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COMMENTARY

ON

LAW "ON TREATMENT OF PROPERTY AND COMPLETION OF THE PROPERTY RESTITUTION PROCESS"

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ACCRONYMS

ATP	Property Management Agency
PRCC	Property Restitution and Compensation Commission
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
CoM	Council of Ministers
CC	Constitutional Court
DCM	Decision of the Council of Ministers
IPRO	Immovable Property Restitution Office

CHAPTER I

1.1. Importance and need for a Commentary on the implementation of Law 133/2015

The need of drafting a commentary on the implementation of Law no.133 / 2015 "On the treatment of property and the completion of the property compensation process" is as important as the need of drafting and adopting Law 133/2015.

22 February 2019 marks three years from its entry into force and implementation. Given the completion of the 3-year timeline for the process of financial evaluation of recognition decisions and the review of pending claims, the elaboration of a commentary becomes indispensable. The commentary aims at addressing matters related to the implementation of Law no. 133/2015, the practices followed by law enforcement bodies, particularly the handling of issues that facilitate the understanding of Law and the challenges arising after the termination of the Property Management Agency (PMA) mandate.

The law enforcement encountered problems in understanding, legal powers, jurisdiction, the way claims were handled, up to the review of its constitutional grounds by the Constitutional Court and the case-law by the High Court.

The commentary probes into all these issues but does not claim to give definitive solutions. It will do so by analysing and interpreting the law at the backdrop of the case-law developed to date and will give an overview of the expectations from the implementation of the law in the future.

The commentary seeks to assist all the stakeholders involved in property recognition and restitution such as agencies, courts, etc while its written style enables all the individuals subject to the law to comprehend it.

1.1.1 Methodology

The commentary was drafted with the assistance and co-operation of the Council of Europe as a wrap-up of a long monitoring - coupled with a series of activities – over the implementation of the judgements of the European Court of Human Rights and more specifically the judgement on "Manushaqe Puto vs. Albania."

The urge in this exercise was the fact that Albania has been put under verification and that the dynamics of the current economic and social developments makes it imperative to conclude this process and the consolidation of property rights and deriving rights.

The commentary was developed in close cooperation with the bodies directly entrusted by the law for its implementation, such as the State Advocate Office, Property Management Agency, field professionals and organizations engaged with the protection of fundamental human rights, particularly of property rights.

During the drafting phase, several meetings were organized with representatives of the above institutions, organizations, individuals and field professionals to better reconcile the issues and problems that the commentary should address, the meetings also served to develop the

content of the commentary with the topics to tackle and the methodology to present high priority issues.

The commentary analyses ECHR judgements directly related to Albania and the case-law of the Constitutional Court and the High Court with a special focus on the case-law developed after the entry into force of the law. Also, it provides a practical assessment of the enforcement of the Law by the Property Management Agency associated with an analysis of its legal provisions.

1.2 Overview of the amendments to the legislation on property restitution and compensation. Key legislative changes in 1993-2015

The right to property found the initial legal regulation to a great extent in Law no. 7491/1991 "On main constitutional provisions" which sanctions that legal and natural persons are property entities with equal rights to the State[1]. The main constitutional provisions provided the basic legal framework which had an ongoing impact on ownership relations. These laid the legal foundation for the adoption of a set of other laws with the focus on property alienation / transfer from the State to the individuals.

One of the initial steps was Law no. 7501, dated 19.07.1991 "On land" which later proved to be the main obstacle to the legislation on property restitution and compensation. In essence, the Law sought to give agricultural household ownership/user rights over agricultural land, without remuneration[2].

For the first time in 1993, the Albanian Government recognised the former owners' right to restitution and compensation of property unjustly confiscated by the communist regime, by the adoption of Law no. 7698, dated 5.04.1993 "On restitution and compensation of property to former owners"[3].

The Law "On restitution and compensation of property to former owners" recognised the former owners and their heirs the right to demand from the authorities tasked by law the recognition and restitution of expropriated property and, in case of impossible physical restitution, the right to in-kind compensation, initially limited to a surface area up to 10,000 m^2 or to a financial value, provided that the following conditions are met:

- the claimed land is not treated by Law no. 7501, dated 19.07.1991 "On land";
- the claimed land is in the form of pasture, meadow, forest land or agricultural and non-agricultural land;
- the claimed land is State-owned; and
- the claimed land can be alienated to construction plot, by including it inside the new development border of inhabited centres.

In case the property could not be restituted in kind, the Law provided for other compensation modes, such as compensation by State bonds, compensation by an equivalent construction land in inhabited areas, or compensation to an equal surface in tourist areas.

[1] Article 1: The State budget shall approve annually a financial fund, according to the chart in Appendix 2 of this law, but not less than 50 billion ALL in 10 years, which shall be administered by the Agency for the implementation of the property restitution process.

[2] "Article 2: The Government shall give land to natural or legal persons. They shall enjoy the ownership rights and all rights contained in this law. Sale and purchase of land shall be prohibited.
Article 3: "Agricultural land shall be given in ownership or use to legal or natural persons without remuneration."

[3] Amended by Laws no.7736/1993, no.7765/1993, no.7808/1994 no.7879/1994, or.7916/1995, and Law no.8084/1996 and repealed by Law no.9235/2004.

A careful reading of the Law shows that it gave priority to in-kind restitution of property to former owners, by imposing limitation on the surface and type[4] of restitutable property.

Besides, it envisaged the establishment of the Property Restitution and Compensation Commission as the competent administrative body to decide on property claims of former owners or their heirs.

The law did not envisage deadlines to challenge the PRCC decisions and it brought problems in its implementation. Law no. 7698/1993 was amended several times to be repealed later on by law no. 9235, dated 29.07.2004 "On property restitution and compensation."

The novelty introduced by Law no. 9235, dated 29.07.2004 "On property restitution and compensation"[5] was that property could be compensated in several forms in cases where physical property restitution to former owners was impossible.
Unlike the old law no.7698, dated 15.04.1993 which imposed limitations on the size of land to be restituted, the new law envisaged limitations to restitution only for the category of agricultural land which could be restituted or compensated up to 60 ha; also, the law extended the forms of compensation[6] with:

- a property of the same type;
- a property of another type;
- shares in State-owned companies;
- value of a State-owned property under privatization process;
- an amount of money corresponding to the property value at the time of the decision.

The Law instituted the State Committee on Property Restitution and Compensation which consisted of five members elected by the parliament. Its role was to decide on the lawfulness of local commissions' decisions on restitution and compensation claims. The Council of Ministers had to establish the detailed rules and the criteria pursuant to this law. For decisions awarding compensation, it provided for their enforcement within the first 6 months of each financial year. The compensation amounted to the market value at the time of compensation recognition.

In addition, the law required that the entitled claimants lodge applications until 31 December 2007 as a deadline. The local committee had the discretion to decide which form of compensation should be granted, but claimants could express in writing their preferred form of compensation. The decision of the district committee could be appealed to the State Committee for Property Restitution and Compensation and afterwards to district courts within 30 days of the issue of the State Committee's decision.

The 2005 amendments set down the method by which immovable property would be valued for compensation purposes, through property valuation maps. Its implementation was left to the State Committee for Property Restitution and Compensation which was tasked by the law to design the maps for the properties' valuation.

[4] Article 3: "For the purpose of property recognition, restitution or compensation, land under this law shall mean construction land and agricultural land."
[5] This Law was frequently changed, by Law no.9388, dated 04.05.2005, Decision of the Constitutional Court no.26, dated 02.11.2005, Law no.9583, dated 17.07.2006, Law no.9684, dated 06.02.2007, Decision of the Constitution Court no.11, dated 04.04.2007, Law no.9898, dated 10.04.2008, Law no.10095, dated 12.3.2009, Law no.10186, dated 05.11.2009, Law no.10207, dated 23.12.2009, Decision of the Constitutional Court no.27, dated 26.5.2010, Law no.10308, dated 22.07.2010, Decision of the Constitutional Court no.43, dated 06.10.2011, Law no.55/2012, dated 10.05.2012, Law no.49/2014, dated 08.05.2014.
[6] Article 11 of Law 9235/2004

By Decision no. 183, dated 18.04.2005, the parliament adopted the method to evaluate the immovable property compensated and that used for compensation. Based on this method, the property valuation map was designed, and it underwent several changes. That map served as a baseline, not only for the valuation of immovable properties for the purpose of restitution and compensation, but also for any other actions with properties, expropriations for public interest, etc.

By amendments introduced to the Law in 2006, the State Committee for Property Restitution and Compensation would be replaced by the Property Restitution and Compensation Agency.

Treatment of property by two different legal mechanisms, with the division of agricultural land by Law no. 7501/1991 without reference to the rights of former owners, and by the Law "On property restitution and compensation" to its owner or heir, as well as various authorities tasked with the implementation of these laws, on t one hand created a bottleneck in the restitution claims from former owners, and on the other hand, it created a conflict of jurisdiction and generated disputes. Incomplete legislation and significantly incoherent unstable case-law were the reasons why this process was dragged in time and failed to deliver the expected results. The need to give a final solution to former owners on expropriated property led to the drafting and adoption of Law 133/2015 which seeks to ultimately solve the compensation issue for former owners within the time-limits set out in the law.

As noted above, frequent changes of legislation and gaps created by the late adoption of some by-laws and sometimes total lack of decisions of the Council of Ministers to be approved pursuant to the Law, made it unenforceable.

Precisely, the frequently changed legislation and its lack of enforcement were the basis of the found violation of Article 1 of Protocol 1 in the European Convention on Human Rights, concerning the right to property and non-execution of national administrative and court decisions.

By-laws facilitate the law enforcement under the Property Management Agency , the latter being the replacement for the Property Restitution and Compensation Commissions. The Agency has built up experience and legal practice, in the implementation of the law, reviewed by courts on several occasions.

The law seeks to finally solve the issue of claims unhandled by PMA during the 3-year deadline, as it provides for their handling by courts in initial jurisdiction after the termination of the PMA mandate on 23 February 2019.

1.3 ECHR case-law concerning property claims against Albania

For over one decade, the European Court of Human Rights (ECtHR) identified in some of its judgements, the problems encountered with the legislation on property restitution and compensation in Albania. In order to understand the core of these problems, it is necessary to probe into the ECtHR case-law and findings in the judgements against Albania.
For the first time, in the judgement "Beshiri and Others v. Albania" ECHR found that non-enforcement of domestic decisions[7] constitutes violation of the right to property enshrined in Article 1 of the Protocol no. 1.

[7]Domestic decisions mean administrative judgments on property restitution and compensation, as well as final judgments of national courts.

Beshiri and Others v. Albania[8]:
"61. The Court considers that the problems involved in the applicants' case are part of the process of transition from the former communist legal order and its property regime to one compatible with the rule of law and the market economy. Such a process, in the very nature of things, is fraught with difficulties. The Court has held in this connection that the Convention cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they had ratified the Convention (see Kopecký v. Slovakia [GC], no. 44912/98, § 35, and von Maltzan and Others v. Germany (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74, ECHR 2005-V). Nor is there any general obligation under the Convention to establish legal procedures in which restitution of property may be sought. However, once a Contracting State decides to establish legal procedures of such a kind, it cannot be exempted from the obligation to honour all relevant guarantees provided for by the Convention, in particular in Article 6 § 1.
82. ...., once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see Broniowski v. Poland [GC], 31443/96, § 125, ECHR 2004-V).

As regards the compensation of damage in this case, the Court states that:
111. Among the matters which the Court takes into account when assessing compensation are pecuniary damage, that is, the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is, reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss (see, among other authorities, Ernestina Zullo v. Italy, no. 64897/01, § 25, 10 November 2004).
112. In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see Comingersoll v. Portugal [GC], no. 35382/97, § 29, ECHR 2000-IV)."[9]

Driza v. Albania[10]
"64. Legal certainty presupposes respect for the principle of *res judicata* (see Brumărescu v. Romania cited above, § 62), that is the principle of the finality of judgments. This principle insists that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' powers of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see Roşca v. Moldova, cited above, § 25)."
The Court notes that the Property Act 1993 (which was repealed by the Property Act 2004, which in turn was amended by the Property Act 2006) provided for various forms of compensation when the original property could not be returned to the former owner (...). The

[8]ECHR judgment dated 22 August 2006, application no.7352/03
[9]ECHR judgment dated 22 August 2006, application no.10508/02
[10]ECHR judgment dated 13 November 2007, application no.33771/02

Property Act 1993 left the determination of the appropriate form of compensation to the Council of Ministers, which was to define the detailed rules and methods applicable to the provision of compensation. According to the findings of the High Court in its judgment of 7 December 2000, the bodies competent to deal with compensation issues had yet to be set up (...). Notwithstanding the entry into force of the Property Act 2004, the situation did not change. It was not until 28 April 2005 that Parliament passed an Act determining the methodology for the valuation of property for compensation purposes. Section 5 of that Act left the task of implementing this methodology to the State Committee on Property Restitution and Compensation, which should have issued the appropriate site plans to allow the properties to be valued. However, to date those plans have not been adopted.
119. Consequently, the Court considers that, by not setting up the appropriate bodies to deal with the compensation issues or adopting site plans for the valuation of the properties, the Government failed to establish an adequate procedure in relation to the compensation claims. Moreover, it is unlikely that the Government will put in place such a system imminently or within a span of time sufficiently short to enable the settlement of the dispute related to the determination of the applicants' rights.

Ramadhi and Others v. Albania[11]
"50. The Court notes that none of the Property Acts or any related domestic provision governed the enforcement of the Commission's decisions. In particular, the Property Acts did not provide either for any statutory time-limit for appealing against such decisions before the domestic courts or for any specific remedy for their enforcement. The Court further notes that the Property Acts left the determination of the appropriate form and manner of compensation to the Council of Ministers, which was to define the detailed rules and methods for such compensation. To date no such measures have been adopted (as described in "Relevant domestic law" above) and the Government proffered no explanation for this.
82. The Government submitted that notwithstanding the administrative authorities' commitment to the implementation of the Property and Land Acts, the proceedings were very complex because the authorities were called upon to determine the manner and the funds for the fulfilment of their obligations pursuant to those Acts. Given that there existed no clear legal rules in domestic law governing the calculation of compensation or any other similar procedure for enforcing the Commission's decisions awarding compensation (see paragraph 24 above), the Court does not find this argument particularly convincing, bearing in mind that it was the authorities' inactivity that caused the interference at issue. In any event, the applicants should not be prevented from benefiting from the success of their litigation on the ground of alleged difficulties experienced by the State (see mutatis mutandis Jeličić v. Bosnia and Herzegovina, no. 41183/02, § 42, ECHR 2006‑ ....).
83. In conclusion, the Government have not produced any convincing evidence to justify the failure of the domestic authorities over so many years to determine the final amount of the compensation due or to return to the first three applicants the plot of land now allocated to third parties. This has resulted in an interference with the applicants' property rights, which in the Court's view is such as to have placed an excessive burden on them.
94. In order to assist the respondent State in complying with its obligations under Article 46, the Court has attempted to indicate the type of measures that the Albanian State could take in order to put an end to the nature and cause of the breaches found in the present case. It considers that the respondent State should, above all, introduce a remedy which secures genuinely effective redress for the Convention violations identified in the instant judgment as well as in respect of all similar applications pending before it, in accordance with the principles for the protection of the rights laid down in Articles 6 § 1 and 13 of the Convention

[11]ECHR Judgement dated 13 November 2007, application no. 38222/02

and Article 1 of Protocol No. 1. By introducing the relevant remedy, the State should, inter alia, designate the competent body, set out the procedural rules, ensure compliance with such rules in practice and remove all obstacles to the award of compensation under the Property Act. These objectives can be achieved by ensuring the appropriate statutory, administrative and budgetary measures. These measures should include the adoption of the maps for the property valuation in respect of those applicants who are entitled to receive compensation in kind and the designation of an adequate fund in respect to those applicants who are entitled to receive compensation in value, this in order to make it possible for all the claimants having successful Commission's decisions in their favour to obtain speedily the lands or the sums due. Such measures should be made available as a matter of urgency.

In the case "Vrioni and Others v. Albania", the Court for the first time refers to a new valuation method in determining the fair compensation, which is a turn in its case-law. Assessment of damage incurred by applicants now will not be based on the value of the property at the moment the ownership right is recognised, but rather according to the property value map.

