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Property rights in theory versus practice: the current process of evaluation and compensation of property in Albania

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Abstract

In the latest and current attempt to solving the 30-year-old problem of the process of restitution of the rights of former owners in Albania, the Government has implemented a new methodology of evaluation of properties to be compensated. However, despite the remedy being in place for more than 6 years now, the domestic authorities have failed to materialize their predictions, with most intermittent deadlines having been missed, due to poor initial planning, numerous delays in implementation, poor execution, as well as necessities in amending the law. At the same time, these delays, especially the Government taking more than a year and a half to institute the necessary amendments to the law, pursuant to the findings of the ECtHR and Constitutional Court, have also put at risk the implementation of the law as a whole and the missing of the final deadline of 2026, for the finalization of the process.

Keywords**:** *Property rights, law, ECtHR, methodology, statistics.*

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I. Introduction

Beginning in 1991, as a result of a change in the political system, a large-scale national privatization of state and common properties was possible for the first time since 1990. During the initial phase of the new transformation process, private ownership and the rights derived from it were legitimized in four main categories of property, including residential properties, agricultural lands, buildings, and industrial or service lands, as well as properties demanded by their documented pre-1945 legitimate owners. In addition to these categories, on a regular basis, newly modified laws on privatization and land ownership rights applied to property owned by the state and local units. The political, economic, and demographic changes that occurred during the 1990s caused confusion and difficulties in the implementation of laws and land control, despite the institutional and legal actions taken by the Government to implement the reform of land and property rights during that decade.

In 1993, the Albanian government initiated legal measures to compensate property owners whose land was seized by communist authorities between 1944 and 1992, with the property compensation law (Parliamentary Assembly, 1993) under which former landowners might request the return of up to sixty hectares of their property. Numerous amendments were made to this law following its enactment, which demonstrated, over time and with the implementation of the Constitution of the Republic of Albania, the need for a more robust framework in this regard.[3] These first efforts culminated with the 1998 Constitution (approved on November 22, 1998) which stipulates that property rights must be determined in an impartial and non-discriminatory manner. (Parliamentary Assembly, 1998).

Following the enactment of the Constitution and the enshrinement of the right to property as a fundamental right under this document, Parliament enacted the Law "On Restitution and Recompense of Property", which overturned the 1993 law, (Parliamentary Assembly, 2004) including the clauses of public interest and equitable compensation. In addition, this law expanded the property compensation choices available to applicants, and monetary and in-kind restitution sum was no longer restricted. Under Article 6 of the law, Expropriated entities were to be recognized with the right of ownership and their immovable properties were to be returned without limitation, with the exception of agricultural land, which was to be returned or compensated up to 100 ha, in case the expropriated subject or his/her heirs did not benefit from the implementation of Law No. 7501, dated 2 19.7.1991 "On Land".

[3] The Law was amended by laws No. 7736/1993, No. 7765/1993, No. 7808/1994 No. 7879/1994, No. 7916/1995, and by law No. 8084/1996.

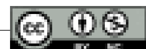
In 2014, Law no. 9583, dated 17.7.2006, established the Property Restitution and Compensation Commission, to determine the legality of the district committee's decisions on the claims raised by various applicants for their return and compensation, an institution that has since undergone changes numerous as a result of numerous laws and decisions of the Constitutional Court.[4] In addition, for the first time, this law permitted the filing of claims for pecuniary damages resulting from the delayed enforcement of Property Restitution Commission decisions and the accompanying loss of profits. This statute was changed at the start of 2006 (Article 23 – Compensation fund). The State Committee for Restitution and Compensation has been dissolved. The Property Restitution and Compensation Agency was founded under the Ministry of Justice. The Agency's regional commissions were known as regional offices. According to Law No. 10207 of December 23, 2009, (Parliamentary Assembly, 2009) all regional offices would be closed and decision-making authority would be transferred to the central body. In tandem with these legislative amendments, the Constitutional Court delivered a series of judgments involving property rights and potential amendments or repeals of this law's constituent norms.[5]

In conditions where the majority of claims filed with state or judicial authorities were not reviewed within a reasonable amount of time and remained pending for more than a decade; where a significant number of cases were awaiting evaluation by the European Court of Human Rights; whereas significant portion of the law had been amended through various judicial and legislative means;[6] the property

[4] The Committee was changed to the Property Restitution and Compensation Agency and the latter's functions underwent further changes with Law No. 9583, dated 17.7.2006, Law No. 10 207, dated 23.12.2009 and the decision of the Constitutional Court No. 27, dated 26.5.2010.

