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COUNCIL OF EUROPE
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Date: 06/11/2015

DH-DD(2015)1169

Meeting:	1243 meeting (8-10 December 2015) (DH)
Item reference:	Communication from the authorities in reply to H/Exec(2015)16 (04/11/2015) concerning the Driza group and the case of Manushaqe Puto against Albania (Applications No. 33771/02, 604/07) (49 pages)

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.

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Réunion :	1243 réunion (8-10 décembre 2015) (DH)
Référence du point :	Communication des autorités en réponse au H/Exec(2015)16 (04/11/2015) concernant le groupe Driza et l'affaire Manushaqe Puto contre Albanie (requêtes n° 33771/02, 604/07) (49 pages) (***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.

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

No. 10/66 **Prot.** **Tirana, on** 04.11.2015

Ref: On the Execution of ECtHR judgment "Manushaqe Puto and others v. Albania" / Government Response on Memorandum H/Exec(2015)16

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

Council of Europe - Strasbourg
67075 Cedex France

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 the execution of the ECtHR judgment "Manushaqe Puto and others v. Albania" and "Driza Group of cases", please find attached the Albanian authorities' response to the Document H/Exec(2015)16 issued by the Execution Department in June 2015, in which it requested the authorities to provide some detailed information on the Draft Law *"On the treatment of property and finalization of the process of compensation of property"*. For ease of reference the replies of the Government are included directly into the original text of Document H/Exec(2015)16.

Furthermore, please find also attached the Legal Assessment of the new formula "For the compensation of former owners".

Expressing my highest consideration,

Yours sincerely,

ALMA HICKA

STATE ADVOCATE GENERAL

REPUBLIKA E SHQIPËRISË-ZYRA

DIRECTION GENERALE

DROITS DE L'HOMME ET ETAT DE ROIT

DIRECTION DES DROITS DE L'HOMME

SERVICE DE L'EXECUTION DES ARRETS
DE LA COUR EUROPEENNE DES DROITS DE L'HOMME

H/Exec(2015)16 2 June 2015

Manushaqe Puto and Others against Albania and Driza against Albania (and 14 similar cases) group

General measures for the execution of the judgments of the European Court

Information document prepared by the Department for the Execution of Judgments of the European Court of Human Rights

EXECUTIVE SUMMARY

In February 2015, the authorities requested expert support from the Council of Europe in drafting the law on compensation and/or restitution of property. Accordingly, a co-operation project was designed by the Human Rights National Implementation Division of the Council of Europe in co-operation with the Department for the Execution of Judgments. Within the framework of that project, in March 2015 two independent experts participated in the working group tasked with preparing the draft law.

A first draft of the law was submitted to the Department for the Execution of Judgments on 1 April 2015 and on 23 April 2015 representatives from the Department went to Tirana to consult on the draft with the Albanian authorities. In this context, the Deputy Prime Minister expressed the Government's commitment to take into account the comments made during the consultations in the further work on the draft law.

On 18 May 2015, the authorities submitted an updated action plan, together with the revised draft law (DH-DD(2015)523).

This document contains an assessment of the information provided. The opinions expressed in this document are not binding on either the Committee of Ministers or the European Court.

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Introduction

1. The Committee of Ministers is currently supervising 15 cases concerning the mechanism for restitution of the properties nationalised[1] during the Communist era in Albania. The first judgment on this subject dates from 2006[2]. There are currently approximately **110 similar cases** pending before the European Court, out of which 81 have so far been communicated to the respondent Government.

2. Following the fall of the Communist regime, the owners of property expropriated and nationalised under communism were officially compensated in the mid-1990s with 1 hectare of land. Awards were made under the relevant law, which is still in force today. However, in most cases the owners did not receive the compensation awarded as there were illegal settlements and/or constructions on the land, and no effective legal means which could be pursued to free the land up. Moreover, the lack of a complete register of immovable property or an electronic cadastre available for all relevant institutions caused frequent conflicting judicial and administrative decisions leading to overlapping of property titles on some of the plots. These auxiliary related problems, as well as overlapping and legalisation of the illegal owners, added up to the extreme complexity of the situation. As a result, many of the decisions which recognise the right to compensation remain unexecuted. In the meantime, the deadlines to file applications for restitution and compensation were prolonged, either by legal amendments or by judicial decisions. New applications kept being submitted and remained pending before the relevant administrative body without any decision being given. One of the key criticisms of the impugned law was that it acknowledged and accepted the right for property compensation, without providing any concrete and practical measures to enforce those rights or to solve the underlying problems[3].

3. Since 2007, the European Court has emphasised, under Article 46 of the Convention, the **structural nature of the problem** originating in a deficiency within the domestic legal order[4]. The Court stressed, in particular, that:

> *"(…) an entire category of individuals have been and are still being deprived of their right to the peaceful enjoyment of their property as a result of the non-enforcement of court judgments awarding compensation under the Property Act. Indeed, there are already dozens of identical applications before the Court. The escalating number of applications is an aggravating factor as regards the State's responsibility under the Convention and is also a threat to the future effectiveness of the system put in place by the Convention, given that in the Court's view, the legal vacuums detected in the applicant's particular case may subsequently give rise to other numerous well-founded applications"[5].*

4. According to the information presented by the Albanian authorities to the Court[6], there are over **40,000 cases** pending at the domestic level where the claimants seek recognition of their property rights, and restitution/compensation. All those claimants are potential applicants to the European Court. In the judgments given so far, culminating in the 2012 pilot judgment *Manushaque Puto and others,* the European Court has repeatedly called upon the Albanian authorities to urgently introduce an effective, compensatory remedy at the domestic level[7].

5. During the continuing absence of an effective remedy at the domestic level, the European Court continues to issue judgments awarding just satisfaction to the applicants. In its press release of March 2015[8] the Ministry of Finance advised that, in the execution of the European Court's judgments on

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[1] The term "nationalisation" in this document covers all measures whereby the State appropriated assets unlawfully or unfairly during the Communist regime (*de facto* expropriations, seizures, confiscations, collectivisation of agricultural lands and woodland, nationalisation laws, etc).

[2] *Beshiri and others v. Albania*, judgment of 22 August 2006, application no. 7352/03.

[3] See B. Abdurrahmani, *Legal Reform on Property Restitution and Compensation and the Perspective of the European Integration of Albania*, Academic Journal of Interdisciplinary Studies, MCSER-CEMAS-Sapienza University of Rome, May 2013, Vol. 2 No. 4, p. 21.

[4] *Driza v. Albania*, judgment of 13/11/2007, application no. 33771/02; *Ramadhi and 5 others v. Albania*, judgment of 13/11/2007, application no. 38222/02; *Hamzaraj No.1 v. Albania*, judgment of 03/02/2009, application no. 45264/04; *Nuri v. Albania*, judgment of 03/02/2009, application no. 12306/04; *Vrioni and others v. Albania*, judgment of 29/09/2009, applications nos. 35720/04+; *Delvina v. Albania*, judgment of 08/03/2011, application no. 49106/06; *Eltari v. Albania*, judgment of 08/03/2011, application no. 16530/06; *Karagjozi and others v. Albania*, judgment of 08/04/2014, applications nos. 25408/06+.

[5] *Driza v. Albania*, cited above, par. 122.

[6] See *Manushaqe Puto v. Albania*, judgment of 31 July 2012, applications nos. 604/07+, annex, pages 32-33.

[7] Information on the status of execution of the individual measures taken in those judgments, is presented separately in H/Exec(2015)11 of 30 April 2015

[8] Press release of the Ministry of Finance of 16/03/2015, available at http://www.financa.gov.al/al/njoftime/deklarata-per-shtyp/ministria-e-financave-ja-sa-kemi-paguar-per-strasburgun&page=1 http://www.financa.gov.al/al/njoftime/deklarata-per-shtyp/ministria-e-financave-ja-sa-kemi-paguar-per-strasburgun&page=1

restitution/compensation between 2005 and 2014, the Albanian State had paid to the applicants the amount of 1,191,555 ALL as just satisfaction awarded by the European Court. Further judgments, with awards of over 1 billion ALL, are still awaiting allocation of funds in the State budget[9].

6. Given the fiscal risk persisting for Albania, the International Monetary Fund[10], the World Bank[11], as well as the Council of the European Union and the European Commission[12] have called for the adoption of a permanent solution to the problem, based on an acceptable compensation formula, which would stop the formers owners from seeking compensation in Strasbourg.

7. This document presents an analysis of the progress made in executing these judgments, focusing on the Action plan put in place following the pilot judgment.

I. Presentation of the action plan

a) Preparatory phase

8. Designing an effective scheme could not be successfully achieved without sound preparation. As underlined by the Committee of Ministers and the European Court (see Appendix 1, §10) the preparation for designing an effective compensation mechanism should consist of:

- calculation of the overall financial impact of such mechanism (i),
- analysis of the existing legislative framework (ii).

9. The 2014 Action plan[13] set out the relevant preparatory measures which can be divided into two key areas, as indicated above.

i. Measures intended to calculate the costs of the compensation mechanism

10. Both the Committee and the European Court underlined repeatedly that in order to design an effective domestic compensatory remedy, the Albanian authorities must first calculate and track the overall compensation bill in order to evaluate the financial implications of the compensation mechanism to be chosen. The bill results from the total amount of compensation granted in the existing restitution and compensation decisions given either by the Agency for Restitution and Compensation for Properties ("ARCP"), or by domestic courts. Furthermore, the authorities should determine the available state resources before deciding on the level, and/or form of compensation to be finally awarded.

11. In order to evaluate the bill, the Action plan specified the following steps:

a. To determine, gather and register all the decisions (of both the ARCP and domestic courts) and to **calculate the total amount awarded** in those decisions:

- screening of the current situation of the ARCP; creation of an electronic register of the ARCP decisions; and creation of a database of beneficiaries of those decisions[14];
- creation of a register of final court decisions awarding compensation to individuals whose land was expropriated.

b. Further, to **determine available state resources**:

- completion of an inventory of the state-owned property available for compensation in kind[15].

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[9] For instance, in the judgment *Karagjozi and others v. Albania* of 8 April 2014, the European Court awarded the applicants the amount of 8,163,000 EUR (over 1 billion ALL) for pecuniary and non-pecuniary damage, as well as costs and expenses. Another judgment was given by the European Court on 10 March 2015 (Siliqi and others v. Albania, nos. 37295/05 and 42228/05) granting the applicants 1,498,400 EUR just satisfaction.

[10] See, for example, Statement at the Conclusion of an IMF Mission to Albania, Press Release No. 14/224, May 13, 2014.

[11] See for example, WB Report No. 82013 – AL, Albania, Public Finance Review, Part I: Toward a Sustainable Fiscal Policy for Growth, January 2014; *Property compensation still pending, keeping hostage investments*, Kseniya Lvovsky, World Bank Country Manager, Gazeta Shqiptare, Albania, March 12, 2012; *Property, a solution can be found only through compromise*, Kseniya Lvovsky, World Bank Country Manager, Daily "Shqip", Albania, March 10, 2012.

[12] See, for example 9731/14 PRESSE 284, Sixth meeting of the Stabilisation and Association Council between Albania and the EU, Joint Press Release, Brussels, 12 May 2014.

[13] See DD(2014)539, with subsequent updates : DD(2014)677, DD(2014)1368 and DD(2015)523 (restricted).

[14] Measure 5.1.a of the Action plan.

[15] Measure 5.3. of the Action plan.

- updating of the Land Value map to reflect the current market value of property[16];

c. Finally, to facilitate the task of **identifying the property that is subject to a restitution/compensation decision**:

- digitalization of maps of restitution and compensation decisions[17].

12. These steps were implemented as follows :

13. The electronic register of the ARCP decisions was completed for 12 districts and made accessible on the ARCP's web page. The register of final judicial decisions awarding compensation has been created and is being constantly updated with new decisions issued. The total amount awarded in those decisions has been calculated so far at 155,583,016 ALL, equivalent to 1,111,307 EUR.

14. The land value map has been updated as planned and the inventory of the state-owned property available for the compensation in-kind has been completed[18].

15. As regards the digitalization of maps of restitution and compensation decisions, at its meeting in June 2014, the Committee was informed that it had been successfully accomplished for Vlora region. In line with the draft law, the digital cartographic map for the whole territory of Albania is to be finalised within one year from its entry into force[19].

ii. Analysis of the existing property legislation

16. As the European Court underlined in the pilot judgment, analysis of the existing legislative framework was another necessary initial step leading to a choice of a particular compensation method[20].

17. To this purpose, the Action plan envisaged:

a. Extension of the mandate of the ARCP by one year, serving as a transitory period for its reform as an important body in the new restitution / compensation mechanism[21];

b. Creation of a working group tasked with elaborating proposals on reform of the ARCP;

c. Creation of an inter-ministerial working group responsible for analysis of the existing law and sublegal acts;

d. Analysis of the property legislation;

e. Preliminary consultations on conclusions drawn from the analysis of legislation with the groups of interests[22].

18. These measures were implemented as follows:

19. The law extending the ARCP operation time was adopted as planned in May 2014[23]. In April 2014 the ARCP submitted a report and concrete proposals on its reform to the working group established by the Prime Minister in line with the Action plan[24].

20. The working group, coordinated by the Ministry of Justice, has analysed all laws and bylaws in force on restitution and compensation of property, on legalisation, on immovable property registration, on state-owned immovable properties, and legal acts on methodology of the land value map[25]. The analysis which provided for concrete interventions into the legislation was accomplished in July 2014, with a two-month delay which was explained by the complexity of the existing legal framework.

21. Two public round-table consultations were held in October 2014.

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[16] Ibidem.
[17] Measure 5.2.a of the Action plan.
[18] See DH-DD-(2015)523 of 20 May 2015 (restricted), pp. 11-12.
[19] Article 34.2.
[20] Par. 110.
[21] Measure 5.1.b
[22] Measure 5.4.b.
[23] See the update on implementation of the Action plan submitted on 13/05/2014, DH-DD(2014)677.
[24] Order No. 153 of the Prime Minister, 17/04/2014 to establish Working Group for "Reviewing of the legislation on property".
[25] See the update on implementation of the Action plan submitted on 27/10/2014, DH-DD(2014)1368.

a) Establishment of the effective compensation mechanism

22. Upon the completion of the preparatory phase, the following steps were envisaged in the Action plan to establish the compensation mechanism:

a. Drafting necessary amendments after the consultation process;

b. Subjecting the draft laws to consultation with groups of interest and public institutions[26];

c. Reflection on remarks and suggestions in the final draft to be submitted for approval to the Council of Ministers in February 2015;

d. Submission of the draft legal acts to the Parliament for a plenary session April – June 2015;

e. Adoption of the law on the compensation mechanism in June 2015.

