

## Albanian Legislation on Restitution of Property Confiscated During the Communist Regime: Its Structural Inconsistencies and a Negative Social Perspective for Achieving an Effective Domestic Remedy

Enkeleda Olldashi

Prof. Assoc. Dr. Faculty of Law, University of Tirana / Professor of Roman Law

Roden Hoxha

PhD Candidate, Faculty of Law, University of New York Tirana

### Abstract

Following more than two decades of failures to implement an efficient system for the recognition, restitution and compensation of property to owners expropriated by the communist regime, in 2015, the Albanian Parliament passed law no. 133/2015 "On the Treatment of Property", which aims to build an efficient mechanism to complete the already delayed process, within a reasonable timeframe. Now, more than three years since its enactment, the law and the enforcing authorities have failed to uphold a number of crucial deadlines and tasks, rendering many facets of the process essentially unfeasible and jeopardizing the possibility of a positive evaluation of the new mechanism by the ECtHR. This paper will examine the objectives set out in the law, the procedures foreseen for the successful completion of the property compensation process and the numerous problems experienced so far in the process, among which the deficient financial funds for the compensation procedure, the excessive delays in the examination of applications on the merits, as well as the ineffectiveness of the administrative procedures envisaged in the law. The analysis will show that, despite the new implemented remedies differ greatly from the provisions of previous laws and the expected positive results, these structural failures have inevitably undermined the social and economic interests of former owners, and failed to meet the Convention standards set out in the numerous ECtHR judgments against Albania.

**Keywords:** property compensation, ECtHR, legal certainty, compensation mechanism, administrative act

### Introduction

The subjective right to ownership is a civil property right, the content of which lies in the assertion that: the owners of the right are recognized by the prescribed law, the possession, enjoyment and the disposal over their immovable property. *Proprietas* (ownership) is a technical term that means full ownership upon its literal meaning (physical and legal power over the object). This term appears to be used for the first time, in the late Republican period in Rome. For some lawyers, this term replaced the previously used, *dominium*, while for others it is a new term, with a wider meaning than the previous term (*dominium*). *Proprietas* means the right of use, enjoyment and disposition of your item, to the extent permitted by the judicial order "*Dominium / proprietas est ius utendi, fruendi, new abutendi sua, quatenus patitur ratio juris*".

The sense of ownership is the property right of enjoyment and disposition of the property within the limits provided by Albanian law, more precisely under article 149 of the Civil Code, which provides for "the right to possess and to use the item (*ius utendi*); the right to collect all natural and civil goods (*ius fruendi*); and the right to destroy the item eventually, to alienate it, or to establish any ownership rights in the interests of other persons (*ius abutendi*)". Ownership has never been an absolute right, a full and exclusive right of the owner. This means that along with the right of ownership restrictions remain on the use, enjoyment or its destruction. The existence of these kind of restrictions shows that the purpose of the law is not only the recognition of the rights of individual property on the one hand, but also the determination of the limits of their exercise, in order to safeguard the right of joint usage of objects such as a good created by nature and people for the purpose of mutual co-existence.

The right to private property has been of great importance, especially after the downfall of the communist regime in Albania, under which following a number of reforms and legal and constitutional amendments, private ownership was all but abolished (Albania, 1976, p. 4). The great injustices that took place during this regime continue to constitute today a great legal and practical challenge to providing a final solution to this systematic and ongoing problem (Manushaqe Puto and Others v. Albania, 2012). There are a number of difficulties, both legislative and a lack of funds for the compensation of all dispossessed subjects, mainly due to the lack of a clear vision of the appropriate means and procedures for restituting and compensation property to the rightful owners, and partly due to the financial toll this issue has caused to the state finances (European Commission for Democracy Through Law, 2016, p. 9).

This right constitutes a fundamental human right sanctioned in Article 41 of the Constitution of the Republic of Albania, which stipulates that: "*The right to private property is guaranteed. The law provides for expropriation or restriction on the exercise of property rights solely for public interest. Expropriations or limitations of property rights that are equal to expropriation are only allowed against fair remuneration. Disagreements over the amount of remuneration can be appealed to the court.*" Likewise, Article 42 provides that: "*Freedom, property and other rights recognized by the Constitution and by law cannot be violated without a due legal process.*"

The right to property is envisaged as a fundamental right also by the provisions of the European Convention on Human Rights and Fundamental Freedoms, its Protocol No. 1 providing that: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

This provision contains three main rules which are:

1. The enjoyment of private property (Every natural or legal person is entitled to the peaceful enjoyment of his possessions)
2. Deprivation by the right of property (Exceptionally and only in justified cases)
3. Control of the use of property (in the case of taxes, contributions or fines)

The European Court of Human Rights has also defined in the sense of this article three main principles:

1. The principle of legality;
2. The principle of a justified purpose in the public interest;
3. The principle of a fair balance.