Vrioni and Others v. Albania[12]
"35. ...it is the failure to pay compensation and not the inherent unlawfulness of the taking of land, as in *Guiso-Gallisay*, that was at the origin of the violation found under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention in the instant case (see, *mutatis mutandis*, *Scordino (no. 1)*, cited above, § 255).
36. In calculating the amount of pecuniary damage, the Court considers that, given the particular circumstances of the Albanian context, it is desirable to depart from the method of calculation described in Driza (cited above, § 137) according to which the amount of compensation should correspond to the value of the plot of land at the time of the domestic authorities' decisions. The Court notes that at the relevant time the property valuation maps did not exist. It was precisely for the purpose of calculating the amount of financial compensation to be awarded and for avoiding any speculation that the Court indicated under Article 46 of the Convention that the respondent State should adopt such maps as a matter of urgency (see *Driza*, cited above, § 126).
37. The Court notes with interest that the authorities have adopted property valuation maps in respect of the entire territory of Albania. The reference price, as stated by the Government, reflects the real market value and was interest-and inflation-indexed at the time of adoption of the maps...
38. The Court rejects the applicants' claim for compensation for the damage resulting from the impossibility of using and enjoying the plot of land.

In the judgement of "Eltari v. Albania", the Court considers that the respondent State should take adequate legislative, administrative and financial measures in order to provide for awards of compensation, without undue delay, ordered by a final court decision in lieu of the restitution of property.

"Eltari v. Albania"[13]
"80. The Court reiterates that Article 13 of the Convention gives direct expression to the States' obligation, enshrined in Article 1 of the Convention, to protect human rights first and foremost within their own legal system. It therefore requires that the States provide a domestic remedy to deal with the substance of an "arguable complaint" under the Convention

[12]ECHR judgment dated 7 December 2010 applications no.35720/04 and no. 42832/06
[13]ECHR judgment dated 8 March 2011, application no.16530/06

and to grant appropriate relief (Burdov v. Russia (no. 2), no. 33509/04, § 96, ECHR 2009-...; and, Yuriy Nikolayevich Ivanov v. Ukraine, no. 40450/04, § 63, ECHR 2009-... (extracts)).
81. The scope of the Contracting States' obligations under Article 13 of the Convention varies depending on the nature of the applicant's complaint; the "effectiveness" of a "remedy" within the meaning of this provision does not depend on the certainty of a favourable outcome for the applicant. At the same time, the remedy required by Article 13 must be "effective" in practice as well as in law in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see Burdov (no. 2), cited above, § 97; and, Yuriy Nikolayevich Ivanov, cited above, § 64).
82. In the instant case the Court observes at the outset that the Government decisions on the award of financial compensation explicitly stipulate that a claimant could vindicate his right to compensation on the basis of a Commission decision. The provisions on financial compensation do not apply to claimants, like the applicant in the instant case, who have an enforceable compensation claim by virtue of a final court decision.
98. Whereas the respondent State remains free to choose the means by which it will discharge its legal obligations under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see Burdov v. Russia (no. 2), cited above, § 136), the Court considers that general measures at national level are undoubtedly called for in the execution of the present judgment.
99. The Court observes that the problems at the root of the violations of Article 6, Article 13 in conjunction with Article 6 and Article 1 of Protocol No. 1 found in this case are complex and structural. They require the adoption and implementation of measures of a legislative and administrative character, involving various authorities. The Court considers that the respondent State should take adequate legislative, administrative and financial measures in order to provide for awards of compensation, without undue delay, ordered by a final court decision in lieu of the restitution of property. The respondent State should, for example, designate a competent enforcement body, provide sufficient human and material resources, establish clear and simplified rules of procedure for the collection of claims, lay down realistic and binding time-limits for their processing and enforcement, allocate the necessary budgetary funds, and remove all obstacles with a view to securing the expedient award of financial or in-kind compensation, having regard to the principles established in the Court's case-law.

Çaush Driza v. Albania[14]:
"79. The Court further notes that ..., the deadline for the allocation of properties to the IkCF was extended, the current deadline being fixed for 31 December 2011. No information was submitted by the Government about the progress of the allocation of properties to the IkCF during 2009 and 2010.
81. ...the Court was not provided with documents showing that the Agency has in fact made any in-kind compensation awards to claimants... The Court is unable to identify any other measures which have been adopted with a view to securing the enforcement of a final court decision awarding in-kind compensation to an applicant in lieu of the restitution of the original property.
95. ... the Court has already found a violation of an applicant's property rights on account of the authorities' failure to provide compensation arising out of a final court decision in the cases of Beshiri and Others (cited above, §§ 95-103); *Driza* (cited above, §§ 101-109); and *Vrioni and Others* (cited above §§ 71-77). The Court sees no reason to reach a different conclusion in the circumstances of the instant case..."

[14]ECHR judgment dated 15 March 2011 pertaining to application no.10810/05

Sharra v. Albania[15]

In the findings of the Judgement for "Sharra v. Albania", the Court did not accept the Value Map 2014, not because of the methodology, but, inter alia, due to the principle of equal treatment of applications and the considerations of the Parliamentary Committee.

"86.*Secondly, the Court would refer to the reservations made during the parliamentary meeting of 7 May 2012 to the effect that the transactions registered with the IPRO did not generally and necessarily reflect the real market value as a result of tax evasion committed by the parties to a sales contract."* With the measures taken by the Albanian Government on regulation of transactions in immovable properties, we deem that this problem is considered exhausted.

In the case "Bici v. Albania", ECHR considers that a declaratory decision of a Court (acknowledge fact) in itself does not refer to the property rights of any applicant or other rights of any kind.

Bici v.Albania[16]

"49...an applicant may allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. The concept of "possessions" has an autonomous meaning which is independent of the formal classification in domestic law (*Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 60, ECHR 2000-XII). "Possessions" can be "existing possessions" or assets, including claims in respect of which an applicant can argue that he has at least a "legitimate expectation" (which must be more concrete than a mere hope) that they will be realised, that is, that he or she will obtain effective enjoyment of a property right (see Gratzinger and Gratzingerova v. the Czech Republic (dec.) [GC], no. 39794/98, ECHR 2002-VII, § 69, and Kopecký v. Slovakia [GC], no. 44912/98, § 35, ECHR 2004-IX). A claim may be regarded as an asset only when it is sufficiently established to be enforceable (see Kopecký, cited above, § 49; and Stran Greek Refineries and Stratis Andreadis v. Greece, judgment of 9 December 1994, Series A no. 301-B, p. 84, § 59). By way of contrast, the hope of recognition of the existence of an old property right which it has long been impossible to exercise effectively cannot be considered as a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98, § 83, ECHR 2001‑VIII). In the Court's view, a claim is conditional when it depends upon an uncertain future event. No "legitimate expectation" can come into play in the absence of a claim sufficiently established to constitute an asset.

50. In the present case, the applicant was a claimant who lodged an application for the recognition, restitution and/or compensation of property rights. By making the application, the applicant relied on a court decision acknowledging the existence of the legal fact that his late father allegedly owned a plot of agricultural land (see paragraph 6 above). Consequently, the application did not concern "existing possessions" of the applicant himself. It therefore remains to be determined whether the applicant could be considered to have had a "legitimate expectation" that a claim, on the basis of a court decision acknowledging a legal fact, amounted to an asset that would be determined in his favour.

51. In this connection, the Court notes that a court decision acknowledging a legal fact whose documentary evidence has disappeared, taken pursuant to Article 388 of the CCP is of a declaratory nature (also see Marku v. Albania, no. 54710/12, §§ 19 and 37, 15 July 2014). Such a decision does not of itself confer on a claimant property rights or any other rights

[15]ECHR judgment, dated 10.11.2015, applications no.25038/08, 64376/09, 64399/09, 347/10, 1376/10, 4036/10, 12889/10, 20240/10, 29442/10, 29617/10, 33154/11 and 2032/12.

[16]ECHR judgment dated 13 December 2015, pertaining to application no.5250/07

whatsoever. Under domestic law, the recognition of a claimant's property rights was contingent upon the Commission, which was the competent administrative authority to deal with former owners' restitution and compensation of property claims (see Ramadhi and Others, cited above, § 25). The Commission did not automatically allow a claimant's application for the restoration and/or compensation of his alleged property rights, which had been acknowledged by a court pursuant to Article 388 of the CCP. It had to ensure that the application complied with the statutory requirements as laid down in the Property Act. The High Court's subsequent case-law lends support to the view that such a court decision did not suffice to recognise automatically a claimant's property rights (see paragraph 22 above).

1.3.1 ECHR findings in "Manushaqe Puto" case

On 31 July 2012, ECtHR, after ascertaining that the Albanian Government had not adopted the effective general measures to remedy the violations of the Convention found by the Court in a series of judgements against Albania described above, adopted the pilot judgement "Manushaqe Puto v. Albania". In this judgement, the Court, inter alia, allowed an 18-month period to the Albanian Government to prepare an action plan which would provide effective solutions to the ECHR findings.
Furthermore, in the same judgement, after a detailed analysis of all the issues found, the Court provided guidance on the measures that must be adopted under the monitoring of the CoE Committee of Ministers, given that this obligation derivers from Article 46 of the European Convention on Human Rights: "*1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution…"*

Specifically, the ECtHR findings and guidance in its pilot judgement in "Manushaqe Puto v. Albania" can be summarized as follows:

- The Court notes that the 2004 Property Act has been amended at least seven times between 2004 and 2010. The respondent State should avoid frequent changes of the legislation and carefully examine all legal and financial implications before introducing further modifications.
- As conceded by the Government in their Action Plan, the authorities lack accurate and reliable information as regards the overall number of administrative decisions recognising property rights and awarding compensation, as appropriate, that have been adopted since 1993. The Court guides that the existence of precise data, which should also reflect modifications made by way of judicial review, would enable the authorities to calculate and track the overall compensation bill as well as the financial implications of the compensation mechanism.
- According to the Court, the Government must compile a global database, in order to estimate a total compensation bill. The compensation scheme should be clear and carefully designed. The compensation scheme should be free of cumbersome compliance procedures, for example the obligation for a claimant to apply for compensation in the subsequent year in the event of unsuccessful application in a preceding year, should consider the principles of the Court's case-law concerning the application of Article 6 § 1 and Article 1 of Protocol No. 1[17].
- Also, the Court guides towards a reconsideration of the modalities for the payment of financial compensation as currently implemented, as well as the revision and update of

[17] It should be noted that the previous legislation forced owners to address requests to the Compensation Agency each year, if their requests were unsuccessful the previous year.

valuation maps should be subject to transparent and explanatory criteria, considering the land development and market fluctuations.

- In order to ease pressure on the budget from claims from former owners, the Court urges the authorities, as a matter of priority, to start making use of other alternative forms of compensation as provided for by the 2004 Property Act.
- The Court highlights that the decision-making process for the type of compensation to be awarded requires the utmost transparency and efficiency with a view to enhancing public confidence. It would be in the general interest that the results be made public and disseminated through different, accessible means of communication. It is crucial that the authorities' decisions contain clear and sufficient reasons and that they be amenable to judicial review in the event of discord.
- Given the characteristics and difficulties of delivering the compensation process in Albania, the Court guides that the process of compensation of former owners on account of the Property Acts should be distinguished from the compensation to former owners on the strength of the Legalisation Act. As to the latter, the respondent State could reconsider 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.
- According to the Court, the respondent State should 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.
- The Court notes that frequent extensions of time-limits, as has been the case to date, do not contribute to an expedient solution of the problems identified and further undermines public confidence. Time-limits must be realistic, statutory and binding, in respect of every step of the process.
- The Court attaches particular importance to human resources available for this process. For the Court, it is important that, in order to ensure the effective implementation of general measures, sufficient human and material resources be placed at the competent authorities' disposal and that coordination amongst different State institutions be ensured with a view to exchanging information. Whenever possible, the authorities could explore the possibility of pooling resources by merging different institutions in order to avoid overlapping and diminish operative costs and expenses.
- The Court considers that the magnitude of the problem and the measures suggested above, on a purely indicative basis, together with the need for a comprehensive and practical solution, could be better addressed if subjected to wide public discussions in order to garner broad understanding about the level of compensation that the State is expected to realistically pay and about the different forms of compensation.
- As can be easily noted, the Court made a comprehensive analysis of the gaps existing in the Albanian legislation on property restitution and compensation, by guiding the Government and also the Committee of Ministers that will monitor the adoption of the general measures by the Albanian Government, i.e. concrete steps that must be taken to ensure an effective legislation that puts an end to the persistent problem of property compensations in Albania.

1.4 Decision-making of the CoE Committee of Ministers and measures taken by the Albanian Government[18]

As mentioned above, the Albanian Government committed to taking concrete steps in improving the legislation, in order to put an end to the problems found by the ECHR, but also to complete an almost 30-year old process of property compensation. For sure, the

[18] Materials for the meetings of the Committee of Ministers were provided by the State Advocacy.

Government cannot be alone in this process, but as ECtHR[19] ruled in its judgement, the enforcement of the pilot judgement and the measures taken shall be strictly supervised by the CoE Committee of Ministers.

The Albanian Government carefully considered the Court conclusions in all its judgements against Albania as regards the violation of Article 1 of the Protocol 1 to the Convention and the recommendations in the pilot decision "Manushaqe Puto v. Albania", under the supervision of the CoE Council of Ministers, took on a series of steps intended to establish an effective mechanism that addresses the persistent property restitution problem.

During 2014-2018, several action plans were developed and reported to the CoE Council of Ministers, such as the 2014 action plan which culminated with the adoption of the Law 133/2015 "On the treatment of property and the completion of the property compensation process", as well as the action plan presented in 2016 concerning the implementation of this Law and its efficiency.

In order to have a clear picture of this process, we will provide below a summary of the measures taken by the Albanian Government and the Committee of Ministers decisions which steer the entire process until the latter ends supervision of the case[20].

In the decision of the 1086th meeting dated 3 June 2010 concerning general measures, the Committee of Ministers recalled that these cases concern the systemic problem of the non-enforcement of final domestic judgments and administrative decisions ordering restitution of properties nationalised during the communist regime or compensation of former owners.
The Committee welcomed the general measures taken so far by the Albanian authorities to remedy this important problem and took note of the issues still pending.
The Committee of Ministers insisted for the presentation by the State authorities of complementary information and explanations as well as a complete action plan/action report.

In the decision of the 1100th meeting dated 2 December 2010, the Committee of Ministers noted with interest the preliminary action plan and action report presented by the Albanian authorities, containing proposals made by the inter-ministerial committee which has the specific task of identifying a comprehensive strategy to address these questions.
The Committee stressed however the crucial importance of urgently addressing the situation criticised by the rulings of the European Court, generating many similar violations; and therefore, encouraged the authorities to adopt without further delay a comprehensive action plan, based on a comprehensive and coherent strategy accompanied by a detailed calendar for its implementation.

In the decision of the 1108th meeting dated 10 March 2011, the Committee of Ministers recalled their decision taken at the 1100th meeting (December 2010) and again urged the Albanian authorities to adopt a comprehensive action plan without further delay, based on a comprehensive and coherent strategy and accompanied by a detailed calendar for its implementation.

In the decision of the 1115th meeting dated 8 June 2011, the Committee of Ministers welcomed the presentation of an Action Plan by the Albanian authorities n 02/02/2011 which aims to solve the structural problem of failure to enforce final domestic court and

[19] Article 46/2: "The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."
[20] Summaries of measures and decisions of the Committee of Ministers were provided by the State Advocacy.

administrative decisions relating to the right of the applicants to restitution of or compensation (whether pecuniary or in kind) for property nationalised under the communist regime.

In the decision of the 1120th meeting dated 14 September 2011, the Committee of Ministers welcomed the various reforms envisaged by the Albanian authorities to simplify the legislative framework and set up a simple and clear compensation mechanism, and noted with interest the setting up of a standardised map and of an electronic database containing the cartographic information and the juridical status of each compensation claim;
Further, the Committee invited the authorities to clarify the procedure which will be followed in order to calculate the overall cost of the compensation process and the provisional calendar.
At this meeting, the authorities were encouraged to speed up the establishment of the Fund for compensation in kind and the finalisation of the process of first registration of properties throughout the territory of Albania, crucial for the security of property titles;
The deputies also underlined the importance of ensuring the existence of a judicial remedy in respect of administrative decisions on compensation claims and reiterated their request for information on the applicability and efficiency of the existing judicial remedies in the event of non-execution of final domestic judgments.

