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Date: 02/08/2017

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Meeting: 1294th meeting (September 2017) (DH)

Communication from the authorities (19/07/2017) concerning the cases of Driza v. Albania & Manushaqe Puto v. Albania (Applications Nos. 33771/02 & 604/07)

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

English courtesy translation of the Judgment of the Constitutional Court of 16.01.2017.

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Réunion : 1294e réunion (septembre 2017) (DH)

Communication des autorités (19/07/2017) dans les affaires Driza c. Albanie & Manushaqe Puto c. Albanie (Requêtes n°s 33771/02 & 604/07) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Traduction anglaise de courtoisie de l'arrêt de la Cour constitutionnelle du 16.01.2017.

REPUBLIKA E SHQIPËRISË
MINISTRY OF JUSTICE
STATE ADVOCATURE
OFFICE OF THE GENERAL STATE ADVOCATE

No. 127/12 **Prot.** **Tirana, on** 18.7.**2017**

To: **Ms. Corinne Amat – Head of Division**
Department for the Execution of Judgments of the ECHR
DGI - Directorate General of Human Rights and Rule of Law

Council of Europe
67075 Cedex
Strasbourg
France

Ref: Submission of the translated judgment of the Constitutional Court

Dear Madam,

Following the cooperation between the Government of Albania with the Department of Execution of Judgments of the European Court of Human Rights, relating to the matter of enforcement of the ECtHR judgment in the case of *"Manushaqe Puto and others v. Albania"* applications nos. 604/07, 43628/07, 46684/07 and 34770/09, judgment of 31.07.2012, final on 17.12.2012, and the Driza Group of cases, please find enclosed the translated judgment of the Constitutional Court of Albania on the application raised by the President of the Republic, Members of Parliament and other interested parties, on the constitutionality of Law 133/2015 *"On the treatment of property and finalization of the property compensation process"*.

Expressing my highest consideration,

Yours sincerely,

ALMA HICKA
GENERAL STATE ADVOCATE

REPUBLIKA E SHQIPËRISË
AVOKATURA E SHTETIT

Judgment no. 1, dated 16.01.2017

(V-1/17)

The Constitutional Court of the Republic of Albania, composed of Bashkim Dedja, President Vladimir Kristo, Vitore Tusha, Altina Xhoxhaj, Fatmir Hoxha, Besnik Imeraj, Fatos Lulo, Gani Dizdari, members, with judicial secretary Edmira Babaj, on 21/04/2016 , reviewed in a plenary session with open doors, case no. 28/1 Act, relating to:

APPLICANTS: PRESIDENT OF THE REPUBLIC OF ALBANIA represented in court by Ms. Ledina Mandia.

1/5 OF THE MEMBERS OF THE NATIONAL ASSEMBLY represented in court by Mr. Oerd Bylykbashi and Mr. Gazmend Bardhi.

THE OMBUDSMAN represented in court by Mr. Arben Gjoleka.

THE REPUBLICAN PARTY OF ALBANIA, represented in court by Av. Agim Bega.

LEGITIMATE OWNERS' ASSOCIATION "Albanians", represented IN COURT by Mr. Ferdinat Sulaj.

THE ASSOCIATION "Krahina Jonë", represented in court by Mr. Axhem Imeraj.

THE ASSOCIATION "Bregdeti" represented in court by Mr. Jorgo Dhrami.

THE NATIONAL ASSOCIATION "Pronësi me Drejtësi" represented in court by Av. Suela Mëneri.

INTERESTED PARTIES:

NATIONAL ASSEMBLY OF THE REPUBLIC OF ALBANIA.

COUNCIL OF MINISTERS, represented in court by Mr. Artur Metani and Mrs. Alma Hicka.

PROPERTY MANAGEMENT AGENCY, represented in court by. Mrs. Sonila Qato and Mr. Olsi Rraklli.

SUBJECT MATTER:

1. The repeal as incompatible with the Constitution of the Republic of Albania and the European Convention on Human Rights and Fundamental Freedoms of the law No. 133/2015, dated 05.12.2015 "For the treatment of property and the finalization of the property compensation process."

2. Suspension of implementation of the Law No. 133/2015, dated 05.12.2015 2015 "For the treatment of property and the finalization of the property compensation process."

LEGAL BASIS:

Articles 4/1, 17, 18, 41, 42/1, 43, 131 / a, 134 / d of the Constitution of the Republic of Albania; Articles 6/1, 14 of the ECHR; Article 1 Protocol 1 of the ECHR; and Articles 45 and 49/1 of Law no. 8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania".

THE CONSTITUTIONAL COURT

After having heard the rapporteur of the case Gani Dizdari, examined the claims of the applicants, who urged the acceptance of the request, the submissions of interested parties, the Council of Ministers and the Property Management Agency, who asked for the rejection of the request, and having discussed the matter thoroughly,

NOTES

I

1. On 05.12.2015, the Parliament of Albania, on the proposal of the Council of Ministers approved the law No. 133/2015 "For the treatment of property and the finalization of the property compensation process." (Hereinafter: Law No. 133/2015).

2. The President of the Republic, by Decree no. 9377, dated 29.12.2015, has remitted for reconsideration by part of the National Assembly Law No. 133/2015 "For the treatment of property and the finalization of the property compensation process", as it was not in accordance with the constitutional principles.

3. In the plenary session dated 21.01.2016, the National Assembly of Albania, with Decision No. 1/2016 dated 21.01.2016 "On the dismissal of the decree no. 9377, dated 29.12.2015 of the President of the Republic, 'For the remittal of law No. 133/2015 "For the treatment of property and the finalization of the property compensation process" voted against the decree of the President of the Republic.

4. In terms of Law No. 133/2015, its scope is the regulation and just satisfaction of issues of property rights that have arisen from the expropriation, nationalization or confiscation, in accordance with Article 41 of the Constitution and Article 1 of Protocol 1 ECHR. For this purpose, the law provides procedures for managing property and the completion of the property compensation process and the responsibilities of the administrative bodies in charge of implementing it. With the entry into force of this law, is repealed Law No. 9235, dated 29.07.2004, "On Property Restitution and Compensation", as amended, and the Law no. 10239, dated 25.02.2010 "On the establishment of a special compensation fund for property", as amended.

5. Referring to the accompanying report of this law, it is noted that *"the draft is proposed for the protection and guarantee of constitutional rights and fundamental freedoms as a way to repair the injustices in the process of nationalization of private property during the communist regime, in accordance with the principle of legal certainty and the rule of law and the exercise of the right of expropriation against fair compensation and full balance with the public interest.*

This draft law aims to provide the opportunity to former owners to restore the denied rights of ownership". Furthermore, it notes that the draft report is based on the recommendations of the ECHR pursuant to the judgment of Manushaqe Puto and Others v. Albania, whose implementation is obligatory for the Albanian state. According to the accompanying report, the draft law has two main purposes: a) the finalization of the process of treatment of property through recognition and compensation of property unfairly expropriated by the state entities from the year 29.11.1944; b) the regulation and the just satisfaction for the compensation of property, and the execution of final decisions of compensation within the time specified in the draft law.

6. The Meeting of the Judges, given that the scope of the claims filed by all parties is the same, decided to join the applications, and to judge them in a single court hearing. Regarding the request to suspend the enforcement of the law, the Meeting of Judges decided to examine it in plenary session, after having heard the parties' submissions.

7. At the hearing on 21.04.2016, participated in the trial the judge Sokol Barber as well, who on 14.09.2016 has submitted his resignation from further exercise of his duty as a member of the Constitutional Court.

II

8. **The applicants**, in brief, submitted the following reasons to support their claims to repeal the law:

8.1. The law violates the principle of legal certainty, because:

8.1.1 *The scheme offered to solve the problem related to the systemic failure to enforce the compensation of owners who have a final administrative decision does not guarantee the effectiveness in solving the problem, nor clarity and predictability.* Article 15 of Law No. 133/2015 "Deadlines for the financial assessment of the compensation decisions", set a deadline of three years to perform the financial evaluation for each subject, which has an earlier decision by which is recognized the right to compensation. This is an approach that still affects legal certainty and prolongs by law the property compensation process.

8.1.2 *The revaluation of final administrative and judicial decisions concerning compensation violates the principle of legal certainty.* Through this law is violated the principle

of legal certainty in the treatment of financial compensation for property recognized and provided for compensation for years, as long as the Government aims, through this law, to return to the type of land at the time of expropriation. This means doing a review of a final decision which has restituted and compensated property.

8.1.3 *The scheme provided for the treatment of untreated files or the ones that will be newly deposited after the entry into force of the law contradicts the constitutional principle of legal certainty, equality before the law and the right to appeal.* Article 21 of the law stipulates the right of the expropriated subject to be compensated in his property referred to the methodology defined in Article 6 and 7 of the law discussed above, unlike the provisions of the previous law which recognized the right of restitution of property and compensation of property at the time of the decision. In this approach the legislator has created legal uncertainty regarding the expectations of the expropriated subject, who expects to be compensated in his own land, following the evaluation of his land, referring to the property type at the time of expropriation.

8.2. *The law violates the principle of equality before the law and non-discrimination* as it orders the re-evaluation of final administrative and judicial decisions concerning compensation. The fact that a former owner addressed the ECtHR and has been awarded just satisfaction through a court judgment and the other one has not yet received compensation, may not allow the Legislature to create a situation of inequality, despite the public interest sought to be protected through the law.

8.3 *The law violates the right of property in the sense of Article 1 Protocol 1 of the ECHR, because it does not provide a realistic assessment of the property, according to the final administrative and judicial decisions concerning compensation.* The evaluation of the first decision using a different manner and various forms of compensation referred to the value of the land at the time of expropriation violates the right to property acquired through a final decision, which the state has failed for years to enforce the standards required by the Convention.

8.4 *The law violates the right of appeal.* Everyone has the right to appeal to a higher court against a court decision. In this case, as long as the court considers the issue on the merits, it is

necessary that a party reserve the right to appeal that decision to a higher tier. The Supreme Court is a court of law and as such may not review the merits.