[5] Decision No. 26/2005 for the repeal as contrary to the Constitution of the Republic of Albania of Article 9of the law. The Constitutional Court accepted the request of an association of tenants in former state houses in private ownership and declared that: "changing the law favorable to a certain group of the population is not justified by any inherent public interest. It is true that the amended provision favors the owners of flats, but on the other hand it discriminates against another group (however small in number), violating the minimum right to live, that of having a shelter. Denying the right of the renters to become owners, terminating their lease without guaranteeing another shelter, are actions that cannot be reconciled with the public interest.

[6] Law No. 9388, dated 4.5.2005, announced by decree No. 4594, dated 1.6.2005 of the President of the Republic of Albania, Alfred Moisiu, Published in Official Gazette No. 44, page 1603; Law No. 9583, dated 17.7.2006 promulgated by decree No. 5001, dated 28.7.2006 of the President of the Republic of Albania, Alfred Moisiu, Published in the Official Gazette No. 81, page 2786; Law No. 9684, dated 6.2.2007 promulgated by decree No. 5203, dated 8.2.2007 of the President of the Republic of Albania, Alfred Moisiu, Published in Official Gazette No. 11, page 180; Law No. 9898, dated 10.4.2008 promulgated by decree No. 5690, dated 29.4.2008 of the President of the Republic of Albania, Bamir Topi, Published in Official Gazette No. 62, page 2736; Law No. 10 095, dated 12.3.2009 Published in the Official Journal No. 53, page 2479; Law No. 10 207, dated 23.12.2009 promulgated by decree No. 6383, dated 13.1.2010 of the President of the Republic of Albania, Bamir Topi, Published in Official Gazette No. 194, page 8573; Law No. 10 308, dated 22.7.2010 Published in the Official Journal No. 1127, page 8573; Law No. 55/2012, dated 10.5.2012, promulgated by decree No. 7495, dated 24.5.2012 of the President of the Republic of Albania, Bamir Topi, Published in Official Gazette No. 61, page 3017; Law No. 49/2014,



restitution and compensation mechanisms were failing; the majority of claims filed with state or judicial authorities were not reviewed within a reasonable amount of time and were pending for more years before domestic and international courts, where the latter had consistently found breaches of human rights and issues with the current mechanism,[7] the ECtHR issued its first pilot judgment for Albania on the issue of property rights (ECtHR, Manushaqe Puto and Others v. Albania, 2012). In this judgment, the Court identified a fundamental structural flaw: *the failure to implement final court and administrative decisions regarding the right to property restitution or compensation*. In reaction to this ruling, after more than three years, in 2015, the Albanian Government passed a new property legislation that overturned the former law 9235/2004, as amended. (Parliamentary Assembly, 2015).

II. The protection and guarantee of the constitutional right to property according to law no. 133/2015

It was proposed that the Law no. 133/2015, would prioritize the protection and guarantee of the constitutional right to property, to ensure its restoration in cases of unjust alienation of rights, in accordance with the principle of legal certainty and the rule of law, as well as the exercise of the right to expropriation, of property following fair compensation and in full balance with the public interest. As a result, the law attempted to establish a new compensation scheme: there is no restitution of the property taken by the communist regime, just monetary or in-kind compensation.

Under the new mechanism, all final decisions on the restitution and compensation of property will be subject to a financial assessment in which the property recognized for compensation is valued based on the cadastral reference the property had at the time of expropriation and the restituted property is valued

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dated 8.5.2014, promulgated by decree No. 8575, dated 27.5.2014 of the President of the Republic of Albania, Bujar Nishani, Published in Official Gazette No. 76, page 2705; and Law No. 47/2015, dated 7.5.2015, promulgated by decree No. 9107, dated 21.5.2015, of the President of the Republic of Albania, Bujar Nishani, Published in Official Gazette No. 84, page 4405.

[7] Among the key judgments against Albania in the field of failure to respect the property rights of former owners are Beshiri and Others v. Albania, ECtHR decision, dated August 22, 2006, application No. 7352/03; Driza v. Albania, decision of the ECHR, dated November 13, 2007, application No. 33771/02; Ramadhi and Others v. Albania, Decision of the ECHR, dated November 13, 2007, application No. 38222/02; Vrioni and Others v. Albania, ECtHR decision, dated December 7, 2010, application No. 35720/04 and 42832/06; Eltari v. Albania, ECtHR decision, dated March 8, 2011, application No. 16530/06; Çaush Driza v. Albania, ECtHR decision dated March 15, 2011 pertaining to application No. 10810/05; Sharra v. Albania, ECtHR decision, dated 10.11.2015, applications Nos. 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; and Bici v. Albania, ECtHR decision dated December 13, 2015, pertaining to application No. 5250/07.

based on the difference between its current cadastral reference and the value of this property, according to the cadastral reference it had at the time of expropriation, (*Article 6- Evaluation methodology*).

