministers of the Council of Europe, the Albanian Government drafted Law No. 133/2015 "On the Treatment of Property and Finalization of the Process of Compensation of Property".

The previous legislation on property, could not fix and solve definitively the process of restitution and compensation of property and, for this reason, the European Court, in a series of judgments, in particular the judgment on the case "Manushaqe Puto and Others v Albania ", requested the Albanian Government take measures and build an effective mechanism for the restitution and compensation of property in Albania.

Following its policies and the implementation of the judgments of the ECtHR, the Albanian Government, in March 2014, presented to the Committee of Ministers of the Council of Europe and Action Plan for the resolution of the problems noted in the pilot judgment "Manushaqe Puto and Others v. Albania ". In this action plan it is clearly stipulated the Government's intention to change the law on restitution and compensation of property, creating a compensation mechanism, which will establish a fair balance between the rights of former owners and the public interest.

In the case "Bici v. Albania", the ECtHR has concluded:

*" 49...that an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. The concept of "possessions" has an autonomous meaning which is independent of the formal classification in domestic law (Former King of Greece and Others v. Greece [GC],*

no. 25701/94, § 60, ECHR 2000-XII). “Possessions” can be “existing possessions” or assets, including claims in respect of which an applicant can argue that he has at least a “legitimate expectation” (which must be more concrete than a mere hope) that they will be realised, that is, that he or she will obtain effective enjoyment of a property right (see *Gratzinger and Gratzingerova v. the Czech Republic (dec.)* [GC], no. 39794/98, ECHR 2002-VII, § 69, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX). A claim may be regarded as an asset only when it is sufficiently established to be enforceable (see *Kopecký*, cited above, § 49; and *Stran Greek Refineries and Stratis Andreadis v. Greece*, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). By way of contrast, the hope of recognition of the existence of an old property right which it has long been impossible to exercise effectively cannot be considered as a “possession” within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001 VIII). In the Court’s view, a claim is conditional when it depends upon an uncertain future event. No “legitimate expectation” can come into play in the absence of a claim sufficiently established to constitute an asset.

50. In the present case, the applicant was a claimant who lodged an application for the recognition, restitution and/or compensation of property rights. By making the application, the applicant relied on a court decision acknowledging the existence of the legal fact that his late father allegedly owned a plot of agricultural land (see paragraph 6 above). Consequently, the application did not concern “existing possessions” of the applicant himself. It therefore remains to be determined whether the applicant could be considered to have had a “legitimate expectation” that a claim, on the basis of a court decision acknowledging a legal fact, amounted to an asset that would be determined in his favour.

51. In this connection, the Court notes that a court decision acknowledging a legal fact whose documentary evidence has disappeared, taken pursuant to Article 388 of the CCP is of a declaratory nature (also see *Marku v. Albania*, no. 54710/12, §§ 19 and 37, 15 July 2014). Such a decision does not of itself confer on a claimant property rights or any other rights whatsoever. Under domestic law, the recognition of a claimant’s property rights was contingent upon the Commission, which was the competent administrative authority to deal with former owners’ restitution and compensation of property claims (see *Ramadhi and Others*, cited above, § 25). The Commission did not automatically allow a claimant’s application for the restoration and/or compensation of his alleged property rights, which had been acknowledged by a court pursuant to Article 388 of the CCP. It had to ensure that the application complied with the statutory requirements as laid down in the Property Act. The Supreme Court’s subsequent case-law lends support to the view that such a court decision did not suffice to recognise automatically a claimant’s property rights (see paragraph 22 above).

52. It results that the applicant has neither a right nor a claim amounting to a “legitimate expectation” in the sense of the Court’s case-law to obtain restitution of the property in question, and therefore no “possession” within the meaning of Article 1 of Protocol No. 1. It follows that this complaint is incompatible with the Convention *ratione materiae* and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.”

The Constitutional Court, in accordance with the ECHR, have determined that the Government, in terms of finding appropriate mechanisms, has a wide field of operation. It is important that the legal mechanisms, the right to compensation of property to former owners, to be accomplished as close as possible to the values from which the subject is drawn as a result of unfair actions.

Access to the legislation of the time, after 90 years, has been to compensate or to put in place the injustice committed against the former owners.

**This means that the former owner will be recognized the object in the qualities it had at the time of expropriation. The compensation value of the property, in case of absence or transfer of property, as a result of arbitrary state activity shall be determined on the basis of the methodologies for the assessment of property, guided by the principles of market evaluation.**

**This is the basic principle that will be materialized in the mechanism, which will enable the just satisfaction of former owners**

In their activity, the Commission for the Restitution and Compensation of Property or the Agency for the Restitution and Compensation of Property, did not have as a main objective the evaluation of property, but the recognition of the status of the former owner and the property restitution or compensation.

In view of these activities, these administrative bodies have decided upon the recognition of agricultural land or plots of land, influenced by the fact that their recognition and their restitution, are realized by a special legal framework.

The legitimate expectations recognized by the administrative and judicial system, accepted by the Constitutional Court and the European Court of Human Rights, relate to the decisions of the Commission for the Restitution and Compensation of Property, which in almost all cases, has determined the right on the surface and not on the financial worth. It never had under the 2004 law a final compensation scheme but only a transitional scheme.

The instant or subsequent change on the regime of the recognized surface, can not bring consequences in the form of change in value or relevance of these values. The improvements on the item were not a result of the activity of the former owner, and respective value of this improvement will be subject to civil law. It cannot be attached to the current market value or the indexed value of the object.

The right to property, in constitutional terms and rules of international law, is not fully identified with the restitution of property confiscated by a totalitarian regimes. The process of restitution and compensation of property in post-communist transitional countries, as much as it is based on the right of property, it is also based on the principle of fairness and justice and, moreover, the principle of the welfare state. This attitude is generally applied in the practice of all countries faced with the same phenomenon.

The right to property is not entirely equated with the right to restitution and / or compensation. This is also the underlying principle of Article 1 of Protocol No. 1 to the European Convention on Human Rights, **which protects only a person's existing possessions** and does not guarantee the right to acquire possession.

In terms of the provisions of the European Convention on Human Rights, **an asset for purposes of the application of legislation for the recognition, restitution and / or compensation is considered that what is returned as administratively, judicially as well, in a final way**, only after these procedures, any intervention that unfairly affects this property gives rise to demand for the implementation of Article 1 of Protocol 1 of the European Convention on Human Rights.

**The methodology of compensation under the law is constructed by observing two principles:**

**First, the restoration as much as possible of the rights of former owners.** The latter are compensated the property that was taken at the same value, as if it was alienated or expropriated today.

**Secondly, the preservation of equity and legal interest, between the added value of the property:**

If the property, which is returned to the owners, has a higher value of what was expropriated, and this is because of improvements made in this property over the years, then this value is calculated. (E.g. the property was a marsh and now due to reclamation it is industrial land , the added value is calculated in the value for compensation).



From the analysis on the legislation, it is evident that such an approach has led legislation over the years. While the former owner of the apartment was restituted the apartments itself, the value of the improvements would be paid by the latter, while always the value of the land for compensation is closely associated with the characteristics it had at the time of expropriation.

The application of compensation at market value of the land at the time of compensation is a methodology that was applied by the ARCP in what was called the transitional compensation scheme, and was considered by the ECtHR, as not meeting the criteria of an effective mechanism for execution of decisions, which recognized the right to compensation of property.

**Clear reference in the compensation formula can be found in the "Best Practices" of the EctHR, mentioning here "Maria Atanasiu and Others v. Romania", "Manushaqe Puto and Others v. Albania", "Lithgow and Others v. The United Kingdom", "Preda and others v. Romania", "Beshiri and Others v. Albania".**

The initial push for the initiative of new legislation on property rights was the pilot judgment "Manushaqe Puto and Others v Albania". The general measures requested in this judgment and the findings of the ECtHR in "Driza v. Albania", "Ramadhi and Other v. Albania" as well as other judgments cited above, the action plans of the Government and the doctrine of jurisprudence of the ECtHR and the Constitutional Court served as a fundamental roadmap criteria to the drafting of the new legislation.

Its main objective was to resolve conclusively the social problems inherited and created by the administrative misconduct and the legislation, which has clearly resulted as not meeting its objectives.

Law no. 133/2015 "For the Treatment of Property and the Finalization of the Process of Compensation of Property" is characterized as a real and effective mechanism for the compensation of owners; governed by deadlines set for each objective and administrative activity, for the finalization of the entire process.

### **The Principle of Legality**

The legislative initiative and legislative process are carried out in accordance with the constitutional criteria and principles.

In Article 181, the Constitution of the Republic of Albania obliges the Parliament to issue laws for the just resolution of different issues related to expropriations and confiscations carried out before the adoption of the Constitution, guided by the criteria of Article 41 thereof.

On the basis of this obligation, the Albanian Parliament passed Law No. 133/2015 "For the Treatment of Property and the Finalization of the Process of Compensation of Property", which is the subject of the constitutional review.

If we consider Article 181 of the Constitution of the Republic of Albania as material provision to regulate the right to regulate issues related to expropriations and confiscations, this provision opens the way to the lawmakers to remedy, within the reasonable deadlines and within all possibilities of the state, the injustice committed to the former owners. From this point of view, it constitutes a constitutional basis and orientation for the legislator, that for issues of expropriations and confiscations, to regulate them without exceeding the allowable limits and all the while respecting the constitutional standards.

The objective of the lawmakers has been first and foremost the maintaining of the fundamental values and principles of the constitutional declaration, implementation and concretization of a particular policy to improve the situation regarding the recognition / restitution / compensation of

property, in addition to improving the governance and the development of the country as a whole. Rule of Law and the principle of legality require that the law not come in conflict with the Constitution, and the principles regulated and embodied in it.

The achievements of the legislative process have been carried out in accordance with the meaning that Article 41 of the Constitution of the Republic of Albania, as well as Article 1 of Protocol No. 1 to the European Convention "On the Protection of Human Rights and Fundamental Freedoms".

The embodiment in the law of some constitutional concepts dealing with "public interest" and "just satisfaction" and the adhering to the principles of fairness, proportionality and the welfare state, have provided the constitutional limits on which the legislator was guided to respect property rights.

In constitutional terms and rules of international law, property rights are not identified with the restitution of property confiscated by the totalitarian regimes. The process of restitution and compensation of property in post-communist transitional countries is not based on the right of property, but on the principle of fairness and justice and the principle of the welfare state<sup>2</sup>.

The first requirement of Article 1 of Protocol no. 1, which is also the most important, is that of legality: in fact, the second sentence of the first paragraph of this article allows only the deprivation of property "in the conditions provided by law"; The second paragraph recognizes the right of states to determine the rules of use of assets, adopting the "laws". Moreover, the supremacy of law, one of the fundamental principles of a democratic society is inseparable from the totality of the provisions of the Convention.

The principle of legality means that there are also domestic legal norms which are applicable, precisely defined and predictable in their application.<sup>3</sup>

Despite the claim regarding the respect of the principle of legality is not the subject of any challenge by part of the interested subjects, it was considered and given the appropriate priority in the legislative activity.

The principle of justice requires that we consider not only the interests of former owners and their heirs, but also those of other members of society, as well as the public interest in general. Thus, the principle of justice and that of proportionality does not require the return of property rights for all the former owners or their heirs or compensate them in full value.<sup>4</sup> The objective of the restitution of property rights is not the deletion of all the injustices, but their reduction. The restitution of property rights should not cause further injustice.<sup>5</sup>

The regulation of "restitution and compensation of property" in its origins, aims to correct, as far as possible, "within the social and economic conditions of the country", the injustices of the previous regime, carried out to the detriment of private property through nationalization, expropriation, confiscation or any other unfair means<sup>6</sup>.

Law No. 133/2015 "For the Treatment of Property and Finalization of the process of Compensation of Property" has equated the concept "of property restitution and compensation" with the Convention concept of "just satisfaction". The mechanism performing the just satisfaction does so in one of its ways.

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<sup>2</sup> The constitutional German Court . "Gerechtigkeit und Socialstaatlichkeit". BverfGE 84,91 (121, 130).

<sup>3</sup> See Broniowski and the referense

<sup>4</sup> Decision No. 2002-12-01, date 25.3.2003 of the Constitutional Court of Lithuania

<sup>5</sup> Decision P1.US 1/98, date 22.9.1998 of Constitutional Court of Czech Republic.

<sup>6</sup> Decision of Constitutional Court of republic of Albania Nr. 26, date 24.4.2001, Summary of decisions, year 2000-2001, page 194.

In all positions held by the jurisprudence of the ECtHR, the European constitutional one, including the Albanian constitutional case law, it was concluded that, in respect of the principle of justice and the welfare state, the obligation for the full compensation of property expropriated or nationalized by regimes that do not respect the minimum standards of human rights can not be implemented, and that "the full restoration of the previous rights of ownership would be contrary to the principle of equality itself."<sup>7</sup>

The Constitution of the Republic of Albania, in Articles 41 and 181, accepted the criteria of "regulation" and "just satisfaction". These constitutional requirements resulting from the criterion for reward or compensation in favor of the former owner do not necessarily have to be complete, but must be fair.

This constitutional regulation is due not only to the dual personal and social function that the right to property carries, but also to the historical, political, economic, social and legal circumstances, which have contributed to the situation and, as such, can not be disregarded by the legislator.

The "private" function the right of property brings its impact on the normal enjoyment of the rights and the freedoms of the individual. The historical and current meaning and guarantee of the property is that of a fundamental right that is inextricably linked to the individual freedoms<sup>8</sup>.

