



ROMANIA
Ministry of Foreign Affairs



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

WORKSHOP 2

**ROUND-TABLE:
PROPERTY RESTITUTION/COMPENSATION:
GENERAL MEASURES TO COMPLY WITH THE
EUROPEAN COURT'S JUDGMENTS**

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The views expressed are those of the author only

Property restitution/compensation: General measures to comply with the European court's judgments.

Bucharest, 17 February

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Round table 2.

Implementing measures: property restitution/compensation process and related challenges.

Dear Madams/Sirs,

Dear Minister of Justice,

First of all, I would like to express my gratitude for having the possibility to present this speech in front of you, as concerns issues related to the implementing measures on the property restitution and compensation of properties and related challenges.

Before sharing with you the ideas of the Albanian Government as concerns the new measures to be taken, I would like to briefly highlight the existing situation and challenges relied on the presentation done in the morning session by the Deputy Minister of Finance Mr. Alfred Rushaj.

Under the current scheme of compensation, each year the Government of Albania allocates funds from the state budget for the execution of the final compensation decisions. From this fund could benefit, based on decisions' chronological order, only those ex-owners which have had no land restituted or distributed during nineties by special laws, for an amount corresponding to a maximum of 200 sq.m. (*indifferent of the total amount each ex-owner is entitled to be compensated*) and after having paid an administrative fee (*for the first time of the compensation application only*). Initially was lacking a map of land value to refer for calculating the compensation amount. Later on, such map was prepared and currently the compensation amount is calculated on a case by case basis by referring to it. This scheme is considered by the ECtHR both discriminatory and not effective. In addition, the physical compensation scheme has not been effective hitherto, given that there has not been identified the physical fund yet.

In addition, until recently, the annually allocated fund from the state budget was being cancelled if not distributed within the same budgetary year. To redress this inconvenience a lasting special compensation fund was created. The later shall exist till the conclusion of the compensation process. This fund is financed (sponsored)

from various sources and is distributed by the Agency for the Restitution and the Compensation of the Properties.

Furthermore, the Agency for the Restitution and the Compensation of the Properties is currently facing serious problems due to the lack of the necessary human resources. More detailed presentation in this scope shall be given by its director Mr. Elvis Çefa.

Further, I would like to mention that, as a matter of principle, the decisions for restitution and compensation issued by the Agency for the Restitution and the Compensation of the Properties could be judicially challenged by the interested subjects. During court procedures the said agency is represented by the State Advocate Office. Moreover, the later could file a so called “Petition for Revision” in case of abusively restituted and compensated lands, administratively in front of the foregoing agency and later on (*if deemed necessary*) in front of the courts. Such petitions can be also submitted, if new evidences not known previously known have been discovered.

Moreover, the compensation process is being complicated because of technical problems such as the lack of restituted/compensated land map to be attached to the decision (*mainly concerning decisions adopted during the first years of administrative process due to lack of experience*), superposition of the lands restituted, etc.

The Albanian party has perused the Memorandum¹ that identifies the main problems as concerns the non-enforcement of final decision settling the applications for restitution and compensation of properties. In its reliance, the Albanian Prime Minister, by his order no. 169, dated 17.09.2010², has decreed the formation of a high level Inter-ministerial Committee charged with the preparation of an Action Plan stating concrete measure and the deadlines for their implementation so as to finally solve the problematic property issues.

¹ The memorandum is drafted by the Department for the Execution of the European Court Decision (DG-HL) and is adopted on 20.05.2010. For further details please refer to the memorandum itself. The problematic issues mainly identified in it concern:

- i. the execution of law no. 9235, dated 29.07.2004 “On the restitution and compensation of properties”, as amended;
- ii. the systematic initial registration of properties;
- iii. the prescription of effective judicial measures tackling the non-enforcement of the decisions.

² Order no. 169, dated 17.09.2010 “On formation and functioning of the Inter-ministerial Committee that shall draft the strategy and propose the measures implementing the Memorandum of the Committee of Ministers of Council of Europe.”

