



SPECIAL REPORT

ON PROBLEMS RELATED TO THE RIGHT TO PROPERTY

PEOPLE'S ADVOCATE

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I. Introduction

Change of the political system in Albania in 1991, brought to the attention of the new political class and the state institutions which were created recently, the legal obligation to recognize the right of individuals to enjoy forms of ownership of real estate, the return of property acquired before 1945, as well as the extent of financial compensation to former owners in terms of inability to physically return the properties.

Since that period and up to the present day, the case of ownership of agricultural land is still pending the final order, regardless of the legal and institutional steps that have been taken over these years.

Since the establishment of the People's Advocate Institution, the right to property as a constitutional right has been and still continues to be the focus of its activity. The initiative undertaken for the preparation of this special report, is a synthesis of the ongoing efforts of the People's Advocate Institution in protecting the right to property and the principle for the development of a fair trial, as a result of underdevelopment of the administrative or judicial process by the bodies in charge, in accordance with the laws and by-laws in force.

Preparation of this special report is carried out in compliance with constitutional and legal obligations of the People's Advocate Institution, as well as by observing the tasks given by Resolution of the Albanian Parliament in 2015 for presentation during the year, of topics relevant to the observance and state of human rights.

Submission of this report is based on Article 63, paragraph 2, of the Constitution of the Republic of Albania which stipulates that:

"People's Advocate reports in front of the Parliament at request of the latter, and may ask to be heard by the Parliament on matters that it considers important", and on Article 27 of Law No. 8454 dated 04.02.1999 "On People's Advocate", as amended, which provides for that:

"In addition to the annual report, the People's Advocate may submit, on its own initiative or at the written request of the Chairman of Parliament or of a group of MPs, special reports on various issues within its functions, especially if it constitutes a violation of constitutional and legal rights. The Chairman of Parliament estimates whether this report shall be discussed".

We believe that the Parliament of the Republic of Albania shall review this Special Report in order to enable the recognition and measures needed to improve as more standards as possible in attaining human rights in Albania, specifically the right to property.

The People's Advocate Institution has consistently brought to the attention of state executive and decision-making institutions, the state of the right of ownership as well as the principle for the development of a fair trial, as a result of the underdevelopment of an administrative or judicial process, by the bodies in charge by law, in accordance with laws and by-laws in force.

They are reflected in the annual reports of the People's Advocate Institution and the proposals submitted to the Minister of Justice, the General Director of the Agency for Property Restitution and Compensation¹, etc.

In addition to the fact that the right to property is a constitutional right, it is also one of the priorities defined by the European Commission in order to open the way to acquiring the candidate status.

The methodology followed by the People's Advocate Institution for the preparation of this report, follows the obtain of information by relevant institutions, namely by the Agency for Property Restitution and Compensation, in Tirana², the Directorate of Budget at the Ministry of Finance³, Chief Registrar of the Central Registration Office of Real Estate, in Tirana⁴ and the State Attorney⁵. The relevant institutions have not provided an answer or complete information in all cases.

In preparation of this report, the findings and proposals for a final settlement of this major issue, not only for the category of the legal owners in restoring a right denied in years, but by the resolution of this right as soon as possible, on which depend even the political, economic and social life prospects of our country, the People's Advocate has used all the legal mechanisms and instruments in order to have a clear picture of the legal deficiencies and improper application of the law.

The People's Advocate Institution was preceded by the organization in Vlora of an auditorium for the right to property, in which participated representatives of the institutions in charge by law, such as the Ministry of Justice, Ministry of Urban Development, Agency for Property Restitution and Compensation, Central Registration Office of Real Estate and ALUIZNI, towards individuals who have applied for attaining this right, groups of interest, NGOs, collage teachers and students of the University, etc. One of the conclusions of this auditorium was the preparation of this Special Report due to major problems that the citizens are facing, as well as to the highly complex situation which the division process of agricultural land has undergone, that of recognition, restitution and compensation of properties created over the years, etc.

In order for this report to be comprehensive regarding the issues as well as transparent, the People's Advocate Institution, as part of the methodology of preparing reports, has developed special hearing sessions with representatives of leading associations within the country which protect the rights of legal owners, on basis of the spirit of the Albanian Constitution, International Conventions as well as laws and by-laws adopted for this purpose, some of whose opinions are included in a separate chapter of this report.

We have also addressed official letters to institutions in charge by law, such as Agency for Property Restitution and Compensation, Central Registration Office of Real Estate, the State

¹ Letter protocol no. 334, dated 04.11.2014.

² Letter protocol no. 94/3, dated 30.03.2015

³ Letter protocol no. 94, dated 30.03.2015

⁴ Letter protocol no. 94/2, dated 30.03.2015

⁵ Letter protocol no. 94/1, dated 30.03.2015

Attorney and the Government Land Commission, where through responses to a questionnaire prepared by us, detailed information is required on the actual state of the process of recognition, restitution and compensation of property and which is the prospect of a final solution, since this process cannot be postponed indefinitely.

The expertise that pervades this report, would be incomplete without the work, analysis and recommendations made over the years by the People's Advocate Institution for the right to property. In defense of the basic rights of individuals, physical or legal entities, the People's Advocate Institution has made a major contribution through the full use of all the instruments provided by the Constitution and the Law on conducting the administrative investigation with professionalism and impartiality, as well as the efficient use of other public means such as participation in debates on the issue of property in television, in the press, at conferences or seminars in order to sensitize the matters that concern the community of legal property owners, but also in giving proposals for legal amendments to the final resolution of this matter.

II. The legal framework that guarantees the right of ownership and a fair trial.

The right to private property, as the basic economic and legal category, interdependent by the relevant social and political structure of the state, the methods of acquisition, its expropriation and restrictions only in the public interest and against a fair compensation, and the right to be protected by its violations through a public administrative or judicial trial, are guaranteed by the Constitution of the Republic of Albania. Hence derives the obligation of guaranteeing to the holder of this actual right, a free space in the property area through protecting and ensuring the property rights, its use, disposition and possibilities of organizing an independent life.

The guarantee of property retains the specific quantity of goods or its products, earned above all by the work through unjustified interference of the state bodies.

Spirit of the Constitution, in terms of regulating the content of private property and the restoration of its violated right over the years, observes equality before the law, free unfolding of the personality of legitimate owners and the rule of law.

Of all the complexity of this right, that of its restitution or compensation to the expropriated from the old system, remains the most sensitive part of it. The regime of the right of ownership in the prolonged years of transition has often been inconsistent. Property compensation process has remained under the declarative framework. Interventions and changes in the legislation concerned, from 1991 onwards, have brought the adoption of a number of laws and by-laws, for the implementation of which, relevant institutions and instruments have been set up, whose job function was the return or compensation of property to property owners, the administrative settlement of disputes within the jurisdiction of the exercise of their powers. In terms when the property right has been and remains a key priority for the EU integration, the development of a new strategy to achieve a final settlement of the property issue in a term as short as possible, remains a priority for the relevant authorities of the public Administration.

The right of ownership and that of a fair trial, as fundamental human rights, are guaranteed in Articles 41, 42, 181 of the Constitution of the Republic of Albania, which respectively provide for that:

Article 41

- "1. The right to private property is guaranteed.*
- 2. Property acquired by donation, inheritance, purchase, or any other classical means provided by the Civil Code.*
- 3. Law may provide for expropriations or limitations in exercise of the property right only for public interests.*
- 4. Expropriations or limitations of the property right that are equivalent to expropriation are permitted only against fair compensation.*
- 5. For disputes over the amount of compensation, a complaint may be filed in court. "*

Article 42

"Freedom, property, and rights recognized in the Constitution and by law may not be infringed without due process.
Everyone, to protect his constitutional and legal rights, freedoms, and interests, or in the case of charges raised against him, has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law".

