

## **Policy Department External Policies**

# **PROPERTY RESTITUTION IN ALBANIA**

**FOREIGN AFFAIRS**

September 2008

**EN**

This briefing paper was requested by the European Parliament's Committee on Foreign Affairs.

It is published in the following language: English

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Briefing made under the framework contract with the Trans European Policy Studies Association (TEPSA)

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Publisher

European Parliament

Manuscript completed on 8 September 2008.

The study is available on the Internet at

<http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>

If you are unable to download the information you require, please request a paper copy

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Brussels: European Parliament, 2008.

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## ***Executive Summary***

**Scope of the briefing:** This Briefing Paper analyses the legislation currently in force in Albania as far as property restitution is concerned (Law No. 9235 and its subsequent amendments), as well as the related implementation problems. The paper describes the complexity of the legal framework and the relevant administrative procedures, the deficiencies of the existing infrastructure and any other related matters. The briefing concludes with certain recommendations.

### **Main findings:**

State of play: In post-communist Albania a long series of legal instruments were enacted for the ascertainment of property rights, including restitution/compensation of properties confiscated during the communist period. A vast number of cases about conflicting claims between new owners and/or the State on one side and former owners on the other side arose and the majority of them still wait to be resolved in a legally, socially and financially effective way. The case law includes judgments of the Constitutional Court, while the first crop of judgments of the European Court of Human Rights (ECtHR) has already found serious deficiencies of the judicial and administrative system of the country in respect of property restitution and compensation of former owners.

Implementation problems: The whole process is moving too slowly due to delays in setting up new structures of the Property Restitution and Compensation Agency (PRCA) both at central level and in regional departments. In addition, the State-owned land is too small, in comparison with the amount of land supposed to be compensated. Informal and corrupt transactions still dominate, although the Government is now trying to implement the law adopted in July 2004 that reflects key policy choices.

Problems related to political and social deficiencies: The difficulty in finding effective solutions for property restitution and compensation of former owners and in subsequently implementing them is tightly linked to the post-Communist political situation in the country and the ensuing social and economic instability which, in the particular matter of real property, is deep-rooted in strong divergences among the various groups of population and their politicians. Restitution of land to former owners is viewed by many as if it would recreate a feudal ownership structure, while former land owners and collective farm workers differ strongly on their support to reform policies.

### **Main conclusions**

- The legal situation governing immovable property in Albania is very complex.
- The provisions of the applicable compensation laws and administrative procedures proved unsatisfactory so far.
- Albania acted with inefficacy regarding the creation of the necessary administrative infrastructure stipulated in the respective legal acts.

- The question of property restitution affects a future candidature of Albania to the EU, since it amounts to the non-fulfilment of the Copenhagen political and economic criteria.
- Overcoming the legal insecurity surrounding property issues depends on the political will and on the ability to reach and maintain a consensus of the political actors involved.

## **Recommendations**

### Long-term

- Completing the overall, long-term, restitution and compensation process no later than 2014.
- Compensating the post-1991 owners holding valid documents or providing adequate new housing rights by the State, while trying to keep the process out of the day-to-day politics.
- Passing a law, or perhaps even a constitutional amendment, with a super-majority to be reached by the largest political parties.
- Finding a similar consensus mechanism regarding a catalogue of necessary implementation measures.
- Direct consultation and serious involvement of the pre-1945 owners in the legal drafting process, to ensure that respective amendment be accepted by the majority of them.

### Short-term

- Making functional the Regional Offices for the property restitution and compensation.
- Finalising the immovable property value map.
- Enforcing the measures by police forces being in charge of evicting illegal occupants; these forces should enjoy special protection and be adequately paid, besides being deployed outside their own residential areas.
- Instituting regular exchange and cooperation among the actors of the legal system involved, such as judges and civil servants who should also be more generously remunerated, in order to limit corruption.
- Financing of the system (perhaps also the property compensation fund) from the proceeds seized in high-level corruption cases, once tried by the courts.
- Providing the infrastructure and training for the officials in charge of mapping, restitution and compensation.

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## INTRODUCTION

Albania is a potential candidate for EU membership. A **Stabilisation and Association Agreement (SAA)** between Albania and the EU was signed in June 2006 and an Interim Agreement is in force since December 2006. The EU provides guidance to the Albanian authorities on reform priorities through the **European Partnership**<sup>1</sup>, based on the conditions defined by the Council in its conclusions of 29 April 1997 and 21 and 22 June 1999, the final declaration of the Zagreb Summit of 24 November 2000 and the Thessaloniki Agenda. Progress is monitored through political and economic dialogue<sup>2</sup>.

With regard to **property rights** that are listed among the short-term priorities of the European Partnership (social and economic rights) Albania committed itself to “[f]urther accelerate both the first registration of properties and the processing of restitution claims and ensure that mechanisms for compensation are sustainable and that these processes are properly coordinated with the property legalisation initiative”, while among the medium-term priorities (civil and political rights) this country undertook to “[e]nforce legislation on restitution/compensation of properties confiscated during the communist period, [c]omplete the process of land registration [and e]nsure that transfers of property are carried out in accordance with the law and ensure the proper functioning of all bodies involved in the process (notaries, property register, etc.)”.

It has been observed<sup>3</sup> that the Government has adopted a strategy which links the processes of first registration of real estate, restitution and compensation and legalisation of informally constructed buildings. 86% of land has now been registered. A first wave of informally [i.e. illegally] constructed buildings on State land has been legalised through payment of a fee which contributes to the compensation fund for former owners. Illegal buildings in some coastal areas have been demolished. The PRCA has improved its internal organisation, transparency and accountability and has made some progress in accelerating the processing of claims. A database to identify, assess, manage and prioritise the 41,000 outstanding restitution and compensation claims is being tested.

Overall there has been progress on strengthening property rights, a key European Partnership priority. However, the pace of restitution and compensation remains slow. Proper coordination and further acceleration of restitution and compensation are now needed. The new strategy needs to be effectively implemented and monitored. The existing legislation requires further improvement. State bodies dealing with property registration, restitution and compensation are not yet sufficiently coordinated.

This Briefing Paper is going to focus on two issues in particular:

- State of play of the legislation currently in force, as well as a broader overview over the last years’ developments.
- Administrative procedures, causes for delays and implementation problems linked to the property restitution and criteria used for compensation.

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<sup>1</sup> 2008/210/EC: Council Decision of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Albania and repealing Decision 2006/54/EC *OJ L 080, 19/03/2008 p. 0001 – 0017*.

<sup>2</sup> See, Commission Staff Working Document, *Albania 2007 Progress Report* [COM(2007) 663 final].

<sup>3</sup> *Ibid.* pp 15-16.

Finally, the paper will reach its **conclusions**, referring to the political challenges represented by the linkage of the situation of property restitution in Albania with the political and economic criteria for a future EU accession.

## Part One - THE STATE OF PLAY

A plethora of laws on privatisation and restitution, and recently also on legalisation of illegal constructions, has been adopted since 1991. Some of these have been amended several times; they have been interpreted and implemented by High Court decisions and in part abrogated by the Constitutional Court.

### Chapter I- THE LEGISLATION UP TO 2004

#### 1. The three privatisation laws (1991/2)

Legislation on private property started out on the wrong foot in post-communist Albania: the constitutional right to private property<sup>4</sup> was detailed in the Law on Private Property of 1991<sup>5</sup>. This law allowed for the transfer of building sites into property against payment, and included the right to sell them (Art. 21.1), but did not regulate the property rights of the pre-1945 land owners. As a result, building sites owned by the latter were transferred to the new owners, thus creating confusion in the legal situation, which may last until today<sup>6</sup>. The same applies in principle to a law of 1992,<sup>7</sup> which gave tenants the right to buy and sell state-owned flats (Arts. 1, 5). The land on which the block of flats was situated (as well as the courtyard surrounding the building, if constantly used and maintained by the tenants, Art. 10.3) was transferred into their co-ownership (Art. 10.1). The property rights of the pre-1945 land owners were expressly excluded in order to be regulated in a separate law (Art. 10.2).

As regards agricultural land, the Law on Land of 1991<sup>8</sup> did not deal with the rights of the pre-1945 land owners either, whose agricultural property had been given to farmers in 1945<sup>9</sup>. Rather, the land was given for free to families who had been living on it until 31.8.1991, or to legal and natural persons (Art. 3 Law on Land). Old families and newcomers who had moved into the villages after 1945 were eligible for land on the same basis<sup>10</sup>. However, it could not be bought or sold until 1995<sup>11</sup>, but could be given into lease since 1993<sup>12</sup>. As a result, still in 2001 80% of 952 interviewed farmers said that part of their land was claimed by third persons<sup>13</sup>.

Key factors for the choice of particular reform procedures are the history of the land ownership, including the post-collectivisation ownership status, the length of

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<sup>4</sup> Arts. 11 and 27 of *Law No. 7491 of 29.4.1991 on the major constitutional provisions*, as amended.

<sup>5</sup> *Law No. 7512 of 10.8.1991 on the regulation and the protection of private property, free initiative, private and independent economic activity and privatisation*, as amended.

<sup>6</sup> Halili, E. And Salamun, M., p.128

<sup>7</sup> *Law No. 7652 of 23.12.1992 on the privatisation of state-owned flats*.

<sup>8</sup> *Law No. 7501 of 19.7.1991 on land*, as amended (and later *Law No. 8053 of 21.12.1995 on granting ownership of agricultural land without compensation*; a draft amendment of 28.1.2008 provides for the compensation with other land of users of land within urban and tourist zones given to them before February 1996 and for which they have documents of use. See at <http://www.keshilliministrave.gov.at>).

<sup>9</sup> Based on *Law No. 108 of 29.8.1945 on the agrarian reform*.

<sup>10</sup> Lemel 2000, p. 29

<sup>11</sup> Art. 2.2 Law on Land was repealed by Art. 10 of *Law No. 7983 of 27.7.1995 on buying and selling agricultural land, meadows and pastures*, later repealed and replaced by Law No. 8337 of 30.4.1998.

<sup>12</sup> Amendment by Law No. 7715 of 2.6.1993.

<sup>13</sup> Aliko, H., p. 10

Communist rule, the ethnic origin of pre-collectivisation owners and the equality of pre-collectivisation assets distribution. In Albania, where pre-collectivisation land was historically more concentrated than in other countries (as Bulgaria), justice and social equity were conflicting objectives during land privatisation. It is claimed that in Albania the choice between restitution and distribution of land became a choice between justice versus efficiency and equity. Restitution of land to former owners was viewed as if it would recreate a feudal ownership structure. Former land owners and collective farm workers differed strongly in their choices regarding reform policies. The government, dominated by the anti-communist Social Democratic Party, chose to redistribute land to rural population on an equal per capita basis with partial financial compensation for former owners. In Albania the large rural population required all the land for distribution, even if in small plots sufficient for household<sup>14</sup>.

## 2. The two laws for restitution and compensation of properties (1993)

The first law actually dealing with restitution was the Property Restitution and Compensation Law passed in 1993<sup>15</sup>; however, it was criticised for being complicated, partly open to different interpretations and for leaving considerable discretion to the restitution commission<sup>16</sup>. It included building sites and buildings constructed on them, but excluded agricultural land distributed on the basis of the Law on Land of 1991 (Art. 2) as well as land of the King<sup>17</sup> and of foreign or joint venture societies (Art. 23). Furthermore, it limited the restitution of land to the size of 1 ha (Art. 5.1)<sup>18</sup>. In a clear preference for *return*, land bought after 1.1.1991 from the State to construct buildings was to be restituted<sup>19</sup> to the former owners, while the new owners were to be compensated by the State for the expenses incurred (Art. 12.1). However, land with businesses offering services and the buildings constructed for them were given into a limited kind of co-ownership of the old and new owners (Art. 17); both provisions were later declared unconstitutional by the Constitutional Court<sup>20</sup>.