The right to enjoy property in the interpretation of this article is guaranteed not only to natural persons, but also to legal persons. The Court has emphasized (Kopecky v. Slovakia, 2004) that the object of this article is only existing property and the provision and the case-law of the court do not include guarantees to acquire property in the future. This article protects individuals or legal persons from arbitrary state interference in their property, with the exception of exceptional case the Convention itself provides for, such as public interest. These principles enshrined in the European Convention on Human Rights, as well as the case-law of the Court were the basis of the laws enacted by the Albanian Government for the remedy of the crime committed against former owners by the communist regime. However, despite Albania becoming part of the Convention System only in 1996 (Parliament, 1996) and the obligations stemming from it, the principles were first met in a number of laws tackling the issue of private property at the beginning of the 1990-s.

Despite the positive intention of the legislative power and its initial initiatives to reconstitute the property to the original owners, these efforts were consistently undermined by the socioeconomical conditions of the time (de Waal, 2004, p. 20) and the need for new legal measures to regulate them.<sup>1</sup> With Law 7501/1991 "On the land" started the process of distribution of more than 420 agricultural cooperatives to 365,000 rural households (Stanfield & Jazoj, 1995), land which in practice belonged to the formerly expropriated owners. The majority of the population of Albania (50% of the workforce and 65%

---

<sup>1</sup> Law 7501/1991 "On Land"; Law 7592/1992 "On Privatization of State Housing"; Law 7512/1991 "On the regulation and protection of private property, free initiative, private and independent activity, as well as privatizations (amended); Law no. 7665, dated 21.01.1993 "On the development of priority areas for tourism"; Law no. 9482, dated 3.04.2006 "On legalization, urbanization and integration of illegal constructions (amended).

of the population) benefited in one way or another from this form of land redistribution (Cungu & Swinne, 1999). In order to minimize the issues created by the Law on Land, in April 1993, Parliament passed the Law on Restitution and Compensation of Property to Former Owners (Parliament, ikub.al, 1993), for the property unjustly expropriated by the state during the communist regime. The implementation of the law was plagued by delays in the decision-making process as well as a total lack of implementation of the decisions held by The Commissions on the Restitution and Compensation of Property.

This law was followed by the new Law on Restitution and Compensation of Property (Parliament, drejtesia.gov.al, 2004) adopted in violation of the deadlines set out in Article 181 of the 1998 Constitution of the Republic of Albania, further contributing to the prolonged deadlines for the completion of the process of restitution and compensation of property. It also suffered from a lack of emphasis on technical capability, financial and human resources for its full implementation (Manushaqe Puto and Others v. Albania, 2012, p. 16). This led to an increasing number of former owners who began addressing the European Court of Human Rights (ECtHR) to resolve their cases. Following a number of considerable financial penalties for the Albanian state in relation to this issue, the ECtHR in 2012 issued the Pilot Judgment *Manushaqe Puto and Others v. Albania*, emphasizing the need for general measures as an urgent matter to effectively ensure the right to compensation with a certain margin of appreciation for the state. For the purposes of the successful implementation of a new legal policy and initiative on this issue, it was important for the Government to implement an accurate database on the number of decisions on property restitution and compensation to owners, a new compensation scheme based on the provisions of the Convention and ECtHR case-law, a transparent process, and realistic binding timeframes, with respect to each step of the compensation process, to be achieved after a public consultation with the interest groups.

With regard to the process of restitution and compensation of the property, both these laws, in contrast to the provisions of the current law and its compensation methodology provided for the full restitution and compensation of property to former owners, and where not possible for objective reasons, its compensation. Law no. 7698, dated 14.03.1993 "On Restitution and Compensation of Property", provided in Article 4 that:

*"Former owners or their heirs are recognized and restituted all the properties, which at the moment of enactment of this law were in the form of free unoccupied real estate or unchanged buildings, with the exception when it provided differently herein."*

The law also provided for a number of limitations with respect to the quantity of property to be restituted, limiting the full compensation/restitution of up until 10,000 sqm. When properties were from 10,000 sqm to 100,000 sqm, compensation/restitution would provide for an additional 10% of the property (over 10,000 sqm). When the property was over 100,000 sqm, +1%.