In the decision of the 1144th meeting dated 3 June 2012, the Committee of Ministers "took note of the elaboration by the Albanian authorities of the draft global strategy on property rights". The Council of Ministers insisted on the necessity for the Albanian authorities to make concrete progress, in particular to: "establish a list of final decisions, finalise the land value map and calculate the cost of the execution of the decisions, in order to be able to define the resources needed, adopt the final execution mechanism, and execute - of their own motion - the decisions at issue;

In the decision of the 1150th meeting dated 26 September, the Committee of Ministers recalled that in the their 1144th meeting (June 2012), it invited the Albanian authorities "to establish a list of final decisions; finalise the land value map; and then, on the basis of these elements, calculate the cost of the execution of the decisions, in order to be able to define the resources needed; adopt the final execution mechanism, and execute - on their own motion - the decisions at issue."
The Deputies took note of the adoption by the Albanian Council of Ministers, on 27 June 2012, of the global strategy on property rights (2012-2020); noted that the Albanian authorities have drawn up a list of 639 final judicial decisions, delivered between 1995 and 2011, and invited the authorities to update the Committee on the next set of measures that will be taken with a view to the execution of these decisions;
The Committee invited Albanian authorities to indicate when they will be in a position to draw up a definitive list of the final administrative decisions to be executed and expressed their concern about the absence of concrete result at this stage, where the first judgment of this group has been final for more than five years.

In the decision of the 1157th meeting dated 6 December 2012, the Committee of Ministers underlined again the urgent need to take all necessary general measures in order to effectively guarantee the right to compensation recognised by final domestic decisions, reiterating their requests addressed to the Albanian authorities at their 1144th meeting (June 2012). The Committee invited the authorities to set deadlines that are realistic but also binding for each of those steps still pending; also invited them to update the action plan for these cases, including the timetable thus fixed;

In the decision of the 1164th meeting dated 7 March 2013, the Committee of Ministers recalled that the it has already reiterated on many occasions its call to the Albanian authorities to rapidly take all the measures identified as necessary for the establishment of an effective compensation mechanism for property nationalised during the communist regime and the execution without further delay of numerous final domestic decisions delivered in this area.
In this decision, it stressed that the Committee's approach was endorsed in a pilot judgment delivered by the European Court, which fixed a deadline of 17 June 2014 for the authorities to put in place such a mechanism.
The Committee called upon the authorities to submit as soon as possible, an action plan with a specific and binding time-table to ensure compliance with the deadline set by the European Court in its pilot judgment.

In the decision of the 1172th meeting dated 6 June 2013, the Committee of Ministers, taking into account that the State authorities had not taken the necessary steps, adopted the Interim Resolution CM/ResDH(2013)115, in which it noted with great concern that to date, only one of the measures identified in the previous judgements and the pilot judgement of the European Court has been finalised, namely the land valuation map.
The Committee of Ministers also noted that no action plan demonstrating the ability of the Albanian authorities to establish an effective compensation mechanism within the deadline set by the Court, has been submitted.
Recalling that the non-enforcement of domestic final decisions represents a grave danger to the rule of law, risks undermining the confidence of citizens in the judicial system, and as such calls into question the credibility of the State, the Committee calls on Albanian authorities, at the highest level, to give the highest priority to the preparation of an action plan capable of establishing, within the deadline set by the European Court, an effective compensation mechanism, which takes account of the measures already identified with the support of the Committee.

In the decision of the 1186th meeting dated 5 December 2013, the Committee of Ministers, welcomed the presence of the Deputy Minister of Justice of Albania and the determination expressed by the Minister of Justice in his letter dated 27 November 2013, demonstrating the authorities' willingness to implement these judgments;
However, the Committee expressed deep concern that, despite the Committee of Ministers' repeated calls for the adoption of the necessary measures, the last being made in Interim Resolution CM/ResDH(2013)115, and the approaching deadline (17 June 2014) set by the Court for the implementation of the Manushaqe Puto pilot judgment, the authorities have still failed to submit tangible information demonstrating that any progress has been achieved and that they have a strategy for implementing the judgment.
On the other hand, it noted with interest in this regard the commitment expressed by the new Albanian government, in office since September 2013, to put in place, within the time-limit set by the Court, an effective compensation mechanism and to submit to the Committee, without further delay, a comprehensive and detailed action plan for the implementation of this group of cases.

On 24 February 2014, the authorities presented to the Committee of Ministers the action plan for the case "Manushaqe Puto and Others".
For the first time, a concrete action plan with well-defined objectives that refers to the findings of the Court was presented to the Council of Ministers in its 1193th meeting. The

Action Plan was designed after a discussion with the international stakeholders and under the guidance of the Council of Ministers.
The measures envisaged for the enforcement of the judgement "Manushaqe Puto and Others" include: Institutional reform of the Property Restitution and Compensation Agency (PRCA), which will play a key role in the future restitution/compensation mechanism; this reform is planned to be completed by 2015. PRCA shall be transformed into the Land Fund Agency and given its important role the Agency has in the new restitution/compensation mechanism, it is proposed to be under the authority of the Council of Ministers / Prime Minister.
Another measure to establish an effective restitution/compensation mechanism is the identification of a precise compensation bill resulting from the total amount granted by the existing restitution/compensation decisions. The authorities consider that the inventory of State sources available and a precise compensation bill are crucial in determining the precise level and compensation forms in place through the new restitution/compensation mechanism.
Also, the authorities designed a plan to complete initial registration and upgrade/update the initial registration databases, with the view of obtaining a realistic compensation formula.
Legislative changed in property rights will make putting in place an effective restitution / compensation mechanism inevitable. This measure, conducive to putting in place of the new effective restitution/compensation mechanism, seeks to avoid fragmentation of the law, ensure legal certainty, guarantee remedies and facilitate the compensation procedure.

In the decision of the 1193rd meeting dated 6 March 2014, the Committee of Ministers welcomed action plan on the measures taken and envisaged in this group of cases; noted with satisfaction that the new government has set the outstanding issues amongst the priorities to be followed at the highest level;
The Committee considered the actions taken since September 2013 and the measures foreseen for the coming weeks and months as encouraging; however, it regretted that the deadline fixed by the pilot judgment will not be met, underlining that the political commitment expressed in the action plan must be followed by concrete and substantial actions at the domestic level, in particular in the fields identified by the Committee in its Interim Resolution CM/ResDH(2013)115;
The Committee welcomed the commitment of the Albanian Government to increase its efforts and give the highest priority to allocating sufficient resources, adopting necessary legal amendments and taking all political decisions required to put in place an effective compensation mechanism in compliance with the pilot judgment Manushaqe Puto, in particular in the remaining months before the expiring deadline set by the European Court of 17 June 2014.

On 23.04.2014, the Council of Ministers through Decision no. 236, dated 23.04.2014 approved the Action Plan "*On enforcement of the pilot judgement of the European Court on Human Rights 'Manushaqe Puto and Others v. Albania."*

In the decision of the 1201st meeting dated 5 June 2014, the Council of Ministers welcomed the formal adoption by the Albanian Council of Ministers of the action plan for the establishment of an effective compensation mechanism, thereby rendering the action plan binding, and noted with satisfaction that the measures foreseen are being adopted in conformity with the previsions in that plan;
In view of the overall deadline foreseen for the implementation of this mechanism, it strongly encouraged the authorities to intensify their efforts with a view to reducing this time-frame as much as possible.

In the decision of the 1230th meeting dated 11 June 2015, the Council of Ministers welcomed the commitment showed by the Albanian authorities in the search for an effective and sustainable solution to the important structural problem at stake and welcomed their presentation of the draft law "On handling of property and completion of the property compensation process" and their co-operation with the Council of Europe, as well as the close consultations held with the Department for Execution, particularly in Tirana on 23 April 2015.
The Committee also noted that, as requested by the Committee of Ministers and by the pilot judgment Manushaqe Puto, the authorities have conducted a careful review of all of the legal and financial implications and have estimated the overall cost of compensation in order to have a concrete basis for considering the necessary legislative changes.
In conclusion, Albanian authorities were invited to submit, as soon as possible, explanations and additional information on the solutions proposed in the draft law, as well on the other outstanding issues identified in the Secretariat's memorandum (H/Exec(2015)16).

On 4.11.2015, Albanian authorities presented an action plan to the Committee of Ministers which will be reviewed in the 2015 December meeting. They also presented the draft law "On treatment of property and completion of the property compensation process" together with other accompanying documents and a detailed clarification of the questions and issues raised by the CoE Committee of Ministers, in terms of solutions provided by the draft law and how it reflected the findings of the Court.

In the decision of the 1243rd meeting dated 9 December 2015, the Deputies of the Committee of Ministers noted with satisfaction the law setting up a compensation scheme for property expropriated during the communist regime, which appears to be a very positive step towards putting an end to the longstanding failure to compensate or return property to former owners; and invited the authorities to inform the Committee as soon as it enters into force.
The Committee further noted that some detailed aspects of the new scheme will be governed by by-laws which will be adopted within binding time-limits.
The Committee of Minister also encouraged the authorities to spare no efforts in providing the necessary technical and logistical infrastructure, as well as adequate human and financial resources, so that the compensation scheme is effective and expeditious, and that all legal deadlines and commitments are respected;
In conclusion, invited the authorities to provide, by 30 January 2016, information on all these questions in order to enable the Committee to assess the progress achieved in the implementation of the law and the means provided to ensure the effectiveness of the mechanism put in place.

On 8 February 2016, the State authorities notified the CoE Committee of Ministers on the elaboration and approval by the Council of Ministers of the Republic of Albania and entry into force of the Property Value Map, as requested by the Committee of Ministers at the 1243rd meeting of 9 December 2015.

On 9 February 2016, the Albanian Government notified the CoE Committee of Ministers on the publication of the Law on the Official Gazette and its entry into force 15 days after the publication and presented the Action Plan for the implementation of the law, as requested by the Committee of Ministers at the 1243rd meeting of 9 December 2015.

On 7 April 2016, the authorities informed the Committee of Ministers on the approval of the DCMs pursuant to the Law 133/2015 and the action plan "M. Puto v. Albania", for the implementation of the law.

In the decision of the meeting 1259 dated 7 December 2016, the Committee of Ministers, *inter alia*, welcomes the adoption of the Law on compensation of property expropriated during the communist regime as a very positive step in the execution of judgements in this group of cases and noted with interest the measures already adopted for the implementation of the latter. The deputies also welcomed the recent approval of three important pieces of by-laws and the establishment of a regular monitoring mechanism.

On 7 July 2017, the Authorities submitted an updated plan to the Committee of Ministers, which provided a detailed description of the progress and fulfilment of measures indicated in the reporting plans.

In September 2017, the CoE Committee of Ministers issued a positive decision on the measures taken by the Albanian Government for the implementation of the action plan "Manushaqe Puto v. Albania". The Committee, *inter alia*, highlighted with particular interest that the Constitutional Court found this mechanism in compliance with the Constitution of Albania, except for several certain aspects of the new compensation assessment method; it took note of the commitment of the Albanian authorities to assess the situation and to undertake appropriate action in preventing any negative impact in the functioning of the mechanism. Also, it strongly encouraged the authorities to keep on with their efforts to ensure effective and expedited operation of the mechanism, particularly by making available all resources, including the promised financial means, so that the compensation process can be concluded within the set time-line.

On 30 December 2017, the Authorities submitted to the CoE Committee of Ministers extensive information on the measures taken by the Albanian Government in the light of the findings of the Constitutional Court decision, as well as the amended DCMs 222 and 223. Measures complied with the time-line defined in the meeting of September 2017 during the handling of the case "M. Puto v. Albania".

On 6 June 2018, the Action Report "Manushaqe Puto v. Albania" was submitted, after it was designed in cooperation with the Department for Enforcement of ECHR Judgements, the Property Management Agency, the Ministry of Justice and the Ministry of Finance, in conclusion of which the Government considered that it is not necessary to adopt general measures other than those contained in the Action Report, for this group of cases.

In the 1324th meeting dated 20 September 2018, the Committee of Ministers, under the terms of Article 46of the European Convention for Human Rights, decided to close the examination of the cases "M.Puto v Albania". The Committee took a decision thereof having noted *"....with satisfaction the major efforts deployed by the Albanian authorities to abide by the judgments of the Court and honour their undertaking to provide compensation for property nationalised under the Communist regime, and to put an end to the long-standing absence of any effective mechanism to this end and noting in particular the sustained political, financial and technical support provided since 2014; and after welcoming the ensuing adoption of a new compensation mechanism in 2015 and its successful implementation in practice.*"

1.5 Purpose of Law 133/2015, entities it addresses and inter-institutional cooperation

The Law 133/2015, also in reference to the decisions of the Constitutional Court seeks to ensure fair compensation of former owners expropriated during the communist regime by

eliminating red tape in the law and practice, and to bring equality among all former owners whose property has been recognized for compensation, with a view to the realization of fair compensation, in accordance with the social and economic conditions of the State. The Constitutional Court, at the same time, noted that the repeal of legislation passed by the communist regime for 50 years, cannot lead to the restoration of property relations as they were in 1944, neither to a full compensation of the damage incurred, due to objective changes in time and justified legal reasons. However, this law strikes a balance between the public interest and the right to property. The principle is not the erasure of all injustice, but their reduction to the maximum extent possible, always within the context and the social-economic opportunities of our country.[21]

Article 2 of the Law sets out its scope:

a. To finalize, pursuant to this law, the process of treatment of property through recognition and compensation, for entities whose properties have been expropriated, nationalized or confiscated by any legal/secondary acts, criminal court decision or expropriated by any other unfair means by the communist state as of 29.11.1944;

b. To regulate and ensure fair property compensation, to enforce the final decisions on compensation, as well as finalize the compensation process within the deadlines specified in this law, through the compensation fund.

The Law applies to claims which are under review at the Property Restitution and Compensation Agency at the moment of its entry into force, and particularly to those claims submitted to the Property Management Agency in the first 3 months after its entry into force. The 3-month deadline is preclusive and such a provision is fully coherent with the scope of the law, in order not to extend the property compensation process endlessly.

As regards the financial evaluation of final administrative/court decisions which recognise the right to compensation, Article 3 stipulates that the Law applies to:

a) the execution of all un-enforced decisions recognising the right to compensation, issued by administrative or judicial bodies, in our country;

b) cases currently under examination in courts of all tiers, in the High Court, as well as in the European Court of Human Rights, as regards their financial evaluation.

It is important to note that the law does not envisage re-assessment for decisions which have already defined a compensation amount.

In the analysis made to the scope of the law, the Venice Commission in its Opinion no. 861/2016 admits that the lowest compensation foreseen by this law can be considered as 'other interventions' in the meaning of Article 1 of Protocol no.1 to ECHR and stated that "*…the interference has a clear legal basis in Law no. 133/2015 (and the three relevant by-laws which duly complement Law no. 133/2015). There appears therefore to be a sufficiently clear and detailed legal basis for the interference at issue. The interference also appears to pursue a legitimate aim, as the purpose of Law no. 133/2015 is effectively to finalise 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*

[21]CoM Report on the Law "On treatment of property and completion of the property restitution process" .

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.

For the Constitutional Court, the purpose of Law no. 133/2015 is to effectively complete the property treatment process through its recognition and compensation within e reasonable 10-year period[22]. Precisely this purpose justified also the interventions in the property rights through this Law. The main objective of the Law Nr. 133/2015 "On the treatment of property and completion of the property compensation process" is to finalize the problems carried over the years, proposing a real and effective compensation mechanism, which aims to establish a fair balance between the interests of owners that are subject to this law and the public interest.

The Law stipulates that "expropriated subject" means legal or natural persons or their heirs whose property was nationalized, expropriated, confiscated or taken in any other unjust way by the state

From the interpretation of the provisions, it is noted that it institutes a special entity with vested with clear duties, powers and time-lines to implement it, which is the Properties Management Agency. Article 10/4: "The property compensation fund shall be managed by the Properties Management Agency in a special Treasury account at the Bank of Albania."

Inter-institutional Cooperation

The Law defines the Properties Management Agency as the sole body specially tasked with its implementation. But, the property compensation process is complex and requires the co-operation of several institutions which exercise powers in property management.

In the law, the inter-institutional cooperation is envisaged in two forms:
First, establishment of an Inter-institutional Commission whose major task is to identify state property that can become part of the property compensation fund. After identifying unoccupied properties, the Inter-institutional Commission proposes to the Council of Ministers the approval of a decision to transfer these properties to the compensation fund[23]. PMA plays the role of Technical Secretariat in this Commission.
Second, another cooperation mode – which plays an important part in the implementation of the law – is the inter-institutional cooperation of the PMA with the bodies involved in the property management process, including the Immovable Property Registration Office, the Agency for the Legalization and Urban Planning of Informal Areas and Buildings (ALUIZNI), the Directorate for Management of Public Property, the State Advocate Office, the State Authority for Geospatial Information (ASIG), the State Archive, the Central Technical Construction Archive, the local government bodies and any other State institution whose activity is relevant to or has responsibilities in this process[24].