Article 181

- "1. The Assembly, within two to three years from the date this Constitution enters into force, issues laws for the fair resolution of different issues related to expropriations and confiscations done before the approval of this Constitution, guided by the criteria of article 41.*
- 2. Laws and other normative acts, adopted before the date this Constitution enters into force, and that relate to the expropriations and confiscations, shall be applied when they do not contradict it."*

By extending the guarantees of the above-mentioned rights, Article 1 of Protocol No. 1 of the Convention provides for that: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions, except in the public interest and subject to the conditions provided for by law and by the general principles of international law."*

European Convention of Human Rights, adopted by Law no. 8137, dated 31.07.1996 "On the Ratification of the European Convention for the protection of human rights and fundamental freedoms", in its Article 6 provides for that:

Everyone is entitled to a fair and public trial within a reasonable time by an independent and impartial court established by law, which shall decide whether claims may arise to the rights and obligations of a civil character, either to determine whether each criminal charge against him is based... "

The right of ownership and that of a fair trial, in essence, cannot and should not be perceived as fair, which rely only on the activity of judicial bodies, as it begins and cannot be excluded even in the administrative activity of public administration bodies in case of the observance of obligations enshrined in Articles 41, 42, 181 of the Constitution of the Republic of Albania,

Articles 6/1, 13 of the European Convention of Human Rights, Article 1 of Protocol No. 1 of the Convention concerned.

In view of the constitutional provisions and the European Convention of Human Rights, a number of laws and by-laws have been adopted which provide for rights and obligations of the authority designated by law for the recognition, restitution or compensation of property, privatization, transition of ownership, sale of real estate, such as:

- Law no. 9235, dated 29.7.2004, *"On the restitution and compensation of property" as amended*.
- Law no. 7501, dated 19. 07.1991 *"On the land"*, as amended.
- Law no. 7512, dated 10.8.1991 *"On sanctioning and protection of private property and free initiative, independent private and privatization activities"*.
- Decree of the President of the Republic no. 378, dated 2.12.1992 *"For the donation of working studios to painters and sculptors."*
- Law no. 7652, dated 23.12.1992 *"On privatization of state housing."*
- DCM no. 452, dated 17.10.1992 *"On the restructuring of agricultural enterprises"*.
- Law no. 7665, dated 21.1.1993 *"For the development of tourism priority areas"*.
- Law no. 8312, dated 26.03.1993 *"On undivided agricultural land"*.
- Law no. 7698, dated 15.4.1993 *"On restitution and compensation of property to former owners"*.
- DCM no. 301 dated 14. 6.1993 *"On measures to implement the Law on the restitution and compensation of property to former owners" as amended.*
- Law no. 7980, dated 27.07.1995 *"On the trade of land."*
- Law no. 7983, dated 07.27.1995 *"On the purchase of agricultural land, meadows and pastures"*.
- Law no. 8053, dated 21.12.1995 *"On transferring the ownership of agricultural land without compensation," as amended.*
- DCM no. 528 dated 13.05.1996 *"On measures for the physical implementation of land compensation in tourist areas, pursuant to Law no. 8084, dated 07.03.1996"*.
- DCM no. 537 dated 19.08.1996 *"On the preparation of the draft-implementation of urban projects of physical compensation with lands in tourist areas"*.
- Law no. 8312, dated 26.03.1998 *"On undivided agricultural lands"*.
- Law no. 8337, dated 30.04.1998 *"On transferring the ownership of agricultural land, forests, meadows and pastures"*.
- DCM no. 500, dated 14.8.2001 *"On the inventory of real estate properties and the transfer of property to local government units", as amended.*
- DCM no. 566, dated 23.08.2006 *"On the organization and functioning of the Agency for Property Restitution and Compensation"*.
- DCM no. 747, dated 9.11.2006 *"On the collection, processing and management of acts of subjects expropriated during the process of recognition and restitution or compensation of property"*.
- DCM no. 52, dated 07.2.2007 *"On defining procedures and terms of communication between the Agency for Property Restitution and Compensation and state institutions during the process of recognition, restitution or compensation of property", as amended.*

- DCM no. 257, dated 11.4.2007 *"On the criteria and procedure of physical compensation with state lands, to expropriated subject, in some particular cases"*, as amended.
- DCM no. 1077, dated 18.06.2008 *"On the creation of the physical compensation fund by forestry and pasture fund"*.
- DCM no.1232, dated 18.06.2008 *"On the creation of the physical compensation fund from state facilities"*.
- DCM no. 868, dated 18.06.2008 *"On the creation of the physical compensation fund from the agricultural land fund"*, as amended.
- DCM no.1712, dated 24.12.2008 *"On Renting or leasing of state-owned assets"* as amended.
- DCM no.1696 dated 24.12.2008 *"On the creation of the physical compensation fund, from the state-owned objects of "Albminiera" Sh.a and the Albanian Geological Service"*.
- DCM no. 12, dated 07.01.2009 *"On the conditions and procedure for alienation of land areas with specific qualities, on account of the financial compensation fund"*, as amended.
- DCM no. 200, dated 19.02.2009 *"On determining the conditions and procedure for alienation of yards in use, on account of the financial compensation fund"*, as amended.
- DCM no. 255, dated 13.04.2010 *"On the collection, processing and management of acts of expropriated subject during the process of recognition and restitution or compensation of property"*.
- DCM no. 256, dated 13.04.2010 *"On the organization and functioning of the Agency for Property Restitution and Compensation"*.
- DCM no. 267, dated 21.04.2010 *"On establishing the rules for coordinating the work of ALUIZNI with the office of real estate registration and the Agency for Property Restitution and Compensation, for the procedures of passing the right of ownership of state-owned lands in areas with tourism priority"*.
- DCM no. 383, dated 19.05.2010 *"On determining the procedure of distribution of financial compensation fund to owners of real estate, private property, which are affected by informal constructions"* as amended.
- The normative act, DCM no. 3, dated 01.03.2012 *"On the release of premises to the legitimate owners by the homeless citizens, living in the premises that are former properties of expropriated subjects"*.
- DCM no. 405, dated 27.06.2012 *"On approval of the crosscutting strategy "Reform in the field of property rights, 2012-202 "and its action plan."*
- DCM no. 578, dated 29.08.2012 *"On determining the procedure of transfer of ownership of yards in use"* as amended.
- DCM no. 460, dated 22.5.2013 *"On determining the criteria, rules and procedures for leasing of agricultural land owned by the state"*.
- DCM no. 770, dated 12.11.2014 *"On transferring the physical compensation fund, available to the Agency for Property Restitution and Compensation, of the area of 23368.8 hectares of agricultural land owned by the state, given for use to local government units"*.

- DCM no. 155 dated 04.03.1996 *"On the lease of state-owned objects and privatization of objects with land owners"*.
- Guideline of the Council of Ministers no. 15 dated 15.11.1993 *"On an amendment to the guideline of the Council of Ministers no. 13, dated 18.10.1993" On implementation of the Law "On the restitution and compensation of property to former owners" and some amendments in the Council of Ministers' Guideline No. 3, dated 21.06.1993 "*, as amended.
- Guideline of the Council of Ministers no. 3, dated 21.06.1993 *"On implementation of the Law" On the restitution and compensation of property to former owners "*, as amended.
- Guideline of the Council of Ministers no. 385, dated 16.01.2009 *"On the implementation of Decision of the Council of Ministers No. 1638, dated 17.12.2008" On the criteria of evaluation of state property to be privatized or transformed and the sales procedure."*

Property rights in Albania in case of the change of order in the 1990s, have been at the center of the reforms undertaken by governments, by undergoing a dynamic process in terms of legislative and institutional changes. Although there is a considerable number of strategic documents that mention in a fragmented way the matters of ownership, in DCM No. 405, dated 27.06.2012, *"On approval of the crosscutting strategy" Reforms in property rights, 2012-2020 "and its action plan"*, it is highlighted that, in them, there are provided no exhaustive and comprehensive solutions to this right. In this situation, the Council of Ministers considers that the drafting and adoption of a national comprehensive and widely consulted strategy so as to reform the property rights, is necessary. Despite this initiative, the People's Advocate Institution takes the opportunity to present the situation ascertained during its activity related to the observance of this right as well as considerations for concrete solutions to this issue.

III. Analysis of some aspects of domestic legislation and judicial jurisprudence from the perspective of international standards

● Recognition, restitution and compensation of properties

Albanian Parliament during 1990 and 2000 has adopted a series of laws on property rights. Referring to the content of laws issued in these years, it is ascertained that the state has undertaken the obligation for the recognition, restitution or compensation of property to all expropriated subjects during the communist regime. It turns out that a number of legal initiatives have been undertaken aiming a fast and efficient administrative process, a uniform transparent and decentralizing methodology, accountability throughout the process and a fair legal process by ensuring proper standards.

