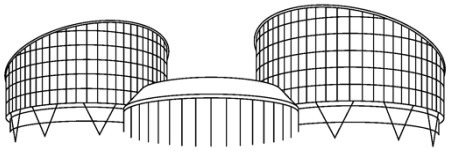

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 29026/06
Agim BESHIRI against Albania
and 11 other applications
(see appended table)

The European Court of Human Rights (Second Section), sitting on 17 March 2020 as a Chamber composed of:

Robert Spano, *President,*
Marko Bošnjak
Valeriu Griţco
Ivana Jelić
Arnfinn Bårdsen
Darian Pavli
Peeter Roosma, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the pilot judgment delivered in the case of *Manushaqe Puto and Others v. Albania*, nos. 604/07 and 3 others, 31 July 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The Albanian Government ("the Government") were represented by their then Agents, Ms S. Mëneri of the then Office of Legal Representative, Ms. E. Hajro, Ms. L. Mandia and Ms. A. Hicka of the State Advocate's Office, and subsequently by Mr A. Metani of the State Advocate's Office.

I. THE CIRCUMSTANCES OF THE CASE

A. Background

1. Introduction

2. Between 2006 and 2011 the Court delivered a number of judgments concerning the non-enforcement of final administrative or court decisions recognising those applicants' entitlement to compensation *in lieu* of the restitution of property which had been confiscated or otherwise taken by the former communist regime. It found a breach of Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the authorities' failure to enforce the final decisions (see *Beshiri and Others v. Albania*, no. 7352/03, 22 August 2006; *Ramadhi and Others v. Albania*, no. 38222/02, 13 November 2007; *Driza v. Albania*, no. 33771/02, ECHR 2007-V (extracts); *Hamzaraj v. Albania (no. 1)*, no. 45264/04, 3 February 2009; *Nuri v. Albania*, no. 12306/04, 3 February 2009; *Vrioni and Others v. Albania and Italy*, nos. 35720/04 and 42832/06, 29 September 2009; and *Eltari v. Albania*, no. 16530/06, 8 March 2011).

3. In the *Ramadhi* and *Driza* judgments, the Court invited the respondent Government, under Article 46 of the Convention, to introduce a remedy which would secure genuinely effective redress for the Convention violations identified in those judgments. In the *Hamzaraj (no. 1)* and *Nuri* judgments, the Court found that the same situation persisted as in the case of *Ramadhi* and invited the respondent Government, under Article 46, to adopt general measures as indicated in the *Ramadhi* judgment. The Court made similar findings in subsequent judgments in the cases of *Vrioni and Others*, cited above, and *Eltari*, cited above.

4. In the judgment in the case of *Vrioni and Others v. Albania* (just satisfaction), nos. 35720/04 and 42832/06, 7 December 2010, the Court accepted to use the 2008 property valuation maps for the calculation of pecuniary damage under Article 41 of the Convention, stating as follows:

> "36. In calculating the amount of pecuniary damage, the Court considers that, given the particular circumstances of the Albanian context, it is desirable to depart from the method of calculation described in Driza (cited above, § 137) according to which the amount of compensation should correspond to the value of the plot of land at the time of the domestic authorities' decisions. The Court notes that at the relevant time the property valuation maps did not exist. It was precisely for the purpose of calculating the amount of financial compensation to be awarded and for avoiding any speculation that the Court indicated under Article 46 of the Convention that the respondent State should adopt such maps as a matter of urgency (see Driza, cited above, § 126).
>
> 37. The Court notes with interest that the authorities have adopted property valuation maps in respect of the entire territory of Albania. The reference price, as stated by the Government, reflects the real market value and was interest-and inflation-indexed at the time of adoption of the maps. The Court will therefore base its

findings for the calculation of pecuniary damage on the property valuation maps adopted in respect of the Tirana region in 2008."

2. The Manushaqe Puto and Others pilot judgment

5. As a result of the introduction of an increasing number of applications concerning prolonged non-enforcement of final decisions recognising those applicants' right to compensation and the authorities' failure to take general measures to enforce the final decisions, the Court decided to have recourse to the pilot judgment procedure and selected the case of *Manushaqe Puto and Others*, cited above, which concerned four applications, as representative of this problem. In its pilot judgment of 31 July 2012 the Court found that there had been a breach of Article 6 § 1 of the Convention as well as of Article 1 of Protocol No. 1 on account of the prolonged non-enforcement of administrative decisions awarding compensation. The Court held, under Article 13 of the Convention, that there was no effective domestic remedy that allowed for adequate and sufficient redress.

6. Ruling under Article 41 of the Convention on just satisfaction, the Court, relying on the property valuation maps adopted by the Government in 2008 (see paragraph 4 above), awarded the applicants an aggregate amount of 2,992,400 Euros ("EUR") in respect of pecuniary and non-pecuniary damage and an aggregate amount of EUR 12,050 in respect of costs and expenses.

7. Under Article 46 of the Convention, the Court proposed, on a purely indicative basis, a list of general measures that the respondent State should take, including, without limitation, the "compilation of a database" of administrative decisions, including any "modifications made by way of judicial review", recognising property rights and awarding compensation; the creation of a "clear compensation scheme" which would "make use of alternative forms of compensation as provided for by law" and "require a reconsideration of the modalities for the payment of financial compensation"; transparent decision-making in, and publication of, the type and award of compensation as well as transparent "revision and update of valuation maps"; "the importance of setting realistic, statutory and binding time-limits in respect of every step of the process" and the allocation of "sufficient human and material resources".

8. The Court decided to adjourn proceedings concerning all new applications lodged with it after the delivery of the pilot judgment in which the applicants raised arguable complaints relating solely to the prolonged non-enforcement of final property decisions for the execution of which the State was responsible, for a period of 18 months after the date on which the pilot judgment became final, which was on 17 December 2012.

9. The Court, however, decided to continue the examination of applications lodged before the delivery of the pilot judgment, without

prejudice to its power at any moment to declare inadmissible any such case or to strike it out of its list following a friendly settlement.

3. Communication and adoption of subsequent judgments in respect of post-Manushaqe Puto and Others follow-up cases

10. On 20 December 2013, consistent with the direction in the pilot judgment (see paragraph 9 above), the Court decided to give notice to the respondent Government of 64 follow-up cases which had been lodged prior to the delivery of the pilot judgment and were the subject of the Court's well-established case-law.

11. On 8 April 2014, consistent with the direction in the pilot judgment (see paragraph 9 above), the Court adopted the first follow-up judgment in the case of *Karagjozi and Others v. Albania* ([Committee], no. 25408/06 and 9 others, 8 April 2014), in which it found a violation of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention on account of the authorities' prolonged non-enforcement of final administrative decisions awarding the applicants compensation in one of the ways provided for by law *in lieu* of the restitution of properties. Ruling under Article 41 of the Convention, the Court awarded the applicants, in respect of pecuniary and non-pecuniary damage, an aggregate amount of EUR 8,154,000 and, in respect of costs and expenses, an aggregate amount of EUR 9,000. The Court declined to consider the 2013 property valuation maps which had been provided by the Government for the calculation of the pecuniary damage, for the following reasons:

> "64. ... The Court notes that the [2013] property valuation maps were submitted as part of general information, beyond any time-limits, after the closure of the written procedure. The Government did not make any explicit submissions as regards the use of such maps in respect of each application. They failed to specify the location of each plot of land in the respective cadastre zones in accordance with the 2013 property valuation maps and the reference price to be applied in respect of each application. Furthermore, the Government did not indicate whether the reference price reflected the real market value and was 'interest and inflation indexed'".

12. In the meantime, the Court has given subsequent judgments in the following follow-up cases.

(i) *Siliqi and Others v. Albania* ([Committee] nos. 37295/05 and 42228/05, 10 March 2015). Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 1,498,400 in respect of pecuniary and non-pecuniary damage and made no award in respect of costs and expenses.

(ii) *Metalla and Others v. Albania* ([Committee] nos. 30264/08 and 3 others, 16 July 2015). Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 121,700 in respect of pecuniary and

non-pecuniary damage and an aggregate amount of EUR 3,000 in respect of costs and expenses.

(iii) *Luli v. Albania*, ([Committee] no. 30601/08, 15 September 2015). Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicant EUR 27,000 for pecuniary damage in respect of his share of property. It further held that, in the absence of just satisfaction claims in respect of another plot of land, the respondent State should secure, by appropriate means, the enforcement of the national decision given in the applicant's favour in respect of that plot of land.

(iv) *Sharra and Others v. Albania* ([Committee], nos. 25038/08 and 11 others, 10 November 2015). Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 5,262,550 in respect of pecuniary and non-pecuniary damage and an aggregate amount of EUR 5,650 in respect of costs and expenses. The Court declined to consider the 2014 property valuation maps which had been provided by the Government for the calculation of the pecuniary damage, for the following reasons (references omitted):

> "82. In the present case, the Court has to determine whether it should refer to the property valuation maps 2008 or those of 2014 for the calculation of pecuniary damage. Having examined the parties' arguments, the Court makes the following observations.
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> 83. The pilot judgment *Manushaqe Puto and Others*, cited above, in relation to the authorities' failure to pay compensation in lieu of the restoration of property was delivered by the Court on 31 July 2012. It became final on 17 December 2012. In its paragraph 121 and the operative provision no. 7 the Court decided not to adjourn the proceedings of cases that had been lodged prior to the delivery of that judgment, but to continue their examination after the judgment became final. In this connection, the present applications were lodged with the Court between 15 May 2008 and 19 December 2011. Notice of the applications was given to the Government on 25 January 2010 and 20 December 2013 (...).
>
> 84. The Court takes note of the Government's arguments in favour of the application of the property valuation maps 2014 for the calculation of the pecuniary damage. It welcomes the fact that the property valuations are (supposed to be) updated every year on the basis of a methodology that was adopted by a Government decision in 2012. However, it is not persuaded by the Government's proposals.
>
> 85. In the first place, the property valuation maps 2014 were adopted after the introduction of the present applications, which are being examined in line with the directions laid down in the pilot judgment. In the Court's view, reference to the valuation maps 2014 would give rise to disparities in the treatment of applicants insofar as reliance on the reference price is concerned.
>
> 86. Secondly, the Court would refer to the reservations made during the parliamentary meeting of 7 May 2012 to the effect that the transactions registered with the IPRO did not generally and necessarily reflect the real market value as a result of tax evasion committed by the parties to a sales contract. Consequently, the Court considers that reliance on the sales prices of registered transactions would be in

> blatant discord with the well-established principle that compensation, in cases of unlawful expropriation, should correspond to the market value, it not being for this Court to indicate measures to curb and combat tax evasion.
>
> 87. Thirdly, and closely linked to the second reason, the Court is concerned that property prices in some cities, particularly in areas experiencing a relatively high development growth, such as the centre of Tirana, the capital city, have experienced a sharp decline. The Court is not in a position to speculate the reasons for such decrease, but it is not convinced that they objectively reflect the current market value and that they were "interest and inflation indexed" in order to cover for the damage occasioned by the unavailability of compensation during all these years (...)."

(v) *Rista and Others v. Albania* ([Committee], nos. 5207/10 and 9 others, 17 March 2016). Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 10,697,900 in respect of pecuniary and non-pecuniary damage and an aggregate amount of EUR 3,200 in respect of costs and expenses.

(vi) *Aliçka and Others v. Albania* ([Committee], nos. 33148/11 and 5 others, 7 April 2016. Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 799,600 in respect of pecuniary and non-pecuniary damage and EUR 1,700 in respect of costs and expenses.

(vii) *Halimi and Others v. Albania* ([Committee], nos. 33839/11, 7 April 2016. Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 754,300 in respect of pecuniary and non-pecuniary damage and EUR 850 in respect of costs and expenses.

(viii) *Karagjozi and Others v. Albania* ([Committee], nos. 32382/11, 7 April 2016. Ruling under Article 41 of the Convention, the Court, relying on the 2008 property valuation maps, awarded the applicants an aggregate amount of EUR 5,919,000 in respect of pecuniary and non-pecuniary damage and EUR 850 in respect of costs and expenses.

13. Between 22 September 2014 and 22 April 2016, consistent with the direction in the pilot judgment (see paragraph 8 above), the Court decided to give notice to the respondent Government of 53 follow-up cases which were the subject of the Court's well-established case-law.

14. Further to the implementation of the *Manushaqe Puto and Others* pilot judgment, on 5 December 2015 Parliament adopted the Treatment of Property and Finalisation of the Property Compensation Process Act (the "2015 Property Act"), which, following the publication in the Official Journal, came into effect on 24 February 2016 (the "Effective Date").

B. The present applications

15. The present applications were lodged with the Court between 2006 and 2014 and concern the prolonged non-enforcement of final

administrative decisions which recognised the applicants' right to compensation in one of the ways provided for by law *in lieu* of the restitution of their properties which had been confiscated or nationalised by the former communist regime. They raise issues similar to those examined by the Court in the *Manushaqe Puto and Others* pilot judgment.

16. A detailed list of the applicants, including their nationalities, representatives and the date of introduction of each application has been set out in the table appended to this decision. A description of the relevant facts of each application is given below.

17. Application no. 29026/06: On 13 February 1996 the Durrës Property Restitution and Compensation Commission ("the Commission") issued two decisions recognising the applicants' inherited property rights to two plots of land measuring 1,272 sq. m and 3,000 sq. m. As the plots of land were occupied, it decided that the applicants would be entitled to compensation in kind (*kompensohen në natyrë*). A third decision issued on the same date recognised the applicants' title to a plot of land measuring 843 sq. m. and the buildings constructed thereon. The buildings were either occupied or leased to households or had been sold to other households by the local authorities. There is no mention of any right to compensation in the third decision.

18. Application no. 3165/08: On 17 November 1995 the Korça Commission recognised the applicants' inherited property rights to a plot of land measuring 450 sq. m. Since the plot of land was occupied by a block of flats, it decided that the applicants would be compensated in one of the ways provided for by law (*të kompensohen me njërën nga mënyrat e parashikuara në...ligj*). On 22 December 2007 the Agency for Restitution and Compensation of Properties (the "Agency"), which had replaced the Commission in 2006, dismissed the applicants' request for financial compensation owing to the lack of funds.

19. Application no. 56956/10: On 12 December 1995 the Bilisht Commission recognised the applicants' inherited property rights to a plot of land measuring 13,315.25 sq. m. Since the plot of land was occupied, the applicants would be compensated by State bonds (*kompensohen me obligacione*). On 16 November 2009 the Agency dismissed the applicants' request for financial compensation as it had not been made in accordance with the statutory requirements, namely it did not contain all supporting documents.

20. Application no. 29127/11: On 20 November 1995 the Tirana Commission recognised the applicants' inherited property rights to a plot of land measuring 5,000 sq. m, of which 524 sq. m were restored. It decided that the applicants would be compensated for the remaining 4,360 sq. m in one of the ways provided for by law (*të kompensohen me një nga mënyrat e këtij [ligji])*, and recognised the applicants' right to first refusal (*e drejta e*

parablerjes) of two buildings, measuring 2,600 sq. m and 1,760 sq. m, in the event of privatisation.

21. Application no. 8904/12: On 30 June 2009 the Tirana Agency recognised the applicants' inherited property rights to a number of plots of land, measuring in total 410,184 sq. m, of which 13,300 sq. m were restored. It further recognised their right to compensation in respect of the remaining 396,884 sq. m (*t'i njihet e drejta e kompensimit për pronën me sipërfaqe 396,884 m*^{2}).

22. Application no. 6311/12*:* On 23 October 1995 the Tirana Commission recognised the applicant's inherited property rights to a plot of land measuring 1,071 sq. m. As the plot was occupied by buildings, it decided that the applicant would be compensated in one of the ways provided for by law (*të kompensojë trashëgimtarët...për truallin e zënë...me një nga mënyrat që përcakton...ligji*). In 2005 the applicant received financial compensation for 200 sq. m.

23. Application no. 5915/14: On 19 June 2007 the Agency recognised the applicants' inherited property rights to a plot of land measuring 240,000 sq. m. It decided that the applicants would be compensated for 183,500 sq. m in one of the ways provided for by law (*të kompensojë...për pronën...me një nga format e parashikuara në...ligj*), since 56,500 sq. m had been restored to them by way of a final court decision in 1996.

24. Application no. 53846/14: On 4 July 1995 the Tirana Commission recognised the applicants' inherited property rights to a plot of land measuring 65,000 sq. m. As the plot was occupied, it decided that the applicants would be compensated in one of the ways provided for by law (*të kompensohet... me një nga mënyrat e përcaktuara në [ligj]*). It also recognised the applicants' right to first refusal of a number of buildings located on the plot of land in the event of their privatisation.

25. Application no. 57152/14: The parties agreed that on 29 June 1994, as supplemented and clarified by two subsequent decisions given on 14 October 1994 and 21 October 1999, the Tirana Commission had recognised the applicants' inherited property rights to a plot of land measuring 1,011 sq. m, of which 224 sq. m were restored. It decided that the applicants would be compensated for the remaining 787 sq. m in one of the ways provided for by law (*të kompensohet...me një nga mënyrat e përcaktuara në [ligj]*).

26. Application no. 67059/14: On 23 September 1996 the Elbasan Commission recognised the applicants' inherited property rights to a plot of land measuring 330 sq. m. As the plot was occupied, it decided that the applicants would be compensated in one of the ways provided for by law (*në bazë të ligjit...të kompensohen për sipëfaqen prej 330 m*^{2}*)*.