Any State institution which activity is relevant to or has responsibilities in the property recognition and compensation process, is obliged to cooperate and provide for free any information or documentation required by the Agency, as well as to communicate the grounds of non-compliance with a measure or required recommendation. PMA demands information from the relevant local and central authorities whether the property claimed by the subject is considered occupied in the meaning of Law no. 133/2015, or whether a

[22] Paragraph 45 of Decision no. 1/2017 of the Constitutional Court.
[23] Article 26, paragraph 3 of Law 133/2015
[24] Article 36 of Law 133/2015

construction permit is issued on it, or whether any other right is granted in accordance with the legislation in force. In any case, PMA demands information from the Albanian Agency of Investments and the Concessions Agency.

Furthermore, in the framework of the inter-institutional cooperation, it is worth mentioning the initiative for the adoption of the Law "On cadastre"[25], which introduced a new body, the State Cadastre Agency which is a formal merger of not only three institutions – with two of which PMA has close co-operation, i.e. IPRO and ALUIZNI, but also of their powers. This merger will simplify and facilitate the co-operation procedures, being that PMA will co-operate with only one body, instead of three, and it will have more extensive and updated information to be used in the benefit of the property compensation process, thus avoiding red tape and expediting the obligations under the Law 133/2015.

[25] This law is under consultation.

CHAPTER II

2.1 Meaning of Compensation under the Law

Decision no 236, dated 23.04.2014 of the Council of Ministers "On the approval of the Action Plan for the enforcement of the pilot judgement of the European Court on Human Rights 'Manushaqe Puto and Others v. Albania" identified concrete measures which were undertaken to address the tasks assigned by ECHR, such as:

- Establishment of an efficient and realistic formula for the compensation of owners;
- A reasonable and fixed time-line for the completion of the entire process;
- A fair solution respecting the constitutional norms for all owners.

All measures prepared by the Government were materialized in the Law 133/2015 and its by-laws, such as: DCM no. 223, dated 23.03.2016 "On the definition of the rules and procedures for the evaluation and execution of distribution of the financial and physical fund for property compensation"; DCM no. 221, dated 23.03.2016 "On the organization and functioning of the Properties Management Agency"; and DCM no. 222, dated 23.03.2016 "On handling of property recognition and compensation claims".

Law No.133/2015 sought to regulate and ensure fair property compensation, the execution of final compensation decisions and the completion of the compensation process within defined deadlines, through the compensation fund.
Law No.133/2015 was subject of review by the Constitutional Court, which already evaluated it against the principle of the rule of law, where aspects of this principle include legal certainty, protection of acquired rights and legitimate expectations.

The Constitution Court held that the lawmaker has its margin of appreciation to regulate compensation of properties nationalized or confiscated during them communist regime. In this context, it recognised the lawmaker's right to limit the margin of enjoyment and possession of private property by citizens, on grounds of the public interest. For such intervention on property right to be justified, it is indispensable to exist a proportionate relation between the means used and the pursued goal. The balance between the intervention and the situation that dictated it imposes the lawmaker to apply such legal remedies, which must be effective.

According to the Constitutional Court, there is a public interest whose importance must be assessed to be at the extent that justified the lawmaker's intervention. Referring to the amicus curiae brief of the Venice Commission, States enjoy a wide margin of appreciation in determining what is in the public interest, in particular under Article 1 of Protocol No.1 and especially when implementing social and economic policies: *"...taking the specific situation of Albania into account, it can well be argued that a new and effective legal framework, which may lead to a lower amount of compensation for the former owners, meets the requirement of proportionality as set out in Article 1 Protocol No.1 to the ECHR. In particular, it seems reasonable that Law no. 133/2015 refer to the cadastral categorisation of the property at the time of the expropriation without being regarded as an extreme disproportion between the official cadastral value of the land and the compensation paid +++."*[26]

[26] *See the Venice Commission opinion adopted in the 108th Plenary Session in Venice, 14-15 October 2016.*

Article 6 of the Law 133//2015, in paragraphs 1 and 2, lays down the formula and methodology for the financial evaluation of final decisions on property restitution and compensation, specifically:
a) the property recognized for compensation is evaluated under the cadastral index it had at the time of expropriation.
b. he restituted property is evaluated by determining the difference resulting between its value pursuant to the current cadastral index and the value pursuant to the cadastral index at the time of expropriation.
2. Final decisions that have recognized only the right to compensation, shall be financially evaluated according to the cadastral index the property had at the time of expropriation pursuant to letter "a" of paragraph 1 of this Article.

Paragraphs 1 and 2 of Article 6 of Law No.133/2015 materialized the main principles of the compensation formula. The other provisions of Article 6 regulate specific situations, as part of the compensation methodology, which also find solutions in other provisions of the law.

Paragraph 4 defines the financial evaluation for decisions that recognized the right to compensation in cases where the type of property or cadastral item at the time of expropriation cannot be determined. Evaluation of such decisions is made by referring to the cadastral item - according to the origin of the property – closest to the property to be compensated, based on the value map at the time of entry into force of this law, which is the Value Map which shall be the reference for all financial evaluations, as defined in DCM no.89/2016, in force at the time the law entered into force.

Paragraphs 3 and 5 were abrogated by the Constitutional Court through its Decision no.1/2017.
Although it abrogated the paragraphs 3 and 5 of the Law, the Constitutional Court by its reasoning upheld not only the formula, but also the mechanism introduced, asking through such abrogation clearer procedures in evaluating the decisions. In the Court's view, it is unclear what benefits are deducted and therefore it requires clarified procedures. Supporting this conclusion, we cite: *"The Court notes that Article 6 of the law under scrutiny must be considered in connection to other articles of the law, namely Articles 13, 14, 20, 21, 24, 26 and 31. In this context, the lawmaker must keep note to what extent the physical compensation laid down in Article 6(3) and (5) is supplemented by the other articles in the law, in order to prevent overlapping or clashes in the provisions. Frequent introduction of provisions uncoordinated in their essence and implications create ambiguities and consequently infringes the principle of legal certainty. In these conditions, the Court holds that the content of paragraphs 3 and 5 is not in compliance with the principle of legal certainty, because the calculation of the acquired surface and the deductible or increasing surface by the formula set out in paragraph 1 of the Article 6 is unclear and creates confusion in application, as regards citizens' expectations."*

In reference to above, paragraphs 3 and 5 of Article 6 were abrogated by the Constitutional Court on the grounds that they are unclear and unpredictable and create confusion in application, consequently, citizens hardly know the concrete extent of compensation they are entitled to.

In paragraph 6, the lawmaker stipulates that any benefits awarded to the expropriated subject or his/her heirs from the execution of the decision that recognised the right to compensation, such as the value of shares, bonds, financial compensation or any other form of compensation, including the value of property acquired from legal provisions on the allocation of agricultural land, shall be deducted from the financial amount of the decision.

Paragraph 7 stipulates that compensation decisions determined in value and still unenforced, for the period from the time of recognition of the right to compensation until reception of the compensation, the expropriated subjects shall benefit from indexation according to the official inflation rate and bank interest according to the annual average rate issued by the Bank of Albania at the time of entry into force of this law.

Selection of the formula in Article 6 is in coherence also with the conclusions of the Constitutional Court[27]:"*The Constitutional Court, at the same time, noted that the repeal of legislation passed by the communist regime for 50 years, cannot lead to the restoration of property relations as they were in 1944, neither to a full compensation of the damage incurred, due to objective changes in time and justified legal reasons.*"

In follow-up to Article 6, Article 6 defines the procedures to be followed by the body tasked with the implementation of the law. This Article states that not only final decisions, but also decisions that become final by the end of the process shall be under the scope of this law.

As regards the other provisions, they provide for various forms of compensation which aim to establish a fair balance between the public interest and that of the individuals. The Venice Commission[28]argued that: "*52.As concerns 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.*

Until the entry into force of the Law 133/2015, there was no final compensation scheme with a concrete financial bill that would allow for a *legitimate expectation.* As regards individuals who still do not have a final decision rendered by the administrative or judicial bodies which recognises them the right to property restitution or compensation, it is considered that they cannot have a legitimate expectation, because their right is not recognised at national level[29].

In the new compensation scheme adopted in Law no. 133/2015, the main element of estimating the financial compensation is the value of the property under the cadastral index it had at the time of expropriation. This approach differs from previous legislation and could lead to lower compensation. The previous laws: Property Act of 1993, that of 2004 and that of 2006 foresaw a higher compensation scheme than Law no. 133/2015 (*Ramadhi and Others v. Albania,* no. 38222/02,§§24-30,13 November 2007;*ManushaqePuto and Others v. Albania*, op. cit.,§25-26.). It could therefore be argued that former laws created expectations to receive compensation equivalent to the market value of the property at the time of the decision on compensation. Although lower compensation cannot qualify as formal expropriation, it may well qualify as an "other interference" which is a catch-all provision laid down in Article 1, Protocol No.1, requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (*See Former King of Greece and Others v. Greece [GC], no. 25701/94, § 79, ECHR 2000-XII, and Latridis v. Greece [GC], no. 31107/96, § 58, ECHR 1999-II).* The principle of lawfulness presupposes that the applicable provisions of domestic law be sufficiently

[27] Decision of the Constitutional Court no. 4, dated 08.04.1994
[28] Amicus Curiae 861/2016
[29]Judgment "Bici v. Albania" described above.

accessible, precise and foreseeable in their application. Taking the specific situation of Albania into account, it can well be argued that the new and effective legal framework established by the Law 133/2015, which may lead to a lower amount of compensation for the former owners, but meets the requirement of proportionality as set out in Article 1 of Protocol No.1[30].

2.1.1 Formula and methodology

Upon the entry into force of Law no.133/2015 "On treatment of property and completion of the property compensation process" and the Decision of the Council of Ministers no. 223, dated 23.03.2016 "On the definition of rules and procedures for the evaluation and execution of final property compensation decisions and distribution of the financial and physical fund for property compensation" (as amended), PMA made a financial estimate of the final decisions which recognised the right to compensation for the years 1993-2013, and published them in the Official Bulletin as provided for in legal provisions.

Financial evaluation of decisions is based on the formula provided for in the above-cited legislation. But, for the purpose of compensation and enforcement of final decisions, the financial evaluation is based on the values indicated in the Value Map approved by DCM no. 89 dated 03.02.2016 *"On the approval of the land value map in the Republic of Albania"*[31], in force at the time the law was adopted.

The approach of the legislation after the '90s was to compensate or make up for the injustice to former owners. This means that former owners will be recognised the right to property expropriations (not) in the condition it had upon expropriation, but on its current value. The compensation value – in case it cannot be restituted or where it is alienated as a result of State activity – is computed based on the property evaluation methodology which is guided by the principle of market value. This is the basic principle which is materialized in the mechanism that will ensure fair compensation of former owners.[32]

The key principle used in the evaluation methodology is: *Property recognised for compensation shall be evaluation based on the cadastral index it had at the time of the expropriation."*[33]

Depending on the recognised right to restitution, compensation or combination of both, the financial evaluation shall be made as follows:

- For decisions recognising only the right to property compensation, the evaluation shall be made based on the cadastral index it had at the time of expropriation, based on the Value Map, at the time of entry into force of this law.

- Evaluation of the final decisions ordering property restitution and compensation shall be made under paragraph 1/a, Article 6 of Law no. 133/2015 dated 05/12.2015 "On the treatment of property and completion of the property compensation process" and paragraph 3/a, Chapter I of the DCM no. 223, dated 23.03.2016 "On the definition of the rules and procedures for the evaluation and execution of final court decisions on property

[30] Paragraph 54 of Amicus Curiae brief no.861/2016 of the Venice Commission.
[31]This map was issued not only for this process, but also for the property evaluation process in all processes involving sale/purchase of State-owned property.
[32]CoM explanatory report on the Law "On treatment of property and completion of the property compensation process", page 7.
[33]Annex 1 gives examples on property evaluation.

compensation, and distribution of the financial and physical fund for property compensation", as amended, applying the following formula:

a. The restituted property shall be estimated as the difference resulting between the value it has under the current cadastral index and the value it had under the cadastral index at the time of expropriation. This difference shall be deducted to the value of property recognised for restitution.
b. In cases where the expropriated subjects have obtained a restitution or compensation decision, the difference of the restitution added value shall be deducted from the value of property recognised for restitution. As per above, if the evaluated property restituted by final decision exceeds the value of the property recognised for compensation, the appropriated subject shall be considered as compensated.
c. In any case, the value of shares, bonds, financial compensation or any other type of compensation – including the value of property acquired from legal provisions on the allocation of agricultural land that the subject or his/her heirs already acquired, shall be deducted from the calculated compensation amount.

The compensation methodology in the law is designed to observe two principles[34]:

First, reinstatement so far as possible of the rights of former owners. Former owners shall be compensated in the same value the property has if it were to be expropriated today (e.g. if 50 ha agricultural land is expropriated, its value in that area or in the nearest area to the property is compensated).
Second, preservation of equality and legitimate interest in the added value of the property. So, if the property restituted to former owners has a higher value than what he/she is entitled to – due to the improvements made to this property over the years – that value shall be included (e.g. the property used to be a swamp is drained and now is converted to industrial land, the added value shall be calculated in the compensation price).

PMA shall appraise (evaluate) the decisions which recognised the right to property compensation, but shall not perform re-appraisal thereof.
The evaluation is intended to attach a financial value to the decisions of the former Property Restitution and Compensation Committee for which there has not been any complete evaluation for the entire surface area recognised for compensation, but it was evaluated and executed partially under a scheme (200 m^2, 300 m^2 etc.,) based on the Decisions of the Council of Ministers.

Decisions recognising compensation have been an abstract right to date, but now this right is being materializing by obtaining a value and determining the precise financial obligation of the State towards the expropriated subjects. This financial evaluation is made for the first time - in line with the legal provisions actually in force – because none of the previous legal acts allowed for an economic evaluation.

The Constitutional Court by its Decision no. 1 dated 16.01.2017 considered the law generally in line with the Constitution, by abrogating only the paragraphs 3 and 5 of Article 6 of Law

[34]Explanatory report of the Law "On treatment of property and completion of the property compensation process", page 8.

no. 133/2015 "*On the treatment of property and completion of the property compensation process.*"

Chapter I of the Decision no. 233, dated 23.3.2016 *"On the definition of rules and procedures for the evaluation and distribution of the financial and physical fund for the property compensation",* as amended, clearly defines the procedure for the financial evaluation of a decision which recognises the right to compensation, stating that initially the financial evaluation is made and then the Value of shares, bonds, financial compensation or any other type of compensation acquired, including legal provisions on the allocation (division) of the agricultural land which the subject or his/her heirs have benefited before, shall be deducted from the calculate compensation amount.

The value of a decision for financial compensation is calculated by deducting the financial amount benefited from the previous compensation from the total financial evaluation for the surface area recognised for compensation.

For compensation decisions determined in value and still unenforced, for the period from the time of recognition of the right to compensation until reception of the compensation, the expropriated subjects shall benefit from indexation according to the official inflation rate and bank interest according to the annual average rate issued by the Bank of Albania at the time of entry into force of this law.

Based on Law no. 133/2015 and DCM no. 233, dated 23.3.2016 *"On the definition of rules and procedures for the evaluation and distribution of the financial and physical fund for the property compensation",* subjects in final compensation decisions which include the pre-emption right are entitled to waive their pre-emption right in exchange of compensation, no later than 1 year from the data of publication of the register.

Procedure followed by the Property Management Agency, as regards the compensation methodology, includes these steps:

- Identify files having a decision for property recognition and compensation;
- Classify files into groups referring to the property subject to the decision;
- Define the recognised, restituted and compensated surface in each decision taken by PRCCs. Also, the documents in the file are verified to check whether these decisions were modified later by administrative or judicial decisions, and whether benefitted from the annual financial compensation given by PRCA during 2005-2014;
- Identify the property origin's cadastral index at the expropriation period, the current cadastral index, the property's cadastral zone for each decision recognising the compensation right, and the nearest (geographically) cadastral zone to the property in cases where the cadastral index changed, and the property is located in the city;
- Position the recognised, restituted/compensated property on the digital map;
- Determine the property value referring to the value map in force, according to the cadastral index;
- For compensation decisions having a value but still unexecuted, the financial estimate of decisions was calculated by adding to the defined amount the official bank interest and inflation indexes, based on the annual average issued by the Bank of Albania until 24.02.2016.