The right to property is guaranteed by article 41 of the Constitution of the Republic of Albania, Article 1 of Protocol No. 1 and Article 6/1 of the European Convention on Human Rights. Property already has a clear regulation internationally, and as such has a wide jurisprudence of International Courts in treating and elaborating concrete provisions that regulate this fundamental right.

Any natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his property except for public interest and in the conditions provided for by law and by the general principles of international law. Provisions above should not in any way violate the rights and general principles of the functioning of a state.

In the context of protecting and guaranteeing the right of ownership, the People's Advocate Institution has paid special attention to addressing the issue of property, within the framework of its observance as one of the fundamental rights of the individual, provided and guaranteed by the Constitution of the Republic of Albania, as well as the European Convention of Human Rights and Fundamental Freedoms.

Protecting this right has stirred up many discussions. A subject of dispute was among others even the inclusion of this right in the catalog of rights guaranteed by the ECHR. It then moved to its provision in a particular instrument, Annex with Protocol No. 1, whose purpose was clarified by *the European Court of Human Rights* (ECtHR) by decision "*Marckx vs. Belgium*", claiming that "with the determination that everyone has the right to respect property, Article 1, in fact, guarantees the right of ownership. But however it does not extend to the right of acquiring ownership"⁶.

The Court has extended the protection of the right of ownership through interpretations made to different cases, case by case. The European Court of Human Rights has had a tendency to expand the interpretation of the term "property" in the Convention, despite the lack of a full definition of the concept of "ownership" in it.⁷

As regards the type or nature of property, ECtHR, has sought to give the concept of "property" a broader sense and not an exhaustive one. In this regard, it is based mainly on the public international law, which equates property with the acquired rights.⁸

Thus, in the case of *Marckx vs. Belgium*, the ECtHR states that the right of everyone to the peaceful enjoyment of property, is exercised only to a person's existing assets. In other words, the property must first be obtained.⁹

In the case of *Öneryıldız vs. Turkey*, ECtHR acknowledged that property, even if obtained in violation of legal norms, in case it is allowed by state authorities, takes the character of a property which acquires protection under Article 1 of Protocol no. 1.¹⁰

However it should be noted that common condition to be respected by all member states of the European Convention of Human Rights, is the fact that the rights deriving from Article 1 of Protocol No. 1 in relation to property rights, are minimum rights, which means that member

⁶ Nowicki, M. On the European Convention, a short commentary on the European Convention of Human Rights, Morava Publishing House, 2000, pg. 343.

⁷ Zaganjori, Xh; Canaj, E. "The right to property according to Article 1, protocol no. 1, of the European Convention of Human Rights and the impact of decisions of the European Court of Human Rights in Albania, Jus & Justica, No. 3, UET Press, 2009, pg. 40.

⁸ In the same place.

⁹ Maho, B. Obtaining ownership of real estate, UET Press, 2009, Tirana, pg. 202.

¹⁰ In the same place, pg. 204.

states have no right to anticipate in their internal legislation, rights with a reduced character in this field.¹¹

In our case, this principle is stipulated in Article 17 of the Constitution of the Republic of Albania, which provides that restrictions on the right of ownership, which is guaranteed by the Constitution, in no case can violate the essence of fundamental freedoms and rights, and in no case can exceed the limits laid down in the European Convention on Human Rights, namely Article 1 of Protocol no. 1 of this Convention. This provision contains three separate principles. The first part of the first paragraph guarantees the observance of property. The second part provides for the possibility of acquiring the property, but on some conditions. While the third principle derives from the second paragraph and determines that states have the right to regulate the manner of use of property in accordance with the general interest.¹²

Finally it should be noted that in its decisions the ECtHR has interpreted that these disputes over property rights, are of a civil nature. Thus the decision of the ECtHR *"Ramadhi and others vs. Albania"*, in §36 and §77, this Court notes that: "*§36. Dispute regarding this right, which by nature is a civil right, is a dispute between the state and the complainant, to determine his right to ownership. Through decisions of the competent Commission on the matter concerned, the State acknowledged the right of compensation to the complainants....* "

On the other hand, even the **Constitutional Court** has interpreted on several occasions the provisions of the legal framework which regulates and defines the procedures for property restitution and compensation, by analyzing of course even the constitutionality of norms in relation to the Constitution. Thus in its decisions no. 27 of May 26th, 2010 and no. 43 of October 6th, 2011, it annulled as unconstitutional several provisions of Law no. 9235, dated 29.07.2004 *"On restitution and compensation of property"*, as amended, which authorized the Director of the Central Agency to reconsider, annul and repeal mainly Decisions of the Commission. Taking into account, inter alia, the decisions of this Court in cases of "Ramadhi and others", as cited above, and "Hamzaraj vs. Albania" ((No.1) (no. 45264/04, February 3rd, 2009)), the Constitutional Court has reaffirmed the fact that *"the decisions of the Commission were able to impose on individuals equal legal expectations to that created on the basis of a court decision which recognizes the rights of ownership of an individual"*. Consequently, those decisions which were not administrative acts within the definition of this legal notion, were directly subject to judicial review. Moreover, since these decisions were made "final and enforceable", they could not be subject to review by the Director of the Agency, who did not "embody the characteristics of a judicial or quasi-judicial body".¹³

¹¹ In the same place, pg. 206.

¹² Nowicki, M. On the European Convention, short commentary on the European Convention of Human Rights, Morava Publishing House, 2000, pg. 343.

¹³ Refer to the Decision of the Constitutional Court no. 6 dated 07.03.2011, which decided on the repeal as incompatible with the Constitution of the Republic of Albania, of Articles 2, 3 and 5 of Law no. 10308, dated 22.07.2010 "On some letters and amendments in Law no. 9235, dated 29.07.2004 "On the restitution and compensation of property, as amended."

In the context of reviewing the constitutionality of legislation on the property, the Constitutional Court has been put into motion several times in order to decide whether the provisions of the Law are in compliance with the Constitution.

During its operation, it turns out that the Constitutional Court is expressed through 39 decisions¹⁴ on issues of the observance of property rights. These can be divided into individual cases, where parties have sought the attitude of the Constitutional Court over a decision that was taken previously by the High Court, or even the verification of compliance with the constitutional provisions of specific provisions of the Law "On the restitution and compensation of property".

Even during the review of different complaints and requests of individuals, the People's Advocate has referred to the constitutional and European standards of the process of legal order, so that the public administration would guarantee and observe the right of every individual for the execution of administrative acts or judicial decisions. The focus has been on the constant practice of the ECtHR which has considered as an integral part of Article 6/1 of the ECtHR, the right to demand the execution of a final judicial decision within a reasonable time.

In the context of the unification of judicial practice, **the Joint Colleges of the High Court** have conducted a systematic interpretation of legal provisions on the right to private property and the restitution and compensation of property to former owners.¹⁵

The Joint Colleges of the High Court assessed that despite the fact that the process of recognition, restitution or compensation of property turns out to be entrusted to an administrative body such as the former Commissions for Restitution and Compensation of Property to Former Owners, which currently is the Agency for Property Restitution and Compensation, the administrative activity of these administrative bodies has never been considered as a genuine administrative activity, but as an activity which featured and displayed the characteristics of a judicial activity.¹⁶

In parallel with the process of recognition, restitution and compensation of property, a number of laws have been adopted over the years which are focused on property rights. As such are the laws for gratuitously granting the use and ownership of agricultural land, for the privatization of residential apartments, for the privatization of land and state-owned facilities, for the verification of property titles, for the development of areas with tourism priorities and for the integration of informal constructions.

Referring to the legislative history on property rights, it ascertained that the problems are complex. There are at least 16 separate laws regulating different sectors of property rights that create state bodies for sector supervision and which determine specific procedures. These laws are constantly subject to amendments and reviews by affecting the creation of non-uniform executive and judicial practices that are reflected in DCM No. 405, dated 27.06.2012.

¹⁴ Information obtained on 25.05.2015 in the official website of the Constitutional Court, http://gjk.gov.al/web/Lista_e_Vendimeve_92_1.php.

¹⁵ Refer to the unifying decision of the High Court no. 4 dated 10.12.2013

¹⁶ In the same place.