The property has at the same time a distinct social character, due to the fact that its use must serve public welfare. "As long as the function of property is a tool for the preservation of individual freedom, the property enjoys special protection ... On the other hand, the legislator may impose restrictions on the property depending on its social function<sup>9</sup>". However, "the constitutional guarantee of property can not accept disproportionate restrictions, i.e. Restrictions that are not justified by social considerations<sup>10</sup>."

No absolute right to compensation derives from the concept of property rights that has been accepted by the Constitution of the Republic of Albania in its Article 41, and Article 1 of Protocol No. 1 to the European Convention "On the Protection of Human Rights and Fundamental Freedoms".

The issue of obligation to just satisfaction in itself and its limits are determined by the circumstances of each case. The state has a wide margin of appreciation, because it recognizes the social relations and situation better than any individual and that only it has the legal tools available to improve them.

"Legitimate **public interest** objectives as those pursued in the context of economic reform measures, or measures designed to achieve greater social justice, may request a refund of less than the full market value<sup>11</sup>."

The European Court of Justice, referring to new regulations such as the Law in question, observes that "The need for a peaceful coexistence between members of society and the objectives of general interest, does not mean necessarily that the basic rights be guaranteed without any restriction."<sup>12</sup>

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<sup>7</sup> The European Commission for Democracy and Law (Venice Commission); Opinion on the draft law "On the restitution and compensation of property" of the Republic of Albania, adopted by the Venice Commission at the 58th Plenary Session (Venice, 12-13 March 2004).

<sup>8</sup> Decision of German Constitutional Court; BverfGE 58, 225 (300)

<sup>9</sup> Decision of German Constitutional Court ; BverfGE 52, 1

<sup>10</sup> there

<sup>11</sup> Monica Carss-Frisk: The right to property; Manuals of human rights, no. 4; A guide to the implementation of Article 1 of Protocol 1 of the ECHR, 2001, page 27.

<sup>12</sup> Decision date 4 July 2000, "Haim versus Luksemburg", C-424/97, Rec p.I-5123

While the ECtHR, more than once has introduced case law stating that State Parties to the ECHR enjoy a “margin of appreciation” or considerable discretion as to the manner of putting into practice and applying the provisions of the Convention, the trend of the Court has been to provide the state a “wide margin of appreciation”, especially when it comes to complex and difficult issues<sup>13</sup>.

The European Court has stated in consistency that States enjoy a “wide margin of appreciation” in the economic and social domains, especially with regard to housing policy<sup>14</sup>.

In the case "James v. the U.K.", the elimination of a social injustice, through reform of the tenant legislation, constituted a legitimate aim, though it interfered substantially in the existing ownership rights.

The method of the reform was not regarded as inappropriate or disproportionate. Furthermore, in "Depalle v. France", the ECtHR accepts the extension of the scope of reasonable restrictions through legal initiatives.

In these circumstances, the Government recognizes to its authority, a wide degree of discretion as regards the way it chose to resolve the issue of restitution/compensation, aiming to be in full compliance with the European Convention "On the Protection of Human Rights and Fundamental Freedoms".

## **Public Interest and Legal Security**

### **Public Interest**

Public interest is the interest of all citizens (nationals) of a country, regardless they are former owners or not.

Public interest includes many aspects of the quality of human life, beginning with human rights, human security, economic growth, happiness, prosperity, living standards, welfare, religious values and constitutional heritage. At the very least, its objective is for each country to provide at least a dignified life for its citizens.

In the concrete case we are talking about a process where all the society will be enforced to live with an indelible debt for many decades, to 0.6% of the population, in the meantime that the inherited public debt is in extraordinary values. Encouraging the continuation of such a situation and obstruction to end it, just for the sake of public interest can not be.

The principle of public interest is closely linked to the principle of "the purpose of pursuing justice". Any interference with the enjoyment of a right recognized by the Convention must pursue a righteous purpose. Even in cases where a positive obligation is implied, it should have a fair excuse for inaction by part of the state. The principle of "fair balance" itself, inseparable from Article 1 of Protocol no. 1 assumes the existence of a general interest. The different measures part of Article 1 of Protocol no. 1, are linked between them and, the second, and third are some special cases on the violation of the rights to respect private property.

The existence of a reason of "public interest" required by the second sentence of Article 1 of Protocol no. 1, or "general interest" mentioned in the second paragraph of the same article, constitute the inevitable consequences of the principle established in the first sentence. Consequently, an interference with the exercise of the right to respect for property, within the

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<sup>13</sup> Sporong & Lonroth versus Suedia” (1982) Seria A Nr.52; 5 EHRR 35, EctHR, v decision “Maria Atanasiu and others v. Romania”

<sup>14</sup> Mellacher versus Austria” (1989) Seria A Nr. 169; 12 EHRR 391, ECtHR

meaning of the first sentence of Article 1 of Protocol no. 1 must also pursue a purpose of public interest.<sup>15</sup>

Thanks to a direct knowledge of the society and its needs, the national authorities, meaning the National Assembly and the Government have the discretion to determine what is in the "public interest".

Inside the protective mechanisms established by the Convention, it is up to them to determine the existence of a problem of general interest, which justifies some measures applicable in the field of exercise of the right of ownership.

Therefore, they enjoy a margin of appreciation, as well as in other areas where extended warranties Convention.

**"Since the legislator has a wide freedom to pursue an economic and social policy, the Court respects the way he conceptualizes essential needs of the "public interest", except if his judgment is manifestly without reasonable grounds<sup>16</sup>.**

The European Court of Human Rights has established a case law, where actions must be the same when it comes to political and economic radical change, reforms or occurrences giving rise to the inevitable adoption of some large scale economic and social legislations<sup>17</sup>.

Taking into consideration the margin of appreciation, the Government has estimated that, by Law no. 133/2015 "For the Treatment of Property and the Finalization of the Process of Compensation of Property" it has respected the principle of justice of the aimed objective, because this measure, had as an objective not only the just satisfaction of the previous owners, but also protected the liquidity of state finances facing economic difficulties and the expected financial sinking, and prevents the falling of the country into the abyss, in the wake of which, previous policies had directed it and are still trying to.

After failing to complete the legal framework for the restitution and compensation of property, failure which is not accepted by those who had the possibility, under this legal basis, achieve their financial interests; the Government has had to take measures to protect the economy and finances in general, and in particular human dignity.

In the judgment dated 16 July 2014 the Grand Chamber of the ECtHR, that the case "Ališić and others v. Bosnia-Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia ", the Court has noted that:

“An interference with the peaceful enjoyment of possessions and a failure to act must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights. In other words, in each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State’s action or inaction the person concerned had to bear a disproportionate and excessive burden. In assessing compliance with that requirement, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are “practical and effective”. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State’s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public

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<sup>15</sup> Beyeler v. Italia” [DhM], nr. 33202/96, § 106, ECHR 2000 I § 111

<sup>16</sup> Bronioëski v. Polonia” [DhM], nr. 31443/96, § 134, § 149

<sup>17</sup> “Suljagić v. Bosnia-Hercegovina”, no. 27912/02 § 42

authorities to act in good time, in an appropriate and consistent manner (see Broniowski, cited above, §§ 147-151).<sup>18</sup>

The above findings serve not only as a guide to the "judicial" position of the ECHR, as well as the encouragement of countries in terms of improving the legislation, when **"uncertainty - be it legislative or administrative, or in connection with the practices established safeguards by the authorities - is a factor which must be taken into account to assess the behavior of the state."**

Even in constitutional terms, the priority criterion, widely accepted by the Constitutional Court, is "public interest". Any interference with property can only be justified if it is in the public or general interest. "Alienation of property pursuant to a policy calculated to achieve social justice within the community can be described accurately as a policy in the public interest."<sup>19</sup>

For the purposes of public interest, the legislators are recognized the right to limit the degree of disposition of private property. In order that such interference to the right of property to be justified, it is imperative that there is a proportional relationship between the means employed and the aim sought to be realized. On this basis, the legal system must contain a series of procedural safeguards to ensure that its impact on the right to property is not arbitrary or unpredictable.

The law provides clearly without misinterpretation opportunities, the restoration of the rights and fair compensation in the materialization of the standards of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" and the constitution, through various forms of compensation within the meaning of the constitutional right to compensation.

These forms of compensation provided by the Law. 133/2015 "For the Treatment of Property and the Finalization of the Process of Compensation of Property", aim at establishing a fair balance between different interests.

In the implementation of this law and the secondary legislation that will accompany it, the existence of public interest that justifies the limitation of property rights, as well as measures to be taken to rectify the situation, through right compensation of the property.

Synthesizing the findings of this doctrinal analysis related to public interest, the conclusions derived from the consolidated position held in the case law of the ECtHR, the European and Albanian constitutional case law on issues related to the process of restitution and compensation of properties nationalized and expropriated, we can distinguish that the object of this law does not appear to be violating the criteria set by Article 41 of the Constitution of the Republic of Albania:

"... These changes (in the law) are within the scope of action and assessment of the lawmaking authority, which evaluates on a case by case basis the need for intervention by a new regulation. **The necessity of a peaceful coexistence between members of society and the objectives of general interest, does not mean necessarily that the fundamental rights be guaranteed without any restriction.**"<sup>20</sup>

"The principle of justice requires that we consider not only the interests of the former owners and their heirs (expropriated subjects), but also those of other members of the society, as well as the public interest in general. **Thus, the principles of justice and proportionality do not**

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<sup>18</sup> "Ališić and others v. Bosnia-Herzegovina, Kroatia, Serbia, Slovenia dhe FYROM" Grand Chamber date 16.07.2014, §108

<sup>19</sup> Monica Carss-Frisk; A guide to the implementation of Article 1 of Protocol 1 of the ECHR, page 26.

<sup>20</sup> Decision of the European Court of justice, Luksemburg of 4 July 2000, Case Haim, C-424/97, Rec p.I-5123

**require the restitution of property rights for all the former owners or their heirs or their compensation in full value"**<sup>21</sup>.

"... A person's request to the bodies of restitution and compensation of property ... **is a subjective right, not his legal interest**, in the sense of Article 32 of the Code of Civil Procedure. This means, in turn, that the decisions of the Commission for Restitution and Compensation of Property decided directly on subjective rights, which are exclusive to the certain holders and not of the citizens or the general public, such as for instance public interest.

This fact can be ascertained by the court because of a person's right to be recognized as the owner of an item is regulated by the Civil Code, therefore the court finds that are outside the scope of public law which regulates the actions of state bodies in the protection of public interests. ... The decisions of administrative bodies, which had jurisdiction over property restitution and compensation, over the years, can not be considered administrative acts, in the normal legal sense of the term (*strictu sensu*), but "sui generis" acts issued by a "sui generis", organ for which the European Court of Human Rights has used the new lexical term, quasi court. 15.04.1993"<sup>22</sup>.

"The Constitutional Court finds that one of the constitutional criteria that applies in these legal provisions cited above is the "**public interest**". Any interference with property can only be justified if it is in the public or general interest. "**Alienation of property pursuant to a policy calculated to achieve social justice within the community can be described accurately as a policy in the public interest**"<sup>23</sup>.

**Other constitutional rights may be limited only in terms of Article 17 of the Constitution, therefore, in the public interest, to protect the rights of others in ways and forms that are proportionate to the situation that has dictated the change and without infringing upon the essence of the right.** Regarding other measures taken by the legislator, even those with negative effects on the subjects of law, can not be accepted that their limitation brings in any case the violation of the constitutional principle of protection of acquired rights<sup>24</sup>.

Public interest in the relations with the obligations of Article 1 of Protocol No. 1, has been under special attention by the ECtHR:

In the pilot case of **Maria Atanasiu and others v Romania**, it is shown that in order to steer the solutions to issues that pose problems similar to restitution and compensation of property, the Court has made a comparative analysis of the legislation regarding restitution and compensation of property nationalized before 1989, in Central and Eastern Europe, and has concluded that:

"The majority of the countries concerned restrict the right to restitution or compensation to certain categories of properties or claimants. In some countries the legislation lays down time-limits, sometimes very short, for lodging claims.

91. Some countries provide for various forms of restitution and/or compensation by means of so-called "restitution" laws: this is the case in Albania, Bulgaria, Lithuania and "the former Yugoslav Republic of Macedonia". Others have dealt with the issue of restitution under rehabilitation laws (the Czech Republic, Germany, Moldova, Russia, Slovakia and Ukraine). Finally, the issue is also dealt with under property legislation (Bulgaria, the Czech Republic, Estonia, Germany and Slovenia)."

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<sup>21</sup> Decision No. 2002-12-01, date 25.3.2003 of Constitutional Court of Lithuania

<sup>22</sup> Constitutional Court in the decision No.27/2010

<sup>23</sup> Decision of the Constitutional Court 30/2005

<sup>24</sup> Vendim i Gjykata Kushtetuese 41/2007

The Grand Chamber of the ECtHR, repeated in 2014, even while the law was in process, the possibility of managing the property, under the allowance of general interest:

“As the Court has stated on many occasions, Article 1 of Protocol No. 1 comprises three rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of property and subjects it to conditions; the third rule, stated **in the second paragraph, recognises that the States are entitled, amongst other things, to control the use of property in accordance with the general interest.** The second and third rules, which are concerned with particular instances of interference with the right to peaceful enjoyment of property, must be read in the light of the general principle laid down in the first rule (see, among other authorities, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; *Iatridis v. Greece [GC]*, no. 31107/96, § 55, ECHR 1999-II; *Immobiliare Saffi v. Italy [GC]*, no. 22774/93, § 44, ECHR 1999 V; *Broniowski v. Poland [GC]*, no. 31443/96, § 134, ECHR 2004 V; and *Vistiņš and Perepjolkins v. Latvia [GC]*, no. 71243/01, § 93, 25 October 2012).<sup>25</sup>”

But in all cases, the "restitution" is not an absolute right, but may be subject to numerous conditions and restrictions. The same applies to the right to compensation.