27. Application no. 72755/14: On 12 July 1999 the Tirana Commission recognised the applicants' inherited property rights to a plot of land measuring 113,000, of which 10,000 sq. m were restored. It decided that the

applicants would be compensated for the remaining 103,000 sq. m in one of the ways provided for by law (*i kompensohet me një nga mënyrat që parashikon ky [ligj]*).

28. Application no. 537/15: On 22 September 1995 the Kavaja Commission recognised the applicants' inherited property rights to a plot of land measuring 28,000 sq. m. It decided that the applicants would be compensated for 20,800 sq. m either by compensation in kind or by State obligations or in any other way provided for by law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Domestic law and practice at the time of the adoption of the *Manushaqe Puto and Others* pilot judgment

29. A summary of the relevant parts of the Property Acts enacted between 1993 and 2012 has been given in the *Manushaqe Puto and Others* pilot judgment, §§ 24-50.

B. Domestic law and practice subsequent to the delivery of the *Manushaqe Puto and Others* pilot judgment

1. The 2015 Property Act

30. The 2015 Property Act repealed the 2004 Property Act.

(a) Parliamentary Commission report

31. Prior to its adoption, the draft law was examined by the standing Parliamentary Commission for Legal Affairs, Public Administration and Human Rights (the "Parliamentary Commission"), which issued a report on the examination of the draft law, as accessed on Parliament's official website[1]. The Parliamentary Commission considered that the draft law was in compliance with the Constitution. It approved the draft law and voted in favour of submitting it to Parliament's scrutiny at a parliamentary session.

32. The report noted that, in implementation of the *Manushaqe Puto and Others* pilot judgment, the authorities (i) had established an electronic register of decisions, given from 1993 to 2014, which had either restored property *in natura* or recognised former owners' right to compensation, (ii) had assessed the financial bill for the State, and (iii) had developed a domestic remedy which would provide a final resolution of the process of property restitution and compensation within a reasonable time.

33. The report referred to the statistical data provided by the Government, according to which: (i) between 1993 and 2013 around 53,000 decisions had been given, which had recognised property rights in

[1] https://www.parlament.al/ProjektLigje/ProjektLigjeDetails/1882

respect of 186,823 hectares, out of which 74,420 hectares had been restored and 73,400 hectares would be subject to compensation; (ii) between 2005 and 2014 only 15.9 hectares had been subject to the payment of financial compensation and 900 decisions had been subject to the payment of partial compensation at a value of 4.1 billion Albanian leks ("ALL") (approximately EUR 32,826,200 – at an average annual rate of around EUR 3,6 million); and (iii) 10,131 claims for recognition of property rights were pending for examination in respect of 148,210 hectares.

34. The Parliamentary Commission endorsed the new compensation scheme proposed in the draft law. It considered that, having regard to the statistical data provided by the authorities and the rate of paying compensation, it would take 4,588 years to pay compensation in relation to the aggregate area of 73,400 hectares in respect of which the domestic decisions had recognised the claimants' right to compensation

35. As part of its consideration of the draft law, the Parliamentary Commission had launched a public consultation on the draft law and had solicited opinions from various international and domestic institutions as well as interest groups and associations.

(b) Government's explanatory report

36. The explanatory report to the 2015 Property Act (*relacion shpjegues për ligjin*), which was submitted by the Government on 8 April 2016, stated that the compensation formulae provided for in prior legislation had not been effective. The new compensation methodology introduced by the 2015 Property Act aimed at resolving the award of just satisfaction to former owners who had had property expropriated during the communist regime, and at ensuring equality of all former owners whose right to compensation had been recognised by awarding just satisfaction in view of the socio-economic situation of the State.

37. According to the report, only 2.5% of the process of restitution and compensation for properties had been completed. Since 1993 the authorities had given a total of 53,115 decisions restoring 74,420 hectares *in natura* and recognising the right to compensation in respect of 73,359 hectares. Between 2005 and 2014 financial compensation had been awarded in respect of 15.9 hectares. The report states that 10,131 property claims were pending for examination before the Agency. The Agency's archives revealed that 26,357 unenforced decisions had recognised the right to compensation.

38. Drawing on property valuation maps that were in force at the material time, the authorities had estimated that the financial bill for the award of compensation in respect of 26,000 decisions would amount to ALL 814 billion (EUR 6,517,200,000). Having regard to the allocation of annual budgetary resources by the State in the amount of ALL 300 million (EUR 2,435,840), the compensation process would be completed after

2,713 years. In these circumstances, the authorities had devised a new compensation scheme, which, in their view, would constitute just satisfaction on the basis of this Court's case-law. One of the objectives of the 2015 Property Act would be to determine the financial amount in respect of prior decisions recognising the right to compensation without specifying the amount of compensation ("decisions without quantum"). Contrary to the compensation process that had taken place in the past, which had been fraught with issues concerning, for example, the amounts of compensation paid and the priority order for the payment of such compensation, the compensation formula, as proposed by the 2015 Property Act, would endeavour to treat all former owners equally. Foreseeability, clarity and transparency in decision-making would feature as some of the objectives of the Act. Publication of decisions would increase transparency and instil public confidence.

39. The explanatory report maintained that the authorities had never established a final compensation scheme which would give rise to legitimate expectations as regards the award of a particular (financial) amount. The prior scheme, which had been introduced and implemented by the authorities, was provisional and it had been found to be ineffective by the Strasbourg Court. The Government considered that the proposed compensation scheme would not constitute an interference with former owners' property rights. It would preserve former owners' equal treatment and the Government would undertake to discharge their obligation within a reasonable time in relation to any damage.

(c) Overview of the 2015 Property Act

(i) Purpose and scope of application

40. According to sections 1 and 2, the purpose of the 2015 Property Act is to: (i) finalise the examination of property claims concerning properties which had been expropriated, nationalised or confiscated since 29 November 1944 under domestic statutes or implementing legal acts/decisions, criminal court decisions or expropriated by any other unfair means by the communist regime, (ii) regulate and award just satisfaction by way of compensation, (iii) set up a Compensation Fund out of which compensation would be paid to former owners, (iv) enforce final decisions which had recognised the right to compensation, and (v) finalise the process of compensation, within the deadlines laid down in the Act, through the Compensation Fund.

41. Some properties would be outside the scope of application of the 2015 Property Act provisions, such as properties which (i) had been acquired as a result of the application of the Agrarian Reform Act, as amended, (ii) had been expropriated against the payment of just satisfaction, and (iii) had been donated to the State on the strength of official documents.

42. The 2015 Property Act uses the term "expropriated subject" to refer to former owners and their legal heirs. For the sake of maintaining consistency with its prior case-law, the Court will continue using the term "former owner" to refer to "expropriated subject".

(ii) Establishment of a new authority

43. The 2015 Property Act has established the Agency for Treatment of Property ("the ATP"), which would be responsible for the application and implementation of the Act and replaced the (former) Agency which had been established in 2006 (see paragraph 18 above). The ATP is accountable to the Minister of Justice and coordinates its work with various State institutions. Its organisation and operation is governed by a Council of Ministers' decision (see paragraph 78 below). The 2015 Property Act contains sunset provisions regarding the operation of the Agency (see paragraphs 44 and 50 below).

(iii) Examination of new and pending property claims

44. In accordance with the scope of application of the 2015 Property Act, the ATP was to examine property claims which had been lodged with and had not been examined by the (former) Agency, as well as accept and decide on new property claims lodged with it for a period of up to ninety days from the Effective Date. Under section 27, the ninety-day time-limit could not be extended under any circumstances by a court or administrative decision. The process for examining pending property claims was to be completed within three years from the Effective Date, that is by 23 February 2019. If the ATP failed to examine properly submitted claims for the recognition of property rights within the three-year time-limit, a former owner would have the right to lodge a civil action with the court of first instance (of general jurisdiction), in accordance with section 34.

45. The ATP could recognise a former owner's property rights and the right to compensation in accordance with section 20. Under section 29, a decision of the ATP recognising (or not) property rights and the right to compensation could be appealed against, within thirty days of its notification, to the competent court of appeal. If the ATP's decision became final, it would be registered with the Immovable Property Registration Office ("IPRO") in accordance with section 30.

46. Former owners were required to pay a processing fee in order to bear the administrative costs of their claims, in accordance with section 28 § 5.

(iv) Determination of financial evaluation

47. All final decisions recognising property rights and the right to compensation, including decisions in respect of applications which were pending for consideration before national courts and this Court, would be

subject to a financial evaluation to be carried out by the ATP pursuant to sections 6 and 7 of the 2015 Property Act, which read as follows (in the original version):

"**Section 6 - Evaluation Methodology**

1. For the purpose of enforcement, all final decisions concerning the restitution and compensation of property shall be subject to a financial evaluation by the Agency for Treatment of Property, as follows:

(a) a property, in respect of which the right to compensation has been recognised (*prona e njohur për kompensim*), shall be subject to a financial evaluation on the basis of the cadastral category (*zëri kadastral*) at the time of expropriation;

(b) a property which has been restored shall be subject to a financial evaluation which will be determined by obtaining the difference between its value on the basis of the actual cadastral category and its value on the basis of the cadastral category at the time of expropriation.

2. Final decisions which have recognized only the right to compensation shall be subject to a financial evaluation on the basis of the property's cadastral category at the time of expropriation, in accordance with paragraph 1(a) above.

3. If a [former owner] has obtained both the restoration and compensation [of the property], the amount obtained under paragraph 1(b) shall be deducted from the amount obtained under paragraph 1(a).

4. [If the cadastral category cannot be determined] The evaluation of final decisions recognizing the right to compensation shall be carried out by reference to the original cadastral category of the property which is located closest to the property [that will be] subject to compensation, and on the basis of the property valuation maps in effect at the time of the entry into force of this Act. If, close to the property [that will be] subject to compensation, there are a number of cadastral categories which are the same as that of the origin of the property and have the same distance but different values, the financial evaluation shall be carried out by reference to the cadastral category having the highest value.

5. If the ATP recognises a [former owner's] property rights and orders compensation in kind within the [former owner's] property, the property shall be subject to a financial evaluation in accordance with paragraph 1. If, following the financial evaluation, it results that [the former owner] has obtained a property the value of which is higher than the value of the property at the time of expropriation, the [former owner] shall be awarded compensation in kind equivalent to the value of the financial evaluation and the remainder of the property shall be transferred to the Land Fund by decision of the ATP.

6. The value of shares, bonds, financial compensation or any other form of compensation, including the value of any property obtained in application of the legal provisions for the distribution of agricultural land, that a [former owner] or his/her heirs have previously received, shall be deducted from the amount determined as compensation.

7. Unenforced decisions which have determined a compensation amount shall be indexed for the period from the date on which the amount was determined until its payment, in accordance with the official inflation and interest rate on the basis of the average annual rate published by the Bank of Albania at the time of the entry into force of this Act.

Section 7

1. All final decisions recognising the right to compensation, and all decisions that will be taken until the finalisation of the [compensation] process under this Act, shall be enforced in accordance with the provisions of this Act.

2. Final decisions recognising the right to compensation shall be subject to a financial evaluation of the property in accordance with Section 6 of this Act, as follows:

(a) if the value of the property which has been [already] restored to [the former owner] through a final decision is higher than the value of the [property] recognised for compensation purposes, the [former owner] shall be deemed to have been compensated;

(b) if the value of the property in respect of which compensation will be awarded is higher than the value of the property which has been [already] restored, the [former owner] shall be paid the difference, in accordance with the provisions of this Act;

(c) if the final decision has not ordered restoration of the property, the financial evaluation of the property in respect of which the right to compensation has been recognised shall be based on the cadastral category of the property at the time of expropriation in accordance with section 6 § 3 of this Act;

(d) if the final decision has not determined [the right to] compensation, the decision and the relevant documents shall be archived in accordance with the statutory archiving requirements."

48. Financial evaluation of decisions was to be carried out in chronological order, starting with the earliest decisions. The ATP was, within six months from the Effective Date, to publish a register of all decisions recognising the right to compensation as provided for in section 16. The register would be published on the ATP's website, the Official Notices Bulletin (*Buletini i Njoftimeve Zyrtare*) and the media. Missing documents could be supplemented within six months from the date of publication of the register.

49. If the missing documents were not provided within the six-month time-limit and it was objectively impossible for the ATP to evaluate the property on the basis of the documentation in its possession, final decisions recognising the right to compensation would be subject to financial evaluation on the basis of the lowest price laid down on the property valuation map in respect of the same category of property and of the same administrative unit.

50. The ATP was to carry out, within three years from the Effective Date, that is by 23 February 2019, the financial evaluation of all final decisions recognising the right to compensation, in accordance with section 15 § 1. On the expiry of the three-year time-limit, former owners would be entitled to lodge an action with the Administrative Court of First Instance, seeking the financial evaluation of final decisions recognising property rights and the right to compensation, in accordance with section 15 § 2, provided that the ATP had failed to do so.

51. Under section 19, the ATP's decision concerning the financial evaluation could be appealed against, within thirty days of its notification, to the Administrative Court of Appeal.

52. Persons whose property was occupied by the construction of unauthorised buildings, which are the subject of the process of legalisation pursuant to the Legalisation Act, would be entitled to seek compensation under this Act in accordance with its section 21.

53. If domestic decisions had recognised a right to first refusal (*e drejta e parablerjes*) in relation to State-owned objects which could be subject to privatisation, it was open to a former owner to waive the exercise of such right in exchange for compensation (which amount would be evaluated by the ATP), within one year from the publication of the register of decisions recognising the right to compensation. This time-limit could not be extended.

(v) Forms and payment of compensation

54. The main forms of compensation under the 2015 Property Act are compensation in kind and financial compensation, as laid down in section 8, which reads as follows:

"**Section 8 – Forms of compensation and valuation**

1. [Former owners] shall pursue the compensation procedures laid down in this Act, on the basis of final decisions recognising property rights and [shall be awarded the following] compensation:

(a) financial;

(b) State-owned immovable property of any kind and of the same value;

(c) shares of State-owned companies or shares of companies of which the State is a shareholder, which have an equal value to the immovable property;

(d) the value of buildings, which will be the subject of privatisation.

2. The valuation process of the property which will be awarded as compensation shall apply to:

(a) the land; [and]

(b) objects constructed [thereon].

...

4. The value of the property to be compensated shall be determined pursuant to the provisions of this Act, as follows:

(a) the value of the land [shall be calculated] on the basis of valuation maps;

(b) the value of objects thereupon [shall be calculated] on the basis of a Council of Ministers' decision on the assessment methodology for immovable properties in the Republic of Albania."

55. The process of compensation was to commence when the ATP's decision concerning the financial evaluation became final in accordance

with the provisions of section 16 § 5 of the 2015 Property Act. The process of compensation in respect of all final decisions recognising the right to compensation is to be completed within ten years from the Effective Date. The compensation amount will not be subject to taxation.

56. Section 25 provides that no compensation in kind out of the unoccupied area of the former owner's land will be awarded if the land, among other things, serves a public interest in accordance with restrictions prescribed by law or has been occupied in accordance with a number of statutes appended to the 2015 Property Act.

57. The 2015 Property Act provides for the establishment of a Compensation Fund which is inalienable (*i paprekshëm*) and will consist of a Land Fund and a Financial Compensation Fund.

(1) The Land Fund

58. According to section 12, the Land Fund which is to be used to award compensation in kind consists of (a) physical properties located in each district and made available through Government decisions; (b) unoccupied land located in areas occupied by unauthorised constructions; and (c) other land made available in accordance with domestic law or implementing decisions. The Land Fund is subject to financial evaluation in accordance with the property valuation maps. Information about the Land Fund and its valuation is published at the premises and on the website of the ATP.

(2) The Financial Compensation Fund

59. The sources of the Financial Compensation Fund, which is administered by the ATP, are the following: (a) annual replenishments from allocations of the State budget; (b) proceeds obtained from auction sales of State-owned properties which are part of the Land Fund; (c) proceeds generated during the process of the legalisation of unauthorised constructions pursuant to the Legalisation Act (see paragraphs 110-112 below); (d) proceeds which are transferred to the Financial Compensation Fund on the basis of specific statutes or implementing decisions; and (e) contributions made by donors.

60. As regards allocations from the State budget, the total amount will be no be less than 50 billion Albanian Lek ("ALL") (approximately EUR 405,503,000) to be contributed over ten years. The ATP may also organise auction sales of properties comprising the Land Fund in order to increase the resources of the Financial Compensation Fund. All former owners in possession of a decision recognising the right to compensation which has been subject to financial evaluation by the ATP have the right to participate therein. If the auction is unsuccessful, the property will be awarded as compensation in kind to former owners who are in possession of a final decision recognising their right to compensation.

61. Under section 17, not more than one third of each annual replenishment from the State budget will be used to pay accelerated compensation at the request of a former owner, as follows: (a) if a former owner requests payment of the entire financial compensation within one year, only 20% of the total compensation amount will be paid and the remainder will be waived; (b) if a former owner requests the payment of financial compensation within three years, only 30% of the total compensation amount will be paid and the remainder will be waived; and (a) if a former owner requests the payment of financial compensation within five years, only 40% of the total compensation amount will be paid and the remainder will be waived.