• The implementation of administrative and judicial decisions related to properties

Besides problems identified in the above-mentioned DCM, we bring to attention issues or situations which have been ascertained, not only by bodies of the Albanian Public Administration, but also by the European Court of Human Rights (ECtHR), in a number of decisions by it, upon receipt of request-complaints by individuals against the Albanian State.

Specifically in the case of Albania, the ECtHR found a violation of the Convention and Protocol No. 1 concerning delays in the implementation of final administrative or judicial decisions related to the right of ownership, as well as the lack of funds or other resources for the compensation of properties recognized by administrative acts or court decisions. Albania has been penalized on several occasions by the European Court of Human Rights, concerning issues of ownership.

Relying on provisions of the European Convention on Human Rights and Fundamental Freedoms, the Court in its decisions has described the essential legitimacy of fundamental rights, which are inviolable, as non-equivalent to formal legality. Therefore, even in case of owners from Albania, who complained against their state for its failure to return property or compensate those expropriated over the years, the Court has penalized the Albanian state with several million Euros. There are currently 43 cases to the Court which are subject to review and trial of property rights.¹⁷

Domestic legal framework as well as their respective practices to be followed in the process of property restitution and compensation, are described in details in the pilot's decision on the case *Manushaqe Puto and others vs. Albania*¹⁸, as well as the case *Rramadhi vs. Albania*, which are necessary¹⁹. Likewise, the Council of Ministers has approved the map of the land value as reference for the process of compensation to owners.²⁰

The scope of determining the case by the court for "*The pilot-trial procedure*" is to facilitate the fastest and most effective resolution of a dysfunctional situation that risks the protection of the Convention right concerned in the national legal order. The purpose of the pilot-trial proceedings is to encourage the Defendant State to resolve a large number of individual matters arising from the same structural problem at a domestic level, thus implementing the principle of subsidiarity, which strengthens the Convention system.²¹

In its pilot decision "*Manushaqe Puto vs. Albania*", the ECtHR ascertained that there was a violation of the European Convention on Human Rights because of the failure of existing

¹⁷ Data from the archive HUDOC dated 30.03.2015.

[http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"languageisocode":\["ENG"\],"respondent":\["ALB"\],"kpthesaurus":\["369"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)

¹⁸ Application no. 604/07, 43628/07, 46684/07 and 34770/09, §§ 23-53, July 31st, 2012.

¹⁹ Application no. 38222/02, November 13th, 2007.

²⁰ Refer to Decisions of the Council of Ministers no. 187 dated 06.03.2013 and no. 514 dated 30.06.2014.

²¹ Refer to *Maria Atanasiu and others vs. Romania, application no. 30767/05 and 33800/06*, §§ 134-37 and 163-68 dated October 12th, 2010, § 212.

mechanisms of restitution and compensation of properties confiscated during the communist regime. This mechanism has proved to be ineffective, since it has already lasted for over 20 years without providing a fair and final solution to the expropriated subjects during the communist regime. The Court has found a violation of Article 6 § 1 of the Convention, Article 13 and Article 1 of Protocol no. 1 of the Convention.

Following this pilot decision of ECtHR, the Council of Ministers approved decision No. 236, dated 23.04.2014, "On approval of the action plan for the implementation of pilot decision of the European Court for Human Rights "Manushaqe Puto and Others vs. Albania ", three targets have been defined, which shall enable a legal reform of the activity of the Agency for Restitution and Compensation of Property and that of its institutional one, namely;

- 1) Legal reform that is anticipated to be undertaken by the Council of Ministers, as well as analysis of the law and regulations in force for the restitution and compensation of property;
- 2) Creation of a new effective mechanism for compensation of the expropriated subjects during the communist regime and specifically suggestions regarding the compensation format, timeframe and methodology of map for the value of land in Albania;
- 3) Transformation of the role of Agency for the Restitution and Compensation of Property, regarding the process of property restitution and compensation of expropriated owners.

Achievement of objectives can be carried out on the basis of an action plan adopted by the Council of Ministers, which has defined measures, activities, and terms, within which the designated authorities should conduct the fulfillment of tasks by the above-mentioned decision.

● **The judicial practice of the High Court on issues of property**

Property rights remain one of those judicial objects that are widely treated and reviewed in the daily practice of the High Court. During the case trial in the third instance, the High Court, in case of ascertaining a huge issue in adjudicating the case with the object of property right, has undertaken the initiative to unify the judicial practice and raising the standards of trial.

The People's Advocate ascertains that a large number of claims have been filed in the High Court²², pending trial, among which many claims whose object is the right of ownership.

In its reasoning, the Court pointed out that ownership is the main institute of the civil law. The right of ownership is one of the fundamental human rights that are protected by the Constitution Provisions.

The right to property is guaranteed even in the international acts ratified by the Albanian state. Among them, the main one is ECHR which in Article 1 of Protocol 1 provides for that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one can be deprived of his possessions except in the public interest and in the conditions provided for by law and by the general principles of international law ... ".

²² For more information refer to website of the High Court www.gjykataclartw.gov.al

The character and content of the property right in the legal and civil sense, is sanctioned even by the domestic legislation, in Article 149 of the Civil Code, according to which "... *Ownership is the right to enjoy and possess objects freely, within limits established by law ...* ". Ownership is the subjective right with a property, absolute, real, sustainable and continuous nature. The object of the right of ownership are the items. The holder of the right of ownership has to force an unlimited number of people and to attain his right without the mediation of other people and is entitled to the right of demanding the item from any illegal possessor or holder, even if in good faith.²³

Following the jurisprudence in this regard, the Joint Colleges of the High Court have analyzed and interpreted the nature and purpose of the law "On the restitution and compensation of property to former owners" and the notion of property as used in the title of law (rubrica legis fit lex), as well as its content²⁴. Joint Collages have specifically stated that:

"... The legislator with these important normative acts, has recognized the injustice, violation of ownership rights of former owners and has decided to restore the right of ownership by returning the nationalized properties, the expropriated or confiscated ones or those taken unjustly in other forms, and in cases of inability, by compensating them. These laws, by considering as unfair what had happened earlier, provided for the restoration of the rights of property to owners, when real estate constituted its object... "

In this context, the Joint Colleges of the High Court considered these legal acts which are addressed to former owners or their heirs, not as a new way of acquiring property in their favor, but as a means to protect and guarantee the right to property and to make it effective by being based even on analogy arguments.²⁵

Restitution of property to former owners or their heirs is the essence and purpose of these laws (*anima legis and ratio legis*). This is the essence of the protection and guarantee of the right of ownership not only judicially, but also in an administrative way.

Laws which have regulated the procedure of restitution and compensation of property, are not considered as new ways of gaining ownership because according to them, it was intended to return the parties in the previous situation, in all those cases where it was possible, by returning to them the same properties that were improperly taken by the state at that time and no other properties.²⁶

The High Court has analyzed not only the right of ownership, but also the ways of obtaining property by referring for this purpose to institutes of the civil law that have regulated the right of ownership at different times. In the analysis that the People's Advocate Institution conducted to the unifying decisions, the High Court expressed itself specifically on the right of property.

²³ In the same place.

²⁴ Refer to the unifying decision of the High Court no. 24, dated 13.3.2002.

²⁵ In the same place.

²⁶ Refer to the unifying decision of the High Court no. 4 dated 10.12.2013.

In the Unifying Decision of the Joint Colleges no. 25 / 2003 concerning those subjects that are procedurally legitimated as plaintiff, it is stated that: *"... while the first group is constituted by subjects who seek restoration or compensation of their rights as former owners (heirs of former owners), the second group of subjects that are procedurally legitimized, includes those subjects that oppose, on behalf of their legal rights or interests, illegal profits that may have been carried out by subjects of the first group through decisions of Property Commissions"*.

Joint Colleges of the High Court in decision no.4 / 2005 have come to the unifying conclusion that: *"Despite the time of registration of the case for trial (before or after the new law enters into force), in all cases where the claim for challenging the decision of the Commission for Restitution of Property, has been raised by other people who have acquired ownership rights over the property tried by this decision, then the court is the one which has jurisdiction to deal with these cases"*.

In the Unifying Decision No. 7/2005, the Joint Colleges of the High Court come to the unifying conclusion that: *".... all matters that have to do with challenging decisions of the Commissions for Restitution and Compensation of Property to former Owners, that have been taken pursuant to Law No. 7698, dated 15.04.1993 and that are challenged in court before the entry into force of Law No. 9235, dated 29.07.2004 "On restitution and compensation of property", are in the legal jurisdiction and not in the administrative one"*.

