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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 nationalised¹ during the Communist era in Albania. The first judgment on this subject dates from 2006². 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 problems³.

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 order⁴. 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 Court⁶, 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 *Manushaqe Puto and others*, the European Court has repeatedly called upon the Albanian authorities to urgently introduce an effective, compensatory remedy at the domestic level⁷.

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 2015⁸ the Ministry of Finance advised that, in the execution of the European Court’s judgments on

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 budget⁹.

6. Given the fiscal risk persisting for Albania, the International Monetary Fund¹⁰, the World Bank¹¹, as well as the Council of the European Union and the European Commission¹² 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, focussing 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 plan¹³ 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 decisions¹⁴;
 - 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 kind¹⁵.

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 property¹⁶;
- 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 decisions¹⁷.

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 completed¹⁸.

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 force¹⁹.

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 method²⁰.

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 mechanism²¹;
- 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 interests²².

18. These measures were implemented as follows:

19. The law extending the ARCP operation time was adopted as planned in May 2014²³. 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 plan²⁴.

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 map²⁵. 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.

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](#).

b) 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 institutions²⁶;
- 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 follows²⁷:

- 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 forms²⁸ and necessary documentation²⁹, some detailed rules on sanctions for non-cooperative state institutions and on charges for the procedure³⁰. More substantial secondary legislation is foreseen for the organisation and structure of the new Agency³¹, rules and procedures for compensation in kind³², as well as the eligibility requirements for unhandled applications³³. 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.

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.

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 foreseen³⁴. 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

²⁸ Article 27.2.

²⁹ Article 16.3.

³⁰ Article 25.4 and 6.

³¹ Articles 25.5 and 34.3.

³² Article 14.4.

³³ Article 27.2.

³⁴ See, for example, Article 21 on the right of first refusal.

decisions³⁵ 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 compensation³⁶. 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.

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 detail³⁷. 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 force³⁸. 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.

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 prohibited³⁹. 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.

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 interest⁴⁰ 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.

³⁵ Article 16.3.

³⁶ See Article 11.5.

³⁷ See Article 16.1 on publication of a register of final decisions and of the information on missing documentation in the relevant files; Article 11.2 on publication of a list of entities that benefit from the property compensation fund in the respective period and Article 18.2 on publication of decisions of the Agency.

³⁸ Article 34.2.

³⁹ Article 26.1.

⁴⁰ *i.e.* representatives of associations of expropriated subjects and of the civil society, experts, international organizations, state institutions.

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 land⁴¹.

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-limit⁴². 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 Rights⁴³.

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 law⁴⁴.

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 yet⁴⁵. 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.

b) Means of compensation

42. The new compensation scheme, to be introduced by the draft law, appears to foresee in the first place financial compensation⁴⁶. A substantial part of the law deals with the method of calculation of the amount of compensation or outstanding compensation⁴⁷. 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 owners⁴⁸.

43. At the same time, it appears, however, to be undermined by the provision on the evaluation methodology⁴⁹ which indicates that the financial assessment is made:

- a. through compensation in kind in the recognised property⁵⁰, if possible"
- b. through financial compensation

⁴¹ Article 1.

⁴² Article 3.

⁴³ Article 3.

⁴⁴ Article 4.

⁴⁵ See statistical data submitted by the Albanian government and included in the annex to the *Manushaqe Puto* judgment, quoted above.

⁴⁶ *Mutatis mutandis* Article 6.

⁴⁷ Some beneficiaries of final decisions have already obtained a partial restitution.

⁴⁸ Article 6.5.

⁴⁹ Article 7.

⁵⁰ i.e. restitution

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.

c) 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.

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 categorisation at the time of expropriation. This solution departs from the current practice of the domestic courts and the method of calculation of

⁵¹ Article 7.a-c.

⁵² Article 19.

⁵³ Article 13.

⁵⁴ Article 6.1 and 6.7.

⁵⁵ Article 6.6.

⁵⁶ Article 8.3-4.

⁵⁷ Article 6.10.

pecuniary damage applied by the European Court in its judgments (i.a. Vroni⁵⁸ or Bushati⁵⁹).

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.

d) 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 fund⁶¹.

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 law⁶². Agricultural land may be restituted up to 100ha⁶³.

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 far⁶⁴.

53. Furthermore, in case of the unhandled claims, the former owners can be compensated in kind in land located within touristic areas⁶⁵ or in other state-owned or state-administered property⁶⁶.