62. Under section 18, if two or more separate decisions recognised the right to compensation to different persons over parts of the same plot of land, the ATP would (a) proceed with the financial evaluation of the property in accordance with the provisions of the 2015 Property Act; (b) pay compensation in respect of the parts of land which did not overlap; and (c) deposit the compensation amount, in respect of the parts of land which overlapped, in a specially designated bank account, to be paid upon resolution of the matter by way of amicable settlement between the parties or conclusion of any court proceedings.

2. Domestic courts' case-law concerning the 2015 Property Act

(a) Constitutional Court's case-law

63. In 2016 a request for constitutional review of the 2015 Property Act was lodged with the Constitutional Court. The complainants, namely the President of the Republic, the Ombudsperson (*Avokati i Popullit*), several members of Parliament and former owners' associations, alleged that the 2015 Property Act breached the principle of legal certainty as it: (1) introduced a new compensation scheme which would result in significantly lower compensation amounts for many former owners; (2) altered the property compensation scheme for former owners whose property had been expropriated by the communist regime; and (3) resulted in a revision of final unenforced decisions awarding compensation or restitution. They further argued that the 2015 Property Act resulted in discrimination between former owners who were waiting to receive compensation and those who had already obtained compensation in reliance on prior legislation which provided for compensation at the market value.

(i) Venice Commission's amicus curiae brief

64. On 7 July 2016 the President of the Constitutional Court invited the European Commission for Democracy Through Law (the "Venice Commission") to provide an *amicus curiae* brief on the

compliance of the 2015 Property Act with the requirements of Article 1 of Protocol No. 1 to the Convention.

65. On 17 October 2016 the Venice Commission issued the *amicus curiae* brief (Opinion no. 861/2016 – CDL-AD (2016)023). As regards the existence of an interference, the *amicus curiae* brief stated, in so far as relevant, the following (references omitted):

> "28. According to [section] 3 (see above) of and the explanatory report to [the 2015 Property Act], this [Act] is to apply to all applications examined by the [Agency for Treatment of] Property, on the day of its entry into force, as well as all those applications that will be submitted within the terms of this [Act] as regards the recognition of the right to property, and will extend its effects, even on the evaluation and enforcement of all decisions on the recognition of the right to compensation, taken by administrative bodies or judicial authorities, including those which are examined by courts, the Supreme Court of Albania, as well as the [European Court of Human Rights].
>
> 29. Under the [Act], the final administrative or judicial decisions containing a specific amount of compensation to be granted, but are not yet enforced, will not be reassessed. Accordingly, although in these cases there is indisputably a "legitimate expectation", there is no "interference" within the meaning of Article 1 of Protocol No. 1 to the [European Convention on Human Rights], as long as these decisions are duly enforced. In this context, it should be reminded that the [European Court of Human Rights] has stated that a lack of funds or other resources cannot be a reason for the country not to honour its obligation under the [European Convention on Human Rights] to ensure compliance with a final decision within a reasonable time.
>
> 30. As concerns decisions which determine restitution or compensation only on the surface and not on financial worth, it is not clear in how far a legitimate expectation arises. The explanatory report to [the 2015 Property Act] argues that a final compensation scheme, which could raise "legitimate expectations" to a specific amount of compensation, has never been established. As to persons or entities that have not yet received a final decision from the administrative body or court recognising the right to restitution or compensation, the Albanian government refers to [the European Court's judgment in] the case of *Bici v. Albania* to justify that these persons or entities do not own property nor have they created legitimate expectations since their right is not known at the local level.
>
> 31. However, the new compensation scheme implemented by [the 2015 Property Act] has changed the evaluation method. The main element of the evaluation of financial compensation is the value of the property under the cadastral [category] it had at the time of expropriation. This approach differs from previous legislation and could lead to lower compensation. The previous laws: the Property Act of 1993, that of 2004 and that of 2006 foresaw a higher compensation scheme than [the 2015 Property Act]. It could therefore be argued that the former laws created expectations to receive compensation equivalent to the market value of the property at the time of the decision on compensation. Even if lower compensation cannot be qualified as formal expropriation, it may well qualify as an "*other interference*" which is a catch-all provision laid down in Article 1, Protocol No.1."

66. The *amicus curiae* brief further stated that the authorities' interference had a clear legal basis in the 2015 Property Act and that the interference followed a legitimate public interest as laid down in its

section 2. As regards the proportionality of the interference, the *amicus curiae* brief read, in so far as relevant, as follows:

> "40. As can be seen from the *Manushaqe* [*Puto and Others*] judgment, the [European Court of Human Rights] is well aware of the special situation in Albania and is ready to take it into account when assessing Albania's legal situation in a new set of proceedings after the Constitutional Court has decided the case. In this respect, the thorough analysis in the explanatory report to [the 2015 Property Act] will be taken into account in favour of the proportionality of the interference in the rights of owners. Moreover, the high number of pending cases (approximately 40,000) is an established and non-disputed factor. This is another element that will give the national legislature a certain margin of appreciation, as long as it is determined to settle the issue in a non-discriminatory and final manner.
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> 41. In the Albanian context, the government calculated that, if compensation were to take place under the previous law, it would cost 814 billion Albanian Leks (almost six billion euros), and the process of compensation would take 2,713 years (with a budget of 300 million Albanian Leks per year). Under the new compensation scheme, the compensation issue could be solved with the amount of 50 billion Albanian Leks within a period of 10 years. In addition, previous laws (Property Acts of 1993, 2004, 2006) have not managed to address the problem of the restitution or compensation of properties effectively, mainly due to financial issues, but also to illegal settlements on the land or to the inefficiency of the institutions. This resulted in a great backlog of cases reaching, as mentioned above, around 40,000 cases on the national level.
>
> 42. It is [section] 11 of [the 2015 Property Act] which provides for a financial fund of 50 billion Albanian Leks within 10 years. However, no explanation is provided as to how this amount was determined, taking into account the state budget as a whole and the Albanian GDP. In addition, [the 2015 Property Act] does not provide for an estimation of the revenues of the auctions of the properties ([section] 13 of [the 2015 Property Act]). The costs which will be incurred by the State for human resources, material, coordination between institutions and the appeals mechanism must also be considered as well as future economic development and the related tax revenue.
>
> 43. In the *Manushaqe* [*Puto and Others*] judgment, the [European Court of Human Rights] had underlined the importance of setting realistic statutory and binding time-limits in respect of every step of the process. To this end, [the 2015 Property Act] has provided clear deadlines for the implementation of secondary legislation (see above for the three by-laws) as well as for all steps in the procedure (from the application to the appeals) and the activities of the [Agency for Treatment of] Property. This is a very positive step, although no explanation is provided as to how these deadlines were calculated and why they are deemed realistic.
>
> 44. In conclusion, taking the specific situation of Albania into account, it can well be argued that a new and effective legal framework, which may lead to a lower amount of compensation for the former owners, meets the requirement of proportionality as set out in Article 1 Protocol No. 1 to the ECHR. In particular, it seems reasonable that [the 2015 Property Act] refer to the cadastral categorisation of the property at the time of the expropriation without being regarded as an extreme disproportion between the official cadastral value of the land and the compensation paid to former owners."

(ii) Constitutional Court's decision

67. In its decision no. 1 of 16 January 2017 ("decision no. 1/2017"), the Constitutional Court's eight-member bench rejected the request for a stay of the application of the 2015 Property Act as unfounded. It accepted by a majority that sections 6 § 1 and 6 § 2 of the 2015 Property Act were constitutional. In the Constitutional Court's view, those provisions "embody the main principles relating to the compensation scheme" which was different from the scheme provided for in prior legislation. The new compensation scheme would result in the award of lower compensation amounts in some cases in comparison with the prior property legislation. It could be argued that prior acts could have created some legitimate expectations on the part of former owners to receive market value compensation. However, the new compensation scheme could not give rise to any issues about an alleged breach of former owners' legitimate expectations as a final compensation scheme, concerning the entitlement to an overall compensation amount, had never been established. Furthermore, a reduction in the amount of compensation could not be considered formal expropriation but as "another interference" within the meaning of Article 1 of Protocol No. 1. Such interference was prescribed for by law which had been approved by Parliament.

68. As regards the existence of a public interest, the Constitutional Court held that the principle of legal certainty was not absolute and could be restricted on the basis of a legitimate or public interest. It found that the public interest served by such interference was "the resolution of property issues within a reasonable time-frame, namely ten years, under sensible financial costs as well as the establishment of social peace amongst various societal strata affected by property issues, which continued to remain unresolved for 25 years". As regards the proportionality of the interference, the Constitutional Court, referring to the Venice Commission *amicus curiae* brief, stated that "State enjoy(s) a wide margin of appreciation in determining what is in the public interest, in particular under Article 1 of Protocol No. 1 and especially when implementing social and economic policies". It further referred to paragraph 44 of the Venice Commission *amicus curiae* brief. It concluded that the new compensation scheme aimed at establishing the right balance amongst various competing interests.

69. As regards domestic decisions awarding a specific amount of compensation, the Constitutional Court stated that such decisions would not be subject to financial re-evaluation. Relying on this Court's judgment in the case of *Bici v. Albania*, (no. 5250/07, 3 December 2015), the Constitutional Court stated that there could not be a breach of legitimate expectations as regards former owners whose property rights had not yet been recognised.

70. However, the Constitutional Court held that "the remainder of Article 6 regulates specific situations, which - [being] part of the

compensation methodology - find solutions in other provisions of the [2015 Property] Act". It thus struck down by a majority sections 6 § 3 and 6 § 5 of the 2015 Property Act. In its view, both provisions "were conceived as new expropriation since they envisaged a re-evaluation of properties that had already been restored to [former] owners or for which they had already received compensation". It was for this reason that they gave rise to issues concerning a breach of the principle of legal certainty, especially as regards the lack of clarity and foreseeability. The Constitutional Court stated that "the legislator should consider the extent to which compensation in kind provided for in [the repealed] sections 6 §§ 3 and 5 is supplemented by other provisions in order to avoid any overlapping or contradiction between legal provisions."

71. The Constitutional Court held that, in so far as the 2015 Property Act had provided for a former owner's right to appeal against an ATP decision (not) recognising property rights to the court of appeal, the complaint concerning the lack of a possibility to institute proceedings before the first-instance court was manifestly ill-founded.

72. The Constitutional Court's vote was tied as regards the complaint concerning the compensation scheme laid down in section 7 of the 2015 Property Act, which complaint was dismissed.

73. In this connection, on 7 December 2017 a fresh request for the constitutional review of section 6 § 1(b) and section 7 § 2 (a) and (b) of the 2015 Property Act was lodged with the Constitutional Court, before which the proceedings are currently pending. The complainant association, relying on the same ground on which the Constitutional Court had set aside section 6 §§ 3 and 5, has requested the Constitutional Court to repeal those sections for being in breach of the principle of legal certainty.

(b) Supreme Court's case-law

74. In a harmonising decision (*vendim njehsues*) of 7 February 2018 (decision no. 611/2018), the Supreme Court's three-member civil bench held that the court of appeal within whose jurisdiction the disputed immovable property was situated would examine an appeal that had been lodged by former owners against Commission or Agency decisions, after the entry into force of the 2015 Property Act. The court of appeal would have full jurisdiction on points of fact and law. An appeal against the court of appeal's decision could be lodged with the Supreme Court, which would have jurisdiction exclusively on points of law. This would also apply to appeals lodged against decisions of the ATP recognising or refusing to recognise property rights or the right to compensation, in accordance with section 29 of the 2015 Property Act. However, all appeals against the amount of compensation determined by the ATP would be examined by the Administrative Court of Appeal in accordance with section 19 of the 2015 Property Act.

75. The Supreme Court further held that the first-instance court within whose jurisdiction the disputed immovable property was situated would examine all third parties' civil actions and counteractions concerning alleged property rights in respect of properties for which the Commission or Agency had given a decision in favour of a former owner.

76. As regards the retroactive application of the 2015 Property Act, the Supreme Court clarified that the 2015 Property Act retroactively applied to all proceedings which had commenced prior to its entry into force, in so far as they concerned the financial evaluation of the property. If the proceedings related to other matters, they would be examined on the basis of the law in force at the time when the proceedings started. The Supreme Court therefore concluded that all civil actions which had been lodged against Commission or Agency decisions prior to the entry into force of the 2015 Property Act would be examined by the first-instance courts within whose jurisdiction the disputed immovable property was situated.

3. Decisions implementing the 2015 Property Act

77. In implementation of the 2015 Property Act, the following instruments have been adopted.

(a) Decision on the organisation and operation of the ATP

78. The Council of Ministers' decision no. 221 of 23 March 2016 laid down the eligibility requirements for, responsibilities and accountability of, the ATP staff members and its director general, the ATP's organisational structure and reporting obligations (see also paragraph 43 above). As of June 2018, the ATP employed a workforce of 169 staff members (see paragraph 127 below).

(b) Decision on the examination of requests for the recognition of the right to compensation

79. The Council of Ministers adopted decision no. 222 of 23 March 2016 on the examination of requests for the recognition of property rights and the right to compensation ("CMD no. 222/2016"). The decision governed the procedures for collecting, processing and administering the documentation that former owners had to submit for the recognition of property rights and the right to compensation. Former owners who wished to lodge a request for the recognition of property rights and the right to compensation were required to submit a template application form, as appended to the decision, together with supporting legal and cartographic documents, as laid down in the decision. If the ATP found that there were missing documents, former owners were invited to complete the file within thirty days of the date of notification.

80. The ATP would enquire with various State institutions and carry out an on-the-spot verification of the geographical location and physical situation of the claimed property. The ATP would give a decision on the request in accordance with the 2015 Property Act. The ATP could rectify material errors at any time, upon receiving a request from the former owner.

81. On 7 December 2017, as part of the fresh request for the constitutional review of some provisions of the 2015 Property Act (see paragraph 73 above), the complainant association, relying on the same grounds, also sought the constitutional review of CMD 222/2016.

Amendments to CMD no. 222/2016

82. Subsequent to the Constitutional Court's decision no. 1/2017, CMD no. 222/2016 was amended by CMD no. 765 of 20 December 2017 on the examination of requests for the recognition of the right to compensation of property ("CMD no. 765/2017"). CMD no. 765/2017 clarified that the ATP decision-making concerned the recognition of the right to compensation. According to CMD no. 765/2017, the ATP could request additional supporting documents during the administrative review of a former owner's request. If, following the expiry of the time-limit for a former owner to submit supplementary documents, a request did not comply with the formal requirements laid down in the decision, the ATP would examine the merits on the basis of the documents and information available to it. Of the State institutions to be consulted about the existing state of the claimed property, the ATP was obliged to seek information from the Albanian Investment Development Agency and the Agency for the Treatment of Concessions. If the ATP accepted the request, it determined, as part of the same decision, the amount and method of compensation. Requests which had been submitted prior to the Effective Date, in respect of which property rights had been recognised, would be subject to a financial evaluation in chronological order.

(c) Decision on the determination of financial evaluation and enforcement of compensation

83. According to sections 2 to 4 of the Council of Ministers' decision no. 223 of 23 March 2016 ("CMD no. 223/2016"), the ATP, by reference to the property valuation maps (which would be adopted in application of the 2015 Property Act), would carry out the financial evaluation of all final decisions recognising the right to compensation, in chronological order, starting with the earliest decision, in accordance with the following methodology: (a) property in respect of which the right to compensation was recognised would be subject to a financial evaluation on the basis of the cadastral category at the time of expropriation; (b) property which had already been restored would be subject to a financial evaluation by obtaining the difference between its value on the basis of the current

cadastral category and its value on the basis of the cadastral category at the time of expropriation; (c) the original cadastral category of the property would be determined on the basis of the documents in the case file, absent which it would be determined on the basis of the property map at the time of expropriation or, in the absence of such property map, on a map which closely resembled that of the time of expropriation. If it was objectively impossible for the ATP to determine the cadastral category, the decision on compensation would be determined by reference to the lowest price for property located in the same administrative unit and belonging to the same category; (d) the value of shares, bonds, financial compensation or any other form of compensation, including the value of any property, determined on the basis of the property map and obtained in application of the legal provisions for the distribution of agricultural land, which a former owner or his/her heirs had previously received, would be deducted from the value obtained as a result of the financial evaluation.

84. According to section 5, if the compensation amount had been specifically indicated in a prior administrative or judicial decision, the compensation amount would be indexed in accordance with the official inflation rate and bank interest on the basis of the annual average rate issued by the Bank of Albania until 24 February 2016.

85. The ATP would establish a register of final decisions that had recognised the right to compensation in accordance with section 7. Under section 9, the register would be published on the ATP's website, the Official Notices Bulletin and/or the media. Former owners were required to provide missing documents within six months from its publication, in order to enable the ATP to carry out a financial evaluation of the property in respect of which the right to compensation had been recognised. According to section 14, a former owner could, within one year from publication of the final decision, waive the exercise of the right to first refusal in exchange for compensation.

86. Former owners in possession of a final decision in respect of which financial evaluation had been completed were entitled to apply for compensation, which would be provided in chronological order, as follows: (i) former owners in possession of final decisions which had been subject to a financial evaluation by reference to the cadastral category of agricultural land, forest, pasture and meadow would receive compensation in kind from the Land Fund in accordance with section 18; (ii) former owners in possession of final decisions which had been subject to a financial evaluation by reference to the cadastral category of construction land (*truall*) would receive financial compensation up to ALL 50 million (EUR 403,673), the remainder to be compensated in kind, in accordance with section 19.