This Committee shall mainly discuss and decide on the necessary legal, structural, technical and budgetary measures to be adopted and the deadlines for their implementation in order to solve the problems as regards: (i) the non-enforcement of the final decisions adopted in course of the process for restitution and compensation of properties, (ii) the delays in the process of first systematic registration of properties, (iii) the complexities as to the functioning and organization of the enforcement practice in Albania.

Up to date, the said Committee has drafted the Action Plan addressing the issues evidenced in the Memorandum. Given the complexity of the issues and the number of state institutions involved in this process such draft is still under discussion in the technical level. Its final version as shall be approved by this Committee shall then be forward for approval to the Albanian Prime Minister.

The key measures aimed to be adopted to address the above problematic matters are as follows:

Institutional measures aiming a better coordination and progress related to property topic. By these measures Albanian state strives: (i) to achieve better interconnection among the archives of each institution and better coordination for the circulation of the documents among them, (ii) to shorten the terms for processing a given application, (iii) to better coordinate different procedures and processes dealing with property topic, etc.

Concretely, a new department will be established within the structure of the Ministry of Justice that shall coordinate and supervise all the matters highlighted in the Memorandum. This department shall be compounded of some coordinators and one director covering the main specific areas where the reform shall be focused. Furthermore, it will be established another state body with technical attributes that shall responsible for preparing a unique standard map to be used by any state body involved in the property reform. The latter shall use such maps in their every day activity. Therefore, the cartographic data produced by each state body shall be interchangeable among them.

Legal measures intending to address one of the central problems identified in the Memorandum namely that of simplifying the properties' legal framework. The Albanian government estimates to reexamine all laws and by-laws regulating the property field. The final objective is to simplify and consolidate the by now fragmented legal framework and to prescribe straightforward and transparent

procedures. In this scope a task force compounded of different state body' s representatives and assisted by international expertise shall be charged to carry out such reform.

Furthermore, the existing law on the property compensation and restitution shall be amended so as to incorporate provisions concerning the new compensation scheme to be adopted. This scheme shall speed up and provide straightforward procedures for obtaining monetary and physical compensation. In addition, a revised methodology is being conceived aiming to deal with the applications in a fair, impartial and non-discriminatory basis as concerns the financial compensation. This methodology shall address the problematic issues identifies hitherto under the current methodology. Based on the revised methodology the new map of property values shall be amended accordingly.

I would like to stress that the legal measures described above shall be adopted after being consulted various stakeholders interested in this process.

Budgetary measures aim to back up the conclusion of the all abovementioned actions. In addition, an estimation shall be prepared as concerns the necessary monetary resources to be annually allocated so as to make effective the financial compensation scheme. Albanian Government shall have a clearer picture accordingly, once the electronic database shall be concluded by the end of this year.

Other measures seek: (i) to conclude the process of the first systematic registration of the properties throughout the territory of the country, (ii) to implement a central up-to-date atlas of the properties, (iii) to register in a single database the up-to-date final property restitution and compensation decisions adopted during the past years, (iv) to conclude the process of legalization of informal areas and constructions, (i) to conclude the identification of properties that shall serve to the physical compensation process (*next to the financial compensation one which is being carried out since several year under the old scheme*).

The timely implementation of the foregoing measures shall permit to Agency for Restitution and Compensation of the Properties to successfully bring to a close the next phase of the process, namely that of the physical compensation. The latter shall lessen the current financial burden of Albanian state.

Furthermore, at this moment each state entity involved in the process is estimating the budgetary impact of these measures and the necessity for additional staff (*to the*

applicable extent). The budgetary aspect has a determinant role as to the timely implementation of the foregoing measures. In addition, the budgetary expenses for the financial compensation itself constitute a significant burden to the state budget, too. This burden shall also be considered while proposing the measures and the deadlines for their implementation.

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