In the Unifying Decision 2/2009 the Joint Colleges have taken the attitude that *"Administrative appeal provided for in Article 18 of the Law" On the restitution and compensation of property " should be understood and applied equally to appeals by the requesting subject that pursues the full administrative procedure and in cases when other requesting subjects do not appear, as well as to appeals from a new claimant subject against the administrative acts issued in favor of another subject, but that affects its interests in the same property and that was not a party in the full administrative procedure of issuing and appeal of the act. In both cases, the expropriated subjects are obliged to follow the procedures of the administrative appeal and only after this legal way has been completely exhausted, they may address the court."*

While in the unifying decision no. 2/2011, the Joint Colleges of the High Court have changed their attitude by unifying decision no. 2/2009 by unifying practice with the unifying dictum that: *"... expropriated subjects have an obligation to address the administrative body, i.e. the Agency for the Restitution and Compensation of Property, only in two situations.*

• Findings in Law No. 9235, dated 29.07.2004, "On the restitution and compensation of property", as amended.

Referring to the existing legal framework in the light of international standards and jurisdiction concerning the right to property, we ascertain that, limitation by law of the right of seeking recognition and restitution / compensation of real estate to the Agency for the Restitution and Compensation of Property, on a fixed term, as provided for by Article 17 of Law no. 9235, dated 29.07.2004, as amended, or the determining of the deadline for completing the process of recognition, restitution and compensation of real estate, as provided for in Article 24 of the law concerned, is not in accordance with the provisions of Article 113/b of Civil Code. The right of

seeking recognition of ownership shall exist even after the end of the activity of the Agency for the Restitution and Compensation of Property. This right as irrevocable, may be exercised by the expropriated subjects, upon completion of the activity of the Agency for the Restitution and Compensation of Property in judicial ways. In this context, we believe that, in Law no. 9235, dated 29.07.2004, as amended, there should be no reflection of setting the limits for seeking recognition of ownership or completion of the process of recognizing the ownership..

Designation as an executive title of the decision taken by the General Director of the Agency for the Restitution and Compensation of Property as provided for in Article 16 of Law 9235, dated 29.07.2004, as amended, and charging of the Bailiff Service for mandatory execution of the decision, according to which it was decided to recognize the fair restitution or compensation of property, is not in accordance with the provisions of Article 510 / a of the Code of Civil Procedure, due to the fact that the decisions given by the General Director of the Agency for the Restitution and Compensation of Property on the recognition of the right to restitution or compensation of property, contain no liability or party in civil conflict for the property under consideration.

The failure to meet up to date the obligation of issuing the law for the compensation of real estate, referring to article 5 of Law no. 9235, dated 29.07.2004 '*On the restitution and compensation of properties*', is an issue which has not met its constitutional obligation as enshrined in Article 181, paragraph 1, of the Constitution of the Republic of Albania.

Anticipation conducted in Article 17/3 of the Law 9235, dated 29.07.2004, as amended, under which the obligation of the Agency for the Restitution and Compensation of Property is not to be tried by decision claims that rely only on a judicial decision of certifying the legal fact of the property, is not in accordance with the principle of taking decisions as provided for in Article 15 of the Administrative Procedure Code. Body of the Agency for the Restitution and Compensation of Property cannot refuse to examine and give decisions on matters submitted for consideration under conditions set out in Article 17/3 of the Law 9235, dated 29.07.2004, as amended. Referring to the provision of article 46 of the Administrative Procedure Code. The administrative proceedings can start with the administration's initiative or at the request of the interested parties and that the outcome of the administrative proceeding is concluded after taking a final decision as stipulated in Article 99 of this Code. In the final decision, the proceeding body under Article 100 of the Administrative Procedure Code, shall decide on all the matters raised during the proceedings.

IV. Opinions on the state of the right to property and proposals for solving the case by owners' associations.

As it is presented even in the methodology of this report, the People's Advocate Institution has conducted a series of activities to attract opinions by actors in this field as well as Groups of interest.

Specifically the following synthesized suggestions and comments by relevant associations:

I - The association "Pronësi me Drejtësi"

1. During the last 2 years, the Government has done nothing concrete for the implementation of the right to property, in accordance with article 181 of the Constitution. The only Balance is the legalization of informal constructions in the lands of the former owners or those owned by the state. The Agency for the Restitution and Compensation of Property over years operates as an institution that prevents the restitution of the property.
2. Laws and DCMs issued for the legalization of informal constructions, particularly in tourist areas, are in violation of the Constitution.
3. Over 8,000 people were killed because of property conflicts (as declared by MPs in the Parliament). There is no official report from the Ministry of Interior regarding people who have lost their lives or were injured due to the property issues.
4. All property laws are defective.
5. Authorities in charge by law do not execute final domestic judicial decisions or those of the ECtHR concerning properties. The Albanian state has not executed a number of decisions given by ECtHR.
6. Groups of interest are expropriated subjects that require the implementation of human rights and constitutional obligations. Both the Parliament and the President violate constitutional obligations (Article 181). The solution is simple and the association "Pronësi me Drejtësi" has provided for a long time full resolution and at no cost, for the issue of property to former owners, but this issue is hampered by the lack of political will.
7. The methodology must change, in addressing the issue of recognition and restitution/compensation of property, by adopting a specific law on lands in the tourist area of Vlora - Saranda. The Association has officially expressed its opinions on this issue in the relevant state.
8. According to the laws adopted during the period 1991-2015 the lands of the former Agricultural Enterprises in tourist areas are given only to expropriated subject, while in reality these lands are acquired by other subjects.

II- The Association "Bregdeti"

1. According to the legal framework in force, it turns out that there is no fair regulation of various issues related to expropriations and confiscations carried out before the adoption of the Constitution, by not respecting thus the criteria of Article 41 as well as the obligations enshrined in Article 181 of the Constitution of the Republic of Albania.
2. There was and still there is a direct violation of the Fundamental Human Rights guaranteed by the Constitution (Article 15 / Paragraph 1, Article 41/Paragraph 1 and Article 42/ Paragraph 1) as well as of the International Charter of Human Rights (Article 17).
3. It wasn't developed and still it isn't developed any regular verification process conducted by the bodies in charge by law in respect of provision carried out in Article 15 of Law No. 7501 "On the Land", according to which any natural or legal person that is given land for use, but do not use it for agricultural or livestock purposes in a year, shall be deprived of the right to use the land.

4. The process for transferring the ownership of agricultural land, based on decisions of municipal councils and current municipalities with no legal basis, shall lead only to generating a new wave of abuse.
5. It is not clearly defined in a definitive way when the property ownership shall be recognized as well as returned/ compensated to the rightful owners.
6. The relevant State bodies do not observe the legal obligations associated with the recognition, restitution and compensation of the land to the legitimate owners;
7. The relevant State bodies do not define the legal obligation to determine properties, the real estate fund for the physical compensation of legitimate owners;
8. The serious damage of the interests of legitimate owners, due to:
 - ✓ The continuous postponement of deadlines in law for the recognition, restitution/ compensation of property.
 - ✓ Giving priority to legalizing informal constructions in lands that are subject of quest in the Agency for Restitution and Compensation of Property by the rightful owners.
 - ✓ Alienation of public property in defiance to the legal obligation of not altering them until the completion of compensation to expropriated owners (a flagrant case is that the Ministry of Defense has recently put up for sale the territories of closed military units).
9. Our alternative is based on the physical compensation with lands owned by the community of each village or by the state, which are located in territories of tourism development priorities in our province:
10. Assignment of property, compensation fund for subjects who are acknowledged as owners with the right to compensation of real estate;
11. Development of the compensation process in a transparent way with the involvement of the community of our province in the resolution of the ownership right over the land.

III – The Association "Krahina Jonë (Dukat-Tragjas-Rradhimë)" in Vlora

1. To implement Article 181 of the Constitution, which states: "The Assembly of the Republic of Albania, within 2-3 years, should change laws on properties that have been issued prior to this Constitution, in compliance with Article 41".
2. To implement the European Charter of Human Rights (ratified by the Albanian Parliament).
3. To create the legal space so that the former owner can take back his property and that the beneficiaries of agricultural land can be treated with new lands opened by the former cooperatives or acquired by the reclamation of swamp or compensated by the state.
4. Pasture that were former private property of residents of the village Dukat, which today are under the administration of the Municipality of Orikum, become an object of recognition owned by subjects on the part of the local government unit.
5. For all the properties of the former owners which were occupied by social and public facilities such as offices, schools, sports grounds, cemeteries and other social facilities, the local government budget shall provide for their compensation.