23. The working group under the auspices of the Ministry of Justice initiated its work in December 2014. Assisted by experts from the World Bank and the Council of Europe the working group sought solutions which, in their view, could be realistically covered by the Albanian budget without posing a fiscal risk and at the same time compatible with the requirements of the European Convention of Human Rights and the case-law of the European Court.

24. According to the updated action plan of 18 May 2015, the law is scheduled for adoption by the Council of Ministers in September 2015 and will then be submitted to the Parliament for its September plenary session.

II. Assessment of the compensation scheme

25. The draft law was presented by the authorities to the Execution Department on 1 April 2015. Following the consultations on the draft between the representatives of the Department and the authorities in Tirana on 23 April 2015, a revised draft was submitted to the Department on 18 May 2015.

26. The below analysis presents the main, general comments which can be made on the draft law. It must be noted at the outset that a full analysis of all its aspects is not possible at this stage, given the fact that some are to be specified in secondary legislation, which has not yet been adopted. Furthermore, the draft is not accompanied by an explanatory memorandum providing in-depth reasoning for the solutions chosen. Thus, more information is necessary to enable a comprehensive assessment of the compatibility of the whole system with the requirements set by the European Court.

27. The Execution Department analysed the compensation scheme, taking into account a range of considerations identified by the European Court in the *Manushaqe Puto* judgment as necessary to be addressed in order to resolve the problem of outstanding claims for restitution and compensation in respect of expropriated properties in a manner consistent with the requirements of the European Convention.

28. These considerations were as follows[27]:

- avoidance of frequent changes of the legislation (a);
- availability of accurate and reliable information and a careful examination of all legal and financial implications (b);
- existence of satisfactory forms of compensation and absence of cumbersome compliance procedures (c);
- utmost transparency and efficiency in the decision-making process (d);
- setting realistic, statutory and binding time-limits and provision of sufficient human and material resources (e);
- holding of wide public discussions (f);
- increase in the cost-share borne by the claimants obtaining legalisation of buildings built unlawfully on someone else's or State property and thus obtaining the property rights with respect to the occupied plot of land (g);
- establishment of a transparent and effective system of property registration (h).

[26] by December 2014.
[27] See *Manushaqe Puto* judgment, quoted above, par. 110-118.

29. In chapter III, more detailed comments are made on individual provisions of the law. The general points (g) and (h) referred to above, are discussed in chapter III, together with the analysis of relevant specific provisions.

a) Avoidance of frequent changes of the legislation

30. As stated in the authorities revised action plan, the new draft law aims at putting an end to the uncertainties and difficulties created by the frequent changes in the legislation in the past. However, for several aspects, the new draft law relies on secondary legislation to supplement it. The sub-legal acts shall set, in particular, the standard forms[28] and necessary documentation[29], some detailed rules on sanctions for non-cooperative state institutions and on charges for the procedure[30]. More substantial secondary legislation is foreseen for the organisation and structure of the new Agency[31], rules and procedures for compensation in kind[32], as well as the eligibility requirements for unhandled applications[33]. It must be stressed that this must not undermine the legal certainty which was at the heart of the European Court's considerations. It may also be noted that the draft law provides for deadlines of 30 days to 6 months for the adoption of the sub-acts by the relevant authorities. **These deadlines need to be explained and justified**.

Response of the Albanian Authorities:

The Albanian Government, with the adoption of this law aims to create a simple procedure to finally solve the problems identified in the Manushaqe Puto pilot judgment, especially to create a simple and easy procedure, and where is possible to solve the issue with the minimum request addressed to the interested parties. We would like also to emphasize that the envisaged secondary legislation in no case affects or violates the procedures or the basic principles of the European Convection. The Government will report to the Committee regarding the by-laws and their adoption, if requested to do so.
The secondary legislation provided in the by-laws is necessary to determine the detailed technical procedure that will be applied by the Agency in its daily work. Theses bylaws have to be authorized, by the law, pursuant to the Constitutional provisions and they can't exceed the provisions of the law itself and expand beyond the margins defined by the relevant legislation. Following the entry into force of the law, the Government may proceed with the adoption of the secondary legislation.
The determination of the deadlines for the issuance of the secondary legislation is conditioned by the constitutional and legislative technique standard.
The Government has attempted at reducing the time for the implementation and the number of the bylaws at the minimum necessary from 1 to 6 month, and the period of time is calculated individually taking into consideration the time period that it is usually necessary for the government to make its best effort, in the process of drafting, consulting, addressing all the relevant institutions' objections/comments and adopting the by-laws in the Council of Minister. The transitory articles in the draft law address the matter of the continuity of the current bylaws until the adoption of the new ones.

b) Careful examination of all legal and financial implications and availability of accurate and reliable information

31. It appears from the action plan that there has clearly been a real attempt to examine all the financial implications both as regards the financial liability of the State towards the expropriated owners and the costs that will be entailed by the new formula for compensation that is being proposed. This is an important achievement in comparison to previous action plans and solutions adopted. The present availability of accurate and reliable information has significantly improved since the time of the *Manushaqe Puto* judgment. Nevertheless, **some uncertainty appears to remain as to the extent of existing claims**, not only those that have not been determined but also those that may overlap or conflict. The opening up of the possibility for submitting new claims will also have further implications. It would be very useful if the authorities could **provide more detailed information on how these open questions may impact upon the final bill, the deadlines set and also on their assessment of the income for the Property Fund from the property sales and other forms of income generation**.

32. As to the legal implications, it cannot be overlooked that an entirely new law is likely to give rise to litigation, in particular due to the need to re-examine all claims or in cases of overlapping or conflicting rights. The updated action plan does not contain an evaluation of the impact which the new workload is expected to have on the domestic courts nor information on any envisaged supportive measures.

33. Finally, the draft law provides for the applicants in the unhandled claims to be entitled to obtain restitution of their land if it is free. The updated action plan does not provide an **explanation why such solution for these particular cases has been chosen and how a potentially differential treatment would be avoided.**

Response of the Albanian Authorities:

As indicated by the ECtHR in its pilot Judgment Manushaqe Puto, the Albanian Government aimed at providing a simple and fair compensation formula in order to finally address the compensation process in 10 years. As indicated in the relevant action plan, the Government conducted a process for the evaluation of the legislation on property issue in Albania, taking into consideration all the legislation from 1993 until the present day. In providing this compensation formula, the Government's intention was to preserve the principles in the calculation of the value of the property, laid down in the national legislation regarding the expropriation, even today. Furthermore, the Government aimed to preserve the goals (the property evaluation map) already achieved in this process. The new formula takes into consideration the value and the characteristics of the property at the time of nationalization, as a condition to provide a proportional amount of compensation to the value of the property taken, and to bring justice among former owners.
The draft-law and the relevant choices proposed in it are laid down following consultations with the Department for the Execution of Judgments of the ECtHR and experts of the HELP program of the Council of Europe, whose contribution was very much appreciated.
The national legislation never lays down a clear and final formula on compensation, but the principles that guided the past legislations presented differences in the amount of surface restituted, taking into consideration the status at the moment of the expropriation. More specifically, the Government will provide a large document with some legal consideration on the choices provided for the formula.
For the purpose of this document, the Government would like to emphasize that the choices provided in the new draft-law aim at complying with Article 41 of the Albanian Constitution, Article 1 of Protocol No. 1 of the ECHR, the principles laid down by the Court in its well-established case law regarding the properties nationalized during the communist regime, and in the end at providing for a fair balance between the property rights of the former owners and the general interests of society.

The period of 10 years is calculated, based on the maximum funds available for this process from the state budget. The Ministry of Finance made their calculations taking into consideration the national GDP and the budgetary necessities of the country. They concluded that the maximum amount possible to be provided for this process from the state budget is 50 billion ALL for a period of 10 years. The amount will increase yearly from 3 to 7 billion ALL. The 3 billion ALL amount of funds available only for the first year is the most serious amount put forward by the Government in this process. We would like to mention here that the total amount of financial funds put forward for this process in the past, from 2005-2014, by the Albanian Government was 4,373 billion ALL. This is a clear picture of the real commitment that this Government shows to the final solution of the problem and the guarantees for the implementation of the draft-law.

The total amount of 50 billion ALL provided in the Compensation Fund is also a product of the analysis of the total financial bill estimated for the payment of all the final decisions to be executed, 26,000 (twenty six thousand) compensation decisions, and of those decisions that will be issued during the process of examination of unaddressed files (approximately 9000 new applications).

Furthermore, the 10-year period of time is provided, while taking into account the amount of 50 billion ALL necessary for the finalization of the process and its financial effects on the state budget, which is impossible to be covered by the state budget for a shorter period of time. In consultations with the Ministry of Finance and other organizations contributing to the compensation fund, is envisaged a breakdown of the bill in 10 consecutive years. The 10-year period has been determined as a reasonable and appropriate time limit in order to conclude a protracted and quite chaotic process as the one on compensation of properties. The financial fund consisting of 50 billion ALL from the state budget and the entire physical fund available for the compensation of owners will be distributed within 10 years.

The expected financial bill is realistically possible to be addressed within the 10 year period provided for the finalization of the process. The division in years is conditioned by the real possibilities of the state to address this financial bill. Never before in the preceding laws, have the time limits, the values to be dispersed over the years as well as opportunities for the reaction of the subjects for the lack of abiding to the time limits or excess of the latter, been clearly provided in the law.

c) Existence of satisfactory forms of compensation and absence of cumbersome compliance procedures

34. The new proposed formula of compensation must be regarded as interfering with the possessions of claimants and thus has implications for their rights under Article 1 of Protocol No. 1. In order to assess whether the proposed solutions satisfy the proportionality principle in line with the European Convention on Human Rights and the case-law of the European Court, a much clearer identification of the rationale and the justifications for the solutions chosen must be advanced.

35. The reason for the European Court's concern that cumbersome compliance procedures should be avoided is clear; these inevitably prolong the decision-making process and thus will delay the time when the restitution and compensation process can genuinely be regarded as completed. Still some aspects of the procedure appear to be somewhat complex, in particular as regards situations in which compensation in kind is foreseen[34]. Shifting the solution of overlapping to courts may furthermore make the procedure excessively time-consuming. Furthermore, the documentation requirements for the financial evaluation of compensation decisions[35] are to be set out in the secondary legislation. The law does not stipulate either, **what legal documents are required to effect the payment of compensation[36]. It would be useful if the authorities provided more information in this respect, ensuring that the documentation requirements will not make the procedure unnecessarily cumbersome.**

Response of the Albanian Authorities:

The Albanian Government has taken all the necessary steps for the law to meet the Constitutional and Convention standards, while maintaining the balance between the public interest and just satisfaction. These two principles of law and restrictive criteria are linked with other elements of the law, during the process of fair compensation. The new draft law provides for the principles of legal certainty, equal treatment, access to court and what is more important the draft-law creates a mechanism that will finally address the entire claim in this regard.

The balance between public interest and fair compensation, as part of the principle of justice, proportionality and the state welfare, have been argued extensively in several decisions of the Constitutional Court of the Republic of Albania, based also on the ECtHR case law.
The Constitutional Court has concluded that the right of property cannot be identified with the restitution of property seized by the state. This assessment is based on the practice of the ECtHR in "Maria Atanasiu and others v. Romania", Kopecky v Poland and all the relevant case law. The known right of "limitation" in the implementation of the process of restitution and compensation of property is embodied in the draft law also based on the case of "Beshiri v Albania".

The principle of justice requires considering not only the interests of former owners, but also those of the other members of society, as well as the public interest in general. The objective of the restitution of property rights is not eliminating all injustice, but minimizing it. The restitution of property rights should not cause further injustice.
Based on the principle of justice and of the state welfare, we cannot provide for the obligation to full compensation of property. The full restoration of property rights would be in contradiction with the principle of equality itself.
Regarding the principle of legal certainty, which can be put into question when there is a conflict of interest, it should be clarified that this principle is not granted an absolute priority, in particular in relation to the public interest, which takes precedence even to the principle of legal certainty.
The Constitutional Court has held that one of the constitutional criteria applying to the abovementioned provisions is "public interest". Any interference with the right to property can only be justified if it is in the public or general interest. "The confiscation of property pursuant to a policy calculated to achieve social justice within the community can be described accurately as a policy in the public interest ...".

In Decision no. 30, dated 01.12.2005, the Constitutional Court held that: "The Constitutional Court finds that one constitutional criteria that applies to the provisions cited above is "public interest". Any interference in the property rights can only be justified only in the public or general interest. "The confiscation of property pursuant to a policy calculated to achieve social justice within the community can be described accurately as a policy in the public interest".
The draft-law provides that where possible the compensation should be in the land previously owned by the former owners, and where this is not possible, to provide for other means of compensation.

d) Utmost transparency and efficiency in the decision-making process

36. The transparency of the chosen solution is limited by the fact that much of the arrangements for implementation of the restitution and compensation process rely on the adoption of sub-legal acts, whose content has yet to be identified. The efficiency of the process will depend on the way the body charged with it will function in practice. Given the fact that the authorities considered that a new body should be created for this purpose, the presentation of a compelling rationale for the choices is necessary. The issue of dissemination of relevant information and decisions to both claimants and / or the public in general also plays an important role in the process. The **method of dissemination has not been explained in sufficient detail**[37]. Finally, the **system of property registration** and a unified data-base of all decisions on restitution or compensation doubtlessly contribute to the transparency. In line with the provisions of the draft law, a digital cartographic data-base of all final decisions is to be finalised within 1 year from its entry into force[38]. Furthermore, the **coverage of the property registration remains incomplete and updated information on progress made** in this respect, in line with the action plan, is required.