Moreover, according to the law, final decisions that only recognized the right to compensation are assessed financially, according to the cadastral reference that the property had at the time of expropriation, and in the absence of a fixed cadastral reference, this assessment is made taking as a reference the cadastral reference, according to the origin of the property, which is located closest to the property to be compensated, based on the value map at the time of entitlement.

In accordance with the purpose of implementing this law, the Property Management Agency (PMA), the newly created institution that replaces the Property Restitution and Compensation Agency (PRCA), was required to review property claims that had been submitted but not reviewed by the PRCA, as well as accept and decide on new property claims presented to it, within ninety days of the law's entry into force (*Article 26 - Property Management Agency*). According to Article 27, the 90-day deadline cannot be extended under any circumstances, either by judicial or administrative decision. The process of reviewing pending property claims must be concluded within three years of the date of implementation, or by February 23, 2019 (*Article 34 - Deadline for completing the process*). Pursuant to Article 34 of the Law, if the PMA fails to consider the submitted requests for the recognition of property rights within three years, the applicant may launch a civil action in the civil court of first instance. According to Article 29, a decision of the PMA recognizing (or not recognizing) property rights and the right to compensation may be appealed to the relevant court of appeal within thirty days of its announcement. In accordance with Article 30 of the statute, the PMA's final decision would be registered with the Immovable Property Registration Office (IPRO). It was anticipated that the entire process of recognizing and paying past owners would be finished within a decade.

On April 21, 2016, the President of the Republic of Albania, one-fifth of the members of the Albanian Parliament, the People's Advocate, the Republican Party, the Association of Legitimate Owners "Albanians," the Association "Our Province," the Association "Bregdeti," and the Association "Pronësi me Drejtësi" appealed the constitutionality of Law No.133/2015, to the Constitutional Court. In 2016, before issuing a judgment, the Albanian Constitutional Court requested an opinion from the Venice Commission on the compatibility of the new law with the principles of the ECHR on property rights. (European Commission for Democracy Through Law, 2016).

According to the opinion of the Venice Commission the smaller amount of compensation paid to the former owners satisfies the proportionality criterion of Article 1 of Protocol 1 of the ECHR. Taking into account the Opinion, the

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Constitutional Court of Albania announced its decision in 2017 declaring illegal only Article 6 items 3 and 5 of Law No.133/2015, as amended. (Constitutional Court, Decision no. 1, 2017). The Court noted that the content of paragraphs 1 and 2 of Article 6 of Law No. 133/2015, as amended materializes the compensation formula's fundamental principles. The remainder of Article 6 controlled specific situations that, based on their substance, are considered of as a new expropriation since they involve the reassessment of possessions that have already been returned or compensated. In this regard, these two laws cause legal certainty difficulties, notably resulting in legislative uncertainty and unpredictability.[8] According to the Court, taking into account the particular circumstances of Albania, it is arguable that the new and effective legislation satisfies the criteria of proportionality provided by Article 1, Protocol 1 of the ECHR and that the intervention appears to have a legitimate purpose, given that the purpose of Law No.133/2015, as amended is to effectively resolve the problem of the property of the current owners through recognition and compensation within a reasonable period of ten years. Regarding the petitioners' arguments regarding the financial compensation scheme outlined in Article 7 of this law, the Constitutional Court lacked the required majority to reach a ruling on the merits; hence it decided to reject the claim. As a result of this judgment, the property compensation procedure continued, with the Property Management Agency serving as the lead entity in charge of its administration. Despite initial successful efforts to unblock a process that had seen significant delays over the years, the extremely high number of cases for initial review, as well as the significant number of applications for evaluation of decisions given by the PRCA and PRCC-s over the years, bogged down the process and led to a failure of keeping up with the initial deadlines set by the law, on the financial evaluation of all unassessed final decisions that have recognized the right to compensation, forcing a high number of former owners who already have a final property recognition decision, to address, through a new process, the Tirana Administrative Court, with their requests for evaluation.

The Tirana Administrative Court, for 2021, has a backlog of 1574 cases, accumulated over the years. At the same time, the Administrative Court of Appeal has started the reporting year 2021, with a significant backlog (stock) of 15,157 cases, accumulated over the years, with 11,760 general administrative cases, 1,733

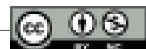
[8] Paragraph 41 of Decision No. 1 dated 16.01.2017, CC, "...In this context, the legislator must take into account to what extent the physical compensation provided for in article 6, items 3 and 5, is fulfilled by other articles of the law in order to avoid overlapping or collision among the provisions of the law. The provision of repeated and uncoordinated regulations between them in essence and the consequences they bring ambiguity and therefore violate the principle of legal certainty. Under these conditions, the Court considers that the content of items 3 and 5 of Article 6 of Law 133/2015 is not in accordance with the principle of legal certainty, since the calculation of the benefited area and what will be deducted or added according to the formula provided in item 1 of article 6 is unclear and creates confusion in implementation as far as citizens' expectations are concerned."

labor cases and 1,664 cases without opposing parties. - The Supreme Judicial Council - Report on the state of the judicial system and the activity of the Supreme Judicial Council for 2021.