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.

e) 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 route⁶⁷.

⁵⁸ *Vroni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, 29 September 2009.

⁵⁹ *Bushati and Others v. Albania*, no. 6397/04, 8 December 2009.

⁶⁰ Article 7.a.

⁶¹ Article 7.c.

⁶² *Mutatis mutandis* Article 24.

⁶³ Article 20.1.

⁶⁴ See Article 19.

⁶⁵ Article 20.5.

⁶⁶ Article 20.6.

⁶⁷ Article 17.

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 illegally⁶⁸.

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 compensation⁷⁰.

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 compensation⁷¹.

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.

f) 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 Properties⁷². 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 records⁷³.

⁶⁸ Silvana Dode, *The Crucial Issues about the Legalization Legislation on Illegal Constructions in Albania. What Can We Learn from the Balcanic Experience?* Mediterranean Journal of Social Sciences, MCSER Publishing, Rome-Italy, Vol.5 No.22.

⁶⁹ Article 23.

⁷⁰ Article 23.2.

⁷¹ Article 21.

⁷² Article 25.

⁷³ Article 25.1.c-d).

62. The Agency shall coordinate its activity with various state institutions⁷⁴. 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 fund⁷⁵. It shall collaborate with the institutions which administer state-owned or public property⁷⁶.

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 Ministers⁷⁷.

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 structure⁷⁸.

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.

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 law⁷⁹. 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 rejected⁸⁰.

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 law⁸¹.

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.

⁷⁴ The Immovable Property Registration Office, the Agency for the Legalization and Urban Planning of Informal Areas and Buildings, the Directorate of Management of Public Property, the State Advocate Office, the State Authority for Geospatial Information (ASIG) and any other state institution whose activity is relevant to, or is responsible for this process.

⁷⁵ Article 25.3.

⁷⁶ Article 25.4.

⁷⁷ Articles 25.4, 25.5 and 34.3.

⁷⁸ Article 30.2.

⁷⁹ Article 26.1.

⁸⁰ Article 26.3.

⁸¹ Article 32.

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.

iii. Evaluation of claims for which a decision already exists⁸²

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 Agency⁸³.

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 category⁸⁴.

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 assessment⁸⁵.

72. Decisions given earlier shall be treated with priority and the assessment shall start chronologically from the older to the most recent final decisions⁸⁶.

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.

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 Albania⁸⁷.

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 Agency⁸⁸.

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.

⁸² Earlier decisions could have been given on the basis of the law of 2004 "On restitution and compensation of property" or the law of 1993 "on financial compensation or physical compensation of former owners of agricultural lands, meadows, pastures, forest land and forests".

⁸³ Article 16.1-3.

⁸⁴ Article 16.4.

⁸⁵ Article 15.1-2.

⁸⁶ Article 15.3.

⁸⁷ Article 25.1.

⁸⁸ Article 29.4.

⁸⁹ Article 18.2.

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 value⁹⁰.

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.

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 Finance⁹¹. 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 deductions⁹².

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 suppress the effect of the above exemption and that the enforcement of a final decision would not be subject to fees.

vii. Enforcement of the decisions

80. The compensation of subjects begins immediately after the decision becomes final⁹³.

81. The Agency or any interested party addresses the final decision to the Immovable Property Registration Office for registration⁹⁴.

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 purpose⁹⁵. 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 Agency⁹⁶.

83. The Agency publishes a list of entities that benefit from the property compensation fund in the respective period⁹⁷.

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 law⁹⁸.

⁹⁰ Article 28.

⁹¹ Article 27.5.

⁹² Article 16.7.

⁹³ It means, after expiry of the 30-day time-limit to lodge an appeal or when the interested parties declare that they will not appeal, or in cases of appeal, the review in the courts of all levels including through the High Court has been concluded.

⁹⁴ Article 29.1.

⁹⁵ Article 11.4.

⁹⁶ Article 11.5.

⁹⁷ Article 11.2.

⁹⁸ Article 16.6.

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 compensation⁹⁹.

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.

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 compensated¹⁰¹.

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 income¹⁰².

88. The Fund is managed by the Agency and is subject to the same procedures as the State budget¹⁰³.

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 property¹⁰⁴.