### Legal Certainty

Understanding this principle requires that, on the one hand, the law in a society should to provide security, clarity and continuity, so that the individuals direct their actions in the correct order in accordance with and, in turn, the law itself may not remain static, if should shape a concept, as it is the justice in a rapidly changing society<sup>26</sup>.

Affirming the principle of legal certainty and of the essential components, the Constitutional Court affirmed that this principle can not prevail in any case. The Court highlighted the fact that "in the case that a different legal regulation of a relationship is directly affected by public interest, with all its essential components, this interest will naturally take precedence over the principle of legal certainty."<sup>27</sup>

**The Court held that a change which may be made to the law, "although it may violate a prior right, does not constitute a violation of the principles, entitled rights and the trust of citizens in the judicial system which enjoy constitutional protection. The Constitution does not prohibit any changes to a favorable legal situation.** Thus, in this regard, should in any case and the extent to which citizens trust that the favorable legal situation to be important to protect the constitutional norms and principles, as well as the reasons for such protection.<sup>28</sup>

Legal certainty, as the constitutional concept approached several times from the practice of the Constitutional Court, including the clarity, comprehensibility and consistency of normative system. "This principle involves, among other things, the faith to the legal system, without taking over any guarantee against changing expectation of a favorable legal situation."<sup>29</sup>

In the Constitutional case law is stated that "the principle of legal certainty interacts with other principles such as that of the **welfare state**, which provides lawmakers a vast and indefinable exactly to adjust the benefit of social goods to an extent and amount assigned. "In this regard, the Court underlined" that not every measure with negative effects that takes the legislator on

<sup>25</sup> "Ališić and others v. Bosnia- Herzegovina, Kroacia, Serbia, Sillovenia and FYROM" GCh date 16.07.2014, §108

<sup>26</sup> Decision no. 36, date 15.10.2007 of Constitutional Court of Albania.

<sup>27</sup> Decision no. 26, date 02.11.2005 of Constitutional Court of Albania.

<sup>28</sup> Decision no. 41, date 16.11.2007 of Constitutional Court of Albania

<sup>29</sup> Decision no.10, date 19.03.2008 of Constitutional Court of Albania



the subjects of law is a violation of a right guaranteed by the Constitution. The legislator not only has the right but is forced to regulate through its own acts in detail the rights provided in the Constitution. Only those rights which are expressly provided as unlimited, are not possible to be affected by the legislator.<sup>30</sup>

In several decisions, the Constitutional Court stated that "the legislator may not unreasonably **deteriorate** legal status of people, to deny rights acquired or ignore their legitimate interests ...<sup>31</sup>"

On the basis of such analysis, it turns out that the main purpose of the principle of legal certainty is focused on reliability of the subjects that should have to state and law on their right to legal status. The institutions of state particularly Parliament, are guided by respect for the principle of legal certainty, so that the legal situation of a person could not worsen without the right reasons.

The explanation of the terms "legal certainty" and "legal uncertainty" becomes clearer by contrasting a) solutions that give law Nr. 133/2015 " For the Treatment of Property and the Finalization of the Process of Compensation of Property", with b) the circumstances of fact over 25 years, with c) The Constitutional Court's achievements in these 25 years, as well as d) the orientations of the European Court Human rights.

#### **According to the Law approach:**

The Law was drafted by a group of legal experts in collaboration and continuous monitoring by experts of the Council of Europe.

The Committee of Ministers of the Council of Europe<sup>32</sup> and the European Union, not only have they never expressed doubts, but they have praised the law and encouraged the taking of measures and initiatives for its successful implementation.

The Committee of Ministers:

"In the decision of the 1243rd meeting DH on 9 December 2015, the delegates of the Committee of Ministers noted with satisfaction the law setting up a compensation scheme for property expropriated during the communist regime, which appears to be a very positive step towards putting an end to the longstanding failure to compensate or return property to former owners; and invited the authorities to inform the Committee as soon as it enters into force.

#### **The European Union:**

Regarding the execution of ECtHR judgments in cases related to property, financial compensation given to some applicants. To implement the action plan of 2014, agreed upon with the Committee of Ministers of the Council of Europe, the Government is finalizing a new law for the setup of a mechanism to implement the decisions and to ensure the compensation or restitution of property nationalized under the communist regime....

In accordance with recommendation 2 of KER, Albania has prepared a draft law that will improve the financial sustainability of the current compensation scheme ...<sup>33</sup>The law regulates the just satisfaction of the cases of the right of ownership, in accordance with Article 41 of the Constitution and Article 1 of Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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<sup>30</sup> there

<sup>31</sup> Decision no. 36, date 15.10.2007 of Constitutional Court of Albania

<sup>32</sup> See decisions of the Committee of Ministers of the EC Progress Report on Albania and the European Union.

<sup>33</sup> 2nd Recommendation of KER

For the first time in the history of the countless legislation regarding properties, the law, provides for judicial response in case of non-compliance pursuant to law within a specified deadline.

The law, leaves nothing to chance or subjective assessment, but determines the financial compensation fund, dedicated just to the just satisfaction of the former owners as well as penalizing measures for its respect and integrity.

The law defines a clear and predictable mechanism. Preclusive terms govern the relationship between the administration and the subjects, and the right to appeal is guaranteed in the better courts of the system.

In no part of the Law it raises suspicion, nor implies, nor provides the possibility for the opportunity to review the decisions of the administration or administrative body, besides the opportunities provided for the appeal in court by part of the subjects.

### **On the state of fact**

The European Union, Council of Europe, the Government of the Republic of Albania, all the organizations and associations organized with the objective of regulating the relations of ownership, most political parties and countless individuals have accepted the hopeless, fictitious and miserable situation in which the state has fulfilled its obligations stemming from Article 41 of the Constitution and Article 1 of Protocol 1 of the European Convention "On the Protection of Human Rights and Fundamental Freedoms", to indemnify those owners, who were alienated their property unfairly and, with them, the legal provision of the rights of former owners.

A hundred or 150 laws on property have emerged, have been approved and have not worked. The rights of former owners are in the condition of the 1950-s. This is, surely anarchic certainty. This certainty is opposed by the "legal uncertainty" of Law Nr. 133/2015 ""For the Treatment of Property and Finalization of the Process of Compensation of Property".

In material legal terms, the legitimate expectation of a subject, who holds a decision of "restitution / compensation of a surface of 1000 sqm", is the restitution of the land and when this is impossible, the market value of expropriated "1000 sqm". The property that the subject holds is a decision (hitherto unenforced) whose value is undetermined, but the expectation is to match the market value.

The European Union underlines the state of fact:

"The legal system ... there are major deficiencies in the rule of law, enforcement of property rights and the fight against corruption, which remains the main aspects for improving the business environment. Steps have been taken to address these complex challenges (see Chapter 23 - Judiciary and fundamental rights), but much remains to be done....<sup>34</sup>"

The European Court, regarding the state of the fact, has repeatedly pointed out, that: "...the unjustified hindrance to the applicant's attempts to obtain compensation pursuant to the Property Act was not attributable to his conduct. It arose from shortcomings in the Albanian legal order as a consequence of which an entire category of individuals have been and are still being deprived of their right to the peaceful enjoyment of their property as a result of the non-enforcement of court judgments awarding compensation under the Property Act.

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<sup>34</sup> Progress report for Albania – EU

Indeed, there are already dozens of identical applications before the Court. The escalating number of applications is an aggravating factor as regards the State's responsibility under the Convention and is also a threat to the future effectiveness of the system put in place by the Convention, given that in the Court's view, the legal vacuums detected in the applicant's particular case may subsequently give rise to other numerous well-founded applications.<sup>35</sup>

### **Constitutional Court findings in these 25 years**

The doctrine of constitutional law has recognized that legal certainty is one of the essential elements of the rule of law. One of the consequences is the credibility of the legal security of citizens in the state and immutability of law for already regulated relations. Credibility has to do with the fact that citizens should not worry continuously about the negative consequences and mutability of normative acts that harm and aggravate a condition regulated by previous laws.

During these years the Constitutional Court has managed to identify the concept of "legal certainty", regardless of how it has affected its realization.

According to the Constitutional Court the principle of legal certainty guarantees the predictability of a normative system. The issuance of legal norms serves not only the solving a potential conflict or regulation of a previously unregulated situation. This process should create the impression to the subjects of law that the content of the legal norms guarantees security and stability for the future<sup>36</sup>.

Legal certainty is treated as a material condition for the validity of an act, ensuring the principle of immutability of normative acts, where attention is provided to the remedy situations without continuous substantial changes<sup>37</sup>.

Interested parties transform the meaning of legal certainty, calling that the state, the legislature, can not issue or amend laws which affect the property of the individual, to a lesser one. Legal certainty as a constitutional concept includes the clarity, comprehensibility and consistency of the normative system.

This principle involves, among other things, trust in the legal system, without guaranteeing any expectation over for not changing a favorable legal situation.

The start of effects, even negative towards the individual, as a result of the change of law can not be considered as a violation of the principle of legal certainty. In this view, the extent to which citizens trust that the favorable legal situation appears important to be protected and what are the reasons for such protection should be examined in each situation.

"The Constitutional Court reiterates that the principle of legal certainty interacts with other principles such as that of the welfare state, which provides lawmakers a vast and indefinable margin of appreciation, exactly to adjust the benefit of social goods in a determined amount ... **In this regard the Constitutional Court considers that not every measure the legislator takes, with negative effects on the subjects of law is a violation of a right guaranteed by the Constitution. The legislator not only has the right but is forced to regulate through its own acts in detail the rights provided in the Constitution.** Only those rights which are expressly provided as unlimited are not possible to be affected by the legislator... **The right of lawmakers to remedy a situation different from what exists, should remain essentially intact, as one of the requirements of a society in constant development, which can not be understood without a dynamic normative framework that suits its development.**<sup>38</sup>

<sup>35</sup> "Driza v. Albania" 13 November 2007, § 122

<sup>36</sup> Decision of Constitutional Court No.2/2013

<sup>37</sup> Decisions of Constitutional Court no.26/2005; no.10/2008; no.33/2010

<sup>38</sup> Constitutional Court Decision 10/2008

However, it seems that even our Constitutional Court was and is clear, that the principle of legal certainty, can not be conceived "per se"<sup>39</sup>, detached from the other principles of the rule of law, in particular the public interest when, in one of its decisions, holds that:

**"Affirming the principle of legal certainty and its main elements, the Constitutional Court notes that this principle can not prevail in any case. This means that, if in case of a different legal regulation of a relationship is directly affected by the public interest, with all its essential elements, this interest will naturally take precedence over the principle of legal certainty ..."**<sup>40</sup>

### **The guidelines of the European Court of Human Rights**

In the view of The European Court of Human Rights, the right to a fair trial must be interpreted in light of the Convention's preamble, referring to the rule of law as an element of the common heritage of contracting states.

One of the basic elements of the rule of law is the principle of certainty of legal relations,<sup>41</sup> which aims in particular to guarantee citizens a certain stability of legal situations and strengthen public confidence in justice.

"Sustainability of the contradictions of jurisprudence may create legal uncertainty such that undermines public confidence in the judicial system, while this belief is one of the components of the basic rule of law"<sup>42</sup>

However, the ECtHR, being more visionary than the current legal structure, in one of the Grand Chamber judgments, has underlined that:

"The Court points out, however, that the requirements of legal certainty and the protection of the legitimate confidence of the public do not confer an acquired right to consistency of case-law (see *Unédic v. France*, no. 20153/04, § 74, 18 December 2008). Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (see *Atanasovski v. "the Former Yugoslav Republic of Macedonia"*, no. 36815/03, § 38, 14 January 2010)."<sup>43</sup>

Even in cases pertaining to Albania, the Court, reiterating the definition of legal certainty, notes that:

" ... One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, among other things, that where the courts have finally determined an issue, their ruling should not be called into question.

Legal certainty presupposes respect for the principle of *res judicata* (see *Brumărescu v. Romania* cited above, § 62), that is the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. **Higher courts'**

<sup>39</sup> Latine: "only for themselves" detached from the other evaluation factors

<sup>40</sup> Constitutional Court Decision 26/2005

<sup>41</sup> "*Brumărescu v Romania*" [GC], no 28342/95, § 61, ECHR 1999 VII

<sup>42</sup> "*Păduraru v Romania*", no.63252/00, ECHR 2005 XII (extrate), § 98, "*Vinčić and others v. Serbia*", nos 44698/06 and others, § 56, 1 December 2009, and "*Ștefănică and others v. Romania*, no 38155/02, 2 November 2010, § 38

<sup>43</sup> "*Nejdet Şahin and Perihan Şahin v Turkey*" decision date 20 October 2011, of Grand Chamber of ECHR.

**powers of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination...**<sup>44</sup>

### **The principle of "justice of the pursued objective"**

Legal certainty and public interest, both are principles that materialize themselves and are harmonized with the provisions of The European Convention "On the Protection of Human Rights and Fundamental Freedoms" and Article 41 of the Constitution of the Republic.

Article 1 of Protocol no. 1 aims essentially to protect the individual from any unjustified infringement of respect to his property by the state. Article 1 of the Convention stipulates in turn that each contracting state "secures to everyone, which is within its jurisdiction the rights and freedoms defined in the Convention...".

This general obligation could imply some positive obligations inherent to guarantee an effective exercise of the rights enshrined by the Convention. As regards Article 1 of Protocol no. 1, such positive obligations could push the state to be forced to take the necessary measures to protect the right of ownership.