8.5 The law does not provide fair financial compensation according to the price of the time but according to the map that the government has concluded, which is not based on the market price, not respecting the guidelines of the ECtHR. References to various prices and maps to for the purpose of compensation would create inequality among owners, which contradicts the principle of equality of citizens before the law.

9. ***The interested party, the National Assembly of Albania***, submitted in writing:

9.1 *The law under examination is an effective law that will give the final solution to the restitution and compensation of property within a reasonable time*. The adoption of this law was seen as a necessity stemming from the obligations arising from the judgments of the ECtHR against Albania, which have grown an exceeding financial bill for the Albanian state to compensate or indemnify the former owners as a result of the violation of their right to property by the legislation enacted from 1991 to today. The Albanian state had a duty to take the appropriate legal and institutional steps to finally solve this problem that has extended beyond any reasonable time.

9.2 *The applicant's claim that the law is in violation of the practice of the ECtHR* for just satisfaction, since this Court has a number of judgments emphasizing the margin of appreciation required by the legislators to assess the unfairly expropriated buildings by the state, after the establishment of communist regimes in Europe.

9.3 *The claim that the law violates the principle of legal certainty and equality before the law does not have a standing,* as the Constitutional Court itself in its practice has estimated that in certain cases the principle of legal certainty does not prevail over the public interest. Public interest in this case is the final solution of the issue of property restitution and compensation, as quickly and with as little financial cost, in order to restore social peace. Law No. 133/2015 provides a fair balance between the restriction of property rights and the public interest.

9.4 *The claim that the Law violates the right of appeal does not have a standing either, since it is expressly provided for in the law*. Subjects have the right to appeal to the Court of

Appeal, by accelerating the closure of the judicial process, as one of the main goals of this law. This guarantees the objective of finalization of the entire process within 10 years in order to avert the endless procedures in the different levels of the judicial system.

10. ***The interested party, the Council of Ministers and Property Management Agency***, in a unified position, submitted regarding the claims of the applicants as follows:

10.1 *The law under consideration is arguably the most efficient and real legal instrument, which was adopted after 1990 in order to restore, as far as possible, the rights of former owners.* Unlike what the applicants claim, the law maintains the principle of equality and legal interest as well as it implements the recommendations of the ECtHR and the Committee of Ministers of the Council of Europe for the Albanian state. The law also solves social problems inherited and created by administrative misconduct. It provides deadlines for each target of administrative activities for the timely finalization of the process.

10.2 *No previous law has had the goal of full restitution of expropriated property.* All laws, including the law under consideration, aim at correcting as far as possible, within and socio-economic conditions of the country, the injustices of the previous regime, carried out at the expense of private property through nationalization, expropriation, confiscation or any other unfair means. For this reason, the law has unified the term "restitution and compensation of property" with the term "just satisfaction". Compensation is one of the ways to achieve just satisfaction. Neither the ECHR nor its additional protocols give raise to the absolute right to full just satisfaction. It is up to the States, based on the economic opportunities and social conditions, to implement the most appropriate mechanism.

10.3 *Regarding the claim of violation of the principle of legal certainty*, we maintain that firstly this principle is not absolute and without its limits, as the Constitutional Court has held in its jurisprudence. Public interest before this principle prevails when intervention is legitimate and proportionate.

10.4 *The allegation of infringement of the right of appeal does not stand,* since the appeal to the Court of Appeals meets the requirements of Article 43 of the Constitution, the former being a court of the law. The provision for the right to appeal is made in accordance with the deadlines established by law to complete the process of compensation to owners.

III

Evaluation of the Constitutional Court

A. For the standing of the applicants

11. Concerning the standing (locus standi) The Court has considered it as one of the main aspects related to the initiation of a constitutional process. In the examination of the control of the constitutionality of the norm, the initiating party, provided for in Article 134, paragraph 1, letter "a", "b", "c" and "d" of the Constitution of the Republic of Albania, are considered as entities that do not have the obligation to prove the necessary connection that should exist between the legal activities they perform and the raised constitutional issue.

12. The applicants are partly unconditional subjects (President, 1/5 of deputies) and partly conditional subjects (Ombudsman, the Republican Party and associations). The first standing *ratione personae* within the meaning of Article 134, paragraph 1 of the Constitution, as unconditional subjects demanding the abstract examination of legal norms without the need for justification of their interest (see judgment no. 19 dated 15.04.2015 of the Constitutional Court).

13. In judgment of the constitutionality of a norm, the initiating entities, as stated in Article 134, paragraph 2, of the Constitution of the Republic of Albania, have the obligation to prove the necessary connection that should exist between the legal activity they perform, and the raised constitutional question. The Republican Party has sanding ratione personae within the meaning of Article 134, paragraph 1, letter "f" of the Constitution. It is a legal person registered as a political party in 1991. The Republican Party, as a subject under article 134, paragraph 1, letter "f" and paragraph 2 of the Constitution, can put in motion the Court, in terms of Article 131, paragraph "c" of the Constitution, for the control of normative acts (see decision no.15, dated 15.04.2010, No. 28, dated 09.05.2012 of the Constitutional Court). Likewise, the Ombudsman has the constitutional function of protecting individual rights that were violated as a result of the activities of state administration and in terms of Article 134, paragraph 1, letter "f" of the Constitution, is entitled to address the court for the control of the constitutionality of the norm.

14. As regards the legal standing of the associations, as initiating entities pursuant to Article 134, paragraph 2, letter "f" of the Constitution, the Court has already a consolidated jurisprudence, which has accepted the legitimacy of these entities on issues related to their interests. The Court has held that the assessment of whether or not an organization has sufficient interest, it is on a case by case basis, depending on the circumstances of each particular case. The Organization initiating the proceedings must prove in what way it can be affected in one aspect of its activity, so it has to prove a direct and individualized connection to exist between its activity and the challenged norm. The interest to act should be safe, direct and personal. This interest consists of the violated right, the real or potential damage and not the theoretical premises on the unconstitutionality of the norm that has brought this violation of the interest. The fact that the challenged provisions may have or have had an effect whatever on the applicant is not sufficient to determine whether he is entitled to filing a claim, but it is necessary to prove that the challenged provisions regulates the relationships that are at the core of the purpose of the activity of the applicant, as stipulated in the Constitution, laws or, in the case of subjects of private law, the statute (see decision No. 14 dated 21.03.2014 and No.33 dated 08.06.2016 of the Constitutional Court). In the present case before this Court, the 4 applicant associations have in their statutes the aim of protecting the interests of former owners and the attempt to establish the right of property expropriated or confiscated by the communist regime in Albania. Given that the scope of the challenged law before the Court is the final resolution of the issue of property expropriated or confiscated by the communist regime, the Court considers that these associations justify their interest to put in motion the constitutional control of the law, according to Article 134/2 of the Constitution.

15. As per the above, in the present case, the associations have ratione personae standing in filing a claim and setting in motion the constitutional jurisdiction under Articles 131/a/c and 134, paragraph 1, letter "f", and paragraph 2 of the Constitution. Furthermore, the applicants have ratio temporis standing, since the request was filed within the 3 years specified in Article 50 of Law No. 8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania".

B. On the request for the suspension of the law under consideration

16. The applicants, in addition to a fifth of the members of Parliament, have requested the Court to suspend the law under review, because according to them, its application while it is pending before this Court would result in irreparable harm to the category of owners who are affected by this law. According to them, this law brings negative consequences from the moment of entry into force and the immediate effects touch the category of owners who have applied and are waiting for the issuance of decisions by the Property Management Agency (hereinafter: PMA) and for those who have benefited from the previous law. Based on this fact, the non-suspension of the effects of this law would lead to serious consequences for property rights to all parties affected by this law.

17. The Court, pursuant to article 45 of Law no. 8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania", has the authority to assess whether the implementation of a concrete norm may have consequences that affect the state, social or individual interests, as appropriate, which constitutes the essential criterion for suspension of execution of this norm. The Court considers that in the meaning of the aforementioned provisions, the applicant failed to submit arguments regarding the severe and irreparable consequences that the law under challenge brings. Consequently, the Court decided to reject the request for suspension as unfounded.

18. Furthermore, to assist the decision-making on this important and complex issue, the Meeting of Judges decided to obtain an amicus curia opinion of the Venice Commission regarding the standards set by the ECHR and the ECtHR’s practice in terms of respecting the principle of legal certainty and equality before the law guaranteeing the right of property by law subject to review before this Court.

19. The Court in reviewing the claims of the applicants sees fit to stop in its assessment of the observance of the principle of legal certainty, equality before the law and the right of appeal in order to protect the property rights of law under examination.

C. On the claim of infringement of legal certainty as a result of the change in the assessment methodology.

20. The applicants claimed that the scheme provided for the solving of the systematic problem related to the failure to enforce decisions on compensation for owners who have a final administrative decision does not guarantee legal certainty and equality before the law in the final resolution of property issues in the country. The revaluation of the final administrative and judicial decisions concerning compensation violates the principle of legal certainty, because through this law the government intends to refer the price and type of land at the time of expropriation. This, according to the applicants, means that the final decisions that have decided to restitute or compensate property shall be reexamined even though they have a final form.

21. In addition, the applicants claim that the law under consideration does not guarantee the restitution to the owner of the property but only provides the recognition and financial compensation. The latter is not in line with the real market value but the one provided by the government that does not respond to the real financial value of the property. According to them, the opportunity for physical restitution is not provided for in the law, but also the financial compensation is also defective because the owner is required to give up a large part of the value.

22. The Court considers that these claims raised by the applicants should be treated in view of the standards set by its jurisprudence regarding the respect for the principle of legal certainty to guarantee the property rights of citizens, which have been nationalized or confiscated during the communist regime in Albania.