Response of the Albanian Authorities:

The publication of the decisions of the Agency for the Treatment the Property (ATP) is envisaged to be performed through the Registry of the Agency, which is already effective and on line on the official website of the ARCP (Agency for the Restitution and Compensation of the Property). In the Register are already published the 26,000 final decisions on the recognition and compensation of property issued in the past years. The new draft law envisages the publication through the media and the Official News Bulletin, which makes it possible for the wider public to take notice of the decisions of the Agency, and not just the interested parties. This is a further guarantee for the transparency of the property compensation process.
As we have mentioned in the previous explanations, the existing register of the ARCP will be the same as the register of the ATP. Furthermore provisions are added to the draft-law in order to coordinate in the future with even the decisions of the Courts that change the administrative decisions. They will be added to the existing Register and the register for the decisions of the Agency.

On the other hand progress in made regarding the digital map of the decision making of the Agency and other relevant institutions through the years. The Agency for the Restitution and Compensation of Property has taken concrete steps to implement the project for the "GIS-WEB" system, which will serve for the digitalization of the cartographic information of all final decisions on restitution and compensation. Recently, this project was awarded by Decision no. 33, dated 15.07.2015, of the Regional Development Fund for the program "Digital Albania". The ARCP on 29.09.2015 started the tendering procedures for the setting up of a digital database of all final decisions that, with the entry into force of the draft law, within the deadlines set by in it, will be available to the competent institutions and the compensation process. This process, among other things regards the setting up of a GIS-WEB system, as soon as possible, which will enhance significantly the administrative process, the rapid handling on unaddressed applications, will avoid overlapping, as well as assist in the registration and correction/clarification of cartographic information. The system will be accessible by the public online. This system, among other things, coordinates and share information with other already operational systems (e.g. the IPRO system, the Civil Registry Department, The National Registration Center, etc.).

e) Setting realistic, statutory and binding time-limits and provision of sufficient human and material resources

37. The draft law proposes legally binding time-limits for completion of relevant procedures and this is a very positive step. Time-limits set by previous legislation were not observed either because of the burden of work, lack of funds or extensions granted by the courts. In the new draft law, the extension of a time-limit by courts or any administrative authority to request restitution or compensation has been prohibited[39].
Nonetheless, it must be noted that the need for realistic, statutory and binding time-limits is closely linked to sufficient human and material resources. **It is not clear yet what staffing of the proposed new body to replace the Agency will be**. Furthermore, the provision enabling compensation in the form of alternative land, together with the need to evaluate all cases that have been decided, as well as to determine those still pending and may yet be received, give rise to doubts about the **feasibility of meeting the deadlines set in the draft law** unless there is a significant enhancement in the staffing resources devoted to the restitution and compensation process. In addition the securing of adequate resources ought to extend to the **courts that may be expected to handle appeals** as this will entail an increase in their workload. Failure to address this issue properly may result in delays and complaints

about length of proceedings both in respect of restitution and compensation claims and of other matters before the courts.

Response of the Albanian Authorities:

The ARCP has calculated the deadlines provided for the finalization of the process, based on the calculation of the number of employees and number of files that have been examined over the years by the Agency. In order to finalize the process in due time, while respecting the deadlines provided in the draft law, the Agency has performed a detailed analysis of the necessary human resources, that will be provided after the entry into force of the law.
Furthermore we would like to provide a concrete example of the Tirana District and the speed of the process and the real bases of the calculation. The Agency, with the human recourses at its disposal, has conducted the full evaluation of the Tirana District area regarding 3431 final decisions for a period of 2 months, in order to test the new formula.

The Government, evaluates that all these measures, show that the problems raised are addressed and enable the Agency to conclude the process in due time.

Furthermore, the 3 year term for the agency to conclude the administrative process is another guarantee that the process will be performed on time, otherwise the interested subjects can address their claim directly to the courts. This is a guaranty that was never provided to the former owners in the past.

In terms of the domestic courts being able to manage the possible large number of cases due to the challenges to the decisions of the PMA, we would like to emphasize that the law provides for four types of courts to deal with the appeals:
The Administrative Court of First Instance, in case the PMA does not finalize the evaluation of compensation in cases where there is a final decision in the 3 year period provided by the draft-law (for unaddressed and new applications. The judges of the Administrative Courts, in order to handle the workload, have been provided with assistant. Furthermore, the legislation that regulates the Administrative Court procedure provides for a 30 day time-limit to conclude the case.
The Administrative Court of Appeal, in cases where the former owners contested the evaluation of the property by the performed by the Agency. The trial in the Court of Appeal is a review procedure that allows the Court when there is ground, to define question of the law and of the fact. Usually the procedure in the Court of Appeal is shorter.
The Courts of Appeal, in the cases of appeals against decisions of the PMA on the merits). It is worth mentioning that today there are 6 Courts of Appeal in whole Republic of Albania, composed of about 40 judges.
The Court of First Instance, in case the PMA does not finalize examination of the unhandled claims. It is worth mentioning that there are 29 District Courts of First Instance, composed of about 300 judges.

The Government is implementing a reform in the justice system as well as new legislation to address the delays in court (as a response to the ECtHR judgment Luli and other v. Albania), that will be available in due time to serve as a expediting mechanism in case of delays. The Government's position is that the resources in the judiciary are sufficient to provide for the finalization of the process in due time, and the new legislation presented to address the issue in general will be sufficient to guaranty the implementation of the process.

f) Holding of wide public discussion

38. In October 2014 the Ministry of Justice and the ARCP held two rounds of preliminary consultations with stakeholders and the groups of interest[40] on the outcomes of the analysis of the legislation and the proposals for amendments. Final consultations on the draft law will be held in July 2015, followed by the Parliamentary debates in September. It must be underlined that, in line with the European Court's conclusions, **wide public consultations appear crucial** for gaining the support of the public and claimants for any approach that is adopted and the confidence that it will actually be implemented within the prescribed deadlines.

Response of the Albanian Authorities:

Following June 2015, public events were held with the aim to inform, the public in general and in particular the ex-owners interested groups on the principles guiding the new Draft-Law, and at the end with the intention to get their input on the process.
On the first event the Draft Law was presented to the public on July 16, 2015 by the Prime Minister, and all the relevant Ministers involved in the process, Ministry of Finance, Ministry of Economy, Ministry of Agriculture and Ministry of Integration.
On 21 and 25 July 2015 two round tables were held, in the premises of the Ministry of Justice with owners' associations and owners. The 21 July round table was chaired by Deputy Minister of Justice and the 25 July round table was presided by the Minister of Justice. The associations and all the present actors were provided with the draft-law and had the possibility to discuss the Government's choices on this draft-law. They had the possibility to address the table and give their opinions on the process and on the law. The Ministry of Justice provided for the interested parties the possibility to submit written comments on the law after the meeting if the wish so.

We would also like to note that before the introduction of the draft law, ad hoc meetings between each association of owners, in particular, and the Director General of the ARCP were conducted, with the intention not only, to clarify the goals, objectives and procedures planned to be provided in the draft law but also with the view to allow a necessary time for the interested groups to reflect on the relevant choices.

Furthermore, it is worth noting that prior to the adoption of the law in Parliament, during the discussion of the draft before the Parliamentary Committees, the interest groups (the former owners) will have the opportunity to present again their views and concerns on the draft law.
The draft law was originally drafted by the Agency for the Restitution and Compensation of Property in close cooperation with the State Advocate Office and with preliminary consultations with experts of the Council of Europe, the World Bank and the Ministry of Finance. The draft law was forwarded for comments to the ministries and all stakeholders, as well as for its consultation, the ARCP and the Ministry of Justice organized consultation roundtables with the stakeholders.

On 20 October 2015, following the discussions and incorporation of all observations proposed by the relevant actors in the process, the draft law was adopted by the Council of Ministers and forwarded to the Albanian Parliament.

III. Detailed comments on the provisions of the draft law

a) The aim and the scope of the law

39. As stipulated in the general provisions of the draft law, it represents the Government's will to solve a long standing problem and provide a just regulation for the property rights issues that arose from expropriation, nationalisation or confiscation of land[41].

40. The law applies to all applications for compensation or restitution currently under review by the ARCP, as well as to those lodged within a specific time-limit[42]. Furthermore, it extends to evaluation and execution of all decisions recognising the right to compensation issued by administrative or judicial authorities, including the European Court of Human Rights[43].

41. Expropriations for which a fair and just compensation has already been provided, property donated to the State, as well as property acquired in the application of agrarian reform of 1945 are excluded from the application of the law[44].

Assessment:

The Committee has already welcomed the political will of the authorities, expressed together with the announcement of the action plan in 2014, to put an end to the process of compensation/restitution for the expropriated property. It is a very positive next step that this political commitment has been embodied in the draft law aimed at introducing an effective compensation scheme.

The law is applicable to all pending applications, as well as those lodged within a specific time-limit, which is set in Article 26 at 6 months. The process of restitution and compensation has been ongoing for more than two decades - since 1993 the expropriated owners could lodge applications for compensation or restitution of their land expropriated during the communist regime. The given deadlines were extended several times and the latest one expired in 2008. Accordingly, it appears important that the authorities explain the reasons behind their decision to reopen the possibility of applying for compensation or restitution.

The law shall equally apply to all already existing but not enforced administrative and judicial decisions. It should be noted that most of the decisions which have already been issued concern recognition of the right to compensation, without the relevant amount having been calculated yet[45]. Some of the decisions awarded partial restitution, with the remainder to be compensated at a later stage. It is understandable that the draft Law will apply for restitution of land in these cases or, if restitution is impossible, for calculation of the compensation. However, it would be useful if the authorities could confirm that the decisions which already indicate the amount of compensation to be awarded (as well as those given by the European Court) are solely executed under the new law and not re-evaluated, as Article 3.2 may suggest. Otherwise, a risk of a breach of legal certainty persists.

The Albanian Authorities explanations:

The Albanian Authorities confirm that the decisions which have already an indicated amount of compensation, as well as those issued by the European Court will not be re-evaluated with the entry in force of the proposed draft law, aiming to create a fair balance with decisions awarded. While for those decisions which are awarded and not yet implemented interests for the delay in enforcement will be granted.

The spirit of the law and its material content does not steer nor allow the review of final decisions, administrative or judicial, which have recognized the right to property. Therefore, in this way, legal certainty is not violated. Taking into account that the (final) ARCP and judicial decisions have determined the restitution and compensation only on the surface (square meters, acres, etc.), these decisions are effectively unenforceable. In the meantime the Albanian Authorities, with the implementation of this law intend to provide economic value to the final decisions issued in 22 year that do not have this evaluation.

Under the draft law, the PMA will examine applications which are submitted, but which remain unaddressed. Following the entry into force of the law, the interested parties will be provided with a preclusive period of 60 days to apply for the recognition of ownership. This deadline cannot be extended or reinstated by the judiciary or any other administrative authority.
Such a provision is necessary, based on the permanent court practice, by which was held on the "Reinstated in the deadlines for the application to address the ARCP" deadline that expire in 2008. Following this Court practice every year almost 1000 new claims are submitted for evaluation in the Agency. In order to stop this Court practice the Government provided a new deadline of 60 days with the aim for it to be preclusive. It is not possible to define as preclusive a deadline that already expired in 2008 and as a necessity to put an end to the process of applications and evaluations is necessary to introduce a new preclusive deadline.
By introducing a preclusive period of 60 days, all interested subjects, including the ones undergoing a trial for the reinstatement of the time limits for application near the Agency, will have a final opportunity to address the PMA. It is the Government's position that this is the only legal choice that will put an end to the process and to new claims submission.

b) Means of compensation

42. The new compensation scheme, to be introduced by the draft law, appears to foresee in the first place financial compensation[46]. A substantial part of the law deals with the method of calculation of the amount of compensation or outstanding compensation[47]. This principle is reinforced by the fact that any land which remains free after a part of it was restituted to a former owner is transferred to a physical compensation fund for use in compensation of other owners[48].

43. At the same time, it appears, however, to be undermined by the provision on the evaluation methodology[49] which indicates that the financial assessment is made:

a. through compensation in kind in the recognized property[50], if possible"
b. through financial compensation
c. through compensation in kind in a different property, part of the physical compensation fund […][51].

44. A further chapter on examination of unhandled claims stipulates that restitution is possible and given priority for claims in which no decision on compensation or restitution has been given so far[52].

45. It is not clear whether the auctions foreseen to increase the financial resources for the compensation fund (see details under point d) below), in which all owners holding a compensation decision assessed by the relevant Agency can participate[53], are also meant to be means of compensation.

Assessment:

In the Manushaqe Puto judgment the European Court took note of the very considerable burden on the State budget which the financial compensation represents (par. 113). It also quoted its conclusions in the Atanasiu case, recalling that "the decision to enact laws expropriating property or affording publicly funded compensation for expropriated property will commonly involve consideration of political, economic and social issues (…) [and] the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one".

Given the way the draft law is structured and since it is not accompanied by an explanatory memorandum, it is difficult to assess with certainty what is the intention of the legislator for the hierarchy of the means of compensation, and what are the reasons behind its choices. There may be a possible risk of discrimination between the expropriated owners who receive restitution of the land and those who are awarded financial compensation. Accordingly, to enable a full assessment of the compatibility of the new compensation scheme with the standards set by the European Court, it is crucial that the authorities provide the Committee with further explanations on the points raised above and detailed reasoning behind the principal choices made when drafting the law.

Response of the Albanian Authorities:

Addressing the concerns expressed in the Secretariat Memorandum (H/Exec (2005)16), for a possible risk of discrimination between applicants that are awarded restitution and those entitled to compensation, the final version of the law does not include restitution and only compensation will apply. Based on the consultations with the experts of the Department of Execution of Judgments, in April 2015, in a round table in Tirana, Albania, the term "restitution of property" as part of compensation formula was removed from the proposed draft law. The proposed draft law has envisaged and will apply only "compensation" based on the compensation formula indicated in in it, in order to guarantee equal and fair rights and treatment for all expropriated owners.

For cases that are not yet addressed by the Agency for Restitution and Compensation of Property, priority will be given to compensation in nature in the property of the former owner, and if this cannot be accomplished, financial compensation will apply. This is a choice so as to address the claim and the objections of the former owners' associations regarding the possibility to come into possession of their land. When is possible the Government will address their claim and compensate them in their land, but with the same formula that will compensate the entire target group.