It is difficult **to distinguish between positive obligations and negative obligations of the state**, in conjunction with Article 1 of Protocol no. 1, much more to give them a precise definition. However, in any case, care should be taken to maintain the right balance between the competing interests of the individual and society as a whole.

However, the purposes mentioned in the second paragraph may play some role in assessing the point if maintaining a balance between the requirements of public interest and the fundamental right of ownership to the plaintiffs.

**"In both options, the state enjoys a certain margin of appreciation for the measures to be taken in order to ensure compliance with the Convention"**<sup>45</sup>

Subject to the examination by part of the Constitutional Court's and The European Court of Human Rights case law, regarding the principle of legal certainty, have been not only individual applications on fairness of legal proceedings, but also normative acts (laws or bylaws) with the object of their incompatibility with the Constitution or The European Convention "On the Protection of Human Rights and Fundamental Freedoms".

The court notes that this principle, which is implicit in the preamble of the Constitution when mentioning the term "rule of law", represents the confidence of the citizens in the state and the immutability of the law for the already regulated relations. The legislator can not unreasonably deteriorate the legal status of people, to deny rights acquired or ignore their legitimate interests.

However, the Constitutional Court and the ECtHR in their jurisprudence, as acts they protect, do not prohibit any changes to a favorable legal situation. The principle of legal certainty also interacts with other principles of the welfare state as one which provides a wide margin of appreciation to lawmakers to regulate the benefit of social goods to a certain extent and amount.

**"... If the case that a different legal regulation of a relationship is directly affected by public interest, with all its essential elements, this interest will naturally take precedence over the principle of legal certainty."**<sup>46</sup>

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<sup>44</sup> "Driza versus Albania" 13 November 2007, §§ 63-64

<sup>45</sup> "Broniowski v. Polonia [DhM], nr. 31443/96, § 144

<sup>46</sup> Decision of Constitutional Court 26/2005

It remains for the applicant, to finally understand that in a democratic society, the respect of this principle requires the law to provide certainty, clarity and consistency, in order to direct the actions of individuals in the correct order in accordance with it and that the law should not remain unchanged even when circumstances warrant changes.

Not every remedy that the legislator takes, with negative effects to the subjects of law is a violation of a right guaranteed by the Constitution. The legislator not only has the right but is forced to regulate through its own acts, in detail, the rights enshrined in the Constitution. Only those rights which are expressly provided as unlimited, are not possible to be affected by the legislator. And in these rights, it is not part of the right to compensation on the basis of the cadastral area of 2016 after such a right has never been guaranteed by law or bylaw or implied.

### **Principle of Proportionality**

In a decision of the German Constitutional Court, in order to outline the principle of proportionality is found in terms: "The more serious the consequences on the citizens and as immutable administrative measures, the stronger must be the right to legal protection of citizens and much less can it be restricted."<sup>47</sup>

If a fundamental right is limited in excess of reasonable limits and the legal protection fails to be provided, then there are all conditions to claim that the fundamentals of this right have been violated and that such a situation is equivalent to denial it. This position held by the doctrine and constitutional jurisprudence shows that the rights and freedoms of citizens, recognized and guaranteed constitutionally and legally, cannot be unlimited.

In an open and democratic society, based on equality, human dignity and freedom, individual rights may be restricted by law and to the extent that the limitation is reasonable and justifiable, taking into account all connecting factors that include the nature of the right, scope and extent of restriction, relation between the limitation and its purpose and the means used to achieve the goal. The standard on which we can be justified in restricting the rights and freedoms of citizens within a certain legal framework and only in cases of the existence of a public interest or for the protection of the interests of others, is recognized as the standard of proportionality. The task of the legislator, when crafting laws, is to respect the principle of the rule of law, which in turn requires that "interventions severe state of charged individuals have a clear legal basis and taken into account appropriately principle of proportionality".<sup>48</sup>

Proportionality is a very important rule, from which the state bodies and in particular the courts should be directed to settle disputes according to the rules of law. Proportionality standard has always been a controversial issue, since it is possible that "reasonable people can reasonably arrive to totally opposite conclusions on the same facts as a whole, without losing as their reasonable title."<sup>49</sup>

The principle of proportionality is not explicitly mentioned by this name in the Constitution of the Republic of Albania. Proportionally is the correct term of proportionality in Albanian language under the Constitution. Regardless of the terminology used in the Constitution, as the doctrine as well as jurisprudence of the Constitutional Court, which have analyzed this principle in all its dimensions, they all have identified it as the standard of proportionality.

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<sup>47</sup> BVerfGE 35, 382; Selected decisions of Constitutional Court of Federal; Germany, Konrad Adenauer Stiftung, 2010.

<sup>48</sup> BVerfGE 35, 382; Selected decisions of Constitutional Court of Federal; Germany, Konrad Adenauer Stiftung, 2010.

<sup>49</sup> Sadushi, Sokol, "Administrative Right" – 2, third |Edition Tiranë 2005

The principle of proportionality, which has gained a constitutional status derives from the concept of limiting the legal rights and freedoms provided for in Article 17 of the Constitution of the Republic of Albania, which states: " The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it. 2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights". Compliance between a restrictive measure taken by the legislator and the need for restraint, are the criteria that must be verified in terms of the conditions set out in the above-mentioned constitutional provisions, namely on the existence of public interest.<sup>50</sup>

Through the constitutional formulation, are identified the essential elements of proportionality, according to which any action carried out by state bodies should be in order to require the realization of the legitimate interests of the public and use appropriate tools, which should be proportionate with the goal to be achieved. So, the constitutional provisions require the assessment of the necessity of a legal intervention of the state, depending on the nature of the right, the character of public interest to be protected, concrete circumstances that dictate an intervention to a minimum and less harmful from human rights point of view<sup>51</sup>.

In any case, state bodies are obliged to assess whether the goal is possible to be achieved with less repressive measures without compromising their effectiveness. The legislator can not impose restrictions that exceed those provided by the European Convention on Human Rights, but neither is hindered, through laws that issues, "to extend the scope of rights and freedoms and to give a greater dimension realization of individual protection."<sup>52</sup>

The principle of proportionality requires that the measures imposed by the state for restricting of rights must be appropriate, necessary, in accordance with the legitimate targets generally important and should not limit the rights more than is necessary and reasonable in order to achieve these objectives. Finding of a balance between the objectives pursued and the means by which these objectives are achieved, between offenses and penalties should be imposed for these violations constitute the basis for the principle of proportionality. This principle does not allow such penalties to be imposed, which significantly disproportionate to the violations of law and to achieve the sought objective.

Of all the tools that can be used to achieve a legitimate aim, the state authority shall use the most appropriate remedies. Using the tools, through which can be reached the causing of the slightest injustice to an individual, is not the only element of this principle. On this purpose is required that from some effective tools for achieving the goal should be used only those tools that cause minimum unfairness to the individual and less harmful to, that is the second element of the principle. This principle requires the fulfillment of the third condition, according to which interference in the rights of an individual should not be out report of the aspired goals.<sup>53</sup>

The principle of proportionality involves three imperative elements, the means used must be appropriate and necessary to achieve the goal and the tool itself should stand in a reasonable proportion to the aim sought to be achieved. The three criterias of this principle, known as his subprinciples (appropriate, necessity and proportionality), are objective criteria in order to achieve its implementation i and achieving the validity of a specific action.

Any interference with the enjoyment of constitutional rights should have a legitimate purpose. On this basis, any measures taken to deprive a person of his rights must have a legitimate aim

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<sup>50</sup> Decision no. 16, date 25.07.2008 of Constitutional Court of Albania.

<sup>51</sup> Decisions of Constitutional Court of Albania nr. 39, date 16.10.2007; nr. 41, date 16.11.2007 and nr. 9, date 23.3.2010.

<sup>52</sup> See decision of Constitutional Court of Albania no. 24, date 13.06.2007.

<sup>53</sup> Sadushi, Sokol, "Administrative Right" – 2, fourth edition , Tiranë 2008.

in the public interest. The notion of public interest is very broad. It is accepted as from the doctrinal point of view, as well as from the development of judicial jurisprudence, that the restriction of a right that is performed as a result of the implementation of a policy promoting social justice in the community, can be regarded as public interest.

The Constitutional Court has not considered exhaustive the issues relating to the public interest, because the public interest must be understood in the relative sense, depending on the different situations that arise.<sup>54</sup> " The state has a wide margin of appreciation in determining the public interest and, as acknowledged from the European Court of Human Rights, for example, about the property, which the Constitutional Court has been referred to: " forcibly property transfer from one individual to another, in special circumstances, it may constitute a legal measure in the public interest"<sup>55</sup>. On these considerations, the Constitutional Court Decision no. 30, dated 01.12.2005 has argued that "taking of property pursuant to a policy calculated to achieve social justice within the community can be described accurately as a policy in the public interest."

The principle of justice requires that we consider not only the interests of the former owners and their heirs, but also those of other members of society, as well as public interest in general. The Constitutional Court, referring to the European constitutional jurisprudence, states that "the principle of justice and that of proportionality, does not require ... to reconstitute property rights to all former owners or their heirs or compensate them with complete value."<sup>56</sup> "The objective of the restitution of property rights is not the deleting of all the injustices, but their reduction. Restitution of property rights should not cause injustice to others."<sup>57</sup> Restitution and compensation of property to its origins, aims to correct, as far as possible "within the possibilities and socio-economic conditions of the country", the injustices of the previous regime, carried out at the expense of private property through nationalization, expropriation, seizures or any other unfair form<sup>58</sup>.

On the basis of this analysis, limiting the restitution and compensation of agricultural land to 60 hectares, in Article 6 of Law no. 9235, dated 29.7.2004 "On restitution and compensation of property", the Constitutional Court has not considered it unjustified because "such a measure not only exceeds the minimum surface decided by the law no. 7699, dated 04.21.1993 "On compensation in amount of the former owners of agricultural land," but is appreciated by the legislator depending on the condition that the circumstances dictate, in which the agricultural land is located in Albania<sup>59</sup>.

In the event of comparing the values of financial compensation under the Law No. 9235/2004 with the expectations of the Law No. 133/2015 "For the Treatment of Property and Finalization of the Process of Compensation of Property" the concerns of the legal security very clearly do not stand.

To consider the constitutional interference in the right of ownership is not enough only the existence of a "lawful purpose" in the "general interest", but there should also be a reasonable proportional relationship between the taken measures and the aim sought to be achieved by depriving a person of his property. Pointing out the necessity, appropriateness, proportionality and effectiveness of the used tool should be achieved by the balancing criteria, which makes it possible to be weighed and evaluated as to the benefits of general or public interests that are

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<sup>54</sup> Decision no. 18, date 14.05.2003 of Constitutional Court of Albania.

<sup>55</sup> *Jahnes and Others v the United Kingdom*; Decision of ECHR date 21.02.1986, parag 40.

<sup>56</sup> Decision no. 2002-12-01, date 25.3.2003 of Constitutional Court of Lithuania; Quote taken from the decision nr. 30, dated 01.12.2005 of the Constitutional Court of the Republic of Albania.

<sup>57</sup> decision P1.US 1/98, date 22.9.1998 of Constitutional Court of Czech Republic quote taken from decision nr. 30, date 01.12.2005 of Constitutional Court of Albania.

<sup>58</sup> Constitutional Court Decision of Albania.

<sup>59</sup> Shih më gjerë vendimin nr. 30, datë 01.12.2005 të Gjykatës Kushtetuese të RSh-së.



protected in relation to the limited right. In its decision no. 12, dated 14.04.2010 the Constitutional Court justifies that the Proportionality of a restriction should be evaluated "case by case basis and taking into account several aspects, such as the right balance between limited public interest or the protection of the rights of others, the instrument used in relation to the situation that has dictated it, the violated right and the goal aimed to be achieved by the legislator."

For the assessment of proportionality of the intervention of legislators, resulting in the violation of individual rights provided by the Constitution and law, be taken into consideration, in addition to the balance between the damage caused to an individual and the profit of society, also the measures of protection from the arbitrariness that offer legal procedures and the possibility that state have to use other means to achieve the goal. If a particular restriction is necessary in a democratic society, in the first place it requires the finding of the legal restriction, as well as determining whether the means by which the restriction will be implemented in proportion to the legitimate aim. Therefore, in its jurisprudence, the Constitutional Court has emphasized repeatedly that in the case of restriction of rights, in order to achieve its rights the measure to be taken "should be as appropriate as they were proportionate"<sup>60</sup>.

The adequacy of a measure or a tool must be determined by objective standards and not in accordance with the subjective judgment of state authority. A measure, act or conduct that does not serve or that is contrary to the purpose of the law is clearly inadequate and therefore impermissible and unlawful. The law requires the use of power only for the purpose for which it was given to state authorities. Those courts may review how the state bodies exercise their power.

In terms of the principle of proportionality, constitutional jurisprudence has concluded in many cases that a state intervention, which limits the legitimate rights of citizens, may be taken when necessary and there is no other way to enable the achievement of public interest. Intervention that limits the rights of citizens, in any case, can not affect the essence of the law and should be in full compliance with the situation that has dictated the design of restrictive rule.<sup>61</sup>

Orientation for an proportional intervention in relation to the dictated situation, "imposes the lawmaker to apply such legal remedies, which must be effective, i.e. selected so as to be suitable for the realization of the objectives pursued."<sup>62</sup> Therefore, the use of the most appropriate tools, which should serve to the goal to be achieved in the issuance of a legal norm or conduct a concrete action, is an essential element of the principle of proportionality. In addition, the Constitutional Court in its decision no. 16, dated 25.07.2008, underlines "the use of these funds should be necessary, which means that the goal can not be achieved by other means. Necessity has also to do with the use of less harmful tools for subjects to whom are violated the human rights and freedoms."