23. The Court in its jurisprudence has emphasized that the principle of the rule of law, enshrined in Article 4 of the Constitution, is one of the fundamental principles of the democratic state and society. Aspects of this principle are also legal certainty, the protection of acquired rights and legitimate expectations. Legal certainty presupposes, among other things, the confidence of citizens in the state and the immutability of the law on regulated relations. Credibility has to do with the conviction of an individual that should not be disturbed continuously or live in fear of the diversity and the negative consequences of legal acts, which could affect his private or professional life and aggravate a condition set by previous acts (see judgment no. 31 dated 18.06.2010 of the Constitutional Court). The Court stated that legal certainty is one of the essential elements of the rule of law. The rule of law that underpins a democracy means the rule of law and the avoidance of arbitrariness, in order to achieve respect and guarantee of human dignity, justice and legal certainty. The principle of legal certainty

includes, in addition to clarity, understanding and sustainability of the normative system, and the trust in the legal system (see judgments no. 15 dated 10.03.2016 and no. 25 dated 28.04.2014 of the Constitutional Court).

24. The principle of legal certainty necessitates a clear formulation of legal norms, since an incorrect regulation of the norm which leaves way to the enforcer to give it different meanings and consequences, does not go in accordance with the purpose, stability, reliability and effectiveness the legal norm has as its scope. It is a requirement of the principle of legal certainty that a law as a whole, in part or in specific provisions in its content should be clear, unambiguous and comprehensible. Therefore, it is the duty of the courts or other bodies of state and society, empowered by the law, that certain deficiencies of a natural complement to the law through the interpretation and application in practice. But to achieve such a thing, first of all should understand the law correctly and fairly. Therefore, the aim of the law should be clear. It should define the means of intervention, the addressed subjects, the specified reports of behavior and the means of its implementation. The expected result is intended to be predictable and the consequences for the entities which are addressed by the law as a whole or in its individual provisions as well (see judgments no. 34 dated 20.12.2005 and no. 31 dated 19.11.2003 of the Constitutional Court). To apply correctly this principle it requires, on the one hand, that the law in a society provide security, clarity and continuity, so that the individuals are able to direct their actions in the correct order and in accordance with it, and on the other hand, not stay static if it needs to shape a concept, as the one of justice in a rapidly changing society (see judgment no. 36 dated 15.10.2007 of the Constitutional Court).

25. The Court has also held that the principle of legal certainty does not guarantee against any expectations in case of a change of a favorable legal situation. This principle may not prevail in any case. This means that if the case that a different legal regulation of a relationship is directly affected by a significant public interest, with all its essential elements, this interest can prevail over the principle of legal certainty. In this view, should in any case and the extent to which the citizens trust that the favorable legal situation appears important to be protected and what are the reasons for such protection. Not every move with negative effects that the legislator takes 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 for those rights which are expressly provided as unlimited, it is not possible to be affected by the legislator (see judgment no. 37 dated 13.06.2012 of the Constitutional Court).

26. Referring to the law under consideration, the Court notes that the legislator has rearranged the case of physical and financial compensation to former owners dispossessed by the communist regime in Albania. This rearrangement should be seen in terms of respecting the criteria established in Article 17 of the Constitution, which is the test that should be applied in any interference with fundamental rights and freedoms of the individual, according to the consolidated practice of the Court. The reason for this is the fact that the law provides a new assessment means for the compensation of property, a scheme which, according to the applicants, results in a lower amount of compensation than the previous law provided for this purpose.

27. Specifically, the Court will focus on the analysis if the lawmakers' intervention in regulating the issue of property restitution and compensation for former owners has respected the principle of legal certainty and predictability of legislation according to the standards set by the Court and the ECtHR.

28. Referring to Article 17 of the Constitution and the practice of the Court, the first criterion for limitations, thus the obligation for the envisioning of interferences by law in the formal sense, turns out to be respected, as the intervention is done through a law enacted by Parliament, according to the procedures provided for this purpose.

29. The second criterion to be assessed is the existence of public interest. The Constitutional concept of public interest, as it is handled in the constant practice of the Court is quite broad and should be seen in the perspective of a concrete act that is under examination before the latter. The Court emphasized in its jurisprudence that as the principle of legal certainty is not absolute and may be restricted if there is a legitimate reason or public interest, disregard of which would bring serious consequences to the legal or social order of the country. It is difficult to exhaustively list the issues of public interest or public reasons that could justify the interference in a fundamental right. They can be listed only negatively, i.e. in terms of limitation of each case. In this way, the compatibility of restrictive measures taken by the legislator to the

presence or not of limitation need to be verified on a case by case basis by the Court (see judgment no. 10/2008, No.4 / 2011 of the Constitutional Court).

30. The Court reiterates that Article 41 of the Constitution of the Republic of Albania and Article 1 of Protocol No. 1 to the European Convention on Human Rights, provide for the possibility of just satisfaction in determining the degree and manner of compensation leaving a wide margin of appreciation to the lawmakers. The state has a wide margin of appreciation, because it recognizes the situation and the social relations better than any individual, and only it has the legal tools available to improve them. The legitimate objectives of public interest as those followed in the context of measures of economic reform or measures designed to achieve greater social justice, can require a compensation of less than the full value of the market "(see judgment no. 30/2015 of the Constitutional Court).

31. The specific issue raised for consideration before this Court relates to the physical and financial compensation to former owners of expropriated during the communist regime in Albania, for which this Court has previously held the position as regards the standards and criteria to be respected by the legislature in implementing the obligation of the state to remedy the violation of property rights. The Court has noted in its case-law that the legislator has their own margin of appreciation to regulate the issue of compensation for property nationalized or confiscated during the communist regime. In this context, the Court has recognized the right of the legislature to limit the amount of enjoyment and disposition of private property of citizens due to the existence of the public interest. In order that such interference to the right of property be justified, it is imperative that there is a proportional relationship between the means employed and the aim sought to be achieved. 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 (See judgment no.25, dated 28.04.2016 of the Constitutional Court).

32. Regarding the other criteria that must respected by the legislature in its imposition of limitations, the right ratio between the intervention and the situation that dictates it, the Court has considered that this condition imposes the legislator to highlight the real need for interference in individual rights in a concrete situation. Balancing the interference with the situation that has dictated it, imposes the legislator to implement such legal remedies, which must be effective, i.e. selected so as to be suitable for the realization of the pursued objectives. In addition, use of these

devices should be necessary, which means that the goal can not be achieved by other means. Necessity has to do also with the use of less harmful means for the subjects whose human rights and freedoms are violated. The condition of the balance of the infringement and the situation that has dictated the necessity is embodied in the necessity itself, the usefulness and proportionality in the strict terms of the imposed constraints. Compliance with these conditions requires a careful analysis in each particular case, balancing the public interest dictating the limitation and those rights subject to restrictions, as well as evaluating the manner of restriction. In this regard, the Court notes that compliance with the above conditions of limitation requires a differentiated approach, depending on the individual rights and freedoms subject to the restrictions (see judgments no.25, dated 28.04.2014, no. 4, dated 23.02.2011 of the Constitutional Court).

33. In the present case, referred to the submissions of the interested parties, the identifiable public interest is the resolution of property issues within a reasonable financial cost and duration and the establishment of social peace between different social categories that are affected by this issue, which has remained unsolved for 25 years.

34. The Court considers that there is a public interest, which should be considered as important to the extent as to justify the intervention of legislators. Referring also to the Amicus curia opinion of the Venice Commission, States enjoy a wide margin of appreciation in determining what is in the public interest, in particular as regards Article 1 of Protocol No. 1 and the implementation of social and economic policies. What does not meet the public interest is only the deprivation of property that is manifestly unfounded. The ECtHR admits that "due to the exact knowledge of their society and the needs that it has, in principle, national authorities can evaluate better than the international judge what is" in the public interest "[...]. For this reason, it is for national authorities to make the initial assessment of the existence of a problem that concerns the public, ensuring measures to be applied in the exercise of the right of ownership, including deprivation and restitution of property. Here [...] national authorities enjoy a certain margin of appreciation. "(*See cases Maria Atanasiu and Others v. Romania, op. Cit., §166; see also Kopecký v. Slovakia [GC], op. Cit. § 37*).

35. Likewise, referring also to the doctrinal attitude expressed in the opinion of the Venice Commission on this issue, it results that comprehensive compensation obligations of the expropriated or nationalized property by regimes that do not respect the minimum standards of

human rights and the full restoration of the rights of previous ownership cannot be instituted and would be contrary to the principle of equality itself. (See Opinion on the draft law "On the restitution and compensation of property" of the Republic of Albania ", approved by the Venice Commission in the 58th Plenary Session, Venice, 12-13 March 2004).

36. Furthermore, in the opinion for the evaluation of the law No. 133/2015, based on the request submitted by the Court for an amicus curia, to the Venice Commission, the latter noted: *"... taking the specific situation of Albania into account, it can well be argued that a new and effective legal framework, which may lead to a lower amount of compensation for the former owners, meets the requirement of proportionality as set out in Article 1 Protocol No.1 to the ECHR. In particular, it seems reasonable that Law no. 133/2015 refer to the cadastral categorisation of the property at the time of the expropriation without being regarded as an extreme disproportion between the official cadastral value of the land and the compensation paid to former owners."* (See opinion of the Venice Commission adopted in the 108th Venice Plenary Session, 14-15 October 2016).

37. Based on the above, the Court will focus on the assessment of Article 6 of the law under examination. This provision, in paragraphs 1 and 2, has provided for the financial evaluation methodology of final decisions on restitution and compensation of property, determining that:

"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."

38. The Court observes that at the content of paragraphs 1 and 2 of Article 6 of Law No. 133/2015 are materialized the main principles of the compensation formula. The rest of Article 6

regulates particular situations, as part of the compensation methodology, find solution in other provisions of the law.