2.2 Problems encountered during the evaluation process

Law 133/2015 was drafted considering some of the problems encountered over the years, for which a solution is foreseen, e.g. there are decisions that cannot be evaluated due to lack of documentation, in order to determine the type of property at the time of expropriation.

In case of failure to submit the required documentation proving the type of property at the time of the expropriation, the evaluation is conducted in line with Article 16/4 of Law 133/2015 which stipulates that:
"The compensation decision shall be assessed financially with the minimum price specified in the value map in that administrative unit and for that category of property, if:

a) the interested subjects do not submit any documentation necessary for the financial evaluation of the decision within the time-limit defined in paragraph 2 of this Article and;
b) it is objectively impossible for PMA to evaluate the property based on the available documentation."

2.3 Final decision by PMA

Procedure for the enforcement of compensation decisions for subjects starts after the evaluation decision becomes final. The evaluation decision becomes final after 30 days from its publication in the Register, provided that one of the conditions below is met:[35]:

- the 30-day notice deadline through the publication of the financial evaluation has expired and no complaint was filed;
- the interested subjects and the State Advocate Office declare that they will not file a complaint;
- there is a complaint and it was adjudicated by the courts of all levels, including the High Court.

Subjects who possess at least one final decision financially evaluated are entitled to apply for compensation.

2.4Forms of compensation

Forms of compensation provided for in the law are:

- financial compensation;
- compensation by another State-owned immovable property of any kind, of equal value;
- compensation by shares in companies with State-owned capital or where the State is co-owners, of a value equal to the immovable property;
- compensation by the value of objects subject to privatization.

In the meaning of the law, "compensation" is the fair remuneration according to procedures laid down in this law. Subjects which have at least one final decision financially evaluated have the right to apply for compensation. The law stipulates that subjects shall be compensated under a certain chronological order starting with the earliest decision.

The main forms of compensation are: "Financial compensation", "Physical compensation from the land fund" and "Physical compensation within the recognised property of the expropriated subject"; the latter implies the surface area of the property decided to be

[35]Article 16/1 of Law 133/2015 foreseen general publication.

compensated to expropriated subjects by final decision, in their property, in case it is considered to be unoccupied.

Priority of compensation forms is in the order below:

a) Physical compensation in the former property of the expropriated subject;
b) Physical compensation from the land fund;
c) Financial compensation.

It can easily be noted that the legislation gives priority to physical compensation on the property of former owners, and only if this is not possible, - so, when the property is considered occupied according to this law, other forms of compensation apply.

All final decisions with a financial value benefit compensation in the order set out above. An exception to this rule is the cases set out in Chapter IV of this decision relating to handling of special applications for financial compensation.

PMA, before deciding about the form of compensation, requests information from the relevant local and central authorities if on the property recognised by final decision to an expropriated subject has been issued a construction permit or is granted any other rights under the legislation in force, or if there is some procedure underway to grant such rights. Only after receiving the information from the relevant institutions, PMA may decide on the form of compensation based on the provisions of Law no. 133/2015.

In all cases where the subject is not awarded physical compensation in the recognised property and there is a financially evaluated final decision, the subject is awarded financial compensation from the financial compensation fund up to 20% of the total financial compensation value, but not more than 10,000,000 (ten million) ALL[36], while the remaining part of the final decision is physically compensated from the land fund. In allocating the land fund, PMA upholds the criterion of selecting the property geographically closer to the property recognised for compensation.

PMA examines the documentation of the subjects, by verifying the documentation issued by the relevant institutions. In cases where PMA deems that an administrative verification is needed for the execution of the final decision, it conducts the verification procedure according to the procedures set forth in the Administrative Procedure Code.

The list of subjects who benefit from the compensation fund are publiclynotified by PMA on its official website, on the Official Notification Bulletin and/or in the media.

The law provides for an additional way of handling special applications. In this case, the law provides for derogation from the chronological handling of compensation applications, by giving priority to the special applications. Compensation is not given for the entire financial value calculated, but, upon request, up to 20%, 30% or 40%, as referred in Article 17 of Law 133/2015.

The Government approves a compensation fund annually, according to the chart in Appendix 2 of the law, but not less than 50 billion ALL in 10 years. It must be administered by the PMA for the compensation process. But not more than 1/3 of this annual financial compensation budget can be used for such special applications.

[36] In reference to letter "a", paragraph 1, Article 8 of Law no. 133/2015.

The subjects, who express willingness to be financially compensated through special applications, can benefit from this fund, as follows:

a) when the subject requests to be financially compensated within 1 year, then he receives 20% of the compensation value and waives from the rest of this value;
b) when the subject requests to be financially compensated within 3 years, then he receives 30% of the compensation value and waives from the rest of this value;
c) when the subject requests to be financially compensated within 5 years, then he receives 40% of the compensation value and waives from the rest of this value.

2.5 Internal procedures of PMA for the compensation process

After the official publication of the registry of decisions awarding the compensation right to expropriated subjects and after the public notice of the PMA, any subject to which a value is published in this register is entitled to apply for compensation from the financial/physical compensation fund.

The PMA admits the applications of expropriated subjects by conducting the following procedures:

a) completes and makes a preliminary verification of the documentation submitted by expropriated subjects;
b) verifies the payment of the fee by the subject for opening a compensation file;
c) opens a file for each applying subject, completes the application form signed by its clerk and the applicant, and registers the application under a protocol number by giving such number to the applicant too;
d) registers the open files in the financial/physical compensation register and in the database set up for this purpose.

After the above steps, the PMA, based on the legal and sub-legal acts stipulating the rules and procedures for the distribution of the financial and physical compensation fund, conducts the following steps:

- examines the documentation submitted by the subjects, verifying the applicant's legitimacy for any property compensation claim;
- the documentation issued by the administering institutions;
- in cases where PMA considers that the enforcement of a final decision requires an administrative investigation, it shall conduct the administrative investigation procedure according to the procedures set out in the Code of Administrative Procedures, in order to concur other necessary data from the relevant institutions.

Also, on a case-by-case basis, where there is an application by the interested subject to obtain compensation, the PMA verifies with the Legal Representation Unit/Sector whether the financial value of the decision – for which the subject applies - has been appealed at the Administrative Court of Appeal.

Once the file is completed with the necessary documents, a legal report is prepared and signed. In the end, the legal report is assessed and approved.

2.5.1 Pre-emption right

For decisions awarding the pre-emption right, pursuant to Article 16/2 of the Law 133/2015, the PMA shall publish the subject's right to waive this right, by allowing a preclusive time-line of 1 year from the publication of the register[37].

The pre-emption right is registered with the Immovable Property Registration Office. If the subject applies to waive the pre-emption right, the PMA evaluates the decision. In other cases, the PMA sends the decision with the pre-emption right for registration to IPRO.

The PMA, after the legal amendments, in parallel to the financial evaluation of decisions, sets up the working groups to block properties available to it, in order to have accurate information on the conditions of the land fund, given the importance of the inventory and identification of the land fund.

2.6 Enforcement of ECtHR judgements

In parallel to the examination of the unhandled applications and financial evaluation of the decisions awarding the property right, the PMA carries out also the enforcement of the ECtHR decisions which in turn ordered the execution of domestic decisions. It is precisely Article 3 of the Law, which stipulates that this law extends the effects of financial evaluation issues under consideration at the courts of all levels at the High Court as well as at the European Court of Human Rights.

The actual practice shows that the Albanian State has executed ECtHR judgements in three forms: physical compensation, financial compensation according to the financial amount indicated in the ECtHR judgements and execution by one of the appropriate options laid down in the Law. Forms of compensation are determined by decision of the Council of Ministers.

- *Physical compensation*

This compensation form - as in the Driza case - was reached after the agreement made with the applicant Driza who agreed to physical compensation, i.e. to be given property from the physical compensation fund managed by the former PRCA.

- *Financial compensation*

In cases where ECtHR ruled for the Albanian Government's obligation to pay fair compensation to the applicant by determining also the respective monetary value, this payment was made from the 'State Budget reserve fund' by the Ministry of Finance in accordance with the relevant DCM.

- *Enforcement of domestic decisions*

Also, a specific case is the enforcement of ECtHR judgements which in turn order *enforcement of domestic decisions for property recognition by one of the appropriate means".*

In cases where the ECtHR does not determine a value, but orders the enforcement of the domestic decisions, the PMA has conducted the evaluation of decisions which recognised the right to property. The financial evaluation of these decisions or issues encountered were

[37] Article 22 of Law 133/2015

published - in line with the legal provisions – on the Official Notices Bulletin no. 30, dated 06.08.2018.

CHAPTER III

3.1 New property recognition applications

Recognition of the right to property is a temporary process under deadlines well-defined in the law, namely 3 years from is entry into force. Also, the law provides for the right of owners to file a property recognition application with PMA within 3 months from the entry in force of the law. This deadline is preclusive.

The United Chambers of the High Court, in its Unifying Decision no. 24, dated 13.3.2002, assessed the nature and purpose of these laws stating that: *"...The Lawmaker, through these important legislative acts recognised the injustice, the violation of property rights of the former owners and decided to recognise again their right to property... These laws, considering as unjust the events occurred before, provided for the restoration of the property rights of owners, where the property was immovable objects...*
...The United Chambers of the High Court consider these legal acts addressed to former owners or their heirs, not as a new form of acquisition of property in their favour...
The United Chambers argued that: *"At the time the legal framework on the restitution of properties to former owners was introduced, the lawmaker could have defined also the judicial procedure to claim and restitute properties unjustly nationalized or confiscated, but deemed as more appropriate the administrative instance and the right to court appeal against decisions of administrative bodies tasked for this purpose…".*

Given that handling of this complex process by the administrative bodies tasked with the review of the property recognition applications lasted for a period of 28 years, the lawmaker, by Law 133/2015 (Article 27) stipulated that - upon the entry into force of the law – interested subjects are given a preclusive deadline of 90 days to file applications for property recognition; this deadline cannot be prolonged or extended by the court or any other administrative body.

The lawmaker intended to have this process completed, that is why it defined a 3-year deadline to handle the applications for property recognition. Upon expiry of this deadline, the interested subjects who received no reply to their applications can address the court to demand recognition of the right to property. So, after the termination of the 3-year deadline, the court is the competent body for the review of applications for property recognition.

3.1.1Application

The expropriated subjects, their legal heirs or representatives having a power-of-attorney had the right to submit to PMA - directly or through postal service - their reasoned applications for property recognition and compensation, together with the supporting documentation which proves their claims, within a 90-day deadline from the entry into force of Law no. 133/2015.

Applications for property recognition were submitted by filling out an approved template form. Also, the following required documents were attached to it:

a) legal documentation;
b) cartographic documentation;
c) any other supporting documentation.

During the administrative review process, the expropriated subjects or their heirs must prove that they were holders of the property title before the date 29.11.1994 for the property over which the right is claimed. In order to prove this fact, the expropriated subjects or their heirs must submit as documentary evidence:

a) property registration documents, cadastral and archive documents, previous decisions of the former Property Restitution and Compensation Commission/ Committee, former IPRO, PRCA, the document proving removal or award of the property right to the expropriated subject by the Government according to the legal acts and by-laws, criminal decisions of courts, or any other unjust form since 29.11.1944, or the document for immovable properties of Albanian citizens which are acquired before 7 April 1939 and were seized under Article 14 of Law no. 37, dated 13.1.1945 *"Law on extraordinary taxation on proceeds of war or any other legal document issued by the State institutions required for fair settlement of the case."*

b) if any of the above-cited legal documents represents flaws concerning the surface area or the border lines of the claimed property, the subject shall submit the final court decision together with the site plan of the property under adjudication, sealed by the court, as well as the expertise-act, if the latter has been compiled during the court adjudication of the case.

In order to determine the location and border lines, the expropriated subjects or their heirs must submit maps containing topographic and cartographic data of the claimed property, reflected in the actual map and confirmed by the institution which, on a case-by-case basis, may be the Immovable Property Registration Office or the Forest Service Directorate where the claimed property is located, or any other State institution, and positioning of the claimed property confirmed by a licensed engineer / geodesist, unless the property positioning has been carried out under a final court decision.

For the purpose of calculating the compensation amount, the expropriated subjects or their heirs must submit:

a) attestation proving whether they benefited from legal provisions on allocation of agricultural land;
b) notary declarations the expropriated subjects benefited from legal provisions on allocation of agricultural land;
c) previous restitution or compensation decisions indicating previous benefits of subjects;
d) other documents or attestations indicating previous benefits under Article 6, paragraph 6 of Law no. 133/2015
dh) attestations or certificates issued by civil registry offices or any other document serving to the expedited settlement of the application under examination.

The Law stipulates that PMA shall handle in the same form the applications filed before the entry into force of the Law 133/2015 and those filed under the terms and conditions laid down in this law.

One of the novelties introduced by the law is that handling of property recognition applications is that, if PMA identifies cases where the legal document is not consistent with the cartographic documentation, it must give priority to the legal documentation, which means that the interested subject is recognised ownership according to the data in the legal documentation.

3.1.2 Handling of property recognition applications

The Law defines a 3-year deadline for handling applications for property recognition (Article 34 of the law).

For the purpose of the legal provisions, the conditions to qualify as an expropriated subject are the following:
- *ownership over an immovable object;*
- *the ownership right was removed unjustly by the State.*

The register of applications without a decision was established within 30 (thirty) days from the entry into force of the law, based on the chronological order when these applications were submitted to the competent authorities, on a region level.

The process of notification of the expropriated subjects started within 90 days from the entry into force of this law, informing them about the documentation that must be submitted, in line with the requirements set forth in the decision of the PMA Director General, observing the priority specified in paragraph 3, Article 15 of Law no. 133/2015.

Procedures for the collection, processing and managing of the acts submitted by the expropriated subjects during the handling of the applications are subject to the provisions of the Code of Administrative Procedures. In addition to the above-cited confirmations, PMA conducts on-site verification of the positioning and the actual state/condition of the property.

In coherence with the chronological financial evaluation of decisions which already recognised the ownership right, also the examination of the applications for recognition of the right of ownership follows the chronological order of the application to the competent authorities, i.e. the time when applications were submitted.

3.2 Final decision on applications for recognition of the right of ownership

The body tasked with the implementation of the Law 133/2015 checks, assesses and confirms the authenticity of the documentation submitted by the expropriated subjects, by cross-checking them against the legal acts and by-laws or court decisions, in accordance with Article 2 of the law, which were used as a basis for expropriation, nationalization, confiscation or unfair appropriation of the property by the State.

After the check, assessment and examination of the applications, PMA issues a decision within the deadline set out in Article 34 of this law, whereby it:
- dismisses the application;
- recognises, as appropriate, the right of ownership, the physical compensation within the boundaries of the recognized property or compensation from the land fund or the financial compensation for the property and other real rights, pursuant to the provisions of this law.

If PMA accepts the application, by the same decision it determines the amount and form of compensation according to the provisions of the Decision no. 223, dated 23.3.2016 of the Council of Ministers.

If PMA decides for recognition and physical compensation in the subject's property, the latter is evaluated as follows:

a) Property recognised for compensation is evaluated based on the cadastral index it had at the moment of expropriation;
b) Restituted property is evaluated based on its current cadastral index and based on the cadastral index it had at the time of expropriation, by calculating the difference in value resulting from the changed cadastral index;
c) If such evaluation finds that the subject is entitled to a property with a higher value than that of the property, he/she had at the moment of expropriation, the subject shall be compensated with the physical surface corresponding to that evaluation and the rest of the property is included in the land fund by PMA decision.

Property positioning is carried out by the working groups after evaluation is made. In cases where the working group finds overlapping of the properties claimed for recognition and compensation, the parties must settle the overlapping either in agreement among them, or through judicial review. PMA continues the procedures for the recognition and compensation of the property for that part which is free of overlapping.

Applications submitted pursuant to Article 22 of Law no. 9235, dated 29.7.2004 "On property restitution and compensation", as amended, are handled according to the procedures, forms and conditions laid down in this law. Article 22 of Law no. 9235, dated 29.7.2004 as amended, provided for the right of expropriated subjects to demand handling of properties which - under the conditions laid down in Law no. 7698, dated 15.4.1993 "On restitution and compensation of properties to former owners" – had not been handled or were handled with compensation and the legal status of the property had changed and the administrative body decided whether the property could be restituted.
For this reason, decisions awarding the compensation right are included in the other compensation applications under the chronological order.