The restitution of agricultural land was foreseen in the Agricultural Property Compensation Law passed also in 1993<sup>21</sup>. This law spelt out a clear preference for *compensation* of the pre-1945 land owners and their successors (Art. 1). Complete compensation was granted for land up to 15 ha; land of larger size was treated according to a formula provided in the law and the upper limit for compensation was determined as 43.5 ha (Art. 8)<sup>22</sup>. Excluded from the scope of the law was land belonging to the former King, foreign and joint venture companies and other special

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<sup>14</sup> Swinnen J. p. 654

<sup>15</sup> Law No. 7698 of 15.4.1993 on the restitution and monetary compensation of former owners, as amended, abrogated by Law No. 9235 of 29.7.2004.

<sup>16</sup> Kelm, K. *et al*, p. 7; Lusho, Sh. and Papa, Dh., p. 7

<sup>17</sup> But see now Law No. 9063 of 8.5.2003 on the status of the successor of the former royal family.

<sup>18</sup> Former owners with land between 1 and 10 ha were to be compensated with an additional 10% and those with land of more than 10 ha with 1% (Art. 5/2); however, compensation was not implemented.

<sup>19</sup> Note on terminology: This report uses the term “*restitution*” to refer to the physical return of immovable property, as opposed to compensation either in money or in kind/with other property.

<sup>20</sup> Decision No. 4 of 8.4.1994.

<sup>21</sup> Law No. 7699 of 21.4.1993 on the monetary compensation or compensation by other land of former owners of agricultural land, pastures, meadows or forest land, as amended, abrogated by Law No. 9235 of 29.7.2004.

<sup>22</sup> The compensation was to be paid in the form of state obligations issued in Lekë, which could be exchanged for state property until 31.12.1999 and subsequently for a period of 5 years for Lekë (Art. 10).

types of land, such as land of collaborators of the nazi-fascist occupants (Arts. 11, 12). A 1995 decree<sup>23</sup> provided for the compensation by land in tourist zones and residential areas; however, several amendments created a complicated legal situation<sup>24</sup> and the decree was barely implemented. Decisions issued on the basis of the Agricultural Property Compensation Law, which have not been implemented, are considered valid as to the recognition of the right of ownership, and the Regional Office determines whether restitution of the immovable property is possible or compensation applies (Art. 22 of the Property Restitution and Compensation Law of 2004). There have been many decisions of the High Court, the Constitutional Court and the ECtHR dealing with the 1993 laws and their implementation (see a list of the decisions in the annex). The ECtHR found in more than one occasion that Albania has violated the obligations imposed by Article 1 of Protocol No. 1 of the European Convention on Human Rights regarding the issues of compensation and restitution. The Albanian Government sustained that the failure to execute final judgments was the result of objective circumstances, such as a lack of funds, confusion over areas of competence and social legislative and political turmoil in Albania. However it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt.

Only in 1995 a law<sup>25</sup> provided certain restrictions on the transfer of property from State to private ownership, until the restitution process would be completed (Art. 3). However, the law excluded agricultural land and foresaw broad exceptions for occupied property, for example, if investments had started, but had not been completed on the land, while the former owners were referred to their right to compensation with other property (Art. 4).

## Chapter II- THE LAW CURRENTLY IN FORCE

### 1. Law on restitution and compensation of immovable property (2004)

The right to property is provided in the Albanian Constitution of 1998 (Art. 41)<sup>26</sup>, which also set a deadline of two to three years, after its entry into force, for the Assembly to adopt laws for the just resolution of different issues related to expropriations and confiscations done before the approval of the Constitution (Art. 181.1). The Law on Restitution and Compensation,<sup>27</sup> which is currently in force, was adopted in 2004, three years after the abovementioned deadline had passed (e.g. on 3.10.2002 in Resolution No.1 the Assembly requested the Special Committee for Property to speed up the drafting process)<sup>28</sup>, after OSCE had brought together the Socialist Party (SP), the Democratic Party (DP) and the Republican Party in a

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<sup>23</sup> *Decree No. 1254 of 19.10.1995 on the compensation of former owners of agricultural, non-agricultural and occupied land*, as amended, abrogated by Law No. 9235 of 29.7.2004. The decree amended the Property Restitution and Compensation Law of 1993 and the Agricultural Property Compensation Law of 1993, a change of a law by decree being a legislative technique detrimental to the rule of law. Now abrogated by Law No. 9235 of 29.7.2004.

<sup>24</sup> Law No. 7699 was complemented by Law No. 7836 of 22.6.1994 and changed by Decree No. 1254 of 19.10.1995. The decree was then adopted and changed by Law No. 8024 of 2.11.1995, which introduced also compensation by other plots of land, as well as by Decree No. 1359 of 5.2.1996 adopted by Law No. 8084 of 7.3.1996. Law No. 7699 was amended by Decree No. 1489 of 16.5.1996 adopted by Law No. 8118 of 9.7.1996.

<sup>25</sup> *Law No. 7980 of 27.7.1995 on the buying and selling of building sites*, as amended.

<sup>26</sup> Constitution of the Republic of Albania, Law No. 8417 of 21.10.1998, as amended.

<sup>27</sup> *Law No. 9235 of 29.7.2004 on the restitution and compensation of immovable property*, as amended.

<sup>28</sup> See also World Bank, p. 90

common technical working group on the draft law (Venice Commission 2004, OSCE Presence in Albania). The law was expected to provide for legal security by regulating property relationships in a final way. In the meantime, however, it has been amended four times<sup>29</sup>.

## 2. Scope, objects and compensation criteria

The law establishes a preference for the *return* of immovable property (as defined in Art. 142 of the Civil Code<sup>30</sup>), wherever return is possible. The property must either have been expropriated since 29.11.1944, or sequestered on the basis of Art. 14 of *Law No. 37 of 13.1.1945 on extraordinary tax for war profits* and obtained after 7.4.1939 (Art. 4)<sup>31</sup>. Excluded from the scope of the law is agricultural land over 100 ha (60 ha before the 2006 amendment) (Art. 6.1). Immovable property that serves a public interest as defined in Art. 7 cannot be restituted; such interest constitutes *inter alia* the bulk of the cases of occupied property based on privatisation laws up to 1995 (as listed in Annex 1 of the law), which considerably restricts the scope of the restitution. However, the law explicitly includes land in tourist zones<sup>32</sup> (Art. 6/1b). Property which is no longer used for a public purpose must be restituted to the former owner who has to pay back any compensation received (Art. 10). The restitution of movable property is left to regulation by another law (Art. 5).

The law restitutes agricultural land up to 100 ha, if the former owner did not profit from the Law on Land of 1991; otherwise, land or compensation gained in this context must be considered in the restitution (Art. 6/1a). A building site that has been transferred to third persons is restituted to the former owner, if no permanent buildings have been legally constructed on it, while the third person is given by the State the value of the purchase multiplied by the price increase index (Art. 8.1). If permanent and legal buildings owned by the State have been constructed on the site, different rules apply: if the buildings are no longer used for public purposes the State has to pay rent and the former owner has the right of the first purchase. If the state-owned buildings are legally used by third parties and the value of the investment is more than 150% of the value of the building site, the third party shall pay to the State within six months the value of the building site at the market price and the State shall pay the building site value to the former owner. Otherwise the building site is to be restituted to the latter, who has the right of the first purchase after expiration of the contract. If the investment is less than 150% of the value of the building site, the property is restituted to the former owner, who has the right of the first purchase (Art. 8/1)<sup>33</sup>.

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<sup>29</sup> By Law No. 9388 of 4.5.2005, which extended the deadlines for the submission of requests, by Law No. 9583 of 17.7.2006, which basically extended the kind and size of the property to be restituted and changed the institutional framework for the implementation of the law, and by Law No. 9684 of 6.2.2007, which detailed the procedures to be applied. The fourth amendment, Law No. 9898 of 10.4.2008 “on some additions and changes to Law No. 9235, dated 29.7.2004 “on the restitution and compensation of property” as amended”, which had been initiated by an MP of the Republican Party, extended once more the deadline for the submission of documents.

<sup>30</sup> The Civil Code, Law No. 7850 of 29.7.1994, as amended, was adopted in 1994.

<sup>31</sup> The second case was inserted by the 2006 amendment (though a similar provision inserted in the restitution law of 1993 had been declared unconstitutional by the Constitutional Court in Decision No. 16 of 17.4.2000).

<sup>32</sup> On the basis of *Law No. 7665 of 21.1.1993 on the development of zones with tourism as priority*, as amended.

<sup>33</sup> Art. 9, which provided that flats leased before the entry into force of the Law on the Privatisation of Flats of 1992 are restituted to the former owners, if the housing needs of the tenants are met in any way possible, was abrogated by the Constitutional Court in Decision No. 11 of 4.4.2007. Previously, the Constitutional Court had abrogated Art. 9.1 with the same wording in Decision No. 26 of 2.11.2005 of for violating the principle of legal security, but it was reintroduced in the 2006 amendment.

Where restitution is not possible, the State compensates the former owners with (a) other immovable property of the same type of equal value in State ownership; (a/1) public immovable property located in zones with tourism development as priority; (b) other immovable property of any type of equal value in State ownership; (c) shares in companies with State capital or where the State is co-owner with a value equal to the immovable property; (ç) the value of objects that are subject to the process of privatisation; or (d) money exempt from fees and taxes (Art. 11). The immovable property used for compensation may be located outside the administrative-territorial borders of the region of the original immovable property (Art. 12).

The value of the property that is compensated according to this law is calculated on the basis of the market value in accordance with the methodology proposed by the PRCA and approved by a decision of the Assembly (Art. 13.2)<sup>34</sup>. The valuation of the property is done by an expert group consisting of experienced and specially qualified persons in the fields of law, economics and engineering and established by the Regional Office (Art. 13.1). Regarding immovable property occupied by the State, the former owners have the right of the first purchase, to be detailed in sub-legal acts of the Council of Ministers and registered in the Office for the Registration of Immovable Property (Art. 14). Any restitution or compensation gained, based on another law, must be considered (Art. 6.3).

Religious communities have the same rights as private individuals in matters of property restitution or compensation. However, before the amendment of 2006 which extended the size of the property to be restituted to 100 ha, the religious communities questioned the law's limitation on property restitution to 150 acres (approximately 56 ha)<sup>35</sup>.

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<sup>34</sup> To this respect, the Assembly adopted *Decision No. 183 of 28.4.2005 on the methodology of land evaluation*, which determines the value of agricultural, urban and tourist land as well as buildings on the land; before the Constitutional Court had required that in compensating third persons the market value must be applied (Decision No. 12 of 21.3.2000).

<sup>35</sup> International Religious Freedom Report 2007

## Part Two - THE IMPLEMENTATION PROBLEMS

### Chapter I- THE COMPLEX LEGAL FRAMEWORK

#### 1. Property restitution

The legal situation governing immovable property in Albania is very complex. One of the reasons for this is that restitution legislation rather reflects the political orientation of the government in power, which tends to take into consideration the interests of either the pre-1945 owners (former owners) or the new (post-1991) owners. Since the first post-communist elections in 1991, in which the SP won a majority of votes, there have been three changes in government (1992 democratic majority, 1997 socialist one, 2005 again democratic).

Restitution of immovable property cannot be granted, if the property on which buildings have been illegally constructed is involved in the **legalisation process**, until the legal time-limitations for the legalisation of buildings in informal zones and other informal objects located within formal territories have expired (see for a definition of these terms in the annex); however, the former owner can opt for compensation (Art. 28/1.1 of the Law on Restitution and Compensation of 2004). This restriction does not apply to immovable properties which have been put by the State at the disposal of third parties by leasing, emphyteose or concession, etc., regardless of the improvements or buildings constructed on them (Art. 28/1.2 of the Law on Restitution and Compensation 2004). Basically, the Law on Legalisation of 2004<sup>36</sup> created the possibility to legalise illegal constructions. The property of the land on which the building was put up was transferred against payment, payment in instalments or given into lease for a determined time period to the owner of the building, if the land was owned by the State. If it was owned by a private person, the transfer should be done according to the Civil Code. If a transfer was not realised, the owner of the land should be compensated according to the Law on Restitution and Compensation 2004 (Art. 10). In addition, another law<sup>37</sup> provided for the legalisation of additions to buildings.

