

## Horizontal Facility for Western Balkans and Turkey

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# Establishing an Effective Mechanism to Compensate and Restitute Expropriated Property

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## INTRODUCTION

1. This report is concerned with the effectiveness of Law no. 133/2015 “*On the treatment of property and finalization of the process of compensation of property*” (“the 2015 Property Act”) and the accompanying implementation arrangements in giving effect to Albania’s obligations under the European Convention on Human Rights (“the European Convention”).
2. The importance of this issue stems from the adoption of the pilot judgment of the European Court of Human Rights (“the European Court”) in *Manushaqe Puto and Others v. Albania*<sup>1</sup> (“the *Puto* judgment”), which dealt with violations of the European Convention resulting from the non-enforcement of domestic court rulings requiring the payment to the applicants of compensation *in lieu* of the restitution of property that had been expropriated between 1944 and 1978, although 1945 was the material date when this occurred in most cases. These violations related to the rights to a fair trial, to an effective remedy and to property under Articles 6(1) and 13 of the European Convention and of Article 1 of Protocol No. 1.
3. The report has been prepared by Suela Meneri<sup>2</sup> and Jeremy McBride<sup>3</sup> at the request of the Council of Europe within the Project “Supporting effective domestic remedies and facilitating execution of ECtHR judgments”, which is a part of the Horizontal Facility for Western Balkans and Turkey – a co-operation framework of the Council of Europe and the European Union aiming at supporting South East Europe and Turkey to comply with European standards.
4. The report first provides some background to the steps taken before the adoption of the 2015 Property Act. It then reviews the measures that the European Court suggested in the *Puto* judgment should be taken to ensure effective protection of the rights guaranteed by the European Convention with respect to such claims that have been recognised by the Albanian authorities but not yet enforced, as well as some references to the cases that followed this judgment. Thereafter, it gives some background to the process leading to the adoption of the 2015 Property Act and certain matters subsequent to this occurring.
5. It then, turns to an assessment of the compensation scheme embodied in the 2015 Property Act and the arrangements relating to its implementation, based on the principal measures that the European Court suggested in the *Puto* judgment should be taken with a view to giving effect to Albania's obligation under Article 46 of the European Convention to abide by the final judgment of the European Court in any case to which it is a party. This is followed by an overall conclusion to the report.

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<sup>1</sup> Nos. 604/07, 43628/07, 46684/07 and 34770/09, 31 July 2012.

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6. Conclusions and recommendations regarding various aspects of the 2015 Property Act and its implementation are highlighted in bold text.

## THE ADOPTION OF THE 2015 PROPERTY ACT

7. The 2015 Property Act is supposed to address a very complex situation in Albania, namely, that resulting from the lack in the past of concrete and practical measures to enforce the acknowledged and accepted rights for property restitution and compensation and solve the underlying problems.<sup>4</sup>
8. Prior to its entry into force, the Albanian Government reported some 53,115 decisions had been issued since the inception of the process in 1993 and that there were a further 10,131 pending applications.<sup>5</sup> The decisions were originally taken by the Agency on Restitution and Compensation of Property, then the Commission on Restitution and Compensation of Property. The body currently responsible for the process of restitution and compensation is the Agency on the Treatment of Property. For convenience, the term “the Agency” will be used in this report whenever reference is being made to particular action by or responsibilities of any of these bodies as the concern is with steps to be taken in the future rather than to reflect on matters in the past.
9. The Agency reportedly restituted to the original owners in the framework of 20 years some 74,420 ha of building land, agricultural land, forestland, pastures and meadows and ordered compensation in respect of other 73,390 ha.<sup>6</sup> Additionally, pending applications on restitution and compensation of properties deposited before entry into force of the 2015 Property Act embodied potential claims concerning further 148,209 ha of building land, agricultural land, forestland, pastures and meadows.<sup>7</sup>
10. The State’s financial burden resulting from the unexecuted Agency decisions (making reference to the 2014 Land Value Map) was estimated to amount to € 10.5 milliard<sup>8</sup>, while the total potential financial burden resulting from the pending applications was estimated to amount to € 7.065 milliard<sup>9</sup>.

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<sup>4</sup> Parliament of Albania, Commission on Legal Affairs and Human Rights, Report on the Draft Law “*On the treatment of property and finalization of the process of compensation of property*”, pages 2-3.

<sup>5</sup> Parliament of Albania, Explanatory Report concerning Law no 133/2015 “*On the treatment of property and finalization of the process of compensation of property*”, page 38.

<sup>6</sup> *Ibid*, page 38. See also: Parliament of Albania, Commission on Legal Affairs and Human Rights, Report on the Draft Law “*On the treatment of property and finalization of the process of compensation of property*”, page 6.

<sup>7</sup> *Ibid*. See also: Agency for the Treatment of Property, Report to the Parliamentary Commission on Legal Affairs and Human Rights, Appended Tables.

<sup>8</sup> National Association of Expropriated Owners, Constitutional Complaint, § 346, pages 103 -104.

<sup>9</sup> *Ibid*.

11. Only 900 out of the 26,000 decisions providing for compensation were (partially) executed from the Albanian authorities during the period of time 2004 – 2014. The financial compensation (in the amount of € 15.9 million, or ALL 4.1 milliard) paid to the original owners appeared therefore insignificant in front of the whole picture of the unenforced Agency decisions providing for compensation<sup>10</sup>. Similarly, the State Owned Land Fund available for compensation reportedly consisted of agricultural land, forestland, pastures and meadows measuring 95,000 ha<sup>11</sup> and its value was estimated to be worth € 1.9 milliard.<sup>12</sup>
12. The 2015 Property Act enshrines the will of the Albanian Government to complete the process of restitution and compensation of properties to the original owners in a manner that is compatible with Article 41 of the Albanian Constitution and the Article 1 of Protocol No. 1 of the European Convention<sup>13</sup>. The Act features some of the characteristics of its predecessors (namely the 1993 Property Act and the 2004 Property Act) as it embodies an administrative programme aimed at repairing past injustices through recognizing and compensating the original owners of property that was expropriated, nationalized or confiscated during the communist regime in Albania<sup>14</sup>.
13. However, the 2015 Property Act differs however from the predecessor (1993 and 2004) Property Acts as it thoroughly restructures the evaluation methodology in respect of the properties subject to its scope of application.<sup>15</sup> The Act encompasses within its scope of protection a notable variety of property titles and other related rights gained by third (public and private) parties in the properties of the original owners in virtue of the majority of the Laws appended to it.<sup>16</sup>
14. The Department for the Execution of Judgments of the European Court assessed the compensation scheme embodied in the 2015 Property Act based on the information provided from the Albanian Government in the updated Action Plan<sup>17</sup> together with the revised draft law.<sup>18</sup> The analysis presented the main, general comments on the draft law. The Department for the Execution of Judgments noted that a full analysis of all aspects of the compensation scheme was not possible at that stage, given the fact that some aspects were to be specified in secondary legislation, which had not yet been adopted. Furthermore, the draft was not accompanied by an explanatory memorandum

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<sup>10</sup> Parliament of Albania, Commission on Legal Affairs and Human Rights, Report on the Draft Law “*On the treatment of property and finalization of the process of compensation of property*”, page 6.

<sup>11</sup> Agency for the Treatment of Property, Report to the Parliamentary Commission on Legal Affairs and Human Rights, Appended Tables.

<sup>12</sup> National Association of Expropriated Owners, Constitutional Complaint, § 346, pages 103 -104.

<sup>13</sup> 2015 Property Act, Article 1.

<sup>14</sup> Article 2.

<sup>15</sup> Articles 6 -7.

<sup>16</sup> Article 25. Annex 1 of the Law 133/2015.

<sup>17</sup> DH-DD(2015)523, 20 May 2015.

<sup>18</sup> H/Exec(2015)16 2 June 2015.

providing in-depth reasoning for the solutions chosen. Thus, it was concluded that more information was necessary to enable a comprehensive assessment of the compatibility of the whole system with the requirements set by the European Court.<sup>19</sup>

15. The Committee of Ministers welcomed in its 1230<sup>th</sup> meeting<sup>20</sup> the commitment showed by the Albanian authorities in the search for an effective and sustainable solution to the important structural problem at stake in the cases dealt with in the *Puto* judgment and in *Driza v. Albania*.<sup>21</sup> Furthermore, at its 1243<sup>th</sup> meeting the Committee of Ministers noted with satisfaction the law setting up a compensation scheme for property expropriated during the communist regime, which appeared to be a very positive step towards putting an end to the longstanding failure to compensate or return property to former owners<sup>22</sup>. Also the Committee of Ministers welcomed in its 1259<sup>th</sup> meeting the adoption of three important by-laws, as well as the establishment of a mechanism of periodic monitoring, involving the Director General of the Agency, the Minister of Justice, the Prime Minister, as well as the Parliamentary Commission on Economy and Finance and the Parliamentary Commission on Legal Affairs, Public Administration and Human Rights. It invited the authorities to keep the Committee regularly informed about the progress achieved in its implementation, particularly as regards the adoption of the by-laws, the concrete results noted in the process of treatment of applications and the first results of the periodic monitoring<sup>23</sup>.
16. Proceedings to challenge the compatibility of the 2015 Property Act with the Albanian Constitution and the European Convention were brought before the Constitutional Court of Albania by the President of the Republic of Albania, the Ombudsman, members of the Albanian Parliament as well as from the Associations of the Expropriated Owners.<sup>24</sup>
17. Based on a request of the Albanian Constitutional Court, the Venice Commission adopted an *Amicus Curiae Opinion* in its Plenary Session of 15-16 October 2016<sup>25</sup>.
18. In this opinion, the Venice Commission concluded that:

48. Final administrative or judicial decisions, which contain a specific amount of compensation to be granted, but which have not yet been enforced, indisputably raise a “legitimate expectation” and will not be reassessed under Law no. 133/2015. In these cases, there is no “interference” within the meaning of Article 1 of Protocol No. 1 to the ECHR, as long as these decisions are duly enforced.

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<sup>19</sup> *Ibid*, at § 26.

<sup>20</sup> Committee of Ministers, 1230<sup>th</sup> meeting - (3-5 June 2015)

<sup>21</sup> No. 33771/02, 13 November 2007.

<sup>22</sup> 8-9 December 2015.

<sup>23</sup> Committee of Ministers, 1259<sup>th</sup> meeting - (7-8 June 2016)

<sup>24</sup> DH-DD(2016)576.

<sup>25</sup> Venice Commission, Albania, *Amicus Curiae* Brief for the Constitutional Court on the Restitution of Property, adopted by the Venice Commission at its 108th Plenary Session (Venice, 14-15 October 2016).

49. As regards decisions which determine restitution or compensation only on the surface and not on financial worth, it is not clear in how far a legitimate expectation arises.

50. However, Law no. 133/2015's new compensation scheme changed the evaluation method, which could lead to lower compensation. Even if lower compensation cannot be qualified as formal expropriation, it may well qualify as an "*other interference*" under Article 1 of Protocol No.1 to the ECHR.

51. The interference, nonetheless, has a clear legal basis in Law no. 133/2015 (and the three relevant by-laws duly complement Law no. 133/2015). There appears therefore to be a sufficiently clear and detailed legal basis for the interference at issue.

52. The interference also appears to pursue a legitimate aim, as the purpose of Law no. 133/2015 is effectively to finalize the process of treatment of property through recognition and compensation. Set against the background of the various problems concerning the effective completion of restitution and compensation in Albania, the intentions of Law no. 133/2015 also appear to be in the public interest within the meaning of Article 1 of Protocol No. 1 to the ECHR.