87. Section 23 envisaged the accelerated payment of financial compensation at a former owner's request. The ATP would, regardless of

the chronological order, direct the payment of financial compensation to a former owner as follows: (a) if the former owner requested the payment of financial compensation within one year, he would receive 20% of the aggregate compensation amount and would waive the right to the payment of the remaining compensation amount; (b) if the former owner requested the payment of financial compensation within three years, he would receive 30% of the compensation amount, in three equal instalments, over three consecutive years, and he would waive the right to the payment of the remaining compensation amount; (c) if the former owner requested the payment of financial compensation within five years, he would receive 40% of the compensation amount, in five equal instalments, over five consecutive years, and he would waive the right to the payment of the remaining compensation amount.

88. According to sections 27 to 36, former owners who had received a final decision recognising the right to compensation and had obtained the financial evaluation of their property could apply to take part in closed auctions of State-owned property. Such properties could include land which was part of the approved Land Fund and State-owned assets which had been subject to an unsuccessful privatisation process. If the decision were not subject to a financial evaluation, the ATP, without prejudice to respect for the rule of chronological order, would determine its financial value. The ATP would award the auctioned property to the highest bidder. If the property could not be sold by closed auction procedure, the ATP would organise an open public auction procedure and invite all interested parties to make an offer.

89. On 7 December 2017, as part of the fresh request for the constitutional review of some provisions of the 2015 Property Act (see paragraph 73 above), the complainant association, relying on the same grounds, also sought the constitutional review of CMD 223/2016.

(i) Amendments to CMD no. 223/2016

90. The application forms appended to CMD no. 223/2016 were amended by CMD no. 685 of 28 September 2016. The principal change related to a requirement for former owners to submit a notarised self-declaration through which they would state whether the administrative decision recognising their property rights had become final or had been appealed against, and whether they had benefited from the legal provisions concerning the distribution of agricultural land.

91. Subsequent to the Constitutional Court's decision no. 1/17, the Minister of Justice ordered the establishment of a working group in order to carry out a thorough analysis of the Constitutional Court's decision and its impact on existing legislation and to make recommendations or propose solutions with a view to bringing any by-laws into line with the 2015 Property Act, as necessary.

92. As submitted to the Committee of Ministers, in its task of supervising the implementation of the *Manushaqe Puto* pilot judgment (see paragraphs 126 and 127 below), the Government concluded that there was no need to amend the 2015 Property Act, since, in their view, the repealed provisions had not brought about any material changes to the 2015 Property Act or the compensation formulae. In order to ensure respect for the principle of legal certainty and provide further clarity on the procedures relating to the financial evaluation and compensation of former owners, as directed by the Constitutional Court, the Government decided to amend CMD no. 223/2016.

93. Consequently, CMD no. 223/2016 was amended by CMD no. 766 of 20 December 2017 ("CMD no. 766/2017"). CMD no. 766/2017 further provided that compensation in kind which had been obtained by a former owner would also be subject to a financial evaluation by obtaining the difference between its value on the basis of the current cadastral category and its value on the basis of the cadastral category at the time of expropriation.

94. According to the new section 4/1, if the financial evaluation of the property subject to compensation, as calculated on the basis of the cadastral category at the time of expropriation, was higher than the financial evaluation of the property which had been restored *in natura*, a former owner would be compensated in respect of the difference between the two. However, if the financial evaluation of the property subject to compensation, as calculated on the basis of the cadastral category at the time of expropriation, was less than the financial evaluation of the property which had been restored *in natura*, the former owner would be deemed to have been fully compensated.

95. According to the new section 16/2, compensation would be provided in the following order of priority: (a) compensation in kind out of the unoccupied area of the former owner's expropriated property, (b) compensation in kind from the Land Fund, and (c) financial compensation. Priority would be given to compensation in kind out of the unoccupied area of the former owners' expropriated property, in accordance with the new section 26/1. Compensation in kind out of the unoccupied area of the former owner's property would not be capped, with the exception of agricultural land, the compensation of which would be capped at 100 hectares, in accordance with the new section 26/3. Under the new section 26/4, the value of compensation in kind would be based on property valuation maps (which would be adopted in application of the 2015 Property Act).

96. Under the new section 17/1, the ATP would not award compensation in kind out of the former owner's expropriated property (in respect of which the property rights had been recognised), if the land were deemed to be occupied within the meaning of the 2015 Property Act (see paragraph 56

above). Under the new section 17/2, the ATP would approach various central and local authorities to request information on whether a building permit or another permit had been - or was in the process of being - granted in accordance with the law, before deciding that a former owner's expropriated property (in respect of which the property rights had been recognised) could be used as compensation in kind.

97. According to the amended section 37, the ATP would award compensation in kind from the Land Fund, if the procedures for compensation in kind out of the unoccupied area of the former owner's property had been completed, the former owner had not applied for compensation by way of auction and the former owner had submitted a standard application form to receive compensation in kind from the Land Fund. The ATP would select land which would be geographically close to the property in respect of which the right to compensation had been recognised.

98. Under the amended section 18, financial compensation would be awarded in all cases of the authorities' failure to award compensation in kind, as described in the preceding paragraphs 95 and 97. Financial compensation would be capped at the lower of 20% of the aggregate amount obtained as a result of the financial evaluation and ALL 10 million (approximately EUR 81,100). According to the new section 19/1, financial compensation would be awarded only if compensation in kind could not be awarded. Financial compensation will be paid in equal instalments during a ten-year period in accordance with the new section 40/2.

(ii) Domestic courts' case-law concerning the constitutionality of CMD no. 766/2017

99. A number of complainants whose properties had been subject to financial evaluations by the ATP prior to December 2017, the amount of which they had accepted, challenged the constitutionality of CMD no. 766/2017 before the Constitutional Court, arguing that, by capping the amount of financial compensation at ALL 10 million payable over ten years and laying down a hierarchy of compensation forms, the CMD's provisions were disproportionate and in excess of the statutory provisions contained in the 2015 Property Act. In their view, the amendments brought about by the impugned CMD had retroactive effect, had not been subject to (public) consultations and did not serve a legitimate interest.

100. By decisions nos. 82, 85 and 86 of 20 June 2018 and no. 94 of 2 July 2018, the Constitutional Court dismissed the complainants' constitutional complaints on the ground of non-exhaustion of domestic remedies, owing to their failure to lodge a complaint with the Administrative Court of Appeal, which was considered to be an effective remedy to challenge the lawfulness of CMD no. 766/2017.

101. It transpires from the website of the Administrative Court of Appeal that, on 26 April 2019 the Administrative Court of Appeal dismissed a complainant's appeal to have CMD no. 766/2017 repealed (case no. 31156-03367-86-2018 lodged on 7 September 2018). Six additional appeals would appear to be pending for examination before the Administrative Court of Appeal.

(iii) Domestic courts' case-law concerning the application and interpretation of CMD no. 766/2017

102. On 16 October 2019 the Government submitted the following domestic courts' decisions:

(i) By decision no. 61 of 19 March 2019 a bench of the Administrative Court of Appeal held that the appellants' appeal had been lodged within the thirty-day time-limit from the publication of the ATP decision on financial evaluation, in accordance with section 19 of the 2015 Property Act. It further added that, in the absence of a section in the ATP decision on the financial evaluation indicating the appellants' right to appeal, the time-limit to exercise such right would be one year from the date of its publication, in accordance with section 18 § 2 of the Administrative Courts Act (see paragraph 116 below). The court dismissed the appellants' appeal on its merits and upheld the ATP's decision on the financial evaluation.

(ii) On 26 March, 28 May and 25 April 2019 a different bench of the Administrative Court of Appeal quashed the ATP's decisions on the financial evaluation of the appellants' properties, according to which, for the purpose of carrying out the financial evaluation, the properties had been considered agricultural land at the time of expropriation. The court, having regard to the documents in the case files and experts' reports, held that the appellants' properties had been construction land at the time of expropriation. The court, relying on the property valuation maps and the appellants' requests, determined the compensation amounts which the ATP should pay to the appellants.

By way of the same decisions the Administrative Court of Appeal further stated that, in the absence of a section in the ATP decisions on the financial evaluation indicating the appellants' right to appeal, the time-limit to exercise such right was one year from the date of its publication, in accordance with section 18 § 2 of the Administrative Courts Act.

(iii) By decision no. 142 of 10 June 2019 a different bench of the Administrative Court of Appeal held that the appellants' appeal had been lodged within the thirty-day time-limit from the publication of the ATP decision on financial evaluation, in accordance with section 19 of the 2015 Property Act. The court dismissed the appellants' appeal on its merits and upheld the ATP's decision on the financial evaluation.

(d) Decision on property valuation maps

103. On 3 February 2016 the Council of Ministers adopted its decision no. 89 on property valuation maps ("CMD no. 89/2016"). The property valuation maps consist of tables comprising the names of administrative units, cadastral zones, cadastral category and respective price per sq. m.

104. On 22 December 2017 a request for the constitutional review of the CMD no. 89/2016 was lodged with the Constitutional Court, before which the proceedings are currently pending. The complainant association, citing this Court's judgments in the cases of *Vrioni and Others*, cited above, *Karagjozi and Others* [Committee], cited above, and *Sharra and Others* [Committee], cited above, has requested the Constitutional Court to set aside CMD no. 89/2016, arguing that the 2016 valuation maps did not reflect the actual market value.

(i) Methodology concerning the preparation of property valuation maps

105. The property valuation maps were determined on the basis of the methodology for the valuation of immovable properties, which had been approved by the Council of Ministers' decision no. 658 of 26 September 2012, as amended by decision no. 1034 of 16 December 2015. According to section 3 of Annex 1 appended to the decision, "the calculation of property valuation shall be based on international standards of valuation of immovable properties ... whereby the property value equals the price of the sale contract. The sale price shall mean the market price according to the type and purpose of use of the property. The market price shall be extracted from the official register of sale contracts registered with the IPRO".

106. The methodology has been described in the Court's judgment in the case of *Sharra and Others* [Committee], cited above, §§ 35-42. Under its section 5, the IPRO provides the ATP with annual data on sale prices which have been registered with the IPRO in respect of each cadastral zone and cadastral category. The ATP processes such data and determines the average sale prices for each property category in each cadastral zone, on the basis of transactions registered with, and reported by, the IPRO, as defined in section 6. At least three transactions are required in order to determine the property price for a particular cadastral zone or category. In the absence of such transactions, "the property valuation would be determined on the basis of the indirect method, grouping sales contracts at a closer level pursuant to this order: village, town, municipality (*bashki*), county (*qark*) for the type of property group".

(ii) Domestic courts' case-law concerning the property valuation maps

107. On 16 October 2019 the Government submitted that by decision no. 162 of 20 June 2019 the Administrative Court of Appeal had dismissed an appellant's action against the alleged unlawfulness of CMD no. 89/2016.

The Administrative Court of Appeal held that CMD no. 89/2016 had been adopted in application of the 2015 Property Act, which, in turn, had been introduced in response to this Court's judgments given in respect of Albania. It further held that the appellants' action chiefly concerned the alleged unconstitutionality of the 2015 Property Act provisions, which had been examined by the Constitution Court's decision no. 1/2017.

108. On 15 August 2019 the appellants lodged an appeal against the Administrative Court of Appeal's decision with the Supreme Court, before which the proceedings are currently pending.

(e) Joint Order of the Minister of Justice and the Minister of Finance

109. In accordance with the 2015 Property Act (see paragraph 46 above), on 9 January 2017 the Minister of Justice and the Minister of Finance issued a joint order (no. 6445/3) concerning fees applicable to claims to be lodged by former owners. Fees range between ALL 2000 and ALL 3000 (approximately between EUR 16 and 24).

C. Other relevant domestic law

1. Legalisation Act

110. Faced with rapid and widespread internal demographic movements of the population in the 1990s and 2000s, Parliament enacted the Legalisation Act (law no. 9482 of 3 March 2006 on the Legalisation, Urban Planning and Integration of Unauthorised Buildings) in order to (i) regularise unauthorised constructions and extensions built on State-owned or privately-owned plots of land, (ii) transfer the ownership of the plot of land on which the unauthorised constructions had been built, (iii) urbanise the informal areas, blocks and buildings and integrate those areas in the territorial and infrastructure development of the country by improving their living conditions, and (iv) lay down procedures for carrying out the regularisation of such unauthorised buildings.

111. If the plot of construction land on which the unauthorised object had been built was registered with the IPRO in the name of the (former) land owner (who did not possess the unauthorised building), the (former) land owner would be awarded compensation in respect of the plot of construction land which had been affected by the unauthorised building, the amount of which would be approved by decision of the Council of Ministers (section 15/1). For the purpose of calculating the amount of compensation, the plot of land would be classified as construction land and the property price would be determined in accordance with a Council of Ministers' decision.

112. The Legalisation Act established the Agency for Legalisation, Urban Planning and Integration of Informal Constructions/Areas, which has

been superseded by the Cadastre State Agency by virtue of the Cadastre Act (law no. 111/2018), which entered into force on 21 March 2019.

2. Constitutional Court Act

113. The Constitutional Court Act (Law no. 8577 of 10 February 2000 on the Organisation and Operation of the Constitutional Court of the Republic of Albania) was amended by law no. 99/2016, which was published in the Official Journal on 8 November 2016. The provisions described below became effective on 23 November 2016.

114. The Constitutional Court is composed of nine judges. Under section 32, as amended, the Constitutional Court, the quorum of which cannot be less than two thirds of all judges, examines complaints at a plenary session attended by all the judges.

115. Pursuant to the new section 73 § 4, if the Constitutional Court cannot reach a majority of five votes, the constitutional complaint is considered dismissed (*konsiderohet e rrëzuar*).

3. Administrative Courts Act (Law no. 49 of 16 May 2012, as amended, on the organisation and operation of administrative courts and examination of administrative disputes)

116. Section 18 § 2 of the Administrative Courts Act stipulates that the time-limit for lodging an action with an administrative court against an administrative decision, provided that the administrative decision has not clearly indicated such time-limit, is one year from the date of its notification or publication.

4. Code of Civil Procedure

117. On 30 March 2017 parliament adopted a number of amendments to the Code of Civil Procedure (Law no. 38/2017), which entered into force on 5 November 2017 (six months after their publication in the Official Journal on 5 May 2019). The relevant articles pertaining to the length of enforcement proceedings read as follows:

"Chapter X - Examination of requests concerning a breach of the reasonable time requirement, acceleration of proceedings and just satisfaction

Article 399/1 - Scope

1. The courts, depending on the level of jurisdiction of [domestic] proceedings as specified in this Chapter, shall be competent to examine requests concerning the payment of just satisfaction to a person who has suffered pecuniary and non-pecuniary damage on account of the unreasonable length of proceedings, as defined in Article 6 § 1 of the [Convention].

2. The provisions of this Chapter shall lay down the procedure to determine the reasonable length of proceedings, and [the award of] just satisfaction if there has been

a finding that the ... enforcement proceedings of a court decision have been unreasonably long.

Article 3992/ Reasonable time

1. For the purposes of Article 399/1, insofar as ... the enforcement of a final decision is concerned, reasonable time shall be:

...

(c) as regards the enforcement proceedings of a civil or administrative decision, the period of one year from the date on which ... an enforcement request has been made, save for [the enforcement of] recurring or time-bound obligations.

...

Article 399/3 Just satisfaction

1. Just satisfaction for a[n alleged] breach of the reasonable time [requirement] shall consist of an acknowledgment of a violation, an adoption of measures intended to accelerate the ... enforcement proceedings and/or the award of [non-pecuniary] damage in accordance with the provisions of this Chapter.

...

Article 399/6 Competent court to examine requests

A request for finding a breach [of the reasonable time requirement] and for accelerating the proceedings is to be lodged with the competent court ... as described below:

...

ç) if the case, in respect of which there is a claim for a breach [of the reasonable time requirement], concerns the enforcement proceedings, the request shall be [lodged with] the first-instance court which is competent for the enforcement [proceedings] in accordance with the legal provisions.

Article 399/10 – Decision on just satisfaction

1. Following the examination of the request, the court shall make an award varying from 50,000 [Albanian] leks [EUR 400] up to 100,000 [Albanian] leks [EUR 800], for each year or month, to be calculated pro-rata, exceeding the reasonable time period [laid down in Article 399/2].

2. The award shall take account of:

a) the complexity of the proceedings which led to the finding of a violation;

b) the conduct of the bench or the bailiff and of the parties;

c) the nature of issues of the case;

ç) the value and importance of the case in relation to the ... enforcement, regard being had also to the parties' personal circumstances.

..."