IV - The National Association of legitimate owners "SHQIPTARËT"

- 1- Natural and legal persons, who have acquired the ownership of an agricultural land by Law 7501 dated 19.07.1991, no.8053 dated 21.12.1995, and which was superimposed to the property of the former owners, shall be stripped of the ownership right and the land shall be mortgaged in the name of old owner.
- 2- To provide for by law the return of gold and other movable property seized after the year 1994.
- 3- Properties occupied by public works, shall be compensated financially and according to the way proposed by associations rather than by casting lots.
- 4- To avoid hindering the old legitimate owners by deadlines for the submission of documents for recognition, restitution and compensation in the Agency for Restitution and Compensation of Property.
- 5- To enable full access of subjects in obtaining information on the ownership by the state bodies.
- 6- To convert according to the market value, the blocking of properties for 70 years as applying the late payment interests, such as for electricity or any kind of missing profit. Conversion shall be accomplished by annulling taxes for several years proportionally to the property.
- 7- Properties claimed by the rightful owners are under process, or even blocked due to the expiration of term for opening the files and that the state has given by concession, leased, for use or public use, shall be placed immediately in function of the Agency for Restitution and Compensation of Property.

V. Findings of the problems associated with the implementation of property laws.

Property has been and still remains a disturbing problem in our society after the democratic movements of 1990s, as well as the democratic legal order set up after these movements. Despite the legal framework and international standards, interpreted and guaranteed in the jurisprudence of the ECtHR, the process of restitution and compensation of properties remains a concern and a serious obstacle in this process, constituting a flagrant violation of property rights, recognized and guaranteed in the Constitution of the Republic of Albania and the ECHR. Failures of this process became object of discussion even in the European mechanisms, which monitor this process. Thus in a decision dated on March 6th, 2014, the Committee of Ministers has spoken concerning the failure of the Albanian authorities regarding the execution of judicial or administrative decisions for the compensation of relevant subjects, as one of the legal ways for the restitution and compensation of properties to the former expropriated subjects.

In its last decision of June 6th, 2012 related to the supervision of the execution of Court decisions, in its 1144th meeting, the Committee of Ministers, inter alia, *"emphasized the preparation of [a] draft global strategy on property rights by the Albanian authorities"*. Further, it insisted that the Albanian authorities should make concrete progress, with the aim of "creating a list of final decisions, to finalize the map of land value so as to calculate the cost of enforcing decisions in order to enable the determination of necessary resources, the use of mechanization

of final execution and execution of the decisions concerned²⁷. "The European Court of Human Rights has expressed the view that the failure of domestic authorities for several years to enforce a court decision, or to financially compensate a subject recognized by law, violates its rights as recognized and guaranteed by article 6/1 of the ECtHR and Article 1 of Protocol 1 of the ECtHR.²⁸

On the other hand, the Court in its jurisprudence has considered the non-execution of a decision which recognizes a property title under the first sentence of Article 1 of Protocol 1²⁹, which establishes the principle of the peaceful enjoyment of property in general terms. In this spirit, the ECtHR argues even on other cases such as *Nuri vs. Albania*, *Hamzaraj No. 1 vs. Albania* and the *pilot* decision *Pluto vs. Albania*, etc.

The Council of Ministers' Decision no. 405, dated 27.06.2012, has recorded the highest number of state bodies (in total 8) that in a fragmented way, address the issue of acquiring the ownership and registration of property titles, thereby overlapping processes associated with the right of ownership, and therefore creating problems which are evident today. Establishment of the Department of Coordination of the Ownership Issue, in the Ministry of Justice, in 2011, as a body coordinating the activities of state institutions involved in issues of ownership and initiator of legal initiatives for the harmonization of legislation, has not proven efficient so far, which situation is ascertained even by the European Court of Human Rights while considering the case of *Manushaqe Puto vs. Albania*.

Failure of the Agency for Restitution and Compensation of Property to consider applications for recognition of the right of restitution or compensation of real estate within the deadline determined by Law No. 9235, dated 29.7.2004, "On the restitution and compensation of property", as amended. Without any cause the Agency for Restitution and Compensation of Property did not and still does not allow the review of applications of different subjects within the legal deadline. In the awareness of the People's Advocate Institution, the Agency for Restitution and Compensation of Property has under review 8343 applications for recognition with the right to restitution or compensation of real estate.

From the data collected, it turns out that the Agency for Restitution and Compensation of Property with the entry into force of Law no. 9235, dated 29.07.2004 "On Restitution and Compensation of Property", as amended, and by 2013, has reviewed and decided on 54 927 cases, i.e. an annual average of nearly 6100 cases reviewed in a year. Referring to the current number of applications administered by the Agency for Restitution and Compensation of Property, of 8343 like this, it takes less than a year and a half to take decisions for them. It is ascertained that the Agency for Restitution and Compensation of Property, from the end of 2013

²⁷ Refer to the interpretation of ECtHR in the case of *Manushaqe Pluto and others vs. Albania*, application no. 604/07, 43628/07, 46684/07 and 34770/09, dated 31.07.2012.

²⁸ Refer to the case *Driza vs. Albania*, application no. 33771/02, *Vrioni and others vs. Albania and Italy*, no 35720/04 and 42832/06, September 29th 2009, *Manushaqe Pluto and others vs. Albania*, and *Ramadhani and others vs. Albania*.

²⁹ Refer to *Burdov vs. Russia*, no.59498/00, § 40, *ECHR 2002-III*, *Jasiūnienė vs. Lithuania*, no.41510/98, § 45, *March 6th 2003*; *Sabin Popescu vs. Romania*, no.48102/99, § 80, *March 2nd 2004*; and *Beshiri and others vs. Albania*.

so far, has not enabled, if only the review of an application, with the object of recognition with the right to restitution or compensation of real estate. Whatever the cause, the violation of the terms provided for in the law for reviewing of applications filed by various subjects, cannot be justified, let alone when the applications were administered 1, 5 or ten years ago.

Given the situation created and the state which was incompatible with the guarantees offered by the ECtHR, the European Court of Human Rights has emphasized the fact that, as stated in paragraph 90 of the decision *Ramadhi and others*, violations found in the decision concerned "derived from a widespread problem affecting a large number of people", i.e. the regulatory shortcomings and / or administrative conduct of the authorities to implement the final decision of the Commission to provide compensation to former owners according to property laws.

As noted above, the People's Advocate ascertains that there are violations following the norms regulating the ownership. This despite the concrete measures proposed by the ECtHR in its decisions on cases *Driza; Ramadhi and others; Vrioni and others* and *Delvina*.

The Court has stated seriously concerned that the number of complaints recorded and based, could increase and therefore it represents a serious threat to the future effectiveness of the Convention mechanism³⁰. Such a situation is and will remain serious for Albania, given the fact that there are already dozens of applications pending review by the ECtHR and there is still no effective enforcement by the mechanisms proposed by the ECtHR, in the framework of pilot decisions *Manushaqe Puto and others vs. Albania*.

The failure to compensate properties recognized as being owned by different subjects within the legal deadline provided for in Article 11 of Law no. 9235, dated 29.07.2004 "On Property Restitution and Compensation", as amended, with a format provided in this legal provision, the problem is just as sharp as that of failure to review applications for recognition, restitution or compensation of property within the legal deadline as provided for, which has disturbed and still disturbs the category of subjects of former owners. It is ascertained that resolving the issue of compensation of properties recognized for more than 20 years, is not over yet. Even in those cases where it is decided to financially compensate subjects which are recognized as the owner of the real estate, the solution of this issue has become so partial to a number of subjects, by still not resolving in a definitive way the issue of compensation. This situation has led to the continuous increase of the number of subjects that addressed and still address the European Court of Human Rights, year after year, for the violation of the right to property or violation of the right to a fair legal trial, guaranteed by Article 41, 42, 181 of the Constitution of the Republic of Albania, or Articles 6/1, 13 of the European Convention of Human Rights and Article 1 of Protocol No. 1 of the Convention. According to calculations of the Association "Pronësi me Drejtësi" the property compensation bill amounts to 20 billion Euros. The Agency for Restitution and Compensation of Property currently possesses a physical fund, according to DCM no. 868, dated 18.06.2008 "On the creation of a compensation fund by the fund of physical agricultural land", as amended, with an area of 18 597 hectares. While some other 71 699 hectares were identified as free, based on DCM no.1077, dated 18.06.2008 "On the creation of the physical compensation fund from the forest and pasture fund". The Agency for Restitution and

³⁰ Refer to *Yuriy Nikolayevich Ivanov Yuriy Nikolayevich Ivanov vs. Ukraine* no. 40450/04, §§ 51-54 dated 15.10.2009, § 86.