53. The interference is proportionate if the financial fund of ALL 50 billion attributed to the compensation scheme over a period of 10 years has been carefully determined in the light of the state budget as a whole and the Albanian GDP.

54. In Albania's specific situation, it can well be argued that a new and effective legal framework provided by Law no.133/2015, which may lead to a lower amount of compensation paid to the former owners, nevertheless meets the requirement of proportionality as set out in Article 1 of Protocol No.1 to the ECHR. In particular, it seems reasonable that Law no. 133/2015 refer to the cadastral categorization of the property at the time of the expropriation without being regarded as an extreme disproportion between the official cadastral value of the land and the compensation paid to the former owners.

55. The elements above are intended to help the Constitutional Court make an abstract assessment of the Law. However, the question of whether or not compensation for expropriated property in Albania meets the requirements of Article 1 of Protocol No. 1 to the ECHR will ultimately depend on the effective implementation of Law no. 133/2015 and its execution by the national authorities. It will be the Albanian authorities' task to ensure that the aims of Law no.133/2015 do not remain theoretical".

19. The Albanian Constitutional Court decided the matter on 17 January 2017.<sup>26</sup> It found Article 6 § (3) and Article 6 § (5) of the 2015 Property Act incompatible with the principle of right to legal certainty. However, it refused to decide on the matter of compatibility with the Albanian Constitution of Articles 6 § (1) (b) and 7 § (2) (a) – (b) of the 2015 Property Act due to tied vote. Lastly, it upheld the constitutionality of the remaining provisions of the Act.

20. Following the steps taken to implement the 2015 Property Act the Committee of Ministers, in its 1294<sup>th</sup> meeting of 19-21 September 2017, noted with satisfaction that as a result of sustained efforts by the Albanian authorities, this mechanism is now fully operational. The Committee also noted with interest that the Constitutional Court had found the mechanism to be in compliance with the Constitution of Albania, save for certain aspects of the new method of evaluation of the compensation; it took note on this latter point of the authorities' commitment to assess the situation and to take appropriate action to prevent any adverse impact on the functioning of the mechanism. Furthermore, the Committee of Ministers underlined the crucial importance of bringing

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<sup>26</sup> Constitutional Court, Judgment no. 1 of 17 January 2017.



a definitive solution to the longstanding problem revealed in these judgments, strongly encouraged the authorities to pursue their efforts to ensure the effective and expeditious functioning of the mechanism, in particular by making available all the resources, including financial, they had pledged, so that the compensation process can be completed within the established time-frame. In addition, it invited the authorities to clarify the steps taken pursuant to their above commitment and to provide the Committee with updated information on the progress achieved in the compensation process by the end of December 2017 at the latest.

21. The European Parliament did not make particular mention on the 2015 Property Act in its 2016 Report on Albania. However it noted that the enforcement of property rights has still to be effectively ensured and it urged action to complete the process of property registration, restitution and compensation and update and effectively implement the 2012-2020 strategy on property rights. It further urged the authorities to develop a roadmap setting out clear responsibilities and deadlines in this regard and to conduct a public information campaign in order to inform former owners about their rights and duties concerning property restitution. In addition, the European Parliament called for greater transparency, legal certainty and equality of treatment as regards the law on compensation for property confiscated during the communist period. It also called for the appointment of a national coordinator for property rights and for acceleration of the process of property registration and mapping, including property digitalization.<sup>27</sup>

## **THE *PUTO* AND SUBSEQUENT JUDGMENTS**

22. There is no obligation under the European Convention to make restitution for property that has been expropriated or otherwise transferred to public authorities or others through a legal measure adopted before it and Protocol No. 1 have been ratified. However, a measure that has been adopted following such ratification which provides a right to restitution and/or compensation for property taken before this occurred will result in the rights thereby created attracting the protection of the provisions of the European Convention and Protocol No. 1.
23. In particular, as the *Puto* judgment and the rulings of the European Court before and since regarding the implementation of the legislation prior to the 2015 Property Act have demonstrated, the non-execution of decisions awarding restitution and/or

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<sup>27</sup> 2016/2312(INI).

compensation will entail violations of the right to a fair trial and to an effective remedy under Articles 6 and 13 of the European Convention and of the right to property under Article 1 of Protocol No. 1. Furthermore, in respect of the last the general approach of the European Court for awards of compensation where property has not been restituted despite decisions that this should occur has been linked to the real market value of the property concerned under the relevant valuation maps that had been adopted for the purpose of restitution and/or compensation, with allowance being made for interest and inflation. This inevitably resulted in quite substantial awards that could create considerable financial difficulties for Albania if generalized.

24. However, the *Puto* judgment is of more significance than previous judgments of the European Court because it also entailed the explicit application of the pilot-judgment procedure and not just the suggestion of general measures seen in some of those judgments.

25. The European Court was particularly concerned that it had:

found violations in the present case, despite the general measures indicated in its previous judgments in 2007, 2009 and 2011 in the cases of *Driza*, cited above; *Ramadhi and Others*, cited above; *Vrioni and Others*, cited above; and, *Delvina*, cited above). Having regard to the number of similar cases pending before the Court and statistics provided by the Government (see the attached Annex), the Court is seriously concerned that the number of well-founded applications registered could increase and, therefore, represent a critical threat to the future effectiveness of the Convention machinery (see, amongst others, *Yuriy Nikolayevich Ivanov*, cited above, § 86).<sup>28</sup>

26. The pilot judgment procedure was adopted because of the acceptance by the European Court that the regulatory shortcomings and/or administrative conduct of the authorities in the enforcement of decisions awarding compensation to former owners originated in a widespread problem affecting a large number of people and that these problems had continued to persist after the adoption of its earlier judgments. In addition, it saw "the urgent need to grant applicants speedy and appropriate redress at the domestic level".<sup>29</sup>

27. As a consequence, in application of Article 46 of the European Convention, the European Court held that Albania was required to:

take general measures, as a matter of urgency, in order to secure in an effective manner the right to compensation, while striking a fair balance between the different interests at stake (see, for example, *Burdov* (no. 2), cited above, § 125). Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment<sup>30</sup>.

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<sup>28</sup> Para. 108.

<sup>29</sup> Para. 109.

<sup>30</sup> Para. 110.

28. In providing guidance as to what these general measures required, the European Court identified certain considerations that needed to be taken into account.

29. Firstly, it underlined the need the need to *avoid frequent changes of the legislation* and to *carefully examine all legal and financial implications* before introducing any further modifications to it. This reflected its concern about the frequency with which the legislation relating to claims for restitution and compensation for the property expropriated in 1944 since:

the complexity of the legislative provisions, the frequent changes made to them as well as the inconsistent judicial practice resulting therefrom, will inevitably contribute to a general lack of legal certainty<sup>31</sup>.

30. Secondly, it emphasised the importance of *accurate and reliable information* as regards the overall number of administrative decisions recognising property rights and awarding compensation that have been adopted since 1993. In its view:

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<sup>32</sup>.

31. Thirdly, the European Court saw the need for a carefully devised and clear compensation scheme, which should be *free of cumbersome compliance procedures*<sup>33</sup> and also took account of its critique of *the forms of compensation* provided in the legislation.

32. As regards the former, the particular elements that are seen as appropriate: are the absence of any need for a claimant to bring separate enforcement proceedings in respect of a final decision; timely action by state authorities of their own motion to effect enforcement; and cooperation by the claimant in adducing just those documents - such as bank details - that are strictly necessary for enforcement.

33. The shortcomings found with respect to the forms of compensation prescribed in the legislation - in-kind compensation (i.e., allocation of different property), state-owned shares and proceeds from privatisation, state bonds and financial compensation - were various. Thus, the European Court found that the first two had never been awarded and that there was no procedure for enforcing the award of the third. However, it also found the award of financial compensation problematic because:

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<sup>31</sup> *Ibid.*

<sup>32</sup> Para. 111.

<sup>33</sup> In this connection, it instanced 'the obligation for a claimant to apply for compensation in the subsequent year in the event of unsuccessful application in a preceding year'; para. 112.

- claimants receiving partial restitution of their property were not eligible to receive it;
- the maximum amount payable was a sum equal to the value of 200 sq. m., with the award of other forms of compensation for any greater amount of property being uncertain;
- the award of such a sum irrespective of the plot of land recognised for the purpose of compensation probably did not ensure equality of treatment in that persons whose situations were significantly different were not being treated differently;
- there was an inadequate technical and logistical infrastructure for the processing of claims, with an unsuccessful claimant in a preceding given year being required to re-submit another application in the subsequent year(s); and
- the decisions did not appear to account for and calculate the non-pecuniary damage suffered as a result of the delayed enforcement of the decisions in their favour.

34. In view of these shortcomings and the burden on the State budget entailed by financial compensation, the European Court saw a need for a "reconsideration of the modalities for the payment of financial compensation as currently implemented"<sup>34</sup>. In its view, the revision and update of valuation maps should be subject to transparent and explanatory criteria, which took into account the land development and market fluctuations. Furthermore, the European Court urged:

the authorities, as a matter of priority, to start making use of other alternative forms of compensation as provided for by the 2004 Property Act, which would eventually ease pressure on the budget, and/or to introduce other methods of compensation<sup>35</sup>.

35. Fourthly, the European Court emphasised the need for *utmost transparency and efficiency in the decision-making process* for the type of compensation to be awarded, particularly with a view to enhancing public confidence. In this connection, it saw it to be:

crucial that the authorities' decisions contain clear and sufficient reasons and that they be amenable to judicial review in the event of discord<sup>36</sup>.

36. Fifthly, the European Court suggested that there be reconsideration of the possibility of *increasing the cost-share borne by the legalisation applicants* "to the extent that it would be capable of matching the financial compensation paid to former owners"<sup>37</sup>.

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<sup>34</sup> Para. 112.

<sup>35</sup> *Ibid.*

<sup>36</sup> Para. 114.

<sup>37</sup> Para. 115.

37. Sixthly, the European Court emphasized

the importance of setting *realistic, statutory and binding time-limits* in respect of every step of the process<sup>38</sup>.

38. Seventhly, effective implementation of the general measures being prescribed was seen as dependent upon the placing of *sufficient human and material resources* at the disposal of the competent authorities, together with the ensuring of coordination amongst the different State institutions involved. In particular, it encouraged exploration of the possibility of pooling resources:

by merging different institutions in order to avoid overlapping and diminish operative costs and expenses" and cautioned that the establishment of any "new institutional structures should not be seen as another layer to the process but should be entirely justified<sup>39</sup>.

39. Finally, in view of the magnitude of the problem and the measures which it was suggesting, the European Court drew attention to the potential benefit of seeking, through *wide public discussions*, to:

garner broad understanding about the level of compensation that the State is expected to realistically pay and about the different forms of compensation<sup>40</sup>.

40. As part of the context in which the measures are to be taken, account also should be taken of the need identified by the European Court for Albania to:

ensure the existence of a *transparent and effective system of property registration*, including accurate, unified, cartographic data, in order to enable, simplify and facilitate future legal transactions<sup>41</sup>.