Conversely, Law 9235, dated 29.07.2004 "on Restitution and Compensation of Property" in Article 6 provided that:

*"Expropriated subjects are entitled to the right of ownership and are restituted the real estate without restriction, with the exception of agricultural land, which is restituted or compensated up to 100 ha, if the expropriated subject (his heirs) have not benefited from the application of Law No. 7501, dated 19.07.1991 on "Land"."*

One underpinning element of the 2004 law was the provision of the right to compensation at market value of the property, something not previously expressly stipulated in the preceding law (Parliament, drejtesia.gov.al, 2004, p. 6). This provision was followed by the issuance of a number of Land Value Maps by the Council of Ministers, which set the value of land in a number of circuits of the Republic of Albania, land value maps which are still in use by the European Court of Human Rights as a reference for the just satisfaction of applicants to the court with cases relevant to the issue of compensation of property (*Halimi and Others v. Albania*, 2016). Further to these stipulations, the law also provided for the right of the expropriated subjects and their heirs to benefit interest based on the time from the recognition of the property until the time of the full enforcement of the decision, stating that *"For the period from the recognition of the right of ownership to the receipt of the remuneration in the form of cash compensation, the expropriated subject also benefits the banking interest, according to the annual average issued by the Bank of Albania"* (Parliament, drejtesia.gov.al, 2004, p. 10).

Despite the best intentions, this rendition of the property restitution framework was not effective either. It was amended numerous times through: Law No. 9388, dated 04.05.2005; Decision of the Constitutional Court (CC) No. 26, dated 02.11.2005; Law No. 9583, dated 17.07.2006; Law No.9684, dated 06.02.2007; CC Decision 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; CC Decision No. 27, dated 26.5.2010; Law No. 10308, dated 22.07.2010; CC Decision No. 43, dated 06.10.2011; Law No. 55/2012, dated 10.05.2012; and up until just months before the enactment of the current law, with Law No. 49 / 2014, dated 08.05.2014.

### **The law of 2015 On the Treatment of Property and the Completion of the Property Compensation Process**

Law no. 133/2015 "On the Treatment of Property and the Completion of the Property Compensation Process" was guided in its merits by the Pilot Judgment "Manushaqe Puto and Others v. Albania", where the ECtHR imposed the general obligations for the Albanian state, to take concrete measures to enforce the unenforced decisions recognizing the right of compensation of former owners and examine pending applications on the matter.

The problems noted by the ECtHR in this judgment, which were also found in other similar cases (see Ramadhi v. Albania, Beshiri and Others against Albania, Hamzaraj v. Albania, Nuri v. Albania, Driza v. Albania, etc.) , were the frequent changes to the legislation related to property restitution and compensation (at least seven times between 2004-2010); the fact that none of these laws or any other domestic provision provided for the manner in which the decisions of administrative bodies for restitution and compensation of property would be implemented; the fact that there was no time limit for appealing these decisions to domestic courts or any specific means for their implementation; as well as the fact that these laws again awarded the Council of Ministers, namely the executive power, the right to determine the form and manner of compensation, by defining the relevant rules and methods. The previous activity of property restitution and compensation bodies, in most cases, did not include the issue of assessment of property, but aimed only at the recognition of the former owner's status, the recognition of the property rights of the former owners to restitution or compensation, allowing in this manner for binding decisions to be left pending indefinitely. Thus, the legitimate expectations of former owners were determined by decisions which in most cases recognized the rights to the real estate property but did not determine the financial value of the compensation. The transitory compensation scheme according to the market value of the compensation time was considered by the ECHR in Manushaqe Puto and Others as an ineffective means of enforcing decisions recognizing the right to compensation. Likewise, the non-execution of the final decisions in favor of the former owners, who were granted the right to compensation, had also violated their rights to a fair hearing within the meaning of Article 6/1 of ECHR.

Law 133/2015, entered into force on the 23<sup>rd</sup> of February 2016, in parallel with a new Property Value Map (Albania C. o., 2016), which was instrumental to the implementation of the law due to it being the reference document for the land prices in the process of evaluation of compensation decisions. It has as its main object: the regulation and just satisfaction of property rights arising from expropriation, nationalization or seizure, in accordance with Article 41 of the Constitution and Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the establishment and administration of the Compensation Fund, which would serve for the purposes of property compensation; and would determine the procedures for the treatment of property and the completion of the completion of the property process as well as the administrative bodies charged with their realization.