These laws were abrogated and replaced by the Law on Legalisation of 2006,<sup>38</sup> which allowed for the declaration of illegal constructions within 60 days after its entry into force; otherwise they were to be demolished (Art. 7). Following a lengthy procedure, the Council for Territorial Adjustment of the Republic of Albania issues a permit, which is registered in the cadastre (Arts. 11, 15). If there already exists a registration of the former owner, he or she is compensated by other land or money (Art. 15.2)<sup>39</sup>. There are draft amendments<sup>40</sup>, which were returned to the Assembly for re-examination by the President of the Republic on 29.4.2008<sup>41</sup>. Subsequently, they were discussed in the Parliamentary Committee for Economy; however, on 3.6.2008

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<sup>36</sup> Law No. 9304 of 28.10.2004 on the legalisation and urbanisation of informal zones.

<sup>37</sup> Law No. 9209 of 23.3.2004 on the legalisation of additions to buildings.

<sup>38</sup> Law No. 9482 of 3.4.2006 on the legalisation, urbanisation and integration of illegal constructions, as amended.

<sup>39</sup> The evaluation procedure depends on the use of the construction and is explained in Art. 17.2. See, however, also Venice Commission 2007, p. 22

<sup>40</sup> Law No. 9895 of 10.4.2008.

<sup>41</sup> See for reasoning 'Topi: Pse s'dekretova ligjin për legalizimet', Nevila Perdoj, *Shekulli*, 2 May 2008 08:52:00, at <http://www.shekulli.com.al>.

the Assembly lacked the necessary majority to adopt the amendments, as the SP did not attend the Parliament session in protest that many of its proposals, such as those intended to avoid a curtailment of the competencies of the local authorities, had not been taken into account by the DP in the draft<sup>42</sup>. The draft amendments were adopted on 9.6.2008, as the DP reached 71 votes, while there were 15 votes against. It is reported that the amendments leave the local government units only two months to carry out the qualification of illegal constructions<sup>43</sup>.

Another reason why property cannot be restituted can be found in the **privatisation process**, which allegedly has been marked by irregularities. In peri-urban areas, new large-scale residential settlements appeared in the early 1990s due to the massive internal migration that took place at that time. Formally, private buildings were built on public land with no legal title. However, the residents have papers from transactions in the early 1990s that took place as the central Government was overwhelmed by the speed of internal migration between 1991 and 1994. The privatisation of agricultural land without payment, e.g. according to the Law on Land of 1991, must be verified by the Ministry of Agriculture, Food and Consumer Protection<sup>44</sup>.

Directly linked to the privatisation process, the process of registration of a piece of land in the cadastre constitutes a further impediment to restitution. As the first registration has proceeded to develop accurate maps and surveys, an extremely complex and fragmented pattern of rural and urban land holdings has been revealed. Land fragmentation hinders the application of civil law, functioning of markets and the practical use of land and property. Urban fragmentation arises from the standards of measurement applied in housing privatisation and restitution. Land parcels accompanying individual houses are limited to 300 square meters. For apartment buildings, land parcels have been created directly underneath the buildings and extending one meter from the outer walls. In both cases, the land surrounding the house or building is kept in State ownership, despite the fact that the occupants use these areas. Similarly, in many cases of restitution, a house or building and its underlying land are separated from the surrounding land, which is transferred to the former owner<sup>45</sup>.

The Law on Property Registration<sup>46</sup> provides that the Office for the Registration of Immovable Property registers the titles and other real rights on the basis of legal documents that prove the ownership (Art. 2/1). The registration is refused, if it overlaps with another property right which was registered earlier, until the issue has been resolved by the courts (Art. 27). Before recent amendments, the law established

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<sup>42</sup> See 'Shtyhet dekreti për legalizimet, mungojnë deputetët e djathtë', F. Braushi, Shekulli, 3 June 2008 08:08:00, at <http://www.shekulli.com.al>. A boycott of Parliament as a means of expressing discontent with and distrust of the policies of the governing party is not unknown to Albanian politics; for example, following the adoption of the Constitution in 1998 by an SP dominated Parliament, the DP embarked on a boycott, which however was ended in the context of the Kosovo crisis.

<sup>43</sup> Then they prepare (in cooperation with the Regional Offices of the Agency of Legalisation, Urbanisation and Integration of Informal Zones /Constructions) the data of the buildings without permit, based on digital aerial photos and on the divisions of the cadastre. Also, the law will include timelines, which provide, first, for the realisation of the process of compensation and, then, for the legalisation. After verification whether the land is registered as the property of third persons, the Agency forwards to the Government for decision the list for the compensation of the legal owners. Then the legalisation is carried out. See Kuvend, miratohet projektligji për legalizimet, Shekulli 9 qershor/ ora 20:05, <http://www.shekulli.com.al/news/101/ARTICLE/26895/2008-06-09.html>.

<sup>44</sup> Art. 28/2.1 of the Law on Restitution and Compensation 2004.

<sup>45</sup> In this context, the Council of Ministers has adopted a Draft law of 28.1.2008 on the examination of the legal validity of the creation of property titles on agricultural land.

<sup>46</sup> *Law No. 7843 of 13.7.1994 on property registration*, as amended.

a presumption for certain documents, without considering the fact that some of these might have been falsified or issued as a result of bribery<sup>47</sup>.

Consequently, former workers have taken land under their ownership, although deprived of any relevant documentation, before the issuance of the relative legislative acts. Meanwhile, for the former owners of agricultural land the procedures were longer. At the time of the first land distribution, the former workers had taken under their ownership or just for use a big amount of land and when a former owner challenged legally its former property, the concrete property was found to belong to a former farm worker.. In such cases, some necessary modifications of confines have taken place, but it still remains a conflictual issue until today.

Only the agrarian families that live in the countryside benefited from the provisions of the Law on Land of 1991, while the families that possessed agricultural land before 1944, but actually live in towns, did not benefit at all of the law. The same happened with the former big land owners. Moreover, the former owners of land, which once formed part of agricultural land owned by the State, would enjoy the right of compensation in value, given that they did not profit of compensation in kind from the implementation of the Law on Land of 1991. In order to regulate this category, a Decision of the Council of Ministers<sup>48</sup> was approved in 1992: it provided that agricultural land sequestered in order to create farms should be distributed to the former owners, under the condition, however, that these families live in the town or district where the farm was located.

## 2. Compensation

The process of compensation is considered a failure, due to the absolute lack of the necessary sub-legal acts that define the ways, procedures and regulations of the compensation. These acts were never passed, except from certain acts that regulate compensation issues for coastal areas or other tourist zones that in reality were used mostly for abusive reasons (political/economic interests and corruption) than for solving the problem itself<sup>49</sup>.

According to a certain opinion, the lack of sub-legal acts led to the implementation of the compensation process only in exceptional cases, connected with personal interests of certain “vip” individuals, members of Restitution and Compensation Property Commissions, etc. In these cases, the compensation took place in kind (land), whereas other forms of compensation (stocks etc) were never implemented. Therefore, the majority of former owners<sup>50</sup>, even though they have been holding for many years the favourable decisions of the respective commissions, have never benefited from any form of compensation.

Another important question is the illegally constructed buildings. In certain zones of the periphery of Tirana as well as in other urban centres, entire districts have been created in this way. These buildings have been constructed on State and on private land. The private land was restituted to the former owners with the decisions

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<sup>47</sup> “The ownership *must be considered as determined* by the ownership documents according to Law No. 7501 of 19.7.1991, privatisation contracts based on Law No. 7652 of 23.12.1992, decisions of restitution commissions according to Law No. 7698 of 15.4.1993, other laws or other official documents that recognise the private ownership, or court decisions”.

<sup>48</sup> Decision of Council of Ministers no. 452/17.10.1992, as amended by Decision of Council of Ministers no. 161/08.04.1993 “on the Restructuration of Agricultural Farms”.

<sup>49</sup> Interview with Sokol Puto, April 2008.

<sup>50</sup> According to the opinion of Sokol Puto, 90% of them have never benefited from the compensation provisions.

of the Commissions on the property restitution and it was registered as such at the Registration Offices. However, this land never returned under the possession of the former owners, because it was illegally occupied and covered with buildings.

After the approval of the Law on Legalisation, all these illegal buildings will be legalised in favour of the constructors. According to legal procedures, the land where buildings have been illegally constructed will change ownership from the former owner to the constructor, whereas the former owner will be compensated. However, until today, no sub-legal act or any concrete and detailed procedure has been issued. Moreover, there are no provisions on the form, value and time of the compensation to be given to former owners, whose properties have been occupied with illegal buildings<sup>51</sup>.

## Chapter II- ADMINISTRATIVE PROCEDURES AND ADMINISTRATIVE DEFICIENCIES

### 1. Administrative procedure and institutions

The request for recognition and restitution or compensation of immovable property must be submitted in person or via mail and is registered with the protocol record book. The deadline for filing requests was extended twice since the approval of the original law and will be closed on 31.12.2008 (Art. 17.1, as amended). The Regional and Central Offices must examine the request and decide within three months from its registration, but can postpone the decision for another 30 days by informing the expropriated subject through a motivated decision (Art. 17.2).

The procedure for requests of recognition and restitution of immovable property is conducted in first instance by the PRCA Regional Office, which replaced the Local Commission of property restitution and compensation (Article 22/1), located within the territory of the region where the property is situated<sup>52</sup>. Its decisions can be appealed within 30 days to the Central Office. In addition, the decisions of the former Local Commissions for the restitution and compensation of property, the former District and Municipality Commissions for the restitution or compensation of the properties of former owners can be appealed to the PRCA Central Office. An appeal must be decided by the Central Office within 30 days from its registration. The decision of the Central Office, which upholds the one of the Regional Office, can be appealed within 30 days to the District Court in the territory of the region where the Regional Office is located. The decision which settles the issue to its merits can be appealed to the Tirana First Instance Court (Art. 18.1). If no complaint or appeal is filed, the decision becomes an executive title to be executed by the Bailiff Office (Art. 16.3). The Bailiff Office<sup>53</sup> is composed of 150 staff members, from which 50 work in the Central Office, and the other 100 in the Regional Offices.

The Law on Restitution and Compensation instituted the State Committee for Property Restitution and Compensation (*Komiteti Shteteror per Kthimin dhe Kompensimin e Pronave*), composed of five members elected by Parliament. The Property Restitution and Compensation Agency (PRCA) that replaced the State Committee for Property Restitution and Compensation (Article 22/1) is charged with

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<sup>51</sup> Interview with Naime Zagorcani, April 2008.

<sup>52</sup> See also *Decision No. 747 of 9.11.2006 on the procedures of collecting, elaborating and administering the requests of expropriated subjects during the process of recognition, restitution or compensation of property.*

<sup>53</sup> Approved by *Order of Prime Minister No. 98 of 29.06.2007, "On the approval of structure and personnel of the SCPRC.*

the implementation of the law. It *inter alia* examines the requests and ascertains the authenticity of the documents submitted by the expropriated subjects, and juxtaposes them with the legal and sub-legal acts, or the court decisions, on which the expropriation, takeover, seizure or unjust deprivation of the property by the State was based. In addition, it confirms the ownership right in favour of the expropriated subjects by issuing the respective document on recognition, extent and modality of the restitution or compensation of the property, according to the model defined by the Council of Ministers. The modalities of the organisation and functioning of the agency, as well as of the procedures of the collection, processing and management of the requests from the expropriated subjects are to be defined by the Council of Ministers (Art. 15)<sup>54</sup>. The Law provides that the methodology for the valuation of the property for compensation by the PRCA requires the issue of appropriate maps. However, to date those maps have not been adopted.