III. RELEVANT COUNCIL OF EUROPE MATERIALS

A. Materials from the Department for the Execution of Judgments

118. On 2 June 2015 the Department for the Execution of Judgments of the European Court of Human Rights prepared a report on a draft version of the 2015 Property Act, which the authorities had submitted for comments on 1 April and 18 May 2015 (H/Exec(2015)16). As the draft law would rely on the adoption of secondary legislation for its implementation, the report stressed that it should not undermine the principle of legal certainty. The draft law provided for the possibility of former owners to lodge new property claims which might impact the final financial bill, and the authorities were invited to explain the reasons behind such proposal. The report alerted to the adoption of overlapping or conflicting decisions, which might eventually end up in judicial proceedings, the impact of which had not been assessed. It recommended that compliance procedures should not be time-consuming and documentation requirements should not make the procedure unnecessarily cumbersome. Given that the authorities considered that a new body should be created, a compelling rationale for their choice was necessary. The authorities were also invited to provide a much clearer identification of the rationale and the justifications for the proposed compensation formula and for the time-limits proposed in the draft Act. The report raised concerns about the feasibility of meeting the deadlines laid down in the draft Act, unless significant enhancement in the staffing resources were devoted to the new body and the courts, which might be expected to handle an increase of their workload in anticipation of appeals. The method of dissemination of relevant information and decisions to claimants and the public had not been explained in sufficient detail. The report stated that, in October 2014, two rounds of preliminary consultations with stakeholders and the groups of interest on the outcomes of the analysis of the legislation and the proposals for amendments had been organised. It encouraged the authorities to continue holding public consultations to gain the support of the public and claimants for any approach that would finally be adopted.

119. Subsequent to the adoption of the 2015 Property Act, the Committee of Ministers at its 1243rd meeting on 8 and 9 December 2015 adopted a decision (CM/Del/Dec(2015)1243/H46-1), whereby it acknowledged the approval of the 2015 Property Act and invited the authorities to provide information about implementing decisions which they planned to introduce, the valuation maps which would be used as a basis for calculating compensation and an updated action plan.

120. On 23 February 2016 the Government Agent informed the Committee of Ministers about the entry into force of the 2015 Property Act and the implementing decisions that the Government intended to adopt with

a view to implementing the 2015 Property Act (DH-DD(2016)196). The Government stated, amongst other things, that (i) 23,000 hectares of agricultural land and 71,699 hectares of forest and pasture land had been transferred to the Land Fund; (ii) the ATP would carry out the financial evaluation of 26,000 final decisions and examine property claims in respect of 10,131 pending applications; and (iii) the ATP's capacity would be reinforced with an additional 59 employees, which would bring the total capacity to 150 employees. In an information note concerning the adoption of the land value map, which had been appended to the communication, the Government stated that "the land value map, and the methodology for its adoption does not only [concern] the compensation process [of] former owners, but it [has been] adopted [to be used in] every transaction that the Government institutions [will conduct in relation to] property: for example, expropriation, buying, selling, legalisation process, etc., with State-owned properties".

121. On 15 April 2016 the Government Agent provided the Committee of Ministers with a copy of the implementing decisions which the Government had approved in application of the 2015 Property Act.

122. On 9 May 2016 the Government Agent, in response to a communication sent by an association of former owners, informed the Committee of Ministers, amongst other things, that they had organised public consultation events which had been attended by representatives of former owners' associations (DH-DD(2016)592).

123. At its 1259th meeting on 7 and 8 June 2016, the Committee of Ministers adopted a decision (CM/Del/Dec(2016)1259/H46-1), whereby it welcomed the adoption of implementing decisions and invited the authorities to provide information about the implementation of the 2015 Property Act and the implementing decisions.

124. On 12 July 2017 the Government provided the Committee of Ministers with, amongst other things, the following statistical information (DH-DD(2017)807):

(i) the ATP total workforce would be increased to 169 employees;

(ii) ALL 2 billion (instead of ALL 3 billion as stipulated in the 2015 Property Act - the equivalent of EUR 16 million) had been allocated to the Financial Fund in 2016;

(iii) ALL 1.8 billion (instead of ALL 3.33 billion as stipulated in the 2015 Property Act - the equivalent of EUR 14.4 million) had been allocated to the Financial Fund in 2017;

(iv) 23,368.8 hectares of agricultural land, valued in the amount of ALL 37 billion (EUR 296 million), had been identified and transferred to the Land Fund;

(v) 50,989.76 hectares of forest and pasture land, valued in the amount of ALL 60 billion (EUR 480.1 million), had been identified and transferred to the Land Fund;

(vi) 160 State objects, valued in the amount of ALL 2.155 billion (EUR 17.2 million), had been identified and transferred to the Land Fund;

(vii) 5,700 new property claims had been submitted to the ATP for examination;

(viii) 10,763 decisions, which had been given between 1993 and 1995, had been subject to financial evaluation, valued in the aggregate amount of ALL 34.2 billion (EUR 274.3 million); 24 decisions had been appealed against to the Administrative Court of Appeal;

(ix) 312.8 hectares of agricultural land, valued in the amount of ALL 640.1 million (EUR 5.1 million) had been awarded as compensation in kind;

(x) 343 decisions had been enforced in full, totalling an aggregate value of ALL 3.4 billion (EUR 27.4 million), in addition to 493 decisions the beneficiaries of which were deemed to have been compensated as a result of prior and partial restitution of property *in natura*;

(xi) 4 requests had benefited from the procedure of accelerated compensation; and

(xii) 2,230 claimants had received compensation in the aggregate amount of ALL 1.9 billion (EUR 15.3 million) in respect of properties occupied by unlawfully constructed buildings.

125. At its 1294th meeting on 19 and 21 September 2017, the Committee of Ministers adopted a decision (CM/Del/Dec(2017)1294/H46-1), whereby it took note of the Constitutional Court's decision and the authorities' commitment to assess the situation and take appropriate measures to prevent any adverse impact, and invited the authorities to make available resources to complete the compensation process within the established time-frame and to provide updated information.

126. On 27 December 2017 the Government Agent informed the Committee of Ministers that, subsequent to the Constitutional Court's decision, the Minister of Justice had established a working group which was tasked with making proposals for any legislative amendments (DH-DD(2018)64). The Government had concluded that there was no need to amend the 2015 Property Act as the repeal of two provisions by the Constitutional Court had not materially affected the compensation formula. Instead, the Government had decided to make amendments to the implementing decisions in order to clarify the procedure for the financial evaluation and unify the decision-making procedure concerning claims under examination. The Government provided the following statistical information:

(i) the ATP's workforce had increased to 118 employees;

(ii) 380 decisions had been enforced in full, totalling an aggregate value of ALL 3.76 billion (EUR 30.1 million);

(iii) 16 requests had benefited from the procedure of accelerated compensation, totalling an aggregate amount of ALL 70,733,017 (EUR 566,012);

(iv) 10,909 decisions, which had been given between 1993 and 1995, had been subject to the financial evaluation;

(v) 2,529 decisions had been given in respect of new property claims; and

(vi) supplementary documents had been requested in respect of 9,000 unexamined applications.

127. In their communications to the Committee of Ministers (see document DH-DD(2018)592 of 11 June 2018, as updated by document DH-DD(2018)793 dated 24 August 2018), the Government, while repeating the reasons for proceeding with amendments to the implementing decisions, provided the following statistical information:

(i) the ATP's workforce had increased to 169 employees;

(ii) the Financial Fund had been replenished each year as shown below:

Financial Fund	**Year 2016**	**Year 2017**	**Year 2018**
State budget	2.00	1.80	2.50
Proceeds received from the transfer of ownership of the building parcels, pursuant to Law no. 9482, dated 03.04.2006, "On the legalization, urbanization and integration of illegal constructions", as amended.	1.60	2.00	1.50
Total billions/ALL	3.60	3.80	4.00

(iii) 18,029 decisions, which had been given between 1993 and 1998, had been subject to financial evaluation, totalling an aggregate amount of ALL 75.5 billion (EUR 604.6 million); 235 decisions had been appealed against to the Administrative Court of Appeal;

(iv) 424 decisions had been enforced in full, totalling an aggregate value of ALL 4 billion (EUR 32.6 million);

(v) 323.4 hectares from the Land Fund, valued in the amount of ALL 663.2 million (EUR 5.3 million) had been awarded as compensation in kind;

(vi) 16,462 new property claims had been submitted to the ATP for examination;

(vii) 5,174 decisions had been given in respect of new property claims, and 163 decisions had been appealed against to the court of appeal; and

(viii) 11,288 claims were pending for examination;

128. At its 1324th meeting on 18 to 20 September 2018, the Committee of Ministers adopted a resolution (CM/RESDH(2018)349) whereby it decided to close the examination of the *Manushaqe Puto and Others* pilot judgment, having satisfied itself that all the measures required by Article 46 § 1 of the Convention had been adopted.

B. Evaluation Report from the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

129. In its Fifth Round Evaluation Report on Albania, which was published in July 2018 further to a visit to the country between 1 and 14 October 2017, MONEYVAL, in so far as immovable property transactions were concerned, observed the following:

> "5. (...) The notary profession was historically deemed highly vulnerable due to its involvement in real estate transactions but its risk awareness and mitigation have significantly improved over the last years. Following increased controls over immovable property transactions, nowadays the highest risks are deemed to be present in transactions where notaries and real estate agents are not involved (informal transactions).
>
> ...
>
> 12. (...) The use of cash is restricted when trading in goods and banned in immovable property transactions. [The General Directorate for the Prevention of Money Laundering], the Ministry of Justice (MoJ) and the [National] Chamber of Notaries (NCN) have coordinated efforts to raise awareness of risks among notaries, who have a key role in real estate transactions.
>
> ...
>
> 25. Notaries recognised their important gatekeeper role in real estate transactions and showed awareness of [money laundering - ML] risks. Their implementation of [anti-money laundering/combating financing of terrorism – AML/CFT] obligations, including [beneficial owner] identification and filings of [suspicious transaction reports], has significantly improved in recent years.
>
> ...
>
> 60. Notaries play a key role in the AML/CFT preventive regime for the real estate sector. The legislation obliges every transaction of immovable property to pass through the notary. Notaries are licenced and supervised by MoJ and are organised under the NCN.

401. Notaries' awareness of ML threats inherent to their gatekeeping role in the economic system is adequate. Supervisors have conducted significant awareness training in recent years ... which has led to a good understanding among notaries of ML typologies in the real estate sector and need to implement controls. The legislation obliges every transaction of immovable property to pass through the notary. Since 2014, it is prohibited to use cash in real estate transactions and notaries have been instructed by authorities to ensure that bank accounts are always used. Notaries provided examples of how they compare the contract value with the market reference price for all real estate transactions to try to prevent cash exchange outside of the notary escrow account at the bank.

420. Notaries showed a good knowledge of their [customer due diligence] requirements obligations in general. (...) Notaries request source of funds for transactions, although they generally found that banks go even further in such checks than they do. Banks receive guidance on procedures to follow for notary escrow account transactions and will require the legal documentation as support prior to transmitting funds. In real estate transactions, this would be the purchase/sale contract and ownership certificate. Cash deposits into notary accounts are prohibited and banks confirmed they question the source of funds transferred into the notary escrow account."

COMPLAINTS

130. The applicants, invoking Article 6 § 1 and Article 13 of the Convention as well as Article 1 of Protocol No. 1 to the Convention, complained about the authorities' failure to award them compensation in accordance with final domestic decisions.

THE LAW

I. JOINDER OF THE APPLICATIONS

131. In accordance with Rule 42 § 1 of the Rules of Court, and having regard to the fact that the present applications originated in the same systemic violation of the Convention as found in the *Manushaqe Puto and Others* pilot judgment, the Court finds it appropriate to examine them jointly in a single decision.

II. COMPLAINTS UNDER ARTICLE 1 OF PROTOCOL NO. 1 AND ARTICLE 13 OF THE CONVENTION

132. The applicants complained that there had been a breach of Article 1 of Protocol No. 1 to the Convention on account of the authorities' failure to award them compensation and a breach of Article 13 of the Convention on account of the lack of an effective remedy in respect of their entitlement to receive compensation.

133. Article 1 of Protocol No. 1 to the Convention reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 13 of the Convention reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

1. As regards the introduction and effectiveness of the new remedy

(a) The Government

134. The Government submitted that, in implementation of the pilot judgment, Parliament had adopted the 2015 Property Act which provided an adequate and accessible domestic remedy for the applicants to exhaust. In view of this new remedy, the Government requested the Court to strike all applications out of the list of cases. The 2015 Property Act had been adopted following public consultations organised in 2014 and 2015 with partners and interest groups. It had laid down binding and realistic time-limits, after having been pilot-tested in Tirana. The ATP's workforce had expanded and undergone training in order to raise its capacity in dealing with property and compensation claims.

135. Prior to adopting the 2015 Property Act, the authorities had carried out a detailed assessment of the legal framework governing the restitution and compensation of properties and concluded that the domestic legislation in force at the time had not laid down a final scheme for determining the amount of compensation to be awarded pursuant to final decisions recognising the right to compensation. The authorities had identified a total of 26,357 unenforced final decisions (mostly without quantum), which had recognised the right to compensation. As a result of such findings, they had introduced a new compensation methodology which would resolve once and for all the determination and payment of compensation.

136. Compensation would be awarded by reference to the property valuation maps, which had been prepared in accordance with international standards on property valuation. They had been updated by reference to the cadastral value registered with the IPRO. The property valuation maps were relied upon for other purposes, such as the computation of compensation in the event of expropriation as well as the process of awarding compensation in the case of regularisation of unauthorised buildings.

137. The Government submitted that the applicants, not having participated in the constitutional proceedings, could not claim to be "victims" within the meaning of Article 34 of the Convention as a result of the Constitutional Court's tied vote in relation to section 7 of the 2015 Property Act. In any event, the Constitutional Court's decision had been consistent with section 74 § 4 of the Constitutional Court Act.

138. Subsequent to the Constitutional Court striking down sections 6 §§ 3 and 5 of the 2015 Property Act, the Government had not considered it necessary or appropriate to make any statutory amendments. Instead, they had decided to amend the implementing decisions that had been adopted in application of the 2015 Property Act, by clarifying the procedure for the evaluation of and compensation for properties and unifying the decision-making procedure regarding pending applications.

139. The Government further submitted that significant resources from the State budget had been allocated annually to the Financial Fund; in 2016 ALL 3.6 billion (EUR 28,823,000), in 2017 ALL 3.8 billion (EUR 30,424,300), and in 2018 ALL 4 billion (EUR 32,025,600). The Land Fund consisted of three main categories: 23,368.8 hectares of agricultural land which had been assessed to have a value of ALL 37 billion (EUR 296,237,000); 160 State-owned buildings, having an estimated value of ALL 2 billion (EUR 16,012,800); and 50,989.76 hectares of forest and pasture land, having an estimated value of ALL 60 billion (EUR 480,384,000).

140. The ATP had proceeded with the financial evaluation of decisions recognising the right to compensation in a chronological order starting with the earliest decisions given in 1993, the result of which had been published in the Official Notices Bulletin.

141. On 4 March 2019 the Government provided the following statistical information as a result of the operation of the 2015 Property Act.

(i) The ATP had completed the financial evaluation in respect of 25,314 decisions, as a result of which: it had determined that the aggregate amount of compensation to be awarded was ALL 96,495,445,182 (approximately EUR 772,580,000) in respect of 22,428 decisions; it had found that, in view of prior and partial restitution of property *in natura*, former owners had been deemed to be compensated in respect of 2,368 decisions; and it had recognised former owners' right to first refusal in respect of 518 decisions.

(ii) From the Effective Date until 20 December 2017, financial compensation totalling ALL 3,890,078,214 (EUR 31,145,500) and compensation in kind totalling 323.3 hectares had been awarded in respect of 396 decisions, which were considered to have been fully enforced.

(iii) Following amendments to CMD 223/2016 on 20 December 2017, financial compensation totalling ALL 1,536,663,923 (EUR 12,303,153) and

compensation in kind totalling 57 hectares had been awarded in respect of 104 decisions, which were considered to have been fully enforced

(iv) In 2018, 355 actions had been lodged with the domestic courts against the ATP's decisions concerning the determination of financial evaluation, out of which 124 had been dismissed, returned or discontinued, 26 had been accepted, 47 had been declared incompatible and 158 were pending before the domestic courts.

(v) Out of a total of 16,462 fresh requests for the recognition of property rights, the ATP had examined 9,512 requests until 23 February 2019 (see paragraph 44 above). The remaining 6,950 would be examined, upon a former owner's request, by the court of first instance in accordance with section 34 of the 2015 Property Act (see paragraph 44 above). On 23 February 2019 the Agency put up a public notice (*njoftim*) informing former owners that they could recover all documents submitted to the Agency if they wished to lodge a civil action with the court of first instance.

(b) The applicants

142. In the first place, the applicants argued that they should not be expected to exhaust a remedy which the authorities had introduced several years after they had lodged their applications with the Court.

143. They submitted that the retroactive application of the 2015 Property Act had given rise to a breach of the principle of legal certainty on three counts. In the first place, the 2015 Property Act had recognised only former owners' right to compensation, one form of which would consist in restitution *in natura*; prior legislation had recognised the applicants' right to restitution of expropriated or confiscated property and the right to compensation *in lieu*. Secondly, the Constitutional Court had declared section 6 § 3 of the 2015 Property Act unconstitutional. However, the Government had reinstated a similar provision in CMD no. 766/2017 (see paragraph 94 above). Thirdly, and most importantly, the 2015 Property Act empowered the ATP to revisit final property decisions, which had become *res judicata*, by determining the financial amount to be awarded as compensation. Under the 2004 Property Act, the applicants would have received compensation equal to the market value of the property, while the amount of compensation under the 2015 Property Act would be calculated by reference to the cadastral category of the property at the time of expropriation.