The new draft provides as a form of compensation, other than those mentioned above, the "shares in State-owned companies or where the state is a co-owner with a value equal to the immovable property"

There is no hierarchy in the use of tools and means of compensation. All these (ways and means of compensation) refer to the same value determined after the evaluation, based on the land value map. The compensation in the former owners' land is a possibility for the pending 9000 applications during the process of evaluation of their right. This is a procedure that was performed for the 26 000 applications in the past. In order to provide the ex-owners the possibility to have a part or the entirety of their land, and to respect their spiritual connection with the past property, the Government, during the evaluation of the claim, will perform, where it is possible physical compensation on their land.

Financial compensation and methods of its calculation

46. The provisions of the draft law setting the compensation formula stipulate that the calculation of the amount to be compensated is based on the land value map at the time of entry into force of the law, taking as reference the cadastral index according to the property origin located closest to the property to be compensated[54]. If different cadastral areas are to be found near the property to be compensated within the same distance and with different values, then the referenced area shall be the one with the highest value[55].

47. If a property consists of land and a building, its value is calculated as a total value of the building and the land on which it is constructed. The calculation is based:

a. for the land, on the land value map;
b. for the buildings, on the Council of Ministers decision on the methodology of assessment of real estate in the Republic of Albania[56].

48. If part of the land has already been restituted to the owner by a previous decision, the value of the restituted land, based on the current value map, will be deducted from the amount to be compensated.

49. Similarly, the value of shares, bonds, financial compensation or any other compensation that the subject or his successors have already received by force of a previous compensation decision shall be deducted from the calculated amount of compensation[57].

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Assessment:

The provisions setting the calculation of the compensation must provide for a fair, transparent, equal and at the same time economically feasible solution, which would ensure that the compensation is ultimately provided and won't remain only theoretical. Indeed, in the draft law, these provisions have the most prominent place. The draft law provides for 100% compensation for the expropriated land according to the current market value calculated, however, based on its cadastral categorization at the time of expropriation. This solution departs from the current practice of the domestic courts and the method of calculation of pecuniary damage applied by the European Court in its judgments (i.a. Vroni[58] or Bushati[59]).

Justified reasons must be provided for the new calculation method, in particular in view of the fact that the compensation, even if calculated on the basis of the current market value, may be lowered for the plots for which the categorisation has changed from the date of expropriation (for example from agricultural land to urban land).

For the calculation of the value of the building situated on the plot of land to be restituted, the exact reference to the relevant decision of the Council of Ministers is necessary, as it is not sufficiently transparent whether it concerns an existing or future decision.

Response of the Albanian Authorities:

Referring to the formula of the compensation the intention of Albanian Authorities is to guarantee equal rights to all expropriated owners, and to avoid possible discriminatory situation of calculation compensation formula, which is still in place. On the other hand the formula must be easily predictable and realistic one that will allow the Government to exhaust the final bill from the process. More specifically, the actual transitory formula of compensation adopted only partially, handles differently expropriated owners in cases when a financial compensation is awarded without any legal ground.
With the new proposed draft law the compensation formula, in the final decisions that have recognized the compensation, intends to treat equally all the expropriated owners, taking as a reference the property value map at the time of entry into force of proposed draft law and the cadastral index that the property had at the time of expropriation, meaning the characteristics of the property (and as a derivative the value) at the time of the expropriation. This provision will finally provide equal treatment of the expropriated owners, putting a fair balance between the value of the nationalized property and the granted amount for compensation, because this calculation starts from the same moment, the moment of expropriation, and considers the value of the expropriated property t when compensation is calculated.
Concretely, the transitory formula of compensation adopted partially on around 700 final decisions handles

differently expropriated owners in cases when a financial compensation is awarded. It is better showed through an example: two expropriated owners that own properties next to each other, in the time of confiscation have had the title as the owners of an "agricultural property". While in the time when their claims are evaluated the situation of the property title appears to be different. The property of the neighboring owner has now the title of an "industrial zone", due to the state's investment during the years, for example it built a road, while the other owner still has the title of his property as an "agricultural property". This is a classic example which clearly illustrates how the actual transitory formula treats differently in means of financial compensation expropriated owners.
The situation becomes even more discriminatory if we consider that the land value and category has changed from the moment that the final decision on the recognition of the compensation right was issued until today, when the calculation will be provided. Due to the process of urbanization the land has undergone further development. The Government sustains that it would be unjust and discriminatory to compensate with the current price a property that was expropriated 70 years ago, and also it is discriminatory to compensate with the price of the time when the final decision on compensation was instituted, due to a long 22 year process for the recognition of the right.
With the new proposed draft law the compensation formula, in the final decisions that have recognized the compensation, intends to treat equally all the expropriated owners, taking as a reference the property value map at the time of entry into force of proposed draft law and the cadastral index that the property had at the time of expropriation, meaning the characteristics of the property (and as a derivative the value) at the time of the expropriation.
In simple words, the new formula will give to former owners, who have a right to compensation the current value of the property that was taken 70 years ago (if the Government would expropriate today the same property with the same characteristics, it would pay the same amount provided by the formula).
For the calculation of the value of the buildings situated on the plot of land to be restituted, the Government relies on an already adopted decision of the Council of Ministers, decision No. 658/2012 on "The assessment methodology for immovable properties in the Republic of Albania".

c) Compensation in kind and relevant procedure

50. The draft law lists two means of compensation in kind: "compensation in kind in the recognised property" and "compensation in kind in a different property"[60], part of the physical compensation fund[61].

51. The property may be restituted if it is free and not serving a public interest or occupied under legal acts, a list of which is provided in an annex to the draft law[62]. Agricultural land may be restituted up to 100ha[63].

52. It appears that restitution ("compensation in kind in the recognised property") is limited and given priority to cases in which no decision on compensation or restitution has been issued so far[64].

53. Furthermore, in case of the unhandled claims, the former owners can be compensated in kind in land located within touristic areas[65] or in other state-owned or state-administered property[66].

Assessment:

It must be recalled again that the authorities are free to choose the means by which they intend to implement a judgment of the European Court. In cases of recognition of the right to compensation or restitution for property expropriated during the communist regime the margin of appreciation left to the state is particularly broad.

It is understandable that in a situation of limited financial resources of the state, an option of compensation in kind for former owners is envisaged. It is, however, not clear why unhandled claims are treated differently from those in which a decision has already been given (see §33 above). The draft law appears to grant priority to restitution in such cases. As indicated in the comment under point b) above, it is important that the authorities explain why such differential treatment has been chosen and how possible discrimination is avoided or justified between owners who receive restitution of the land and those who are awarded financial compensation.

Response of the Albanian Authorities:

Referring to the assessment as above stated, it is the intention of the Albanian Authorities to treat equally and to avoid discrimination between the expropriated owners. We would like to explain that there are two different processes ongoing in the Agency: the process of the first evaluation of almost 9000 files and the process of execution of 26 000 final decisions.

While 26.000 final decisions for execution need only the confirmation of an economic value, the process is different for the rest of the 9000 applications. These claims have still to be evaluated on their merits, if there is ground for the recognition of the property right and evaluation if the property is to be kept for public purposes. This process has already been performed for the 26 000 decisions which are now final.

The different treatment derives from the status of examination of the applications. The intention is to treat the applicants equally, by submitting them to the same process which already has been performed for the claims ready for enforcement.

d) Specific situations

54. Specific provisions are stipulated in Articles 17, 22 and 23 of the draft law and regulate situations where the plot upon which a right to compensation has been recognised is not free.

i. Overlapping property rights

55. Shall there be an overlap of the right to compensation for a given plot of land, the enforcement of the relevant compensation decision is ensured for areas that do not overlap. For the overlapping part, the responsible body (the Agency) deposits a corresponding value in a separate bank account, pending the settlement of the conflicting interests. The parties may resolve the dispute through an agreement or take a judicial route.

ii. Land occupied by illegal buildings

56. Illegal constructions raised on land not owned by the builder and without planning permission are a wide-spread problem in Albania and can hinder restitution of land. It is estimated that since 1991, when Albania's democratic system was set up and up to 2014, 400,000 buildings were built illegally[68].

57. The law specifies that parties are entitled to compensation for property located in "informal areas"[69] on which illegal buildings were raised. If the property is located in a "formal area", the former owner has the right to waive the right of priority for physical compensation against another form of compensation[70].

iii. Land occupied by state-owned buildings

58. If a state owned or state-managed building is built on land recognized for compensation, the former owner has a right to first refusal when the state property is privatised. He may waive that right against compensation[71].

Assessment:

It is a positive step that the draft law allows for implementation of decisions on compensation in any non-overlapping parts and to allocate the amount of compensation over which conflicting rights occur on a separate bank account pending resolution of the dispute. However, it would be useful if the authorities explained how they envisage, when choosing this solution, to avoid notably possible risks of:

- overloading the courts, in particular in light of the existing problem of excessive length of proceedings in Albania (see Luli and Marini cases);
- inability to legally solve cases in which two parties were granted rights over the same plot in good faith due to misconduct or mistakes committed by the State authorities;
- creating additional difficulties, should the necessary documentation be in the hands of the Agency and not in the hands of the parties involved.

Information would also be useful on the scope of the problem of overlapping rights.

As regards the provisions on the land occupied by illegal buildings, definitions of "informal" and "formal" areas are not provided. It is furthermore to be recalled that the European Court indicated in the Manushaqe Puto judgment that the legalised subjects should bear more costs of the legalisation process and thus contribute to just compensation to be offered to the expropriated owners. Some specific reasoning seems necessary as to whether such solution has been considered.

The Albanian Authorities explanation:

Regarding the concern on the possible overload of the courts claims, which might be possibly increased after the approval of the draft law, it is necessary to emphasize that the existing problem of excessive length of proceedings (Luli and Marini cases) is part of the juridical reform that it is under way of consultations in Albania. The Government has informed the Committee on that issue in the Action Plan regarding this case. We will keep the CM updated on the further reforms that will be approved.

In this regard we would like to add that, from 2004 until December 2013 all the claim related to the property issues we examined by the Tirana District court, due to the provisions on the relevant law.

After the entering into force of the Law on the Administrative Court, following an interpretation of the Supreme Court today 26 District Court in all the territory examine this kind of cases. This fact per se constitutes an increase of the number of judges dealing with this group of cases.

***While regarding the "inability to legally solve cases in which two parties were granted rights over the same plot in good faith due to misconduct or mistakes committed by the State authorities**" here it is necessary to emphasized that the Albanian Constitutional Court has established a consolidation practice fair and equal rights in resolving these situations.*

The Constitutional Court of Albania did not apply the criteria of good faith. The Constitutional Court clearly stated that the decision on the recognition of property is a reinstatement on the rights, and if the persons had never been in the past owners of the nationalized property, then they have never gained the right. The decision per se isn't a new way of gaining properties.

In this context the provision of the law brings justice to the real owners of the property, and furthermore this is in line with the court's practice in cases of restitution when there is overlapping. In these cases the Courts have competence to decide over the title and restitute the property to the real owner.

This is not the case when the person acts in good faith because in all there cases the decision is a result of documents produced by the applicants, submitting information as if they are the owners of the property. One of the applicants has provided false declarations to the authorities, and that is, according to the interpretation of the Government, to act in bad faith, and in line with the decisions of the Constitutional Court and the domestic judicial practice.

As regards the definitions of "informal" and "formal" areas the Albanian legislation has now consolidated the legal provision in Law no. 9482, dated 3.4.2006, "On the legalization, urbanization and the integration of the informal buildings" (amended}. The Government's intention with this provision is to divide the two processes in order to speed up the procedure and avoid the delay of one process by the other. If it is requested the Government will be able to provide the decision of the authorities on that regard.

In this regard, we would like to note that the legalization process is a process that includes the expropriation of the actual owners of the land, and on the other hand the process of compensation regards expropriations that

happened mostly in 1945 during the agrarian reform in Albania.

It is the Government's intention to produce as less conflict as possible and where possible to reduce conflict regarding the property. That is why the land, even when is occupied by illegal buildings, will be considered occupied and the former owner will be entitled to financial compensation or compensation with another property on the value of its claim.

The definition of informal areas is decided by decision of the National Territory Council, the organ responsible for the management of the entire territory of the Republic of Albania. These decisions are disseminated through the website of the National Agency for the Planning of the Territory, and are available to the public. As a result, the definition of informal and formal areas is quite clear in the legal framework of the Republic of Albania.

The Albanian Government confirms that in the national legislation and during all the 22 years jurisprudence of the national Courts on this regard it is legally possible to solve the cases of the overlapping rights, through the judicial system.

Related to the concerns expressed for additional difficulties, should the necessary documentation be in the hands of the Agency, the Government would like to explain that all the documents in the Agency, are defined official documents and pursuant to the domestic legislations there is an obligation on the public institutions to provide the interested parties and the Court with this documents. Otherwise there are disciplinary penalties or fines for the public officials that retain official document and refuse to submit them to the interested parties. As a guaranty the Court also can order the Agency to submit documents if the Agency refuses to perform its legal obligation. The legislation into force guaranties all the parties the rights on this regard.

Furthermore, the draft-law provides that subjects that benefit from the legalization law will bear a significant portion of the financial burden necessary for the "Compensation Fund". For the implementation of the European Court judgment in the case of "Manushaqe Puto and Others v. Albania", paragraph 115, the income from the Legalization process will be included as part of the Financial Compensation Fund (Art 24).

The Government will monitor the issue in continuity and will provide information on the developments in the implementation phase on the overlapping rights including the performance in the Court system and the workload stemming from this provision.

e) Procedure

i. Responsible bodies

59. Implementation of the law is entrusted to the Properties Management Agency (PMA), a new legal public entity created by transformation of the Agency for Restitution and Compensation of Properties[72]. The new Agency shall be responsible for examination of all claims for restitution and compensation deposited before the entry into force of this law, and for which no decision has yet been taken, as well as for financial evaluation of decisions recognising a right to compensation but without setting an amount to be compensated.

60. For this purpose it shall examine the entire documentation submitted by the expropriated entities and confirm their accuracy and compliance with the criteria provided under the bylaws in force and, subsequently, issue a decision either recognizing the right to restitution or compensation or dismissing the claim.