Compensation of Property shall possess even another fund to physically compensate state facilities, which shall be assessed according to rigorous criteria and shall be privatized. The decisions of the International Court of Human Rights for the financial non-compensation of expropriated subjects over the years, have so far penalized the Albanian state in several million of euros. Meanwhile there are more than eight thousand other claims pending review, which along with the above-mentioned financial burden, constitute a serious problem for Albania and a commitment to the final resolution of the property issue.

Priority should be given to the rapid identification of free public real estate and which should be used for the physical compensation of the expropriated, as with much lower cost, than the financial one.

The non-execution of administrative or judicial decisions related to property. Referring to provision of article 196 of the Civil Code, the Agency for Restitution and Compensation of Property has had and still has the obligation of delivery to the local office of registration of real estate, the decisions taken by it under which it is decided on the recognition, acquisition of the property right on the real estate or any other right over it. This legal obligation is not met on a continuous regular basis by the Agency for Restitution and Compensation of Property or even by its previous bodies as The Commission for Restitution and Compensation of Property to former owners, in municipalities, KSHKKP, ZRKKP in the region. This situation turns out to be displayed even in the attitude taken by the judicial administration which just like the Agency for Restitution and Compensation of Property, has not regularly met the obligation of delivery to the local office of registration of real estate, of all the judicial decisions on the definition and enforcement of the provision conducted in Article 196 of the Civil Code. To enable the solution to this abnormal situation, as ascertained in the attitude held by the Judicial Administration, the People's Advocate Institution has initiated in 2013, the review of this issue, at the end of which it has recommended³¹ to the Minister of Justice to issue the order for unification of the attitude held by the court administration regarding the delivery of final civil judicial decisions containing the acquisition, recognition, modification, termination of an actual right over it, or that declare as invalid the legal actions for the transfer of ownership recorded earlier.

Failure to enforce final decisions recognizing the right of restitution / compensation of properties confiscated during the communist regime, is undoubtedly an early structural problem of the Albanian legal system. Putting into operation an effective mechanism for the restitution / compensation of property, remains a challenge for the Albanian state, which has to pay a huge financial bill.

Regarding the process of execution of decisions dealing with the decisions of the ECtHR, from our information, it turns out that financial obligation has been executed, totally for 38 decisions while two other decisions are under process of approval and execution. It should be noted that the Albanian government observes the execution of decisions of the Court of Strasbourg and, currently, there are no unpaid decisions or under execution process. For all decisions of the European Court of Human Rights, if payments of obligations are not performed within 3 months

³¹ Letter no. K3/I5-60, dated 17.12.2013

from the date when the decision became final, the Albanian state shall be burdened with the payment of delay interest, for each day of delay.

Following this process, the People's Advocate ascertains that the state budget is burdened during the year by decisions of the International Court of Strasbourg, which in almost all cases are in favor of the plaintiffs, with a significant financial impact. In these conditions, it turns out that the Ministry of Justice must take measures in regard to the review of the current scheme of restitution and compensation of property, as well as to finalize a package of concrete measures in this process, which should be adopted later even by the International Court of Strasbourg.

The most recent decision of the Strasbourg Court refers to the case of *Siliqi and others vs. Albania*³², where the Court ascertained, inter alia, a violation of Article 1 of Protocol 1 additional to the ECtHR, since the Albanian authorities have refused to execute a decision of the High Court issued in 2002³³. The largest financial obligation recognized in favor of the applicants confirms once again the necessity of establishing effective mechanisms for the fair compensation to former owners or their legal heirs, so that such proceedings do not drag on for years.

The ECtHR has stated that the principles concerning the fair legal trial and the obligation for execution of court decisions, are of a greater importance in the context of administrative procedures dealing with a dispute, the result of which is decisive for the civil rights of the applicant³⁴. Effective protection of a party in such proceedings and the restoration of legality implies an obligation for administrative authorities to implement court decisions. In this regard, the Court notes that the administrative authorities constitute an element of the rule of law and, consequently, their interests coincide with the need for good administration of justice. If the administrative authorities refuse or fail to implement these decisions, or simply delay to do so, the guarantees of Article 6, enjoyed by parties during the trial, lose their purpose.³⁵

The Constitutional Court has on several occasions addressed the problem of non-execution of court decisions, as an essential part of the fair legal trial, within the observance of Article 42 of the Constitution and Article 6/1 of the ECHR, thus ascertaining the violation of the principle for a fair legal trial. In its reasoning, the Constitutional Court has referred to almost all issues, principles and standards already discussed and interpreted by the ECtHR in its rich jurisprudence.

This principle and standard has been elaborated and specifically addressed in the jurisprudence of the ECtHR, as noted above, finding its expression and concretization in many cases reviewed by this Court.

The Constitutional Court has accepted that the execution of a final decision of the court is regarded as the final phase of the realization of a right acquired judicially. Only after completion

³² Application no. 37295/05 and 42228/05, decision dated March 10th 2015.

³³ Only based on this decision on the case *Siliqi and others vs. Albania*, the Albanian state shall pay within three months 1,498,400 Euros.

³⁴ For more information refer to the Jurisprudence of ECtHR of the Albanian Constitutional Court through decision no. 6 dated 07.03.2011.

³⁵ Refer to decisions of the ECtHR dated 19.03.1997 in the case of *Hornsby vs. Greece (1)*, § 41; dated 27.05.2004, in the case of *Metaxas vs. Greece*.

of this phase, it can be considered that the individual has fully set in place his right to win. In such cases the process of setting in place a violated right, includes not only the decision-making of the courts, but also the manner of performing specific actions by the responsible bodies in charge of the execution of final court decisions. No doubt that a delay in the execution of a decision may be justified in special circumstances, but the delay cannot be to such an extent as to harm the essence of the law.³⁶

The Constitutional Court held the same position in its decision and agreed that: "... the constitutional principles concerning the fair legal trial, which is referred to Article 42/2 of the Constitution and Article 6 of the ECHR as well as the obligation for execution of judicial decisions provided for in Article 142/3 of the Constitution, emphasize the fact that every citizen who addresses a competent court for the realization of a right, cannot await endlessly for its realization". Further, "... the execution of the decision constitutes an essential element of the rule of law and of the very notion of a fair trial. No state body can put into question the fairness of final judicial decisions. Every state organ is obliged to take appropriate measures for their implementation."³⁷ We think that taking into consideration recommendations shall affect the realization in a shorter term of the process of compensation to the expropriated subjects of the communist regime and the device with full documentation of the ownership of those subjects that have benefited under the aforementioned law. The data indicate that the land fund for enabling compensation to the expropriated subjects, does exist, therefore the process development and its termination in the shortest time possible, remains an organizational matter. The increasing number of staff of the Agency for Restitution and Compensation of Property shall serve to this goal.

Also, in the current situation of the process of recognition and restitution / compensation of properties, attention should be paid even to problems encountered in the progress report of the EU for 2005-2012, where there was ascertained that;

- Property issues related to the restitution or compensation of property to the former expropriated owners during the communist regime, remain a major problem.
- Amendments to the law on property restitution and compensation, by setting new criteria for assessing the land, and by extending the continuation of the process of restitution and compensation.
- Occasional changes of the legal framework for the right of ownership, in spite of deriving from the need to improve it, have often led to the overlapping of relevant institutions powers in this field.
- Electronic land registry has not finished yet and database of properties has remained under the control of various law enforcement agencies.
- Serious efforts should be made to guarantee the execution of decisions of courts of the country, as well as those of the European Court of Human Rights relating to the right of ownership.