Proportionality requires an adequate balance between the injustice of an individual caused by an act committed, and benefit of citizens. At the same time proportionality prohibits such measures to individual actions that provide greater disadvantage in relation to citizens. To determine the extent of proportionality in its jurisprudence the Constitutional Court gives priority to the legal content of a concrete regulation, intervening only when an obvious case disproportionateness. The Constitutional Court has reached in this conclusion in its decision no. 17, dated 23.04.2010, when it considers the achievement of the legitimate aim, relating to the situation of property registration offices of Immovable property registration, the legislator can not predict the deletion of property registration, although not completely divest holder of the right of ownership, actually deprives him of the right to freely dispose of his property.

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<sup>60</sup> Decision no. 17, date 23.4.2010 of Constitutional Court of Albania.

<sup>61</sup> Decision no.16, date 25.07.2008 of Constitutional Court of Albania.

<sup>62</sup> Decision no. 16, date 25.07.2008 of Constitutional Court of Albania.

State authorities can not exercise their power at will. They are required to make a reasonable balance between the interests of citizens in general and individuals in particular. The Constitutional Court has clarified that the administrative practice of registration of ownership was a violation not limited to the law, in terms of violations of the right to the rightful owner, which justified state intervention aiming "above all, a return to legitimacy of the situation of the property and the establishment of citizens' trust in the social system in force"<sup>63</sup>. But the Court has noted that "although the interest of the legislator is legitimate, the fact that the owner, who has registered later in time his title of ownership will not can enjoy the property in its entirety for an indefinite period of time, it does not create a situation of balance between public interest and private interests affected, especially in terms of vehicle disproportionate use. "Evaluating the tool chosen by the legislator, to achieve his goal, the Court concludes "that is restrictive and disproportionate means."<sup>64</sup>

In terms of clearly implementation of the principle of proportionality, constitutional jurisprudence has sought continuously to the measures imposed by the state to limit the rights and freedoms of citizens to be appropriate, necessary and proportionate, to comply with the legitimate objective of important and should not restrict the person more than it is reasonably necessary to achieve the objectives. This requires to maintain a fair balance between the interests of society and those of a person in order to avoid unreasonable restriction of the rights of the person.

Referring to the principle of proportionality, which appears to be materialized in the law under review, the Constitutional Court has noted that: "Essentially the principle of proportionality is the "fair balancing of interests", their important and objective evaluation, and the avoidance of conflicts through selection of appropriate means for their realization. A restriction would be considered in accordance with the standards of the principle of proportionality if:

- the lawmakers' objective is sufficiently important to justify the limitation of the rights;
- the measures taken are reasonably related to the objective; in other words they can not be arbitrary, unfair or based on illogical estimates;
- the means used are not more stringent than required to achieve the objective - the greater the adverse effects of the measure selected, the more significant should be the objective to be achieved, in order to justify measure as necessary (see decision No.52, dated 05.12.2012 of the Constitutional Court).<sup>65</sup>

The Constitutional Court holds the same position regarding the possibility of a violation, in a constitutional manner, of the principle of legal certainty, when it reiterates that the Constitution does not prohibit any changes to a favorable legal situation. In this regard, it should be seen in any case and to which extent the citizen trusts that a favorable legal situation appears as important as to be protected by constitutional norms and principles and what are the reasons for such a protection.

The Constitutional Court notes that: "... The cases of restriction of fundamental rights by the legislator, while taking various legislative measures in order to protect the public interest, could lead to violation of the principle of legal certainty, which can not prevail against the former." For this reason, the Court held that in each concrete case, "it should examine whether the intervention of the legislator was necessary, therefore dictated by a public interest, reasonable and proportionate to the situation that has dictated the intervention and if it has affected the substance of the law...Although the principle of legal certainty is affected by the new regulation, this intervention is done while respecting the constitutional criteria for this purpose provided in Article 17/1 of the Constitution, namely the protection of public interest, the establishment of a

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<sup>63</sup> See decision nr. 17, date 23.4.2010 of Constitutional Court of Albania.

<sup>64</sup> There

<sup>65</sup> Decision no. 2 date 18.02.2013 of Constitutional Court of Albania.

fair balance between the violated right and the goal to be achieved through the legislative intervention as well as maintaining the essence of the right to social certainty."<sup>66</sup>

Even in the ECtHR case law on the right to property, including here the cases decided against Albania, the Court argued **that the principle of "fair balance" embodied in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest to the community.** Due to their direct knowledge of the society and its needs, the **local institutions are in principle better placed than the international judge to appreciate what is "in the public interest"**. Consequently, according to the system of protection established by the Convention, it is for the national authorities to make the initial assessment of the existence of a problem of public interest that requires the implementation of measures in the sphere of the exercise of the right to property, including the deprivation and restitution of property.

At this point, as in other areas in which the safeguards of the Convention extend, the national authorities enjoy a certain margin of appreciation.

The Court has paid special attention in the judgment of the case, "Maria Atanasiu and Others v. Romania", when, among others, outlines the clear jurisprudence:

Restitution legislation of wide sweep, in particular if it implements a programme of social and economic reform, is hardly capable of doing entire justice in the diverse circumstances of the very large number of different individuals concerned. It is in the first place for the domestic authorities, and in particular Parliament, to assess the advantages and disadvantages involved in the various legislative alternatives available, bearing in mind that this is a policy decision (see James and Others, cited above, §§ 68-69, and, mutatis mutandis, Olaru and Others v. Moldova, nos. 476/07, 22539/05, 17911/08 and 13136/07, § 55, 28 July 2009)."<sup>67</sup>

The confrontation of the practice and orientations of the European Court of Human Rights in cases against Albania, with the achievements of the Law No. 133/2015 "On the Treatment of Property and Finalization of the Process of Compensation of Property".

### **Findings of the Court**

The problems associated with the property and the legal system in Albania in general and those related to the implementation of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" and its Protocols, in particular, have been in the special attention of the ECtHR.

Starting from the adjudication of the case "Qufaj Co. ShPK v. Albania "(dated November 18, 2004), to "Manushaqe Puto and Others v. Albania "(31 July 2012) The European Court has analyzed the legal situation and the state of law enforcement, has identified the violations of the European Convention" On the Protection Human Rights and Fundamental Freedoms "and has ordered the undertaking of general and individual measures.

In the initial decisions, the Court was satisfied with the finding of violations of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" and the ordering of individual measures. In the texts of the Court, the latter guided, not so much as ordered the improvement of the legal framework.

The violations of the Convention identified by the Court were mostly related to violation by part of the authorities of Article 6 of the Convention (mainly "non-execution of a judgment issued by

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<sup>66</sup> Decision no. 2 date 18.02.2013 of Constitutional Court of Albania.

<sup>67</sup> "Maria Atanasiu and others v. Romania" §170

a court"<sup>68</sup>), violation of the right to property; protected by Article 1, of Protocol No. 1; lack of effective remedy for appeal provided by Article 13 of the Convention.

In "Qufaj Co. ShPK v. Albania" The Court has implied shortcomings in the legislation and practice of the Constitutional Court, in relation to the subsidiarity of its decision-making, in terms of response to the failures to enforce the decisions, while established case law for:

"...the Court reiterates that, as regards the execution of judgments that impose payment of money to a State, a person who has obtained a judgment debt against the State should not be required to bring enforcement proceedings in order to recover the sum due..."<sup>69</sup>

On 31 March 2005, in a judgment on the case "Gjonbocari and others v. Albania" The Court **defines the concept of "property"** within the meaning of Article 1 of Protocol No. 1 to the Convention.

Pursuant to the Court "[possessions] within the meaning of Article 1 of Protocol No. 1 can be "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of a non-fulfilment of the condition..."<sup>70</sup>

The duration of the procedures was a repeated ascertainment of the Court. The Court expresses no confidence that Article 131 of the Constitution is an effective remedy, while accepting the repeated violations of Article 13 of the Convention.

Besides the finding of violations and deficiencies in the legislation, the Court guides:

"76. However, as the Court has recently emphasized, the best solution in absolute terms is indisputably, as in many spheres, prevention. Where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach a posteriori, as does a compensatory remedy. Some States have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation"<sup>71</sup>

Based on the European Court of Human Rights judgment, regarding the application "Beshiri and others v. Albania", in particular paragraph 61, in which the Court reiterated the standard of the European Convention "On the Protection of Human Rights and Fundamental Freedoms": **"There is no general obligation under the Convention to establish procedures through which can be requested restitution of property ..."**

In respect to the **calculation of the compensation**, the Court reiterates its earlier position stipulating that: **"...when assessing compensation are pecuniary damage, that is, the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is, reparation for the anxiety, inconvenience and uncertainty caused by the**

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<sup>68</sup> Decision dated 18 November 2004, that the application no. 54268/00, "Qufaj Co. shpk against Albania

<sup>69</sup> there, §§56-57

<sup>70</sup> Decision of ECHR date 31 March 2005, no. 10508/02, "Gjonbocari and others v. Albania" §§42-43

<sup>71</sup> Judgment of ECHR date 31 March 2005, nr. 10508/02, "Gjonbocari and others v Albania"§76

**violation, and other non-pecuniary loss** (see, among other authorities, Ernestina Zullo v. Italy, no. 64897/01, § 25, 10 November 2004).<sup>72</sup>

For the first time, in its judgment dated 13 November 2007, in "Driza v. Albania", the ECtHR finds a lack of methodology, relevant land plans to allow evaluation of the properties, the relevant authorities to address issues of compensation or approving land plans for the evaluation of properties, and an appropriate procedure regarding the claims for compensation.

The Court recalls that since 28 April 2005, the Parliament established the scheme in relation to the valuation of property for compensation purposes. State Committee for the Restitution and Compensation of Property, would draft maps for property evaluation. However by the material time of the judgment the government failed to establish an appropriate procedure regarding the claims for compensation.

The Court concludes that the unjustified delay in compensation was due to the existence of a vacuum in the Albanian legislation, as a consequence of which an entire category of individuals were deprived of their right to peaceful enjoyment of property as a result of non-execution of court decisions, awarding compensation.

The orientation of the Court is that the respondent State must remove all obstacles to the award of compensation under the Property Act by ensuring the undertaking of all the necessary legal, administrative and budgetary measures. These measures should include the adoption of maps for property evaluation for compensation in kind, as well as determining an appropriate compensation in value.

On 13 November 2007, this time in "Ramadhi and others v. Albania", the Court concluded that: The Property Acts, or any other provision in the legislation, do not regulate the execution of the decision.<sup>73</sup>

The Property Act does not provide any legal deadline for appeals of decisions before domestic courts, The Property Act does not provide any specific remedy for their execution. The Court directs, in the framework of general measures, that the State should first of all:

- provide a legal means to provide a genuinely effective remedy for the Convention violations identified,
- designate the competent authority for the use of the remedy,
- determine the procedural rules
- ensure the implementation of these rules in practice and,
- remove all obstacles to the award of compensation under the law.

The Court directs that these objectives can be achieved by taking the appropriate legal, administrative and budgetary resources, which include:

- The drafting of property evaluation maps, for compensation in kind,
- Determining an appropriate fund, for the compensation in value.
- Regarding the assessment of damage, just satisfaction, the Court did not refer to any specific methodology, but used the previous arguments.

While the authorities have adopted property evaluation maps for the entire territory of Albania, the reference price reflects the fair market value and contains indications of interest as well as inflation at the time of approval of the maps.

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<sup>72</sup> Judgment of ECHR date 22 August 2006, nr. 10508/02, "Beshiri and others v Albania" §§61-112

<sup>73</sup> Judgment date 8 March 2011 "Eitari v. Albania"

The Court for the purposes of monetary damages calculation was based on property evaluation maps of 2008, while rejected the claims of the applicant for compensation for damage caused by the inability to use and possess the land.

In the judgment of 8 March 2011, on application no. 16530/06 "Eltari v. Albania", the Court has acknowledged that the government has approved new legal provisions concerning the granting of financial compensation, approval of maps determining the value of the property, and the creation of the physical compensation fund.

However, the Court, after rejecting the effectiveness of the remedies created, requires the state to undertake the adequate legislative, administrative and financial measures to ensure the provision of compensation, in particular:

- designate a competent enforcement body,
- provide sufficient human and material resources,
- establish clear and simplified rules of procedure for the collection of claims,
- lay down realistic and binding time-limits for their processing and enforcement,
- allocate the necessary budgetary funds, and
- remove all obstacles with a view to securing the expedient award of financial or in-kind compensation, having regard to the principles established in the Court's case-law.<sup>74</sup>

Also in March 2011, in "Çaush Driza v. Albania", the Court concludes that "the applicant had an effective remedy to give him the chance to secure the enforcement of his right to compensation recognized on the basis of a final court decision."<sup>75</sup>

On 31 July 2012, at the conclusion of the trial belonging to the pilot judgment, on the claims related to the case "Manushaqe Puto and others v. Albania", the state of fact in applying the European Convention "On the Protection of Rights Rights and Fundamental Freedoms" was outlined, regarding the properties in Albania, and the basis for the final settlement of this issue was formed.

## **B. ON ARTICLE 13 OF THE CONVENTION**

Regarding Article 13 of the European Convention "On the Protection of Human Rights and Fundamental Freedoms"

"None of the ownership laws, or any relevant domestic provision, fixes the implementation of the Commission decisions. Property laws left the determination of the appropriate form and manner of compensation to the Council of Ministers, which would have to determine the detailed rules and methods for compensation.

Following the judgment in "Ramadhi and others v. Albania" - 2007, the Government has adopted a number of legal acts, concerning the granting of financial compensation, approval of maps on the value of property, the creation of the IkFC and the approval of the Action Plan. Compensation in kind was never given and emphasizing that this form of compensation is not an effective remedy.