Article 3 of the Law stipulates that this law acts on all claims that are under review at the PRCA [Property Restitution and Compensation Agency, precursor of the current Property Management Agency] on the day of its entry into force as well as on all those applications that will be submitted within the terms of this law as it pertains to the recognition of the property rights. In addition, this law extends its effects, including in the financial assessment, to the: a) execution of all decisions that have not been implemented, for the recognition of the right of compensation provided by the administrative or judicial bodies in Albania; b) applications that are under consideration in the courts of all levels, at the Supreme Court as well as at the European Court of Human Rights, regarding their financial assessment.

This law, in contrast to the previous iterations of the legal framework on property restitution/compensation, provides for compensation as the only remedy for the rights of former owners and their heirs, substituting restitution with the concept of compensation in the land previously recognized as property of the former, a new and untested alternative, which was not welcomed by many of the interest groups (Top-Channel, 2015). In Article 8 of Law, the forms of compensation provided are: a) financial; b. with other immovable property of any kind, of equal value, owned by the state; c) in shares in state-owned companies or in which the state is a co-owner, having an equivalent value to the immovable property; d) with the value of objects, which are subject to privatization. The basic property value indicators under this law are assigned separately for land and construction objects (Article 8). When a property is a land union with a construction object, its value is derived per unit, as the sum of the values of the construction object and the land on which it sits. The value of the compensated property in this case is derived for the land based on the land value map, and for the building/facilities, on

the Decision of the Council of Ministers on the methodology of valuation of immovable property in the Republic of Albania (Ministers, 2012).

Further, contrary to the straight forward concept of previous laws of compensation/restitution at 100% of the land previously owned at market value, it introduced a new compensation mechanism, where the property to be compensated is to be evaluated based on the cadastral index that it had at the time of expropriation. The restituted property is evaluated by determining the differences that will result between its value pursuant to the current cadastral index and the value of the property pursuant to the cadastral index at the time of expropriation.

Put into a simplified explanation, the process is as follows:

$$Sp \times Vp = FVp$$

Where:

**Sp** - the surface of the property recognized for compensation

**Vp** - the value of the property (based on the land value map) according to the cadastral index the property had at the time of expropriation

**FVp** – Final financial value of the property to be compensated to the former owner or the heirs

Simplified Explanation on evaluation of property already restituted

$$Sp \times AVp - Sp \times VP + VRp$$

Where:

**Sp** - the surface of the property recognized for compensation

**Vp** - the value of the property (based on the land value map) according to the cadastral index the property had at the time of expropriation

**Avp** - value of property based on the actual cadastral index

**VRp** – Restituted property value

This new methodology was sanctioned in the law as irrefutable in court, leaving room to owners for challenges only with respect to the value calculated by the Property Management Agency, and not the manner in which it as calculated (Article 19/1).

The law provides also for the cases where in cases in which the expropriated subjects have benefited through a decision compensation or restitution, the difference calculated as per the letter "b" of paragraph 1 of Article 6 of the Law is deducted from the assessed value of the property recognized for compensation, calculated according to letter "a" of paragraph 1 therein. When this assessment shows that the subject receives a property that has a value greater than the property he had at the time of expropriation, then the subject is compensated in nature with the surface corresponding to the evaluation and the rest of the property is transferred to the land fund through a decision of the PMA. This provision, which would provide for the backbone of the land compensation fund for the state, was found unconstitutional by the Constitutional Court of the Republic of Albania (Decision no. 1, dated 16.01.2017, 2017).

However, the Constitutional Court failed to consider two of the most problematic and most disputed provisions of the law, failing to reach a majority in its ruling:

*"Article 7, Item 2/ a and b:*

*If the assessment of the property restituted through a final decision is higher than the estimate of the land recognized for compensation, then the expropriated subject is considered as compensated in full.*

*b. If the assessment of the property recognized for compensation is greater than the evaluation of the restituted land, then the subject is compensated for the difference, pursuant to the provisions of this law."*

These provisions have been seen by many parties, from the interest groups on property issues, the President of the Republic, the Ombudsman and Members of Parliament, as a violation of the right of former owners to legal certainty and unfair interference with their right to positive expectations on the issue.

The Albanian government justified the use of this new compensation scheme based on the characteristics and value of the property of origin, where most of the properties expropriated by the communist regime were agricultural land, forest land, and meadows and pastures, with the plot land surface being an extremely limited area; the numerous demographic, civic and geographical changes occurring during this regime and subsequent years, turning many of these areas, specifically those in the vicinity or boundaries of existing cities from agricultural land into plots of land, due to the natural extension of the boundaries of these inhabited centers; and the lack of financial value added to these areas by the owners themselves, but by the gradual and natural evolution of society. Consequently, this led to the financial impossibility of the state and the nation as a whole to pay the very high financial bill for full compensation of the owners on the basis of the current form of the land and market value.