³⁶ Refer to decision of the Constitutional Court no.43, dated 19.12.2007; no.6 dated 04.03.2010, no.35 dated 27.10.2010 and no. 6 dated 07.03.2011.

³⁷ Refer to decision no. 43, dated 19.12.2007, decision no.1 dated 19.01.2009, decision no.6 dated 06.03.2009 and no. 13 dated 14.04.2010 of the Constitutional Court.

During the period 2010-2014, by the People's Advocate Institution, a total of **1375 complaints** have been administered, in which it was raised the allegation of infringement of property rights by public administration bodies. A number of complaints according to bodies which have allegedly conducted the violation of the right of ownership, are addressed as follows:

1. To local registration offices of real estate as well as the Central Registration Office of Real Estate, a total of **407 cases**.
2. To the Agency for Restitution and Compensation of Property, a total of **248 cases**.
3. To municipalities and communes, a total of **426 cases**.
4. To ALUIZNI, a total of **149 cases**.
5. To the National Inspectorate for the Defense of the Territory (INUK and INUV), a total of **145 cases**.

Referring to the scope of complaints, the People's Advocate Institution in the process of reviewing them, has noted that the violation of the right of ownership, in a considerable number of cases, comes as a result of non-compliance with the legal provisions by employees in charge by law to perform certain actions.

Below, there are some of the problems identified by the People's Advocate Institution in recent years which deal with complaints and administrative investigation conducted by it.

- In the improper preparation of the cartographic documentation by the local registration offices of real estate during the initial registration of property titles, actions that have caused overlapping of properties and therefore civil conflicts among subjects.
- Underdevelopment of administrative procedures by the local registration offices of real estate within the time as provided for.
- Failure to perform the action for correcting documents that contain erroneous ownership data.
- Failure to register or unjustified delays in the registration of property titles.
- Failure to register all the surface of agricultural land by the local registration office of real estate as acquired by the agricultural families according to Law No. 7501 dated 19.07.1991 "On the land".
- Failure to provide information on the ownership as required by the interested subject.
- Failure to issue ownership documents or failure to return a response on time to the subjects who have applied to obtain a document of ownership for their real estate.
- Failure to take action for the registration of constructions prior to 10.08.1991, as defined in DCM no. 608, dated 05.09.2012, for which the holders do not possess acts of acquisition of property.
- Delay of procedures by the local government unit for the extraction of title for constructions carried out prior to 10.08.1991, in accordance with DCM no.608 dated 05.09.2012.
- Delays in the delivery of the cash value to the expropriated subjects.
- Delays in the process of reviewing the requests (applications) for the legalization of informal constructions.

- Failure to carry out procedures by the IKMT in accordance with the provisions of law, during the development process of demolishing illegal and informal constructions.
- Failure to issue or communicate relevant acts by the IKMT, to possessors or owners of the construction subject to demolition.
- Delay in the process of reviewing the validity of property titles on agricultural land by local Commissions in the Prefecture of each district.
- Failure to provide agricultural families with agricultural land in different areas according to the norm set per capita.
- Failure to issue the new act (duplicate) of ownership by the local government unit, in case of loss of the property title (AMTP) by the agricultural family.
- Failure to prepare the cartographic material by the commission of land division in the village or the local government unit, for parcels given to the agricultural family, according to Law No. 7501 dated 19.07.1991 "On the land" etc.

VI. Recommendations

In order to improve the legal framework of the property rights and to implement international standards, we recommend:

1. To prepare as soon as possible and to put up for approval in the Parliament of Albania the Draft-Law 'On Amendments to the Law no. 9235, dated 29.07.2004, "*On the restitution and compensation of property*" as amended", which reflects the removal of the application term at the Agency for Restitution and Compensation of Property for the recognition of the right to restitution or compensation of property.
2. To prepare as soon as possible and to put up for approval in the Parliament of Albania the Draft-Law '*On Amendments to the Law no. 9235, dated 29.07.2004, "On the restitution and compensation of property"* as amended", which reflects the removal of obligation for the execution of the Judicial Bailiff Service of decisions given by the General Director of the Agency for Restitution and Compensation of Property.
3. To prepare as soon as possible and to put up for approval in the Parliament of Albania the Draft-Law "*On the restitution and compensation of movable property*" as a constitutional obligation unfulfilled to date in definition and enforcement of Article 181, paragraph 1, of the Constitution of the Republic of Albania", and Article 5 of Law no. 9235, dated 29.07.2004 '*On the restitution and compensation of properties*".
4. To prepare as soon as possible and to put up for approval in the Parliament of Albania the Draft Law '*On Amendments to the Law no. 9235, dated 29.07.2004, "On the restitution and compensation of property "*, as amended", which reflects the repeal of provisions carried out in Article 17/3.

In order to implement the legislation of property rights and to enforce international instruments and jurisprudence of the ECtHR, we recommend:

1. "To take measures as soon as possible regarding the fulfillment of tasks given by the European Court of Human Rights, in the trial of the case of Manushaqe Puto vs. Albania, such as;

a) Developing a list of final administrative and judicial decisions that recognize, restore and compensate the property right to former owners. This list should contain information about the status of the property, location, area of the land which is to be returned, compensated and forms of compensation;

b) Approving the map of property value with values as much reasonable and realistic as possible;

c) Preparing the financial invoice of the process of property restitution and compensation;

d) Creating an efficient mechanism for executing all final administrative and judicial decisions, that recognize, restore and compensate the property to former owners."

2. To take immediate measures which enable the review at a much faster time of applications administered for the recognition with the right to restitution or compensation of real estate.

3. "To adopt as soon as possible the list of properties at physical disposal, according to letters "a" and "b" of Article 11 of the Law No. 9583, dated 17.07.2006, as well as ways of establishing this fund available to the Agency for Restitution and Compensation of Property."

4. "To take measures as soon as possible to identify all administrative and judicial decisions given from 1990 to date, according to which it is decided on the recognition, acquisition of rights to real estate or any actual right over it, and to deliver them to the relevant local registration office of real estate "

a) For real estate occupied by state objects, it has happened that expropriated owners were not provided with the opportunity to exercise the right of pre-purchase on these objects when they have been privatized.

b) Regarding the creation of a new mechanism for effective compensation of expropriated subjects during the communist regime, as well as the transformation and role of the Agency for Restitution and Compensation of Property, in the process of restitution and compensation of property to expropriated owners.

5. To regularly issue the bylaw on financial compensation to the expropriated every year on basis of Law No. 10 239, dated 25.02.2010 "On the creation of a special fund of property compensation"

6. To publish the physical compensation fund by DCM no. 1077, dated 18.06.2008 "On the creation of the physical compensation fund by forestry and pasture fund'.

7. To publish the physical compensation fund by DCM no. 868, dated 18.06.2008 "On the creation of the physical compensation fund by the fund of agricultural land".

8. To create the databases and cartographic positioning of properties that are available to AQSH, Cadastre (today - ZAMT) in Districts, mortgages (today - ZVRPP), ownership data prior to the implementation of the Law "On the agrarian reform", year 1946.

9. To complete the process of systematic registration of properties in those areas where the cadastre is set for recognition and restitution / compensation of real estate. (Since it is hampered to provide with property card as well as mapping of real estate, the interested who have profited under the Law "On the restitution and compensation of property").

10. To increase the level of coordination between institutions dealing with issues of ownership

11. To complete the process of restitution and compensation of property, legalization process and the evaluation of property titles within the legal terms.

12. To complete as soon as possible the initial registration of real estate and the digitization of data.
13. To put in the registration system lands allocated to agricultural families in many areas of the country, through providing financial funds and human resources to the Central Registration Office of Real Estate.
14. To establish special commissions and to issue laws and by-laws for the settlement of ownership of agricultural land, obtained for use by the beneficiary subject, as former employees of Agricultural Cooperatives and Enterprises.
15. To review modalities for compensation in order to reflect the instructions provided by the ECtHR on property issues.
16. Compensation as provided by Law No. 9235, dated 29.07.12004 "On Property Restitution and Compensation", as amended, should not be carried out mainly in cash, but to consider with priority the use of alternative methods of compensation.
17. To calculate the total number of administrative decisions that recognize the right of ownership, with the right to compensation, in order to calculate the total amount of compensation.