39. Further, Article 6 paragraph 3 provides: "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. While paragraph 5 of the Law provides: "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. "

40. The Court considers that these two points, according to their content, lead to the conclusion that they are conceived as a new expropriation given that provide the reevaluation of the restituted and compensated property, before. In this regard, these two provisions create problems specifically associated to legal certainty specifically regarding the uncertainty and unpredictability of legislation.

41. The Court, as stated above, reiterates that the legal certainty as constitutional concept includes the clarity, comprehensibility and consistency of normative system. Further, the ECHR in its decision *Manushaqe Puto and others versus Albania* defining the elements regarding the clarity of the law in the drafting process of legislation, emphasizes the predictability, clarity and transparency in decision-making, as the key principles of law and one of the purposes of the law (*See case Manushaqe Puto and others versus Albania, Decision dated 31 July 2012, §§ 114*). This position is held by the ECtHR in the case *Sabanchiyeva and others versus Russia*, which inter alia states that the predictability and clarity of acts and in particular the automatic nature of the rule, the vagueness of the claims regarding some of the concepts and the lack of the trial, are closely linked to the principle of proportionality (See cases TP and KM versus the United Kingdom, no. 28945/95, § 72, and Chapman v United Kingdom no. 27238/95, § 92, ECHR 2001-I).

42. The Court considers that Article 6 of the law under examination must be seen also linked to other articles of the law, specifically Articles 13, 14, 20, 21, 24, 26 and 31. In this context, the legislator must keep in mind that until to what extent the compensation provided for in Article 6, paragraph 3 and 5, complemented by other articles of the law in order to not be overlapped or clash between provisions of the law. Provision of repetitive and uncoordinated adjustments between their essence and its consequences create uncertainty and therefore violate the principle of legal certainty. In these circumstances, the Court considers that the content of paragraphs 3 and 5 of Article 6 of Law 133/2015 is not in accordance with the principle of legal certainty, since the calculation of the benefited surface and what will be decreased or increased according to the formula prescribed in paragraph 1 of Article 6 is unclear and creates confusion in terms of implementation regarding citizens' expectations.

43. The Court considers that regarding the other provisions contested by the applicants; they provide various forms of compensation, which aim to establish a fair balance between different interests. Referring to the *amicus curia* opinion on this matter, the Venice Commission has estimated that regarding decisions that provide restitution or compensation only in surface and not in monetary value, it is not clear to what extent the issue of legitimate expectation rises. The explanatory report of the law No. 133/2015 argues that there is never drawn any final compensation scheme, with a specific compensation figure, which would create a "legitimate expectation". Regarding individuals who have not yet received a final judgment by administrative or judicial bodies, which grant them the right of restitution or compensation of property, the Government refers to the case *Bici versus Albania* in order to justify that these individuals or entities do not own and have not created a legitimate expectation, since their right is not recognized in domestic level.

44. The Court reiterates that the new compensation scheme adopted by Law No. 133/2015 has changed the method of valuation. The main element of the assessment of financial compensation is the value of the property according to the cadastral voice it had at the time of expropriation. This method is different from the previous legislation and can result in lower compensation amount. Previous laws (laws for properties 1993, 2004 and 2006) provide a higher compensation scheme than that provided by law No. 133/2015 (Ramadhi and Others v. Albania, no. 38222/02, § § 24-30, 13 November 2007; Manushaqe Puto and others v. Albania, op. cit., §

25-26.). Thus, it can be said that previous laws have created expectations for obtaining equivalent compensation based on the property market value at the time of decision making on compensation. Although lower amount of compensation cannot be considered as formal expropriation, it may as well be termed as an "interference", which is a comprehensive provision laid down in Article 1 of Protocol No. 1 requires that any interference by public authorities regarding the right to the peaceful enjoyment of property must be lawful (see Former King of Greece and others v. Greece [GC], no. 25701/94, § 79, ECHR 2000-XII and Latridis v. Greece [GC], no. 31107/96, § 58, ECHR 1999-II). The principle of lawfulness also presupposes that the applicable provisions of domestic law must be sufficiently clear and accessible, and that their implementation be predictable. Taking into account the specific situation in Albania, it can be argued that the new and effective legal framework prescribed by law No. 133/2015, which may result in a lower amount of compensation for the former owners, however, meet the requirements of proportionality provided for in Article 1 of Protocol No. 1 to the ECHR.

45. Regarding the provisions on judicial or administrative final decisions, but not yet executed, which provide granting of a certain amount of compensation, the Court considers that they raise the issue of "legitimate expectation", but according to the law will not be subject to revaluation. Therefore these cases cannot be said to have "interference" within the meaning of Article 1 of Protocol no. 1 of the ECHR, as long as those decisions will be executed. Regarding decisions that provide restitution or compensation only with surface and not with financial value, the new compensation scheme, provided by Law No. 133/2015, changed the method of valuation, which could result in a lower compensation amount. Although the lower compensation amount cannot be considered as a formal expropriation, it could very well be termed as "interference" under Article 1 of Protocol No. 1 to the ECHR. However, the Court considers that there is a sufficient legal basis of clear and detailed intervention in this matter. Also, as noted above, the intervention seems to pursue a legitimate aim, since the aim of the law No. 133/2015 is the effective finalization of the property treatment through the its recognition and compensation within a reasonable time (10 years).

46. In the specific case of Albania it could be argued that the new and effective legal framework prescribed by law No. 133/2015, which may result in a lower amount of compensation to be paid to the former owners, certainly meets the proportionality requirements

set out in Article 1 of Protocol No. 1 to the ECHR. More specifically, it seems reasonable that the law No. 133/2015 refers to the cadastral classification of property at the time of expropriation without considering it as an extreme disproportion between the official cadastral value of land and compensation paid to the former owners (See Venice Commission's opinion, pg.44).

47. Taking into account the analysis of the Venice Commission, the Court considers that the law under consideration, despite providing a new evaluation methodology for the physical and financial compensation of former owners, which although resulting in interference with the right of property and not be in conformity to expectations of the subjects that are affected by the law, it turns out that in its entirety it respects the proportionality of the interference in the right to compensation of property to former owners and as such it is in respect of Article 1 of Protocol No. 1 of the ECHR."

D. On the allegation of infringement of the right of appeal

48. The applicants claimed that the law infringes the right of appeal given that providing the allegations of PMAs decisions to the Court of Appeals, has practically made impossible the appeal of the decision to a higher court, since the Court of Appeal’s decisions are final and conclusive and the Supreme Court is a court of law and as such cannot be invested to the facts of the case. Furthermore, the expropriated subjects could not challenge in court the assessment methodology, the way that the property value is assessed, but only the financial compensation. The article 19 provides the right of appeal against a decision of the PMA's only for the compensation amount, so the owner has no right to challenge the methodology in which the evaluation is based. So, limiting the right of appeal relates to the merits of the appeal and not only to the tier of the court where he is examined.

49. According to the submissions of interested parties, the challenge to the court of Appeals allows non-excessive procedures and finalization of the process. Albanian state has endured what this court and the ECHR stated: these decisions are quasi-judicial and should be executed. There is no administrative body competence to review them, so there is not a review but a fulfillment of the decision. According to the Council of Ministers, it was concluded that these decisions are never executed because they do not have a clearly defined value. If they would have an economic or financial value, they will be executed through the ordinary system.

The non-execution of decisions is related to their lack of evaluation and this has been a deliberate process in order to not execute them. So the new law today gives an economic value in order to be executed.

50. Regarding this claim in its practice continuously the Court has estimated that the judicial control over the acts of an administrative nature, being the expression of the principle of powers' check and balance and remaining in foundations of the institutional independence has a crucial change from administrative control performed in hierarchical route or by specially created bodies. Differences remain, among others, on the procedural level, in the meaning that courts in control of these acts follow the rules laid down in procedural law and may not interfere or adopt administrative procedures. The Court considers this claim regarding the right to a fair hearing within the meaning of Article 42 of the Constitution. The right to address the court, among other things, aims to guarantee citizens from any action that causes a violation of their rights, without excluding cases where the violation comes from an act of state administration. The rule of law implies that any interference by the executive authorities in the rights of individuals or legal entities should be subject to an effective control by a body which offers independency and impartiality guarantees during the review process (see Decision No. 10 dated 29.02.2016 of the Constitutional Court).

51. In a similar case, the Court found that the right of judicial appeal against the administrative body's decisions anticipating the appeal's mean and deadline meet the constitutional standard of the right of appeal. The Court therefore considered that the legal provision was sufficient to realize the right of judicial appeal against administrative acts issued by the administrative body (See decision no. 25 dated 28.04.2014 of the Constitutional Court).

52. In the instant case for review, the Court considers that the right of appeal provided for by law no. 133/2015 meets the criteria to have a judicial review of the decision taken by the administrative or quasi-judicial bodies. The applicants claim that the court of appeal should not be considered as a tier of appeal, as the competent court to examine the appeal against the PMA decisions but the Administrative Court of First Instance, it is not based. The Court notes that the state has no obligation to provide more than a tier of appeal, as long as there is an appeal to a statutory court, in the sense of Article 43 of the Constitution and Article 13 of the ECHR. In

these circumstances, the Court considers that the criterion of judicial review of acts on public authorities is guaranteed by the law under review.

E. Other appeals

53. Regarding the applicants appeals in terms of financial compensation scheme provided for by Article 7 of the law, the court failed to establish the required majority and therefore decided rejection of the request.

54. Regarding the claims of other applicants dealing with the infringement of property rights and equality of citizens before the law, the Court has assessed them within the intervention of legislator under the criteria of Article 17 of the Constitution as above and does not deem it necessary to treat them separately, as they relate to the same reasons and legal consequences.

55. Based on the above, in conclusion of the review, the Court finds that the laws under consideration in paragraphs 3 and 5 of Article 6 violates legal certainty and as such are not in accordance with the Constitution.