41. The European Court sought to differentiate between those cases lodged before and after the *Puto* judgment as regards the procedure to be followed, with the former continuing to be examined and the latter being adjourned for 18 months after it became final on 17 December 2012. However, this distinction has become moot as no general measures were adopted within that 18 month period, which has now expired, and all applications that have been lodged are now at risk of leading to awards of damages on the same basis as occurred in the *Puto* judgment in the absence of any friendly settlement or resolution of the matter by other means in accordance with Articles 37 or 39 of the European Convention or Rule 62A of the Rules of Court.

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<sup>38</sup> Para. 116 (emphasis added).

<sup>39</sup> Para. 117.

<sup>40</sup> Para. 118.

<sup>41</sup> Para. 115 (emphasis added).

42. Since the *Puto* judgment, the European Court has dealt with applications for just satisfaction in respect of two cases in which it had previously reserved this issue<sup>42</sup> and one request for revision of the judgment itself<sup>43</sup>.
43. In both of the just satisfaction cases Albania had submitted a unilateral declaration as a basis for resolving them.
44. The unilateral declaration in one of them<sup>44</sup> involved the offer to the applicants of in-kind compensation by awarding an equivalent plot of land, whose value would be determined on the basis of the property prices in 2006, when the final domestic court decision was delivered.
45. The European Court made it clear that it welcome in principle such a unilateral declaration but, having studied it carefully, it declined to accept the one being made in this case:

because it lacks clarity and certainty. It does not specify the precise physical location of the plot of land to be awarded to the applicants, its value or its legal status. The Government's undertakings cannot suffice to dispel those deficiencies or to provide comfort as to the duration of the in-kind compensation process. The Court further notes that this form of compensation has been found not to be an effective remedy (see, for example, *Manushaqe Puto and Others v. Albania*, nos. [604/07](#), [43628/07](#), [46684/07](#) and [34770/09](#), § 75, 31 July 2012, and *Çaush Driza v. Albania*, no. [10810/05](#), §§ 78-83, 15 March 2011). Moreover, in its judgment in the case of *Vrioni and Others v. Albania (just satisfaction)*, cited above, the Court has already rejected the Government's argument that the reference price for the expropriated property should correspond to the market value at the time of the domestic authorities' decisions (see paragraphs 36-37 of the said judgment)<sup>45</sup>.

46. Furthermore, the European Court reaffirmed the appropriateness of the method of calculation used in *Vrioni and Others v. Albania (just satisfaction)*<sup>46</sup>, namely, on the property valuation maps adopted in respect of the region concerned<sup>47</sup>. On this basis, it awarded EUR 2,022,400 in respect of non-pecuniary damage<sup>48</sup>.
47. The second unilateral declaration involved the payment of EUR 3,000 for non-pecuniary damage and ALL 6,252,000 (EUR 44,000) in respect of pecuniary damage, which was

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<sup>42</sup> *Delvina v. Albania (Just satisfaction)*, no. 49106/06, 21 May 2013 and *Eltari v. Albania (Just satisfaction)*, no. 16530/06, 10 June 2014.

<sup>43</sup> *Manushaqe Puto and Others v. Albania (Revision)*, nos. 604/07, 43628/07, 46684/07 and 34770/09, 4 November 2014. In addition there has been one judgment in which a violation of Article 6(1) was found as a result of the length of the proceedings but no violation of Article 1 of Protocol No. 1 on account of the applicant's property right not having actually been recognized; *Bici v. Albania*, no. 5250/07, 3 December 2015.

<sup>44</sup> *Delvina v. Albania (Just satisfaction)*, no. 49106/06, 21 May 2013.

<sup>45</sup> *Ibid.*, para.13.

<sup>46</sup> *Ibid.*, para.17.

<sup>47</sup> Council of Ministers, Decision no. 1628 dated 26.11.2008 "On the Adoption of the Building Land Price in all Municipalities". In this case they were those adopted for Tirana in 2008.

<sup>48</sup> No claim was made for non-pecuniary damage and no award was made in respect of it.

calculated by reference to the property valuation maps adopted in respect of the region concerned<sup>49</sup>.

48. The applicant had disputed this calculation on the basis that the reference price was the one adopted in 2008 and had been halved compared to the one that had been indicated in the precious 2007 decision of the Council of Ministers, with such halving having taken place within one year and without any justifying arguments having been advanced for it.
49. However, the European Court, after having examined the 2008 property valuation maps, was still prepared to accept the unilateral declaration, noting that:

the reference price was reduced in respect of all plots of land in the coastal city of Vlora compared with the 2007 property valuation maps. Whereas the Government could have supplied reasons justifying such reduction, the applicant did not submit any expert's report or rely on another alternative as regards the calculation of the reference price. The Court further notes that the applicant was inconsistent in relation to her claim for pecuniary damage without good reason. She initially claimed a reference price of EUR 600 per sq. m without substantiating that figure by way of an expert's report. In her comments on the Government's unilateral declaration she was willing to accept a reference price reduced to EUR 179 per sq. m. In these circumstances, the Court rejects the applicant's proposal and it is prepared to accept the reference price indicated in the 2008 property valuation maps<sup>50</sup>.

50. It should be noted that the European Court referred to the fact that the Government had provided it with the Court with the 2013 property valuation maps. It observed that they had been submitted for general information, out of time, after the closure of the written procedure and that the Government had not made any explicit submissions as regards the use of such maps in respect of this application. The European Court stated that the Government had:

failed to specify the location of the plot of land in the respective cadastre zones in accordance with the 2013 property valuation maps and the reference price to be applied in respect of this application. Furthermore, the Government did not indicate whether the reference price reflected the real market value and was "interest and inflation indexed" (compare *Vrioni and Others* (just satisfaction), cited above, § 37). In these circumstances, the Court cannot base its calculation of pecuniary damage on the property valuation maps adopted by the Government in 2013<sup>51</sup>.

51. The judgment did not indicate the extent to which the 2013 property valuation maps differed in their reference prices from those used in 2007 or 2008. However, it appears that the prices in the 2013 ones are considerably lower than those in their predecessors<sup>52</sup>.

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<sup>49</sup> *Eltari v. Albania (Just satisfaction)*, no. 16530/06, 10 June 2014, para. 11.

<sup>50</sup> *Ibid.*, para. 18. The price of EUR 179 per sq. m referred to was the reference price in the 2007 property valuation maps.

<sup>51</sup> *Ibid.*, para. 16.

<sup>52</sup> This impression is also reflected in the calculations used in *W. McCluskey, Compensation and Restitution: An Option Review*, (Draft 8 March 2015, not for circulation).

52. The 2008 property valuation maps had previously been relied upon twice by the European Court when determining just satisfaction awards for pecuniary damage<sup>53</sup>.
53. The applicant had also claimed EUR 15,000 in respect of non-pecuniary damage but, without further elaboration, the European Court considered this amount to be excessive and was also prepared to accept the Government's proposal to award her EUR 3,000<sup>54</sup>.
54. The request for revision concerned the award of pecuniary and non-pecuniary damage in respect of one of the four applications determined in the *Puto* judgment, namely, no. [34770/09](#). This request was based on the fact that the applicant's brother had died on 12 July 2009 and she had not submitted an updated power of attorney authorising her to continue the representation of her brother or his heirs before this Court. The Government submitted that they had only learned of the brother's death in 2013 during a meeting with the applicant's husband.
55. The European Court considered that the death of the applicant's brother constituted "the discovery of a fact (...) which when [the] judgment was delivered, was unknown to the Court" for the purpose of Article 80 of the Rules of Court and that it also constituted a fact of "decisive influence" on the outcome of the judgment within the meaning of that Rule 80, namely on the award of just satisfaction under Article 41 of the Convention. It further accepted that this decisive fact "could not reasonably have been expected to be known to" the Government.
56. As a result the request for revision was accepted and the European Court considered that:
- in the interest of the good administration of justice, the initial award of pecuniary and non-pecuniary damage made to the applicant in application no. [34770/09](#), Ms Shqipe Muka, should be halved. It accordingly decides to award the applicant, Ms Muka, only the amount of EUR 680,000 (six hundred and eighty thousand euros) in respect of pecuniary and non-pecuniary damage<sup>55</sup>.
57. This ruling is, however, only of significance for the particular applicant concerned; it has no bearing on the approach required for general measures in the *Puto* judgment itself.

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<sup>53</sup> *Vrioni and Others v. Albania (Just satisfaction)*, nos. 35720/04 and 42832/06, 7 December 2010; *Manushaqe Puto and Others v. Albania*, nos. 604/07, 43628/07, 46684/07 and 34770/09, 31 July 2012. See also paras. 120 and 129 below.

<sup>54</sup> *Ibid.*, para. 19.

<sup>55</sup> *Manushaqe Puto and Others v. Albania (Revision)*, nos. 604/07, 43628/07, 46684/07 and 34770/09, 4 November 2014, para. 11. The European Court had previously noted that "the death of the applicant's brother occurred on 12 July 2009, less than a month from the introduction of the application and the applicant failed to inform the Court of the death. She did not provide any explanation concerning her failure to inform the Court of her brother's death or that she was the only heir. Neither did she submit an updated power of attorney authorising her to continue the case on behalf of her deceased brother's heirs" (para. 9).



58. Nonetheless, the *Puto* and subsequent judgments do not necessarily mean that the only way of complying with the compensation obligations arising from the failure to respect the right to property under Article 1 of Protocol No. 1 is to make awards based on the real market value in respect of current property valuations where decisions have been taken recognizing claims that have been made.
59. As was recognised in the Venice Commission's *Amicus Curiae* Opinion, it would still be possible to justify a diminution of the approach to affording compensation (and an abandonment of a commitment to afford restitution) within the framework of rights under the European Convention and, in particular, Article 1 of Protocol No. 1. This would not be precluded so long as any change in the basis for compensation is not tantamount to extinguishing the claims in their entirety on account of the potential expense involved<sup>56</sup> - putting the clock back or following the approaches to restitution schemes in other post-communist countries is thus not an option - but entails no more than a rectification in the light of economic conditions<sup>57</sup>. However, it is essential for this purpose that there would need to be an articulation of a compelling justification for this social and economic goal, which seems evident in the background to the adoption of the 2015 Property Act.
60. Nonetheless, the *Puto* judgment also requires that some remedy for non-pecuniary, be provided to all claimants who have suffered from as a result of the prolonged process, something seen in the just satisfaction awards made by the European Court where violations of Article 6(1) of the European Convention in respect of the length of the proceedings have been established.
61. Remedying past delays is, of course, not enough; further unjustified delays ought also to be avoided and the resolution of outstanding claims should thus be as smooth as possible. This not only requires that all the bodies involved in the process are appropriately resourced but also that any approach to finalising cases should avoid adding to the complexity of the process and ensure that the execution of all final decisions is promptly expedited.

## ASSESSMENT OF THE COMPENSATION SCHEME

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<sup>56</sup> As was the case in *Pressos Compania Navarra SA and Others v. Belgium*, no. 17849/91, 20 November 1995.

<sup>57</sup> Such as was found acceptable in *Sud Parisienne de Construction v. France*, no. 33704/04, 11 February 2010, which concerned a retrospective adjustment of the default interest rate for public procurement contracts. The European Court found that the measure in question had not impaired the very essence of the applicant company's right of property but was an interference with its possessions that had been proportionate and had not upset the fair balance between the demands of the general interest and the requirements of the protection of the individual's fundamental rights.