During the examination of the applications for recognition of ownership, it happened in practice that some interested subjects did not show interest for the administrative process even after receiving the official notice from PMA to complete the required documentation. In these cases, PMA decided to "terminate processing" due to relinquishment, based on the Code of Administrative Procedure.
This PMA decision-making became subject to judicial review. The case-law of the first-instance and appellate courts set forth a debate as to which court has jurisdiction over the settlement of disputes between former owners and the State, in cases where PMA terminated the administrative process by a non-final decision and without deciding on the merits of the application submitted by the former owner. This problem was addressed by the High Court in its unifying Decision no. 611, dated 07.02.2018 in which it stated that:
"*The decision by the PMA on the examination of the application only by the wording "termination of the administrative processing", in the meaning of the legal terms and language is inaccurate and must not be used by PMA as a form of expression of will, because such decisions are not stipulated in the special law which defines on what and how PMA must decide."*
The Court ruled that the cases for dismissal of the application may be of substantive or procedural nature. Cases of substantive nature involve cases where the expropriated subjects or their heirs were found as legitimate claimants, deadlines were respected, documentation was complete, etc., but, on this basis, in the meaning of substantive law, the right to ownership cannot be recognised -+ and compensated, because these do not represent unjust expropriation, the applicant is not the expropriated subject concerning the claimed property,

and the surface area, location, nature, characteristics, etc. of the unjustly expropriated property are different from those claimed by the applicant.
So, these are the exemptions for property handling (Article 4 of Law no. 133/2015), etc.
Similarly, the dismissal of the application can be based on procedural grounds, i.e. may be related to the observance of the deadlines for the submission of the application, to the legitimate status of the applicants demanding evaluation or recognition and compensation of property, to the legitimate status of legal representatives of the expropriated subjects, etc., i.e. omissions which - even until the completion of the regular administrative procedure and its conclusion – were not addressed by the applicant through the relevant documentation which he/she is bound by law to submit.

We observe that in all cases, either with material or procedural omissions, PMA must decide to dismiss the application and not terminate the administrative process, because Law 133/2015 does not grant such a right to PMA.

CHAPTER IV

4.1 Jurisdiction

Law no. 133/2015 "On the treatment of property and completion of the property compensation process" aims to effectively finalize the property management process through its recognition and compensation within a reasonable deadline. For this purpose, a sole public legal decision-making body was introduced by this law, namely the Property Management Agency, which was transferred the rights and obligations of the Property Restitution and Compensation Agency and will handle conclusively the applications of former owners for property recognition, restitution and compensation.

Article 3 of Law no. 133/2015 defines its scope of application, which included all decisions of administrative and judicial bodies which awarded the compensation right but were still unenforced for all applications under examination by PRCA at the time of entry into force of the law and all cases under adjudication, as regards the financial evaluation. This law no longer recognised the right to physical property restitution, but only the right to compensation.[38]

At the same time, Article 6 of the law specifies the methodology by which PMA would make the financial evaluation of properties for compensation purposes. According to this provision, subject to re-evaluation by PMA shall be all final unenforced decisions of the former property restitution and compensation commissions, former regional property restitution and compensation offices, and former PRCA, which have recognised:

a) only the right to compensation *(without defining a value or surface area);*
b) only the right to compensation defined in surface area;
c) the right to partial restitution and compensation *(undefined in value or surface area);*
d) the right to partial restitution and compensation *(defined in surface area).*

In view of the legal provisions, one of the debates set before the courts was: which decisions and which cases will be subject preliminarily to the administrative jurisdiction for the financial re-evaluation and compensation purposes, and in which disputes will be subject to judicial jurisdiction. In order to reach a clear conclusion, a harmonised interpretation of the content of Article 3 against the content of Articles 6 and 15 of Law no. 133/2015. In this framework, the High Court by its unifying decision no. 00-2018-611, dated 07.02.2018 reasoned about a series of issues involving:

a) category of previous decisions of administrative bodies responsible for property restitution and compensation, taken under laws that are repealed, which will fall under the scope of this law and consequently will be evaluated financially by PMA;
b) applicable law, and which decisions will be subject preliminarily to the administrative jurisdiction for the financial re-evaluation and compensation purposes;
c) disputes that will be subject to the judicial jurisdiction and which will be the competent court to adjudicate these disputes under the judicial jurisdiction.

[38] Forms of compensation under this law are: *financial compensation*, *physical compensation* from the land fund, *physical compensation within the recognized property* of the expropriated subject, compensation with shares in companies with State-owned capital and *compensation with the value of objects* subject to privatization (Article 8).

d) understanding the meaning of Article 6/1 of Law no. 133/3015 which foresees that subject to the evaluation will be all final unenforced decisions awarding restitution / compensation, whether
e) understanding the meaning of Article 6/1 of Law no. 133/3015 which foresees that all unenforced final decisions awarding restitution / compensation will be subject to evaluation; whether subject to the evaluation will be only the final decisions which are unenforced or unenforceable because they did not clearly specify the right awarded therein, or all unenforced restitution / compensation decisions regardless of what they disposed/ruled.

First, the High Court by its unifying decision no. 00-2018-611, dated 07.02.2018 reasoned that the review scope of administrative jurisdiction - according to the provisions of Law no. 133/2015 – entailed only unevaluated decisions which foresee abstract (*in abstracto)* rights and, on the other hand, if it was interpreted that all previous decisions rendered under laws repealed by now, regardless of what they disposed, will be again subject to the administrative jurisdiction, this would create again delays and uncertainty among title holders and would run counter to the purpose of the law for the completion of the property handling process within a reasonable period.

This solution must be considered particularly under the stipulations of Article 15 of Law no. 133/2015,[39] which foresees that PMA must perform a financial evaluation of previous decisions no later than 3 years from the entry into force of the law; this is a significant deadline compared to the 10-year deadline for the completion of the property compensation process.

This means that if the previous legislation entitled former owners to file a lawsuit, given that the administrative power has been exhausted once, under the principle of legal certainty, this right cannot be revoked or annulled by a later law, it is not possible that any time the law is amended, the subjects holding a concrete right and who were entitled to the right to file a lawsuit are returned to the administrative jurisdiction.

In this context, the High reached the conclusion that Law no. 133/2015 does not intend to review final decisions awarding compensation or physical restitution in which the rights of former owners are stipulated in a concrete manner, both qualitatively and quantitatively, and which represent an acquired right, regardless whether it is fulfilled or unfulfilled. They are executive titles, both when they are vested in the form of an administrative act or when they are vested in the form of a final court decision and *ruling*, and as such can only be enforced and cannot be questioned or cannot be reviewed again administratively and judicially.[40]

Law no. 133/2015 cannot be interpreted as extinguishing or obstructing the filing of a lawsuit as a right already granted. On the contrary, the Constitution-compliant interpretation of this law necessarily requires that the scope of application under Article 3 be strictly and restrictedly interpreted, in respect of the principle of the rule of law and the legal certainty of the individual. Whereas in the substantive aspect,

[39] Article 15 no. 133/2015 stipulated that: "*1.Within a period of 3 years from the entry into force of this law and pursuant to its stipulations, the PMA shall financially evaluate all unevaluated final decisions recognizing the right to compensation.2. If the Agency fails to meet the obligation under paragraph 1 of this Article within this period of 3 years, the subjects become entitled to address the Tirana Administrative Court of First Instance demanding financial evaluation according to the stipulations of this law...*"
[40] Paragraph 37 of the Unifying Decision no. 00-2018-611 dated 07.02.2018 of the Civil Chamber of the High Court

it certainly enjoys protection due to the principle of legal certainty and the right to property provided for in Article 41 of the Constitution of the Republic of Albania and Article 1 of Protocol no. 1 of the ECHR, insofar as it is decided and disposed of with the previous decisions of the property restitution and compensation bodies.

The part of the right recognized and disposed of by a previous decision, according to the law in force at the time of the decision, shall not be violated as it is an acquired right, but if the former owner has claims on the legality of the decision rendered by former bodies under repealed laws, in terms of the quality or quantity/span of the acquired right, *that part of the claimed right shall be subject to the provisions of the new law and limitations therein related to the physical restitution of property*. Such lawsuits are filed under a new legal context, at the time when a new law is in force, which provided for a different regulation of the relationship between the State and the former owner, in a more unfavourable way.[41]

On the other hand, compensation decisions rendered by previous bodies without specifying a value, cannot be qualified as concrete legitimate expectation in the meaning of Article 1 of Protocol no. 1 of the ECHR. Having no specifically individualized right in these decisions, it cannot be said that they represent an acquired right. Given the nature of disposition, it can be said that those decisions create an unspecified right and can be handled equally – in terms of implications – with the category of subjects for whom there is no previous decision.

This category of decisions will be subject to financial evaluation by the administrative jurisdiction, which will make concrete and identify the rights of former owners recognised hypothetically and further on will be subject to the judicial jurisdiction in line with the legal requirements set out in Law no. 133/2015.

The reason why these decisions will be handled initially by the administrative jurisdiction is that this jurisdiction has not been exhausted. Decisions recognizing the right to compensation in an unspecified way – which for the purposes of the law will be considered as unevaluated, become equal to those which have not yet been subject to the administrative jurisdiction, in terms of implications and expectation they evoke in the subjects, being that there was no concrete disposition thereon by this jurisdiction. As a result, the latter cannot be considered as exhausted, as *condicio sine qua non*, for the acquisition of the right to lawsuit. This means that, if the dispute between the former owner and the State involves an unspecified right, it will be brought before the administrative jurisdiction which should make the right concrete and identifiable, and then it will be reviewed by the judicial jurisdiction, given that the administrative jurisdiction is considered exhausted.

Second: If PMA fails to meet the legal obligation to issue the decision on the financial evaluation of property compensation within the 3-year deadline, the interested subject is entitled to address directly the Administrative First-Instance Court of Tirana to demand financial evaluation in accordance with the requirements of Law 133/2015 (Article 15, paragraphs 1 and 2). Simultaneously, if within the 3-year deadline, PMA fails to meet the legal obligation to issue the decision on handling of property applications (recognition and compensation) by which it dismisses or accepts / admits the application, the interested subject is entitled to address directly the first-instance court of the ordinary jurisdiction which has the territorial jurisdiction depending on the concrete case demanding that their application be handled for the simultaneous property recognition and physical or financial compensation,

[41] Paragraph 40 of the Unifying Decision no. 00-2018-611 dated 07.02.2018 of the Civil Chamber of the High Court

pursuant to and in line with the provisions of Law no. 133/2015 (Article 34, paragraphs 1 and 2 of Law no. 133/2015).

In this situation, after the termination of the 3-year deadline and inaction by the PMA, the High Court reached the conclusion – through its unifying decision making – that the dispute will be subject to the judicial jurisdiction and the decisive criterion to determine the reviewing jurisdiction over the disputes arising between PMA and the interested subject or the State Advocate Office shall be solely the type of application for which the PMA issued a decision or not and the type of decision rendered by PMA for the submitted applications.

Third: Law no. 133/2015, like the previously repealed laws whose scope was the process of restitution and compensation of property to former owners, extended this scope to former-owner subjects who were unfairly expropriated, or their property confiscated by administrative acts or judicial decisions, by the totalitarian communist State as of 29.11.1944

The lawmaker's intention over the years has been to regulate and discipline, through the *self-expropriation* process, the relationship between the former owner and the State represented by the competent administrative bodies of property restitution and compensation, by assuming the obligation to regulate and reduce the injustices of the previous system, to the extent possible under the socio-economic conditions, based on the principles of equality, proportionality, justice and the social state.

The legal relationship stemmed between the State and the former owner has been and is of a special *sui generis* nature, bearing legal-administrative elements as much as legal-civil ones.

The legal-administrative aspect relates to the fact that the former owner's right will be decided by a public administration body, representative of the owner-State, whose powers are defined in a special law and which will articulate its will by an administrative act. Eventually, this is the form a State operates, as a public entity that expresses its will through administrative acts or actions.

On the other hand, the legal-civil aspect related to the fact that the claims of the former owner who addresses the property restitution and compensation bodies entails a subjective right in the sense of Article 42 of the Constitution of the Republic of Albania and Article 32 of the Code of Civil Procedure. The right of a person to be recognised as owner of an object/item is regulated by the Civil Code provisions, which falls out of the scope of public law which regulates the activity of public administration bodies, in upholding the public interest. The decisions of the property restitution and compensation bodies decided directly on subjective rights exclusive of certain right-holders, not of citizens or the public in general, such as the case of public interest. For this reason, the decisions of administrative bodies which had the power for property restitution and compensation, which recognised and restituted property to former owners, are not administrative acts in the classical, normal and ordinary legal sense *(strictu sensu),* but rather *sui generis* acts issued by a *sui generis* body for which the ECtHR used the new lexical term *quasi-judicial body[*[42]*]*.

This conclusion means that in dealing with subjective rights, even though the State body expressed its will through acts, the latter shall not be handled or challenged in court as administrative acts; on the contrary, the citizen shall demand in ordinary adjudication in court his/her right to property by submitting evidence to support this right.

[42] See the Decision of the Constitutional Court 27/2010.

At the moment such decisions become final, the State is deemed self-expropriated and they turn into property titles (mode of property acquisition) for the subject in whose favour it is disposed in the meaning of Article 163 of the Civil Code, property in the meaning of Article 41 of the Constitution and possession(s) in the meaning of Article 1 of Protocol no. 1 of the ECHR. At the moment the decisions of administrative property restitution and compensation bodies become final, the State is stripped of its right to property and the former owner or his/her heirs become entitled to the right to property. This means that from the moment of State self-expropriation by a final decision that recognizes and returns the immovable property or compensates it with another property in favour of the former owner, whether this decision is based on the law or not, any claims of third parties in civil proceedings over that property or any disputes arising from such decisions (property titles) will no longer qualify as mixed civil-administrative disputes between the State and the former owner in the context of the property recognition and restitution process, but will be considered as disputes of a typical legal-civil nature between private law entities, former owners or not, claiming the protection of subjective property rights on an immovable object/item, who, in an eventual conflict, would address the court about the existence and validity of respective property titles, according to the legal norms of civil, procedural and material law.

In other words, the State can no longer be held liable judicially or extra-judicially - by third-party subjects who claim property rights over an immovable object/item – for the obligation to recognise ownership or return property, because the State no longer holds property rights over that property due to the self-expropriation, the State lost ownership over it and consequently can no longer decide on it, in line with the principle that nobody can confer other more rights than he already has (*nemo dat quod non habet).*

In the same legal rationale, the United Chambers of the High Court, when defining the relationship between the third-party, the State and the former owner for the purpose of exhausting the administrative appeal challenging decisions of competent administrative bodies tasked with property restitution and compensation, stated *inter alia* in its Decision no. 2, dated 21.01.2017 that: "*Expropriated subjects have the obligation to address the administrative body, namely PRCA, in two situations: First, when the expropriated subjects submit for the first time an application for property recognition and restitution in the capacity of former owner. Second, in the case of appeal to the decision given on their behalf and on their application by the (former) Regional Office of PRCA, so, after the entry into force of Law no. 9235, dated 29.07.2004 "On property restitution and compensation" (as amended). However, even in these two cases, the case will be part of the judicial jurisdiction, therefore the obligation to address the application and the appeal to the administrative instance does not exist, provided that the expropriated subject claims that for the same property the former PRCCs or PRCA decided once on the recognition or restitution of that property to another expropriated subject."*

In other words, this means that if the State was self-expropriated by a decision of the former PRCCs, former Regional Offices of PRCA or the former PRCA, the dispute that may arise between the subject in favour of whom the decision is rendered and a third party having claims on that immovable object/item in the capacity of former owner, is no longer a *sui generis* administrative-civil dispute between the State and the former owner which must be initially solved by the administrative jurisdiction. Now, this civil dispute has already arisen and exists between two subjects of private law and as such should be resolved directly before the judicial jurisdiction.

In addition, the Constitutional Court consistently held the same position on the legitimacy of these subjects to address the court for their property rights claims over immovable objects/items for which there is a decision by the competent property restitution and compensation bodies. Hence, in Decision no. 27, dated 27.07.2009, the Constitutional Court reasoned that:

"The legitimacy of these subjects, as part of the ordinary court practice, has been accepted by the High Court which according to Article 141/2 of the Constitution has unified the judicial practice. During the adjudication initiated by the above subjects, inter alia, it is investigated and verified whether these subjects were violated the ownership right and any court decision that would partially or completely cancel the decisions of the respective administration body; should at the same time confirm their ownership right. For this reason, the Constitutional Court considers that in examining a dispute initiated by such subjects, the court has the jurisdiction and power not only to partially or completely cancel the decisions of the administrative body, but at the same time to recognize and partially or fully restitute the property in their favour."