Compensation through state-owned shares and the income from the privatization process, was never implemented,

The law does not provide for compensation through state bonds and decisions containing this obligation are objectively unenforceable, Financial compensation was granted only if the Commission had awarded compensation in respect of the entire property. Was provided for

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<sup>74</sup> Judgment date 8 March 2011 "Eltariv. Albania"§99

<sup>75</sup> Judgment date 15 March 2011, "Çaush Driza v Albania", §82

financial compensation equal to the value of 200 square meters. The applicant would have to undertake procedural steps for the financial compensation. The financial damage caused as a result of the failure to compensate was not provided for.

The Court has reached the overall conclusion that:

**"There was no effective domestic legal means to allow adequate and appropriate compensation due to the extended failure to enforce the Commission's decision that awarded compensation."**<sup>76</sup>

### **C. ON ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL NO. 1, OF THE CONVENTION**

In respect of Article 6 § 1 and Article 1 of Protocol No. 1 of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" we can note these findings:

The delays in the implementation of administrative decisions and final property, Failure to enforce a final decision continued after the entry into force of the Convention on 2 October 1996 and is still ongoing. Consequently, the Convention applies, The lack of funds or other resources as a cause for the failure to comply with court obligations, can not relieve the State of its obligation under the Convention.

The Court has reached the overall conclusion that **"Enforceable and final decisions of the Commission in favor of the applicants remained unenforced for periods ranging from 15 to 17 years."**<sup>77</sup>

### **D. Assessments of the European Court**

The Court has approved the development of the procedure through the pilot judgment, having the objective to encourage the state to solve a large number of individual issues arising from the same structural problem at domestic level, thus implementing the principle of subsidiarity. The Court may decide to defer consideration of all similar cases, thus giving the respondent State an opportunity to settle in these different ways. If the State fails to take action following a pilot judgment and continues to violate the Convention, the Court will resume examination of all similar unresolved complaints brought before it.

### **E. On the General Measures**

With regard to the legislative changes, after acknowledging that the current changes have caused legal uncertainty, the Court directs that **the respondent State should avoid frequent changes of legislation and examine carefully all legal and financial implications before it submit further changes.**

The Court directs the State for the calculation and analysis of the compensation bill, as well as the financial implications of the compensation mechanism, while taking into consideration the accurate and reliable information, in relation to the total number of administrative decisions recognizing the right of ownership and awarding compensation, and the changes made through judicial review.

The compilation of a database and the estimation of the global compensation bill should be accompanied by a carefully devised and clear compensation scheme. The compensation scheme, which should be free of cumbersome compliance procedures should take into account the principles of the Court's case-law concerning the application of Article 6 § 1 and Article 1 of Protocol No. 1.

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<sup>76</sup> Judgment date 15 March 2011, "Çaush Driza v. Albania", §82

<sup>77</sup> Judgment date 31 July 2012 "Manushaqe Puto and Others v. Albania", § 97

The compensation scheme should be effective and unlike the previous practices. The revision and update of valuation maps should be subject to transparent and explanatory criteria, taking into account the land development and market fluctuations. The Court urges the authorities, as a matter of priority, to start making use of other alternative forms of compensation.

The decision-making process for the type of compensation to be awarded requires the utmost transparency and efficiency with a view to enhancing public confidence. It would be in the general interest that the results be made public and disseminated through different, accessible means of communication. It is crucial that the authorities' decisions contain clear and sufficient reasons and that they be amenable to judicial review in the event of discord.

The process of compensation of former owners on account of the Property Acts should be distinguished from the compensation to former owners on the strength of the Legalization Act. The respondent State could reconsider increasing the cost-share borne by the legalization applicants to the extent that it would be capable of matching the financial compensation paid to former owners.

The State should ensure the existence of a transparent and effective system of property registration, including accurate, unified, cartographic data, in order to enable, simplify and facilitate future legal transactions.

The setting realistic, statutory and binding time-limits, in respect of every step of the process.

The structural organization of the administrative body, putting at its disposal sufficient human resources and materials and to ensure coordination between different institutions, with the aim of exchanging information.

Broad public discussion, in order to collect a wide perception regarding the level of compensation that the State is expected to actually award and the different forms of compensation.

**The embodiment of the assessments and general measures of the ECHR in law no. 133/2015 "For the Treatment of Property and Finalization of the Process of Compensation of Property"**

The main focus of lawmakers, as the ECtHR, is focused on respect for the principles of legal certainty, equality and justice legality of the aim pursued, in particular the balancing of interests, the means employed and the aim pursued.

Before the legislative initiative, in the framework of the implementation of the Action Plan, the obligations stemming from the judgment "Manushaqe Puto and others v. Albania" were fulfilled, by calculating and analyzing the total compensation bill, as well as the financial implications of the compensation mechanism, based on the total number of administrative compensation decisions, and judgments.

Based on real and known data, was estimated the global bill for compensation, which found expression in the economic forecast of the budget law, just for this purpose.<sup>78</sup>

According to the administered data, it turns out that the process of property restitution and compensation was realized for less than 2.5% of the total percentage, which means that 97.5% of this process has not been completed.

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<sup>78</sup> Judgment date 31 July 2012, "Manushaqe Puto and others v Albania" §§ 110-112



The creation of the electronic register and the collection of official data for decision-making for 22 years on the restitution and compensation of property from the Agency for Restitution and Compensation of Property, with the object of creating transparency and notification on the expectations, showed that the total number of decisions issued during the process of restitution and compensation of property is 53.115 decisions, which recognize a total area of 744,419,995 m<sup>2</sup> for restitution and a total of 733,589,283.31 m<sup>2</sup> for compensation.

From the archive records of the Agency for Restitution and Compensation of Property, on the basis of which the electronic register was created, the total number of decisions that have recognized the right to compensation is 26,000.

From the total area recognized for compensation, a total area of 15.9 ha of land plot was financially compensated from the compensation funds for the years 2005-2014, while currently, the Agency for Restitution and Compensation of Property has under examination 10.131 files. Based on this information, which were generated by the electronic registry and archives of the Agency for Restitution and Compensation of Property, was calculated the financial bill the Albanian state owed to the owners.

During the legislative process, the principles for the creation and adoption of the proposed legislation were respected, by implementing a due legal (globally proven and undisputed) process, in accordance with the requirements of the ECtHR on the "broad public discussion."<sup>79</sup> The compensation scheme, which represents at the same time just satisfaction, is designed based on the consolidated case law of the ECtHR, not only in the cases against Albania, but also in identical situations and issues, mainly in Central and Eastern Europe, which have passed through the same process.

The compensation scheme does not have burdensome compliance procedures, and was created based on the principles of ECtHR case law regarding the application of Article 6 § 1 and Article 1 of Protocol No. 1.<sup>80</sup>

One of the objectives of the law is the conversion of compensation decisions from plots of land or agricultural land surfaces in financial value. In respect with this activity, the law defines and embodies the criteria of equality. The law defines as the basis for the evaluation the cadastral index at the time of expropriation. The achievement of this objective finds support in the case law of the ECtHR and the Constitutional Court.

The compensation formula, in the final decisions which have decided on compensation, treats all owners of expropriated property equally, taking as reference the land value map at the time of entry into force of the law and the cadastral index, under which the property was registered at the time of expropriation. In this way the unequal treatment will be avoided, by establishing a fair balance between the value of the expropriated land and the gained compensation value. The Compensation Fund will be used to reward the subjects of law, based on the documents found at the PMA. The payment of compensation to former owners or their heirs will be based on decisions, while prioritizing the earliest decisions.

Predictability, clarity and transparency in decision-making, in addition to being the main principles of law, are also one of the purposes of this law, also at the same time realized essential elements of the law.<sup>81</sup>

The publication of decisions will be performed not only with the aim of transparency and obtaining public confidence, but also in order to speed the process of compensation. The publication of decisions by the Agency, would belong to all interested parties in the process of

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<sup>79</sup> Judgment date 31 July 2012, "Manushaqe Puto and others v. Albania" § 118

<sup>80</sup> Judgment date 31 July 2012, "Manushaqe Puto and others v. Albania" §§ 112-113

<sup>81</sup> Judgment date 31 July 2012, "Manushaqe Puto and others v. Albania" §§ 114

compensation and those who have interests in the implementation of the decisions of the PMA. (Direct beneficiaries, former owners, their heirs, and state authorities (SA). The publication will be effective and safe, creating information and procedural reaction opportunities as to the decisions.

**Comparison of the practice and orientations of the European Court of Human Rights, in other cases, which fall under article 1 of protocol no. 1 with the achievements of Law No. 133/2015 "On the Treatment of Property and the Finalization of the Process of Compensation of Property".**

**Findings of the Court**

Similar problems, the analysis and conclusions identified by the European Court of Human Rights in its selected jurisprudence on the measures of restitution and / or compensation of property alienated after the fall of communist regimes in Central and Eastern Europe, and the principles applied by the ECtHR when reviewing the relevant cases under the European Convention on Human Rights, in particular with regard to the scope of Article 1 of Protocol No. 1, have inherently served in the drafting of Law No. 133/2015 "For Treatment of Property and Finalization of the Process of Compensation of Property".

In the judgment of the case "Former King of Greece and others v. Greece" (just satisfaction), no. 25701/94, § 89-90, 28 November 2002 the Court noted the terms of compensation.

"...Compensation terms under the relevant legislation are material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants. In this connection, the Court has already found that the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference and a total lack of compensation can be considered justifiable under Article 1 of Protocol No. 1 only in exceptional circumstances (see the Holy Monasteries v. Greece judgment of 9 December 1994, Series A no. 301-A, p. 35, § 71). In the present case there is no provision for compensation in Law."

The Grand Chamber's Judgment, dated 25 March 2014, in the case " **Vistiņš and Perepjolkins v. Latvia**" application, no. 71243/01, ECHR noted that:

"34. as the finding of a violation was based solely on an unjustified disproportion between the official cadastral value of the land and the compensation awarded to the applicants..."

In those circumstances, **"the closest possible situation to that which would have existed if the breach in question had not occurred" is limited to the payment of appropriate compensation which should have been awarded at the time of the expropriation.**

In those circumstances, **the Court finds that the compensation to be determined in the present case will not have to reflect the idea of a total elimination of the consequences of the impugned interference, nor the full value of the property at issue.** In determining the amount of appropriate compensation, the Court must have regard to the criteria laid down in its case-law concerning Article 1 of Protocol No. 1 and according to which, without payment of an amount reasonably related to its value, the taking of property would normally constitute a disproportionate interference which could not be considered justifiable under that Article. **The Court therefore deems it appropriate to fix sums that are, as far as possible, "reasonably related" to the market value of the plots of land, that is to say sums that it would itself have found acceptable under Article 1 of Protocol No. 1 if the respondent State had duly compensated the applicants.** To that end, it must make a general assessment of the consequences of the impugned expropriation, calculating the amount of the compensation according to the value of the land at the time the applicants lost their ownership thereof (see the principal judgment, § 111). Lastly, having regard to the particular circumstances of the present case, the Court must have recourse to equitable considerations in calculating the relevant sums

(see, mutatis mutandis, Former King of Greece and Others v. Greece [GC] (just satisfaction), no. 25701/94, §§ 78-79, 28 November 2002), whilst taking into account the findings in paragraph 118 of the principal judgment."

This position of the European Court was held earlier **in the case Guiso-Gallisay v. Italy** (just satisfaction) no. 58858/00, § 105, December 22, 2009, and **Medici and others v. Italy** (just satisfaction), no. 70508/01, § 13, December 4, 2012), in which the Court outlined the principle that:

".. **Compensation must correspond to the full value of the land at the time of loss of ownership**, minus the amounts already awarded at domestic level and following the performance of the necessary changes to offset the effects of inflation and increasing interest." In the judgments of 9 June 2005 and 14 June 2007, pertaining to the case "Kirilova and Others v. Bulgaria "(just satisfaction) The European Court found the continuing failure of the authorities to provide a compensation award, a failure which constitutes an interference with the applicants' right to peaceful enjoyment of their properties. The Court found that the alleged lack of funds does not justify long delays.

The court agreed with the Law on property, which expressly **provides that the expropriated properties are assessed based on the market price at the time of expropriation** and that ... the Supreme Administrative Court had applied this rule.

In the judgment of 7 January 2010, on application "Lyubomir Popov v. Bulgaria" (no. 69855/01) the Court decided to order the compensation for pecuniary damages in the amount of € 2,000, for several parcels of land in found circumstances:

"The compensation paid in connection with certain plots took eight to twelve years after the applicant's legitimate expectation for recognition of its ownership rights. Further, up to 2006, the applicant's property rights in connection with certain parcels were not restituted; until this year, he had not received any compensation. **Consequently, the applicant was left in a state of uncertainty regarding the exercise of his rights of ownership and enjoyment of his properties was hampered.** While the Court acknowledged that the relevant events occurred in a period of social and economic transition, in the absence of specific justification on the delays for the award of compensation, the European Court held that **the delays were unreasonable and put an excessive burden on the applicant**" (violation of Article 1 of Protocol 1).

In the judgment of November 5, 2002, on application "Pincová and Pinc v. Czech Republic" (no. 36548) The European Court concluded that:

"... When a person is deprived of his property, the balance between the demands of the general interest and demands for fundamental rights is generally achieved **when the compensation payable to the person from whom the property was taken in reasonably related to its "market value" as determined at the time of expropriation.**"

In the judgment of 30 June 2005, "Jahn and Others v. Germany "([GC], nos. 46720/99, 72203/01 and 72552/01) the European Court, considering the unification of Germany as a unique case, concludes that:

"**In the unique context of German reunification, the lack of compensation does not affect the right balance" to be struck between the protection of property and the needs of the general interest"**

In the judgment of June 2, 2009 "Smiljanic v. Slovenia "(no. 481/04) the Court acknowledges **that claims for restitution of property, do constitute a sufficient demand provided sufficiently in domestic law** and, consequently, they do not constitute a "possession" within the meaning of Article 1 of Protocol 1.