62. In the light of the *Puto* judgment, the following assessment of the 2015 Property Act and the arrangements made so far for its implementation is based on the following considerations:

- The avoidance of frequent changes to the legislation and careful prior examination of the implications of any change that has to be made;
- The availability of accurate and reliable information;
- The existence of satisfactory forms of compensation and the absence of cumbersome compliance procedures;
- The utmost transparency and efficiency in the decision-making process;
- The setting of realistic, statutory and binding time-limits and the provision of sufficient human and material resources; and
- The holding of wide public discussions.

**1) *Avoiding frequent changes to the legislation and careful prior examination of the implications of any change that has to be made***

63. Five sub-legal acts have been approved to supplement the 2015 Property Act.<sup>58</sup>

64. In addition, on 29 November 2016, the Council of Ministers of Albania made amendments to its previous Decision no. 223 of 23 March 2016 “On Rules of Procedure related to Assessment and Distribution of the Financial and Physical Compensation Fund” which approved some additional changes in respect of content of the application forms that claimants are required to submit with the Agency.

65. The authorities have also predicted that further legislative action will need to be taken in order to improve the implementation of the 2015 Property Act.<sup>59</sup>

**66. As stated in the authorities updated Action Plan<sup>60</sup>, a significant part of the sub-legal acts complementing the 2015 Property Act were approved within the previewed deadlines. Thanks to those sub-legal acts there are in place basic legal regulations governing (a) the daily activities of the Agency, (b) the functioning of the inter-institutional mechanisms concerning identification of the Physical Compensation Fund**

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<sup>58</sup> Council of Ministers Decision no 221, dated 23.3.2016 “On the Organization and Functioning of the Agency on the Treatment of Property”; Council of Ministers Decision no.222 dated 23.3.2016 “On the Treatment of Requests concerning Recognition and Compensation of Property”; Council of Ministers Decision no.223 dated 23.3.2016 “On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fund”; Council of Ministers Decision no. 901 dated 21.12.2016 “On the establishment of the Inter Institutional Commission, mandated to identify the state owned property, which may be subjected to physical compensation fund”; Joint Regulation no 6445/3 dated 9.1.2017 of Ministry of Justice of Albania and the Ministry of Finance of Albania, “On the adoption of the Official Tariffs that are to be applied from the Agency on the Treatment of Property in respect of its services”.

<sup>59</sup> Consultation Meeting with national authorities on Legislation Assessment and Institutional Development, dated 10 October 2017.

<sup>60</sup> Committee of Ministers, DH-DD (2017)807, 12 July 2017.

as well as (c) the treatment of requests concerning recognition and compensation of property and (d) the assessment and distribution of Financial and Physical Compensation Fund. One of the sub-legal acts was amended during the year 2016 in an attempt to improve effective implementation of the Act.<sup>61</sup>

67. However, although the improvement of the compensation procedure is highly appreciated, only changes which clearly enhance the predictability and sustainability of the process of implementation of the 2015 Property Act should justify amendment of existing sub-legal acts or the adoption of any further sub-legal acts. This is particularly important in respect any prospected change that might affect the structure and functioning of the Agency.

68. Furthermore, before any further changes are made, there will be a need to ensure that both the specific financial and practical implications of their implementation have been thoroughly assessed and that the means of addressing them have been put into place.

## **2) Ensuring the availability of accurate and reliable information**

69. The Agency is an administrative body, dependent on the Minister of Justice.<sup>62</sup> Both these bodies have the responsibility for securing effective enforcement of the 2015 Property Act. The day-to-day activities of the Treatment Agency are conducted by its General Director, who is appointed (suspended, or removed from office) upon order of the Prime Minister following the proposal of the Minister of Justice.<sup>63</sup> Recognized professional experience and personal integrity of the candidate are the two decisive legal requirements for appointing the General Director.<sup>64</sup>

70. Every three months the General Director of the Agency submits a written Activity Report to the Minister of Justice, to the Prime Minister and to the Parliamentary Commission on Economy and Finance of the Albanian Parliament.<sup>65</sup> As a rule this report contains:

- Generalized data on the evolution of the process of financial evaluation of decisions recognizing a right to compensation;
- The generalized number of already enforced assessments (showing the size and type of distributed land in the form of compensation and the total amount of delivered compensation);

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<sup>61</sup> Council of Ministers, Decision no 685, dated 28.9.2016 ““On some amendments concerning Rules of Procedure related to Assessment and Distribution of the Financial and Physical Compensation Fund”

<sup>62</sup> 2015 Property Act, Article 26.

<sup>63</sup> Council of Ministers, Decision no 221 dated 23.3.2016 “On the Organization and Functioning of the Agency on the Treatment of Property”, Article 7.

<sup>64</sup> *Ibid.*, Article 9.

<sup>65</sup> *Ibid.*, Article 14.

- The overall number of pending applications (as per county town and the type of property claimed);
  - The overall number of fresh decisions of the Treatment Agency (showing the index of dismissed and upheld claims);
  - The number of appeals against the assessments and decisions of the Treatment Agency;
  - The assets pertaining to the Land Fund awarded by the Agency in the form of in kind compensation;
  - The quality of cooperation of the Inter Institutional Group mandated to identify the state owned property which may be used as a Land Fund available for in kind compensation of claimants (showing the size, type and kind of the identified property);
  - The quality of cooperation with the other competent institutions; and
  - Any other information that is deemed relevant by the General Director.
71. Two weeks after the submission of the quarterly Activity Report, the Agency publishes that part of it which contains: (a) generalized data concerning the evolution of the process of financial evaluation of decisions recognizing a right to compensation; (b) the generalized number of already enforced assessments (showing the size and type of distributed land in the form of compensation and the total amount of delivered compensation); (c) the overall number of pending applications (as per county town and the type of property claimed) as well as (d) any other data that affects the property restitution and compensation.<sup>66</sup> However, the Activity Reports are not themselves published.
72. The General Director of the Treatment Agency also submits an Annual Activity Report to the Parliamentary Commission on Legal Affairs, Public Administration and Human Rights<sup>67</sup>.
- 73. The Treatment Agency is required through sub-legal acts to periodically report to both the Albanian Parliament and Government – with concrete indicators - about the state of the implementation of the 2015 Property Act. It is also bound to publish certain elements of the quarterly Activity Reports. These requirements are to be welcomed since they add value to the authorities’ attempt to significantly improve availability of accurate and reliable information. However, it is of paramount importance in this connection that these reports abide by an agreed reporting methodology and be published in accordance with relevant provisions of the sub-legal acts. Otherwise it will be very difficult to follow the implementation of the Act.**
- 74. Although the updated Action Plan includes some important indicators, they are not sufficient to assess with certainty the state of implementation of the 2015 Property**

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<sup>66</sup> *Ibid.*, Article 14 (unnumbered paragraph)

<sup>67</sup> *Ibid.*

**Act in respect of: the number of existing, overlapping claims, conflicting and newly-lodged claims, as well as the claims that are yet to be reassessed from the Agency, the income for the Property Fund from the property sales, auction procedure, the extent of the workload borne by the courts, the amount of physical compensation and the total number of fully executed decisions.**

75. Ensuring that all this information is also available is essential not only in order to assess the state of implementation of the 2015 Property Act but also to facilitate any practical changes that might be required to be made should actual progress prove to be less effective than was anticipated. There is thus a need to make appropriate arrangements to make all the necessary information publicly available

**3) Ensuring the existence of satisfactory forms of compensation and the absence of cumbersome compliance procedures**

76. The requirements under this heading concern five issues: financial compensation; compensation in kind; the administrative action of the Agency leading to financial assessments of property claims; the right to appeal; and enforcement of final assessments and decisions of the Agency.

**a) Financial Compensation**

77. As a rule any claimant is entitled to financial compensation which does not exceed ALL 500 million if the decision(s) recognizing its right to compensation is assessed financially under the category of building land<sup>68</sup>.
78. If the amount to be compensated exceeds ALL 500 million, the claimant is entitled to receive the rest of the compensation amount in the form of compensation in kind in a different property, part of the physical compensation fund.<sup>69</sup> The Agency selects to this end (ex officio) a property which is situated geographically closest to the property to be compensated.<sup>70</sup> However, there are no rules of procedure, or principles applicable to making the selection of such properties within reasonable time limits.
79. Exceptionally a claimant is entitled to financial compensation if he or she applies for accelerated financial compensation under Article 17 of the 2015 Property Act.<sup>71</sup> The Agency will pay 10% of the total amount of compensation to any claimant who asked for

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<sup>68</sup> Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fund", Article 18.

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.* Article 22.

financial compensation within 3 years<sup>72</sup> and 8% of the total amount of compensation to any claimant who asked for financial compensation within 5 years<sup>73</sup>.

## b) Compensation in kind

80. A claimant is entitled to **compensation in kind with a state-owned property** forming part of the Physical Compensation Fund and is situated closest to the claimed property, if the decision recognizing his right to compensation is assessed financially under the category of agricultural land, forest land, meadow, or pasture.<sup>74</sup> The Agency may decide to conduct administrative investigations in compliance with the Code of Administrative Procedures of Albania, if certain information disclosed in the case file needs be established prior to enforcement of that decision.<sup>75</sup>
81. The Agency, following financial assessment of a claimant's request to physical compensation with state-owned property but prior to its decision on the method of compensation, publishes in its Website, in the Official Bulletin and in the public media a public announcement calling for other applications in respect of the same property.<sup>76</sup> It accepts new applications within 30 days from the public announcement<sup>77</sup> and verifies them within 45 days, restoring the claimed property in priority to the claimant who possesses a final decision which acknowledges his or her property title over the claimed property on the condition that such property is situated within, in the middle or next to the other restored property.<sup>78</sup>
82. As a rule restitution (**"compensation in kind in the recognized property"**) is given priority to cases in which no decision on compensation or restitution has been issued so far.<sup>79</sup> However, there is a distinction between the applicable rules of procedure in respect of newly-lodged applications on one hand and the pending claims for restitution and compensation deposited before the entry into force of the 2015 Property Act on the other. Concretely, the Agency investigates on site and in the claimant's presence the factual situation of a claimed property subject to a newly-lodged application<sup>80</sup>, while in respect of pending claims for restitution and compensation deposited before the entry into force of the Act the method of compensation is based exclusively on the information disclosed in the case file.<sup>81</sup>

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<sup>72</sup> *Ibid.*, Article 23.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*, Article 17.

<sup>75</sup> *Ibid.*, Article 20.

<sup>76</sup> *Ibid.*, Article 40 (a).

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*, Article 40 (c).

<sup>79</sup> 2015 Property Act, Article 20.

<sup>80</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests, concerning Recognition and Compensation of Property", Article 13.

<sup>81</sup> *Ibid.*, Article 16 (c).

83. Although the Agency enjoys a particularly wide discretion to decide whether a claimed property is “occupied” pursuant to one of relevant provisions of Article 21 – 25 of the 2015 Property Act, physical compensation in the recognized property still remains the main rule of compensation for a newly-lodged application. However, this method of compensation is exceptional in respect of any pending claim deposited prior to the entry into force of the Act, where the claimants are likely to be entitled to physical compensation with a state-owned property.<sup>82</sup> Moreover, where compensation in kind in the recognized property is not possible in respect of a newly-lodged application, the claimant is entitled to any other form of compensation available (either compensation in kind with a state-owned property or financial compensation).<sup>83</sup> Apparently this is not the case with pending applications, deposited before the entry into force of the Act.<sup>84</sup>

84. Any claimant who possesses a decision recognizing his right to compensation, but without setting an amount to be compensated is entitled to **compensation in kind through auction** irrespective of the chronological order attributed to his decision under the Property Act.<sup>85</sup> This form of compensation is dependent on the will of a claimant to participate in an auction procedure.<sup>86</sup> The Agency has full discretion to determine what assets of the Physical Compensation Fund are going to be sold through auction<sup>87</sup>. It is sufficient in this point that the selected property be part of the physical compensation fund, or be a state owned asset with a failed privatization history<sup>88</sup>. The only criterion determining the selection of the winner is “the highest bid<sup>89</sup>”. The principle of chronological order of decisions is, however, applicable where several equal bids compete<sup>90</sup>. Apparently, the fact that a claimant is the original owner of a property subjected to auction bears no relevance for this purpose. The Agency will dismiss *ad initio* bids with a lower value than the value of the property subjected to auction<sup>91</sup>.