III. The implementation of the law in practice by the responsible institutions

The Property Management Agency has handled a large number of requests for first recognition and requests for compensation based on earlier rulings over the past five years. In 2016, this institution financially assessed 1869 judgments with a total value of 11,883,227,764 ALL, and 419 applicants filed petitions for the execution of the financially assessed decisions. Among these petitions, 197 were compensated, and the total value of all benefits is 1,805,417,553 ALL. Regarding the applications that got monetary compensation based on a special request, four applicants with a total monetary value of ALL 91,869,447 profited. Approximately 5,700 fresh requests for acknowledgment of ownership were submitted within the law's 90-day deadline (Law 133/2015, Article 27 - Handling of requests). By the end of the year, the Property Management Agency had issued 1,000 final rulings. (Property Management Agency, 2017).

In 2017, the Property Management Agency published a total of 4038 decisions from the years 1993-1994, which recognized the property right to compensation, of which 118 decisions were published in 2017; 6941 decisions of 1995 that have recognized the right to compensation; and a total of 4,877 decisions from 1996 that recognized the right to compensation. In total, until the end of 2017, the PMA assessed a total of 15,856 decisions from the years 1993, 1994, 1995 and 1996, which recognized the right to compensation of expropriated applicants, of which 11,936 decisions were assessed in the period January-December 2017. However, during 2017, the Property Management Agency made financial compensation through special requests for 12 applications with a total value of ALL 348,631,590. According to the progressive compensation of 20%, 30% and 40% of the property, the subjects benefited from financial compensation in the value of ALL 97,434,259. With regards to compensation in nature, for the period January - March 2017, 11 requests (out of 96 requests in total) were treated with compensation from the land fund available to the PMA; for the period April - June 2017, 6 requests and for the period July - September 2017, 5 requests were handled with compensation in nature from the land fund available to the PMA, in total 22 requests. Regarding the applications presented for recognition of ownership (new requests) to this Agency, 2529 requests were issued a decision, most of which were returned for further completion of the documentation of the files. (Property Management Agency, 2018).



In 2018, the Property management Agency continued the work with the financial evaluation of the final decisions for compensation, completing the financial evaluation of 9458 decisions not previously evaluated. 8,642 decisions were financially assessed with a value of ALL 34,156,228,643, while 632 decisions were considered compensated with reference to Article 7, item 2, of the law, which was later repealed by the Constitutional Court in its decision of February 2021.184 decisions were recognized with the right of first refusal. The statistics and low numbers of new cases administration and evaluation this period raise questions about the Agency's efficiency. During the period of January - December 2018, the PMA registered 429 applications for financial compensation and compensation in nature and 18 decisions were executed, distributing from the Financial Fund, a value of 35,521,553 ALL and from the Land Fund, an area of 568,909 m2 with a financial value of ALL 116,637,991. During this period, in terms of special request decisions, 129 applications were received, of which 86 were new applications: 86 applications/files were executed which benefited from the first installment, with a total value of 1 507 504 425.56 ALL. Furthermore, the second installment for 10 applications and the third installment for 2 applications were prepared. During the period of January - December 2018, the PMA handled only 3,000 requests for ownership recognition, while the number of files submitted for review in this category of requests had a total of 12,950 files. (Property Management Agency, 2019).

In 2019, the Property Management Agency continued the work with the financial evaluation of the final decisions for compensation, completing the financial evaluation of 1558 decisions, registering 149 applications for financial / physical compensation and 59 decisions with the right to financial compensation were executed and from the land fund and for 22 decisions, the closure of the proceedings was decided. In relation to the execution of decisions with a special request, it turns out that 115 subjects applied, and during the year, 190 files were taken into administrative review, where 97 applications were treated with a decision, of which for 86 applications, the PMA continued with the payment of installments. Meanwhile, for 11 applications it decided to end the administrative procedure. Until the end of this year, which also coincides with the end of the three-year deadline for evaluating unhandled claims (February 23, 2019), the Property management Agency completed the handling of 9,512 claims, out of a total of 16,462 unprocessed claims (claims filed under previous laws and new claims under Law No. 133/2015, as amended). (Property Management Agency, 2020).

According to Article 34 para.2 "Deadline for the end of the process", for 6950 unprocessed claims, the PMA continued with the notification procedures, noting that for the recognition and compensation of the claimed property, the applicants would have to address the court of first instance, of the place where the property is located.