61. The Agency is further entrusted with verification and calculation of the financial obligations of the state towards expropriated entities or third parties and for depositing the deeds for registration in the immovable properties records[73].

62. The Agency shall coordinate its activity with various state institutions[74]. Any institution whose activity is relevant or which is responsible for the process of recognition, restitution and compensation of property is obliged to cooperate and provide information or documentation required by the Agency and also to communicate the grounds of failure for not meeting a required measure or recommendation.

63. The Agency also carries out all procedures for the identification and inventory of state-owned real property which can be assigned to the compensation fund[75]. It shall collaborate with the institutions which administer state-owned or public property[76].

64. The organisation and functioning of the Agency, the procedures of collection, processing and management of the acts of the expropriated entities, the procedures and deadlines of cooperation and communication with the state institutions, as well as relevant sanctions for any failure to co-operate are to be established through a decision of the Council of Ministers[77].

65. The structure of the Agency is to be adopted by the Council of Ministers within 1 month from the entry into force of the law. Until the adoption of the structure, the Agency shall function according to the existing structure[78].

Assessment:

The draft law introduces a new body responsible for the process of evaluation of compensation claims and for the award of compensation or restitution. Reasoning would be useful, explaining why the authorities considered it necessary to replace the existing Agency for Restitution and Compensation for Property (ARCP). In particular, what will be the costs of the change, as well as the budget, staffing and resources of the new Agency.

It appears to be positive that an attempt is made to ensure coherence within the authorities with responsibility for matters concerned with property rights. Deadlines and sanctions are introduced for entities failing to co-operate timely and efficiently with the new Agency.

The structure and details of the functioning of the new Agency are to be set by secondary legislation. Explanations are necessary to give a more detailed view on the envisaged solutions and to enable their assessment by the Committee.

Response of the Albanian Authorities:

The proposed draft law envisages the transformation of the existing Agency for Restitution and Compensation of Property into the "Property Management Agency" (PMA). The Agency calculated the time-limits needed for the implementation of the law while taking as a reference the actual staff. Pursuant to the Report on the Draft Law, the Agency will have human resources of double the staff of the current Agency for the Restitution and Compensation of Property. The structure of the PMA will be adopted by the Council of Ministers within 1 month from the entry into force of this law. Until the adoption of the structure, the PMA shall function pursuant to the existing structure of the ARCP.

The Agency will be made available a centralized digitalized map system, which will be outsourced to third parties for its implementation, in doing so relieving the Agency from a considerable amount of work and procedures on the matter, consequently implementing one of the key elements and requests of the judgment of Manushaqe Puto and Others v. Albania. The tender was announced on 29.09.2015 (letter no. 2819/7, dated 14.10.2015 of the ARCP). As a consequence this adds to the implementation of one of the key elements and requests of the judgment of Manushaqe Puto and Others v. Albania

ii. Examination of claims

66. The new Agency established by the draft law is entrusted with the examination of all applications pending before the previous Agency (ARCP), as well as to review applications submitted within 6 months after the entry into force of the draft law[79]. The 6-month deadline cannot be extended or reinstated by the judiciary or any other administrative authority.

67. Applications based only on "proof of legal fact", in terms of Article 388 of the Code of Civil Procedure, are rejected[80].

68. The process of examination of files submitted before the entry into force of the draft law and yet not examined shall be completed within three years from the entry into force of the law[81].

Assessment:

The draft law foresees reinstatement of the time-limit for submission of new claims with the Agency. Additional explanations are necessary in this respect (see point III a) above).

The inadmissibility criterion "proof of legal fact" set out in Article 26.3 is not sufficiently clear in the current wording.

Information should also be provided on how the deadline for examination of the files was calculated and what resources will be allocated for the purpose of completing the process in the given time.

Response of the Albanian Authorities:

Regarding the reinstatement of the time-limit for submission of new claims with the Agency, the Albanian Authorities refer to the explanation given in the point III a) above.

Regarding the criterion of "proof of legal fact", we would like to inform that this "fact" alone without supporting documents is not sufficient to prove the legal ownership of the property. "Proof of legal fact" is declarative decisions, usually based on the witnesses' state for the declaration of the ownership by part of the former owner. The draft law requires by the applicants to submit at least some written evidence, even indirect one, to prove the claimed property rights. This provision of the law aims to address the practical problems stemming from the abusive practices that have been occurring in 20 years of the process. Taking into account this fact and the practice of 1990 on the administration of files for restitution and compensation, the Government, starting from 2004, has evaluated that the declaratory decision "proof of legal fact" should be supported by other written evidence, so that the Agency can conclude with the recognition of ownership. The law in force has the same attitude towards the problem at hand and this practice is also well established in the domestic jurisprudence. This law provides for the same position.

The ARCP has calculated the deadlines provided for the finalization of the process, based on the calculation of the number of employees and number of files that have been examined over the years by the latter. In order to finalize the process in due time, while respecting the deadlines provided in the draft law, the Agency has performed a detailed analysis of the necessary human resources, that will be provided after the entry into force of the law.
Furthermore we would like show a concrete example of the Tirana District, the speed of the process and the real basis of the calculation. The Agency, with the human recourses at its disposal has conducted the full evaluation of the Tirana District, regarding 3431 final decisions for a period of 2 months, in order to test the new formula.
The Government, evaluates that all these measures, show that the problems raised are address and enable the Agency to conclude the process in due time.

iii. Evaluation of claims for which a decision already exists[82]

69. Within a period of 6 months from the date of the entry into force of the law, the Agency shall publish a registry of all final decisions entitling the right to compensation to the expropriated entities. The record shall also contain information on the missing documents in the decision file. The interested entities must submit the necessary documentation within a period of 6 months from the date of publication of the registry. An overall list of necessary documentation for the financial assessment of compensation decisions is adopted
and published by a decision of the Director General of the Agency[83].

70. In case of a failure to submit necessary documents, the Agency shall evaluate such decisions with the minimum price as defined in the value map for that administrative unit (municipality/commune) and for that property category[84].

71. The amount of compensation for all existing final decisions acknowledging the right to compensation shall be calculated by the Agency within a term of 5 years from the entry into force of the law. If the Agency does not fulfil this obligation within the term, the entities can address the Judicial Administrative Court of Tirana for the financial assessment[85].

72. Decisions given earlier shall be treated with priority and the assessment shall start chronologically from the older to the most recent final decisions[86].

Assessment:

As the European Court underlined in the Manushaqe Puto judgment, any procedure to evaluate the current pending claims should not put an excessive burden on the claimants. In order to assess whether this is the case, more details are needed on the by-laws specifying the lists of necessary documents. In addition, explanations are needed on how the six month deadline to publish a list of decisions was calculated, the assessment of the relevant work load made and what resources have been allocated for that purpose.

Response of the Albanian Authorities:

The law provides for the necessary documentation to be submitted by the applicants to the PMA, for further assessment. The draft law provides that the expropriated subjects have to submit the following documentation for the assessment of their application:
-The form for applying for recognition and compensation, which must be signed by the expropriated subject or his authorized representative. The form contains a warning that the law assigns responsibility to the applicant in case of declaration of false facts or deposit of forged documents.
-Legal documentation
-Cartographic documentation pursuant to the requirements to be set for their submission.

The determination of the documents, necessary for the evaluation of claims for which decisions already exist, is dependent on each individual application and, for this reason it is impossible to be foreseen by the law.
The submission of this documentation in no way entails a further burden on the applicants since the documentation at hand is one that the applicants already dispose of.

All decisions of the PMA will be made public through the publication of the register on the official PMA web page. Furthermore, the new draft law envisages the publication through the media and the Official News Bulletin.

Regarding the 6 month deadline for the publication of the list of decisions, the Albanian Government would like to inform that such step has become obsolete seeing as the ARCP has already published the final list of decisions in September of last year.

iv. Decision

73. The performance of the duties of the Agency for the restitution and compensation of properties is expressed through a written decision of the Director General of the Agency, reasoned and meeting the requirements of an administrative act as provided by the Code of Administrative Procedures of the Republic of Albania[87].

74. Any court decision amending the Agency's decision on restitution/compensation or the value of compensation is notified to the Agency and is recorded in the relevant record of decision-making, which is kept by the Agency[88].

75. The Agency publishes the decisions through "appropriate means"[89].

Assessment:

It is a positive step that there will be one responsible body for issuing decisions on compensation or restitution for property. Record keeping of judicial decisions is also crucial and welcomed. The publication of decisions of the Agency "through appropriate means" is not, however, sufficiently transparent and the draft law should be more specific on this matter, including on how it fits with the existing ARCP register. One central register of all decisions would appear to be helpful to avoid confusion.

Response of the Albanian Authorities:

The Albanian Government would like to inform that the draft law provides that the register of the PMA will be coordinated with the current register of decisions of the ARCP and other previous agencies responsible for the restitution and compensation of property. There is only one central register for all decisions.

The draft law reflects the concerns expressed in the CM document H/Exec(2015)16 and provides that the dissemination of the registry of the PMA decisions will be performed through its publication on-line, though the media and in the Official Announcements Bulletin. Consequently the draft law does not provide any more for the publication "through the appropriate means".
The Government, taking into account this explanation and those provided on the point II/d above considers this concern addressed properly in the last version of the draft law.

v. Right of appeal

76. When the decision is not appealed, within the time limits foreseen by this law, it becomes an executable title.

77. Any interested party has the right to appeal against the assessment of the Agency which establishes the value of the property, to the Court of Administrative Appeal, within 30 days of the publication, and only for the amount of compensation value[90].

Assessment:

Granting the right to appeal against a decision of the Agency is a positive step, which was requested by the European Court. However, the appeal appears to be limited solely to an assessment of the compensation value. It would be useful if the authorities could explain whether the establishment of the right to compensation and the procedural aspects could be subject to appeal as well.

Furthermore, what resources are to be allocated to the courts for this purpose and how prolonged litigations are to be avoided should be explained.

Response of the Albanian Authorities:

The right to appeal is provided in two articles article 19 and article 29. Article 19 provides for right of appeal on the compensation value, because the process is limited on the evaluation of the final decisions. Those decisions already had a right to appeal when issued and the aim of the provision is to exclude appeal on the merits of the decision as requirement of the principle of the legal certainty. The appeal on the value includes the appeal on the procedural aspects of this evaluation and also on the value, but excludes reexamination of the merits of the property rights or the decision for compensation.
The right to appeal on the value will be evaluated by the Administrative Courts of Appeals, which have a fast track procedure with a time limit of 30 days.
In the alternative, the claim never evaluated on the merits will be granted appeal on the bases of article 29 of the law by the Courts of Appeal.
The Government does not expect for there to be too many challenges on the value of the property because the calculation will be quite similar to the one adopted in the past and that former owners expect to be the value of their property. In this regard, the fact that there are 6 Court of Appeal that will evaluate the decisions of the Agency is to be taken into consideration. The Government's position is that the recourses in the judiciary are sufficient to provide for the process in due time.

vi. Charges

78. The charges for the procedure of restitution and compensation of properties are established under the joint order of the Minister of Justice and the Minister of Finance[91]. The draft law does not specify whether they would be due at the outset or at any later stage of the proceedings.

79. The remuneration for compensation is not subject to any tax, fees or deductions[92].

Assessment:

The exclusion of the amount of compensation from liability to taxes or other financial deductions is a principle required by the European Court in its case-law. However, confirmation should be given that charges for the procedure would not supress the effect of the above exemption and that the enforcement of a final decision would not be subject to fees.

Response of the Albanian Authorities:

The Government confirms that it is not the intention of draft law to provide further charges in the procedure, at least not of that kind that can suppress the effect of the exemption from the taxes.

vii. Enforcement of the decisions

80. The compensation of subjects begins immediately after the decision becomes final[93].

81. The Agency or any interested party addresses the final decision to the Immovable Property Registration Office for registration[94].

82. Depending on the funds available, the Agency allocates the amount of compensation to the "defined entities" by transferring the sum to the bank deposit opened for such purpose[95]. The decision on compensation shall be considered executed at the time of allocation of the full value in the relevant bank account. The payment of the deposited amount shall be performed by the bank in favour of beneficiary entities after all legal documents required to make the payments are submitted. The required documents and the verification procedures thereof are defined by a decision of the General Director of the Agency[96].

83. The Agency publishes a list of entities that benefit from the property compensation fund in the respective period[97].

84. The process of payment for all decisions acknowledging the right to compensation shall terminate within a term of 10 years from the moment of entry into force of the law[98].

85. For the final decisions in which a value of compensation had been determined and which remained unenforced, the expropriated subjects will benefit from indexation according to the official value of inflation and banking interest for the period from the recognition of the right to compensation to receiving the actual compensation[99].

Assessment:

The procedure of payments of compensation will inevitably be a sensitive issue due to the number of expropriated owners and the delay in evaluating their claims or enforcing final decisions issued in their cases. Therefore, it appears necessary to obtain detailed information on the following points:

- what are the "defined entities" and how will they be selected for payment,
- whether the payments are to be made in full or if instalments are envisaged (as it would appear from the wording of Article 11.4, "depending on the funds available"),
- whether the necessary confirmation procedures to enable the payment are not cumbersome,
- how the publication of the beneficiaries should be made and whether it would not interfere with their rights to private life,
- why it is necessary to open separate bank accounts for every beneficiary and whether such procedure would not involve excessive costs or workload for the Agency.

It is to be welcomed that a legally binding deadline of 10 years has been set to complete the process. Due to its length, additional information is required on how the deadline was calculated and what steps are taken or envisaged to comply with it.

The obligation to register all final decisions appears to be a step towards the establishment of a transparent and effective system of property registration, as requested by the European Court. It would be useful to define more precisely, who the "interested parties" are who can request the registration of a decision.

The provision of interest in cases of delay in payment of compensation awarded by previous decisions is to be welcomed.

Response of the Albanian Authorities:

The aim of the law is to provide for an immediate compensation into the bank accounts for the compensation values. Also there is an intention to transfer the final part of the payment process to the bank institutions, in order to avoid difficulties for the parties and also for the Agency. The benefit of this provision will be that each recipient will be able to have the benefited amount in the bank without taking further procedural steps.