### c) Administrative Actions of the Agency leading to financial assessments of property claims

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<sup>82</sup> 2015 Property Act, Article 20 (last sentence). However, there are no specific provisions in the sub-legal acts developing the scope of Article 20 of the Act in respect of unhandled applications deposited prior to the entry into force of the Act.

<sup>83</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 “On the Treatment of Requests, concerning Recognition and Compensation of Property”, Article 14.

<sup>84</sup> There are no specific legal provisions or other provisions in the in the sub-legal acts recognizing such right to the claimants who have deposited applications with the Agency prior to the entry into force of the 2015 Property Act.

<sup>85</sup> *Ibid.*, Article 27.

<sup>86</sup> *Ibid.*, Article 28.

<sup>87</sup> *Ibid.*, Article 31.

<sup>88</sup> *Ibid.*, Article 29.

<sup>89</sup> *Ibid.*, Article 36.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*, Article 30.

85. The Agency is competent to assess financially all types of claims under its review.<sup>92</sup> It assesses whether a claimed property qualifies as building land, agricultural land, forest land, meadow, or pasture under Article 6(1)(a) of the 2015 Property Act, taking into consideration the qualifications attributed to that property in the legal documents which are available in the case file. If the legal documents in the case file do not offer accurate information to such end, the Agency will then make reference to the qualifications attributed to that property in the Land Map that officially applied at a time closest to expropriation date. If the Agency is objectively prevented from assessing the cadastral index of the claimed property based on one of the above principles it will assess that property based on its lowest cadastral index in the current Value Map<sup>93</sup>.
86. The Constitutional Court of Albania annulled Articles 6(3) and 6(5) of the 2015 Property Act.<sup>94</sup> However, the relevant by-laws appended to that Act continue to provide for the deduction of any deductible benefit from the amount to be compensated.<sup>95</sup> Apparently the effects of this unconstitutional method of calculation are neither measured nor addressed accordingly. These rules continue to apply irrespectively of the Constitutional Court's judgment and affect all types of claims under the review of the Agency. They appear as specific provisions in all relevant sub-legal acts<sup>96</sup>.
87. The Agency is competent to initiate *ex officio* the administrative procedure concerning *assessment of claims for the restitution and compensation, deposited before the entry into force of this Act* and for which no decision has yet been taken, as well as for the financial evaluation of decisions recognizing a right to compensation, but without setting an amount to be compensated. It publishes in the electronic Registry of Assessments the documents that are missing in any case file subject to examination and leaves accordingly a specific time limit to the interested parties to submit missing documents.<sup>97</sup>

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<sup>92</sup> *Ibid.*, Article 26 (1) (c).

<sup>93</sup> Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure, concerning the Assessment and Distribution of the Financial and Physical Compensation Fund", Article 3 (d).

<sup>94</sup> Constitutional Court, Judgment no. 1 of 17 January 2017.

<sup>95</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests, concerning Recognition and Compensation of Property" Article 18. Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fund", Articles 3-6.

<sup>96</sup> Council of Ministers, Decision no 221 dated 23.3.2016 "On the Organization and Functioning of the Agency on the Treatment of Council of Ministers of Albania Property. Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests, concerning Recognition and Compensation of Property". Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fund".

<sup>97</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests concerning Recognition and Compensation of Property", Article 16. Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fond", Articles 9-10.



88. As a rule *examination of a newly-lodged application* on restitution and compensation of property (under Article 27.1 of the 2015 Property Act) is dependent on the claimants' will to apply to the Agency. Any interested claimant is nevertheless required to append to the application form three valid sets of documents: namely, the set of legal documents; the land map(s) and documents that certify whether the applicant is a beneficiary of agricultural land.<sup>98</sup>
89. The legal documents required to establish a valid case file in respect of newly-lodged applications consist of: (a) Land Certificate(s) issued from the Land Registry (if any), (b) formerly issued Agency Decision(s) (if any), (c) court decision(s), or the act(s) of expropriation of property issued after 29.11.1994 (in respect of properties owned by claimants prior to 7.04.1939).<sup>99</sup> If one of the above mentioned legal documents does not define with sufficient precision the size, or the boundaries of the claimed property, the claimant has to replace it with a final court decision showing with accuracy the missing information.<sup>100</sup> The land map is on the other hand a (cartographically and topographically) updated description of the exact size and boundaries of a claimed property, mapped onto the official Land Map of the competent Land Registry.<sup>101</sup> This document acquires legal relevance only if issued from a licensed engineer.<sup>102</sup>
90. Prior to assessment of a newly-lodged application, the Agency, in cooperation with the competent state institutions: (a) verifies the existence and the authenticity of the legal documents appended to an application form<sup>103</sup>; (b) examines whether the legal documents at issue reveal unclear or incomplete information in respect of the claimed property<sup>104</sup>; (c) confirms the accuracy of the land map(s) appended in the newly-lodged case file<sup>105</sup>; (d) identifies in the terrain with the presence of the claimant the positioning and factual boundaries of a property<sup>106</sup>.
91. If the Agency concludes that the documents appended to a new application do not satisfy the relevant legal requirements, it notifies the claimant in writing in the address of his residence and requests him/her to comply accordingly<sup>107</sup>. If for any reason the claimant cannot be traced the Agency halts administrative procedure in his respect until the claimant shows an interest in respect of the state of examination of his application

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<sup>98</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests concerning Recognition and Compensation of Property", Article 3.

<sup>99</sup> *Ibid.*, Article 4 (a).

<sup>100</sup> *Ibid.*, Article 4(b)

<sup>101</sup> *Ibid.*, Article 5. Competent Land Registry according to Article 5 means: any Regional Land Registry Office (in respect of building land, agricultural land, pastures and meadows) and the General Directorate of Forests (in respect of forest land),

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, Article 12

<sup>104</sup> *Ibid.*, Article 10.

<sup>105</sup> *Ibid.*, Article 11.

<sup>106</sup> *Ibid.*, Article 13.

<sup>107</sup> *Ibid.*, Article 8.

before the Agency<sup>108</sup>. If the Agency identifies the claimant's place of residence subsequently, it publishes public announcement in its own premises and also in the administrative municipality where the claimed property is situated.<sup>109</sup> If the claimant fails to submit the required documents following notification, or fails to pay the application fees, the Agency restores him the application form together with the appended documents.<sup>110</sup>

92. As a rule, the failure of the claimants to submit the missing documents will not prevent the Agency from assessing the claims for restitution and compensation deposited before the entry into force of this law, and for which no decision has yet been taken.<sup>111</sup> Neither will such a failure prevent the Agency from assessing the claims for the financial evaluation of decisions recognizing a right to compensation but without setting an amount to be compensated<sup>112</sup>. In case of a failure of claimants to submit necessary documents, the Agency shall assess such claims with the minimum price as defined in the value map for that administrative unit (municipality/commune) and for that property category.<sup>113</sup>
93. The Agency is competent to initiate accelerated administrative proceedings for financial compensation based on the claimants' requests.<sup>114</sup> In such cases the Agency assesses financially the compensation claims irrespective of their chronological order.<sup>115</sup> There are no particular rules of procedure or deadlines addressing situations of missing documents in the case files subject to such procedure, or situations where the documents submitted do not satisfy the legal requirements. It is not clear whether the penalties previewed under article 16 (4) of the 2015 Property Act, apply in respect of this extraordinary procedure.
94. The Agency initiates the *auction procedure* on its own motion.<sup>116</sup> However, it rests with a claimant to decide whether he or she wishes to participate in an announced auction.<sup>117</sup> The Agency enjoys full discretion in this respect since there are no rules providing for the deadlines or conditions to organize auction for the sale of a state owned property. Also there are no rules defining eligibility criteria in respect of state owned property that may be subjected to auction.

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<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*, Article 9.

<sup>111</sup> *Ibid.*, Article 18.

<sup>112</sup> Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fond", Articles 10-13.

<sup>113</sup> 2015 Property Act, Article 16 (4).

<sup>114</sup> Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fond", Article 22 (a).

<sup>115</sup> *Ibid.*, Article 22 (c).

<sup>116</sup> *Ibid.*, Article 31.

<sup>117</sup> *Ibid.*, Article 28.

95. Lastly, there are no new developments in respect of efforts needed to find solutions that might effectively address specific situations such as: (a) the existence of overlapping property rights; (b) the land being occupied by illegal buildings; and (c) the land being occupied by state-owned buildings. Nonetheless, there are 14 laws appended to Annex 1 of the 2015 Property Act that have caused and still continue to cause such situations to arise.

**d) The right to appeal**

96. The Court of Administrative Appeal is competent to examine the complaints of any interested party against an assessment of the Agency which establishes the value of the property, provided that these are submitted within 30 days of the publication and only with respect to the amount of the compensation.<sup>118</sup> According to the Government of Albania the procedural aspects are also subjected to appeal.<sup>119</sup> However, the ability to exercise the right to complain against procedural aspects is in practice doubtful since the claimants are not informed about either the concrete rules of procedure or the principles applied by the Agency in their case. As mentioned above, the Agency does not reason in a written form the exercise of its discretion to make a financial assessment or the way it and determines the appropriate method of compensation in a given case, although it decides for the first time in such matters.

97. The Court of Appeal is, on the other hand, the competent court to examine the complaints of any interested party and of the State Advocate against any decision of the Agency for restitution and compensation in respect of claims deposited before the entry into force of this Act, and for which no decision has yet been taken.<sup>120</sup> The same court is competent to also examine the complaint of any interested party and of the State Advocate against the decision of the Agency concerning the claims logged in compliance with article 27.1 of the Act<sup>121</sup>. The Court of Appeal acts in accordance with the provisions of the Code of Civil Procedures of the Republic of Albania, provided that the appeal is submitted within 30 days from the notification of the Decision of the Agency.<sup>122</sup>

98. Tirana Administrative Court of first instance requested the Supreme Court on 27 July 2017 to decide the matter of competences, where Article 29 of the 2015 Property Act is applicable.<sup>123</sup> Although the Administrative College of the Supreme Court is supposed to

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<sup>118</sup> 2015 Property Act, Article 19.

<sup>119</sup> [H/Exec (2015)16 2 June 2015], Response of the Government of Albania in respect of assessments made by the Department of Execution of Judgments of the European Court of Human Rights, §§ 76 – 77 of the document.

<sup>120</sup> 2015 Property Act, Article 29.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> Supreme Court of Albania, Case no. 31003-02116-00-2017.

decide the matter within 10 days following submission of a request<sup>124</sup>, the case is pending.

