MANUSHAQE PUTO AND DRIZA GROUP OF CASES v. ALBANIA

(Application nos. 604/07 and 33771/02)

Execution Status

EIN briefing to the Committee of Ministers,
10 September 2018, Strasbourg

Dear Committee of Ministers representatives and dear colleagues,

It is a great pleasure to have the opportunity to present a civil society organization perspective in regard to Albania`s progress on the execution of the European Court for Human Rights judgments concerning the Manushaqe Puto no. 604/07 and Driza no. 33771/02 group of cases v. Albania.

The European Centre, member of the European Implementation Network, is an independent Albanian NGO funded in 1999. Its mission is to contribute on the consolidation of the rule of law, with a special focus on improving general knowledge on the European human rights standards. Since its establishment the Centre has been focused on raising awareness and capacity building measures which have in focus the implementation of the ECHR standards at domestic level. The Centre has continuously collaborated with the Registry of the ECtHR to enrich the HUDOC database with relevant case summaries in Albanian. Among others, the Centre is monitoring the execution of the ECtHR judgments at domestic level as this process is a crucial element in terms of compliance with the ECHR guarantees.

In the *Driza group* of cases delivered in 2007 the ECtHR envisaged the structural problem of the failure of state authorities to enforce domestic final judicial and administrative decisions, relating to the right of the applicants to restitution or compensation (whether pecuniary or in kind) for property nationalised under the communist regime, and the lack of an effective remedy in this respect. In view of the scale of the problem, the ECtHR delivered in 2012 the pilot judgment Manushaqe Puto and others v. Albania. In its pilot judgment the Court ordered the Albanian Government to set up an efficient compensation scheme, bearing in mind the various findings in its judgment.

In order to do this, the Court found that the authorities needed to provide a list of final judicial and administrative decisions which recognized, restituted and/or compensated former-owners for property, the financial bill stemming from this list, an updated Land Value Map, the adoption of an Action Plan for the enforcement of this Court pilot judgment, and finally the establishment of an effective mechanism for the execution of the aforementioned decisions.

It has been 4 years since the delivery of the first Action Plan by the Government on 28.04.2014, in terms of addressing the findings of the ECtHR. As reported by the Government, pursuant to the Action Plan, **a new law no. 133/2015** *"On the treatment of property and finalisation of the process of compensation of property" was adopted,* which entered into force on 24 February 2016. Since then some progress has been

made: up to date the Government amended the by-laws which defined the compensation methodology, as well as it established the periodic monitoring mechanism.

Even though a progress has been made, we consider that additional steps should be taken by the Government, with the aim to execute in due time the ECtHR judgment:

Firstly, the Property Management Agency (PMA) established by the new law should **further proceed with the examination of applications that have yet to have a final decision and unaddressed applications** in order to finalize the process of compensation of property. According to the Government arguments presented in the current Action Report (06.06.2018) delivered to the Committee of Ministers, this process started to be fully operative in December 2017, with a delay of almost two years after the law no. 133/2015 entered into force. The Government argued that this situation is caused due to justified problems such as delays in the adoption of the relevant secondary legislation, insufficient human resources of the Property Management Agency, delays on the allocation of financial and land funds, and questions related to the constitutionality of the new law examined by the Constitutional Court. As presented by the current Action Report[1], up to now there are finalized almost 28% of new unaddressed compensation claims, and financially evaluated 48% of the existing claims which had a final judgment/decision. However, we remind that the deadline to finalize the entire evaluation process of new and existing application files as presented by the Action Plan is **February 2019**.

It should be emphasized that in this type of cases the **length of proceedings, itself,** was **considered** by the Court, in the judgments *Driza*, and *Manushaqe Puto and Others*, **a systemic problem**. Thus, violating Article 6 § 1 of the Convention.