This fundamental element in the law, which constitutes an objective and subjective right for all potential applicants, and of the entire process of recognition and compensation of property (the short deadline for recognition of new claims) failed to be met by the competent authorities, showing the deep deficiencies in the provisions of the implementation of this law and the marked lack of objective planning on the needs of the process, which in the present case further aggravate the situation of the applicants, as well as of the local judicial institutions.

During the period of January-December 2020, 43 decisions were updated that recognized the right to compensation; 67 new applications for financial/physical compensation were registered, and the process of reviewing files that were previously filed continued, 67 new applications were administered and 25 decisions were executed. In relation to the execution of decisions with a special request, 55 new requests were administered and 80 applications were treated with a decision, of which for 75 applications the PMA continued with the payment of installments, while for 5 applications it was decided to end the administrative procedure. (Property Management Agency, 2021).

The Property Management Agency, until 23.02.2021, has evaluated a total of 26,092 final decisions for compensation covering decisions allotting property rights issued in the years 1993 to 2013. However, for this year, only 11 decisions that recognized the right to compensation and 6 applications for execution have been updated. (Property Management Agency, 2022).

This stalemate in the administrative activity of the PMA was explained as an effect of the decision of the Constitutional Court of February 15, 2021, published in Official Gazette No. 37, dated March 11, 2021. In this judgment, the Court decided to partially grant the petition of the "Pronësi me Drejtësi" association, ordering the repeal, as incompatible with the Constitution, of Article 7, item 2, letters "a" and "b", of Law No. 133/2015 "On the treatment of property and the completion of the property compensation procedure" and the repeal, as incompatible with the Constitution, of items 16/2, 16/4, and 18 of DCM No. 223, dated 23.03.2016 "On determining the rules and procedures for the evaluation and distribution of the financial and physical fund for property compensation", as amended. It is estimated that a total of 4,141 decisions with a financial worth of about 18 billion ALL will be affected by this decision and the upcoming modifications to the law and the accompanying CDMs will further slowdown the process as a whole. (Constitutional Court, Decision no. 4, 2021).

From the entry into force of Law No. 133/2015, as amended, until December 31, 2021, the Property Management Agency has executed only 794 decisions with a value of 7,842,824,600.14 ALL, from a total of existing and new filed requests of more than 40,000.

Concerning the evaluation of new requests for recognition of ownership, during the first five years of the implementation of Law No.133/2015, as amended, a total

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of 16,462 unprocessed applications were registered with the PMA (requests filed under previous laws and new requests under Law No.133/2015, as amended), of which only 9,512 were administered with a final decision, while 6,950 applicants were notified to withdraw the documents from the PMA and address the local courts.

In 2017 and 2018, there were more than 20,000 cases administered by the PMA, according to the agency's case statistics. However, the number of files administered has decreased over the past three years, and the same trend can be observed in terms of the number of decisions issuing financial compensation, evaluating new requests for recognition, and notifying applicants of the need to supplement their files with the necessary documentation. In the past two years, there has been a discernible decrease in activity, with virtually no decisions for financial compensation, no decisions for new evaluations, and very few decisions for financial compensation in response to special requests. This slowdown was justified by the PMA with the decision of the Constitutional Court on the unconstitutionality of the provisions of Article 7 of the Law and the uncertainty that it would create, as well as the need for the amendment of the law by Parliament before further continuation. In actuality, despite the increased number of applications that this adjustment will bring to the PMA, it has no influence on the practices that are currently awaiting examination by the institution.

IV. European Court of Human Rights assessment of the efficiency of the legal remedy for property rights restoration

Due to the fact that a large number of cases for initial recognition are already before the district courts for consideration of their merits, the process of property compensation, which is already in the second half of the legal term established by the law itself, reveals a number of fundamental problems with its implementation, including: a) the low number of cases completed with full execution; b) the low number of applications that have found a final assessment; and c) the high number of cases that have not yet been completed.

As a result of the progression of the property compensation process in the system established by the new law, and the latter's inability to resolve the property issue within a reasonable timeframe, an increasing number of cases, in addition to those already submitted, have been presented to the European Court of Human Rights. In a number of decisions, including Gjergo and Babicenko v. Albania, the European Court of Human Rights has analyzed the new system established by the 2015 law.

According to the ECtHR, the 2015 law provides a variety of forms of compensation, and it is not the ECtHR's role to establish the hierarchy of

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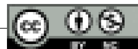
compensation determined by local authorities. The court determined that the Government has utilized *"alternative forms of compensation"* as instructed in the pilot judgment Manushaqe Puto and Others. Despite this, the Court determined that Article 25 of the Law and the relevant Decisions of the Council of Ministers for its implementation lack the necessary legal certainty according to the fundamental provisions of the Convention (ECtHR, Agim Beshiri v. Albania and 11 other applicants, 2020, para.180).