FOR THESE REASONS,

The Constitutional Court of the Republic of Albania, pursuant to Articles 131 and 134 of the Constitution, and Articles 72 and following of law no. 8577, dated 10.02.2000 "On the organization and functioning of the Constitutional Court of the Republic of Albania", by majority vote,

HOLDS:

- Partial acceptance of the complaint;
- Repeal of Article 6, paragraphs 3 and 5 of Law No. 133/2015 “On the treatment of property and the finalization of the property compensation process” as unconstitutional;
- Rejection of the request for the repeal of Article 6, paragraph 1, letter "b", and Article 7, paragraph 2, letter "a" and "b" therein;
- Dismissal of the remainder of the application.

- This decision is final, final and enters into force with its publication in the Official Journal.

MINORITY OPINION

1. The reason we do not share the same attitude with the majority on the issue of repeal as incompatible with the Constitution and ECHR law No. 133/2015, dated 05.12.2015 ""For the treatment of property and the finalization of the property compensation process."

2. At the end of the review, the Court decided to partly accept the request, to repeal as incompatible with the Constitution of Article 6, paragraphs 3 and 5 of Law No. 133/2015, rejecting the request for the repeal of Article 6, paragraph 1, letter "b", and Article 7, paragraph 2, letter "a" and "b" of the law and the dismissal of the reminder of the application. During the assessment of the decision regarding the repeal of paragraphs 3 and 5 of Article 6, the majority has estimated that these provisions, according to their content, are comprehended as a new expropriation being that provide revaluation of restituted or compensated properties. In this regard, these two provisions create problems regarding legal certainty specifically in terms of uncertainty and unpredictability of legislation.

3. In contrast to what the majority has evaluated, as well as based on the opinion of the Venice Commission for assessment of the law No. 133/2015, we, the minority judges estimate that the Court should decide to reject the request in its entirety, because the claims submitted by the applicants are unfounded, for all the arguments to be presented in the following:

4. Regarding the principle of legal certainty, in its jurisprudence the Court has considered that the protection of acquired rights and legitimate expectations, as constitutional standards treated consistently by constitutional jurisprudence, comprise elements of the principle of rule of law, enshrined in Article 4 of the Constitution. The principle of legal certainty includes, in addition to clarity, understanding and sustainability of normative system, the trust in the legal system, without taking over any guarantee against changing expectation of a favorable legal situation. Credibility has to do with the conviction of an individual that should not be disturbed continuously or live in fear of diversity and the negative consequences of legal acts, which could affect his private or professional life and aggravate a condition set by previous acts (see decision No. 5, dated 05.02.2015 of the Constitutional Court). The legal provisions relating to the rights of citizens must have enough sustainability to ensure their continuity. As a rule, cannot be denied the legitimate interests and expectations of citizens from legislative changes. The state should

aim changing a situation settled before, only if the change brings positive consequences (see decision no.25, dated 28.04.2014 of the Constitutional Court).

5. Based on the above constitutional standards we estimate that the challenged law does not violate the principle of legal certainty in any of its elements. In its article 1, the Law nr.133 / 2015 defines as subject the regulation and just satisfaction regarding the issue of property rights, creation and administration of the compensation fund, and defining procedures for the treatment of property, in order to finalize this process. While Article 3 has clearly defined the field of implementation, where he extends its effects, namely the implementation of the non-executed decisions recognizing the right to compensation, as well as issues that are pending in courts tier regarding the compensation purposes. Also, Article 7/1 of law refers only to decisions that recognize the right to compensation. So the clarity of this part of the law relating to its effects, we evaluate that rejects the appeal regarding the legal regulation uncertainty. The law has not taken the responsibility to regulate the situation regarding the decisions that decided on the physical restitution of the property, that clearly result on the article 8/1, which stipulates that compensation, is subject to the expropriated subjects who have a final decision for the financial compensation.

6. The same attitude was held by the Venice Commission[1], which in its opinion stated: "Judicial or administrative final decisions, which provide granting of a certain amount of compensation, but not yet executed, no doubt raise the issue of "legitimate expectation" and will not be subject to revaluation according to law No. 133/2015. In these cases there is no "interference" within the meaning of Article 1 of Protocol No. 1 to the ECHR, as long as these decisions are properly executed. Regarding decisions determining restitution or compensation only on surface and not financial value, it is not clear to what extent raise the issue of legitimate expectation. However, the new scheme of compensation provided by law No. 133/2015 changed the method of valuation, which could result in lower amount of compensation. Although lower amounts of compensation cannot be considered as formal expropriation, it could very well be qualified as "interference" based on Article 1 of Protocol No. 1 of Convention. However, the interference has a clear legal basis regarding the law No. 133/2015 (and three other legal acts that have been published pursuant to law No. 133/2015). Well, it seems that there is a sufficient

[1] See Venice Commission Opinion No. 861/2016 CDL-AD (2016)023

legal basis of clear and detailed interference in this matter. Further, the interference seems to pursue a legitimate aim, since the aim of the law No. 133/2015 is the effective finalization of the process of treatment of the property through its recognition and compensation. Given the historical background of various problems related to the effective finalization of the process of restitution and compensation of properties in Albania, it seems that the purpose of the law No. 133/2015 is in the public interest, within the meaning of Article 1 of Protocol No .1 of Convention. The interference is proportionate if the financial fund of 50 billion Albanian Leks attributed to the compensation scheme over a 10-year period is properly defined, taking into consideration the general state budget and gross domestic product of the country. In the specific situation of Albania can be argued that the new legal and effective framework prescribed by law No. 133/2015, which may result in a lower amount of compensation that was paid to the former owners, however, meet the requirements of proportionality defined in Article 1 of Protocol No. 1 of the Convention. More specifically, it seems reasonable that the law No. 133/2015 refers to cadastral classification of property at the time of expropriation, without considering it as an extreme disproportion between the official cadastral value of land and compensation paid to the former owners. ".

7. The new law does not change the essence of the right recognized by the prior law, namely the right to compensation for eligible entities, which in our assessment will lead to a violation of legitimate expectations. Rather, he respects those expectations, but establishes criteria, procedures and clear rules on how these subjects benefit. As long as the new law does not exclude compensation by the market value, we do not think that there is a violation of the principle of legal certainty of the subjects that the law treats. The new law has not established new criteria, but has clarified the mode of implementation of the criteria set out earlier. The purpose of the law is in itself the realization of compensation rather than changing the rules or provision of new procedures for the physical restitution of the property. This means that this law applies only to those former owners who have failed to benefit the physical restitution of their expropriated/confiscated property, because it has never been cheaper or for any other reason. There by they benefit from the right to compensation. In the same line should be interpreted most of the repealed provisions of the Law No. 133/2015.

8. Albania has had the obligation to finalize the process of restitution and compensation of property also based on the pilot judgment of the ECHR in the case of Manushaqe Puto. The means chosen by the legislator for the treatment and the finalization of this process does not violate constitutional standards, specifically the right to property, legal certainty the right to appeal, the right to a fair trial and equality before the law. In our assessment, the law has set the same and clear standards for all persons who will be its subject. He has established procedures and rules to be followed in order to fulfill the right of property to the beneficiaries and legitimate expectations of the former owners, as well as a time limit assessed as reasonable for the finalization of this process.

9. For all the above arguments we estimate that the claims submitted in the request should be dismissed as ungrounded.

President: Bashkim Dedja

Members: Besnik Imeraj, Altina Xhoxhaj

MINORITY OPINION

1. We are in line with the majority position for the dismissal of Article 6, paragraph 3 and 5 of Law No. 133/2015 "For the treatment of property and the finalization of the property compensation process, but we do not agree with the reasoning line that the majority follows in this decision, and the rejection of the request as regards the rest of the claims, according to the subject of the request. We the minority judges maintain that the Court should have declared the **law unconstitutional as a whole** for the following reasons.

A. On the allegation regarding violation of legal certainty

2. The Applicants have claimed that the scheme provided for systemic problem solution regarding non-execution of decisions on the compensation of the owners who have a final administrative decision does not guarantee effectiveness in solving the problem, nor clarity and predictability. In Article 15 of Law 133/2015 "Deadlines on the financial evaluation of the compensation decisions", is set a deadline of three years to make the financial evaluation for each subject, who has an earlier decision that recognizes the right to compensation. This is an approach that undermines legal certainty and prolongs by law again the process of property compensation".

3. Furthermore, according to applicants, the revaluation of final administrative and judicial decisions concerning compensation violates the principle of legal certainty, because through this law the government intends to refer the price and the type of land at the time of expropriation. This means that will be evaluated final decisions that have provided regarding restitution or compensation of property, as they have become final.

4. Thirdly, according to applicants, the scheme offered for the treatment of the untreated files or those that will be newly deposited after the entry into force of the law contradicts the constitutional principle of legal certainty, the equality before the law and the right to appeal. Article 21 of the law stipulates the right of the expropriated subject to be compensated in his property referred to the methodology defined in Article 6 and 7 of the law, as stipulated unlike the previous law that recognized the right of restitution and compensation property at the time when the decision was given. In this approach the legislator has created legal uncertainty

regarding the expropriated subject expectations, who expects to be compensated referring to the type of property at the time of expropriation.

5. The applicants claim that the law does not guarantee the restitution of the property to the owner but only provides recognition and financial compensation. The latter is not in line with real market price but with the value provided by the government and that does not respond to the real financial value of the property. According to them, the physical restitution opportunities have not been provided by law and the financial compensation is also with deficiency because to the owner is requested to give up a large part of the amount. Also, to the owners is removed the possibility to exercise the right of first refusal.

6. Referring to the law under examination, we think that it present problems in terms of constitutionality regarding the forms of compensation of property and the methodology of evaluation of the objects addressed by this law.