Furthermore, this is a permanent procedural request of the stakeholders that would prefer that the money is transferred automatically into bank accounts.
The 22 years past practice on this process that the funds depends on the availability of the Government is over with the provisions of this draft-law. *The Government wishes to emphasize that for the first time in the 22 years process, there is a provision of the law that defines the value available to the Compensation Fund, which will be allocated each year, progressively. The new law has established a fund for not less than 3 billion ALL a year, with not less than 50 billion ALL in 10 years. The amount that will be available from the state budget to this process each year is defined in an appendix to the draft-law as a guaranty for the implementation till the end of the process.*
The calculation of the amount is a derivative of the evaluations that Ministry of Finance has performed, taking into account the possibilities offered by the Financial Fund of Compensation (art.10), and comparing that to the relevant necessities to be financed by this budget. The amount considers the final bill, which is expected to be paid for this process and the calculated value of property at the Agency disposal in the Physical Compensation Fund. The difference from this to values in the amount of 50 billion ALL will be financed by the state budget over the 10 year period.
The Government has exhausted all its resources for this process considering also the necessary balance with public interest. This period takes into consideration the possibilities of the state budged over a year and the balance between the other obligations of the state. ***We would like to mention that this amount is at least 10 times the value of the budged allocated to the current process, in the best scenario in the past years****.*

Regarding the property registration, the draft-law includes as a new provision the automatic registration of the right to first purchase in the Registry of the Immovable Properties, for the future and the past decisions. This process will be performed automatically by the Agency without excluding the right of the subjects entitled to a decision to proceed with the registration. On the other hand the separation of the Legalization process and the Compensation process will avoid future conflict and simplify the process of registration for the Office of the Registration of the Immovable Properties. Working on the same map as provided by the draft –law will also improve the process of registration, avoiding overlapping rights.
The Agency and all "interested parties", which are one or more beneficiaries of the right

(recognition/compensation) such as the expropriated subjects may request the registration of the decision of the PMA. In fact, the law stipulates that the Agency has the obligation to register the decisions itself.

The Government confirms that the "interested subjects" definition is clear in the national administrative and judicial practice. It includes the ex-owner and their heirs.

The selection of the decisions for their payment will be established based on the time of issuing of the final decisions, starting from the oldest to the newest.

Transparency in decision making is one of the main principles of the law and one of the purposes of this law. The publication of the decision and names of beneficiaries will be performed in order to expedite the process of compensation, its being as transparent as possible and the avoidance of abuse.
Publication in this case will be performed by applying the provisions of the laws in force, which are a further guarantee for the respect of the rights of individuals and the public, such as Law 119/2014 "On the Right to Information" as well as Law 9887/2008 "For the protection of personal data".

Regarding the time period envisaged for the implementation of the process, the 10 year period is envisaged following the evaluation of all the human resources necessary to realize the objectives of the law, the necessary funds made available to the Compensation Fund and the forecasts for the unaddressed applications.

viii. Compensation fund

86. In order to secure funds for enforcement of decisions awarding compensation, the draft law establishes a fund (Properties Compensation Fund)[100]. It comprises of a financial fund and a land fund. The Land Fund consists of state-owned property allocated by a decision of the Council of Ministers and property of former owners who were financially compensated[101].

87. The resources of the Compensation Fund are:
   a. Income from the State budget
   b. Income from sales at auctions of state-owned properties which are part of the land fund
   c. Donations and other income[102].

88. The Fund is managed by the Agency and is subject to the same procedures as the State budget[103].

89. The State budget approves annually a financial fund of not less than 5 billion ALL a year for the implementation of the process of compensation of property[104].

90. In order to increase the financial resources of the Fund, the Agency organises auctions for sale of a property from the land fund. The income is passed to the Compensation Fund. All former owners holding a final and evaluated compensation decision can participate in those auctions[105]. If such auctions fail twice for
a property, a public auction of the land takes place[106]. In any case, the Agency shall not sell the property for a price lower than that on the land value map[107]. Shall the land not be sold in that public auction either, it is made available for compensation in kind[108] and used for physical compensation for entities holding a final compensation decision. For that purpose the real property shall be published for a 45-day period and awarded to the beneficiary subject who has applied[109].

Assessment:

Effective implementation of the draft law and the finalisation of the process of compensation or restitution for the expropriated land will depend on the funds available. It is thus crucial that detailed reasoning is provided for calculations made by the authorities for this purpose. In particular, it would be useful to know why the limit of 5bln ALL was set and how the allocations from the budget will be ensured, especially taking into account the long time-limit of 10 years envisaged to finalise the process of payment.

Furthermore, confirmation would be appropriate as to whether the Compensation Fund is the transformation of the currently existing Fund.

In order to increase the income of the Fund, the draft law envisages auctions of the land from the Land Fund. For a better understanding of the measure proposed, some clarification of the functioning of these auctions would be useful. In particular, it would be useful to confirm whether access to the first two auctions for a property is limited to former owners and whether the auctions are also meant to be means of compensation (see para. 45 above).

Response of the Albanian Authorities:

The Government wishes to emphasize that for the first time in the 22 years process, there is a provision of the law that defines the value available to the Compensation Fund, which will be allocated each year, progressively. The new law has established a fund for not less than 3 billion ALL a year, with not less than 50 billion ALL in 10 years. The amount that will be available from the state budget to this process each year is defined in an appendix to the draft-law, as a guaranty for the implementation till the end of the process.
The calculation of the amount is a derivative of the evaluations that Ministry of Finance has performed, taking into account the possibilities offered by the Financial Compensation Fund (art.10), and comparing that to the relevant necessities to be financed by this budget. The amount considers the final bill, which is expected to be paid for this process and the calculated value of property at the Agency disposal for the Physical Compensation Fund. The difference from this to values in the amount of 50 billion ALL will be financed by the state budget over the 10 year period.
The Government has exhausted all its resources for this process considering also the necessary balance with public interest.
This period takes into consideration the possibilities of the state budged over a year and the balance between other obligations of the state. ***We would like to mention that this amount is at least 10 times the value of the budged allocated to the current process, in the best scenario in the past years****.*

The financial compensation fund is regarded as a special fund within the meaning of Article 7 of Law no. 9936, dated 26.06.2008 "On the management of the budgetary system in the Republic of Albania". The procedures for the proposal and adoption of the budget for this fund are the same ones applied to the law on the State Budget and are presented together to the National Assembly for approval. The draft stipulates that the compensation fund is untouchable. No administrative or judicial body can dispose of the fund, apart from the subjects specified in the law for its administration. The existing Compensation Fund will remain at the disposal of the new Agency and of the compensation process.

With letter no. 3486 prot, dated 15.10.2015, the ARCP has announced that the envisaged fund is in full respect of the expectations. This resulted from "The results of the pilot study on the economic value for the compensation of property in the district of Tirana, referring to the provisions of the draft law".
Tirana was chosen for this pilot project, as one of the cities with the largest geographic reach and greater impact. The Albanian Government has made the financial and time projections, which guarantee that the 10 year period of time and the financial resources of 50 billion ALL shall meet the objectives of the law.

Furthermore, in this line the income generated from the sale at auction of the property part of the land fund, pursuant to the provisions of this law, is foreseen to be transferred to the Financial Compensation Fund and be used for the compensation of the subjects under the provisions of the law.

LEGAL ASSESSMENT FOR THE NEW FORMULA "FOR COMPENSATION OF FORMER OWNERS"

A. Facts to be considered in the assessment of compensation options.

The ARCP has created a registry with the information on the final decisions and presently it results that:

- There is a total of twenty six thousand (26,000) final compensation decisions;
- About seven hundred and seventy (770) decisions were treated with partial compensation;
- For none of the decisions addressed, the process of compensation has been completed.

Conclusion;

Therefore, the compensation formula that may be adopted will apply to all the final decisions, resulting in this manner in an equal treatment[1].

B. A summary on the Law provisions regarding the right to compensation of the former owners in Albania, from 1993, until now.

1. *The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and other complementing laws.*

Article 3/2 of the Law no. 7698, dated 15.04.1993 "On restitution and compensation of property" in the definition of its "Object [*of the Law*]" provides for different treatment on the restitution of the "***plot of land***" meaning land used for building situated in the cities or residential areas and "***agriculture land***".

Therefore the Law in the article 3/2 provided that that law would apply only to "plots" [*truall*] and "agricultural land" [*toke bujqësore*]. The Law had its own definition of what would be considered a "plot" and what would be called agricultural land and this was associated with the status of the property at the time of expropriation. This law does not address land classified as pasture, meadow and forest.

[1] The principle of equal treatment, taking into consideration the international standards in this regard, considers equal treatment in the application of a law, the treatment in an equal manner of the people subjects of the law.

- "**Plot of land**" is considered mortgaged and registered land situated within the boundaries of residential areas at the time of expropriation.
- "**Agricultural land**" is considered the land that was outside the boundaries of residential areas at the time of expropriation, but that at the time of entry into force of this law was altered into plots of land.

Law no. 7916, dated 12.04.1995 "On Amendments to the Law No. 7698, dated 15.04.1993 "On restitution and compensation of property to former owners", in article 2 enhanced the definition of the plot of land by clarifying those cases where the residential area does not have a boundary and finally it provided the definition of "**plot of land"**, which means land that is mortgaged and registered, and situated within the boundaries of residential areas at the time of expropriation. In case the residential area does not provide for a boundary, the plot of land is considered the surface of land occupied by the building built and its surrounding area (functional yard).
This law also expanded its scope including the addition, apart from "a**gricultural land"**, the "**non-agricultural land**" where again this category shall mean land which was outside the boundaries of residential areas at the time of expropriation, but that at the time of entry into effect of this law was changed into plots of land.

Article 2/2 provides that *"**plot of land"** means land that is mortgaged and registered, and situated within the boundaries of residential areas at the time of expropriation*.

Article 3 of Law no. 7698
For purposes of recognition, restitution or compensation of property, land, under this law, is called the plot of land and agricultural land.
***Plot** means land that is mortgaged and registered, and situated within the boundaries of residential areas at the time of expropriation.*
***Agricultural land** means land that was outside the boundaries of residential areas at the time of expropriation, but that at the time of entry into force of this law is altered into plots.*

Conclusion;

The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and other complementing laws clearly related the definition of the category of the land [plot or agriculture land] with the time of expropriation.

2. *The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and its limitation of the right to restitute and compensate the former owners.*

The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property", clearly provided for limitations into the right for restitution and compensation explained below. A distinctive feature of the provisions of this law has been the limitation of the possibilities for restitution and compensation of property. This law never provided for restitution or compensation of 100% of the property, *al contrario* the right to compensation would be recognized, but a special law would determine the award of compensation. We would like to quote same provisions into the articles of this law;

Article 19
For free parcels within the boundaries of cities and tourist areas in accordance with regulatory plans approved at the time of entry into force of this law, which will be restituted to former owners, the amount of restitution will be:
- For plots of land, 5,000 m2 and the rest will be compensated by in one of the ways provided in this law.
***- For agricultural land, 5,000 m2 and the rest will be compensated according to the law "On Land"**.*
The Council of Ministers sets out detailed rules for the implementation of this article.

Article 26
*The price of land [**for the purpose of compensation**] is set by a special law.*

Law no. 7698, dated 15.04.1993 "For restitution and compensation of property to former owners", had restrictions on property restitution and compensation, restrictions which have been different at different times and which can be summarized as follows:

Article 5
In all cases not otherwise provided for in this law, the amount of restitution or compensation for plots of land will be complete up to 10,000 m2.
When the property is of 10.000 m2 up to 100,000 m2, the amount of restitution or compensation will be plus 10 percent, while for properties over 100,000 m2 plus 1 percent.

For agricultural lands **Law no. 7699, dated 21.04.1993** "On compensation in value of the former owners of agricultural land" and the bylaws envisioned *the full* compensation of an area **up to 15 hectares** and not of a larger surface.
"**Agricultural land**" under Article 2 of this law is considered the agricultural land, including olive groves, orchards, vineyards, fruitless lands ***considered at the time of issuance of Law no. 108, dated 29.08.1945 "On Agrarian Reform"***.

Article 1

This law recognizes the right of ownership for the purposes of compensation in value of agricultural land to former owners, individuals or legal entities that have had it under ownership at the time of entry into force of Law No. 108, dated 29.08.1945 "On Agrarian Reform".

Article 2

In this law will use the following definitions:
"Agricultural land" - are all lands defined in Albania as agricultural land, including olive groves, orchards, vineyards and such lands that were considered at the time of issuance of Law no. 108, dated 29.08.1945. Lands that for purposes of compensation will be handled by other laws are excluded.
"The former owners of agricultural land" are persons or their heirs, who enjoyed the ownership of agricultural land at the time of entry into force of Law No. 108, dated 29.08.1945.

Article 6

The former owner or his heirs who have received agricultural land according to law No. 7501, dated 19.07.1991, receive compensation in the amount of the difference between the area of agricultural land they owned and the one they have received (meaning according to the law "on the Land" of 1991 [agrarian reform],……..

Article 8

1. Former owners of agricultural land under the provisions of this law, benefit full compensation amounting to an area of 15 ha.
2. For the former owners who have owned over 15 hectares of agricultural land, compensation amounting to the rest of the agricultural land is done according to the formula:
a) from 15 ha to 100 ha of agricultural land, each hectare over 15 ha is compensated with the value of 0.1 ha.
b) From 100 ha to 1100 ha of agricultural land, each hectare over 100 hectares is compensated with the value of 0.02 ha.
c) For the surface area of over 1100 ha there will be no additional compensation.
3. ***In any case the maximum amount of compensation in value must not be greater than the equivalent of an area of 43.5 ha****.*

Conclusions;

The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and all the amendments on this law, granted ***limited rights on the restitution and compensation***. For the plot of land a maximum of 10000 m2 and for agriculture land 15 ha, as full restitution or compensation and for each limitation, in the cases where a grater surface will be restituted or compensated. The price was will be set by a

separate law. The limitation included a cap in the restitution and compensation and also a proportional compensation in a specific percentage that decreased with the increasing of the surface entitled for compensation.