The basic principle on which the Government relied on the conception of this methodology was that "return" is not an absolute right, but may be subject to numerous conditions and limitations (Maria Atanasiu and Others v. Romania, 2010), applying the principle of possible restrictions directly onto the property issue itself.

As a novelty to the compensation scheme, the law provides that applicants may apply for special compensation, waiving part of their claim for the benefit of a speedy enforcement.

- a) When the subject requests to be financially compensated within 1 year, then he receives 20% of the compensation value and foregoes 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 foregoes 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 foregoes the rest of this value.

According to the official figures of the PMA, for the year 2017 (Agency, 2017) there have been 12 such applications with a total value of properties at 348,631,590 ALL. The financial value awarded after waiver to the owners has been that of 97,343,259 ALL, saving the state the financial burden of 251,197,331 ALL. For the year 2018 (Agency P. M., 2019) there have been 129 such applications with a financial value awarded after the waiver of 1,507,504,425 ALL, saving the state the amount of 3,010,751,266 ALL. This norm has been seen as a positive step towards not only the speedy and full enforcement of the decisions held by the applicants, but also as a means of providing a lighter financial burden to the state finances.

### **The problems observed in the practical implementation of new framework**

Despite the finding of the law and methodology as an effective remedy by the Committee of Ministers of Council of Europe (Europe, 2018), many of the procedures envisaged for obtaining compensation were seen and are still seen as flawed legal projections by many domestic actors who have objected to the draft law and the successive law adopted by the Albanian Parliament (SotNews, 2019), culminating in the submission of a request to the Constitutional Court on the non-compliance of the Law 133/2015 with the Constitution of the Republic of Albania and the European Convention on Human Rights.

The process of reviewing the submitted petition continued for more than 9 months, at which time the Constitutional Court requested legal assistance from the European Commission for Democracy through Law (Venice Commission) on the conformity of the law with Article 1 of Protocol No. 1 to the Convention and the relevant case-law of the European Court. In its assessment, the Venice Commission maintained a highly realistic position on the then situation of the property issue, where more than 230 cases are pending review by the ECtHR (European Commission for Democracy Through Law, 2016, p. 3); 40,000 issues before competent local authorities; and the financial cost for full compensation of about 814 Billion ALL, estimating that a proportional solution was needed between the right of owners for just satisfaction and the financial burden for the Albanian state. Considering Albania's specific situation, the Commission considered that the new legal framework, which could bring lower compensation to former owners, met the requirement of proportionality (Ashingdane v. The United Kingdom, 1985), as set out in Article 1 Protocol No. 1 of the ECHR. Despite this, the Commission assessed that this opinion was issued to assist the Constitutional Court to evaluate the new law in an abstract manner.



Following this opinion, the Constitutional Court partially accepted the petition of the applicants, repealing Article 6, items 3 and 5 of the Law as unconstitutional, and rejecting the request for the abrogation of Article 6, item 1, letter "b", and Article 7, item 2, letters "a" and "b".

Even after the Constitutional Court's decision to abrogate Article 6, items 3 and 5 of the Law, the latter and its supplementing bylaws have presented a number of fundamental and procedural shortcomings that have affected its effective application, and have effectively halted the process to a standstill. With more than 40,000 decisions awaiting evaluation and later compensation as well as more than 16,000 unexamined applications pending before domestic institutions, the work started slowly and current statistics do not show promising results.

Pursuant to the aforementioned reports of the Agency before the Parliamentary Commission on Legal Matters, Public Administration and Human Rights, for the year 2017, the Property Management Agency has evaluated financially 4,038 decisions of the years 1993-1194, 6,941 decisions of 1995, and 4,877 decisions of 1996, totaling 15,856. The total financial fund awarded to the applicants for these assessed decisions was 1,959,411,055 ALL. The total physical fund used for compensation for 2016 was 65,9 hectares and for 2017, 257,5 hectares. In total, only 881 requests for compensation have been deposited near the agency, contributing in this way to the stagnation of the process. With regard to applications pending recognition, only 2529 of them were administered, with 2164 being returned to the applicants for need for supplemental documentation and 365 of them being refused by the Agency.

Meanwhile, things started to pick up for the Agency in 2018, when it evaluated financially 9458 decisions, where 8642 of the latter were evaluated financially at 34,156,228,643 ALL, 632 being found to have been compensated pursuant to Article 7 of the law and 184 decisions being awarded the right to first refusal. However, even in 2018, the number of applicants actually being awarded just satisfaction is considerably low for the number of pending decisions, with only 429 applications for compensation and only 18 of them awarded a final enforcement decision in the amount of 35,521,553 ALL and ~56 hectares in compensation in kind.