A Property Compensation Fund, which is financed from budgetary incomes, incomes created by the Law on Restitution and Compensation from donors, has been instituted and is to pay compensation, for a period of 10 years starting from 2005 (Art. 23). In addition, an Immovable Property Fund for Physical Compensation, which includes immovable state-owned property, has been instituted (Art. 28)<sup>55</sup>.

## **2. The deficiencies of administrative infrastructure**

During the implementation of the Law on Restitution and Compensation of 2004 the work of the local commissions in charge of examining the applications related to property restitution resulted to be ineffective, because these structures had been set up too late. In addition, the local commissions were not equipped with the necessary infrastructure (offices, desks, computers, etc). The commissions dealt only with cases of restitution in kind, refusing, hence, the applications for compensation. Moreover, the 12 Regional Committees on Restitution and Compensation that must adjudicate the claims began working only in April 2005 and have not (as of May 2005) received training, nor has any staff been hired for the PRCA, which must conduct the procedures, verify standards and hear appeals (The World Bank).

The methodology of property valuation was approved with delay. As a result of that, there was a slowdown in the mapping procedure of the property value intended for compensation. Unfortunately, even today the maps in question have not been completed yet for all the regions of the country. In addition, no compensation in kind, in stock or share in privatisation has been applied. The only step that has been taken regarding property compensation was the distribution, as from 2005, of a financial fund of 2 million USD at the end of each year. During the last three years, about 300 former owners have benefited from this fund, each one of them for no more than 200 m<sup>2</sup>. Therefore, in most cases, this was a partial money compensation. This number is insignificant in comparison with hundred of thousands of former owners who have been waiting for more than 10 years to be compensated for their properties.

The whole process is moving too slowly due to delays in setting up new structures of the PRCA both at central level and in regional departments. In addition,

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<sup>54</sup> See *Decision No. 566 of 23.8.2006 on the organisation and functioning of the Property Restitution and Compensation Agency*.

<sup>55</sup> See also *Decision No. 566 of 5.9.2007 on the adoption of procedures for the distribution of the fund of monetary compensation for the year 2007* (most recently *Decision of 4.6.2008 on the adoption of procedures for the distribution of the fund of monetary compensation for the year 2008*) and *Decision No. 567 of 5.9.2007 on the adoption of criteria and procedures, the determination of properties, the fund for immovable property, for physical compensation*.

the staff of this Agency is unexperienced. Undoubtedly, political factors are playing an important role, particularly due to the party alternation in the country's government.

On the other hand, even if the Law on Restitution and Compensation of 2004 has been issued four years ago, the recoverable parts of State land as well as the free land parcels that could be used for compensation in kind of the former owners have not been identified yet. Therefore, until today, due to the aforementioned shortages and lack of political will, the process of compensation in kind of the former owners has not started at all<sup>56</sup>.

### **3. Other administrative problems**

The process of distribution of agricultural land, based on the Law on Land of 1991, even though it continued for several years, failed to be equally implemented all over the country. Under this law, the distribution of land had to take place according to the decisions made by the Commission of Land in villages. But this criterion was implemented in a discretionary way and only in certain villages. Meanwhile, for other pieces of land, distribution took place according to the old pre-1944 land boundaries. On one side, the number, location and boundaries of State properties cannot be specified until restitution parcels and private parcels (under the 1991 Law on Land and other laws) have been determined. On the other side, until state property is not identified, it is impossible to specify which lands will be available for alternative grants to former owners. The lack of information about alternatives and values has caused the former owners to resist making the choice between continuing their claims and accepting potential compensation.

The process of compensation to the former owners of agricultural land that, according to the 1991 Law on Land has been distributed elsewhere, is also problematic. There are thousands of hectares of land whose ownership has been returned from the respective Commission to the former owners. However, according to the 1991 Law on Land these pieces of land have been distributed and transformed to properties of the former farm workers' families.

Regarding property restitution, a part of former owners hold in their hands the decisions of the Commission on property restitution in kind, but these decisions cannot be executed because the respective pieces of land have been distributed to the former farm workers or have been illegally occupied<sup>57</sup>.

An important part of the state-owned land in tourist zones and coastal areas has been rented for 99 years in order for tourist villages to be built. In reality, however, this process has been deformed because many touristic buildings have already been sold, transforming them into private properties. Consequently, even in these zones, there is no possibility for compensation to the former owners<sup>58</sup>.

#### **3.1. Extra-legal actions.**

As it is mentioned in a World Bank report (2005), there is a risk that informal and corrupt transactions continue to dominate even if the Government is now trying to implement the law adopted in July 2004, which includes key policy choices. In fact, extra-legal actions, such as occupation of land in towns mainly by migrants from the countryside and the mountains, who try to preserve their occupant status, e.g. by threatening to apply force on the former owners if evicted and allegedly pay judges to

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<sup>56</sup> *Op. cit.* footnote 42.

<sup>57</sup> *Op. cit.* footnote 44.

<sup>58</sup> *Op. cit.* footnote 42.

influence the outcome of court decisions, when sued<sup>59</sup>, complicate further the situation. Thus the former owner may or may not have a judicial title for eviction, but he has no means to implement it.

As far as the distribution of agricultural land is concerned, it should be stressed that serious abuses and malformations have taken place. In fact, the free agricultural land was given to farm workers without strict control. As a result of that, some individuals acquired land without having been former workers on it<sup>60</sup>.

### Chapter III- OTHER PROBLEMS

The State-owned land is too small, in comparison with the amount of requests of compensation. Besides, these pieces of land are located either in mountain zones and far away from the inhabited centres, thus with no significant value or, in other cases, buildings have been illegally constructed on them. Under these circumstances, when the compensation procedures start, it will be very difficult for the former owners to accept a compensation in kind, given that their former properties were located in urban zones and have therefore a higher value. Consequently, the only solution would be the compensation in money.

It must also be stressed that the compensation criteria differ according to zones, but prices are rather expensive (for instance, the value of land used for compensation in Tirana is between 200-800 Euro/m<sup>2</sup>). Keeping in mind the fact that the available land used for compensation in kind could cover only a tiny part of the State's obligation towards the former owners, the financial compensation seems impossible to be realised in practice, because the total amount would reach billions of euros<sup>61</sup>.

The implementation of paragraphs "c" and "ç" of Art. 11 of the Law on Property Restitution and Compensation of 2004, which provides for the compensation of the former owners in stocks or through the participation in the process of privatisation of State buildings is absolutely inoperative, due to the fact that there is no building left to be privatised, except from those of strategic use, that obviously are not included in that process. In the case of ALBTELECOM privatisation, for instance, no money from the price of its sale was given for compensation to the former owners<sup>62</sup>.

The legal entity charged with deciding claims (the National Committee for the Compensation and Restitution of Properties) commenced its operation in the summer of 2005 when the Government of Albania established a fund of USD 2 million for compensation. In December 2005, because the claims were far larger than the fund, a lottery was organised and 32 owners were compensated. The 2006 fund has been increased to USD 3 million, which is still very little in comparison to the large number of compensation requests.

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<sup>59</sup> Stahl *et al* 2007, p.8

<sup>60</sup> Cakalli P., Papa L., 2005, p.4

<sup>61</sup> *Op. cit.*, footnote 42.

<sup>62</sup> *Ibid.*

## CONCLUSIONS

The **legal situation** governing immovable property in Albania is very complex. The provisions of the applicable compensation laws and administrative procedures proved unsatisfactory so far. The rights of former owners remain unsettled to a significant extent.

Albania acted with inefficacy regarding the creation of the necessary **administrative infrastructure** foreseen in the respective legal national acts. The Property Restitution and Compensation Law of 1993 provided for various forms of compensation when the original property could not be allocated to the former owners. The Council of Ministers which was supposed to define the detailed rules and methods for such compensation did not act efficiently. The bodies competent to deal with the compensation issues that emerged had not been set up and the situation had not changed with the entry into force of the Property Restitution and Compensation Law of 2004. Even after the adoption by the Parliament (28/4/2005) of the Law determining the methodology for the valuation of the property for compensation, the situation did not change.

### **The impact of property restitution on the future EU candidature of Albania**

In the Albanian political system, the only issue on which there has been steady consensus among all parties, that mostly hold very opposing positions, is the country's eventual EU membership. Property restitution in Albania represents a very complicated legal and factual situation, a 'Gordian knot'<sup>63</sup>, which forms part of the general problem of weak and corrupt State structures in any post-communist society, although it can appear to differing degrees. The question of property restitution affects the pre-accession process of Albania to the EU since it risks provoking the infringement of the Copenhagen political and economic criteria. As it is stipulated in the Albania 2007 progress report<sup>64</sup>, Government measures to combat corruption in the judiciary led to a continuous conflict between the executive and the judiciary, in particular the office of the General Prosecutor. The law on conflicts of interest needs to be further clarified. In addition, as it is concluded in the judgments of the ECtHR, Albania has violated the obligations imposed by the European Convention on Human Rights in several cases regarding property compensation and restitution<sup>65</sup>.

As far as the economic Copenhagen criteria are concerned, according to the Albania 2007 progress report, among other things (for example the high level of corruption and the outstanding deficiencies of the judiciary), uncertainty about property rights continued to hinder economic development and investment. It should be added that land fragmentation obstructs the application of civil law, functioning of markets and the practical use of land and property. Each owner must reach agreement with neighboring owners or obtain administrative permits in order to carry out activities that would need simple management decisions in any EU country.

It is thought that corruption in State bodies is responsible for the bad performance of Albania on property restitution and for the unsatisfactory compliance with both the political and the economic Copenhagen criteria. In fact, a negative legacy of the Albanian communist period is the confusion between the ruling party

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<sup>63</sup> See 'KOMENT/Anti kushtetutshmëri në pronën mbi token', Gaqo Apostoli, Dërguar më: 31/05/2008 - 07:18, <http://balkanweb.com/sitev4/index.php?id=21528>.

<sup>64</sup> Albania 2007 Progress Report, Brussels, COM(2007) 663 final, 6.11.2007.

<sup>65</sup> See *Driza v. Albania*, Application no. 33771/02, Judgment of 13.11.07 and *Ramadhi and 5 others v. Albania*, Application no. 38222/02, Judgment of 13.11.07.

and the State. Whoever wins the elections, reserves the right to change the whole State structure. In practice, each Albanian Prime Minister appoints loyalists in all prominent positions, like in taxes-customs-roads administrations, in the police, etc. Politicians from both the largest parties run their own businesses, for example construction companies or are closely connected to businesses through kinship or other bonds. Parliament is not contributing much to progress since it is not properly performing its constitutional check on the executive branch and harbours groups that actively and effectively can obstruct progress in areas like anti-corruption and organised crime.

The changing of the law on legalisation and the non-implementation of the restitution laws have already frustrated the pre-1945 landowners and emotionalised the issue so that a solution is increasingly difficult to achieve. Unkept election promises and aiming for the votes of, respectively the pre-1945 or the post-1991 owners are, of course, parts of the political game. The Government's new anti-corruption strategy (2007-2013) does not include sufficiently concrete objectives and indicators<sup>66</sup>.

## **Recommendations**

### Long-term measures

As in every European democratic State, overcoming the existing legal insecurity depends on the political will and on the ability to reach and maintain a consensus of the political actors involved.

A long-term perspective needs to start with a legal framework for property restitution, which should take into account the legitimate interest of the persons affected by it. Although the legal framework was elaborated by a technical group consisting of the major parties and convened by the OSCE, the Property Restitution and Compensation Law of 2004 has been amended several times since its adoption. The Legalisation Law of 2004 was replaced by a new law in 2006. A stable legal framework, therefore, could only be created by passing a law with a super-majority, perhaps even by constitutional amendment, which could not be achieved by a DP- or an SP-led majority alone, but only by both largest parties together; a similar consensus mechanism should be found regarding a catalogue of necessary implementation measures. Whether such a super-majority can be achieved, is questionable, considering the distrust between the two main parties and the polarisation of the political landscape since 1991; maybe the prospect of European integration could lead to such consensus.