7. Specifically, referring to article 2 which provides the subject of the law are mentioned only the terms "compensation and just satisfaction of compensation." So, the term *restitution of the property* does not appear to be subject of the law differently than it has been in all previous laws on the subject of restitution and compensation of property to the former owners, which was repealed by the entry into force of the law under review. Further, throughout the text of the law, are provided only forms of compensation (financial, with properties of the same nature or the property sold at auction). It is understandable and clear that the aim of legislators has changed not targeting the physical restitution of the property, where possible, as it has been with the previous legislation, but in all cases only for its physical or financial compensation, regardless the situation of the legal owner. This includes cases where the owner has a final decision to restitute the property but because these decisions have not been executed because the property has been occupied or the state failed to alienate de facto to the owner, the owner today with this restitution of property decision, despite having obtained a legal title, will be compensated and will not get physically the property, which was restituted by the competent authority.

8. We think that this position of the legislator is not in accordance with the principle of legal certainty for these reasons:

9. First, it is not given any explanation or argument of constitutional nature relating to elimination process of the restitution of property where such a thing is possible. The legislator has decided only compensation (financial or physical with other objects), which is not in accordance with the actual normative framework, which gave priority to physical restitution of property and if that was not possible, addresses other forms. The Court has already a consolidated practice concerning the guarantee of property rights by the legislator, with the emphasis on the categories of expropriated persons by the communist regime. This Court, in its decision no. 30/2005, has argued that the previous law on restitution and compensation of property (repealed by the law under examination) is covered by the principle according to which the state takes over (forces itself) to restitute to the former owners, namely to own them again with those properties actually and legally possible to be restituted, as effectively exist and are part of the state property fund, or held by others without any good reason. The law under examination does not seem to follow this line set by the previous law and the decision of the Court.

10. Referring to the decision of the ECHR, Beshiri and others versus Albania, August 22, 2006 "when a Contracting State that has ratified the Convention, including the Additional First Protocol, enacts the legislation that provides full or partial restitution of property confiscated by the previous regime, such legislation may be considered as a generating of a new property right, protected by Article 1 of protocol no. 1 for persons eligible to acquire such a right. The same may apply in respect of legal arrangement for restitution or compensation provided before ratification, if this legislation remains in force, after the ratification by the Contracting State of the Additional First Protocol (see Broniowski v. Poland [GC], 31443/96 , §125, ECHR 2004-V)."

11. We are of the opinion that the removal or non-provision of restitution of property where possible, and provision of physical compensation with a land fund that is at least suspicious and not sure of its expectations is not consistent with the purpose of the law nor regarding the obligations of the ECHR decisions for effective and final solution of the Albanian state on property.

12. Secondly, regarding the provided methodology for financial compensation we think that this way of calculation in order to definitely compensate the owners does not respect the concept of just satisfaction, referred to the jurisprudence of the Constitutional Court.

13. In Chapter 2 of the law under review are provided the rules for compensation of the final decisions regarding the methodology of evaluation and the forms of compensation and evaluation. These rules apply as for decisions of untreated files but also for the files for which there is a final decision.

14. By law, all final decisions on restitution or compensation of property, for the finalization of the compensation process shall be subject to this way of evaluation:

(I) the property recognized for compensation is evaluated under the cadastral voice it had at the time of expropriation

(Ii) 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.

(Iii) 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, as defined above;

(Iv) In cases in which the expropriated subjects benefited through a decision compensation or restitution, the difference calculated as above is deducted from the assessed value of the property recognized for compensation.

(V) 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.

(Vi) If the PMA decides on the recognition and compensation in nature in the property of the subject, the property is assessed under paragraph 1 of article 6. 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.

(Vii) 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.

(Viii) 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.

15. Referring to the law subject of review, the evaluation of property by cadastral voice had at the time of expropriation is directly violating the principles of legal certainty and equality before the law of citizens, changing the legal situation during the process in a detrimental sense to members of the same category without a reasonable cause.

16. In the case *Manushaqe Puto v. Albania*, pg.113, ECHR oriented the Albanian state noting that: "*In particular, it takes note of the very considerable burden on the State budget which financial compensation represents. The above findings clearly require a reconsideration of the modalities for the payment of financial compensation as currently implemented. The Court urges the authorities, as a matter of priority, to start making use of other alternative forms of compensation as provided for by the 2004 Property Act, which would eventually ease pressure on the budget, and/or to introduce other methods of compensation.*

... 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. As to the latter, 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. Process compensation to former owners of property laws

due to be distinguished from the compensation of former owners under the Law of legalization. In connection with the latter, the respondent State may reconsider the increase of the cost that legalization has brought to the extent that the applicants would be able to regulate the financial compensation paid to the former owners. The government has not made a fair assessment in this regard, while it is obvious that there are other options that should receive priority but financial compensation for the execution of final decisions, not exceeding the arbitrariness as a violation of one right it is important that the property and due process of law that applies to the execution of a final decision. Unlike previous legislation and is oriented differently than through pilot Decision Government has paid attention to the financial compensation referred to in Article 8 of the Law. In its decision the ECHR pilot has directed the Government to use alternative forms of compensation. Also, the Secretariat in evaluating the compensation scheme introduced by the Government through Law has estimated that it is impossible to understand the Government has applied a form such hierarchy for compensation and expressed doubts referred to potential discrimination that may arise among those who were given the right to return ago and now they are entitled to compensation. "

17. Thus, referring to the decision Manushaqe Puto v. Albania, ECtHR appreciated that "As acknowledged by the Government in its Action Plan ,the authorities had no information to accurate and trustworthy information about the total number of administrative decisions recognizing the right of ownership and the granting of compensation, as appropriate , which were adopted since 1993. The existence of reliable data that should reflect and changes made by means of judicial review, would enable authorities to calculate and analyze the bill's overall compensation, and financial implications of the mechanism of compensation... Preparation of a database and calculation of global compensation bill should be accompanied by a clear compensation scheme designed carefully. The compensation scheme which should not have procedures in charge-compliance, for example, the obligation that a complaining apply for compensation in the next year in case of an unsuccessful applications to one year preceding, should take into account the principles of the practice court on the implementation of Article 6 § 1 and Article 1 of Protocol No. 1... The maps review and update of the value should be subject to transparent criteria and explanatory considering land development and market fluctuations.The court urges the authorities with priority to start using alternative forms of compensation provided by the Property Law of 2004, which will eventually ease the pressure on

the budget and / or to present other ways of compensation. Type decision process of compensation to be given requires transparency and maximum efficiency, with a view to increasing public confidence. It would be in the general interest that the results be made public and distributed through various means of communication accessible. It is essential that the decisions of the authorities are clear and contain sufficient and subject to judicial review in the event of dispute. The process of compensation to former owners of property laws due to be distinguished from the compensation of former owners under the Law of legalization. In connection with the latter, The respondent State may reconsider the increase of the cost that legalization has brought to the extent that the applicants would be able to regulate the financial compensation paid to the former owners. On the other hand, the respondent State is to guarantee the existence of a transparent and effective system of property registration, including accurate data, unified mapping, in order to enable, simplify and facilitate future legal transactions.

18. So, in summary the State obligations under the decision of *Manushaqe Puto v. Albania* are:

(i) To avoid constant legislative changes. "The respondent State should take general measures of priority in order to ensure effectively the right to compensation and set the right balance between the various interests in question (see, for example Burdov (no. 2), cited above , § 125) On the basis of monitoring by the Committee of Ministers, the respondent State remains free to choose the means with which to fulfill its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in Decision Court (see Scozzari and Giunta against Italy [GC], no. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). The Court first notes that the current legislation on the ownership is changed frequently, at least seven times during the period 2004-2010. While legislative changes may reflect an improved situation, the complexity of the legislative provisions, their frequent changes and inconsistent judicial practices resulting from them, will inevitably contribute to a general lack of legal certainty. The respondent state should avoid frequent changes of legislation and examine carefully all legal and financial implications before further changes present "(pg.110)

(ii) To make available information to accurate and reliable and carefully analyzed all the legal implications and financial: "As is accepted by the Government in its Action Plan , the authorities have accurate and reliable about the total number of administrative decisions

recognizing the right of ownership and the granting of compensation, if any, which were adopted since 1993. The existence of accurate data that should reflect the changes made by way of judicial review, will give authorities the ability to calculate and analyze the compensation bill, as well as the financial implications of the mechanism of compensation "(pg.111);

(iii) To provide satisfactory compensation funds and to avoid cumbersome procedural requirements: "Preparation of a database and calculation of global compensation bill should be accompanied by a clear compensation scheme designed carefully. The compensation scheme which should not be cumbersome procedures compliance, for example the obligation of an applicant to apply for compensation in the next year in case of an unsuccessful one year earlier, must take into account the practice of the Court in connection with the implementation of Article 6 § 1 and Article 1 of Protocol No. 1 "(pg.112);

(iv) Complete transparency and efficiency in decision-making process: "The Court observes that the compensation scheme should address the findings made pursuant to Article 13 of the Convention. In particular, it highlights the extremely heavy burden on the state budget that represents financial compensation. The above findings clearly require a review of the modalities for the payment of financial compensation that apply currently. Review and update maps of value should be subject to transparency and disclosure requirements, taking into account land development and market fluctuations. The court urges that the authorities with priority to start using other forms of alternative compensation provided by the Law on Property of 2004, which will eventually ease the pressure on the budget and / or to present ways to other compensation. "(Pg. 113-114);

(v) Assignment of legally enforceable and realistic forecast of human and financial resources sufficient: "Quite unlike the proposals in the Action Plan the Government did not mention concrete terms, the Court can not emphasize enough the importance of setting deadlines realistic, statutory and binding with respect to each step of the process. Frequent postponements of deadlines, as has happened so far, do not contribute to a rapid solution to the problems identified and further undermines public confidence. It is important that, in order to ensure effective implementation of the general measures available to the competent authorities to put sufficient human and material resources and to ensure coordination between different institutions, with the aim of exchanging information. Whenever possible, the authorities may

consider the possibility of reducing the resources, bringing together various institutions, in order to avoid duplication and reduce costs and operational expenses. Creation of new institutional structures should not be considered as another layer of process but should be fully justified. "(Pg.116-117);

(vi) Increasing the burden of illegal owners seeking to legalize property rights in the properties of the former owners and the state-owned properties: "The process of compensation to former owners due to Property Laws should be characterized by compensation former owners under the Law of Legalization. In connection with the latter, the respondent State may reconsider the increase of the cost that legalization has brought to the extent that the applicants would be able to regulate the financial compensation paid to the former owners "(pg.115);

(vii) Creating a transparent and effective system of registration of real estate "On the other hand, the respondent State is to guarantee the existence of a transparent and effective system of property registration, including accurate data, unified mapping, in order to enable, simplify and facilitate future legal transactions ";

(viii) The maintenance of extensive public discussion: "The decision-making process for the type of compensation to be given requires transparency and maximum efficiency, with a view to increasing public confidence. It would be in the general interest that the results be made public and distributed through various means of communication accessible. It is essential that the decisions of the authorities are clear and contain sufficient and subject to judicial review in the event of a dispute. "

19. Regarding the obligations in paragraphs (ii), (iii), (vi) and (vii) did not provide any convincing argument essential information or constitutional level stakeholders how they are implemented or why not provided for in law these obligations. Therefore, we maintain that the orientations of the ECtHR decision Manushaqe Puto v. Albania are not enshrined in law under review.