The court also considered the reality in Albania, where a large number of illegal structures, including former owners' properties, have been built throughout the country. In order to maintain social peace, the Government has been forced to intervene multiple times by passing legislation aimed at regulating illegally erected structures. This scenario was accounted for in the relevant law, which provided for the recognition of former owners' claims for compensation when restitution is physically or legally impossible. According to the Court, if adequate compensation is provided in accordance with ECtHR case law, there is no imbalance between the parties' respective interests (Para. 181 *ibid.)*

Concerning the remedies available to applicants, the ECtHR emphasized that the law established a claimant's ability to appeal the PMA's decisions on the recognition of property rights and the right to compensation to the relevant appellate court. (Para. 182 *ibid*.) In addition, the law gives claimants the right to file a civil action in a court of first instance with general jurisdiction if the PMA fails to render a decision within three years on ongoing property claims. In this regard, the Court raised a number of questions regarding the procedure that national courts will follow when deciding on pending property claims, as well as how they will conduct financial assessments and carry out other responsibilities that were formerly the PMA's purview. (Para. 183 *ibid*.)

The court also noted that the 2015 Law on Property grants the former owner the right to file a civil action with the Administrative Court in cases involving the PMA's failure to determine the financial assessment within the statutorily mandated three-year period. Taking into account not only all of the legal measures, but also their implementation in practice, the Court affirmed in its decision that local authorities, who are in the best position to assess the practices, priorities, and competing interests at the domestic level, have a large degree of discretion in selecting forms of compensation for property rights violations.

As a result, the Court determined that there was no unresolved issue in the law regarding the efficacy of its mechanism that would call into question the efficacy of the legal remedy in this regard, (Para. 215 *ibid.)* concluding that it was an effective remedy pursuant to Article 13 of the Convention. The Court also found no violation of the former owners' rights in terms of the proportionality of the burden borne by the applicants in limiting their compensation against the public interest,



recalling the Wolkenberg case in which it accepted the government's argument regarding the need for a compromise between the claimants' expectations and the state's budget constraints in an exceptional situation, resulting in a reduction of the co-ownership compensation. (ECtHR, Wolkenberg and Others v. Poland, 2007).

In the case of compensations when the property's current value is exponentially greater than its value under the original cadastral reference, the court found problems with the burden of proportionality between the rights of former owners and the public interest. The court noted that the use of the initial cadastral reference of the expropriated property as the basis for conducting the financial evaluation is not an arbitrary act by the state authorities. However, due to the adoption of such a referral criterion, some applicants may receive only a modest amount of compensation, despite the fact that the value of their expropriated property has increased over time. Under these conditions, the remedy is only effective if the total amount of compensation – regardless of the form of compensation – reaches at least 10% of the value to which the applicants would have been entitled if the financial assessment had been conducted according to the current cadastral reference. Given the general level of sacrifice that the new compensation scheme imposes on former owners, the court determined that the 10% minimum threshold for the amount of compensation can be deemed reasonable (Agim Beshiri v. Albania and 11 other applicants, 2020, para. 209).

The ECHR reexamined anew, in April 2021, the situation of property compensation in Albania, in the Ruçi and Bejleri case, in which it noted that after the Beshiri and Others decision, the Constitutional Court of Albania issued a decision regarding the constitutional evaluation *in abstracto* of certain provisions of the Property Law of 2015, repealing articles 7 (2) (a) and (b) as well as certain implementation provisions. (ECtHR, Ruçi and Bejleri and 191 other applicants v. Albania, 2021).

In reviewing local judicial developments, the Court noted and approved the fact that with the repeal of Articles 7 (2) (a) and (b) of Law 133/2015, which regulated the determination of the financial assessment when a former owner had previously received partial compensation for an expropriated property, the financial assessment determination was no longer governed by those provisions. The court followed the instructions and attempted to implement in practice the ECtHR's instruction that the amount of compensation should not be less than 10% of the amount the former owners would be entitled to receive based on the property's current market value. (Para. 24, *ibid*) Despite the above conclusion, the Court drew attention to the provisions made in paragraph 222 of the Beshiri and Others decision, regarding the conditions that must be met by the authorities in order for the solution to continue to be effective, particularly the granting of compensation for not less than 10% of the value to which the former owners are

entitled, if the financial assessment is made with reference to the current cadastral reference of the expropriated property.

V. The practical aspects of the application of property law within the domestic legal framework and the need for further modification to reflect new circumstances

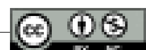
Following the Beshiri and Others ECtHR decision, on 15 February 2021, in response to a second request for the evaluation of the constitutionality of certain provisions of the Property Law of 2015 and the supplementary Decisions of the Council of Ministers, the Constitutional Court issued a new judgment (CC (V-4/21)), through which it filled the gaps left by the 2017 decision, in which the latter had not considered the merits of the claim in relation to Articles 6 (1) (a) and 6 (2) (a) of the Convention.