99. Neither the Agency nor the Court publish the list of appeals submitted pursuant to Articles 19 and 29 of the 2015 Property Act against the assessments and decisions of the Agency. This is regrettable as knowledge about their extent would clearly be important for achieving an understanding the trends regarding resort to judicial proceedings, as well as the likely future reliance of the claimants on the guarantees embodied in the Articles 6(1) and 13 of the European Convention.

#### **e) Enforcement of final Assessments and Decisions of the Agency**

100. Any claimant whose claims concerning compensation of property are financially assessed by the Agency is entitled to apply for compensation, providing that this financial assessment has become final and binding in his or her respect.<sup>125</sup> The latter will occur if: (a) the claimant does not appeal against pursuant to Article 19(3) of the 2015 Property Act; (b) the interested parties and the State Advocate do not appeal against that assessment; and (c) any appellate court proceedings (including proceedings before the Supreme Court) have been concluded.<sup>126</sup>

101. Apparently the Agency determines the mode of compensation on a case by case basis during the enforcement phase. It examines the documents appended to the application form to this end.<sup>127</sup> There are no express rules providing for a claimant's entitlement to bring appellate court proceedings to challenge the method of compensation imposed by the Agency in his or her case, although the mode of compensation is a core indicator of the effectiveness the compensation mechanism embodied in the 2015 Property Act.

102. Moreover there are no express rules providing for enforcement of the Agency Decisions in respect of newly-lodged applications as well as of claims submitted with the Agency prior to the entry into force of the 2015 Property Act. It is not clear whether the Agency determines the mode of compensation after a decision becomes final or prior to that. Neither is it clear whether the claimants are entitled to lodge appellate court proceedings against the method of compensation imposed from the Agency in their cases.

103. **The forms of compensation embodied in the 2015 Property Act - except for the provisions in Articles 6(3) and 6(5) of the Act - were declared to be constitutional by the Constitutional Court. Confirmation of the Act's constitutionality has paved the**

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<sup>124</sup> Law no 49/2012 "On the Administrative Courts and Adjudication of Administrative Disputes", Article 13 (6).

<sup>125</sup> Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fond", Article 16.

<sup>126</sup> *Ibid.*, Article 15.

<sup>127</sup> *Ibid.*, Article 16.

way for its further implementation. Nonetheless, there are two major considerations affecting this process, namely, the effects of the legislative gap resulting from the unconstitutionality of Articles 6(3) and 6(5) of the Act and failure of the sub-legal acts supplementing the Act to ensure that cumbersome procedures are eliminated.

104. With regard to the first, it is highly desirable that any proposed solution aimed at filling the existing legislative gap - through modification of the existing compensation formula - be approved as an amendment to the 2015 Property Act, with proper consideration being given to ensure that a further successful constitutional challenge is unlikely. Such an approach is the one most likely to secure compliance with the principle of legal certainty, to which the Constitutional Court attached great importance. Also the authorities should ensure that all sub-legal acts and the previous decisions of the Agency are free from any effects stemming from the finding that Articles 6(3) and 6(5) were unconstitutional. This is particularly important in view of decisions providing for compensation in kind, where claimants risked receiving significantly smaller plots of land as a consequence of the application of the above mentioned provisions and were therefore willing to challenge the relevant decisions of the Agency before domestic courts. It should be appreciated that the Act can only be regarded as having been fully implemented in respect of a given application where the claimant actually receives the compensation due to him or her.
105. As to the second consideration, the authorities should take the steps necessary in accordance with Article 36(2) of the Act to secure effective cooperation between the institutions involved in the restitution and compensation process since all the documents that claimants are required to submit to the Agency are issued from those institutions. Having to rely on the legislation on the right to information from the responsible institutions places a burden of proof on the claimants that is quite uncommon for administrative proceedings. Enhancing effective cooperation between responsible institutions should thus notably reduce the burden of proof placed on claimants.
106. Also, securing effective cooperation between the Agency and the relevant institutions would contribute to preventing possible abuse of power and corruption. The implementation of the 2015 Property Act is particularly vulnerable to the above mentioned phenomena since: the coverage of property registration (in compliance with the World Bank Recommendations) has not been completed; the Task Force established through the Joint Agreement between the Agency, the General Prosecutor's Office and the State Advocate Office is not fully operative; the 2012 – 2020 Inter-Institutional Strategy on Restitution and Compensation of Property has not been revised after the adoption of the 2015 Property Act; the approval by municipalities of detailed urban plans in respect of several properties takes place without verifying in advance their status with the Agency; and the line ministries grant state-owned properties to third public and private parties on the presumption of the public interest without verifying in advance their status with the Agency.

107. In view of the above, the establishment of any focal point to promote the necessary cooperation is something that needs to be underpinned by a solid and explicit legal basis which takes account of the difficulties outlined above. This is essential if there is to be a significant acceleration in the process of implementing the 2015 Property Act and the elimination of parallel decision-making processes.
108. There are a dozen laws, on the presumption of public interest, that grant formally state-owned property to private/public third parties for private use, although the process of registration of all properties in Albania is still not complete. Certainly, there seem to be individuals and private or public entities whose property is not definitively registered in the Land Registry. As a consequence, the possibility of overlapping or conflicting claims in respect of several properties cannot be regarded as something arising only in isolated or sporadic cases. The authorities should thus examine the implications in this regard for the laws appended to the 2015 Property Act, with a view to avoiding the risk of any issues relevant to the restitution and compensation process being left to being randomly resolved in the courts. Furthermore, consideration should be given to ensuring that any grant of private property to third parties for private use on the presumption of public interest should be the exception and not the rule. In addition, the legislative framework should ensure that the public interest in case of any interference with the private property is clearly conceivable.
109. Recently the Government of Albania approved two further additional laws, namely, Law no 55/2015 “On the strategic investments in the Republic of Albania” and Law no. 93/2015 “On the Tourism”. There is no doubt that these laws serve the public interest and enhance the perspective of the country’s economic development. However aspiring to achieve those goals should not place excessive burden on either investors or individuals, including those seeking compensation and restitution. From that perspective the prompt completion of the process registration of property in Albania is a matter of key importance.
110. Furthermore, the need for separate enforcement proceedings following a final decision should be abandoned and steps should be taken both to unify the approach to the interpretation of the legislation by the Agency and the courts and to ensure that the confusion over which courts have competence in any appeals is removed. In addition, consideration should be given to abandoning or limiting arrangements for in-kind compensation and the proposed use of an auction procedure in view of the unnecessary complexities that both involve for processing claims.
111. Moreover, awards of compensation should include an element covering non-pecuniary damage for the delayed implementation of the legislation.
112. Finally, in view of the burden on public finances of providing compensation to former owners, consideration ought to be given to increasing the cost-share borne by those who are benefitting from the legalization process.

#### **4) Utmost transparency and efficiency in the decision-making process**

113. The requirements under this heading concern four issues: the organizational actions of the Agency; the discretion of the Agency to assess financially property claims; the decisions of the Agency; and administrative tariffs.

##### **a) Organizational actions of the Agency**

114. In addition to his or her duties under the 2015 Property Act, the General Director of the Agency is responsible for: approving approve its Rules of Procedure of the Agency<sup>128</sup>; representing it in relations with third parties<sup>129</sup>; reporting to the Prime Minister, the Minister of Justice and the monitoring Parliamentary Commissions<sup>130</sup>; and examining cases of (alleged) administrative misconduct by any of its members of staff<sup>131</sup>.

115. The Agency sustains the work of the Inter-institutional Commission (“the Commission”), mandated to identify the state-owned property that may be transferrable to the Physical Compensation Fund.<sup>132</sup> In this framework, the Agency is responsible for: coordinating the meetings of the Commission<sup>133</sup>; to inform the Commission about the work accomplished<sup>134</sup>; co-ordinating the inter-institutional work aimed to the fulfillment of the Commission’s mandate<sup>135</sup>; observing the compatibility of Commission’s activities with the latter’s mandate<sup>136</sup>; and performing such duties as are required by the Head of the Commission<sup>137</sup>.

116. The members of the Commission are bound to cooperate with the Agency. The General Director of the Agency is supposed to inform the Prime Minister about the failure of any of the members to cooperate.<sup>138</sup> In addition, the Head of the Commission is supposed to inform the Prime Minister about the evolution of the work of the

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<sup>128</sup> *Ibid.*, Article 8 (d).

<sup>129</sup> *Ibid.*, Article 8 (b).

<sup>130</sup> *Ibid.*, Article 14.

<sup>131</sup> *Ibid.*, Article 8(c).

<sup>132</sup> Council of Ministers, Decision no. 901 dated 21.12.2016 “On the establishment of the Inter Institutional Commission, mandated to identify the state owned property, which may be subjected to physical compensation fund”, Article 7.

<sup>133</sup> *Ibid.*, Article 7 (a).

<sup>134</sup> *Ibid.*, Article 7 (b).

<sup>135</sup> *Ibid.*, Article 7 (c).

<sup>136</sup> *Ibid.*, Article 7 (ç)

<sup>137</sup> *Ibid.*, Article 7 (d).

<sup>138</sup> *Ibid.*, Article 8.

Commission, problems identified, their possible solution and the concrete results achieved.<sup>139</sup>

117. The National Land Registry, the Agency on Legalization and Urbanization of Informal Buildings and Living Territories, the General Directorate of Public Property Management, the State Archive, the Central Archive of Urban Planning and the General State Advocate, as well as any other public entity whose services are necessary for the implementation of the 2015 Property Act are bound to offer them to the Agency, free of charge.<sup>140</sup>

118. The General Director of the Agency is supposed to bring to the attention of the Minister of Justice any information about developments in the process of assessment of property claims under its review, or about pending judicial proceedings that he deems important.<sup>141</sup>

119. The General Director of the Agency appears to enjoy a wide discretion to elect appropriate candidates for the vacant positions in the Agency. The Deputy Director of the Agency is appointed (suspended, or removed from office) upon order of the Minister of Justice following the proposal of the General Director of the Agency.<sup>142</sup> Other vacancies in the Agency are filled in compliance with the Labor Code of the Republic of Albania.<sup>143</sup> Candidates have to be Albanian nationals, having attained a Master's degree in the field of law, engineering, urban planning, architecture, economy, real estate management, or topography. Integrity and organizing capacities are two further qualities that potential candidates are required to satisfy.<sup>144</sup> Selection of the candidates is further determined by the specific, additional required for certain vacancies.<sup>145</sup> However, although the Agency is an administrative body bound by the Code of Administrative Procedure but requirements for appointments in general are not prescribed in its internal rules.

120. The work performance of Agency employees is reported monthly to the General Director of the Agency.<sup>146</sup> Employees of the Agency are responsible for making an accurate technical and legal assessment in respect of each pending case and for proposing the most appropriate compensation in that respect.<sup>147</sup> Also they have to secure accurate and correct registration, administration and protection of all case files

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<sup>139</sup> *Ibid.*, Article 6.

<sup>140</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests concerning Recognition and Compensation of Property", Article 12.

<sup>141</sup> Council of Ministers Decision no 221 dated 23.3.2016 "On the Organization and Functioning of the Agency on the Treatment of Council of Ministers of Albania Property", Article 15.

<sup>142</sup> *Ibid.*, Article 7.

<sup>143</sup> *Ibid.*, Article 16.

<sup>144</sup> *Ibid.*, Article 17.

<sup>145</sup> *Ibid.*, Article 18.