Despite the pick-up in the pace of examination of decisions and dissemination of compensation, in the three years allotted by the law for the process (Article 15), the PMA has evaluated financially only 25,314 decisions out of more than 40,000 pending applications, with the local courts now taking over the process.

The timeframe for the evaluation of already issued decisions pursuant to the law is 3 years. If the process is not concluded by this timeframe, interested parties may address the Tirana Administrative Court of First Instance, to carry out the evaluation pursuant to the law. Currently process has reached the deadline and as such applicants can only continue through judicial review, which in itself presents a further burden considering that Albania is undergoing the transitory evaluation of professionals of the judiciary, with a large number of the judges who have undergone the process having been let go of their position, contributing in this way to the backlog of cases pending examination (Commission, n.d.).

Even with regard to the examination of new applications for recognition, the law provides a binding timeframe of 3 years, deadline which has been passed with the 2018 report of the Agency stating that in the period of January-December 2018, there were 12,950 new applications administered by the Agency, of which 3000 have been dealt with, and the remaining 9,950 case files being processed currently. However, now that the deadline has passed the Agency has suspended the examination process and waiting for the pending cases to be examined by the Civil Court of First Instance (Article 34). One main question which has risen in the last months is in what capacity is the PMA taking part in the court proceedings of certification of fact by part of the applicants for the recognition of their right to property. The passive legitimacy of the PMA to be part of this proceedings has been questioned, but so far it has been impossible for the question to be answered as currently Albania does not have a functioning Supreme Court, nor a functioning Constitutional Court to rule on the matter.

The courts tasked by the law with the duty to review the applicants' challenges to the decisions of the PMA as well as the requests for recognition once the deadlines for the procedure have passed, in themselves exhibit serious problems in the efficiency of the examination of deposited casefiles. From the most recent data deposited by the Albanian Government to the CoE (Advocature, 2018), it is evident that the Administrative Courts of First Instance at country level for the years 2015, 2016 and 2017 had 21,540 registered cases and only 17,927 cases administered and examined; 24,606, registered cases and 20,365 examined cases; and 21,477 registered cases and only 17,451, examined cases, respectively, in this way contributing year after year to the buildup of a considerable backlog. For the Administrative Appeals Court, the situation is quite similar for the same years. At the same time, even the Civil Courts where the requests for recognition are poised

to be deposited from now on, the situation is quite similar. For the years 2015, 2016, and 2017, 89,416, 92,120 and 94,388 filed cases and only 71,589, 75,189 and 78,200 examined cases, respectively, showing the same pattern of backlog buildup which would pose a significant threat to the effectiveness of the mechanism envisaged in the law and the objective ability of applicants in reaching a satisfactory solution to their claims, depriving them of the rights guaranteed under Article 6/1 of the Convention, a core element of the Manushaqe Puto and Others judgment.

Even with regard to the funds made available to the Agency for the finalization of the process, the law has been breached from the outset. In its appendix, the law provides for a budget of ALL 50 billion made available to the Compensation Fund, with a specific amount for the PMA's annual activity (see Annex of Law 133/2015). Despite the provisions in the law stating that the budget for the years 2016 and 2017, pursuant to the Agency's reports, in total, would amount to 6,033,000,000.00 ALL, the fund available and used by the Agency was only 3,426,701,399.00 ALL. The same can be said for the year 2018, where despite the law providing a budget of 3,690,000,000 ALL, the PMA has used only 1,543,025,978.56 ALL. It is true that Article 10 of the law provides that the remainder of unused budget funds for a specific year are to be passed to the following year, the initial trends show that there is a failure to use the financial funds available and a delay in the compensation process, raising questions to the effectiveness of the mechanism.

One final remedy provided in the law as a means for the speedy compensation of applicants, as well as a means of providing the state with leeway in accumulating funds for the financial and physical compensation fund, was the procedure of compensation through auction (Article 13). The law provides that the PMA, in order to increase the financial resources for the compensation fund, would organize auctions for the sale of a property, part of the land fund. All owners holding a compensation decision financially evaluated by the PMA could participate in the auction. The owners holding an assessment on a final compensation decision could participate in the auction if they express their will to benefit from the physical compensation fund. The PMA would announce the winner in accordance with the legislation in force for public auctions, based on the highest bid. So far, not a single procedure of compensation through auction has been initiated and this process is seen as a failure and unnecessary step in the overall mechanism for the compensation of former owners.