In its decision, the Constitutional Court found that Article 7 (2) (a) and (b) regulates situations in which a former owner has previously obtained partial restitution of expropriated property. It was noted that, based on updated information provided by the government, a substantial number of applications, 10,120 out of 26,091, submitted for financial review were affected by a change in cadastral reference over time. Therefore, it was up to the legislature and not the executive branch to determine how the minimum threshold of 10% for the amount of compensation established by the European Court in the Beshiri and Others decision should be applied in this category, including cases in which the former owners had previously received compensation or partial restitution, affected by the provisions of Article 7 of the law.

As a result, the Constitutional Court determined that the calculation method defined in Article 7 (2) (a) and (b), which had not been altered since the ECHR's decision in Beshiri and Others, did not meet the 10% threshold, and that the interference with the property rights of the former owners was disproportionate. Article 7 (2) (a) and (b) of the Property Act of 2015 was therefore repealed. (para. 59-68, CC (V-4/21)). The Constitutional Court postponed the implementation of its decision by six months from the date of its announcement and ordered Parliament to adopt new legislation within the same time frame in order to fill the legal void left by the repealed provisions, a provision of the decision's enacting clause that Parliament failed to abide to for more than a year and a half.

In August 2022, the government proposed some changes to Law No. 133/2015.[9] In the latter, further to the codification of the 10% threshold suggested by the ECtHR

[9] Approved by Parliament though Law no. 77/2022 "For some additions and amendments to Law no. 133/2015 "For the treatment of the property and the finalization of the property compensation process", published on the Official Gazette no. 168, dated 15.12.2022.



in the Beshiri and Others case, for the guarantee of the rights of former owners who would be unjustly burdened from the change of the cadastral reference of their property (Article 1, *ibid*), a new iteration of Article 7 was proposed, in order to complement and complete the nullified provision with the rules governing the methodology of evaluation of the law, which was omitted in the previous iteration. This new provision defines clear rules for the financial assessment of properties whose cadastral reference has not changed, as well as those whose cadastral item has changed, depending on whether the final decisions have recognized the right to restitution and compensation of the property, or only the right to compensation. Additionally, in accordance with the Beshiri and Others decision and the decision of the Constitutional Court, this provision also guaranteed the minimal amount of 10% of the value of the property to the recognized owners, according to the current cadastral reference.

According to this formula, the final decisions that have recognized the property rights of the owners, when the cadastral reference of the latter has changed, are evaluated financially, calculating the value of the property recognized for compensation, based on the current cadastral reference. Following this step, the value of the property already restituted/compensated is calculated according to the methodology of Article 6 and the value of the restituted property is deducted from the value of the property recognized for compensation, calculated according to the current cadastral reference. If the value of the already restituted/compensated property is greater than the value of the property recognized for compensation, then the expropriated subject is considered compensated. In cases where the value of the property recognized for compensation is greater than the value of the property already restituted/compensated, the financial assessment of the final decision, which recognized the right to restitution and compensation of the property, is equal to 10% of the resulting difference, deducting the value of the restituted/compensated property from the value of the property recognized for compensation.

All these amendments, aligning the law with the judgments and decisions of the ECtHR and domestic courts, were passed by Parliament on November 18th 2022, despite the protests and objections by the opposition. (Parliament of Albania, 2022).

In parallel to these domestic and international procedures, the Civil College Chamber of the Supreme Court of Albania ruled in a binding decision dated February 7th 2018, that against the decisions of the Appeals Court, which examines appeals on matters of law and substance, a petition may be made to the Supreme Court, which will have exclusive jurisdiction. (Supreme Court of Albania, 89th Unifying Judgment, 2018)

In accordance with Article 29 of Law No. 133/2015, as amended, this will also apply to appeals of PMA decisions that recognize or refuse to recognize ownership

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rights or the right to compensation. In accordance with Article 19 of the Property Law, all appeals against the amount of compensation determined by the PMA will be reviewed by the Administrative Court of Appeals. (Para. 71 *ibid*).

In addition, the Chamber ruled that the court of first instance in whose jurisdiction the disputed immovable property was situated would hear all civil actions and eventual counterclaims of third parties relating to rights claimed in relation to properties for which the PRCA or PMA had ruled in favor of a former owner. (Para. 63 *ibid*).

Regarding the retroactive application of the Property Law of 2015, the Supreme Court clarified that the 2015 Law applied retroactively to all property valuation proceedings initiated prior to its entry into force. If the proceedings involved other matters, they would be evaluated according to the law in effect at the time they were initiated. Therefore, the Supreme Court concluded that all civil actions filed against the decisions of the PRCC or PRCA prior to the enactment of the 2015 Law would be heard by the courts of first instance within whose territorial jurisdiction the contested immovable property was situated.