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 auctions¹⁰⁵. If such auctions fail twice for a property, a public auction of the land takes place¹⁰⁶. In any case, the Agency shall not sell the property for a price lower than that on the land value map¹⁰⁷. Shall the land not be sold in that public auction either, it is made available for compensation in kind¹⁰⁸ and used for physical compensation for entities holding a final

⁹⁹ Article 6.11.

¹⁰⁰ Article 9.

¹⁰¹ Article 12.1.

¹⁰² Article 10.3.

¹⁰³ Article 10.1.

¹⁰⁴ Article 11.1.

¹⁰⁵ Article 13.1.

¹⁰⁶ Article 13.3.

¹⁰⁷ Article 13.3.

¹⁰⁸ Article 14.1.

compensation decision. For that purpose the real property shall be published for a 45-day period and awarded to the beneficiary subject who has applied¹⁰⁹.

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).

¹⁰⁹ Article 14.2.

Appendix I - Overview of the Execution Process

a) From 2007 until the pilot judgment

1. Since the adoption of the judgment in the Driza group of cases in 2007, the authorities have submitted several action plans¹¹⁰. Evaluating those plans in 2010, the Committee welcomed the then presented legislative changes and the introduction of a private bailiff system. However, it noted that measures crucial for the implementation of the proposed solutions in practice were not in place¹¹¹. In 2011, the Committee urged the authorities to simplify and clarify the procedure which would be followed to calculate the overall cost of the compensation process and to provide a provisional calendar for the envisaged measures. The Committee repeatedly highlighted the need to introduce an effective domestic remedy.

2. Further plans¹¹² were submitted but there was no concrete progress and in June 2012, the Committee of Ministers insisted on the necessity for the Albanian authorities to make rapidly concrete progress. The Committee indicated measures which it considered crucial to break out of the apparent deadlock. Namely, to:

- establish a list of final decisions,
- finalise the land value map,
- and then, on the basis of these elements, calculate the cost of the execution of the decisions, in order to be able to define the resources needed, adopt the final execution mechanism, and execute - of their own motion - the decisions at issue¹¹³.

b) Pilot judgment

3. On 31 July 2012, having regard to the persistent ineffectiveness of the existing compensation mechanism and lack of progress, as well as the need to urgently grant the applicants appropriate and rapid damages at the national level, the Court considered it necessary to apply the **pilot judgment** procedure in the case of *Manushaqe Puto and others*¹¹⁴ and set a deadline for the Albanian authorities to put in place an effective compensation mechanism. The Court indicated the measures that it deemed appropriate to remedy the systemic problem identified. Building on the Committee of Ministers' conclusions, it considered that the authorities should:

- avoid frequent changes of the legislation in the field and carefully examine all legal and financial implications before introducing further modifications¹¹⁵;
- compile a database of overall number of administrative decisions recognising property rights and awarding compensation, as appropriate (...), and on this basis estimate the global compensation bill¹¹⁶.
- the compilation of a database and the estimation of the global compensation bill should be accompanied by a carefully devised and clear compensation scheme¹¹⁷,
- the solutions should be subjected to wide public discussions in order to garner broad understanding about the level of compensation that the State is expected to realistically pay and about the different forms of compensation¹¹⁸.
- the chosen compensation scheme should be free of cumbersome compliance procedures (...) and take into account the principles of the Court's case-law concerning the application of Article 6 § 1 and Article 1 of Protocol No. 1¹¹⁹.

4. The Court held that measures capable of affording adequate redress to all persons affected by the compensation legislation would have to be adopted within 18 months from the date on which the pilot

¹¹⁰ See, in particular, decisions of the CM adopted at their 1086th DH meeting, 3/06/2010; 1100th DH meeting, 2/12/2010; 1115th DH meeting 8/06/2011. See also the two memoranda (CM/Inf/DH(2010)20 et CM/Inf/DH(2011)36), evaluating the relevant measures proposed respectively the Albanian authorities.

¹¹¹ The In-kind Compensation Fund was not operational and the registration process of immovable property not concluded.

¹¹² On 27 June 2012, the authorities adopted a National Cross Cutting Strategy (2012-2017)¹¹² concerning not only the execution of final decisions ordering the restitution of nationalised properties or the payment of compensation, but also more general questions regarding property rights.

¹¹³ See the decision of the Committee of Ministers adopted at its 1144th meeting 1144 decision in Driza group of cases

¹¹⁴ *Manushaqe Puto and Others v. Albania*, nos. 604/07, 43628/07, 46684/07 and 34770/09, judgment of 31 July 2012.