A stable legal framework, which creates legal security, is legitimate only if it is perceived as “just” by the population; in the case of property restitution, naturally, the population will be divided into the groups of the pre-1945 owners, the post-1991 owners and the illegal occupants. While the first two groups acquired the land legally and therefore are entitled to protection by the State, the latter may have claims based on falsified or false documents and/or threats to use force. The resolution of historical injustice must be the first step; therefore, any law and its implementation should be accepted by the majority of the pre-1945 owners, who ought to be consulted directly and involved seriously in the legislative drafting process.

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<sup>66</sup> “Political corruption in Albania, legislative developments and case studies” at [www.im.nrw.de/inn/seiten/korr/6\\_tagung/dokumente/bicja\\_manuskript.pdf](http://www.im.nrw.de/inn/seiten/korr/6_tagung/dokumente/bicja_manuskript.pdf)

However, remedying historical injustices should be kept out of the day-to-day politics and should not create new injustice; nobody who is entitled to protection by the State, because he or she has a valid legal title to property (as opposed to the illegal occupants), should be put in disadvantage or be disappointed in his or her trust in the law. Therefore, the post-1991 owners with proof of valid documents should be compensated and/or adequate new housing rights should be provided to them by the State.

The ECtHR indicated the type of measures that the Albanian State could take in order to put an end to the breaches found in the case of *Ramadhi and 5 others vs. Albania*<sup>67</sup>. It considered that Albania should designate the competent body, set out the procedural rules, ensure compliance with such rules in practice and remove all obstacles to the award of compensation under the Property Restitution and Compensation Law.

These objectives can be achieved by ensuring appropriate statutory, administrative and budgetary measures. These measures should include the adoption of the maps for the property valuation in respect of those applicants who are entitled to receive compensation in kind and the designation of an adequate fund for those applicants who are entitled to receive compensation in value, this in order to make it possible for all the claimants having successful Commission's decisions in their favour to obtain speedily the lands or the sums due. Such measures should be made available as a matter of urgency'.

The short-term measures recommended are the following:

- Making functional the Regional Offices for the property restitution and compensation;
- Finalising the immovable property value map;
- Enforcing the measures by police forces being in charge of evicting illegal occupants and who must enjoy special protection and be adequately paid, besides being deployed outside their own residential areas.
- Instituting regular exchange and cooperation between the actors of the legal system involved, such as judges and civil servants who should also be more generously remunerated, in order to limit corruption.
- Financing of the system (perhaps also the property compensation fund) from the proceeds seized in high-level corruption cases, once tried by the courts.
- Providing the infrastructure and training for the officials in charge of mapping, restitution and compensation.

This paper ends rather optimistically: Albania could fulfil its obligations and implement the recommendations of the European Partnership as reapproved by the Council in February 2008 on the question of property restitution and compensation and could, sooner or later, embark on a just and stable solution which would provide the legal security necessary for a viable property market and, in the long run, the chance of achieving EU integration.

The fact that on 4.6.2008 the Council of Ministers adopted a Decision for the execution of the ECtHR judgment on the *Gjonboçari* case to pay a compensation is a positive step. Many more need to follow, if this modern Gordian knot is to be untied.

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<sup>67</sup> *Ramadhi, op. cit.* 56.

## ANNEXES

### *Definition of the terms “informal zones”, “other informal objects” and “formal territories”*

Law No. 9304 of 2004, which is no longer in force, defined an “informal zone” as a) a zone constructed without any basis in town planning, b) a zone occupied by illegal constructions or c) zones that do not enjoy special protection by legal and sub-legal acts in force, as adopted by the Council of Territorial Regulation of the Republic of Albania (Art 3.1). An “illegal construction” was defined as an object built by a citizen within a territory designated as “informal zone”, which has not been built in compliance with the procedures provided by Law 8405/17.09.1998, “On urban planning” (Art 3.2).

A different definition can be found in the new Law No. 9482 of 2006, which defines an “illegal construction” as an object where the structure and roof have been finished, which is intended for living, exercising an economic activity and/or other functions (such as social-cultural, education, health care and other similar activities), located within a territory defined as “formal centre of habitation”, “informal zone” or “other territories”, which has not been built in compliance with the procedures provided by Law 8405/17.09.1998, “on urban planning”. The term includes also informal extensions and additions to legal objects within the territory of formal habitation centres.

An “informal zone” is a territory of over 5 ha occupied by illegal buildings, which does not enjoy special protection in legal and sub-legal acts in force.

Other informal objects can be seen as an “informal habitation block”, which is considered that territory of informal buildings with an area of 1 up to 5 ha inside or outside of a formal habitation centre and an “isolated informal building”, which is that object (or group of objects) built illegally in a territory/parcel up to 1 ha. “The boundary of the informal zone/habitation block/building” is the geographic line of the informal buildings territory approved by the CTARA in compliance with the provisions in power on the informal zones and the respective local government unit, through the elected organ and/or the CTA, per informal habitation block/building.

By contrast, “formal habitation centre” is the territory incorporated within the restrictive lines (the yellow lines) officially approved for inhabited urban (town) or rural (village) areas, while “informal habitation centre” is the territory with a surface of over 5 ha incorporated within the restrictive lines (the yellow lines) officially approved for the inhabited urban (city) or rural (village) areas. “Other territories” are the agricultural land (arable soil, fruit/vegetable plantations, fields of olives, vineyards) and non-agricultural land (forests, pastures and unproductive land) (Art 3.a-ë).

Some of these notions were to be changed by the draft amendments returned to the Assembly in April 2008.



**REPUBLIC OF ALBANIA  
THE ASSEMBLY**

**LAW  
No. 9235, dated 29.07.2004<sup>68</sup>**

**ON RESTITUTION AND COMPENSATION OF PROPERTY**

**As amended with Law. No. 9388, dated 4.5.2005, Law No. 9583, dated 17.7.2006, Law No. 9684, dated 6.2.2007 and Law No. 9898 of 10.4.2008<sup>69</sup>**

In reliance on articles 41, 78, 83 point 1 and 181 of the Constitution, upon the proposal of a group of deputies,

**THE ASSEMBLY OF THE REPUBLIC OF ALBANIA**

**DECIDED:**

**Article 1  
Object of the Law**

The object of this law is:

- a. the just regulation, according to the criteria of article 41 of the Constitution, of the issues of property rights that have arisen from expropriation, nationalisation or confiscation;
- b. restitution, and when according to this law restitution of property is not possible, compensation;
- c. the procedures for accomplishing restitution and compensation of property and the administrative bodies charged with its completion.

**Article 2 (amended by Law No. 9583)  
Right to Property**

Every expropriated subject enjoys the right to request the right of ownership, in compliance with this law, if the property was taken by the State according to legal acts, sub-legal acts, criminal court decisions or in any other unjust form since 29.11.1944, and the restitution or compensation of the property.

*The field of application of this law extends its effects on the immovable properties of Albanian citizens, created after 7 April 1939 and sequestered based on article 14 of Law no. 37, dated 13.1.1945 "Law on extraordinary tax for war profits".*

**Article 3 (amended by Law No. 9583)  
Definitions**

For the implementation of this law, the following terms have these meanings:

1. "Compensation" – means just remuneration, according to the market value of the property at the moment this remuneration is recognised, which is done in accordance with this law;
2. "Property" - means an immovable item as defined in the Civil Code;
3. "Expropriated subject" - means natural or juridical persons or their heirs whose property is nationalized, expropriated, confiscated or taken in any other unjust manner by the state;

<sup>68</sup> Published in Official Journal 61, dated 31.8.2004.

<sup>69</sup> Consolidated text as of 6 May 2008 based on the translation of the OSCE Presence in Albania, 2004, as updated in August 2006; the 2007 and 2008 amendments were included.

4. "Alienation" - means the transfer of ownership or other real rights from one natural or juridical person to another as provided in the Civil Code;
5. "Building site" - means land that is located inside the border line of cities and inhabited zones at the moment this law enters into force. When the inhabited zone does not have a border line, the building site will be considered the surface area occupied by the construction built on it and the functional yard. The surface of this yard is calculated as three times the surface of the construction, but not more than 500 square meters.
6. *"Industrial building site" is the land surface area which is located out of the bordering lines of the cities and inhabited areas on which permanent buildings have been constructed for economic purposes or serving for such function.*

#### **Article 4**

##### **Exclusions to this Law**

Provisions of this law are not applicable:

- a. for property gained as result of implementation of Law no.108, dated 29.08.1945 "On Agrarian Reform", with subsequent changes;
- b. for expropriations made against a just compensation and used for a public interest;
- c. for property donated to the state for which official documents exist.

#### **Article 5**

##### **Movable Property**

The restitution and compensation of movable property will be done with a separate law.

### **CHAPTER II**

#### **RECOGNITION OF THE RIGHT TO OWNERSHIP AND RESTITUTION OF PROPERTY**

##### **Article 6 (amended by Law No. 9583)**

##### **Recognition of the Right to Ownership and Restitution of Property**

1. Ownership to property is recognized and immovable property is restituted without limitation to the expropriated subjects, except for agricultural land, which is restituted or compensated *up to 100 ha, in case the expropriated subject (his heirs) did not profit from the implementation of Law. 7501, dated 19.7.1991 "On land"*.
  - 1/a. *When the expropriated subject (his heirs) profited land from the implementation of Law No. 7501, dated 19.7.1991 "On land" the amount restituted or compensated according to this law is calculated as a difference between the part that would belong to them in cases they did not profit from the implementation of Law. 7501, dated 19.7.1991 "On land" and the amount each of them profited from the implementation of this law.*
  - 1/b. *The expropriated subjects shall in accordance with the criteria of this law be recognized the right to ownership and shall be restituted also the immovable properties, lands located within the tourist territories, according to Law No.7665, dated 21.1.1993, "On Development of Zones with Tourism as Priority," amended.*
  - 1/c. *The expropriated subjects shall be restituted all those immovable properties under the ownership or use of the Ministry of Defense, which are not included in the armed force structure approved by the President of the Republic, as well as the agricultural land involved in the experimental-scientific activities of scientific research institutes, as well as in any other activity of various state institutions, but which are not within the destination of their activity.*
  - 1/ç. *In the cases where in the rented property the destination of the constructed buildings has been altered, for which agreement has been made to use for stimulated activities, the land shall be considered as unoccupied and shall be restituted to the expropriated subject.*  
*When the investment has been made on a land which is of public property, the contracting subject shall pay to the state within 6 months the value of the building site with the market price. The revenues ensured from the sale shall be included in the property compensation fund.*
2. The expropriated subjects, whose property was flooded as a result of the construction of the hydro-power stations, are treated according to the provisions of this law, except for cases when they have benefited by the law "On expropriations in the public interest". *The land will be valued as industrial building site.*
3. Expropriated subjects who have been compensated in accordance with the laws in force have the right to benefit from this law only for the part of property that has not been restituted or compensated.