144. The applicants maintained that the application of the compensation scheme, as laid down in the 2015 Property Act, would result in extremely low compensation amounts which could be up to one hundred times less than the amounts they would have received in application of the 2004 Property Act, or some applicants would be deemed to have been fully compensated on account of the fact that the value of the land which had previously been restored *in natura* would exceed the total amount of

compensation to which they would have been entitled. The applicants recalled that this Court had already held that just satisfaction should be awarded on the basis of the cadastral category at the time of the adoption of the domestic decision, instead of the cadastral category at the time of expropriation.

145. The applicants argued that the application of the compensation scheme would give rise to discrimination compared to those applicants who had already obtained compensation by way of this Court's prior judgments in respect of the same property. In their view, the Court should continue to apply the calculation methodology laid down in its *Vrioni and Others* judgment. They further submitted that the authorities' decision to lower and cap the ceiling of financial compensation from ALL 50 million (EUR 403,673) to ALL 10 million (EUR 81,100) had given rise to unequal treatment of former owners.

146. According to the applicants, the 2015 Property Act provided for a hierarchy of forms of compensation, financial compensation taking precedence over other forms of compensation. That being said, the Financial Compensation Fund, which did not take into account the pending property claims and the outcome thereof, had not been determined on the basis of full and accurate data, and the resources allocated to it were insufficient. The applicants submitted that they were not able to challenge the financial compensation to be awarded by the authorities. Applicants who wished to obtain accelerated compensation had to sign a form waiving all complaints that they had submitted in the past or could submit in the future. They further argued that compensation in kind was not effective as the authorities had not yet had recourse to it. They submitted that the Government had transferred more than 18,000 hectares of land to the Ministry of Agriculture instead of using it as compensation in kind. Moreover, in some cases, the authorities had leased land and other assets to third parties at a symbolic price of 1 euro per sq. m instead of using them as compensation in kind.

147. The applicants submitted that the 2016 property valuation maps, which the authorities were using for the purpose of determining the financial evaluation, did not reflect the market value of the land, especially in highly-priced cities, such as the capital city, Tirana. Referring to a Government decision (no. 655 of 22 July 2015), they maintained that the Government used different property valuation maps when they awarded compensation in the event of new expropriations.

148. The applicants further submitted that CMD no. 685/2016 had imposed a burden on them to submit notarised statements for documents which physically existed in the archives of State institutions. Such a requirement, together with the costs that the production of a notarised act entailed, constituted an obstacle to their realising the essence of their right.

149. The applicants argued that, having regard to the backlog of cases pending before the Administrative Court of Appeal, any appeal against the

amount of compensation would take an unreasonably long time to be examined. The 2015 Property Act had deprived them of the right to appeal against such court decisions to a higher court.

150. As regards public consultation with the interest groups, they claimed that former owners' associations had not been allowed to express their opinion during the public consultations organised by the Government.

2. As regards individual applications

(a) The Government

151. On 4 March 2019 the Government submitted updated information in respect of each application.

152. As regards application no. 29026/06, the Government submitted that the ATP could not carry out the financial evaluation of the first Commission decision owing to the lack of documents, which the applicants had failed to submit within the statutory time-limit following the publication of the ATP's decision and which were required to determine the location of the property in respect of which the applicants would be compensated. In such circumstances, it was open to the applicants to lodge a claim, under section 15 § 2 of the 2015 Property Act, with the Administrative Court of First Instance, seeking the financial evaluation of that decision. As regards the second Commission decision, the ATP had determined the financial evaluation and the applicants had not made an application for payment of compensation.

153. As regards application no. 3165/08, the Government submitted that the applicants were deemed to have been compensated, because the assessed value of the plot of land previously restored to them was higher than the financial evaluation of the plot of land in respect of which the applicants would be compensated. The ATP decision, which had been published on the Official Notices Bulletin on 12 March 2018, had become final on 12 April 2018 in accordance with section 16 § 5 of the 2015 Property Act, no appeal having been lodged against it.

154. As regards application no. 56956/10, the Government submitted that the ATP had carried out the financial evaluation of the applicants' property, even though the applicants had failed to submit supplementing documents.

155. As regards application no. 29127/11, the Government submitted that they had published a decision in the Official Notices Bulletin on 8 May 2017. As the applicants had not waived their right to first refusal of two buildings, the ATP could not determine the financial evaluation in respect of the buildings (see paragraph 85 above).

156. As regards application no. 8904/12, the Government submitted that the ATP had decided that the financial evaluation of the applicants' right to compensation amounted to ALL 113,110,832 (EUR 913,170). Its decision

had been published in the Official Notices Bulletin on 8 August 2018. The applicants had appealed against the ATP decision to the Administrative Court of Appeal, before which the proceedings were currently pending.

157. As regards application no. 6311/12, the Government submitted that, following the Administrative Court of Appeal's decision of 18 June 2018 which had rejected the applicants' appeal against the ATP's decision on the financial evaluation, the applicants' cassation appeal had been pending before the Supreme Court since 3 August 2018.

158. As regards application no. 5915/14, the Government submitted that the plot in respect of which the applicants would be compensated overlapped with a property of which the right to compensation had also been recognised to other parties by way of another decision. In such circumstances, the ATP had deposited the money in a bank account, which money would be paid after the final resolution of the matter concerning the overlapping plot of land in accordance with section 18 of the 2015 Property Act (see paragraph 62 above).

159. As regards application no. 53846/14, the Government submitted that the applicants, who had failed to submit supplementing documents, were deemed to have been compensated.

160. As regards application no. 57152/14, the Government submitted that, following ATP's decision on the financial evaluation and the applicants' application for payment of compensation, the decision had been enforced in full: the applicants had received ALL 50 million out of the Financial Compensation Fund and 12,162 sq. m of agricultural land as compensation in kind out of the Land Fund.

161. As regards application no. 67059/14, the Government submitted that the ATP's decision on the financial evaluation had been published in the Official Notices Bulletin on 18 December 2017.

162. As regards application no. 72755/14, on 16 October 2019 the Government confirmed the events submitted by the applicants in paragraph 169 below.

163. As regards application no. 537/15, the Government submitted that the ATP had not yet determined the financial evaluation of the applicants' right to compensation.

(b) The applicants

164. As regards applications nos. 3165/08, 56956/10, 29127/11, the applicants did not make any updated submissions.

165. As regards application no. 5915/14, the applicants contested the application of the new compensation formula and requested the Court to rely on the expert's report they had submitted in 2015.

166. As regards application no. 53846/14, the applicants submitted that, in reliance on the 2016 property valuation maps, the reference price per square metre would be 105 times less than the reference price stated in the

2014 valuation maps, from ALL 23,955 (EUR 192) per sq. m to ALL 230 (EUR 2) per sq. m.

167. As regards application no. 57152/14, the applicants confirmed that, in circumstances of extreme necessity, they had received compensation which was lower than the real market value of the property.

168. As regards application no. 67059/14, the applicant submitted that he had lodged an appeal against the ATP decision on the financial evaluation with the Administrative Court of Appeal, before which the proceedings were currently pending.

169. As regards application no. 72755/14, the applicants submitted that they had appealed against the ATP's decision on the financial evaluation to the Administrative Court of Appeal. The ATP had determined that the plot of land in respect of which the applicants would receive compensation was agricultural land at the time of expropriation. On 5 April 2019 the Administrative Court of Appeal held that under the 2015 Property Act the ATP was required to publish the financial evaluation in the Official Notices Bulletin, and an appellant had the right to appeal against the ATP's decision within thirty days from such publication, there being no obligation for the ATP to take any other individual decision which would be actionable.

Ruling on the applicants' appeal, the court, following an assessment of the evidence before it, held that the plot measuring 103,000 sq. m was construction land at the time of expropriation. In view of its findings, the court ordered the ATP to carry out a fresh financial evaluation of the plot measuring 103,000 sq. m, referring to it as construction land. There is no information as to whether an appeal has been lodged with the Supreme Court administrative bench. In any event, the applicants argued that an appeal before the Supreme Court would take a long time to be examined since there is a backlog of over 30,000 pending cases owing to its non-operation as a result of the ongoing process of transitional re-evaluation of judges.

B. The Court's assessment

1. Scope of the case before the Court

170. The present applications, which were lodged from 2006 to 2014, concern the same issues as the Court identified in the *Manushaqe Puto and Others* pilot judgment, namely the authorities' failure to enforce final decisions recognising the applicants' right to compensation. The Court recalls that the pilot judgment was conceived as a response to the growth in the Court's caseload, caused by a series of cases deriving from the same structural or systemic dysfunction, and to ensure long-term solutions to the underlying problems at national level.

171. In this connection, the purpose of the pilot judgment is to reduce the threat to the effective functioning of the Convention system and to

facilitate the most speedy and effective resolution of a dysfunction affecting the protection of Convention rights in the national legal order by bringing about the creation of a domestic remedy capable of dealing with similar cases (see, for example, *Rezmiveș and Others v. Romania*, nos. 61467/12 and 3 others, §§ 102-5, 25 April 2017). This is the reason why in the *Manushaqe Puto and Others* pilot judgment, the Court directed the respondent Government to "take general measures, as a matter of urgency, in order to secure in an effective manner the right to compensation".

172. In response to the *Manushaqe Puto and Others* pilot judgment, the authorities have adopted a new remedy, as provided in the 2015 Property Act. The present applications, which the Court has not yet declared admissible, are the first to be examined following the introduction of the new remedy. The Court considers that the assessment of the complaints in the present applications extends beyond the sole interests of the individual applicants and requires it to examine the case from the perspective of assessing the new remedy that the authorities have introduced in the implementation of the *Manushaqe Puto and Others* pilot judgment (see, for example, *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 238, ECHR 2006-VIII).

173. In its examination of the present case, the Court, taking full account of the information in its possession, the parties' submissions and the principles laid down in its case-law as to the interpretation of the Convention, which is designed to guarantee rights that are practical and effective, not theoretical or illusory (see, most recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 171, 13 February 2020, and *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, § 215, 29 May 2019), will determine whether, within the context of the applicants' compliance with the rule of exhaustion of domestic remedies, the 2015 Property Act fulfils the criteria laid down in the Court's case-law to be considered an effective remedy.

2. Exhaustion of domestic remedies

174. Article 35 § 1 of the Convention reads as follows:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

(a) General principles of exhaustion

175. The purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, amongst other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). The rule in Article 35 § 1 is based on the assumption,

reflected in Article 13 (with which it has a close affinity), that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see, for example, *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI). In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see, amongst others, *Sejdovic v. Italy* [GC], no. 56581/00, § 43, ECHR 2006-II).

176. The existence of a remedy must be sufficiently certain not only in theory but also in practice, failing which it will lack the requisite accessibility and effectiveness (see, for example, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 71, 25 March 2014). To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see, most recently, *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 182, 28 June 2018). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see, for example, *Gherghina v. Romania* [GC], no. 42219/07, § 86, 9 July 2015). The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 131, ECHR 2014).

177. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. However, the Court has held on many occasions that this rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 84, ECHR 2010). Among such exceptions are situations where, following a pilot judgment in which the Court found a systemic violation of the Convention, the respondent State has introduced new or amending legislation capable of providing existing and potential victims of the systemic violation with sufficient and adequate relief at domestic level such that the Court's further examination of similar applications is no longer justified (see, for instance, *Balan v. the Republic of Moldova* (dec.), no. 44746/08, 24 January 2012, and *Nagovitsyn and Nalgiyev v. Russia* (dec.), nos. 27451/09 and 60650/09, 23 September 2010 concerning the non-enforcement of judgments; *Stella and 10 Other applications v. Italy* (dec.), no. 49169/09, 16 September 2014, and *Łatak v. Poland* (dec.), no. 52070/08, 12 October 2010 concerning prison overcrowding; *Techniki Olympiaki A.E. v. Greece* (dec.), no. 40547/10, 1 October 2013; *Balakchiev and Others v. Bulgaria* (dec.), no. 65187/10,

18 June 2013, and *Müdür Turgut and Others v. Turkey* (dec.), no. 4860/09, 26 March 2013 concerning the length of proceedings; and *Hodžić v. Slovenia* (dec.), no. 3461/08, 4 April 2017 concerning "old" foreign-currency savings).

(b) Application of these principles in the present case

(i) As regards the effectiveness of the 2015 Property Act

178. The Court notes that the applicants have raised numerous arguments impugning the effectiveness of the remedy which has been made available by virtue of the 2015 Property Act. As described above, the term "effective" means that the remedy must be adequate and accessible (*McFarlane v. Ireland* [GC], no. 31333/06, § 108, 10 September 2010). The Court, by responding to the applicants' arguments, will therefore examine below the adequacy and accessibility of the 2015 Property Act.

(1) Appropriateness of the form of redress

179. The applicants have made a number of complaints challenging the legal restrictions on the restitution of their expropriated property (as opposed to the award of financial compensation or other forms of compensation in kind), and the priority order of forms of compensation to be awarded by the authorities. In so far as criticism is made of a restrictive approach to the restitution of the original property following the recognition of property rights, Article 1 of Protocol No. 1 cannot be interpreted as imposing any restrictions on the Contracting States' freedom to determine the scope of property restitution (see *Jantner v. Slovakia*, no. 39050/97, § 34, 4 March 2003). The Contracting States enjoy a wide margin of appreciation in this regard, and it would be injudicious for the Court to attempt to impose an obligation on the respondent State to effect restitution of all properties which had been expropriated, nationalised or confiscated during the communist regime in all instances (see *Sirc v. Slovenia* (dec.), no. 44580/98, § 275, 22 June 2006). Furthermore, some applicants in the present applications have obtained restitution of properties which were unoccupied.

180. The 2015 Property Act provides for various forms of compensation. It is not for this Court to determine the hierarchy of compensation forms to be awarded by the domestic authorities. The Court is satisfied that the Government, as directed in the *Manushaqe Puto and Others* pilot judgment, have provided for the use of "alternative forms of compensation". That being said, the Court considers that, from a legal certainty perspective, section 25 of the 2015 Act - which excludes the restitution of any expropriated property that "serves the public interest in accordance with restrictions prescribed by law" - as well as the formulation of its implementing decision (see in particular paragraph 96 above) is rather

open-ended. While this is primarily a matter for the national courts to decide, the Court emphasizes that the applicable legal framework, namely statutes and implementing decisions, ought to describe and circumscribe with sufficient clarity the exercise of discretion by the ATP - or other implementing authorities - in making decisions relating to the award of compensation in kind out of expropriated property (in respect of which a former owner's property rights have been recognised).

181. The Court is also mindful of the reality in Albania, whereby a great number of unlawful constructions have been built throughout the country, including on former owners' plots of land. This situation has led the authorities to intervene repeatedly by introducing legislation with a view to regularising unlawfully constructed buildings in order to maintain social peace. The 2015 Property Act has taken this situation into account and has made provision for the recognition of former owners' right to compensation wherever restitution is materially or legally impossible. If appropriate compensation is paid in accordance with the Court's case-law, there is in general no unfair balance between the parties' interests.

182. In terms of legal redress, the 2015 Property Act has provided for a claimant's right to appeal against the ATP's decisions recognising property rights and the right to compensation to the competent court of appeal. The Supreme Court's case-law has further clarified that an appeal against a decision given by the court of appeal may be lodged with the Supreme Court (see paragraphs 74-76 above).

183. Moreover, in cases concerning the ATP's failure to take a decision relating to pending property claims within the three-year time-limit, the 2015 Property Act provides for the right of a claimant to lodge a civil action with the court of first instance of general jurisdiction. In this connection, it appears to be somewhat unclear upon which basis the national courts will determine the pending property claims, carry out the financial evaluation and perform other functions that were previously carried out by the ATP. In any event, the Court must emphasize that, having regard to the reasonable time requirement, consistent judicial practice and expeditious processes are required to deal with almost 7,000 pending property claims, as stated in the Government's submissions in paragraph 141 (v) above.

184. Furthermore, the 2015 Property Act has guaranteed the right of a former owner to appeal against the ATP's decisions on financial evaluations to the Administrative Court of Appeal. The Court is satisfied that such administrative decisions are amenable to appeal before a tribunal. The Court further notes that, in cases concerning the ATP's failure to determine the financial evaluation within the three-year time-limit, the 2015 Property Act provides for the right of a former owner to lodge a civil action with the Administrative Court of First Instance.

185. The Court also welcomes the fact that the 2015 Property Act has provided for situations of overlapping claims, by prompting the parties to

resolve the matter amicably, failing which the parties have the right to institute court proceedings seeking the final determination of the right to compensation (compare and contrast *Preda and Others v. Romania*, nos. 9584/02 and 7 others, §§ 124 and 130, 29 April 2014). In the meantime, the amount of compensation related to the disputed part of the property will be deposited in a specially designated bank account, to be paid upon resolution of the matter.

186. The 2015 Property Act does not contain any discernible provision empowering the ATP to call into question the finality of decisions without quantum. The 2015 Property Act provides that these decisions will be subject to a financial evaluation in order to determine the amount of compensation, and, subsequently, the award of any compensation out of the Compensation Fund. Also, section 6 § 7 of the 2015 Property Act upholds the finality of decisions which have determined the amount of compensation to be awarded to former owners, subject to indexation. Because the right to compensation remains unchallengeable and indisputable, in respect of which the applicants did not submit any emerging practice to the contrary, the Court does not agree with the applicants' argument that the 2015 Property Act gives rise to a breach of the principle of legal certainty in so far as the right to compensation is concerned.