<sup>146</sup> *Ibid.*, Article 11 (last paragraph)

<sup>147</sup> *Ibid.*, Article 13



under their responsibility.<sup>148</sup> They are prohibited from exercising any public or private functions that conflict with their job description and they are legally bound to inform the General Director of the Agency if they become aware of a conflict of interest in their case.<sup>149</sup>

121. Employees of the Agency have to offer effective assistance and advice to claimants during the working hours. However, the provision of assistance to the public may be subject to certain limitations specified by the General Director of the Agency<sup>150</sup>.

122. As a rule Departments of the Agency submit written, monthly activity reports to the General Director of the Agency concerning the implementation of the 2015 Property Act<sup>151</sup>. These Activity Reports contain relevant data on: the overall size of the land compensated in kind in the recognized property (as per cadastral index); the overall size of the land available for compensation in kind (as per cadastral index); the number of assessments establishing the value of the property; the number of assessments in respect of which compensation procedure is pending (showing the total amount to be paid to claimants and the type of land to be awarded to them as compensation in kind); the number of enforced assessments (showing the total compensation amount delivered to the claimants and the size of land distributed to them in the form of compensation in kind); the index of the decisions of the Agency acknowledging the right to property and providing for compensation; the quality of inter-institutional cooperation; the number of appeals against the assessments and decisions of the Agency including their current status; the work accomplished to update the digital Registry as well as the Archive of the Agency; and any further information which is deemed necessary from General Director of the Agency.

#### **b) Discretion of the Agency to assess financially property claims**

123. The Agency assesses financially all claims for restitution and compensation deposited before the entry into force of the 2015 Property Act and for which no decision has yet been taken<sup>152</sup>, as well as all claims for financial evaluation of decisions recognizing a right to compensation but without setting an amount to be compensated<sup>153</sup>. Also, it assesses financially the applications for compensation or restitution lodged within a specific time-limit.<sup>154</sup>

124. However, the Agency is not competent to assess financially claims for restitution and compensation deposited before the entry into force of the 2015 Property Act if no

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<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*, Articles 19 - 20.

<sup>150</sup> *Ibid.*, Article 4.

<sup>151</sup> *Ibid.*, Article 11.

<sup>152</sup> 2015 Property Act, Article 3.1

<sup>153</sup> *Ibid.*, Article 3 (2) b.

<sup>154</sup> *Ibid.*, Article 3.1.

decision on it has yet been taken and the property claimed falls under the scope of Article 25 of the Act.<sup>155</sup> The same rule applies even in respect of the newly-lodged applications.<sup>156</sup> Moreover, the Agency will not assess financially a newly-lodged application if the property claimed therein is an occupied property under Article 25 of the Act. Furthermore, the Agency is not competent to address in any form claims concerning unenforced decisions on restitution of property issued prior to the entry in force of this Act. It is not clear whether judicial review of the claims pending before the Agency that have been excluded from the scope of the 2015 Property Act's application is permitted.

125. The administrative procedure leading to the financial assessment of claims under the review of the Agency is regulated by the relevant rules of the 2015 Property Act, the Code of Administrative Procedures of Albania and the relevant by-laws.<sup>157</sup> The process of assessment is of both legal and technical character<sup>158</sup>. Any assessed case file is duly signed by the competent working group (which is composed of the lawyer and the topographer who examine that particular case file) as well as by the head of the Supervising Team that approves the assessment.<sup>159</sup>

126. In the framework to the competences attributed to it by the above mentioned laws, the Agency enjoys discretion to assess in a case by case basis whether and to what extent:

- i. a property qualifies as "occupied property" for purposes of applicability of Article 25(1)(a)–(b) of the Act;
- ii. a property qualifies as "occupied property" for purposes of applicability of Article 25(1)(c) of the Act;
- iii. a property qualifies for compensation in kind in the recognized property;
- iv. on grounds of *public interest*, or *international obligations* as prescribed under Article 25 (1)(a)–(b) of the Act;
- v. a property qualifies as "*land granted for use*" under Article 23 of the Act;
- vi. the claim for compensation may be dismissed on grounds of deductible benefits under Article 6, Article 7(2)(a)–(b) and Article 21(4) of Act;
- vii. financial compensation may be reduced on grounds of "objective impossibility" and "lack of necessary documentation" under Article 16(4)(a)–(b);

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<sup>155</sup> *Ibid.*, Article 20.

<sup>156</sup> *Ibid.*

<sup>157</sup> Council of Ministers of Albania, Decision no 221 dated 23.3.2016 "On the Organization and Functioning of the Agency on the Treatment of Property", Council of Ministers of Albania, Decision no.222 dated 23.3.2016 "On the Treatment of Requests concerning Recognition and Compensation of Property" and Council of Ministers of Albania, Decision no.223 dated 23.3.2016 "On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fund".

<sup>158</sup> Council of Ministers of Albania, Decision no 221 dated 23.3.2016 "On the Organization and Functioning of the Agency on the Treatment of Property", Article 13.

<sup>159</sup> *Ibid.*

- viii. the claim for compensation may be dismissed on grounds of “accuracy of documentation”, as provided for in Article 26(1)(ii) of the Act taken in conjunction with in Article 2 of the Act;
- ix. a claimant qualifies as a “beneficiary”, or “interested party” under the meaning of Articles 19(3), 23, 27(1), 29 and 30(3) of the Act;
- x. a property qualifies as available to auction procedure under Article 13 of the Act; and
- xi. the “permanently unproductive lands” under Article 5(11) of the Act are to be used as compensation tools under this Act.

127. The Agency determines the method of compensation on a case by case basis following financial assessment of all property claims under its review.<sup>160</sup>

### c) Decisions of the Agency

128. As a rule, the General Director of the Agency is supposed to issue written decisions that are reasoned and meet the requirements of an administrative act provided for in the Code of Administrative Procedures of the Republic of Albania.<sup>161</sup> However, it appears that in practice the Agency issues written decisions only in respect of pending claims for restitution and compensation deposited before the entry into force of this Act and for which no decision has yet been taken as well as in respect of newly-lodged claims under Article 27(1) of the 2015 Property Act. It does not issue written and reasoned assessments establishing the value of the property.<sup>162</sup>

129. The Agency publishes and updates the assessments establishing the value of the property in an electronic Registry (the “Registry of Assessments”), which is accessible on its official website.<sup>163</sup> The updates are also published in the media and in the Official News Bulletin.<sup>164</sup> The Registry of Assessments contains relevant data concerning: the cadastral Index of a property at the date of expropriation; the current cadastral index of that property; missing documents in the case file and also the amount of compensation.<sup>165</sup> It does not provide information about the relevant procedural actions leading to each assessment.

130. The Agency publishes on its official website a separate electronic Registry of Claims for restitution and compensation deposited before the entry into force of the 2015 Property Act and for which no decision has yet been taken, as well as of the claims

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<sup>160</sup> 2015 Property Act, Article 26(a)(ii).

<sup>161</sup> 2015 Property Act, Article 27 (5).

<sup>162</sup> Council of Ministers of Albania, Decision no.223 dated 23.3.2016 “On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fund” Article 13.

<sup>163</sup> *Ibid.*, Article 7.

<sup>164</sup> *Ibid.*, Article 8.

<sup>165</sup> *Ibid.*, Article 9.

logged in compliance with Article 27(1) of the Act.<sup>166</sup> It appears that there are no rules of procedure providing for the updating of the Registry of Claims or for the integration of the information in the Registry of Claims into the Registry of Assessments. Moreover the decisions of the Agency in respect of this group of claims are not accessible online.

#### **d) Administrative Tariffs**

131. The administrative tariffs applied by the Agency became binding in January 2017.<sup>167</sup> A claimant is required to pay for: (a) the assessment of a newly-lodged application<sup>168</sup>; (b) the assessment of compensation claims<sup>169</sup>; (c) the financial compensation of a property occupied by informal buildings<sup>170</sup>; (d) the alienation of a yard occupied by third parties<sup>171</sup>; and (e) the receipt of copies of the case file<sup>172</sup>.

132. However, the costs arising in connection with the foregoing services is not limited to the approved tariffs since a claimant will, in addition, have to pay for the required notary declarations<sup>173</sup>, the land maps and the other legal documents that they must submit to the Agency.

133. **The sub-legal acts have undoubtedly improved the organizational competences of the Agency. However, there is still scope for further action to ensure transparency and effective decision-making. Thus, there is a need to identify and determine the monitoring powers of the Ministry of Justice over the daily activities of the Agency in concrete terms. In addition, it is similarly necessary to identify and determine the monitoring powers of the legislative and executive institutions that are competent to assess the information reported by the Agency, as well as their powers to issue binding policy directives for the Agency. Furthermore, it would be appropriate to enhance the independence of the staff of the Agency in decision-making.**

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<sup>166</sup> Council of Ministers of Albania, Decision no.222 dated 23.3.2016 “On the Treatment of Requests, concerning Recognition and Compensation of Property”, Article 16.

<sup>167</sup> Ministry of Justice of Albania and the Ministry of Finance of Albania, Joint Regulation no 6445/3 dated 9.1.2017 “On the adoption of the Official Tariffs that are to be applied from the Agency on the Treatment of Property in respect of services offered by it”.

<sup>168</sup> *Ibid.*, Article 1.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.* Although the by-law refers to “compensation”, “assessment” is what is actually intended.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> Council of Ministers of Albania, Decision no 685 dated 28.9.2016, amending Decision no.223 dated 23.3.2016 “On Rules of Procedure concerning Assessment and Distribution of the Financial and Physical Compensation Fond”, Articles 2-3. According to these provisions any claimant has an obligation to submit with the Agency – apart from the required legal and cartographic documents – a notarized statement that none of the heirs he represents has ever received land based on the applicable legislation providing for distribution of the land. Also during enforcement proceedings any claimant has to submit with the Agency another notarized statement that the Assessment of the Agency subjected to enforcement procedure is not challenged by them, or any other third party before the competent court.

134. As stated in the updated Action Plan, the WEB Gis Program for the Digital Map<sup>174</sup> will enable property registration and establishment of a unified database of all decisions on restitution and compensation of properties until September 2017. The potential afforded by this Program for the effective implementation of the 2015 Property Act could prove to be very significant. However, indicators relating to the Program's efficiency have yet to be determined.
135. In addition, there is a need for the valuation maps in use to be revised and updated by reference to transparent and explanatory criteria, with due account being taken of the land development and market fluctuation.
136. Although the Agency enjoys a wide discretion to decide the property claims in the case files under its jurisdiction, it does not specifically notify a claimant in writing about decisions establishing the value of the property concerned. Instead the financial assessments are published in an electronic registry on the Agency's website and also in several newspapers. A claimant is then left only 30 days such publication to challenge that assessment before the Court of Administrative Appeal. However, there are many reasons – including the claimant's age, health, place of residence and ability to have access to the Internet and print media - why this form of notification may not effectively reach a claimant and jeopardize as a consequence its right to effective appellate court proceedings. According to the case law of the European Court, the responsibility for notifying the claimants rests with the authorities. Moreover, the equal and effective notification of all financial assessments to claimants ensures the utmost transparency in the decision-making process. This approach should also be followed as a means of rectifying the ineffective notifications in the past.