This stance is further consolidated by Decision 27/2010 of the Constitutional Court, which, *inter alia,* stated that: "*... in the case of subjective rights, even though the State body has expressed its will by acts, the latter shall be handled and shall not be challenged in court as administrative acts, but on the contrary, the citizen shall demand in ordinary adjudication in court his/her right to property by submitting evidence to support this right... the courts of the Republic of Albania, at the moment they were activated to solve complaints about PRCCs decisions, solved the merits of the case same as if they were handling a proper ownership conflict."*

In the narrow technical-procedural aspect, the lawsuits of third-party subjects challenging the property restitution and compensation decisions (physical compensation) are generated and are based on Articles 31 and 32 of the Civil Procedure Code and Articles 296 and onwards of the Civil Code, or other lawsuits such as claims for recognition and restitution of hereditary estate or recognition of shared ownership. Specifically, Article 31 provides that: *"The lawsuit is the right of a person claiming to be heard on the merits of this claim so that the court rules whether it is founded or not. The opposing party has the right to discuss and raise objections on the merits and legal grounds of this claim."*

Likewise, Article 32 of the Civil Procedure Code stipulates that: *"The lawsuit can be filed: a) to demand reinstatement of a legitimate right or interest which has been violated; b) to certify being or not in a legal relationship or existence of a right; c) to recognise the authenticity or inauthenticity of a document bearing legal implications for the plaintiff."*

Articles 31 and 32 materialize on legal ground the general provision of Article 42 of the Constitution which defines the general and mandatory judicial jurisdiction, according to which anyone can address an independent and impartial court established by law to seek protection of their constitutional rights, freedoms and interests.

Based on the above provisions, anyone can address the court to defend his/her ownership rights over an immovable object/item, using one of the ownership protection means and can demand to be recognised as the owner of the immovable object/ item (by recognition lawsuit, *formulae praeiudiciales*) or this object/item to be returned to him/her (*rei vendicatio* or*petitium hereditatis*).

On the other hand, the person against whom this lawsuit is directed, has the right to defend himself, whether through objections or countersue, by challenging the legality and validity of the ownership title of the opposing party.[43] In such cases, the challenging of the decision of the former PRCCs, former PRCA or former Regional Offices of PRCA - both in the situation where the plaintiff challenges the ownership title of the respondent party or the respondent party challenges the ownership title of the plaintiff – is at the foundation of the legal reason and cause for the lawsuit or the countersue. In such disputes, the courts will exercise check on the legality of these decisions, as a prejudice issue, in order to assess the grounds of the plaintiff's claim, principal intervenor or respondent party which countersued, eventually for recognition as owner or return of object/item.

So, in the case of lawsuits, countersuing or lawsuits of the principal intervenor which seek to challenge ownership titles awarded to another subject by a property restitution and compensation decision, with the claim that the competent administrative bodies responsible for property restitution and compensation allegedly violated the law in awarding the property which in fact should have been awarded to the plaintiff, the countersuing respondent or principal intervenor, the court has the role to assess the application of the law by the relevant commission or the relevant law enforcement agency. It is this legal regime under which the legality of property titles contested by litigants is tested, in the intention to reach a final decision to the conflict under adjudication and rule on all the claims set forth in the lawsuit, countersuing or the principal intervenor's lawsuit. This means that, on one hand, the property titles of the litigants will be reviewed not as administrative acts, but as ordinary property titles and, on the other hand, the discussion on the diabolic process of substantiating (*probatio diabolica*) will not extend on all the originating property titles or the chain of property titles of the litigants' heirs; on the contrary, their property titles will be analysed with the intention to test the substantiation and fulfilment of the legal requirements of the law on property restitution and compensation. This conclusion will shape also the ruling over the claims set forth in the lawsuit, countersue or the principal intervenor's lawsuit.

4.2 Subject-matter, functional and territorial jurisdiction

For the purpose of finalizing the property restitution process within a reasonable time, Article 29 of this Law provides that appeals against PMA decisions must be filed will appellate courts within 30 days from the date of notification of the PMA decision. Meanwhile, Article 19 of the law provides that a lawsuit against the PMA financial evaluation which appraised the value of the property can be filed with the Administrative Court of Appeal within 30 days from the date of publication, only for the value of the compensation.

By the transitional provision of Law no. 133/2015, namely Article 38, the following laws were repealed: Law no. 9235, dated 29.7.2004 *"On property restitution and compensation",* as amended; Law no. 10 239, dated 25.2.2010 *"On establishing the special property compensation fund"* and any other by-laws in conflict with it. On the other hand, by repealing the legal basis for the activity of first-instance courts in the adjudication of these cases, there is no transitional provision stating what will happen with the cases under adjudication in such courts on the date of entry into force of this law. In addition, there is no transitional provision regulating which is the competent court for the adjudication of lawsuits against decisions not

[43] Claim for absolute invalidity of the decision renderred by the competent body got property restitution and compensation can be submitted also in the form of objections by the respondent party.

taken by PMA under Law no. 133/2015, but were taken by previous competent bodies for property restitution and compensation under laws already repealed.

Given that the law did not provide for the above aspects, the first-instance courts, the appellate courts and the Civil Chamber of the High Court itself have ruled differently (held different positions) about the issues identified above. Specifically, there is a debate in judicial practice and the different rulings involve the question which jurisdiction will cover the following issues:

a) review of court cases registered before the entry into force of Law no. 133/2015;
b) review of lawsuits against previous decisions of the competent administrative bodies for property restitution and compensation (former PRCCs), former Regional Office of the Property Restitution and Compensation Agency (former ROPRCA), or the former Property Restitution and Compensation Agency (former PRCA), which are filed after the entry into force of Law no. 133/2015.
c) review of disputes between former owners and third parties, where the decision of the competent body for property restitution and compensation is challenged as a property title, not as an administrative act.
ç) which court shall have jurisdiction over PMA decisions to terminate the process without a decision on the merits of the claims.
d) review of court cases registered before the entry into force of Law no. 133/2015;
e) review of lawsuits against previous decisions of the competent administrative bodies for property restitution and compensation (former PRCCs), former Regional and Local Offices of Property Restitution and Compensation (former ROsPRC), or the former Property Restitution and Compensation Agency (former PRCA), which are filed after the entry into force of Law no. 133/2015.
f) review of disputes between former owners and third parties, where the decision of the competent body for property restitution and compensation is challenged as a property title, not as an administrative act.
ç) which court shall have jurisdiction over PMA decisions to terminate the process without a decision on the merits of the claims.

As per above, the Civil Chamber of the High Court, through its unifying Decision no. 00-2018-611, dated 07.02.2018, decided to unify some issues in the case-law:

- Which is the competent court for the review lawsuits registered with the court after the date 23.02.2016 when Law no. 133/2015 entered into force and filed by former owners or their heirs to challenge the decision taken by the former PRCCs, former RLOsPRC or former PRCA which decided on the application based on previous laws on property restitution and compensation?
- Which is the competent court for the review of lawsuits, countersuits or principal intervenor's lawsuit which challenge the decision taken by the former PRCCs, former RLOsPRC or former PRCA in favour of a subject, by the third party claiming total or partial ownership, and in which court will this decision be challenged as a property title?
- Which is the competent court for the review of lawsuits against the decisions of the PMA where the latter decides to terminate the process without deciding on the merits of the claims: the civil appellate court, the Administrative Court of Appeal or the administrative first-instance court?
- Which is the competent court for the review of lawsuits challenging the decisions of competent bodies for property restitution and compensation taken under previous laws

which are repealed by now, registered with the court before the date 23.02.2015, i.e. after the entry into force of Law no. 133/2015?

First, concerning the first issue set forth for unification, as to which is the competent court for lawsuits registered with the court after 23.02.2016 when Law no. 133/3015 entered into force and filed by the former owner or his/her heirs to challenge the decision taken by the former PRCCs, former RLOsPRC or former PRCA which issued a decision on their application based on previous property restitution and compensation laws, the Civil Chamber of the High Court reached the unifying conclusion that: ***"For the review of lawsuits registered with the court after 23.02.2016, when Law no. 133/2015 entered into force, filed by a former owner or his/her heirs against a decision taken by the former PRCCs, former RLOsPRC or former PRCA which issued a decision on their application based on previous property restitution and compensation laws, the competent court in terms of subject-matter/ functional jurisdiction shall be the Court of Appeal. As regards the claims for recognition of a right, the competent court in terms of subject-matter / functional jurisdiction shall be the Court of Appeal in whose jurisdiction is located the immovable property. As regards claims about the compensation value, the competent court in terms of subject-matter / functional jurisdiction shall be the Administrative Court of Appeal."***

The Civil Chamber of the High Court reached this unifying conclusion reasoning that the competent court for the review of any dispute arising from decisions of previous administrative bodies which ruled specifically on the rights of the former owner, shall be the Court of Appeal on whose territorial jurisdiction is located the immovable object/item, or, the civil court of appeal, as applicable, where the claims and the dispute derive from the recognition of the right (Article 29 of the law); and disputes over the financial compensation shall be under the jurisdiction of the Administrative Court of Appeal (Article 19 of the Law). Although Law no. 133/2015 does not explicitly state the competent courts to review of previous decisions issued by administrative bodies of property restitution and compensation, this stems from the purpose and object of the law, which is not only the enforcement of unenforced decisions, but also the completion of the property treatment process as soon as possible and within a reasonable time.

With the intention to finalize the property compensation process within a reasonable time-line, the lawmaker envisaged only one instance of adjudication - in terms of fact and law - for reviewing appeals against decisions on properties of former owners, namely the appellate court. Thus, the law provided for one administrative review instance with initial jurisdiction of fact and law, one judicial review instance, namely the appellate courts, with full review jurisdiction of fact and law, as well as one judicial review instance, namely the High Court, with full review and exclusive jurisdiction of law. Thus, in the context of the exhaustion of all judicial instances, it can be said that PMA enjoys some features of a *quasi*-court and its decision takes the features of an almost first-instance court decision[44], for the purpose of exercising initial jurisdiction over property handling (treatment) applications. However, being under the authority of the Minister of Justice, PMA fails to meet the constitutional and conventional material conditions of a *quasi*-court, consequently, its decisions are not *quasi*-judicial decisions. Elimination of one instance of the judicial power (see Article 135 of the Constitution) guarantees the lawmaker's intention to complete the entire property handling process within 10 years and prevent this process from being dragged endlessly in various instances of administrative jurisdiction and judicial power.

[44] Obviously, not in the proper meaning of a quasi-judicial body with all the elements that such a body must have to be considered as such under the case-law of the European Court of Human Rights. The reason is that this body lacks the element of independence from the executive power. According to Article 26/1 of Law no. 133/2015, PMA is subordinate to the Minister of Justice.

By Law no. 133/2015, the appellate court shall be the competent court to review claims regarding the legality of PMA decisions on the recognition of the ownership right to former owners or decisions of former property restitution and compensation commissions, former local and regional offices of property restitution and compensation, or the former Property Restitution and Compensation Agency whose legal personality has been transferred to PMA. According to the object of the dispute, if the claims relate to the recognition of the right, the competent court under Article 29 shall be the appellate court having territorial jurisdiction over immovable property subject to the decision-making (*forum rei sitae*). If the claims relate to the compensation value, the competent court shall be the Administrative Court of Appeal. This was the intention of Law no. 133/2015, specifically Articles 19 and 29 thereof, when it defined the functional jurisdiction of the appellate courts for the judicial review of PMA decisions. Similarly, this was the intention of the law, specifically Articles 32 and 38 as transitional provisions, in determining the functional jurisdiction of the appellate courts also for the judicial review of previous decisions of PRCCs, RLOsPRC or PRCA, by extinguishing the PRCA's legal personality, by transferring its rights and obligations to the PMA, and by repealing previous laws that conflicted with this law, which governed the previous activity of these bodies and which tasked the ordinary judicial instance with the review of appeals against the decisions of these bodies.

Second: Regarding the second question set forth for unification as to which is the competent court for the review of the lawsuit, countersuit or the principal intervenor's lawsuit which challenged the decisions of the former PRCC, former RLOsPRC and former PRCA in favour of a subject, by the third party claiming total or partial ownership, and in which court will this decision be challenged as a property title, the Civil Chamber of the High Court reached the unifying conclusion that: ***"The adjudication of the lawsuit, countersuit or the principal intervenor's lawsuit against the decisions of the former PRCC, former RLOsPRC and former PRCA in favour of a subject, claiming total or partial ownership of the immovable object/item under dispute, when these decisions are challenged as property titles, shall be in the jurisdiction of first-instance courts where the immovable object/item is located."***

The Civil Chamber of the High Court reached this conclusion reasoning that, if a judicial conflict between two subjects of the private law, which derives from the ownership right, the claim for invalidity of the decision of the competent body recognising property ownership and restitution or compensation is raised incidentally by the litigant (as a third subject vis-à-vis the decision), intended to challenge the property title claimed by the opponent party, the judicial review of this claim – as a pre-adjudication case – has an interdependent and deriving character from the review of the claim presented by the plaintiff, principal intervenor or the countersuing respondent party, for the eventual recognition as owner, co-owner or co-heir or restitution of property or restitution of inheritance properties. Consequently, Consequently, the dispute in the concrete case does not derive from the former owner's claim on the decision of the public body which ruled on his/her rights for recognition of ownership or property restitution / compensation. This case is now a dispute between subjects which deny the capacity of owner or heir of the opposing party, or behave as owners or heirs through the exclusive and preclusive enjoyment of property, and these lawsuits qualify as property protection remedies under the provisions of the Civil Code.

In this situation, these lawsuits generate disputes of typical legal-civil character deriving from the ownership right between two subjects of private law. These lawsuits follow the respective legal regime defined in the Civil Code and in the Civil Procedure Code or other laws in force and, as such, these lawsuits fall also under the subject-matter jurisdiction of the first-instance

courts which exercise their judicial, subject-matter and territorial jurisdiction in the territory where the immovable object / item (*forum rei sitae*) is located. The opposite interpretation would lead to the violation of the principle of respecting the instances of the judiciary, as sanctioned in Article 135 of the Constitution and the relevant provisions of the Civil Procedure Code concerning the court jurisdiction over the review of such disputes.

Third: As regards the third issue set forth for unification - as to which is the competent court for the review of lawsuits against decisions of the PMA, where the latter decided to terminate the process without deciding on the merits of the claims: the civil court of appeal, the Administrative Court of Appeal or the first-instance administrative court - the Civil Chamber of the High Court reached the unifying conclusion that: ***"The competent court for the review of lawsuits against decisions of the PMA, where the latter decided to terminate the process without deciding on the merits of the application, depending on the claims of the interested subject, shall be the appellate court in the territory of which the immovable object / item is located, in case ownership right is claimed, in line with Article 29 of Law no.133/2015, as well as the Administrative Court of Appeal where it is demanded financial evaluation of the final unevaluated decisions and financial compensation in line with Article 19 of Law 133/2015."***
The Civil Chamber of the High Court reached this unifying conclusion reasoning that the decisions of the PMA, like any other State body, regardless of its decisions, must be taken after the administrative review procedure of the application is completed following the steps, elements and criteria laid down in Law no. 133/2015, in the Administrative Procedure Code and the legislation in force applicable to the concrete case. Any non-final decision-making of the PMA which terminate the administrative process and does not solve the case it its merits shall be considered as not founded in law. PMA cannot consider that its mission and obligations are exhausted by issuing decisions for termination of the administrative procedure for the review of the application filed by the expropriated subject, without deciding on the merits of the application. In conclusion of the administrative process, PMA has the obligation to decide whether it accepts and how it recognises and compensates the ownership right, or whether it dismisses the application submitted by the expropriated subject (Article 15, paragraph 1; Article 26, paragraph 1, letter "a" of Law no. 133/3015). In both cases, the decision must be written and reasoned (Article 25, paragraph 5 of Law no. 133/2015) and, it not only terminates the administrative process, but also decides on its merits.

If the application is dismissed, the relevant grounds/reasons must be of substantive nature, i.e. the expropriated subjects and their representatives are legitimated, the deadlines are respected, the documentation is completed, etc., but, on this basis, in the meaning of the substantive law, the ownership right cannot be recognised and compensated, because this does not qualify as an unjust expropriation; the applying subject is not the expropriated subject over the ownership he/she claim; the surface area, location, nature, characteristics, etc. of the unjustly expropriated property are different from those claimed by the applicant; these are the exclusions from property treatment (Article 4 of Law no. 133/2015), etc.

