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

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Bucharest, Howard Johnson Hotel,
5-7 Calea Dorobantilor Dist. 1, Bucharest, 010551 Romania

**Presentation prepared
by Mr Alfred Rushaj, Albania**

The views expressed are those of the author only

CHRONOLOGICAL OVERVIEW OF THE PROPERTY RESTITUTION AND COMPENSATION PROCESS IN ALBANIA

1. The property restitution and compensation process has its origins in the immediate aftermath of the fall of the communist regime in Albania and the establishment of the multi-party regime which brought about recognition of the right to own property and free private enterprise. The Albanian authorities made a commitment to recognise, return or provide compensation for property in the case of all those who had been dispossessed during the time of the previous regime.

2. Initially, the process was started under the auspices of Law no.7698/1993 which constitutes the first attempt to provide a solution to the issue of property¹ nationalised, dispossessed or confiscated according to laws, bye-laws and court rulings issued after 29th November 1944, which had been taken unjustly by the state. Under this law, the Committee for the Restitution and Compensation of Property operated at the town and county council level (*in the case of urban areas and areas outside city limits*), to recognise, return property to, and compensate former owners. The committees were headed by the State Committee for the Restitution and Compensation of Property, which operated as a self-governing body under the direction of a Chairman, with no power to review rulings at the local administrative level. The Committee's rulings were only subject to review by local courts within the statutory period. These rulings were deemed to be executive deeds for however long they were set, without recognising ownership, the method and measures to be taken to return property or compensation.

3. Following ratification of the European Convention on Human Rights by the Albanian Government in 1996, and that of the Constitution of the Republic of Albania in 1998, the Albanian legislature undertook to adopt new standards to safeguard the right of ownership which relate to "public interest" and "fair recompense", as well as respect for the principles of justice (*honesty and equality*), proportionality and social welfare by drafting the new Law on ownership no.9235, dated 2004, which revoked the previous Law. The new law extended the range of compensation methods, raised the upper limit on the surface area of agricultural land to be recognised, provided for return or compensation, and also set out the obligation to create a real estate fund for physical

¹ Property was understood to mean real estate in the form of *plots of land, buildings and anything else that is permanently associated with them, such as residential buildings, factories, workshops, shops, warehouses and any other inhabitable construction*. The full surface area for return or compensation regarding plots of land was up to 10,000m². For properties between 10,000m² and 100,000m², the surface area for return or compensation was plus 10 percent, and for properties over 100,000m², plus 1 percent. For freehold land within city limits and tourist areas, in keeping with the regulatory plans approved at the time when this law came into force, the surface area for the return of land was 5,000m² and the remainder would be compensated in the manner stipulated in this law; in the case of agricultural land, 5,000m² and the remainder would be compensated in accordance with the law "On land".

compensation and a fund for financial compensation. The State Committee for the Restitution and Compensation of Property was now operating as a collegiate body made up of five members who were elected by Parliament with the power to re-examine decisions made by the local committees in each district of the country, maintaining the decentralised system of decision-making. Through other changes to the law, the Committee was disbanded in order to create the Property Restitution and Compensation Agency (AKKP), which, together with the regional district offices, was subordinated to the Ministry of Justice in order to ensure centralised and effective organisation and to speed up the decision-making process. The AKKP operates as a self-governing body headed by the Director General. Currently, as a result of recent changes to the law, the AKKP's Regional District Offices have been disbanded and the entire administrative process and the examination of decision-making have been placed centrally with the AKKP.

4. The deadline for the acceptance of requests from former owners for recognition, return and compensation is 31.12.2008. Whereas the final deadline for the AKKP to conclude the process to examine applications and make decisions is by the end of the year 2011.

5. Compensation in the case of property that cannot be physically returned, is achieved under the law in several ways: by using other state-owned real estate of the same type or of any other type; by offering shares in companies using public funds; by offering the value of the buildings that are intended to be privatised; in cash; by using state-owned real estate in priority areas for the development of tourism.

6. Starting in 2005, financial compensation in cash was enacted for those who had been dispossessed. Financial compensation is made on the basis of the methodology for evaluating the real estate for which compensation is being paid and what counts for the purpose of compensation², as well as on the basis of the land value chart at the village, town, city and district level, which was approved in 2008 and is updated on an annual basis in line with market values. The plan is for financial compensation to be paid by the year 2015.