## Conclusions

The legal framework for property restitution / compensation, in the 27 years following the collapse of the communist regime, has undergone frequent and fluent changes with laws and bylaws that most times either don't complement each-other or are objectively unable to be implemented in full, a systematic problem that has been found to violate the rights of former owners both by the Constitutional Court of the Republic of Albania and the ECtHR. The most recent and current law has encountered many problems and challenges, among which non-participation of interest groups in the formulation of the new law, disregard of budget projections for the financial fund at the disposal of the process, passing of restrictive deadlines set in the law, possible delays in the examination of claims by of the competent institutions or the effective impossibility of the applicants to have access to the judicial system in order to finalize the process of review of their claims.

The present law is a law which does not base the compensation of property at current market value or size in origin other than the provisions of previous laws, thus creating a relatively high loss for entities still pending return and compensation for their lawful properties. This mechanism was accepted as being proportional by a number of actors, but it was contested by those groups of interests directly affected by its implementation, seeing it with skepticism and controversy, which has led to the official complaint of many associations and The President of the Republic of the Council of Europe and the ECtHR.

Despite the finding of the law as an effective mechanism by the Council of Ministers of the Council of Europe, the many challenges faced by the executive bodies charged with the implementation of the law, as well as the breach of deadlines for the examination of new claims and evaluation of already issued decisions has raised serious questions on the new mechanism. So far, the European Court for Human Rights has refrained itself from issuing a judgment examining the new remedy set in place by the Albanian Government, despite the Government submitting the request for examination in 2016, this due also to the lack of an Albanian judge in the panel to examine the case. Recently, a new Albanian judge was appointed to the Court, and the examination of the case seems to draw to a close. However, the most pressing issue remain on what will happen if there is a negative decision by part of the Court. In general, the Court, due to the principle of legal certainty, does not provide for measures of retrospective effect in its judgments, unless the state wishes to give such effect to the case (*Marckx v. Belgium*, 1979).



However, chances are that it will find the new mechanism incompatible with the Convention System and the case-law of the Court, guiding the state in finding a new methodology and domestic remedy in tackling this long-standing systematic issue. Nevertheless, all this remains speculation until the moment the Court itself issues a binding judgment, which will determine the fate of more than 40,000 already issued domestic decisions and more than 16,000 still pending applications for the right to property.

## Bibliography

- [1] Advocature, A. S. (2018, October 17). *rm.coe.int*. Retrieved July 20, 2019, from Updated Action Report - Luli and Others v. Albania:  
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016808e67cd>
- [2] Agency, P. M. (2017, December 27). *parlament.al*. Retrieved July 20, 2019, from Raporti vjetor per punen e kryer ne Agjencine e Trajimit te Pronave: <http://www.parlament.al/Files/Kerkese/ATP-raportimi-vjetor-2017.pdf>
- [3] Agency, P. M. (2019). *parlament.al*. Retrieved July 20, 2019, from Agjencia e Trajimit te Pronave Raport Vjetor 2018:  
<http://www.parlament.al/Files/Kerkese/20190607132432ATP%20Raportimi%20vjetor%202018.docx>
- [4] Albania, C. o. (2016, February 3). *atp.gov.al*. Retrieved July 20, 2019, from VENDIM Nr. 89, datë 3.2.2016 PËR MIRATIMIN E HARTËS SË VLERËS SË TOKËS NË REPUBLIKËN E SHQIPËRISË:  
[http://atp.gov.al/index.php?option=com\\_content&view=article&id=6&Itemid=384](http://atp.gov.al/index.php?option=com_content&view=article&id=6&Itemid=384)
- [5] Albania, P. o. (1976, 12 28). *eudo-citizenship.eu*. Retrieved 7 20, 2019, from Kushtetuta e Republikës Popullore Socialiste te Shqiperise - neni 16: <http://eudo-citizenship.eu/NationalDB/docs/ALB%20Kushtetuta%20e%20Republikes%20Socialiste%20Popullore%20e%20Shqiperise%201976.pdf>
- [6] *Ashingdane v. The United Kingdom*, 8225/78 (The European Court for Human Rights May 28, 1985).
- [7] Commission, I. Q. (n.d.). *kpk.al*. Retrieved July 20, 2019, from Njoftime: <http://kpk.al/njoftime/>
- [8] Cungu, A., & Swinne, J. F. (1999, April). Albania's Radical Agrarian Reform. *Economic Development and Cultural Change*, 47(3), 605-619.
- [9] de Waal, C. (2004). Post-socialist Property Rights and Wrongs in Albania: An Ethnography of Agrarian Change. *Conservation and Society*, 2(1), 19-50.
- [10] Decision no. 1, dated 16.01.2017 (Constitutional Court of Albania January 16, 2017).
- [11] Europe, C. o. (2018, September 20). The Committee of Ministers' Human Rights meetings. Retrieved July 20, 2019, from H46-1 Manushaqe Puto and Others group (Application No. 604/07) and Driza group (Application No. 33771/02) v. Albania: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016808d5938](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808d5938)
- [12] European Commission for Democracy Through Law, V. C. (2016, October 16). *www.venice.coe.int*. Retrieved from AMICUS CURIAE BRIEF FOR THE CONSTITUTIONAL COURT ON THE RESTITUTION OF PROPERTY: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)023-e)
- [13] Halimi and Others v. Albania, 33839/11 (European Court for Human Rights April 7, 2016).
- [14] Kopecky v. Slovakia, 44912/98 (European Court for Human Rights September 28, 2004).
- [15] Manushaqe Puto and Others v. Albania, 604/07, 43628/07, 46684/07 and 34770/09 (European Court for Human Rights July 31, 2012).
- [16] Marckx v. Belgium, 6833/74 (European Cour for Human Rights June 13, 1979).
- [17] Maria Atanasiu and Others v. Romania, 30767/05 and 33800/06 (European Court for Human Rights October 12, 2010).
- [18] Ministers, C. o. (2012, Shtator 26). *ikub.al*. Retrieved July 20, 2019, from Vendim i Keshillit te Ministrave Nr. 658, date 26.09.2012 Per miratimin e metodologjise per vleresimin e pronave te paluajtshme ne Republikën e Shqiperise: <http://www.ikub.al/LIGJE/1211160159/Article-PeR-MIRATIMIN-E-METODOLOGJISE-PeR-VLERESIMIN-E-PRONAVE-Te-PALUAJTSHME-Ne-REPUBLIKEN-E-SHQIPERISE.aspx>