**Article 6/1 (inserted by Law No. 9583)**

*Orchards and vineyards which are property of those expropriated subjects, whose lands have not been registered as agricultural lands, shall be considered as such for compensation purposes, according to this law.*

*Following the verification of their ownership, they shall be converted into agricultural lands based on the coefficient to be approved by the Council of Ministers.*

**Article 7 (amended by Law No. 9583)**

**Property not Subject to Restitution**

- 1. Immovable properties are not restituted, which serve a public interest and which:
  - a. serve to fulfil obligations of the Albanian state that are a result of treaties and conventions to which our state is a party;*
  - b. are occupied according to the legal acts set forth in Annex 1 of this law.**
- 2. In cases when it is proposed that immovable properties included in point 1 of this article be alienated, they pass to the expropriated subjects when the latter are not compensated.*
- 3. The properties defined in point 1 of this article are compensated according to the specifications set forth in this law.*

**Article 7/1 (inserted by Law No. 9583)**

**Restituted Properties Which Serve a Public Interest**

- 1. In all those cases where the international agreements, general urban development plans, or plans of economic development or tourism foresee for the properties restituted according to this law the start and development by the state or third parties of investment projects in economy or infrastructure, tourism infrastructure, water and energy objects, etc., which are to the public service or interest, the expropriated subjects and the interested investment developer may enter contractual relations, depending on the legal form the project development is based on, with the aim to realize the investment.*
- 2. In those cases where the expropriated subjects and the investment developers do not achieve within a normal timeline of negotiations the successful signatory of the respective agreements on the transfer or legitimate possession of the property, the Council of Ministers shall decide, in accordance with the effective legislation, the compensation of the expropriated subject at the market price for the surface areas where the investment shall be developed.  
*The expropriated subject and investment developer shall conduct negotiations under the market conditions, as provided for by the first paragraph of this section**

**Article 8 (amended by Law No. 9583)**

**Building Sites**

- 1. When a building site has been alienated to third parties and there are no permanent legal buildings on it, it is restituted to the expropriated subjects, whereas the state will retribute to the third parties the value of the purchase multiplied by the price increase index.*
- 2. Repealed.*
- 3. In cases when constructions have been constructed on building sites before 10.8.1991, for which there is no registration of ownership of the site, the person who owns the building is obliged to pay the initial value of the site in accordance with art. 10 of law no. 7652, dated 23.12.1992 "On privatization of state housing" multiplied by the price increase index.*
- 4. Repealed.*

**Article 8/1 (inserted by Law No. 9583)**

**Building site occupied by state-owned buildings**

- 1. Differently from the wording of Article 7, the expropriated subjects shall be restituted or compensated the private building site where permanent and legal buildings have been constructed which are under ownership of the State, in the following cases:
  - a. In the case where the buildings under the ownership of the State are no longer used for public interest, the building site shall be restituted the expropriated subject, recognizing him the right of pre-acquisition of the object under privatisation. Until the privatisation of the object, according to this law, the state has the obligation to pay to the expropriated subject the price of the lease of the building site under its possession, according to the applicable tariffs of leasing state-owned building sites to third parties.**

- b. *In the case where the buildings which are under the ownership of the State are in use by third parties, based on a contract of lease, concession or emphyteosis on the building site where the building is constructed or on the building itself, the following actions shall be undertaken:*
- i. *when the investment made is over 150% of the building site value, the contracting subject shall pay the state within 6 months the value of the building site at the market price. The State shall immediately pay the building site value to the land owner. In the case where the contracting subject fails to pay the building site value within the above-mentioned timeline, the building site shall be restituted to the expropriated subject, who until the expiration of the contract receives from the state also the leasing tariff stipulated in the contract. With the expiration of the contract, the building site owner shall have the right of pre-acquisition.*
  - ii. *when the investment made is under 150% of the building site value, the building site shall be restituted to the expropriated subject, who shall be paid by the state until the end of the contract also the value of the building site lease the subject pays according to the contract. With the expiration of the contract, the building site owner shall have the right of pre-acquisition.*
2. *Upon entry of this law into force, the state institutions shall not be allowed to give on lease, emphyteosis, and concession or in use the state-owned objects build on private building sites, except for those cases where the contracts are in function of the realization of public interests, as provided for by Article 7/1 of this law.*
- In case the state-owned objects which are constructed on private building sites are transferred under the ownership or administration of another state institution, the pre-acquisition right shall not cease.*

#### **Article 9**

**(abrogated as unconstitutional with Decision No. 26 of 2.11.2005 of the Constitutional Court, reinserted by Law No. 9583 and again abrogated by Decision No. 11 of 4.4.2007 of the Constitutional Court).**

Abrogated.

#### **Article 10**

##### **Property No Longer Used for a Public Purpose**

When an expropriation was done in the public interest and the Property Restitution and Compensation Agency verifies that the immovable property is no longer used for this purpose, it is restituted to the expropriated subject while the expropriated subject, in case s/he received remuneration, returns to the state the remuneration received.

### **CHAPTER III**

#### **COMPENSATION OF PROPERTY**

##### **Article 11 (amended by Law No. 9583)**

##### **Forms of Compensation**

1. For property defined in this law, for which physical restitution is impossible, the state compensates the expropriated subjects with one or more of the following forms:
  - a. With other immovable property of the same type of equal value in state ownership;
    - a/1. *With public immovable property located in the zones with tourism development as priority.*
  - b. With other immovable property of any type of equal value in state ownership;
  - c. With shares in companies with state capital or where the state is co-owner with a value equal to the immovable property;
  - ç. With the value of objects that are subject to the process of privatisation;.
  - d. With money.
2. *Repealed.*
3. The remuneration given for compensation purposes is not subject to any fees, taxes or other financial obligations.

##### **Article 12 (amended by Law No. 9583)**

##### **Location of Physical Compensation**

*Physical compensation, according to letters 'a', 'a/1' and 'b' of article 11 of this law, is done even outside the administrative-territorial borders of the region where immovable property is located. The Council of Ministers approves the criteria and procedures to determine the properties to be used as an immovable property fund for physical compensation. For purposes of physical compensation priority is given to public property in zones that have tourism as their priority, as defined in Law. No. 7665, dated 21.1.1993 "For the development of the zones where tourism is priority".*

*Building sites in tourist zones given as a compensation must be used only in compliance with the master plan for the development of tourism and respective regulatory plans of the territory, approved for its implementation.*

The areas defined for compensation are announced publicly in the Official Journal, stating their categories (type) as well as their value.

### **Article 13**

#### **Valuation of property**

1. For the valuation of property that will be compensated, the PRCA Regional Office establishes an expert group. The commission appoints as experts experienced and specially qualified persons in the fields of law, economics and engineering that is related to the process of restitution and compensation of property.
2. The value of the property that is compensated according to this law is calculated based on the market value in accordance with the methodology proposed by the Property Restitution and Compensation Agency and approved by a decision of the Assembly.
3. In carrying out its activities, no member of the state bodies for the process of restitution and compensation of property or of the expert group shall be subject to any conflict of interest defined in the Code of Administrative Procedure.

### **Article 14 (amended by Law No. 9583)**

#### **Right of First Refusal (Right of First Purchase)**

1. For immovable property occupied by state objects, expropriated subjects have the right of first refusal for these objects when they are privatized. *The right to first refusal is registered in the Office for the Registration of Immovable Property. The Council of Ministers is charged with issuing sub legal acts for the right to first refusal in cases objects will be privatized.*
2. The expropriated subjects shall have the right to waive their right of first refusal and receive compensation based on article 11 of this law.

## **CHAPTER IV**

### **STATE BODIES FOR THE PROCESS OF RESTITUTION AND COMPENSATION OF PROPERTY**

#### **Article 15 (amended by Law No. 9583)**

##### **Property Restitution and Compensation Agency**

1. *For the implementation of this law shall be established the Property Restitution and Compensation Agency, which is a legal public person. The Property Restitution and Compensation Agency (hereinafter referred to as PRCA) shall be based in Tirana and shall have regional offices in every region. The Property Restitution and Compensation Agency shall have the following tasks and responsibilities:*
  - a. *it shall accept the requests for property restitution and compensation, according to this law;*
  - b. *it shall examine the requests and ascertain the authenticity of the documents submitted by the expropriated subjects, and confronts them with the legal and sub-legal acts, or the court decisions, in accordance with Article 2 of this law, which have constituted the basis for the expropriation, takeover, seizure or unjust deprivation of the property from the state;*
  - c. *it shall verify and calculate the financial obligations that emerge for the state, the expropriated subject or third parties, as provided for in this law;*
  - ç. *it shall confirm the ownership right to the expropriated subjects by issue of the respective document on recognition, extent and modality of the restitution or compensation of the property, according to the model defined by the Council of Ministers;*
  - d. *it shall keep record in the immovable property registers of the acts of recognition, restitution or compensation of property and the real rights related to them.*
2. *In function of exercising the responsibilities defined in section 1 of this article the PRCA shall collaborate with the institutions which have under administration the state-owned or public property. The Council of Ministers shall establish, no later than 1 month from the entry of this law into force, the procedure and timelines of communication among institutions.*
3. *The modalities of the organization and functioning of the Property Restitution and Compensation Agency, as well as of the procedures of the collection, processing and management of the requests by the expropriated subjects shall be defined by the Council of Ministers.*

**Article 16 (amended by Law No. 9583 and Law No. 9684)**

**Responsibilities of Central and Regional Offices**

- 1. The PRCA Central office has the following responsibilities:**
  - a. it shall lead and supervise the work for the implementation of this law at the regional offices;**
  - b. it shall perform the first examination of the request for compensation of the expropriated subject for those immovable properties recognized for compensation, according to the provisions of Article 11 of this law;**
  - c. it shall examine the appeals against the decisions of regional PRCA office or the former local commission for restitution and compensation of property and the former district or municipality commissions for the restitution or compensation of the properties of former owners;**
  - ç) it can on its own initiative examine decisions issued by the regional PRCA offices or the former local commission for restitution and compensation of property and the former district or municipality commissions for the restitution or compensation of the properties of former owners; For the implementation of his/her responsibilities on the compensation, addressing of appeals and examination mainly of the decisions issued by the regional PRCA offices or the former local commission for restitution and compensation of property and the former district or municipality commissions for the restitution or compensation of the properties of former owners, the PRCA Director General issues a decision.**
- 2. The PRCA offices in regions shall address the requests of expropriated subjects for recognition and restitution of the immovable property, for those properties located within the territory of the region. The director of the regional office shall sign the decision on the recognition of the right to ownership and restitution or compensation, and other real rights provided for by this law. For the implementation of his own responsibilities with regard to the recognition of the right to ownership, restitution or compensation, as well as other real rights, the director of the regional PRCA office issues a decision.**
- 3. The decisions referred to in section 1 and 2 of this article must be in a written form, supported by arguments and signed by the director and meet the requirements for the administrative act provided for by the Code of Administrative Procedures. In the case where the decision referred to in section 1 and 2 of this article, is not appealed against or is not examined by the Director of PRCA within the timelines provided by this law, it shall constitute an executive title. Bailiff Offices shall be tasked with its execution, in accordance with the rules provided for by the Code of Civil Procedure.**
- 4. The fees for the procedure of the restitution and compensation of property are determined by common order of the Minister of Justice and the Minister of Finances.**

**Article 17 (amended by Law No. 9583 and Law No. 9898)**

**Timeline**

- 1. In order to be granted the rights provided for by this law, the expropriated subjects are entitled to submit new requests until 31 December 2008. If the expropriated subject, based on legal grounds, did not manage to submit the request, he is entitled to reinstatement of the time-period before the court.**
- 2. The PRCA Central Office shall examine the request for compensation no later than three months from the day of its registration. In case it is impossible for the PRCA Central Office to make a decision within this timeline, it shall notify the expropriated subject and, by a motivated decision, could put off the timeline for a period no longer than 30 days. The request of the expropriated subject shall be submitted to the institution in person or via mail and is registered with the protocol record book of the institution. The subject shall be provided with the request registration. The same timeline and procedure is applicable also for the examination of a request for ownership recognition at the regional PRCA office.**
- 3. For the implementation of this law, the Property Restitution and Compensation Agency shall come up with a decision on any case supporting the own claim, except for the case where a court decision proving the juridical fact of the property is issued, in the meaning of Article 388 of the Code of Civil Procedure. All the applications based on a decision proving the juridical fact shall be restituted to the subjects within 30 days from their submission. The execution of the decision on financial compensation shall take place within the first semester of any financial year. The Council of Ministers determines the rules and criteria for the treatment of decisions of financial compensation.**