Secondly, there should be considered as a problem the frequent amendments of the secondary legislation. The **amendments made in 20.12.2017 to the by-law**[2] which provides the rules and procedures for the evaluation and compensation process entails a complex process, not easy to be understood. The by-laws **limit the right of financial compensation to the extent of 20%** of the total compensation amount recognized, but no more than 10 million ALL. This provision came **into contrast to the prescription made by the new law**[3], which does not limit the right of the expropriated subjects in regard to financial compensation

On our perspective the evaluation methodology set out by the by-laws in cases when a compensation decision has been recognized, failed to address the Court findings in the case *Scordino v. Italy*[4] *(No. 3)* [Just Satisfaction] and in the case *Sharra and Others v. Albania*[5] § 79. According to the by-laws the calculation of the compensation amount will be in accordance with the value of the property in the time it was unlawfully expropriated. Thus, **it will not be calculated with the current value of the property**, which derives a situation that **fails to address the ECtHR standard.**

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[1] 1324th meeting (September 2018) (DH) - Action report (06/06/2018) - Communication from Albania concerning the MANUSHAQE PUTO and DRIZA groups of cases v. Albania (Applications No. 604/07, 33771/02), pg. 8.

[2] Council of Ministers Decision no. 765 dated 20.12.2017 "On some amendments and additions to the decision no. 222, dated 23.03.2016, of the Council of Ministers "On the Treatment of Applications for the Recognition of Property and its Compensation"; and CMD no. 766/2017 "On some amendments to Decision no. 223, dated 23.03.2016 "On the determining the rules and procedures for the evaluation and the distribution of financial and physical funds for the property compensation".

[3] Law no. 133/2015, Article 10.

[4] Application no. 36813/97.

[5] Application no. 35038/08 [Committee].

Taking into account the provisions of the amended by-laws the Property Management Agency has a wide margin of appreciation, which can entail abusive scenarios as the PMA cannot be considered an independent and impartial body, as it is a public administration institution fully controlled by the Government. Even though the PMA decisions can be subject to subsequent control by a juridical body[6], that has full jurisdiction over the matter it will repeat again the same situation as noted in the Court judgement *Manushaqe Puto and Others v. Albania*. Thus, all the measures taken up to now will not have any real positive effect.

In addition, **the frequent amendments made by the Government to the by-laws**7 which were adopted in 2016 and amended in December 2017, entail **a lack of legal certainty** toward the owners, who are waiting to conclude this long lasting process which has started in early `90 after the fall of the communist regime. This situation **failed to address the the ECtHR finding** in the pilot judgment *Manushaqe Puto and Others v. Albania*, **which emphasized that the responsible state should avoid frequent changes of the legislation**[8].

Last but not least, it is very important to mention that the Albanian judiciary in going through a *sui generis* transition, as result of the juridical reform. The judiciary is going through a vetting process, which entails the re-evaluation of all judges and prosecutors in duty. As a result of this process currently Albania is facing an unprecedented situation within the framework of the functioning of the rule of law: the inactivity of the Constitutional Court. As result of the vetting 7 out of 9 judges of this court were considered inappropriate to further continue to be part of the juridical system. Thus, the Constitutional Court cannot deliberate on any **potential complaint by the owners for questions of unconstitutionality of the amended by-law**s, or specific complaints on violations of the fair trial standards during any instance of proceedings.

Taking into account this situation our recommendations for the Committee of Ministers are:

- To remind the State Authorities to complete the examination of applications that have yet to have a final decision and the unaddressed applications, and thus finalize the process within February 2019, as forecasted in the Action Plan;
- To remind the State Authorities to accelerate the process of execution of the final administrative decisions of restitution or compensation which were not appealed at any instance or court;
- To remind the State Authorities to properly execute the ECtHR findings in the case Manushaqe Puto and Others in terms of respecting the principle of legal certainty;
- As the most important, to encourage the Government to be more transparent and involve civil society in the decision making process when it comes to the possible amendments of the secondary legislation, in order to guarantee the implementation of the “check and balance” principle, as the country has an inactive Constitutional Court due to the ongoing juridical reform.

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[6] See, for example, *Ortenberg v. Austria*, 25 November 1994, § 31, Series A no. 295-B, and *Crişan v. Romania*, no. 42930/98, § 24, 27 May 2003.
[7] Refer to the *supra* note no. 2.
[8] Manushaqe Puto and Others v. Albania, § 110.