187. Lastly, the Court notes that the applicants have taken issue with the approach followed by the Government, subsequent to the delivery of the Constitutional Court's decision no. 1/2017, by adopting amendments to the implementing decisions instead of introducing statutory changes to the 2015 Property Act. In this connection, the Court takes note of the Government's submissions before the Committee of Ministers explaining the procedure and reasons for not bringing about changes to the 2015 Property Act (see paragraph 126 above), even though such reasons had not been subject to scrutiny by Parliament as stated in the Constitutional Court's decision (see paragraph 70 above). Furthermore, it would appear that the amendments to the implementing decisions do not, on their face, regulate with sufficient clarity the situation governed by the repealed section 6 § 5 of the 2015 Property Act, namely the calculations related to the portion of a property to which a former owner is entitled when a fresh restitution of his own recognised property is being considered by the Agency. Be that as it may, it is not the role of this Court to determine the course that the authorities should pursue to remedy a domestic situation following the repeal of statutory provisions, such matter remaining at the authorities' assessment and discretion, regard being had to the domestic legal requirements. The Court further notes that proceedings concerning the constitutionality of CMD nos. 222/2016 and 223/2016 are pending for examination before the Constitutional Court (see paragraphs 81 and 89 above), and the proceedings concerning the constitutionality of CMD no. 766/2017 are pending for examination before the Administrative Court

of Appeal, even though a complainant's appeal has already been dismissed (see paragraph 101 above). In this context, the Court is intended to be subsidiary to the national systems safeguarding human rights and it is appropriate that the national courts should initially have the opportunity to determine questions regarding the compatibility of domestic law with the Convention and that, if an application is nonetheless subsequently brought to Strasbourg, the Court should have the benefit of the views of the national courts, as being in direct and continuous contact with the forces of their countries (see *Burden v. the United Kingdom* [GC], no. 13378/05, § 42, ECHR 2008).

188. In conclusion, the Court maintains that the domestic authorities, which are in the best position to assess the practicalities, priorities and conflicting interests on a domestic level, enjoy a wide margin of appreciation as regards the choice of forms of redress for breaches of property rights. The Court therefore finds that no issues arise as regards the appropriateness of the form of redress provided for by the 2015 Property Act that would put into question the effectiveness of the remedy in this respect.

(2) Adequacy of the compensation

189. In the case of *Vistiņš and Perepjolkins v. Latvia* ([GC], no. 71243/01, 25 October 2012) the Court summarised the principles applicable to compensation terms, including in the context of major political transitions, stating, amongst others, as follows:

> "112. (...) Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances (see *Broniowski* [*v. Poland* [GC], no. 31443/96], § 182, [ECHR 2004-V]). Admittedly, a total lack of compensation can be considered justifiable only in exceptional circumstances (see *Former King of Greece and Others* [GC] (merits), [no. 25701/94], § 89 [ECHR 2000-XII]). Legitimate objectives of "public interest", such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see *James and Others* [*v. the United Kingdom*, 21 February 1986,], § 54 [Series A no. 98]); in such cases, the compensation does not necessarily have to reflect the full value of the property in question.
>
> 113. This principle applies all the more forcefully when laws are enacted in the context of a change of political and economic regime, especially during the initial transition period, which is necessarily marked by upheavals and uncertainties; in such cases the State has a particularly wide margin of appreciation (see, among other authorities, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX; *Jahn and Others* [*v. Germany* ([GC], nos. 46720/99, 72203/01 and 72552/01], § 116 (a) [ECHR 2005-VI]; and *Suljagić v. Bosnia and Herzegovina*, no. 27912/02, § 42, 3 November 2009). Thus, for example, the Court has held that less than full compensation may also be necessary *a fortiori* where property is taken for the purposes of "such fundamental changes of a country's constitutional system as the transition from a monarchy to a republic" (*see Former King of Greece and Others* (merits), cited above, § 87). The Court reaffirmed that principle in *Broniowski* (cited above, § 182), in the context of a property restitution and

> compensation policy, specifying that a scheme to regulate property, being "wide-reaching but controversial ... with significant economic impact for the country as a whole", could involve decisions restricting compensation for the taking or restitution of property to a level below its market value. The Court has also reiterated these principles regarding the enactment of laws in "the exceptional context of German reunification" (see *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, §§ 77 and 111-112, ECHR 2005-V, and *Jahn and Others*, cited above)"

190. The Court considers that the present case is not about the original unlawful expropriation of the applicants' properties, in which case full compensation at the current market value would have been required in principle (see, for example, *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, §§ 34-40, Series A no. 330-B); rather, it is about the arrangements for providing compensation for unjust deprivation of property carried out by the former communist regime.

191. The Court notes that, in application of the 2015 Property Act, decisions which had determined the amount of compensation to be awarded to former owners are to be enforced, subject to indexation. The Court is satisfied that the 2015 Property Act does not call into question the amount of compensation awarded by virtue of those decisions (see also paragraph 186 above) and that the authorities have undertaken to comply with the obligations arising therefrom.

192. However, as regards decisions without quantum, the Court notes that, contrary to the applicants' expectation to receive compensation at the current market value conferred on them by virtue of prior legislation, the amounts to be awarded as compensation under the 2015 Property Act may, in some cases, be considerably reduced owing to changes in the cadastral classification of the expropriated property over time. In other cases, the applicants may be considered to have been fully compensated. In these circumstances, the 2015 Property Act would appear to constitute a potentially significant interference, and the Court must ascertain whether the determination of compensation in accordance with the 2015 Property Act is justified.

193. The Court observes that the Constitutional Court found that the introduction of the new compensation scheme pursued the public interest of resolving "property issues within a reasonable time-frame, namely 10 years, under sensible financial costs as well as the establishment of social peace amongst various societal strata affected by property issues, which continued to remain unresolved for 25 years". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest" and thus enjoy a wide margin of appreciation in this field (see *Jahn and Others* [GC], cited above, § 91). The Court takes note of the Constitutional Court's findings, and attaches importance to the fact that the 2015 Property Act was adopted in response to the *Manushaqe Puto and*

Others pilot judgment in order to resolve a structural and systemic problem which had persisted since 1993 and affected at least 26,000 claims for compensation.

194. Furthermore, the Court considers that the State has been dealing with an exceptionally difficult and complex situation which involved a choice as to which pecuniary and moral obligations could be fulfilled towards persons who had suffered past injustices. In this connection, the Court observes that the Government had calculated the financial bill to amount to over EUR 6.5 billion, which at the average rate of the State's budgetary allocations over the past two decades would have taken an extremely long time to pay to claimants on the basis of the compensation scheme under the 2004 Property Act (see paragraph 38 above). Given the magnitude of the problem and the importance of finding a lasting solution to the property compensation, the authorities have had to take into account various social, legal and economic considerations. The approach taken by the authorities does not appear unreasonable and disproportionate, considering that they have a duty to correct the ineffectiveness of prior property restitution and compensation legislation and given the wide margin of appreciation accorded to them in situations involving a wide-reaching but controversial legislative scheme with significant economic impact for the country as a whole.

195. As to whether the applicants have to bear a disproportionate and excessive burden, the Court recalls that in the case of *Wolkenberg and Others v. Poland* (dec.) (no. 50003/99, §64, 4 December 2007) it accepted the respondent Government's argument concerning the need for a compromise between the claimants' expectations and the State's budgetary constraints in an exceptionally difficult situation, leading to a reduction of the amount of compensation to 20% of the current value of the original property in the so-called "territories beyond the Bug River". In a completely different case concerning the adequacy of compensation for the "erased", the Court also accepted as reasonable and proportionate "the amounts of financial compensation chosen by the domestic authorities, ranging between approximately 20% and 60% of the Grand Chamber's individual award in the [*Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, ECHR 2014-I] pilot case" (see *Anastasov and Others v. Slovenia* (dec.), no. 65020/13, § 72, 18 October 2016).

196. Turning to the circumstances of the present case, the Court considers that the reference to the original cadastral category of the expropriated property as a basis for carrying out the financial evaluation is not *per se* arbitrary. However, some applicants might obtain only a small amount of compensation as a result of the use of such reference criterion, no regard being had to the increased value of their expropriated property over the years. In these circumstances, in order to prevent an extreme burden on former owners in general and the applicants in particular, the remedy can

only be considered effective to the extent that the aggregate amount of compensation – irrespective of the form of compensation – amounts to at least 10% of the value to which the applicants would have been entitled if the financial evaluation had been carried out by reference to the current cadastral category of the expropriated property. In the Court's view, the 10% minimum threshold for the amount of compensation could be considered reasonable in the specific context of the restitution and compensation of properties process in Albania in view of the overall level of sacrifice imposed by the new compensation scheme on former owners, including the applicants, compared to their expectation to receive current market value compensation which flowed from prior legislation (see also paragraph 194 above).

197. As regards the applicants' opposition to the use of the 2016 property valuation maps, the Court observes that the 2016 property valuation maps were drawn up on the basis of immovable property transactions' values registered with the IPRO. The Court takes note of the MONEYVAL's recent evaluation report which points to seemingly considerable improvements undertaken by the authorities in the manner immovable property transactions have been carried out since 2014, notably through the prohibition of the use of cash transfers or deposits, the mandatory use of notary escrow bank accounts and the notary's obligation to indicate the real sales price of immovable properties (see paragraph 129 above). In the light of the authorities' continued endeavours to curb and combat the informal economy, the Court accepts that the situation has not remained unchanged since the adoption of the judgment in the case of *Sharra and Others* [Committee], cited in paragraph 12 (iii) above. Whether the 2016 property valuation maps reflect correct property values is a matter of fact that must ultimately be determined by the national authorities.

198. In this connection and as regards application no. 53846/14, the Court considers the applicant's submission concerning a drastic decrease of the reference price to be incorrect. Having examined the 2016 property valuation maps, the Court notes that the reference price for the same cadastral category (that is construction land (*truall*)) has increased to ALL 29,106 (EUR 233) in 2016 (compared to the alleged EUR 192 in 2014).

199. As regards the applicants' arguments concerning a difference in treatment amongst former owners, including former successful applicants to this Court, the Court notes that former successful applicants received compensation (at the market value) which was consistent with the legislation in force at the material time. However, as a result of the *Manushaqe Puto and Others* pilot judgment and the general measures indicated to the respondent Government, the authorities have overhauled the property restitution and compensation legislation and enacted the 2015 Property Act, which introduced a different compensation scheme. The

Court recalls that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination. The words "other status" have generally been given a wide meaning in the Court's case-law and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see, for example, *Molla Sali v. Greece* [GC], no. 20452/14, § 134, 19 December 2018). The difference in treatment which the applicants invoke relates to their amount of compensation to be calculated by reference to the cadastral category of the property at the time of expropriation instead of by reference to the current market price of the property. Even assuming that this difference was based on an identifiable personal characteristic of theirs, and was thus to fall under "other status" within the meaning of Article 14 of the Convention, it was exclusively due to an intervening change in the legislation and cannot therefore be regarded as discriminatory (see, for example, *Yordanova and Toshev v. Bulgaria*, no. 5126/05, § 62, 2 October 2012 and the references cited therein).

200. In the same vein, the fact that some former owners may be deemed to have been fully compensated under the 2015 Property Act on account of the prior (partial) restitution of the property they have obtained, cannot be regarded as a difference in treatment and it does not affect or alter the form of compensation they have already obtained. The absence of an award of further compensation would indeed be the logical result of the application of the new compensation scheme. Otherwise they would obtain an unfair advantage over former owners who have not yet been able to receive any form of compensation in the past, it being recalled that the goal of the 2015 Property Act is to resolve the property issue in as equitable manner as possible (see also paragraph 193 above).

201. Lastly, the Court has not been made aware that, following the amendments to CMD no. 223/2016, the reduction of the financial compensation amount from ALL 50 million (EUR 403,763) to ALL 10 million (EUR 81,100) resulted in a situation of significant legal uncertainty or a general difference in treatment. In this connection, it does not appear that, on the basis of the statistical information provided by the Government in 2019 (see paragraph 141 (ii) and (iii) above), the average award of financial compensation was significantly (or at all) reduced subsequent to the amendments to CMD no. 223/2016. Whereas the Government might have been prompted to give priority to compensation in kind and reduce the overall financial compensation (see paragraph 95 above), the Court must emphasize that frequent changes to the legislation, including implementing decisions, may contribute to a general lack of legal certainty and that is a factor to be taken into account in assessing the State's conduct in the future (see *Manushaqe Puto and Others*, cited above, § 110).

202. The Court further notes that, as the adequacy of compensation is likely to be diminished if it were to be paid without reference to various circumstances liable to reduce its value, such as the lapse of a considerable period of time (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 82, Series A no. 301-B, and *Wolkenberg and Others* (dec.), cited above, § 65), the amount will have to be converted to current value to offset the effects of inflation. For this purpose, the Court observes that, having regard to the scheme of staggered payment of compensation, the amount of compensation ought to be indexed to inflation until final payment in order for the remedy to continue to remain effective (see also *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 105, 22 December 2009). That notwithstanding, the Court welcomes the fact that, under section 6 § 7 of the 2015 Property Act, final decisions which had determined the amount of compensation to be awarded to former owners will be subject to indexation (see also paragraph 186 above).

203. The Court therefore finds that, subject to compliance with the 10% minimum threshold for the amount of compensation, no issues arise as regards the adequacy of compensation provided for by the 2015 Property Act that would put into question the effectiveness of the remedy in this respect.

(3) Accessibility and efficiency of the remedy

204. As regards the operation of the 2015 Property Act in practice, the Court would refer to the most recent statistics supplied by the Government (see paragraph 141 above). Since the Effective Date of the 2015 Property Act, the Government submitted that the authorities had enforced 500 decisions in full; had completed the financial evaluation for over 25,000 decisions; and had examined over 9,500 new property claims. These figures show a progression of the work carried out by the authorities in comparison to the statistics the Government had submitted to the Committee of Ministers in June 2018 (see paragraph 127 above).

205. In contrast to the situation obtaining before, the Government have abided by the statutory obligations emanating from the 2015 Property Act, by allocating significant annual budgetary resources for the payment of financial compensation. They have also enlarged the pool of land designated by the State for the payment of compensation in kind. In fact, the State has secured financial compensation and compensation in kind for claimants who have complied with domestic procedures (see paragraphs 127 and 141 above).

206. The Court finds these developments satisfactory. Still, it notes that, while the percentage of the Land Fund that has been used to award in kind compensation has been low to date, greater use of compensation in kind would in principle reduce the overall financial compensation bill and may allow former owners to benefit from any future increase in the value of

compensation in kind. The Court further emphasises that sufficient allocation of resources, infrastructure and facilities is necessary in order to ensure that the processing of unexamined property claims and the compensation scheme remains at all times "effective and expeditious" (see *Broniowski* [GC], cited above, § 194), not least because almost 7,000 property claims, which were not examined by the ATP within the three-year statutory time-limit, would need to be examined by the court of first instance at a former owner's request.

207. The Court notes that the 2015 Property Act, which was drafted following the compilation of an electronic database of administrative decisions given since 1993, laid down clear and binding time-limits for the authorities to act. It established the ATP which was responsible for examining property claims and recognising property rights, including the right to compensation. The ATP would also determine the financial evaluation concerning decisions which were pending before the national authorities and this Court. Turning to the information provided by the Government, the Court notes that the ATP had determined the financial evaluation in respect of almost each application that forms part of the present case (see paragraphs 152-163 above).

208. In this connection, the Court cannot overlook the fact that the ATP was only the first limb of the system of remedies put in place by the authorities, and that there would be a second, fully judicial procedure, which can result in a legally binding court decision. The Court is satisfied that such a system has already been used, since the applicants and other former owners have appealed against ATP decisions (see paragraphs 102 and 169 above). As regards the applicants' argument that the proceedings would be unreasonably long before the domestic courts, it would be speculative for the Court to find that the domestic courts dealing with such appeals will not act with due diligence, this being a question of judicial administration and case management. It is true that the effectiveness of the remedy will depend on those courts' ability to handle such cases with special diligence in terms of the length of time taken for their determination. In this respect, the Court notes that the Supreme Court is currently not functioning owing to the operation of the Transitional Re-evaluation of Judges and Prosecutors Act and to delays in appointing new judges. The excessive length of any court proceedings, including those pending before the Supreme Court, in respect of individual applications may be subject to this Court's review in the future and may have a bearing on the overall assessment of the effectiveness of the remedy.

209. As regards those applicants who had introduced an application with the Court by the date of the delivery of this decision and chose not to appeal against the ATP decision determining the financial evaluation or not to submit any missing documents within the statutory time-limits, the Court observes that, in view of the official publication of the 2015 Property Act,

the applicants became aware of its Effective Date (see, *mutatis mutandis*, *Broca and Texier-Micault v. France*, no. 27928/02 and 31694/02, § 20, 21 October 2003). It was open to the applicants, starting from the Effective Date, to comply with the statutory requirements laid down in the 2015 Property Act instead of *a priori* calling into question the effectiveness of the new remedy which had been introduced into the legal system of the respondent State in response to the *Manushaqe Puto and Others* pilot judgment. The Court further considers that, having regard to the Constitutional Court's decision which dismissed a request for the stay of the application of the 2015 Property Act as unfounded and declared the 2015 Property Act constitutional save for its sections 6 §§ 3 and 5, it would not be fair and reasonable to dispense the applicants from having recourse to it. To hold differently could give rise to an unjustified difference in treatment vis-à-vis those former owners who have complied with the requirements of the new domestic remedy. That notwithstanding, subject to compliance with the 10% minimum threshold for the amount of compensation (see paragraph 196 above), it should be open to the applicants affected by it to apply for an adjustment of the compensation in observance of any applicable rules to be adopted for this purpose.