**Article 18 (amended by Law No. 9583 and Law No. 9684)**

**Complaints**

*1. The expropriated subject or the State Advocature has the right to file a complaint with the PRCA Central Office against the decision on the recognition of the right to ownership, restitution or compensation of property, as well as other real rights, by the PRCA regional office, within 30 days upon notification of such decision. The expropriated subject or the State Advocature has the right to file a complaint with the PRCA Central Office against the decision on the recognition of the right to ownership, restitution or compensation of property, as well as other real rights, by the former local commissions for the restitution and compensation of property, the former district and municipality commissions for the restitution or compensation of the properties of former owners. No later than 30 days from the registration of the complaint, the PRCA Director General shall issue a decision on the object of the complaint.*

*The PRCA Director General has the right to examine mainly decisions issued by the regional PRCA offices, within 30 days of the adoption of the decision. The General Director examines also decisions of the former local commission for restitution and compensation of property and the former district or municipality commissions for the restitution or compensation of the properties of former owners. After the main examination or the examination of the complaint, the PRCA Director General decides:*

- upholding of the decision;*
- the abrogation of the decision and settlement to its merit;*
- the restitution for re-examination to the PRCA regional office.*

*In case of disagreement with the decision of upholding the decision of the PRCA regional office, an appeal shall be filed with the District Court of the territory of the region of location of the PRCA office and the PRCA interests shall be defended by the regional office of the PRCA of the region. In the case where the decision settles the issue to its merit, the appeal shall be filed with Tirana First Instance Court and the PRCA shall be represented at court by the PRCA Central Office.*

*2. The expropriated subject has the right to file an appeal against the decision of PRCA Central Office on property compensation with the Tirana First Instance Court within 30 days from the notification of such decision. PRCA shall be represented at court by the PRCA Central Office.*

**Article 19 (repealed by Law No. 9583)**

Repealed

**Article 20 (amended by Law No. 9583)**

**Transfer of Archive, Logistics and Working Means**

*The activity of the Property Restitution and Compensation Committee, and that of the commissions in the regions shall terminate in the day of entry into force of this law. The archive, working means and logistics of the Property Restitution and Compensation Committee, and of the local commissions in the regions, which was created and managed in accordance with the Law No. 9235, dated 29.07.2004, amended, shall be transferred under the PRCA administration within 45 days of entry into force of this law.*

**CHAPTER V**

**FINAL DISPOSITIONS**

**Article 21(amended by Law No. 9583)**

**Transfer of Budget Funds of PRCC and the local commissions**

*Upon entry into force of the law, the budget funds projected for the State Committee for Property Restitution and Compensation and the local commissions in the regions shall be transferred to the PRCA. Exception shall make only the salary fund for the employee in charge of the files handover.*

**Article 22**

**Previous Decisions**

*1. When the files submitted to the PRCA Regional Office, created according to Law no. 7698, dated 15.4.1993 “On restitution and compensation of property to the former owners”, contain the necessary documentation for verification of the property to be gained from this law, the expropriated subject submits only a written request for recognition, restitution or compensation of the remaining part of the immovable property. Decisions that were issued based on Law no. 7699, dated 21.04.1993 “On compensation in value or with sites to ex-owners of agricultural land, pastures, meadows, forestry land and forests” which have not been implemented, are considered valid as to the recognition of the*

- right of ownership, and the PRCA Regional Office defines whether restitution of the immovable property is possible or else its compensation.
2. The process of restitution and compensation of property re-starts in the manner, form and conditions set forth in this law.

**Article 22/1 (inserted by Law No. 9583)**

*Throughout the law, the terms "State Committee for Property Restitution and Compensation" and "Local Commission of Property Restitution and Compensation" shall be replaced with the terms "Property Restitution and Compensation Agency" and "PRCA Regional Office".*

**Article 23**

**Fund of Compensation**

1. The Property Compensation Fund is created for the implementation of financial compensation. This fund consists of budgetary incomes, incomes created by this law and incomes from different donors.
2. Starting from 2005 and for a subsequent period of ten years, the Assembly, at the proposal of the Council of Ministers, defines a Compensation Fund administered by the Property Restitution and Compensation Agency for monetary compensation to expropriated subjects. For the period from the recognition of the right of ownership to receiving compensation in cash, the expropriated subject is also entitled to receive the bank interest rate calculated according to the annual average rate issued by the Bank of Albania.
3. Based on the decision of the PRCA Regional Office or by a court decision, and by its own order, the Property Restitution and Compensation Agency divides the Compensation Fund proportionally.

**Article 24 (amended by Law No. 9898)**

**Termination of the Process**

The process of recognition, restitution and compensation of immovable property ends on **30.6.2009**, except for the completion of payments for compensation, which shall end within the term defined in article 23 of this law.

**Article 25**

**Use of state documents**

For the implementation of this law, within 30 days from the submission of a request, state institutions shall make available copies of all documentation in their possession to the expropriated subjects and to the state commissions, for a fee.

**Article 26**

**Keeping Documentation**

Documentation for the process of recognition, restitution and compensation of property is kept according to the legislation on archives. Upon the termination of the process, according to article 24, this documentation is submitted to the Central State Archive.

**Article 27**

**Auditing**

An economic and financial audit of the activity of the Property Restitution and Compensation Agency and of the PRCA Regional Office is conducted by the High State Auditor at least once every six months. Audit results are always made public.

**Article 28 (amended by Law No. 9583 and Law No. 9898)**

**Immovable Property Fund for Physical Compensation**

*In addition to the financial fund for compensation, provided for by Article 23 of this law, the immovable property fund for physical compensation shall be created. **Until 31 December 2008**, the Council of Ministers shall approve the property fund, which are state-owned immovable properties made available for physical compensation, in accordance with the letters "a", "a/1" and "b" of Article 11 of this law, as well as the modalities of putting such fund at disposal of the Property Restitution and Compensation Agency.*

**Article 28/1 (inserted by Law No. 9583)**

**Transitory Provisions**

1. *With regard to those immovable properties on which third parties have built unauthorized buildings, in violation of the Law "On Urban Planning", physical compensation shall not be applicable until expiry of the legal timelines established for the legalisation of buildings in informal areas and other informal objects located within formal territories. By expiry of the legal timeline established for the legalisation process, the physical restitution of the immovable property shall be made where it will be possible, while the rest shall be compensated in compliance with Article 11 of this law. The expropriated subject or the subject who was arbitrarily deprived of ownership is entitled at any time before the expiry of the timeline foreseen for the completion of the legalisation process to waive the right of physical compensation of the land occupied with these buildings against compensation, as provided by Article 11 of this law.*
2. *Such restriction does not extend its effects on those immovable properties which have been put by the state at disposal of third parties by leasing, emphyteose or concession, etc., regardless of the improvements or buildings constructed on them. For all these immovable properties is immediately applicable the legal arrangement provided for in section 1, letter b of Article 8/1 of this law.*

**Article 28/2 (inserted by Law No. 9583, amended by Law No. 9898)**

**Verification of Legitimacy of Alienations**

1. *The Ministry of Agriculture, Food and Consumer Protection is tasked with the verification of the process of transfer for use or into ownership without payment of the immovable property, according to the legal acts set out in Annex 1/1 of this law, to families or members of agricultural enterprises or cooperatives, persons who founded former agricultural enterprises, former employees of agricultural enterprises whose residence is in the city, or agriculture specialists. The Ministry of Agriculture, Food and Consumer Protection shall organize such process through the regional directorates of agriculture in 12 regions.*
2. *The process defined in section 1 of this Article shall be subject of verification of the lawfulness. Such verification shall be based on official documents which are administered by the Ministry itself, the Immoveable Property Registration Office, the Social Insurance Institute, State Archive, General Directorate of Civil Status, as well as any other public or private entity and, if it is the case, on field verifications. The official documents issued by the public institutions with regard to this process shall be registered in a separate register and shall be exempted from the payments of stamp tax or service fee.*
3. *The Ministry of Agriculture, Food and Consumer Protection shall complete the verification process throughout the territory of the country by **30 June 2008**. In accordance with the outcome of the verification, the Council of Ministers shall define the administrative measures to be undertaken for restoring lawfulness in the country.*

**Article 28/3 (inserted by Law No. 9684)**

***The PRCA Director General adopts a decision within 60 days of the entry into force of this law about decisions of the former local commission for restitution and compensation of property and the former district or municipality commissions for the restitution or compensation of the properties of former owners, against which a complaint has been submitted with the State Committee for Restitution and Compensation of Property and which after the creation of the PRCA remained without examination.***

**Article 29**

**Sub-legal acts**

The Council of Ministers shall issue the necessary sub-legal acts for the implementation of this law within 90 days from the entry into force of this law.

**Article 30**

**Abrogation**

Law no. 7698, dated 15. 04. 1993 "On restitution and compensation of property to the former owners", with subsequent amendments, Law no. 7699, dated 21.04.1993 "On compensation in value of former owners of agricultural land, pastures, meadows, forestry land and forests", Decree no. 1254, dated 19.10.1995 "On compensation of the former owners of agricultural land and non-agricultural land and occupied building sites, with sites in tourist lands and in the inhabited zones", article 10 of Law no.

8030, dated 15. 11. 1995 “On the state contribution for unsheltered households”, and letter ç of article 7 and article 13 of the Law No. 7665, dated 21. 1 1993 “On development of zones that have priority in the development of tourism” and any other provision which is in violation with this law, are abrogated.

**Article 31**  
**Entrance in Force**

This law enters in force 15 days after being published in the Official Journal.

ANNEX 1 (amended by Law No. 9898)

1. Law no. 7501, dated 19.07.1991 ‘On land’
2. Law no. 7512, dated 10.08.1991 “On sanctioning and protecting private property and free initiative, private independent activities and privatization”
3. Decree of the President of the Republic no. 378, dated 2.12.1992 “On giving working studios to painters and sculptors”
4. Law no. 7652, dated 23.12.1992 “On privatization of state housing”
5. Law no. 7665, dated 21.01.1993 “On development of zones that have priority in the development of tourism”
6. Law no. 7698, dated 15.04.1993 “On restitution and compensation of property to former owners”
7. Law no. 7980, dated 27.07.1995 “On buying and selling building sites”
8. Law no. 8053, dated 21.12.1995 “On granting ownership of agricultural land without compensation”

ANNEX 1/1

1. Law No. 7501, dated 19.7.1991, “On Land”, amended
2. Law No. 7983, dated 27.7.1995 “For purchasing agricultural land, pastures and meadows”
3. Law No. 8053, dated 21.12.1995, “On Transfer of Agricultural Land in Ownership without Payment”
4. Law no.8312, dated 26.3.1993 “For undivided agricultural land”
5. Law no.8337, dated 30.4.1998 “For transferring in ownership the agricultural land, pastures and meadows”
6. Decision No. 452, dated 17.10.1992, “On Restructuring of Agricultural Enterprises”.

## ANNEX II: Statistical data

Table 1. Structure of Urban Property, 2004

<b>Properties Categorized:</b>	<b>Number of properties</b>	<b>Percent</b>
<b>By ownership</b>		
All properties	88,140	100.0
Private citizen ownership	65,015	73.8
-- Unverified citizen ownership	10,902	
Private juridical person ownership	6,493	07.4
State ownership	16,721	19.0
<b>By type of unit</b>		
Apartment units	37,607	42.7
Truall (land with development status)	34,680	39.3
Buildings on land	12,168	13.8
-- buildings owned separately from land	2,123	02.4
Streets (public spaces)	2,885	03.3
<b>Illegal status</b>		
Illegal buildings	17,994	20.4

*Source:* ROI project (USAID), World Bank Office Tirana, Status of Land Reform and Real Property Markets in Albania, Tirana, 2006.