20. ECtHR in case *Vrion v. Albania* has concluded that the method of calculation referred to the case *Driza v. Albania* method of calculation should be the value of the property at the time of the decision, but on condition that Albania failed to have a map value in 1993, the ECtHR referred to the value of the property at the time of compensation based on a map value reflecting

the market price. So, therefore, the government should have taken into account the value of the property at the time of the decision not to expropriation compensation. So, the ECtHR has instructed the Albanian government to which value should refer to issues related to compensation. The scheme offered by the law under examination does not comply with this orientation of the ECtHR.

21. As regards just satisfaction criteria, they are described by the ECtHR in its judgement to *Driza v.Albania*. In this judgement, the ECtHR stated inter alia that: "The Court considers that in the circumstances of the case, the return of the smaller plot of land, as ordered by the court by the final decision of the High Court dated 17 December 1998, together with payment of lost profit and compensation worth about larger plot of land on the basis of the decision of 7 December 2000, including interest rate that reflects the intervention, the consequence of which it was loss of ownership of the whole plot of land, would put the applicant as soon as possible in a situation similar to that in which he would have been if we had not violated the Convention ".

22. The ECtHR has further elaborated the meaning of "*just satisfaction "* in case *Vrioni v. Albania* dated 13.11.2007, § 135, making reference to compensation researchers to the map value of the property in 2008. The ECtHR said at this point, that "the selection of the value of the property mapping in 2008, it inter alia took into account the achieved goals of the just satisfaction described in the case *"Driza v. Albania "*.

23. Referring to the law and the explanations of the subject concerned, the Council of Ministers, it turns out that the concept of just satisfaction is not embodied in the elements elaborated by the ECtHR but in the different elements that do not guarantee fair remuneration and thus no equality between expropriated owners. In summary the law, regardless of what is submitted by the interested parties, *de facto,* aims:

(i) *revaluation of all properties expropriated subjects*, which were returned to them in the early final decisions according to the conditions laid down in Article 6 § (1) - (4) of the law. This assessment will serve as a *benefit deductible* for purposes of the application of Article 6 § (6), Article 7, Article 21 § (4), Article 23 of Law. Through this solution, the owners, who have been returned a piece of property with earlier decisions withdrawn from the recognition of properties

for articles of "*benefits deductible"* ordering the revaluation of assets recovered, according to the criteria of the law in short, they automatically exclude from the scope of law No. 133/15.

(ii) *a financial assessment of the original property*, which was returned to the owners, calculated according to the criteria of Article 6, section 1-4 of the law, in order to decrease the difference that results in accordance with Article 6.5 of the law. Through this solution, deprived owners of returning a part of the assets of origin, although they recognized the right of their property.

(iii) *break process applications for which there is a final decision* has not ordered compensation to property under Article 7/2 point ç) of the Law. Through this solution, the state is not obliged to implement the final decisions of the CRCP,ARCP and judicial decisions that have ordered the return of the property.

(iv) *lower financial assessment* for cases under Article 16/4 a) -b)of the Law. Through this solution the owners were growing burden of proof at the expense of the value of their property.

(v) *recognition of the applicants' right to relinquish the right to compensation* in exchange for faster payments under the criteria of article 17 of the Law. Through this solution, the law differentiates owners in an effort to ensure the benefits of 80% - 50% of the known properties, in exchange terms, which are generalized in 10 years. This kind of benefit is high impact, if we consider that the majority of applicants are elderly.

(vi) *the obligation of the applicants to relinquish of the right of first refusal* (within 1 year) in exchange for compensation under Article 22 of the Law. Through this solution, the law provides for the possibility of exclusion of owners of the right of first refusal if they demand compensation. It doesn't understand why the owner not benefit partly auction and partly from other forms of compensation.

(vii) *the obligation of applicants to receive compensation for their lands given to use by the state under Article 23 of the Law,* or having to wait indefinitely and without legal relationship existing indemnification under this Article. It doesn't understand why when these lands given to

use, if they are not occupied, compensated. If they are not occupied ,why not restitute to the legitimate owner?

(viii) *Failing to owners who do not have a final decision,* if the property for which they applied included within the properties specified in Article 25 of the Law (see Article 20 of the Law). Through this solution, the law exempts owners who have applied for recognition of their properties, which are included within the scope of Article 25 of Law 133/15.

(ix) *liability of owners converted into the right to compensation property restitute by early decisions,*which fall within the scope of Article 23 and Article 25 of the Law. Depriving themselves the obligation to implement the final decisions on restitution, which have been remained unimplemented, according to Article 7§2 point ç)of the Law in 133/15, the Law under consideration obliges all owners to apply for compensation for property which it has been returned, but was not possessed by them, according to law 133/15, which fall within the scope of Article 23, Article 24 and Article 25.These decisions will be archived.

(x) *suspension of overlapping claims related to property rights in bad faith*, until disputes resolved in court.

24. This formula for achieving "just satisfaction" referred to the purpose and spirit of the law, in fact, does not match. Namely, returning the property of origin to a owner under Article 21 § (1) of the law that the property in question must: (a) not to be state property under the broad concept of the public interest, provided in Article 25/1; (b) must not be occupied or owned by the laws listed in Annex of the law; (c) should not be property given in use under Article 23 of the Law; (D) or property occupied by illegal constructions under Article 24 of the Law, (d) or territory resort, (f) or immovable property under the administration of state institutions, (e) or land occupied by state buildings (see Article 21 §§ (5) - (8) of the Law.

25. Furthermore, according to this formula Agency has unlimited discretion to demolish the backlog of requests for restitution or compensation if their object is related to the original properties specified in Article 25 of the Law. So, any unexamined application will falls under Article 20 of the Law, if the Agency concludes that the property is taken for public interest and / or under the laws of "Annex I" of the Law. In a situation where most of the owners have failed to

possess their properties as they are occupied illegally or forcibly held by the state, despite not constitute public interest, what the final solution is intended to be realized with this law?

26. The Court, in its jurisprudence has emphasized that the principle of the rule of Law, enshrined in Article 4 of the Constitution, is one of the fundamental principles of the state and democratic society. Aspects of this principle are also legal security, the protection of acquired rights and legitimate expectations. Legal certainty presupposes, among other things, the confidence of citizens in the state and the immutability of the law regulated relations. Credibility has to do with the conviction of an individual that should not be disturbed continuously or live in fear of diversity and the negative consequences of legal acts, which could affect his private life or professional and aggravate a condition set by previous acts (*see decisions of the Constitutional Court no. 31 dated 18.06.2010, No. 24, dated 12.11.2008, No.9, dated 26.02.2007).*

27. On the other hand, the Court has held that the principle of legal certainty does not guarantee any expectation of non-change of a favorable legal situation. This principle may not prevail in any case. This means that, if the case with a different legal regulation of a relationship is directly influenced by an important public interest, with all of its essential elements, this interest can prevail over the principle of legal certainty (see the decision of the Constitutional Court no. 26 dated 02.11.2005). In this view, should in any case to what extent and in which the faith of the citizenship in a favorable legal situation submitted to be important protected and what are the reasons for such protection. Not every measure with negative effects for subjects receiving legislator of the law is a violation of a right guaranteed by the Constitution. The legislator not only has the right but is obligated to regulate through the acts with detail the rights provided in the Constitution. Only those rights which are provided as expressly unlimited, are not possible to be affected by the legislator *(see Constitutional Court's decision no. 37 dated 13.06.2012).*

28. Referring to the proportionality test under Article 17 of the Constitution and the practice of the Court, the first criterion of limitations, so their forecast of formal law, results respectable. On the second criterion is the public interest. Constitutional concept of public interest, as it is handled in constant practice of the Court is quite broad and should be seen in the perspective of a concrete act that appears to control it before. it is difficult to exhaustively listed issues of public interest or public reason that could justify intervention in a fundamental right.

They can be listed only negatively, in terms of limitation of each case. In this way, the compatibility of restrictive measures taken by the legislator to the presence or not of limitation need to be verified in terms of the conditions set out in Article 17/1 of the Constitution, namely the existence of public interest (*see decisions No. 10 / 2008; No. 4/2011 of the Constitutional Court).*

29. It is true that the Court emphasized in its jurisprudence that the principle of legal certainty as well as that of equality of citizens before the law are not absolute and may be restricted if this is a legitimate reason or public interest, disrespect for which would bring serious consequences to the legal or social order in the country. But referred to the submissions of interested parties, the Council of Ministers and the Assembly, as well as questions and the debates at the public hearing held before this Court, it resulted that the government, as it was guided by the ECtHR and the Committee of Ministers, was based on an in-depth study or assessment of the situation as a whole. The only argument was brought ,was the public interest based on the high financial bill of the state!