210. While the 2015 Property Act, as implemented by the joint order of the Minister of Justice and the Minister of Finance, imposes the payment of a fee (see paragraph 109 above), the Court considers that the requirement for the applicants to submit a notarised self-declaration does not constitute an excessive obstacle for realising the essence of their right. They did not substantiate that the costs of preparing the notarised self-declaration are prohibitive. Nor is the Court persuaded that the obligation to submit supporting documentary evidence constitutes an excessive obstacle for realising their rights.

211. As regards the 10-year time-frame for the full payment of compensation, the Court takes the view that, even though the applicants may have to wait for a number of years to have the compensation amounts paid to them in full, the system of staggering the payment of compensation may be accepted in the exceptional circumstances of this case and would not *per se* call into question the effectiveness of the remedy or be contrary to the reasonable time requirement guaranteed by Article 6 of the Convention (see *Knežević and Others v. Bosnia and Hercegovina* (dec.), no. 15663/12, § 15, 14 March 2017, and *Preda and Others*, cited above, § 131; contrast with *Đurić and Others v. Bosnia and Herzegovina*, nos. 79867/12 and 5 others, § 30, 20 January 2015).

212. As regards past delays, the Court notes that the remedy introduced in 2017 (see paragraph 117 above) has been designed to address, amongst others, the issue of the non-enforcement or delayed enforcement of final decisions in an effective and meaningful manner, taking account of the Convention requirements under its Article 6 § 1. In this connection, the

Court has held that administrative property decisions are 'final' for the purposes of Article 6 § 1 of the Convention, insofar as they remained unchallengeable and "generated rights which were final and enforceable" (see, for example, *Ramadhi and Others*, cited above, § 36; *Hamzaraj (no. 1)*, cited above, § 26; and *Nuri*, cited above, § 28). The Court therefore considers that, without prejudice to the examination of the effectiveness of this remedy in the future, it would in principle be open to the applicants to seek relief for the distress and frustration caused by the authorities' prolonged failure to enforce final decisions in their respective cases. That being said, in order to prevent further delays in this context, the Court also considers that this matter may be more appropriately addressed by introducing a simplified scheme for the award of non-pecuniary damage to former owners, including the applicants in the present case, regard being had to this Court's case-law (see, for example, *Cocchiarella v. Italy* [GC], no. 64886/01, § 80, ECHR 2006-V; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 204-06, ECHR 2006-V; *Bizjak v. Slovenia* (dec.), no. 25516/12, §§ 39-43, 8 July 2014; and *Knežević and Others* (dec.), cited above, § 11 and 15-16).

213. Lastly, it transpires from the Parliamentary Commission's report that interest groups, in addition to other stakeholders, had been invited to submit comments on the new draft law. The Government maintained that they had organised round tables inviting representatives of former owners' associations. Even assuming that the right to consultation had not been effectively exercised, the Court is satisfied that former owners' associations were amongst the complainants who effectively exercised the right to petition to the Constitutional Court. In this connection, the Court considers that the Constitutional Court's tied vote concerning the complainants' complaint about section 7 of the 2015 Property Act did not breach the applicants' right of access to court, not least because the applicants had not been a party to any domestic proceedings relating to alleged breaches of individual rights guaranteed by the Convention. The constitutional proceedings were brought by former owners' associations and concerned an *in abstracto* constitutional review of the provisions of the 2015 Property Act (compare and contrast *Marini v. Albania,* no. 3738/02, §§ 118-23, 18 December 2007, in which the applicant had been personally and directly affected as a result of the Constitutional Court's tied vote in proceedings regarding the liquidation of a company of which he was a shareholder). In addition, the Constitutional Court appears to have applied the new section 73 § 4 of the Constitutional Court Act when it dismissed the complaint about section 7 of the 2015 Property Act (see paragraph 115 above).

214. The Court therefore finds that, in view of the reasons described above, no issues arise as regards the accessibility and efficiency of the remedy provided for by the 2015 Property Ac.

(4) Conclusion

215. The Court, having regard to the above considerations and the adoption of the Committee of Ministers' resolution closing the examination of the *Manushaqe Puto and Others* pilot judgment (see paragraph 128 above), finds that the remedy introduced by virtue of the 2015 Property Act is effective, within the meaning of Article 35 § 1 and Article 13 of the Convention.

(ii) As regards the applicants' obligation to exhaust the domestic remedy

216. The Court recalls its general principle stated in paragraph 177 above. In such cases, the Court declared the follow-up cases inadmissible for non-exhaustion of domestic remedies and "repatriated" such cases to the respondent States in question.

217. Giving weight to the subsidiary character of its role, the Court considers that the exception applies here for the following reasons. Firstly, the Court finds it significant that the authorities adopted the 2015 Property Act which has been designed to address the issue of enforcing former owners' right to compensation in an effective and meaningful manner, taking account of the Convention requirements, in response to the *Manushaqe Puto and Others* pilot judgment. It would be in line with the spirit and logic of the pilot judgment that applicants complaining about the non-enforcement of their right to compensation could claim redress for their grievances in the first place through the 2015 Property Act. Secondly, the Court attaches particular importance to the fact that the 2015 Property Act applies to all individuals who had lodged an application with the Court in Strasbourg before the entry into force of the 2015 Property Act. Lastly, the Court reiterates that its task, as defined by Article 19 of the Convention, would not be best achieved by taking such cases to judgment in the place of domestic authorities, let alone considering them in parallel with the domestic proceedings.

218. Having regard to the above considerations, the Court concludes that the applicants in applications nos. 29026/06, 3165/08, 56956/10, 29127/11, 5915/14, 53846/14, and 537/15 were or are required under Article 35 § 1 to avail themselves of the domestic remedies introduced by virtue of the 2015 Property Act in compliance with the relevant domestic rules. Furthermore, it finds no exceptional circumstances capable of exempting them from the obligation to exhaust domestic remedies. It follows that their complaint under Article 1 of Protocol No. 1 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

219. As regards the applicants in applications nos. 8904/12, 6311/12, 67059/14 and 72755/14, the Court finds that, having regard to the fact that the domestic proceedings are pending before the domestic courts, it would be premature for the Court to deal with their complaint under Article 1 of

Protocol No. 1, which must be rejected under Article 35 §§ 1 and 4 of the Convention.

220. As regards the applicants in application no. 57152/14, the Court finds that, having regard to the full payment of the compensation award, they can no longer claim to be a 'victim' of breaches of the Convention rights within the meaning of Article 34 of the Convention. Their complaint under Article 1 of Protocol No. 1 is accordingly incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention and must therefore be rejected pursuant to Article 35 § 4.

221. In view of its findings in paragraphs 215 above, the Court finds that the applicants' complaint under Article 13 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

222. The Court's position may be subject to review in the future depending, in particular, on the authorities' capacity to demonstrate that the remedies introduced in the 2015 Property Act, including their ability to (i) to deal with almost 7,000 pending property claims in an effective manner (see paragraph 183 above), (ii) provide for compensation of no less than 10% of the value to which the applicants would have been entitled if the financial evaluation had been carried out by reference to the current cadastral category of the expropriated property (see paragraphs 196 above), and (iii) provide for indexation of the amount of compensation until final payment (see paragraph 202 above), continue to comply with the Convention requirements in practice.

III. COMPLAINT UNDER ARTICLE 6 § 1

223. The applicants complained that there had been a breach of Article 6 § 1 of the Convention on account of (i) the authorities' failure to enforce the final decisions recognising their entitlement to receive compensation, and (ii) the retroactive application of the 2015 Property Act to the enforcement of final administrative decisions which had obtained the force of *res judicata*. Article 6 § 1 of the Convention provides in its relevant parts as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

224. The Court, having regard to its findings in the preceding paragraphs that the 2015 Property Act provides the applicants with a right to an effective remedy as well as the fact that the applicants have or had access to a court or obtained full compensation, considers that the applicants' complaint concerning the authorities' alleged failure to enforce the final decisions recognising the applicants' right to compensation is manifestly

ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

225. As regards the applicants' complaint about the alleged legislative interference with the enforcement of final decisions, the Court has repeatedly held that while, in principle, the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing law, the principle of the rule of law and the notion of a fair trial enshrined in Article 6 preclude any interference by the legislature - other than on compelling grounds of the general interest - with the administration of justice designed to influence the judicial determination of a dispute (see, amongst others, *Stran Greek Refineries and Stratis Andreadis*, cited above, § 49; *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, § 57, ECHR 1999-VII, and *Scordino (no. 1)*, cited above, § 29). Financial considerations cannot by themselves warrant the legislature substituting itself for the courts in order to settle disputes (see *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 76, 24 June 2014).

226. Turning to the present case, the Court reiterates that the 2015 Property Act does not adversely affect final decisions which had determined the amount of compensation to be awarded to former owners or had ordered restoration *in natura* to former owners. As regards decisions without quantum, the Court is satisfied that the 2015 Property Act upholds the applicants' right to compensation (see paragraph 186 above). The Court is not persuaded that decisions without quantum, which directed that former owners should be compensated in one of the ways provided for by law, produced *res judicata* effects with respect to either the precise form of compensation or the amount of compensation to be awarded in individual cases, regard being had to the fact that the realisation of compensation would hinge upon implementing regulatory decisions and discretionary administrative decision-making (see, in this connection, *Manushaqe Puto and Others*, cited above, §§ 35-40).

227. Moreover, the Court considers that, whereas the 2015 Property Act introduced a new remedy according to which decisions without quantum would be subject to financial evaluation by reference to the cadastral category of the property at the time of expropriation, its retroactive application was not aimed specifically at any individual application – let alone the individual applications of the present case the proceedings of which had completed prior to the enactment and the Effective Date of the 2015 Property Act – but constituted the authorities' global response to the *Manushaqe Puto and Others* pilot judgment which had called on the State "to secure in an effective manner the right to compensation" in respect of at least 26,000 decisions which the authorities had subsequently identified (see paragraph 38 above). The Court notes that it can be said that in the circumstances of the present case the applicants could have foreseen a

reaction by the national legislature (see, for example, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 112, *Reports of Judgments and Decisions* 1997-VII, and *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, § 72, 27 May 2004).

228. The Court is further satisfied that, in view of its conclusions under Article 1 of Protocol No. 1, the adoption of the 2015 Property Act was not motivated by financial considerations alone, but by the need to provide a lasting solution to the State's longstanding failure to secure the enforcement of the overwhelming majority of property compensation decisions, regard being had to complex social, legal and economic considerations (see paragraphs 193 and 194 above). The Court therefore considers that the adoption of a new property Act with retroactive effects responded to an obvious and compelling public interest justification (see, for example, *Forrer-Niedenthal v. Germany*, no. 47316/99, §§ 63-64, 20 February 2003; compare and contrast *Zielinski and Pradal and Gonzalez and Others*, cited above, §§ 58-60; *Scordino (no. 1)*, cited above, §§ 126-33, ECHR 2006-V; *De Rosa and Others v. Italy*, nos. 52888/08 and 13 others, §§ 47-55, 11 December 2012; *Azienda Agricola Silverfunghi S.a.s. and Others*, cited above, § 88; and, most recently, *Cicero and Others v. Italy*, nos. 29483/11 and 4 others, §§ 29-34, 30 January 2020, not yet final).

229. Accordingly, the Court considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares inadmissible the applications.

Done in English and notified in writing on 7 May 2020.

Stanley Naismith Registrar	Robert Spano President

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Appendix

List of applications

No.	Application no.	Case name	Lodged on	Applicant	Nationality	Represented by
1	29026/06	Beshiri v. Albania	14/07/2006	Agim BESHIRI[2] Makbule BESHIRI[3] Suleiman BESHIRI Ylber BESHIRI Lumnije BESHIRI[4]	Albanian Albanian Albanian Albanian Albanian	Sokol PUTO
2	3165/08	Cale v. Albania	07/01/2008	Theodhoraq CALE Gjergji CALE Spiro CALE Stefanaq CALE	Albanian Albanian Albanian Albanian	Gjergji CALE
3	56956/10	Foundos and Kallinikos v. Albania	27/09/2010	Albert FOUNDOS Louis FOUNDOS	American American	Artan HAJDARI

[2] As substituted by his heirs: Dritan BESHIRI, Hafize BESHIRI and Shpresa PAPADHIMA BESHIRI
[3] As substituted by her heirs: Bardhyl RESO and Flutura PETRELA
[4] As substituted by her heirs: Arjan DERVISHI, Erna BONATI DERVISHI and Linda KUMBARO DERVISHI

No.	Application no.	Case name	Lodged on	Applicant	Nationality	Represented by
				Viola KALLINIKOS	American	
4	29127/11	Maci and Others v. Albania	26/03/2011	Gezim MACI Maksim LESKO Hatlije LLAGAMI[5] Ardian MACI Skender BYLYKU Mahmudije GOLIA[6]	Albanian Albanian Albanian Albanian Albanian Albanian	Elton GONGO
5	6311/12	Perja v. Albania	10/01/2012	Silva PERJA	Albanian	Artan HAJDARI
6	8904/12	Karapici and Others v. Albania	19/01/2012	Gani KARAPICI Sabri JELLA[7] Bukurie SOPOTI Drita BOZGO Fatmira ELMAZI Pranvera ZGJANI Shkendi ZGJANI Andi ZEQIRAJ Merjeme TURDIU[8] Zana JELLA Ema JELLA Hasan JELLA[9] Eleen JELLA	Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian	Sokol PUTO

[5] As substituted by her heirs: Shpetim LLAGAMI, Ismail LLAGAMI, Eshref LLAGAMI, Blend LLAGAMI, Apostolia LLAGAMI, Marcio LLAGAMI and Ana LLAGAMI
[6] As substituted by her heirs: Hajten META, Fatmir GOLIA, Edmond GOLIA and Alben GOLIA
[7] As substituted by his heirs: Halit JELLA, Gazmend JELLA, Adela JELLA and Hans JELLA
[8] As substituted by her heirs: Neraida TURDIU and Gazmend TURDIU
[9] Deceased

No.	Application no.	Case name	Lodged on	Applicant	Nationality	Represented by
				Bernice JELLA Hysni JELLA (KARAPICI) Mary JELA (YELLA) Shpresa HAXHIU Lumturi SORRA Saemira TAUSHANI Aldona BRAHIMMUCO Admir SORRA Arjana STRATI Luela GUNBARDHI Diana SORRA Alma MURATAJ Vediha SHTRAZA Mimoza HADO Manjola XHIKU Ardiana KACERJA Zydi NJUMA Evrianthi KARAPICI Ivana GORE Aurora TAKO	Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian	
7	5915/14	Sovali v. Albania	31/12/2013	Valdete SOVALI Agron QUKU Ajete SULSTAROVA Enis SULSTAROVA Sami SULSTAROVA Dhurata SULSTAROVA Redi SULSTAROVA Oriana SULSTAROVA	Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian	Oltion TORO

No.	Application no.	Case name	Lodged on	Applicant	Nationality	Represented by
8	53846/14	Gostivari and Others v. Albania	24/07/2014	Envere GOSTIVARI Shpetim FAGU Astrit FAGU Ali FAGU Ermira KOVACI Redmond SHAHU	Albanian Albanian Albanian Albanian Albanian Albanian	Viktor GUMI
9	57152/14	Saraçi and Llagami v. Albania	31/10/2014	Pellumb SARAÇI Aishe LLAGAMI Hysen SARACI	Albanian Albanian Albanian	Xhevdet SHETA
10	67059/14	Kotherja v. Albania	01/10/2014	Endri KOTHERJA	Albanian	
11	72755/14	Mulleti and Others v. Albania	08/11/2014	Tanush MULLETI Vera DINE Fatbardha SARAÇI Dhurata BATALAKU Agim KUSI DRITA Drita STËRMASI Mehdi STËRMASI Nargis STËRMASI Majlinda DILO Hiqmete STËRMASI Luftulla STËRMASI Rezart STËRMASI Sazan STËRMASI Silvana STËRMASI Alban STËRMASI Selime STËRMASI Edlira STËRMASI Iris STËRMASI	Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian	Sokol PUTO

No.	Application no.	Case name	Lodged on	Applicant	Nationality	Represented by
				Rexhep STËRMASI Ganimete XHUFAJ Denis MORINA Fiqiret GJANÇI Shkëndije STËRMASI Enkeleda XHAFA Gëzim KONI Jusuf KAZAZI Kemal PASHALLARI Ismihan PIRGU Flutra LLAPAJ	Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian	
12	537/15	Axha and Others v. Albania	06/01/2015	Marie AXHA Thoma AXHA Edit AXHA Ertion AXHA Petro AXHA Jolanda AXHA Vlash HEBA Aurel HEBA	Albanian Albanian Albanian Albanian Albanian Albanian Albanian Albanian	Sokol PUTO