With the exception of the judgment of the Civil College Chamber of the Supreme Court, which addressed procedural issues on the rights of applicants to appeal specific decisions and the relevant institutions to be addressed, the majority of the Constitutional Court's decisions lacked the establishment of a new legal precedent or legal doctrine. Instead, it relied on the judgements and arguments of institutions such as the Venice Commission or the European Court of Human Rights. At the same time, these judgments lacked in their effort to be enforced by the Government, with the latter failing to implement new measures for more than a year and a half since the rendition of the latest Constitutional Court judgment, despite the letter allotting only 6 months for such amendments.

VI. Final considerations

On the basis of the current reference of the evaluation and compensation process and the actions taken by the various administrative and judicial bodies, domestic and international, a number of conclusions can be drawn on the practical implementation of Law No.133/2015, as amended, the subsequent bylaws, the activity and administrative practice of the PMA, as well as the analysis of domestic and international decision-making bodies regarding the effectiveness of the remedy introduced by this law.

The process of compensation of properties of previous owners or their successors has been viewed favorably by the majority, if not all, Government and international actors, notwithstanding the obstacles and challenges encountered

in practice. The authors of this paper tend to disagree with this evaluation based on two simple metrics: the failure of the PMA to adhere to the deadlines for the implementation of the different steps of the process, particularly in regards to the recognition of new claims, and the consistent failure of the PMA to address new and already existing claims into a consistent stream of administered cases, reducing the number of cases evaluated in the later years to nearly zero, thereby jeopardizing the integrity of the system as a whole.

Despite the changes in the meaning of the law during the past five years and those pending as a result of judgements by the Constitutional Court and the European Court of Human Rights, the legal framework and its implementation have become much more stable. However, this stability has come at a high price for Albanian property owners, who after more than three decades are still navigating the administrative and legal landscape in search of a solution to their problem. Despite the legal framework stabilizing in recent years, the failure of the lawmakers to have succinct norms in the law since its genesis, and the necessity to intervene with new legal provisions, after more than 5 years following judgments by international and domestic courts, as well as the failure of administrative actors to adhere to the already existing legal deadlines, has thrown the entire system into disarray, with applicants now having to address again the administrative as well as new judicial institutions, and beginning a new procedure that they had started and re-started for the past three decades, every time the previous laws failed to materialize a remedy, new bylaws were enacted, and the laws and bylaws were deemed unconstitutional by the Constitutional Court or international tribunals.

In light of the fact that the current law is in its sixth year of implementation, and not even half of property claims have found a definitive solution, with many applicants addressing the courts anew and many others appealing PMA decisions, history appears to be repeating itself, with the current initiative risking to become yet another failure among the numerous Government initiatives in this field.

The Committee of Ministers of the Council of Europe, the Venice Commission, as well as the domestic judicial authorities, and the European Court of Human Rights have evaluated and confirmed the effectiveness of the current mechanism recognizing and compensating property to owners dispossessed by the communist regime. The problem with these conclusions, as identified by the authors, is that the vast majority, if not all analyses of the law are theoretical, and not a single evaluation to date has focused on the law's merits, present application, and efficiency of the work of the Property Management Agency, which has *"shut its doors"* in the later years due to numerous reasons. Neither the European Court of Human Rights nor the Committee of Ministers of the Council of Europe, nor the highest domestic courts have reviewed the efficacy of the law in practice, which would reveal a completely different reality than the evaluation *in abstracto* undertaken in all prior evaluations.

With the continuation of the process, the issuance of the Constitutional Court's ruling in 2021, and the expected implementation of the amendments to the law, a new cadre of cases will be reevaluated by the Property Management Agency, resulting in a new backlog of case files and additional delays in the future. The process has been stalled for more than two years, suspended pending legal and by-law amendments, a deadlock that does not merely suspend proceedings for claimants pending a compensation decision and delivery, but which opens a new process for more than 4000 applicants, to whom the state obligations, prior to the legal amendments, were considered fulfilled, but now will be reevaluated.

In principle, at its inception, Law No. 133/2015, as amended, was envisaged as a tangible option that the authorities believed would help solve the great and difficult impasse in our country for the restitution and as of now simply compensation of properties. The question that arises naturally following the findings on the implementation of the legislation in question is: *"Is the law No. 133/2015, as amended, of those dimensions and effective enough to constitute a final tool for solving this problem and ending the transitory system of the fundamental right of ownership?"*. The answer of the authors of this article is that, speaking from historical experience, where most initiatives excelled in their implementation in the first years, but were bogged down eventually, due to poor initial planning or resource management, is that the future of the current law is ominous, unless urgent steps are taken to remedy the situation.

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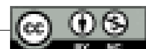

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