30. *First*, we maintain that this argument is not based on arguments of a constitutional level, because the state can not only care about the financial budget bill but for all other effects in the legal, social and economic field of the state and citizens. *Secondly,* there is not an argument based on evidence and facts than could be reduced financial cost if the law had foreseen the physical restitution of the property, where it is possible. *Thirdly,* there is no precise information what is the difference between the amount that the state would have to pay to the previous law and as to the applicable law and how this difference can be reduced. *Fourth*, referring to the intent of the law, we understand that the aim is *"just satisfaction "* the expropriated owners. The question arises: How can be considered just satisfaction when a land confiscated in the '50s has been agricultural land and today is building land in an urban area and is worth tens or hundreds of times higher? The government argued that this just satisfaction is for the land when it was nationalized that had that value and deserves to be rewarded with that value, this is called the equal treatment and does not lead to discrimination between citizens (!). But the Council of Ministers does not stop the fact that it is precisely the state that in the best case does not take efficient measures and at worst actively prevent enjoyment of the property by the legitimate owner. So, the inability or unwillingness of the state must paied again by the expropriated

subject submit to the compensation scheme by the end of calculations only the legitimate owner will reached given charity and not a just satisfaction, as claimed by entities concerned.

31. In the present case, the Council of Ministers represents as a public interest the high financial bill that would have paid the state, if it wants to keep the compensation scheme under the old law. In fact, if we refer applicants claim and the facts presented by them, there are many subjects as commissions from the restitution and compensation of properties have taken a decision to return part or all of their property, such decisions in force by the Albanian courts or by the ECtHR. A good part of them can benefit from physical return of their property, where it is totally or partially free. For owners of forests and pastures this option results in greater opportunities (also referred to the Ombudsman's submissions at the hearing, based on his communication with the Ministry of Agriculture regarding the forest and pasture fund that are currently owned by the state). Then the question arises: Why should these decisions be treated with a form of compensation, if the object properties are still free treatment? Why the government sees no possibility of reducing the financial value of the bill by removing from state ownership to such property owners that in fact are subject to expropriation?

Just the realization of the latter in view of the public interest would be fully justified by him and not vice versa.

32. This question asked by the Court at the hearing the representatives of the Council of Ministers said that "In the first version there was restitution, so as required by owners and precisely to realize this right. The question which the Albanian state could not answer and did not respond until now, is whether to implement full refund and compensation, on the other hand this formula would mean unequal treatment. Today who would take the land plot that has been agricultural land would be treated in an unequal to whom who would receive compensation. Is what has happened in 23 years, they have had and have the right to return and possessed it and have had the opportunity to see the fruits of their 23 years. This situation was found in violation of human rights and therefore there was not a 2-year’s decision of ARCP because the agency's decision, every day would be in contradiction with human rights. Until the new mechanism was created which we believe is effective and it is in accordance with human rights. "

33. What we find it difficult to understand from the perspective of the entity concerned is that the state did not attempt to predict how properties are fully reversible, so as the number of buildings or land, meadows and forests can return to physical form without having to enter their owners in the compensation scheme. Thus, the inability of the state to make an inventory of the seized or expropriated properties that are still free or potentially possible to return to the owner, has led the charge for forecasting methodology, although there are other ways not only more effective for the owner, who would be pleased to have his property than the value of the offset, but would be less costly for the state and the Albanian taxpayers, who until now are paying more for the state's inability to solve this problem.

34. Referring to the proportionality test to this limitation that makes the Law of the Right to Property, this scheme does not exceed with success, because there is no legitimate reason to justify this solution. The state should not choose the path and method simpler or easier "to complete the treatment process property " as a purpose of the law, but should really make the effort to achieve de facto rights of property owners unfairly expropriated and to reduce as much financial bill to taxpayers. The state should use the most appropriate means and guarantees interference as small constitutional rights and not resort heavier but reaching the goal faster, without caring for violations that causes the rights of parties affected by it.

35. The Court has noted that another condition that must respect the legislature during the intervention in a situation previously regulated compliance report is right between intervention and condition / situation that has dictated it. This condition imposes legislator to highlight the real need for intervention in individual rights in a concrete situation. Balancing intervention with the situation that has dictated it to implement the legislator imposes such legal remedies, which must be effective, i.e. selected so as to be suitable for realizing the objectives sought to be achieved. Also, the Court, in constant jurisprudence has held that the principle of proportionality implies that the intervention of legislators to limit a right or freedom set to be the appropriate means to respond to the goal to be achieved. In addition, use of these devices should be necessary, which means that the goal can not be achieved by other means. Necessity has to do also with the use of less harmful for subjects that violated human rights and freedoms. The condition of the restriction ratio of the situation has dictated, of necessity concrete demand, the usefulness and proportionality. Compliance with these conditions requires a careful analysis in

each particular case, having faced the public interest dictates limiting the rights to be limited. In this regard, the Court notes that compliance with the above conditions fulfillment of restraint requires a differentiated approach, depending on the individual rights and freedoms are subject to limitations. *(Decision No. 2, dated 18.02.2013 of the Constitutional Court).*

36. The law provides for the establishment of the Land Fund (Article 5/3 and 12), which will consist of physical property fund in each district, in territories free surfaces and other surfaces informal (unspecified). While there will be a fund arises such question why the Council of Ministers has not made a study which of these free lands can turn into physical form for owners unnecessarily treated as fund for all owners or just as potentially possible as there isn't a determination how as will be this fund and how will be created?

37. Article 12 is indefinable as saying that the land compensation fund will be created from the remaining free surfaces by the informal constructions, is nonsense, because the legitimate owner will have to wait what remains free of squatters or illegal builders, number and whose percentage is still undetermined until the fund created to compensate land owners legitimate. If the government aimed to create the fund for compensation of land owners could have suspended the legalization process until the final performance of the restitution and compensation of property where sufficient land is believed to be returned to the owners. In this way, the state would save the financial fund and the land will not be given with a symbolic price, it is obtained as far from the lawless. Even Albanian taxpayers would be more satisfied with the reduction of the financial burden that will have to pay for the next decades. The assessment of the Committee of Ministers concerning the execution of the decision *Manushaqe Puto v. Albania,* pg.31 noted that despite the positive efforts of the Albanian Government to fulfill the obligations imposed by the ECtHR, *"some uncertainty appear to have remained associated with lawsuits that are currently under review or those who may contradict each other. It would have been helpful if authorities would provide more detailed information on how these bills will affect the overall compensation fund and determining the Land Fund*. "Further, pg.45 states" may exist the risk of discrimination between subjects who were expropriated property returned to them physically and to be compensated. For this it is necessary to explain why the government has made this choice preference bill, in order to assess the new scheme of compensation in accordance with standards established by the ECtHR. "The response of the Albanian government

regarding this has been" .. .to remove any possibility of discrimination is not anticipated restitution but only compensation for expropriated. (!) "(ibid).

38. The argument given by the Council of Ministers that there hasn't been a final compensation scheme and as such it can change at any time unexpectedly by the government / by the parliament, does not seem grounded. Any legal provision as long as power is applied and is presumed to be stable. The sudden change of forecasts for the same subjects and detrimental consequences, without giving constitutional arguments, constitutes a violation of legal certainty and discrimination between entities in the same category. These constitutional principles can not be violated only with the argument that the financial bill increases when the process already has started for more than 20 years had a different scheme that differs entirely by failing to respect all the right owners but only superficially obligation of the state to "close" the issue of property. The argument used repeatedly by the Council of Ministers, we don't think that is in a sign of a constitutional level that justifies the continued violation of property rights.

39. Given the above, we maintain that the principle of legal certainty is affected by the new regulation and intervention do not respect constitutional criteria for this purpose provided in Article 17/1 of the Constitution, namely the protection of public interest, setting a report entitled prejudice between the right and the goal to be achieved through legislative intervention as well as preserving the essence of the right to property.

B. On the claim a breach of equality before the law

40. The applicants have argued that the compensation scheme provided by law conflicts with the principle of equality before the law, as various treats the same category of owners putting those who expect to be compensated in a less favorable position than those who were offset prior to the enactment of this law. Also, the final decisions, including decisions issued by the ECtHR, will be evaluated by a less favorable scheme than the decisions executed prior to the enactment of the law, although they are of the same nature or total value.

41. The question from the Court during the hearing if the selected scheme creates inequality, the subject concerned, the Council of Ministers responded negatively. According to them, the law provides for equal treatment not only between former owners, but also between them and today's owners. So, referring to this position, if the state applies these criteria to be

expropriated in the public interest today, will apply the same criteria for the expropriation happened 70 years ago.

42. As stated above, the purpose of the law under consideration is *"... b) fair reward regulation and compensation of property, execution of final decisions of compensation, as well as completion of the process of compensation."*. Thus, regulation of expropriation issues that occur today are not covered by this law, and not only that, but today it is not possible to compare the value of property that is in the market with what it had before 70 years.

43. We think that the law violates the equality of citizens before the law, making differential treatment between owners that have a decision to obtain restitution or compensation before the entry into force of this law but still unenforced and for owners whose have failed to execute the decision to return or compensation received at the same time. If the applicants have their property restitutied, which by law 133/15 regarded as within the scope of Articles 23, 24, 25, they can not complain about delays in implementation of the decision process, but within 90 days from the from the entry into force of the law, they must relinquish property certificates and apply for compensation, of course according to the criteria *deductible benefits.* Unlike the state frees itself from the obligation to implement the decisions in question. Through this formula the law places in unequal positions and apply today owners who have benefited from previous decisions but failed to possess or to execute it, depriving them arbitrarily of property rights. Therefore we think that the law contradicts the principle of equality of citizens before the law.

44. For all these reasons, we maintain that the Court should have declared the law unconstitutional as a whole and not just part of it, because his spirit and the real purpose does not respond to the constitutional requirements stipulated under Articles 41, 42 and 17 of the Constitution and Article 1 of Protocol No. 1 to the ECtHR as well as the continued practice of the ECtHR and the Constitutional Court.

Members: Gani Dizdari, Vladimir Kristo.