In the judgment of October 12, 2010 on applications nos. 30767/05 and 33800/06 "Maria Atanasiu and others v. Romania", the Court, after determining the definition of property in terms of the standard of Article 1 of Protocol No. 1, continued with the compatibility that there is no general obligation on the Contracting Parties to reconstitute property that was transferred to them before their ratification of the Convention.

The Court notes that Article 1 of Protocol No. 1 allows the possibility for obtaining property, and did not put any restrictions on the freedom of the Contracting States to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights to former owners.<sup>82</sup>

**Article 1 of Protocol No. 1 requires is that the amount of compensation granted for property taken by the State be "reasonably related" to its value. ... (see Broniowski, § 186).**

**Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances – less than full compensation does not make the taking of a person's property eo ipso wrongful in every case. In particular, legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value** (see James and Others, cited above, § 54; Lithgow and Others v. the United Kingdom, 8 July 1986, § 120, Series A no. 102; and Scordino v. Italy (no. 1) [GC], no. 36813/97, §§ 95 et seq., ECHR 2006-V).

Thus, in Broniowski and in Wolkenberg, the Court expressly accepted **that the radical reform of Poland's political and economic system, as well as the state of its finances, might justify stringent limitations on compensation** for the Bug River claimants (see Broniowski, cited above, § 183, and Wolkenberg and Others v. Poland (dec.), no. 50003/99, § 63, ECHR 2007 XIV (extracts)).

The Court has provided sustainable solutions to the balancing of interests and the principle of proportionality when it highlights:

"On the other hand, Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (...). The principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable in their application (...).

Furthermore, any interference with the enjoyment of a right or freedom recognised by the Convention must pursue a legitimate aim. By the same token, in cases involving a positive duty, there must be a legitimate justification for the State's inaction. The principle of a "fair balance" inherent in Article 1 of Protocol No. 1 itself presupposes the existence of a general interest of the community. 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". Under the system of protection established by the Convention, it 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, as in other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation.

**Furthermore, the notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property or affording publicly funded**

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<sup>82</sup> Judgment date 12 October 2010 "Maria Atanasiu and others v Romania"

compensation for expropriated property will commonly involve consideration of political, economic and social issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has declared that it will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (...).

**Both an interference with the peaceful enjoyment of possessions and an abstention from action must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights..."**

In terms of regulation of compensation, while analyzing the Romanian legislation, the Court noted that the implementation of the Law no. 247/2005, which establishes a single administrative procedure for claiming compensation, applicable to all properties, represented a positive step by establishing simplified and harmonized procedures.

The European Court considers it necessary to take the necessary measures to effectively ensure the right of restitution or compensation while maintaining the right balance between the different interests at stake.

In this regard, the European Court identified the Resolution Res (2004) 3 and Recommendation Rec (2004) 6, according to which the respondent State must either remove all obstacles to the effective exercise of the right, or, if not possible, it must provide adequate compensation. This objective can be achieved by amending the current mechanism on restitution and establishing a simplified and effective procedure on the basis of coherent legislation and judicial and administrative practice, all the while considering the maintenance of a fair balance between the different interests at stake.

The European Court supported the Government's Action Plan, which aimed to establish binding deadlines for every administrative step.

The Court after identifying examples of good practice and legislative regulation provided by other signatory states of the Convention, directed:

***"A full review of the legislation in order to create clear rules of simplified procedures would make the compensation scheme more predictable in its application, compared with the current system. The definition of a ceiling level for compensation and payment of compensation in installments over a longer period of time can help find the right balance between competing interests."***

**The Embodiment of the ECHR case law in relation to articles 6§1, 13, article 1, protocol 1 of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" in the Law No. 133/2015 "For the Treatment of Property and Finalization of the Process of Compensation of Property"**

Besides the directives on the General Measures in the cases against Albania in general and, in the "Manushaqe Puto and Others v. Albania" pilot judgment in particular, the experts drafting the law, the Council of Europe experts and observers of the Committee of Ministers of the CoE, have materialized in Law No. 133/2015 "For the Treatment of Property and Finalization of the Process of Compensation of Property", the principles and measures ordered by the European Court of Human Rights in decisions that belong to the countries of Central and Eastern Europe, which have undergone the same process.

The most notable decision among them, being the one in the case "Maria Atanasiu and others v. Romania".

The political, historical and factual circumstances are more or less identical to those developed in Romania. From these flows and is identified a problem which should have been solved by all authorities which should take full responsibility to find a solution.

Regardless that in the rights of the owners, in addition to improving them by avoiding legal uncertainty, the law does not deteriorate any state of facts or legitimate expectation, the law has embodied principles established by the ECtHR, in the judgment part of the analysis of the law. On the basis of these judgments, the law has implemented the ECtHR guidance in relation to:

- The setting up of a clear, predictable and effective compensation scheme. (Articles 6-7 of Law no. 133/2015 "For the Treatment of Property and Finalization of the Process of Compensation of Property"). The setting of deadlines for each administrative step and activity, and court appeals against administrative acts. Articles 15, 16, 19, 27, 29, 30, 31, 34 of the Law regulate the relations on the access to Court. The Law clearly and without any possibility of misunderstanding, provides judicial appeal and review as the only way of challenging administrative acts.

In the framework of meeting the orientation of the Court that "**the awarded amount for compensation should be reasonably related to the value**", it was determined that compensation will match the market value.

In accordance with the decisions and the best European practices, approved by the Court, the Law provides for certain forms of compensation, the effectiveness of which has been tested in several countries in Central and Eastern Europe. (Article 8 of Law no. 133/2015 "For the Treatment of Property and Finalization of the Process of Compensation of Property")

The review in full of the legislation, left as a duty by the Court in "Manushaqe Puto and others v. Albania", lead also by "Maria Atanasiu and others v. Romania" or "Broniowski v. Poland ", has had as a main objective the fulfillment of the obligations deriving from Article 1 of Protocol 1, by adhering to the principles and standards of the European Convention "On the Protection of Human Rights and Fundamental Freedoms" outlined in the European Court of Human Rights practice.

***In conclusion, the Government refers to the findings of the Court in the case Bici, regarding the findings for violations of legal security of pending requests, which have not yet a final decision of the administrative body or court recognizing the right concluding: that these subjects do not have a property or have created legitimate expectations as long their right is not known at local level. In relation to the claims for breach of legal certainty as regards the amount of the compensation the Government concludes that domestic legislation never created a final compensation scheme which raised legitimate expectations to a certain value.***

***The adopted scheme so far has been transitional aiming to establish a final scheme, and that the transitional scheme was deemed ineffective by the Strasbourg Court. Consequently there is no interference with the right of property.***

***Besides, the compensation scheme proposed by the stakeholders, initially violates the equality of subjects treatment, according to the decisions that recognize their right to compensation treating the subject differently in the amount of compensation starting from the time of issuing of the decision (ie without connecting the compensation value of the expropriated property) and then is considered impossible to liquidate in a reasonable timeframe.***

***Consequently, the Government estimates that the new scheme of compensation, do not interferes with the right of property of the interested subjects but on the other hand preserves the equality of treatment between them and guarantees the obligated repayment in a reasonable time, at a value on the suffered damage.***

## V. ASSESSMENT OF THE DEGREE OF ALIGNMENT TO ACQUIS COMMUNAUTAIRE (FOR NOMATICE DRAFTS)

This bill does not aim at aligning with Community law; therefore there is no estimate of the degree of alignment.

## VI. EXPLANATORY SUMMARY ON THE CONTENTS OF THE DRAFT LAW

Law No. 133/2015 "On the Treatment of Property and Finalization of the Process of Compensation of Property" aims to protect and guarantee the constitutional right of property, giving the opportunity to the former owners of real estate, to restore the denied rights of property.

Law No. 133/2015 " On the Treatment of Property and Finalization of the Process of Compensation of Property" clearly defines the competent authority that will manage this process determines completion of the review and award decisions for requests that are untreated, within a period of 3 year. It sets completion of compensation for all decisions within a period of 10 years, guaranteeing the repayment of this obligation through annual financial fund established by law. It establishes sanctions in case of non-compliance with the obligations stipulated in this Law, by the officials at the Property Management Agency.

**Chapter I**, address the general provisions, sanctioning the object, purpose, scope of application, the properties that are exempt from the treatment by the law, as well as the provision on the definitions.

The object of this law is:

- The regulation and provision of a just compensation pursuant to the criteria of Article 41 of the Constitution, on the property rights issues raised from the expropriations, nationalizations or confiscations;
- The establishment and management of the Compensation Fund, which shall be used for the compensation of properties;
- The establishment of the procedures for the treatment of property and finalization of the process of compensation of properties, as well as the administrative bodies in charge of the application thereof.

This Law has two purposes, more specifically:

- a. To finalize, pursuant to this law, the process of recognition and compensation of property, for entities expropriated under any legal/secondary acts, criminal court decision or expropriated by any other unfair means by the state from 29.11.1944;
- b. To regulate and fairly reward on property compensation, to enforce the final decisions on compensation, as well as finalize the process of compensation, within the deadlines specified in this law, through the administration of the compensation fund.

The law is envisaged to act on all applications which are being examined near the ARCP, on the day of 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 the evaluation and enforcement of all decisions on the recognition of the right to compensation, issued by administrative bodies or judicial authorities, including the issues that are being examined in courts of all levels, The Supreme Court, as well as the European Court of Human Rights.

***The decisions, which determine a compensation value, including decisions issued by the ECtHR will not be reassessed with the entry into force of the new law, which aims to create a balance with the amount defined in the decisions.***

At the same time given that almost all decisions of the ARCP and those judicial (final) have determined the restitution and compensation only on the surface (square meters, acres, etc.), effectively these decisions are impracticable intended that, through the new law, be given a financial value, economic decisions made during 22 years.

From the spirit of the law resulting from the administration of compensation to property, to make enforceable the decisions, will only make the conversion surfaces compensated in Given that over 90% of the (final) ARCP and judicial decisions have determined the restitution and compensation only on the surface

The spirit of the law shows that the administration on compensation of property, to convert the decisions into enforceable ones, will only performs the conversion of the surfaces compensated into their worth..

**Chapter II**, establishes the rules for compensation

The final decisions on restitution and compensation for the finalizing of the compensation process shall be subject to evaluation. The evaluation under this law is:

- The restituted property is evaluated under its current cadastral voice and under the cadastral voice it had at the time of expropriation, accounting for the difference in value resulting from the change of the cadastral categorization.
- The property recognized for compensation is evaluated under the cadastral voice it had at the time of expropriation.
- The compensation that the expropriated subjects will benefit will be the value of the property acknowledged for compensation minus the value of the property restored.
- The evaluation of final decision recognizing the right of compensation is performed taking as reference the cadastral voice at the time of expropriation of the property.
- The evaluation of final decision recognizing the right of compensation is performed taking as reference the cadastral voice at the time of expropriation of the property located nearest to the property that will be compensated and based on the land value map at the time of entry into force of this law. If next to the property there are areas within the same distance but with different values, the area with the highest price is taken as reference for the calculation.
- If the PMA decides on the recognition and compensation in nature in the property of the subject, the property is assessed under paragraph 1. When this assessment shows that the subject receives a property that has a value greater than the property he had at the time of expropriation, then the subject is compensated in nature with the surface corresponding to the evaluation and the rest of the property is transferred to the land fund through a decision of the PMA.
- Compensation will be carried out through the financial evaluation that ATP will make to the final decision, according to the rules defined in this law.
- All the final decisions that have recognized the right to compensation or those to be taken to conclude the process based on the provisions of this law will be applied while respecting the provisions of this law.



- In its financial evaluation of the compensation decision, ATP will discount from the amount of compensation the value of shares, bonds, financial compensation or any other compensation that the subject or his heirs have received previously.
- The value of shares, bonds, financial compensation or any other form of compensation, including provisions for the allocation of land, that the subject or the heirs were previously awarded will be deducted from the evaluated amount of compensation
- For the decisions on compensation determined in value and still unenforced, for the period from the time of recognition of the right to compensation to receiving the actual compensation, the expropriated subjects will benefit from indexation according to the official value of inflation and banking interest, according to the annual means issued by the Bank of Albania at the time of entry into force of this law.

The expropriated subjects are subject to compensation according to the Law, based on the final decision for recognition and compensation in four forms:

- in monetary value;
- in immovable property of any kind, with equal value, owned by the state.
- with shares in companies with state owned capital, or where the state is co-owner, with an equal value to the immovable property.
- with the value of facilities, subject to privatization
- 

The value of property that is to be compensated is evaluated according to the provisions of law on the basis of:

- a) On the land, the land value map;
- b) For buildings, the decision of the Council of Ministers for the methodology of assessment of properties in Albania.

The term "restitution" as part of the compensation formula, was removed. Law No. 133/2015 "On the Treatment of Property and Finalization of the Process of Compensation of Property" envisages that it would apply only "compensation" based on the compensation formula, in order to guarantee equal rights for all the former owners.

For claims which have not been treated yet by the Agency for Restitution and Compensation of Property, priority will be the return of property and, if this can not be accomplished, the Agency will move to financial compensation.

There is no hierarchy in the use of means and different approaches to compensation. All these (ways and means of compensation) refer to the same value determined after the evaluation, based on the land value map.