3. *The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and other complementing laws, Law no. 7699, dated 21.04.1993 "On compensation in value of the former owners of agricultural land" and provisions related to the amount of compensation of agricultural land.*

Law no. 7699, dated 21.04.1993 "On compensation in value of the former owners of agricultural land"

Article 1
This law defines the right of ownership for the purposes of compensation in value of agricultural land to former owners, individuals or legal entities that have had it under ownership at the time of issuance of Law No. 108, dated 29.08.1945 "On Agrarian Reform"

Article 2
The amount of compensation in value of agricultural land is determined on the basis of natural fertility per hectare according to the criteria of Law no. 7501, dated 19.07.1991 "On Land".
For alienated lands and those that have not been reclaimed (ameliorated) [meaning improvement in the quality of land through a technical process], the evaluation will be conducted according to the criteria that will be determined by the Ministry of Agriculture and Food.

Article 3
The value of compensation of agricultural land, pursuant to Article 2, is as follows:

The value in each hectare in 000 / ALL (Albanian Lek)			
Classes	Up to 15 ha	15 to 100 ha	100 to 1100 ha
Class I	280	310	360
Class II	244	274	324
Class III	210	240	290
Class IV	171	201	251
Class V	135	165	2015
Class VI	107	137	187

Class VII	62	92	142
Class VIII-X	50	70	108

Conclusions;

The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and other complementing laws, Law no. 7699, dated 21.04.1993 "On compensation in value of the former owners of agricultural land" and provisions related to the amount of compensation of agricultural land, granted ***limited rights on the amount of compensation***. They made a connection between the quality (and as derivation) the value of the land to be compensated. They included a limit in the amount of compensation and also a proportional compensation that decreased with the increasing of the surface entitled for compensation.

4. *The procedure of compensation (physical and financial) based on the '93 Law.*

As was mentioned before Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and other complementing laws, referred to the Law no. 7699, dated 21.04.1993 "On compensation in value of the former owners of agricultural land" for the amount of compensation and the procedure.

The latter, in Article 13 provided for the compensation procedure, which envisaged, among others the issue of the bylaws, which were never completely issued. Specifically, for the process of compensation of agricultural lands were implemented these acts:

- **Law no. 7699, dated 21.04.1993** "On compensation in value of agricultural land to former owners.
- **CMD no. 560, dated 16.10.1995**, item 5 "For the physical compensation of agricultural lands"
- **President's Decree no. 1254, dated 19.10.1995** "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas."
- **Law no. 8024, dated 02.11.1995** "On approval of some amendments to the decree no. 1254, dated 19.10.1995 "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas."
- **Decree no. 1359, dated 05.02.1996** "On Amendments to the Decree no. 1254, dated 19.10.1995 "On the compensation of former owners of agricultural land,

non-agricultural and occupied plots of land, with sites in the touristic and residential areas., amended by Law no. 8024, dated 02.11.1995 ".

– **Law no. 8084, dated 07.03.1996** "On approval with some additions and amendments to Decree no. 1359, dated 05.02.1996 "On Amendments to the Decree no. 1254, dated 19.10.1995 "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas, amended by Law no. 8024, dated 02.11.1995".

CMD no. 560, dated 16.10.1995, item 5 "For the physical compensation of agricultural lands" that stipulates the implementation measures of Law no. 7699, dated 21.04.1993, which requires among other things the completion of the documentation required under Article 14 of the above law.

Law no. 7698, dated 15.04.1993 "On restitution and compensation to former owners" provides in Article 16 compensation to former owners to the limits of expropriation, where one of the ways provided for compensation is that of physical compensation.

Article 16, towards its end provides that:

"*The Council of Ministers provides the detailed rules for the ways and terms of such compensation*".

If we refer to the subsequent bylaws, in a consistent manner it turns out that the bylaws governing physical compensation process were never fully issued and implemented.

Specifically, in view of the compensation process, the President issued **Decree no. 1254, dated 19.10.1995** "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas." Although this decree provided for the physical compensation of former owners, Article 5 stipulates that the Council of Ministers is responsible that within the 15-th of November 1995 to issue regulations to implement the physical compensation with plots in inhabited areas. If we follow the chronology of subsequent acts, it turns out that the compensation procedures and methodology were never completely exhausted.

Following the above mentioned decree, **Law no. 8024, dated 02.11.1995** "On approval of some amendments to the decree no. 1254, dated 19.10.1995 "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas" was issued. The spirit of this law was that besides agricultural land, the compensation of non-agricultural land such as plots of land etc., which were occupied and could be compensated in tourist areas or in residential areas would also be allowed. Even in this case the complete bylaws that regulated the methodology of compensation were never issued. Realizing that this law needed improvements especially to determine the manner and the surface that could be compensated by commissions, three months later the decree cited below was issued.

In **Decree no. 1359, dated 05.02.1996** "On Amendments to the Decree no. 1254, dated 19.10.1995 "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas, as amended by Law no. 8024, dated 02.11.1995", Article 2 provides for compensation of former owners to the extent of 5000 m2. But referring to Article 7 of this legal act, it explicitly provides that, "Article 6 of the decree becomes Article 7 with this content; "To achieve the fastest possible compensation with plots of land, the Council of Ministers within the 28-th of February 1996 should issue the bylaws". The bylaw provides for the creation of special commissions through a decision of the Council of Ministers that there was never implemented.

Again, in view the compensation of former owners, **Law no. 8084, dated 07.03.1996** "On approval with some additions and amendments to **Decree no. 1359, dated 05.02.1996** "On some additions and amendments to Decree No. 1254, dated 19.10.1995 "On the compensation of former owners of agricultural land, non-agricultural and occupied plots of land, with sites in the touristic and residential areas, as amended by Law no. 8024, dated 02.11.1995" was issued, which provided compensation with plots of land in tourist or residential areas for the former owners to the extent of 10,000 m2. Even this law provides for the issuance of subsequent legal acts that were never issued, nor implemented.

Law no. 8084, dated 07.03.1996 and **CMD no. 528, dated 13.05.1996** provided the initial set of procedures for the physical compensation stating that, special commissions would be raised, which would have separate legal personality, i.e. a separate seal, that were never constituted and as such never functioned.

Conclusions;

Although the right for restitution and compensation was generally defined in the law, followed by the amount of compensation or the price provided by law, with the relevant above-mentioned limitations, the procedure of compensation was unclear leading to incomplete decisions and impeding their execution.

GENERAL CONCLUSIONS ON THE LAW OF '93 AND ITS RELATED LAWS AND BYLAWS.

Definition,

The Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and all the amendments on this law, even where there were frequent changes in the years 1993-95, never changed the definition of agricultural land and plot of land for effect of the law on restitution and compensation of property. They always have been

related to the moment of expropriation. In any case, there never was a definition which violated the compensation according to the cadastral entry of the land at the time of expropriation, rather the opposite happens, the law explicitly stipulates that any classification in a particular cadastral entry will be linked to the time of expropriation. This distinction made by the law was mainly to determine the regulatory framework.

Limitations,

Law No. 7698 dated 15.04.1993 "On restitution and compensation of property" and all the amendments on this law, granted ***limited rights on the restitution and compensation***. For the plot of land ***a maximum of 10,000 m2 and for agriculture land 15 ha, as full restitution or compensation*** and for each limitation, in the cases where a grater surface will be restituted or compensated. The limitation included a limit in the restitution and compensation and also a proportional compensation in a specific percentage that decreased with the increasing of the surface entitled for compensation. The price was to be set by a separate law.

Amount,

Law no. 7699, dated 21.04.1993 "On compensation in value of the former owners of agricultural land" and provisions related to the amount of compensation of agricultural land, granted ***limited rights on the amount of compensation***. They made a connection between the quality (and as derivation) on the value of the land to be compensated and the amount of compensation. This law included a limit in the amount of compensation and also a proportional compensation that decreased with the increasing of the surface entitled for compensation.

Procedure,

Although the right for restitution and compensation was generally defined in the law, followed by the amount of compensation or the price provided by law, with the relevant above-mentioned limitations, the procedure of compensation was unclear leading to incomplete decisions which in turn impeded their execution.

5. *Law No. 9235, dated 29.07.2004 "On restitution and compensation of property".*

The Law No. 9235, dated 29.07.2004 "On restitution and compensation of property" and all the amendments on this law does not give a new definition to this point on the concept of agricultural, plot and non-agricultural land, but in its Article 22 has expanded the object of the law adding to the surfaces to be restituted for the plots of land, and has allowing the restitution of agricultural lands (to a maximum of 100 ha), forests, pastures, meadows and unproductive lands.

The Law No. 9235, dated 29.07.2004 "On restitution and compensation of property" provided for two forms of restitution of immovable property, namely "the restitution" and "compensation" in the event of the authorities were unable to restitute the property. Restitution was not limited in size. The Law in article 11 provided five forms of compensation:

(a) property of the same kind;
(b) property of any other kind;
(c) shares in State-owned companies;
(d) the value of a State-owned property in the course of privatization, and
(e) a sum of money corresponding to the value attributed to the property at the time of the decision.

Law No. 9235, dated 29.07.2004 "On restitution and compensation of property" and all the amendments on this law do not make a distinction that can influence the assessment of the new formula, but we can conclude that the legislator is considering for example in paragraph (a) property of the same kind, meaning of the kind of the one that was expropriated. On the other hand the legislator relates the amount of money in paragraph (e) with the time of the decision for the recognition of the right. Considering that the process of issuing decisions was prolonged in Albania from 1993 and will go one for another 3 yeas period after the approval of the new law, the value of the land goes up day by day, the government concluded that this method of compensation departing from the date of the decision is unfair and do not treat equally all the former owners. In response to this problem, the Government choses to apply a formula based on the moment of the expropriation, in order to treat the entire group of applicants subject to the law in the same manner.

There is also a clear need to address the differences that are created by the application of deferent methods of compensation as a difference in values. A formula that treats all the subjects of the law with the same manner of calculation, despite the method of compensation was a necessity and is today a reality.

Conclusions;

Law No. 9235, dated 29.07.2004 "On restitution and compensation of property" and all the amendments on this law do not make a clear distinction on the definition of the border line as the old law, but there are elements that can help the assessment of the new formula. We can conclude that the legislator is considering for compensation as *per* example in paragraph (a) property of the same kind, ***meaning of the kind of the one that was expropriated***. *The financial compensation provided in the 2004 Law, related to the to the value attributed to the property at the time of the decision, is discriminatory*, due to the fact that it reserves different treatment in the amount of money for different applicants. These differences are not justified when it is clear that the time of the decision extends into 25 years and this is to be attributed to the authorities that delayed the process.

6. *Definition of compensation and the other terms, by Law No. 9235, dated 29.07.2004 "On restitution and compensation of property"*

The new **Law no. 9235, dated 29.07.2004** "On restitution and compensation of property" provides the compensation process in Articles 11, 12, 13 and Article 23 which deals separately with the financial compensation, which has been applied for the last years. Article 28 of the law provides the compensation in nature, which has not yet been applied to any extent.

"***Compensation***" *– means just satisfaction, according to the market value at the moment of the recognition of this remuneration, done in accordance with this law*;

"***Property***" *- means an immovable item as defined in the Civil Code;*

"***Expropriated subject***" *- means natural or juridical persons or their heirs whose property is nationalized, expropriated, confiscated or taken in any other unjust manner by the state*;

"***Plot of land***" *- means land that is located inside the border-line of cities and inhabited zones at the moment this law enters into force. When the inhabited zone does not have a border line, the building site will be considered the surface area occupied by the construction built on it and the functional yard. The surface of this yard is calculated as three times the surface of the construction, but not more than 500 square meters*.

"***Industrial plot of land***" *is the land surface area which is located out of the bordering lines of the cities and inhabited areas on which permanent buildings have been constructed for economic purposes or serving for such function*.

By **Decision No. 183, dated 28.04.2005**, the Parliament adopted the methodology of assessment of immovable property that is compensated and the one that will be used for compensation. On the basis of this methodology under section 5 of the above decision is drawn the property value map, which is updated regularly each year.

The Property Value Map was created by the Government to serve as the basis for the evaluation of real estate for the purpose of restitution and compensation and for any further evaluation on property. E.g. expropriation for public interest, legalization process etc. The methodology of this map is based on the classification of property based on its use. E.g. plot of land, agricultural land, meadow, pasture, fruitless land, etc.

Regarding the application of this methodology we mentioned in the first part of this document that this methodology was applied only in 770 cases and that was a partial compensation.

On the other hand the legislator, in the 2004 Law, relates the amount of money in paragraph (e) with the time of the decision for the recognition of the right. Considering that the process of issuing decisions prolonged in Albania from 1993 and will go one for another 3 yeas period after the approval of the new law (meaning for

at least 25 years), the value of the land grows each following day, the Government concluded that this method of compensation starting from the date of the decision is unfair and does not treat equally all the former owners. *In response to this problem the Government choses to apply a formula that starts from the moment of the expropriation, in order to treat the entire group of applicants subject to the law in the same manner*.

The 2004 Law does not solve definitively the property compensation process, and therefore the Court of Strasbourg in a group of decisions included in the Driza Group of Cases culminating with the pilot judgment of Manushaqe Puto requested the Albanian Government to undertake a series of measures and the implementation of an effective mechanism for the compensation and restitution of property in the Republic of Albania.

Following the decision of the Court, the Albanian Government in March 2014, presented to the Committee of Ministers of the CoE an action plan for solving the problems expressed in the pilot judgment of Manushaqe Puto. This action plan clearly provides that the Government intends to change the law on restitution and compensation of property through the creation of a compensation mechanism that establishes a fair balance between the rights of former owners for compensation and the public interest.

In this respect the Albanian Constitutional Court and the Strasbourg Court have determined that the Government has a wide margin of appreciation.

Today the Albanian Government prepared a draft-law addressing all the issues raised by the Court in Manushaqe Puto pilot judgment, including a fair and simple formula, a clear mechanism, financial guaranties provided on the law and also guaranties on the procedure.

Conclusions;

By these definitions of the Law No. 9235, dated 29.07.2004 "On restitution and compensation of property" **has been aroused problems affecting the principle of just satisfaction and equality**.
In response to this problem the Government choses to apply a formula that starts from the moment of the expropriation, in order to treat the entire group of applicants subject to the law in the same manner.