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

137. The Agency has examined 10,872 decisions taken by its predecessor which provided for compensation (out of a total of 26,000) pertaining to the years 1993, 1994 and 1995.<sup>175</sup> Out of these 10,782 decisions, 4,011 belong to the years 1993–1994 and 6,861 to the year 1995<sup>176</sup>.
138. Only 1,925 of the 4,011 decisions for the years 1993-1994 have been financially assessed. Another 503 decisions have been declared “exhausted” pursuant to Article 7(2)(a) of the 2015 Property Act and a further 1,583 decisions have not been assessed

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<sup>174</sup> DH-DD(2017), 12 July 2017, at p. 11. See also Agency on the Treatment of Property, Report issued upon expert request, 29 August 2017.

<sup>175</sup> Committee of Ministers, DH-DD (2017)807, 12 July 2017. See also: Agency on the Treatment of Property, Report issued upon expert request, 29 August 2017.

<sup>176</sup> *Ibid.*

financially due to: a lack of the necessary cartographic data which would enable determination of the cadastral index at the time of expropriation; the unclear definition of the claimed property in the old certificate; or due other reasons described in the Land Commission Registry published on the website of the Agency.<sup>177</sup>

139. Only 3,601 of the 6,861 decisions for 1995 have been financially evaluated. Another 737 decisions have been declared “exhausted” according to Article 7(2)(a) of the 2015 Property Act and a further 2,523 decisions have not been assessed financially for the same reasons given in the preceding paragraph.<sup>178</sup> By the end of 2017 the Agency expects to have completed the examination of 6,396 decisions pertaining to the year 1996.<sup>179</sup>

140. It appears in the updated Action Plan that the Agency “has financially assessed” 4,011 decisions for the years 1993–1994 and the 6,861 decisions for 1995. However, it actually uses the term “financial assessment” for those decisions of its predecessor which it has examined without, for various reasons, being able to assess them financially.

141. According to the Agency claimants have challenged its financial assessment in 22 cases (pertaining the decisions of 1993 and 1994) before the Court of Administrative Appeal.<sup>180</sup> That court has upheld the financial evaluation made by the Agency in 15 cases, partially rejected its financial assessment in one case and there are another 6 cases still pending.<sup>181</sup> The Agency has reported that claimants have challenged the financial assessment of the Agency in a further 68 cases (pertaining to the decisions of 1993 and 1994) before the Court of Appeal<sup>182</sup>, which has upheld the financial evaluation made by the Agency in 4 them, with the remainder of the cases still pending<sup>183</sup>.

142. The Agency has received 5,700 newly-lodged applications.<sup>184</sup> It has already examined administratively 3,504 of them.<sup>185</sup> The Agency has reportedly restored to the claimants documents in 2,663 cases (in compliance with the Council of Ministers’ Decision no 222/2016)<sup>186</sup> and has declared the other 568 applications admissible<sup>187</sup>.

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<sup>177</sup> Agency on the Treatment of Property, Report issued upon expert request, 29 August 2017.

<sup>178</sup> *Ibid.*

<sup>179</sup> Committee of Ministers, DH-DD (2017)807, 12 July 2017. See also: Agency on the Treatment of Property, Report issued upon expert request, 29 August 2017

<sup>180</sup> Agency on the Treatment of Property, Report issued upon expert request, 29 August 2017.

<sup>181</sup> *Ibid.*

<sup>182</sup> *Ibid.*

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.*

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

143. The Agency reports that the claimants have complained before the Court of Appeal (under Article 29 of the 2015 Property Act) in 58 cases. Court proceedings have been completed in only 3 of them cases.<sup>188</sup>
144. The Agency has observed a relatively low number of requests for compensation where claimants have agreed with its financial assessment; concretely there have been a total number of 928 applications for financial compensation (419 applications during the year 2016 and 509 applications during the year 2017)<sup>189</sup> It has suggested that the low number of applications is attributable to the numbered heirs, being unable to speedily complete the documents required for compensation claims. In addition, it is suggested that some of the entitled heirs living abroad and are not in a position to complete the required documents or do not consent to claims being made because of the low compensation involved.<sup>190</sup>
145. The Agency announced a fund for financial compensation of ALL 3, 764 828 608 during the year 2016 and ALL 1, 805 417 553 during the year 2017<sup>191</sup>.
146. In addition, the Agency has distributed a total of 323.4 ha in physical compensation (65.9 ha during the year 2016 and 257.5 ha during the year 2017).<sup>192</sup>
147. The Agency has received 12 applications in terms of speedy compensations and has distributed ALL 415 516 537 as compensation in that respect<sup>193</sup>.
148. The Agency has identified 290 overlapping cases in respect of decisions issued during the years 1993, 1994 and 1995.<sup>194</sup> It has also registered 12 applications in respect of overlapping properties and awarded ALL 36 586 026 to the bank account in respect of 7 of them.<sup>195</sup>
149. **As stated in the updated Action Plan the Agency has enhanced the staffing resources. It has been able to examine some 10,872 decisions providing for compensation (out of the total of 26,000). The examined decisions belong to years 1993, 1994 and 1995. The Agency is expected to examine within the year 2017 other 6,396 decisions pertaining to the year 1996.**
150. **Although the Agency has made noticeable progress with the examination of decisions providing for compensation yet it has declared “exhausted” - under article**

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<sup>188</sup> *ibid.*

<sup>189</sup> *ibid.*

<sup>190</sup> *ibid.*

<sup>191</sup> *ibid.* See also, Committee of Ministers, DH-DD (2017)807, 12 July 2017.

<sup>192</sup> *ibid.*

<sup>193</sup> *ibid.*

<sup>194</sup> *ibid.*

<sup>195</sup> *ibid.*

**7(2)(a) of the Act - 10% of those decisions and has still to financially reassess 40% of them. Furthermore, the Agency will re-examine the case files of all the decisions under its jurisdiction where it has to award physical compensation to claimants. That means that the Agency will have to take additional action in the above situations. These actions are time consuming and will weaken the prospect of strict observation of the allowed time-limits.**

151. It is understood that the provision of compensation through the auction procedure has not started, while physical compensation in the recognized property is interrupted after Articles 6(3) and 6(5) of the Act were declared unconstitutional. These are factors that may also negatively affect the observation of the required time-limits. In addition the Agency has reportedly examined administratively 3,504 applications that is relatively a low number of applications compared to the total number of unhandled claims.
152. There is a need, therefore, either to revise the time-scale for processing claims or to allocate the Agency a more appropriate level of human and material resources in order to fulfill the goals set for it.
153. As it appears in the updated Action Plan the government has underfunded financial compensation in the first two years of the implementation of the Act. Moreover the Agency pointed out that the Financial Compensation Fund will be used to compensate the owners who did not challenge before a court the financial assessment made by the Agency in their respect. Enforcement of final courts' decisions that change financial assessments made by the Agency will be financed with other budgetary funds. Although the number of complaints against financial assessments of the Agency is reportedly low there is an immediate need to clarify sources and the methodology of financing implementation of those decisions, since 2015 Property Act speaks of a sole Financial Compensation Fund.

## **6) Holding of wide public discussions**

154. In the Action Plan submitted to the Committee of Ministers on 20 May 2015<sup>196</sup>, the Albanian authorities stated that four working groups had been established to assist with the drafting of the 2015 Property Act: (a) the Inter-Ministerial Working Group charged with preparing the Action Plan for Restitution and Compensation of Property, chaired by the Deputy Minister of Justice<sup>197</sup>; (b) the Working Group established by order of the Director General of the Agency, which had also prepared the 2003 proposal for the authorities<sup>198</sup>; (c) the Working Group established by the Agency's Director General,

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<sup>196</sup> Committee of Ministers, DH-DD(2015)523, 20 May 2015.

<sup>197</sup> *Ibid.*, p. 3.

<sup>198</sup> *Ibid.*, p. 5.



pursuant to the Prime Minister's order to "review the legislation on the restitution and compensation of property", Order No. 153 dated 17.04.2014<sup>199</sup>; and (d) the Inter-Ministerial Working Group chaired by the Deputy Minister of Justice, also established pursuant to the Prime Minister's Order No. 153 to "review the legislation on the restitution and compensation of property"<sup>200</sup>. It appears that beneficiaries and interested groups were not invited to participate in these working groups.

155. The 2015 Property Act provides for establishment of another inter-ministerial working group to identify the properties that can be transferred to the Physical Compensation Fund. Beneficiaries or interested groups are not included in that group either<sup>201</sup>.

156. The updated Action Plan submitted by the Albanian Government to the Committee of Ministers of the Council of Europe following approval of the 2015 Property Act do not mention any involvement of beneficiaries or other interested groups in the processes leading to adoption of sublegal acts.

157. Recently, the Minister of Justice issued an administrative order aimed at finding a solution in respect of the uncommon situation created after the annulment of Articles 6(3) and 6(5) of the 2015 Property Act by the Constitutional Court.<sup>202</sup> The Minister of Justice leads the working group established to that end. The other members of the working group are: the General Secretary of the Ministry of Justice; the State Advocate; the Chief of the Cabinet of the Minister of Justice; and the Director General of the Agency on the Treatment of Property. The deadline to propose a solution is 27 November 2017.

158. **As stated in the authorities' Action Plan submitted with the Committee of Ministers on 20 May 2015, four working groups were established to assist with the drafting of the 2015 Property Act. As indicated in that Action Plan, neither the beneficiaries, nor the interested parties were included in any of these working groups. Apparently they were not invited to participate in the process of adoption of the sub legal acts. It is therefore questionable whether the solutions embodied in the law itself and in the sub-legal acts are at all a result of wide public discussions.**

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<sup>199</sup> *Ibid.*, p. 8.

<sup>200</sup> *Ibid.*, p. 12.

<sup>201</sup> Article 26(3) of the 2015 Property Act.

<sup>202</sup> Minister of Justice, Order no. 6323 dated 25.10.2017.

## CONCLUSION

159. The *Puto* judgment set an important and demanding agenda for the completion of the restitution and compensation process. It is clear that the adoption of the 2015 Property Act reflects a genuine wish to rise to the challenge that has been set by this agenda.

160. However, there are still significant shortcomings as regards the indicators available to assess the state of implementation of the Act. Implementation has also been complicated by the ruling of the Constitutional Court with respect to the Act and this is also being affected by appeals and differences in the approach which the law requires to be adopted when determining claims. In addition, the difficulties in securing effective and constructive inter-institutional co-operation necessarily impacts on the extent to which implantation is realized in practice. Furthermore, there remain problems in ensuring the resources required for implementation are in the right place and, insofar as that concerns the availability of property for compensation in-kind, this stems in part from the way the demands of other legislation run counter to the goal of bringing the process of restitution and compensation to a satisfactory conclusion. Moreover, from the perspective of complainants, the process remains cumbersome and costly and fails to take account of the non-pecuniary damage suffered by the delays experienced.

161. The report has identified various steps that need to be taken. There is a need for this to be done as a matter of urgency as otherwise the prospect of further recourse to the European Court and the risk of awards of compensation at a different level from that envisaged in the 2015 Property Act cannot be underestimated. In this connection, it should be noted that the European Court has previously indicated that:

in the cases in which there had already been a delay of more than ten years, the judgments need to be enforced without further delay.<sup>203</sup>

162. The delay in completing the restitution and compensation process and giving effect to decisions reached concerning particular cases has so far been much greater than that in the case where the European Court made that observation. It is vital, therefore, that every effort now be made to ensure that the time-scale envisaged by the 2015 Property Act is realized, particularly in view of the time that has already elapsed since the *Puto* judgment was handed down.

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<sup>203</sup> *Đurić and Others v. Bosnia and Herzegovina*, no. 79867/12, 20 January 2015, at para. 46.