However, the reasons for the dismissal of the application may be of a procedural nature, that is, they may be related to the observance or not of deadlines for the submission of the application; to the legitimization of the applicants to demand evaluation or recognition and compensation of the property; to the legitimization of legal representatives of expropriated subjects, etc., deficiencies which even after the completion of the regular administrative procedure are not addressed by the applicant with supporting documentation which he/she must complete according to the law.

In any case, it is a legal obligation and it is important for PMA to demonstrate in a written and reasoned decisions, exhaustively elaborated on the fact and the procedure followed, what are the reasons by which it decided to admit or dismiss the application in conclusion of the administrative process. The decision by the PMA on the examination of the application only by the wording "termination of the administrative processing", in the meaning of the legal terms and language is inaccurate and must not be used by PMA as a form of expression of will, because such decisions are not stipulated in the special law which defines on what and how PMA must decide. Meanwhile, in reference and pursuant to the law, even this inaccurate way of expression in the technical aspect, must be understood as a clear will of PMA to dismiss the application in the sense of Article 26, paragraph 1, letter "a" of Law no. 133/2015.

So, regardless of the grounds on which the PMA bases its decision on these cases, now the adjudication of the merits of the dispute arising from the decision (cover letter, return of documentation etc., as applicable) taken by PMA on the applications of former owners belong exclusively to judicial jurisdiction. The subject-matter jurisdiction of ordinary or administrative courts in adjudicating appeals against decisions is determined depending on the nature of the claim (only financial evaluation or recognition of property plus compensation). Functionally, if PMA issued a decision within the 3-year deadline, as applicable (object of the application), it is up to the administrative court of appeal or the appellate court of the ordinary jurisdiction to adjudicate and decide on the merits of the case.

However, in the legal viewpoint and mission of the courts, it is challenging a decision even in cases where the administrative will is articulated in the form of the cover letter *return of documentation,* issued by the PMA. Given that that the special law (a) expressly indicates what types of decisions may be issued by PMA (dismissal or admission of a complaint, in part or in whole); (b) does not set any criteria impeding the PMA from reviewing the claim and deciding on its merits; (c) does not set conditions for applicants to demand from PMA a decision on merits; (ç) does not set any binding administrative tool to challenge the PMA decision, this legal-procedural situation brings the emergence of the exclusive judicial jurisdiction for the settlement of the merits of the case presented to it for review concerning the dispute arisen between the applying subject and PMA.

In all cases where there is a PMA decision on the former owner's application, regardless of the decision (dismissal, admission or termination of the process without deciding on the merits of the application, etc.), the administrative jurisdiction in respect of this application is considered exhausted and this entitles the interested subject to address the judicial jurisdiction, which, according to Law no. 133/2015, shall be exercised for the first time at the appellate courts. Where the application seeks property recognition and compensation (physical or financial), the competent court shall be the appellate court in the territory of which the immovable object / item is located; and where the application seeks a financial evaluation of the previous decision rendered by the administrative body, the competent body shall be the Administrative Court of Appeal.

The subject may address the first-instance (administrative or ordinary judicial jurisdiction) courts, as the eventual situations may arise in practice and discussed above, only in those cases where there is no PMA decision on which judicial review may be exercised by appellate courts with initial jurisdiction. This is because within the 3-year deadline from the entry into force of the law, the administrative body failed to meet its legal obligation to express itself in relation to the claims of the former owner. Only in such cases, the rights and obligations of the administrative body are transferred to the judicial bodies, namely the first-

instance (civil and administrative) courts for disputes which, as per their nature, shall be reviewed in second instance – in line with Articles 19 and 29 of Law no. 133/205 – by the appellate courts and the Administrative Court of Appeal respectively. The rationale of this provision is to conclude the property treatment process within a reasonable period, 10 years from the entry into force of the law; this intends to avoid delays and prevent disputes between the State and former owners to remain endlessly pending before the administrative jurisdiction, but rather channel them through the judicial jurisdiction which will ultimately decide on the claims of the expropriated subjects.

Fourth: As regards the fourth issue set forth for unification, i.e. which is the competent court for the review of lawsuits challenging the decisions of competent bodies for property restitution and compensation taken under previous laws which are repealed by now, registered with the court before the date 23.02.2015, i.e. after the entry into force of Law no. 133/2015, the Civil Chamber of the High Court reached the unifying conclusion that: ***"Adjudication of lawsuits against the decisions of the former PRCA, former PRCCs, or former RLOsPRC filed and registered with the court by the former owners or their heirs before 23.02.2016 when Law no. 133/2015 entered into force, shall be continued and shall be concluded by the first-instance civil courts - in the territory of which the immovable object/item under dispute is located - whose powers and jurisdiction, in view of the principles* perpetuatio iuridictionis *and* perpetuatio fori, *were defined in the law at the time the lawsuit was filed with the court."***

The Civil Chamber of the High Court reached this unifying conclusion by reasoning that the lawmaker has taken care to give retroactive effect to the substantive law only for the individualization, realization and confirmation of the individual's subjective rights which were not materialized until the moment of the entry into force of the law, in order to finalize the process. This means that the Assembly did not allow the law to retroactively regulate applications, lawsuits, appeals or recourses filed before 23.02.2016, and which derive from previous laws on property recognition, restitution or compensation, whose claims do not include the financial evaluation and monetary compensation of the property. For all these cases under adjudication, at any stage and level of adjudication, the courts will settle disputes based on the substantive law of the time the right to lawsuit arisen in the substantive meaning.

In the constitutional aspect, the court's subject-matter or functional jurisdiction is very important, as an element that guarantees a due legal process. It is a prerequisite for the validity of the judicial process and the acts administered, in the sense that an incompetent court cannot perform any procedural steps.

Despite Law no. 133/2015 particularly vests the appellate courts (civil or administrative) with the initial jurisdiction for the review of PMA decisions, there is no transitional provision explicitly stating what will happen to cases under adjudication at the time of entry into force of this law; referring to the general principles analysed above, the jurisdiction to review these cases was determined in the law at the time when the lawsuit was filed with court.

In this way, jurisdiction for the review of decisions of taken by the former PRCA, the former KPCCs or the former ROsPRCs before the entry into force of Law no. 133/2015 is determined by the law that was in force at the time of filing the lawsuit and the respective unified case law of the United Chambers of the High Court and the case-law of the Constitutional Court, distinguishing the moment of adoption of the decision which constituted or not the substantive legal ownership relationship, from the moment of

constitution of the legal-procedural relationship which arised upon the filing of the lawsuit with the court. Article 3 of Law no. 133/2015 sanctions the retroactive effect of the law, as an exception from the rule. But, it must be narrowly interpreted (*stricto sensu)* and among all possible interpretation, only the interpretation in compliance with the constitutional principles of the rule of law, legal certainty and the principle *perpetuatio iurisdictionis et fori* must be applied. This means that the Article 3 of Law no. 133/2015 must be interpreted in line with the spirit and rationale of the law, always bearing in mind why this law was adopted.

4.3 GENERAL CONSIDERATIONS

From the analysis of this Law and its by-laws, PMA activity and case-law, as well as the analysis that the Chief State Advocate made in the representation of cases in court, some conclusions can be drawn on the performance of the process to date and its expectations:

First, the process of property compensation to former owners or their heirs has entered on the certain tracks of solution, despite the issues and difficulties encountered in practice. The legal basis and its application are much more consolidated now, albeit the variations in understanding the law over these three years. This helps directly to guarantee the completion of this transitional phase hat Albania is going through.

The commented legislation and by-laws issued for its implementation comply with international standards of guaranteeing human rights and fundamental freedoms and are certified as such not only by the domestic judicial jurisdiction, the Constitutional Court of the Republic of Albania, but also by the Committee of Ministers and the Venice Commission. This legal basis also helps facilitate the activities of the Agencies involved in its implementation, as well as in the activity of courts that resolve disputes arising during this process.

Second, it is necessary that the judicial system, and in particular the High Court, taking stock of the experience gained so far in the application of the law, ensure the sustainability, consistency and continuity of its correct implementation through the consolidation of the case-law, which would prevent different solutions for the same situations.

Third, there is a felt need to explain Law not only for the institutions that apply it, but also for the interested persons – former owners and their heirs, and the public opinion at large, in order to create an enabling environment for its implementation and enhance the efficiency of this process. In this regard, the comments made to the law by this commentary assisted by the Council of Europe and the civil society are equally useful.

Fourth, effective compensation of the former owners and their heirs in the forms and deadlines set out in the law remains a challenge, being that this process will continue.

Fifth, the law stipulates that applications not handled during the 3-year deadline will be reviewed after 23.02.2019 by the ordinary courts where the property is located (Article 34). For the first, application of the judicial jurisdiction without a previous administrative jurisdiction presents the need to clarify the formal and procedural aspects, as well as the substantial aspects of this process, which came up from the implementation in practice. Looking at the enforcement issues identified so far and addressed in this commentary, there were many ambiguities on the adjudication and PMA decision-making, on how interested parties can challenge decisions in the relevant appellate courts, on the court rulings and the procedures followed by these courts, which are now clarified by the case-law of the High

Court. For this reason, we believe that examination of these applications directly by the judicial jurisdiction will be easier and more effective given the built-up case-law of the High Court, although some challenges are expected.

Last, the successful realization of this process requires professional commitment and is based on good will that long-standing problems related to the return and compensation of property to former owners/their heirs comes to an expedited and effective conclusion. This is in the best interest of individuals who have unjustly been deprived for many years to enjoy their property, as well as to the public interest, as it guarantees the development of society.

The problem encountered in these years and the hesitation of important domestic or foreign investments to expand in Albania has been largely attributed to the uncertainty of property rights and many land disputes. No significant investor would risk major strategic investments in a legally and factually uncertain ground. This being said, the need to successfully complete this process is quite evident and any input to a better understanding of the law and to finding short but effective ways for final settlement of property issues serves this important goal.
This commentary is one of these inputs, without claiming to be exhaustive of all issues identified so far.

Annex no.1

Example 1.

Method of calculation of the financial evaluation when a property recognized for compensation has not had any changes in its cadastre registered origin.

Former owner X is recognized a surface of 1000 m^2 by a 1995 decision of the Property Compensation and Restitution Commission, which used to be a plot.

Out of that surface, 600 m2 are restituted to former owner X (originally and currently a plot).

The former owner X is recognized the right to compensation for the remaining 400m m^2 (originally and currently a plot).

The property is located in the cadastre zone no.8150, Tirana. The land value for this cadastre area, based on the property value map is 66 969 leke/m^2.

The surface recognized for compensation is as follows:

400 m^2 *66 969 lekë/m^2 = 26 787 600 lekë.

Example 2

Method of calculation of the financial evaluation when the property recognized for compensation has been changed in the cadastre.

Citizen Y is recognized a surface of 1000 m^2 by a 1994 decision of the Property Compensation and Restitution Commission, currently assessed as a construction plot, because it is located within the yellow line of the Municipality of Tirana. This property was originally agricultural land.

From this area, subject Y got back 600 m2 (originally registered as agricultural land and currently a construction plot).

Also, the subject is recognized 400 m^2 for compensation (both originally and currently registered as a construction plot).

The property is located in the cadastre zone no. 8150, Tirana. The value of construction plot in this cadastre zone is 66 969 leke/m^2. The value of agricultural land in the geographically nearest cadastre zone, Cadastre Zone 1605, Farke e Vogel, whose value is 448 leke/m2, since there is no value for agricultural land set for Cadastre Zone 8150.

The surface recognized for restitution is estimated: 600 m2 * 66969 leke/ m2 - 600 m2 * 448 leke /m2 =39 912 600 leke

The surface recognized for compensation is estimated: 400 m2 * 448 leke/m2 =179 200 leke

Total value for compensation: the difference between the value of the surface recognized for compensation and the value of the surface recognized for restitution: 179 200 leke -39 912 600 leke = (-39 733 400) leke.

In this case, the subject is considered compensated.

Annex no.2

Types of forms and applications/requests to be submitted to the Property Treatment Agency

FORM NO.1

APPLICATION FOR COMPENSATION

Addressed to: _____

Date of submission of application _____/ _____/_____

Name/father's name/name of the subject submitting the _____

Address: _____ tel: _____

No. personal ID _____

Name/father's name/family name of the expropriated subject
_____

Enclosed the following documentation:

1. Compensation Claim ☐
2. Confirmation from relevant Local Immovable Property Registration Office of the legal status of property to be compensated and whether or the preemption right is exercised. ☐
3. Notarized/certified statement, signed by the subject of the expropriated subject/representative by proxy of all the legal heirs of the expropriated subject, through which the subjects declare whether the final compensation decision or the estimated compensation is judicially challenged and whether these subjects have been respondents or third parties in a process, where they apply for compensation, whether they have judicially challenged such process, and whether they have been respondents or third parties in judicial proceedings where the decision for which they apply was challenged.
4. Evidence of legacy had it to establish whether the ☐ circle of heirs has changed.

☐

5. A proxy signed by all legal heirs, where they agree, among others, to also authorize the proxy holder to withdraw the financial value on their behalf. ☐

6. Confirmation/certificate of the bank account number ☐

7. Notary declaration, signed by the expropriated subject/representative by proxy of all the legal heirs of the expropriated subject, through which the subjects declare whether they have benefitted from the provisions of the law on division of agricultural land. ☐

8. Authentication document ☐

9. Payment slip ☐

I, the undersigned. _____, declare under my full legal responsibility, that I accept and agree to apply according to the compensation criteria and conditions set by Decision of Council of Ministers No. _____

Signature of claimant _____

ACKNOWLEDGEMENT OF INFORMATION RECEIVED ON THE EFFECTS OF THE FORM AND THE DOCUMENTS SUBMITTED ACCORDING TO THE REQUIREMENTS IN THIS FORM

I, the undersigned _____, was informed and made aware that:

a) This form represents an official document addressed to a state body and is subject to verification.
b) Submission of untrue, inaccurate data, and hiding thereof, leads to the immediate exclusion from any further procedure and criminal liability under the law at any time.
c) By filling in this form, I agree and authorize the Property Treatment Agency to fully check every data, information and documentation accompanying this form.
ç) The data shall be processed in line with legislation applicable to protection of personal data.

Being aware of the legal consequences in case of declaring untrue, incorrect data, or hiding them, I confirm the accuracy of data reflected in the documentation submitted according to the requirements of this form.

NOTE: ARE YOU SURE? IT IS SUGGESTED THAT THIS SECTION IS SIGNED AFTER YOU ACCURATELY FILL IN THE WHOLE FORM!

_____

(name, family name, signature)

FORM NO.2

APPLICATION FOR FINANCIAL COMPENSATION/SPECIAL REQUESTS

Addressed to: _____

Date of submission of application _____/ _____/_____

Name/father's name/name of the subject submitting the _____

Address: _____ tel: _____

No. personal ID _____

Name/father's name/family name of the expropriated subject
_____

I apply for: *(tick a box)*

1. Financial compensation within 1 year, ☐
2. Financial compensation within 3 years, ☐
3. Financial compensation within 5 years ☐

Enclosed the following documentation:

10. Claim for financial compensation/special claims ☐

11. Financial evaluation of the decision ☐

12. Confirmation from relevant Local Immovable Property Registration Office of the legal status of property to be compensated and whether or the preemption right is exercised. ☐

13. A notary statement, signed by the expropriated subject/representative by proxy of all legal heirs of the expropriated subject, through which the subjects declare whether the final compensation decision or estimation thereof is judicially challenged and whether these subjects have been respondents or third parties in a process for which they apply. ☐

14. Evidence of legacy had it to establish whether the circle of heirs has changed. ☐

15. A proxy signed by all legal heirs, where they agree, among others, to also authorize the proxy holder to withdraw the financial value on their behalf. ☐

16. Confirmation/certificate of the bank account number ☐

17. Notary declaration, signed by the expropriated subject/representative by proxy of all the legal heirs of the expropriated subject, through which the subjects declare whether they have benefitted from the provisions of the law on division of agricultural land.

18. Authentication document ☐

19. Payment slip ☐

I, the undersigned _____, declare under my full legal responsibility that I agree to apply according to the compensation criteria and conditions set by Decision of Council of Ministers No.

ACKNOWLEDGEMENT OF INFORMATION RECEIVED ON THE EFFECTS OF THE FORM AND THE DOCUMENTS SUBMITTED ACCORDING TO THE REQUIREMENTS IN THIS FORM

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NOTE: ARE YOU SURE? IT IS SUGGESTED THAT THIS SECTION IS SIGNED AFTER YOU ACCURATELY FILL IN THE WHOLE FORM!

_____

(name, family name, signature)