- [19] Parliament, A. (1993, April 15). ikub.al. Retrieved July 20, 2019, from Per kthimin dhe kompensimin e pronave ish-pronareve: [http://www.ikub.al/ligje/304150001/Article\\_Per-kthimin-dhe-kompesimin-e-pronave-ish-pronareve-.aspx](http://www.ikub.al/ligje/304150001/Article_Per-kthimin-dhe-kompesimin-e-pronave-ish-pronareve-.aspx)
- [20] Parliament, A. (1996, July 31). pp.gov.al. Retrieved July 20, 2019, from Ligji per ratifikimin e Konventes Evropiane per Mbrojtjen e te Drejtave te Njeriut dhe Lirite Themelore: [http://www.pp.gov.al/web/ligji\\_ratifikues\\_i\\_kednj\\_790.pdf](http://www.pp.gov.al/web/ligji_ratifikues_i_kednj_790.pdf)
- [21] Parliament, A. (2004, July 24). drejtesia.gov.al. Retrieved July 20, 2019, from Ligji Nr. 9235, date 29.7.2004 per kthimin dhe kompensimin e prones : [http://drejtesia.gov.al/wp-content/uploads/2017/11/Ligj\\_per\\_kthimin\\_dhe\\_kompensimin\\_e\\_prones-1.pdf](http://drejtesia.gov.al/wp-content/uploads/2017/11/Ligj_per_kthimin_dhe_kompensimin_e_prones-1.pdf)
- [22] SotNews. (2019, March 9). sot.com.al. Retrieved July 20, 2019, from Mbyllja e vlerësimit të pronave, Myrshit Vorpsi: Janë mbi 10 mijë dosje pa zgjidhje, do i drejtohem sërish gjykatës: <https://sot.com.al/politike-intervista/mbyllja-e-vleresimit-te-pronave-myrshit-vorpsi-jane-mbi-10-mije-dosje-pa>
- [23] Stanfield, D., & Jazoj, A. (1995). Markets for Immovable Property in Albania: After Privatization, What? Markets for Immovable Property in Albania: After Privatization, What? - Draft for Discussion, 1-18. Madison, Wisconsin, United States of America.
- [24] Top-Channel. (2015, July 17). top-channel.tv. Retrieved July 20, 2019, from Debat për ligjin e ri të pronave, pronarët: Nuk njeh kthimin fizik të pronës: <http://top-channel.tv/2015/07/17/debat-per-ligjin-e-ri-te-pronave-pronaret-nuk-njeh-kthimin-fizik-te-prones/>