7. Principles set by the Constitutional Court of Albania.

Firstly, this legal opinion aims to specify the rights former owners enjoy today for compensation and especially the part related to the financial burden for the state and society, the amount of compensation.

The new formula presented by the Albanian Government in simple words provides that the right of compensation of property of former owners is related to what was alienated as a consequence of the unfair actions of nationalization. Of course, the fair indexing of the value of the property at the time of its nationalization is a rightful claim. (***Basically the price that will be paid is equal to the one that will be paid today if the owner, with the same characteristic of the land, would have been expropriated***.)

The above analysis of the legislation allows us to understand that the approach of the legislation at the time has been to compensate or to remedy the injustice committed against these former owners.

The new formula of compensation, unlike most countries in Eastern Europe, aims to reward the full value of the property, based at the same time, not only on the right of ownership, according to civil law principles, but also on the just satisfaction under the standards of the Convention.

The fundamental problem that identifies the singularity of this formula is that ex-owners, in general, should be compensated for the kind of land that was expropriated from them. For example if the expropriated property was agricultural land, then the value of the property should be calculated pursuant to the value of agricultural land, etc.

The right to property, in the constitutional sense and the rules of international law, is not identified with the complete restitution of property seized by totalitarian regimes. The process of restitution and compensation in the post-communist transition countries, as much as it is based on the right of property, it is based on the principle of fairness and justice and, moreover, the principle of the social state. It is practice for all countries that are faced with the same phenomenon to generally adhere to this attitude.

The right to property is not completely closely identified with the right of restitution and / or its compensation. This is also the meaning of Article 1 of Protocol No. 1 of the European Convention on Human Rights, which **protects only existing possessions of a person** and does not guarantee the right to acquire holdings.

The Albanian Constitutional Court has issued several decisions on the issue and some of their conclusions are;

The Constitutional Court in decision no. 30/2005 estimated that *"The principle of justice requires to take into consideration not only the interests of the former owners*

and their heirs (expropriated subjects), but also those of other members of society as well as the public interest in general. Thus, the principle of justice and proportionality does not require the return of property rights for all former owners or their heirs ***or compensate them in full value****".* {Decision no. .2002-12-01 dated 25.03.2003 of the Constitutional Court of Latvia}

The Constitutional Court held in decision no. 27, dated 26.10.2010 that: "*... The application of a person before the restitution and compensation institutions ... is a subjective right and not a legitimate interest, in the sense of Article 32 of the Code of Civil Procedure. This means, in turn, that the decisions of the CRCP disposed directly on subjective rights, which are exclusive to certain holders and not of the citizens or the general public, such as public interests. This fact can be ascertained by the court as the right of a person to be recognized as the owner of an item is regulated by the Civil Code, the court therefore finds that are outside the scope of public law which regulates the actions of state bodies in protection of the public interests. ... Decisions of administrative bodies, which had jurisdiction in property restitution and compensation, in years, can not be considered administrative acts, in the normal legal sense of the term (strictu sensu), but "sui generis" acts issued by a "sui generis" body, to which the European Court of Human Rights has used the new lexical term, quasi court. ..... ".*

The Constitutional Court in decision no. 2/2013 reaffirms that: The principle of legal certainty guarantees the predictability of normative system. The implementation of legal norms serves not only solving a potential conflict or regulation of a previously unregulated situation. This process should create the impression on the subjects of law that the content of the legal norms provides security and stability for the future. Legal certainty is dealt with as a condition of material validity of an act, guaranteeing immutability of the principle of normative acts, where the attention is given to the remedy of situations without substantial changes in the continuum, because otherwise it will place the subjects of law in an unpleasant and unfavorable position. (*See decisions No.26 / 2005, No.10 / 2008; No 33/2010 of the Constitutional Court*).

Conclusions,

The principles outlined by the Constitutional Court, underline that the right to property, in the constitutional sense and the rules of international law, is not identified with the complete restitution of property. The process of restitution and compensation in the post-communist transition countries, as much as it is based on the right of property, it is based on the principle of fairness and justice and, moreover, the principle of the welfare state.

8. Principals set out by the European Court of Human Rights on the property rights.

The case law of the European Court of Human Rights on these issues adhere to the position that "***the hope of recognition of the survival of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession***" (Prince Hans-Adam II of Liechtenstein v Germany, decision of 12/07/2001, Grand Chamber, application No. 42527/98, par.83)

Article 1 protocol 1 of the European Convention guarantees to everyone the right of peaceful enjoyment of property, and therefore applies only to the person's existing property.
In terms of the provisions of the European Convention on Human Rights, ***property for the purposes of implementation of legislation for recognition, restitution and / or compensation, is considered what has been restituted as administratively and judicially, in a final manner***. Only following these procedures, any intervention that unjustly affects property gives rise to the claim for the implementation of Article 1 of Protocol 1 of the European Convention on Human Rights.

The ECtHR examined cases from deferent ex-communist countries and set out principles regarding this process in **KOPECKY V. SLOVAKIA PARAGRAPH 35**

B. The Court's assessment
1. Recapitulation of the relevant principles
35. The following relevant principles have been established by the practice of the Convention institutions under Article 1 of Protocol No. 1.
(a) ***Deprivation of ownership or of another right in rem is in principle an instantaneous act*** and does not produce a continuing situation of "deprivation of a right" (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, with further references).
(b) ***Article 1 of Protocol No. 1 does not guarantee the right to acquire property*** (see *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, p. 23, § 48, and *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II).
(c) ***An applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions related to his "possessions" within the meaning of this provision***. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. *By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1*, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82-83, ECHR 2001-VIII, and *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, ECHR 2002-

VII).

(d) Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003).

In particular, the Contracting States enjoy a wide margin of appreciation with regard to the exclusion of certain categories of former owners from such entitlement. Where categories of owners are excluded in this way, their claims for restitution cannot provide the basis for a "legitimate expectation" attracting the protection of Article 1 of Protocol No. 1 (see, among other authorities, *Gratzinger and Gratzingerova*, cited above, §§ 70-74).

On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, ***such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement***. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see *Broniowski v. Poland* [GC], no. 31443/96, § 125, ECHR 2004-V).

In applying those principles in the Albanian cases the Court finds in **VRIONI AND OTHERS V. ALBANIA (no 35720/04)**

54. The right of access to a tribunal guaranteed by Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed ***a final, binding judicial decision to remain inoperative to the detriment of one party***. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see, *inter alia*, *Beshiri and Others*, cited above, § 60).

55. The Convention cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they had ratified the Convention (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, and *von Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V). ***Nor is there any general obligation under the Convention to establish legal procedures in which restitution of property may be sought. However, once a Contracting State decides to establish legal procedures of such a kind, it cannot be exempted from the obligation to honor all relevant guarantees provided for by the Convention, in particular in Article 6 § 1***.

56. The Court recalls its finding in paragraph 38 above. The Supreme Court's judgment of 15 June 2004, which upheld the Court of Appeal's judgment of 29 October 2002, can be interpreted as ordering the authorities to offer the applicants a

form of compensation which would indemnify them in lieu of the restitution of their original property.

57. The Court observes that following the delivery of the judgment in 2004 the authorities failed to offer the applicants the option of obtaining appropriate compensation (contrast *Užkurėlienė and Others v. Lithuania*, no. 62988/00, § 36, 7 April 2005). Thus, the applicants did not even have the possibility of considering an offer of compensation in lieu of the restitution of the property that had previously been allocated to them (see *Driza*, cited above, § 90.)

58. Moreover, the Government have not provided any explanation as to why the judgment of 15 June 2004 has still not been enforced more than five years after it was delivered. It does not appear that the administrative authorities have taken any measures to execute the judgment.

59. Consequently, the Court considers that the problem persists and remains unresolved, notwithstanding the indications it gave in *Beshiri and Others* that "in the execution of judgments in which the State was ordered to make a payment, a person who had obtained a judgment debt against the State should not be required to bring enforcement proceedings in order to recover the sum due" (see § 108).

60. The foregoing considerations are sufficient to enable the Court to conclude that, by failing to take the necessary measures to comply with the judgment of 15 June 2004, the Albanian authorities deprived the provisions of Article 6 § 1 of the Convention of all useful effect.

61. There has accordingly been a violation of Article 6 § 1 of the Convention in this respect

Conclusion;

In examining the Albanian cases the ECtHR repeated the principles set out in Kopency and in Vrioni finds out;

Deprivation of ownership or of another right in rem is in principle an instantaneous act, and happened in Albanian in mostly in 1945 during the agrarian reform**.**

….***By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1,*** meaning that the ex-owners in Albania can not claim property rights over the land or the property expropriated**.**

…. such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement, meaning that the decisions and the legislation adopted to address this issue is the one that entitle the subjects to the law to claim a property right.

9. ***Principals set out by the European Court of Human Rights on the amount of compensation.***

Some very important conclusions are set out even in the comparative analyses that the Court made in Maria Atanasiu and Others v. Romania.

Taking into consideration the estimates provided by the ECtHR in the pilot judgment Maria Atanasiu and others v. Romania, *it is evidenced that for the purpose of orientation in solving cases which present the same problems in the restitution and compensation of property, the court has made a comparative analysis of legislation concerning the restitution and compensation of property nationalized before 1989 in Central and Eastern Europe and has concluded that: "Most of the countries in question restrict the right of restitution or compensation for certain categories of property or applicants. In some countries legislation establishes deadlines, sometimes very short, for filing of applications ..... Some countries offer various forms of restitution and / or compensation through the so-called laws of a "restitution": this is the case in Albania, Bulgaria, Lithuania and "the former Yugoslav Republic of Macedonia". Other countries have addressed the issue of restitution under the laws of rehabilitation (Czech Republic, Germany, Moldova, Russia, Slovakia and Ukraine). Finally, the issue is addressed, also in property legislation (Bulgaria, Czech Republic, Estonia, Germany and Slovenia).*

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

…The institutions responsible for deciding on claims for restitution or compensation can be judicial or administrative bodies. The most common settings determine bodies (panels) specific for restitution and compensation (Albania, Bulgaria, Moldova and Montenegro), administrative bodies (Lithuania), Ministry of Finance or Justice, or the courts (Czech Republic). In all countries surveyed, the decisions of administrative bodies can be appealed before the civil or administrative courts.

The ECHR, in the case "Maria Atanasiu and others v. Romania", on the subtitle "Forms of compensation and restrictions thereon" highlighted:

"101. A number of countries have opted to provide compensation in the form of another property equivalent to that which was nationalized or confiscated (Albania, Bulgaria, Germany, Montenegro and "the former Yugoslav Republic of Macedonia").
102. Where no exchange is possible the legislation allows the person concerned to be provided with a property of a different kind, a sum of money, compensation vouchers (Bulgaria and Hungary), State securities or bonds (Slovenia and "the former Yugoslav Republic of Macedonia") or shares in a public company (Albania and Bulgaria).
103. The amount of compensation is calculated mainly by reference to the market value of the property at the time of the restitution or compensation decision (Albania, Lithuania, Moldova, Montenegro, Poland and Serbia) or at the time the property was

confiscated ("the former Yugoslav Republic of Macedonia"), or as otherwise provided by law.
104. Some countries take account of other considerations in addition to the market price. In Albania, when compensation is provided in the form of shares the amount is equal to the value of the property at the time of the decision or the value of the privatized public property.
105. Other factors may also be taken into consideration in determining the amount of compensation. In Germany, for instance, account is taken of the value of the property before expropriation, which is then multiplied by a coefficient laid down by law.
106. In some countries the legislation sets a cap on compensation (Germany, Russia and Ukraine), or provides for payment in instalments (Moldova)."

Conclusion,

The legislations set out in different countries consider the restitution and compensation of the property nationalized as subject to different restrictions guided by the public interests. This restrictions were considered by the Court as in compliance with article 1 protocol 1 of the Convention.

9. ***The formula proposed in the new draft law.***

The Compensation formula constructed by the Government is built on this principle:

Compensation for the rights of former owners in the market value but with the characteristic of the land expropriated (the former owners of property is compensated the property that has been expropriated in the same amount as it would have been expropriated today, E.g. 50 hectares of previously expropriated agricultural land are given the same value as 50 hectares of agricultural land in the same area or the closest area to the location of the property).

According to the analysis conducted on the legislation, over the years we have noticed that such an attitude was held by the legislation. E.g. while the former owner was restituted the expropriated apartment, the value of the improvements on the item would be paid by the latter, while the value of the land for compensation has always been linked with the purpose it had at the time of expropriation.

The application of compensation *at market value of the land at the time of compensation* (*not at the time of recognition of the right as per law defined*) is a methodology which is followed by the ARCP in what was called transitional compensation scheme which was considered by the Court, as one that does not meet the criteria for an effective mechanism for the execution of decisions on recognition of the right of property compensation.

Since this scheme has never been fully implemented, but in only ***partially*** in ≈ 700 cases out of ≈ 26,000 decisions that are to be executed, the Government has the possibility to apply the new compensation formula in all cases, treating them equally.

Conclusion,

In examining the Albanian cases the ECtHR repeated the principles set out in Kopency and in Vrioni finds out;

Deprivation of ownership or of another right in rem is in principle an instantaneous act, and happened in Albanian in mostly in 1945 during the agrarian reform**.**

….***By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1,*** meaning that the ex-owners in Albania can not claim property rights over the land or the property expropriated**.**

…. such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement, meaning that the decisions and the legislation adopted to address this issue is the one that entitle the subjects to the law to claim a property right.

The legislations set out in different countries consider the restitution and compensation of the property nationalized as subject to different restrictions guided by the public interests. This restrictions were considered by the Court as in compliance with article 1 protocol 1 of the Convention.

The compensation formula proposed in the new draft law aims to compensate the former owners based on the market value of the property with the characteristic of the expropriated property, creating in this manner a simple and predictable formula that treats all the subjects of the law in the same manner, starting from a common starting point, the value of the property at the time of expropriation, and awarding them an amount of money equal to the value of that property today.

The Albanian Government trust that this formula and all the guaranties provided in the law, address all the Court's concerns expressed in the Manushaqe Puto pilot judgment creating as a result an effective mechanism to enforce all the administrative and judicial decision.