¹¹⁵ *Ibidem*, par. 110.

¹¹⁶ *Ibidem*, par. 111. The Court underlined that the existence of precise data, which should also reflect modifications made by way of judicial review, would enable the authorities to calculate and track the overall compensation bill as well as the financial implications of the compensation mechanism

¹¹⁷ *Ibidem*, par. 112.

¹¹⁸ *Ibidem*, par. 118.

¹¹⁹ Par. 112.

judgment became final, that is by **17 June 2014**. The Court adjourned for that same period its examination of any new applications stemming from the same general problem, however, reserved its right to examine at any moment all registered cases.

1) Implementing the Action plan

5. Following the pilot judgment, the Committee repeatedly called on the Albanian authorities to take rapidly all necessary measures, without further delay¹²⁰. However, by 2013 only one of the measures identified as essential by the Committee and the Court had been adopted: the finalisation of the land valuation map. Incomplete lists of decisions had been compiled, but the Committee had not received any precise information on the number of final administrative decisions to execute, the cost of the execution of all relevant decisions, the resources required; information which was indispensable for adopting a final and viable execution mechanism.

6. In June 2013¹²¹ the Committee adopted an interim resolution¹²² to stimulate the national execution process. It “called on the Albanian authorities, at the highest level, to attach the highest priority to the preparation of an Action plan capable of establishing, within the deadline set by the Court, an effective compensation mechanism, which would take account of the measures already identified with the support of the Committee”.

7. Following parliamentary elections in Albania, in December 2013 the Deputy Minister of Justice assured the Committee of the political will and the commitment of the newly elected Government to adopt all necessary measures to set a compensation mechanism as required by the Court¹²³. A working group comprised of, *inter alia*, deputy ministers of all relevant ministries, including finance, economy, administration and agriculture, was established with a mandate to prepare a draft Action plan by 31 January 2014¹²⁴.

8. On 13-14 February 2014 consultations took place in Tirana between the authorities and the Department for the Execution of the judgments of the European Court to address the proposals made by the working group and on 24 February 2014 the authorities submitted their draft Action plan to the Committee¹²⁵. It was officially adopted by the Albanian Council of Ministers on 24 April 2014 and obtained a legally binding force.

9. The Action plan was the first detailed document submitted by the Albanian authorities presenting a clear vision and strategy for setting up an effective compensation mechanism within a specific deadline. The adoption of measures in this area became a key priority for the newly elected Government, and a monitoring mechanism reporting directly to the Prime Minister was created to ensure its implementation.

10. The Action plan has as its main objective the creation of a new, effective mechanism for those whose property was nationalised under the communist regime and who have been awarded a final decision recognising their right to the property, to be established by June 2015. The main steps to achieve the establishment of the mechanism correspond to those identified as essential by the Committee and the Court, which are:

- measures intended to calculate the final bill,
- analysis of the legislation in the field of property rights,
- adoption of the compensation mechanism.

The Action plan specifies the deadlines for implementation of each measure and the respective institutions in charge of their fulfilment.

11. Evaluating the Action plan at its meeting in March 2014¹²⁶, the Committee regretted that the deadline fixed by the *Manushaque Puto* pilot judgment would not be met. It noted, however, with satisfaction that the new government had set the issue amongst the priorities to be followed at the highest level. It urged the authorities to follow the political commitment with concrete and substantial actions at the domestic level, and strongly encouraged them to keep the Committee updated on the progress achieved. In view of the overall deadline foreseen for the implementation of this mechanism, it also strongly encouraged the authorities to intensify their efforts with a view to reducing this time-frame as much as possible.

¹²⁰ See, in particular decisions adopted by the Committee of Ministers at its 1150th, 1157th, 1164th meetings.

¹²¹ 1172nd CM DH meeting.

¹²² [CM/ResDH\(2013\)115](#)

¹²³ See the decision adopted by the Committee of Ministers at its 1186th meeting ([1186 decisions DRIZA group of cases](#)).

¹²⁴ [DH-DD\(2014\)98](#).

¹²⁵ See the presentation of the Action plan submitted by the authorities for the CM DH meeting in March 2014 [DH-DD\(2014\)365](#).

¹²⁶ See decision adopted at the 1163rd CM DH meeting.