Article 6 of the law governs the manner of evaluating the decisions held or to be held, determining where the property is returned / compensated, the cadastral voice has changed from the time of expropriation until the evaluation.

At the same time the Article clarifies how the assessment of the decisions is performed when there is a change of the cadastral voice and the decision provides only for the right to compensation. So, for the financial assessment of this case we refer to the property value under the cadastral voice of origin.

In addition, this Article determines how to proceed with the assessment of all decisions already held and those to be held, as well as the compensation of decisions determined in value.

Due to the fact that these decisions are final and enforceable, the agency can not change the dispositive of these decisions (also referred to in the practice of the Constitutional Court, which considers these decisions as "quasi judicial").

Regarding the compensation decisions assessed in value and yet to be implemented, from the period of the recognition of the right to compensation till the compensation the expropriated subjects will benefit the value be indexed according to the official value of inflation and interest received and the estimated annual means issued by the Bank of Albania at the moment of the entrance into force of this Law.

Law No. 133/2015 treats equally all expropriated owners, taking as reference the value of the map at the time of entry into force of the law and the cadastral voice, which the property had at the time of expropriation. It is this method that avoids the unequal treatment, by putting a right balance between the value of the expropriated land and the gained compensation value.

**Chapter III** stipulates the compensation fund and procedures for compensation of property.

The Compensation Fund is a fund available for compensating the final decisions on compensation, which consists of:

- a) The Financial Compensation Fund;
- b) The Land Fund.

The compensation fund is untouchable. No administrative or judicial body can dispose of the fund, apart from the subjects specified in the law for its administration.

The financial compensation fund is regarded as a special fund within the meaning of Article 7 of Law no. 9936, dated 26.06.2008 "On the management of the budgetary system in the Republic of Albania". The procedures for the proposal and adoption of the budget for this fund are the same ones that apply to the law on the State Budget and are presented together to the National Assembly for approval. The Compensation Fund is used for the compensation of the expropriated subjects, who have been granted the right to compensation with the final decision, in monetary value.

The Law No.133/2015 "On the treatment of property and finalization of the process of compensation of property" stipulates that the State budget approves annually a financial fund pursuant to a budgetary chart attached to the law, with not less than 50 billion in 10 years, which will be administered by the PMA, for the implementation of the property restitution process. The existing law does not provide for the annual fund that must be allocated to perform the compensation of property.

The law provides property auctions to sell part of the land fund for the financial resources for the Financial Compensation Fund.

The income generated from the sale at auction of the property part of the land fund, is transferred to the Financial Compensation Fund and is used to compensate the financial subjects under the provisions of the law. If, after a public auction, the property is not sold, then it is used for the physical compensation of the subjects who have a final compensation decision pursuant to the well-defined procedures.

The law stipulates that if PMA within a determined period of time does not comply the obligation to assess all the decisions that have recognized the right to compensation, the parties may address the Administrative Court of First Instance of Tirana, to perform the assessment under the provisions of this law.

The complaints about the amount of compensation will be assessed by the Administrative Court of Appeal, which has determined deadlines and fastest procedural proceedings, within 30 days of the request.

The PMA has created the digitized electronic register of all decisions, which contains information about the status of the property, location (cadastral area), surfaces that are restored, compensated and forms of compensation.

In order to create the new legal and effective mechanism for the implementation of the compensation process and determining the financial bill, from the electronic registry of all decisions of the former Commission for Restitution and Compensation of Property and the Agency for Restitution and Compensation of Property of 1993 until now, have been identified 26.357 decisions, which have recognized the right of compensation to expropriated subjects.

On the basis of prices approved by the value map in Albania, according to the previous law, for each cadastral item, results in a value of approximately from 814 000 000 000 (eight hundred and fourteen billion) ALL.

The legal framework in force at the time of execution of the compensation, realize surface schematized therefore partial compensation for all decisions, causing excessive length of the finalizing of the compensation process. Managing financial assets allocated from the budget to compensate former owners, 300 million lek, for each budget year, the process of compensation to former owners for the 26.357 decisions, worth 814 billion, would end after 2,713 years.

By applying the methodology defined in the law 133/2015, referred to the current legal framework has finalized the pilot project *"On the implementation of the new formula and economic assessment of all decisions on compensation to expropriated subjects in Tirana from 1993 to date, in order to recover the total compensation bill in this district"*. It was made possible to identify for every decision for compensation, in Tirana, the data base for the application of the new formula and the amount of the compensation referred to:

- Property Cadastral index at the time of expropriation;
- Cadastral -Area where the property lies for compensation;
- Property-Value referred to the value of the property map currently in force under the cadastral index;
- the surface of property for compensation and restitution;

The calculation was performed, confirming the fact that the law guarantees the completion of the property compensation.

The new law provides facilities for the implementation of the compensation process as well as increased financial resources for the Financial Compensation Fund, with special provision to cases of financial compensation as well as compensation for physical auction.

The law No. 133/2015 in the Annex 2 provides financial fund to compensate owners for each respective year, as follows:

FINANCIAL FUND											
Year	I	II	III	IV	V	VI	VII	VII I	IX	X	TOTAL
Billio n	3,0 0	3,3 3	3,6 9	4,1 0	4,5 4	5,0 4	5,5 9	6,2 0	6,8 8	7,6 3	50

**Chapter IV** Governs the procedure for examining unaddressed applications.

Applications made before the entry into force of the law, as well as applications made within the deadline set by the law will undergo treatment of the property by recognizing the property rights of the expropriated subjects through a decision of the PMA, and their subsequent compensation pursuant to the Law No.133/2015 “On the treatment of property and finalization of the process of compensation of property “. In any case, where possible, priority shall be given to the physical compensation in the property recognized by the PMA's decision.

The purpose of such a provision is to treat equally and avoid discrimination between expropriated subjects. We would like to explain that there will be two different processes within the Agency, the evaluation process for the first time of the 11.131 unaddressed files, and the new applications that will be submitted within the deadlines provided by this law, and the process of enforcement of the 26,357 final decisions.

Whereas the 26,357 final decisions, will need only the determination of the economic value for the compensation of the property, the process will be different for the 11.131 unaddressed and the new applications. The latter will be evaluated on their merits, the relevant documentation will be examined and it will be decided if there is room for recognition of ownership. This process is similar to what has already been performed for the 26,357 final decisions.

The different treatment is due to the situation in which they stand for evaluation. The goal is equal treatment, by going through the same process, which have been subject to the applications ready for execution. Restitution for the unaddressed and the new applications will be performed only in those cases when this is possible and due to the request of the former owners which have an affective connection their former property.

When the decision issued under this law becomes final, the Agency or any interested party addresses it to the Immovable Property Registration Office for registration.

This draft law intends to put an end to specific situations, such as overlapping, land occupied by state owned buildings and lands occupied by illegal constructions.

The law provides that for previously unaddressed applications, restitution of property can not be performed for lands occupied by illegal constructions. This would not only be physically impossible, but it would entail social conflicts for the state as well as overlapping of rights among beneficiaries.

**Chapter V**, defines the state authorities charged with the treatment of property.

The Law No.133/2015 “On the treatment of property and finalization of the process of compensation of property “envisages amendments to the structure of the ARCP, which will be the Property Management Agency (PMA), a public legal person.

The change made to the naming of the Agency has come as a necessity from the conceptual changes and the purpose of the draft law. The Agency will be restructured and its human resources will be doubled in order to implement, within deadlines the finalization of the property compensation process.

The PMA carries out the following tasks and duties:

Finalizes within the legal deadline the examination of the applications of the expropriated subjects on the treatment of property for which no decision has been held, while checking, evaluating and confirming:

- iii. The entire documentation submitted by the expropriated subjects and the compliance thereof with the criteria provided under this law;
- iv. The accuracy of the documentation submitted by the expropriated entities, by checking thereof with the laws and bylaws or judicial decisions, in compliance with article 2 herein, which have been used as a basis for expropriation, nationalization, confiscation or unfair appropriation of property by the state.

Following the control, assessment and examination of claims, pursuant to the definitions of the above letter "a" clause "1", the Director General of the PMA issues a decision within the term defined in Article 33 of this law on:

- Dismissing the claim;
  - Recognition, as appropriate, of the right of ownership, physical compensation within the boundaries of the recognized property or compensation from the land fund or the financial compensation for the property and other real rights, pursuant to this law.
- f) Accepts, examines and assesses the applications to benefit the recognized right to compensation, according to this law and bylaws in force.
  - g) Verifies and calculates the financial obligations of the state towards expropriated subjects or third parties, under the provisions of this law.
  - h) Deposits for registration near the registers of immovable property all the decisions dealing with property.
  - i) Any other duty provided by this law and the secondary acts issued for its implementation

The PMA examines the submitted applications, which are unaddressed pursuant to the norms of this law. Within the preclusive period of 90 days from the date of entry in force of the law, the interested subjects may apply regarding the recognition of property. This deadline can not be extended or reinstated by the judiciary or any other administrative authority. Such a measure is intended to enable the finalization of the property compensation process in Albania.

Such a provision is necessary, based on the recent court practice, by which was held on the "Resetting of the deadlines for the application to address the ARCP". This practice would cause excessive length to the process of property restitution. By introducing a preclusive period of 90 days, all expropriated subjects, who for various reasons have not submitted their requests on time to the ARCP are given an opportunity to address the PMA. This measure is intended to for the purpose of putting an end to the process of recognition and compensation of property in Albania.

In order to bring an end to abuses and excessive length of process, among others is provided for the rejection of applications, which are supported only on judicial decisions for "proof of legal fact". Regarding the criterion of "proof of legal fact", we would like to inform that this "fact" is not sufficient enough in the eyes of the law to prove the legal ownership of the property. It is necessary for the applicants to submit further written evidence on the matter and their rights on the claimed property. This provision of the law aims to address the practical problems stemming from the abusive practices that have been occurring in 20 years of the process. The law in force has the same attitude towards the problem at hand and this practice is also well established in the domestic jurisprudence. This position is supported by the Strasbourg Court in the case "Bici v. Albania".

The best practices implemented so far have been taken into account in order to assess the deadline for examining the requests. Furthermore, this is also related to the fact that the examination of the majority of the applications for recognition of the right has been completed. The Agency, meanwhile, has estimated the human resources necessary for the timely examination of the applications, and as a consequence the number of its employees will be doubled with the approval of the draft law.

One of the ways provided for guaranteeing respect for rule of law, within the limits set by law, are and administrative offences. The law provides administrative offences for the administration, imposing fines of 50,000 to 800,000 LEK to the ATP employees, including the General Director of ATP.

Fines will be imposed on: "Violation of the legal provisions and regulations for the respect of the deadlines and procedures for physical compensation through auction, other cases of physical compensation, the financial evaluation of decisions on compensation, compensation in nature in the property of the expropriated subject, the examination of untreated applications and every deadline and other mandatory procedures". Competent authority for the imposition of these fines is the General Director of the PMA, when the violation was committed by his subordinates; The Administrative Court when the offense was committed by the Director General of the PMA.

The procedures for the finding of the violation, the notification of the offender, the decision, appeal and other administrative measures against violations of this law, as well as execution of the sentence, are regulated by the law in force on administrative offenses.

**The following**, contains the final and transitory provisions.

The law stipulates that the Agency for the Restitution and Compensation of Property will be transformed in the Property management Agency, with the entry into force of this law. The structure of PMA must be approved by the order of the Prime Minister within one month from the entry into force of the law. Until the approval of the structure, ATP will operate under the existing structure.

The administrative documentation files, which are under examination and follow-up by the ARCP, shall be transferred for their administration and further follow-up by the PMA. The archives, the means of work and logistics of the ARCP offices, established and administered according to the law, are transferred under the administration of the PMA. The budget funds planned for the Agency on Restitution and Compensation of Property, upon the entry into force of this law, are transferred to the accounts of the PMA.

For applications submitted under Article 22 of Law No. 9235, dated 29.07.2004 "On Restitution and Compensation of Property" will be proceeded in the manner, form and conditions prescribed by the draft law. The process of examination of the files, which have been submitted before the entry into force of this law and that are under examination near the Agency, is to be completed within 3 years from the entry into force of the law. The process of allocation of property compensation fund shall continue until, pursuant to the provisions of this law all former-owners holding a final compensation decision are compensated.

The draft law provides that if the PMA does not comply with the obligation to address the applications specified in paragraph 1 of Article 33, within 3 years, the parties may address the Court of First Instance, on their applications, pursuant to the provisions of this law.

## **VII. INSTITUTIONS AND BODIES TASKED WITH THE IMPLEMENTATION OF THE DRAFT LAW**

The Agency for the Restitution and Compensation of Property, or as it has been named in this draft law the Property Management Agency is tasked with the implementation of this law.

## **VIII. MINISTRIES, INSTITUTIONS AND OTHER ENTITIES THAT HAVE CONTRIBUTED TO THE DRAFTING OF THE ACT**

The draft law was originally drafted by the Agency for the Restitution and Compensation of Property in close cooperation with the State Advocature and with preliminary consultations with experts of the Council of Europe, the World Bank and the Ministry of Finance.

The draft law was forwarded for comments to the ministries of the line and all stakeholders, as well as for its consultation, the ARCP and the Ministry of Justice organized consultation roundtables with the stakeholders.

The owners associations present at the organized roundtables and discussions did not comment on the specific provisions of the Law, as these associations evaluated that the work should begin in fact with the repeal of the law no. 7501/1991. However, we are fully aware that the repeal of this law and undoing of the consequences that it has brought is legally, practically and logically impossible.

#### **IX. BUDGETARY INCOME AND EXPENDITURES ASSESSMENT REPORT**

The financial effects of this draft law shall be covered by the state budget.