7. The financial compensation fund in the year 2005 was 200 million leks. This fund

² defined the basic methods for calculating and evaluating for the purpose of compensation in respect of:

- **Land:** *agricultural, woodland, meadows and pasture land.*
- **Estates:** *urban, non-profitable estates, industrial estates and those found in tourist areas.*
- **Fertile woodland.**

was only distributed in Tirana, as at that time the land value chart had only been completed for this district. In the year 2006 the 300 million-lek fund was distributed in Tirana and Kavaja. During 2007 the 500 million-lek fund was further extended to the districts of Berat, Korça, Dibër, Kukës and the city of Vlora. Starting in 2008 the 500 million-lek fund was distributed throughout the 12 (twelve) districts of the country and thus throughout all Albanian territory. In 2009 the compensation fund rose to 1.25 billion leks. For 2010 the compensation fund was 1.7 million euros. In total, during the period 2005-2010 577 successful applicants ultimately benefited from compensation, with a total value of 2,754,526,414 leks. Of the 577 successful applicants, only 207 were compensated in full. The procedures for distributing the compensation fund for each year are determined by annual Council of Ministers' decisions. The Ministry of Justice, the AKKP, Real Estate Registration Offices and the Departments for the Administration and Protection of Land (SAMTs) in the counties are responsible for implementing these decisions.

8. According to the criteria set out in these decisions financial compensation is provided only to those former owners who have been recognised as having the right to compensation and only in the event that they have not gained: from earlier compensation; from partial physical return of the property as a result of any decision made in respect of that person; from the right to pre-purchase; from land resulting from the implementation of law no. 7501, dated 19.7.1991 "On land".

9. To date, compensation for any individual is provided for a surface area up to 200 (two hundred) m² (*regardless of the surface area for which the right of compensation had been recognised*). The dispossessed individual also benefits from bank interest, in line with the annual average figure issued by the Bank of Albania, for the period from the recognition of his right of ownership until the receipt of recompense in the form of cash compensation according to the updated value on the land value chart. Compensation is provided in line with the chronological criterion of the dates on which decisions were made by the former Property Restitution and Compensation Committees (KKKPs) which recognise the right to compensation. In the case of decisions that have been changed through administrative or legal channels, for the purpose of enacting the chronological criterion, consideration is given to the date of the earliest decision to recognise, return and provide compensation for the property for which compensation is sought. The Ministry of Finance, in collaboration with the AKKP and the second-line banks, has taken steps to transfer the financial amount to the bank account number of the successful dispossessed individuals in line with the procedures for implementing the state budget.

10. To date, 54,000 decisions have been made in total, in respect of 43,000 dispossessed individuals, and recognition has been granted for 172,000 hectares of land, of which 101,600 hectares of land have been physically returned and compensation has been provided for 56,138 hectares.

11. In implementing ECHR case law, during the year 2010-2011 the Albanian Government has expressed its intention to take concrete measures to approve new criteria for financial compensation based on a percentage dependent on the location of the property, in line with the principle of equal treatment of individuals in the eyes of the law and non-discrimination.

12. A legal initiative that was put in place with the aim of making the financial compensation fund independent of the state budget and having it carried over in each financial year is the passing of Law no.10239, dated 25.2.2010 “On the special compensation fund”. This law extended the sources of funding for financial compensation and the procedures for administering it were made more flexible in the interests of the former owners. According to the provisions of this law this fund is used to compensate in terms of value those former owners who have had their right to financial compensation recognised. The following budgetary revenue is included in this fund: Revenue from the state budget for the compensation of former owners; Revenue derived from the sale at auction of state assets at 65% of the sale price in the case of buildings and 100% of the sale price for land; Revenue collected from individuals in whose name plots for building have been legally authorised³; Other revenue which, according to special laws or bye-laws, is channelled into the property compensation fund; Revenue from various donors.

13. Individuals benefiting from this fund are not only those who have won the right to compensation under Law No.9235, dated 29.07.2004 “On the return and compensation of property”. The owners have also won the right to recompense under law no.9482, dated 3.4.2006 “On the legal recognition, urbanisation and integration of buildings without planning permission”, dependent upon the revenue collected from the transfer of ownership of plots for building⁴, as have all dispossessed individuals whose right to property compensation is recognised under special law.

³ according to law 9482, dated 3.4.2006 “On the legal recognition, urbanisation and integration of buildings without planning permission”, amended

⁴ These cases pertain to legal authorisations for buildings and the land on which they have been built, where the land has been recognised and returned to former owners. In these circumstances the revenue from the legal authorisation process is paid into the

14. The Director General of the AKKP reports every three months in writing to the Prime Minister and the Minister of Justice on the progress of the financial compensation process. The Minister of Justice also reports to Parliament on behalf of the Council of Ministers every year in March.

15. Meanwhile, physical compensation has not begun because the identification and setting of the fund for physical compensation are not complete. The fund identified so far amounts to a surface area of 17,335 hectares of agricultural land, 71,699.3 hectares of woodland and pasture land and 29 buildings. Work is currently ongoing at the AKKP and the Real Estate Registration Offices to verify this fund. At the same time, work is continuing to identify agricultural land in the case of 3 other districts, which, it is believed, will boost the physical compensation fund by about 4,000 hectares of available land from former agricultural businesses. Meanwhile, the collection of data on tourist areas, industrial areas, reservoirs and power stations is continuing.