**Table 2. Procedure for Legalization of Land Parcels and Buildings  
in Informal Zones**

<b>Actions by citizens</b>	<b>Actions by administrative bodies</b>	<b>Time</b>
1. Citizens submit forms self-declaring their illegal land and buildings		3 months
	2. Local government reviews the declarations and submits a request to the national Territorial Adjustment Committee (TAC) to include the properties in legalization.	6 months after the deadline for citizen submission
	3. TAC examines the requests and decides (a) on the designation of the urban zone and (b) on whether an urban study is needed for the zone.	
	4. Local government prepares the draft urban study and local Territorial Adjustment committee approves	6 months from date of zone designation
	5. National TAC approves the urban study.	4 months
	6. Local government demolishes any buildings that are standing within areas for streets and public facilities, in accordance with the urban study.	
7. Citizens prepare the technical and legal documents for submission of applications to the local government. They reach agreements with the owner of the land (state or private), on which their buildings stand.	7. National TAC invites citizens to submit applications to legalize their buildings and land parcels within the zone.	One year
	8. When conditions are fulfilled by the citizen (agreement with land owner reached), the local government issues the legalization permit to the citizen.	
9. Citizen registers in IPRS the legalization certificate and the property agreement (purchase/sale contract, lease, etc.)		

*Source:* ROI project (USAID), World Bank Office Tirana, Status of Land Reform and Real Property Markets in Albania, Tirana, 2006

**Table 3. Structure of Agricultural Land Holding, 2002**

<b>Farm groups</b>	<b>Number of farms</b>	<b>Percentage</b>
0.1-0.5 hectare	142,600	33.9
0.5-1 hectare	101,600	24.2
1-2 hectare	126,200	30.1
Above 2 hectare	19,600	11.8
Total farm units	420,000	100%

*Source:* Ministry of Agriculture and Food, Annual Report, 2002 at pg. 18.

**Table 4. Rural Landholding in 2004**

<b>Category of ownership/control</b>	<b>Hectares</b>	<b>Parcels</b>	<b>Registered</b>
Agricultural (cultivated and perennial)	700,250		
-- family members of cooperatives	562,470	1.9 million	80%
-- family employees of state farms			
-- refused land (communal control)	110,000		
-- state owned	26,780		80%
Forests	1,050,360		
-- State	760,200		05%
-- Commune	283,840		
-- Private	6,314		10%
Pastures	481,400		
-- State	160,000		05%
--Commune	244,200		
-- Private	23,600		15%
Village housing	400,000		70%

*Source:* World Bank Office Tirana, Status of Land Reform and Real Property Markets in Albania, Tirana, 2006 (data from Ministry of Agriculture and Food, IPRS).

Table 5. Status of Land and Property Registration (January 1, 2005)

Category	Number of Properties	Number of Zones	Partnerships Concerned
<b>Properties entered into IPRS by December 2004</b>			
Rural (2001)	2,013,000	2,263	USAID/EU/PMU
Apartments (2001)	168,000		USAID/EU/PMU
Rural economic priority (2004)	70,900	62	USAID
Urban (2004)	84,400	16	USAID
Apartment updates (2004)	12,000		USAID
<b>Zones in progress in 2005</b>			
Category	Number of Properties	Number of Zones	Partnerships Concerned
Rural zones (2004)	52,200	58	PMU
Korce/Maliq	15,000	4	EU
[to be chosen]		6	OSCE
<b>Remaining unfinished</b>			
Rural zones	400,000	531	
State-owned forest/pasture (not previously registered)	600,000	2,685	
Village centers (not previously registered)	10,000	40	
Urban	750,000	113	

Sources: IPRS, Ministry of Agriculture and Food PMU, ROI project (USAID).

**Table 6. Strengthening institutional capacities in the Land Management Sector**

INVESTMENTS	MEASURING UNIT	CURRENT SITUATION	YEARS			
			2007	2008	2009	2010
Additional Human resources	persons	3	3	3	3	3
Training (Thousand ALL)	Thousand ALL	0	200	200	200	300

*Source:* National Plan for the Implementation of the Stabilisation and Association Agreement 2007-2012, Tirana, 2007.

**Table 7: Strengthening institutional capacities in the Land Protection Inspectorate.**

INVESTMENTS	MEASURING UNIT	CURRENT SITUATION	YEARS			
			2007	2008	2009	2010
Additional Human resources	persons	4	4	4	4	4
Training (Thousand ALL)	Thousand ALL	0	0	200	200	200

*Source:* National Plan for the Implementation of the Stabilisation and Association Agreement 2007-2012, Tirana, 2007.

**Table 8: Strengthening institutional capacities in the Immovable Property Registration Office.**

INVESTMENTS	MEASURING UNIT	CURRENT SITUATION	YEARS			
			2007	2008	2009	2010
Additional Human resources	persons	x	x	x	x	X
Training (Thousand ALL)	Thousand ALL	x	11.791	15.715	18.658	13.753

*Source:* National Plan for the Implementation of the Stabilisation and Association Agreement 2007-2012, Tirana, 2007.

## BIBLIOGRAPHY

- Aliko, H., 'Ndikimi negativ i moszgjidhjes së problemit të ish-pronarëve të tokës bujqësore në zhvillimin e tregut të tokës në Shqipëri', *E drejta parlamentare dhe politikat ligjore* VI, 2002, pp. 5-12.
- Cakalli, P., Papa, L., Dhima, M., Milo, P., Jorgji, K., 'Problemet e prones ne bregdet dhe opsionet e zgjidhjes se ketij problemi madhor si potencial per zhvillimin ekonomik te zones', referat i mbajtur ne Konferencen Panhimariote me titull "Ndertimi i se ardhmes se Himares", zhvilluar ne 16-17 dhjetor, 2005, Tirane.
- Halili, E., Salamun, M., 'Eigentumsordnung, -formen und Restitution unbeweglichen Eigentums in Albanien', *Zeitschrift für Rechtsvergleichung, Internationales Privatrecht und Europarecht*, 4, 2006, pp. 123–138.
- European Commission, *Albania 2007 Progress Report*, Brussels, COM(2007) 663 final, 6.11.2007.
- Interview with Mr. Sokol Puto, lawyer specialised on property restitution and compensation in Tirana and agent of the MFA of Albania before the ECtHR.
- Interview with Mrs. Naime Zagorcani, topogeodesic engineer, high-ranking officer to the Land Registry Office of Albania, located in Tirana.
- Kelm, K., Harasani, P., Stanfield, D., with Luli, F., Puka, Ll., Childress, M., Haase, D., 'Land Privatization in Albania', *Country Studies: Real Estate Privatization in Selected Eastern European and Eurasian Countries*, Land Tenure Center, Madison, 2001.
- Lemel, H., 'Tenure Security, Lemel, H. (ed), *Rural property and economy in post-communist Albania*, Berghahn, US, 2000, 27-49.
- Lusho, Sh., Papa, Dh., *Land fragmentation and consolidation in Albania*, Albania Series, Working Paper 25, Land Tenure Center, Madison, 1998.
- National Plan for the Implementation of the Stabilisation and Association Agreement 2007-2012, Tirana, 2007.
- OSCE Presence in Albania, *Commentary on the draft law "On Recognition, Restitution and Compensation of Property"*, presented to the Assembly of the Republic of Albania by OSCE led Technical Expert Group on 27 October 2003.
- Stahl, J., Sikor, T., Dorondel, S., 'Transparency in Albanian and Romanian Land Administration', International Land Coalition 2007.
- Swinnen J., *The political economy of land reform choices in Central and Eastern Europe*, Economics of Transition, volume 7 (3) 1999, (637-664).
- Venice Commission, *Amicus Curiae Opinion on the law on the legalisation, urbanisation and integration of illegal constructions of the Republic of Albania*, CDL-AD(2007)029, 18.6.2007.
- Venice Commission, *Opinion on the draft law on recognition, restitution and compensation of property of the Republic of Albania*, CDL-AD(2004)009, 16.3.2004.
- World Bank Office Tirana, *Status of Land Reform and Real Property Markets in Albania*, Tirana, 2006.

### *List of legal acts (selection)*

- Law No. 7501 of 19.7.1991 on land of 1991, as amended.
- Law No. 7652 of 23.12.1992 on the privatisation of state-owned flats, abrogated by Law No. 9719 of 23.4.2007.
- Law No. 7698 of 15.4.1993 on the restitution and monetary compensation of former owners, as amended, abrogated by Law No. 9235 of 29.7.2004.
- Law No. 7699 of 21.4.1993 on the monetary compensation or compensation by other land of former owners of agricultural land, pastures, meadows or forest land, as amended, abrogated by Law No. 9235 of 29.7.2004.
- Law No. 7843 of 13.7.1994 on property registration, as amended.
- Law No. 7980 of 27.7.1995 on the buying and selling of property, as amended.

- Law No. 8053 of 21.12.1995 on granting ownership of agricultural land without compensation.
- Law No. 9235 of 29.7.2004 on the restitution and compensation of immovable property, as amended.
- Law No. 9304 of 28.10.2004 on the legalisation and urbanisation of informal zones.
- Law No. 9209 of 23.3.2004 on the legalisation of additions to buildings.
- Law No. 9482 of 3.4.2006 on the legalisation, urbanisation and integration of illegal constructions, as amended.
- Parliament Decision No. 183, dated 28.04.2005 “The methodology of immovable property valuation”.
- Decision No. 566, dated 05.09.2007 “On the adoption of procedures for the distribution of the fund of monetary compensation for the year 2007”.
- Decision of the Council of Ministers No. 747, dated 09.11.2006, “On the procedures of collection, processing and administration of the expropriated subjects during the process of property recognition, restitution and compensation”.
- Decision of the Council of Ministers No. 758, dated 16.11.2006 “On the approval of procedures for the distribution of the compensation fund for year 2006”.
- Decision of the Council of Ministers No. 51, dated 07.02.2007 “On the approval of models for the decisions that are issued by the State Committee for Property Restitution and Compensation”.
- Decision of the Council of Ministers No. 52, dated 07.02.2007 “On the definition of procedures and time limits for the communication between the State Committee for Property Restitution and Compensation and the state institutions during the process of property recognition, restitution and compensation”.
- Decision of the Council of Ministers No. 257, dated 11.04.2007 “On the criteria to be followed in the natural compensation procedure, with state land, to the expropriated persons, in some specific cases”.
- Order of the Director General No. 251, dated 03.11.2006 “On the approval of standard forms, to be used during the process of property recognition, restitution and compensation”.
- Order of the Director General No. 51, dated 02.02.2007 “On the approval of the regulation ‘On the organization and functioning of regional offices for property restitution and compensation in the Districts”.
- Order of the Director General No. 259, dated 20.06.2007 “On the organization and functioning of the State Committee for Property Restitution and Compensation”.

***List of decisions of highest courts regarding the 1993 restitution laws and their implementation (selection)***

<b>High Court</b>	<b>Constitutional Court</b>
Decision No. 4 of 24.3.2005	Decision No. 4 of 8.4.1994
Decision No. 7 of 24.3.2005	Decision No. 12 of 21.3.2000
Decision No. 9 of 16.1.2002	Decision No. 16 of 17.4.2000
Decision No. 85 of 29.6.2001	Decision No. 26 of 24.4.2001
Decision No. 25 of 28.3.2003	
Decision No. 5 of 23.3.2004	
Decision No. 6 of 24.1.2007	
Decision No. 7 of 11.3.2008	
<b>ECtHR</b>	
<i>Qufaj Co.Sh.p.k. v. Albania</i> , Application no. 54268/00, Judgment of 18.11.2004.	
<i>Gjonbocari and others v. Albania</i> , Application no. 10508/02, Judgment of 23.10.2007.	
<i>Beshiri and others v. Albania</i> , Application no. 7352/03, Judgment of 22.08.06.	
<i>Driza v. Albania</i> , Application no. 33771/02, Judgment of 13.11.07*.	
<i>Ramadhani and 5 others v. Albania</i> , Application no. 38222/02, Judgment of 13.11.07*.	

\* Request for referral to the Grand Chamber pending.