16. Central and local institutions are currently identifying and compiling a list of recorded properties that are under their ownership or administration and will be used for the purpose of physical compensation, before then sending this list to the AKKP. After carrying out the necessary checks, the AKKP then includes the identified properties in the physical compensation fund. In parallel, the Real Estate Registration Offices confirm the legal status of the properties in question. The list of real estate to be used for the purpose of physical compensation will be published in the Official Gazette once it and the description of the property have been approved by the Council of Ministers. This process is due to be completed by the statutory deadline of 31.12.2011.

17. The current scheme used to compensate individuals who have been dispossessed is extremely difficult in practice, because of the complex nature of the process for returning and providing compensation for property, as a result of a series of other parallel processes associated with the right of ownership. The aim of this scheme is to offer full, 100%, compensation for former owners in line with the values on the approved land value chart for the whole territory of Albania.

18. Financial compensation under this scheme offers a partial solution and extremely limited compensation to individuals by the year 2015. Restitution and physical

special fund and the AKKP then distributes it to former owners who have been recognised as owners and who have had land returned to them as legally authorised under law 9482 for those individuals who had put up unauthorised buildings on it.

compensation have not yet begun because of the objective inability to identify the physical fund of state property. In order to identify this fund the following must be completed first: the initial registration of those assets that offer a guaranteed deed of ownership; the legal authorisation of unauthorised areas, the notification and transfer of public property associated with local government institutions; the privatisation of state-owned buildings; the administration of woodland and pasture land, and the completion of town-planning projects in coastal areas etc. In order to incorporate these parallel processes, efficient cross-institutional co-ordination is also required in order for the process to be handled at pace. What is more, current legislation in the area of property ownership is considerably fragmented because of multiple interventions over law 9235, as well as numerous bye-laws for its implementation and operation.

19. A further problem that arises is the creation of overlap in property ownership, because of the registration of several individuals as owners of the same property, which affects the State Agency's decision-making process and increases the number of legal disputes between individuals. The inability to handle restitution and physical compensation for former owners makes it difficult for the state to offer financial compensation within the confines of the revenue that comes from the state budget, which in any case is not sufficient to offer a definitive solution to applicants' demands. For these reasons, the decisions of the Committees and the Property Restitution and Compensation Agency effectively cannot be executed, because, amongst other things, they are constantly subject to administrative and judicial oversight.

20. In these circumstances the Albanian authorities are studying the parameters of a new compensation scheme that can realistically be put into practice to offer real, concrete solutions with a fixed deadline and specified financial costs. In order to implement the new compensation scheme, the Albanian Government has drawn up a sector-based strategy for property ownership issues which is expected to be approved at the end of 2011, as well as an action plan under the auspices of this strategy, based on which work is in train to adopt a series of legal, institutional and structural measures.

21. In the context of legal cases based on the claims of complainants of Albanian nationality regarding the failure to execute binding court rulings pertaining to the rights of former owners to restitution, or compensation for property under Law No.9235, dated 29.07.2004 "On the return and compensation of property" that are being heard at the European Court, it has been noted that the violation of the right of ownership in the case of Albanian individuals has come about as a consequence of the obstacles and impediments to implementing the process to return and provide compensation for property.

22. In its rulings in several such cases the European Court has found that the failure to execute binding court rulings and deeds of ownership by classing the committees' decisions as *quasi-judicial* violates the right of the complainants to due legal process under article 6 and the right of ownership under article 1 of Protocol 1 of the European Convention. The Court has also found that the country's legal system does not provide the legal means of redress to tackle the failure to execute binding court rulings, and this constitutes a violation of the right of complainants to effective channels for appeal under article 13 of the Convention.

23. The failure to execute the above-mentioned rulings has come about as a consequence of problems and difficulties encountered:

- In connection with the implementation of Law no. 9235, dated 29.07.2004 "On the return and compensation of property"
- In connection with the property registration process
- In connection with access to effective legal channels in cases of a failure to execute binding court rulings

24. More specifically, the problem areas encountered are to do with the lack of cross-institutional co-ordination over circulating documentation and the interaction between each institution's archives, as well as the various processes that affect property. The legal framework for property ownership is considerably fragmented and needs to be consolidated and simplified in order to establish simple and transparent procedures for compensation. What is more, the initial registration process has not concluded for the territory of the whole country. There is currently no single national record of property ownership. The state agency does not have one single database to record final decisions on the return and compensation of property. The process of legal authorisations for the remaining properties (*which are estimated to number in the region of 70,000*), has not concluded, and the establishment of the fund that will be used for the physical compensation process also remains pending.

25. Mindful of these findings, the Albanian Side has drawn up an Action Plan and Report to provide a detailed definition of the legal, administrative and budgetary measures that are associated with the overcoming of these difficulties and obstacles, in conjunction with specific timeframes and financial costings for their implementation.

Alfred Rushaj

Deputy Minister of Finance