Strasbourg, 27 September 2019 **CDL(2019)032***

Opinion No. 952 / 2019 Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

ALBANIA

DRAFT OPINION

ON THE DRAFT LAW

ON THE FINALISATION OF TRANSITIONAL OWNERSHIP PROCESSES

on the basis of comments by:

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Opinion co-funded by the European Union

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I. Introduction

1. By letter of 10 May 2019, the Speaker of the Albanian Parliament, Mr Gramoz Ruçi requested an opinion of the Venice Commission on the Draft Law on the finalisation of transitional ownership processes in the Republic of Albania (hereinafter, "the draft law") with a focus on its articles 7 and 9.

2. The Commission had also at their disposal translations of the Law No. 111/2018 on Cadastre, the Law No. 9948, dated 7.7.2008 on the review of legal validity for the creation of ownership titles on agricultural land as 2019 and the evaluation report on the reorganization of ownership institutions and review of the legal framework of the ownership field done in preparation of the draft law by an inter-institutional working group of June 2018.

3. The English translation of the texts together with the accompanying parliamentary report to the draft law was provided by the authorities of Albania. Inaccuracies may occur in this opinion as a result of incorrect translation.

4. For the present opinion, Mr Dimitrov (Bulgaria), Mr Kask (Estonia), and Ms Hermanns (Germany), acted as rapporteurs for the Venice Commission and Mr Fontanelli (Italy) as DGI expert. On 18 and 19 September 2019 a delegation of the Venice Commission composed of Mr Philip Dimitrov, Mr Oliver Kask, and Mr Filippo Fontanelli (international expert), accompanied by Ms Silvia Grundmann, Head of the Democratic Institutions and Fundamental Rights Division at the Secretariat visited Albania. The delegation met with the Prime Minister, the Minister of Tourism and Environment, all other ministries involved (Ministry of Justice, Ministry of Interior, Ministry of Agriculture, Ministry of Infrastructure and Energy, Ministry of Finance and Economy, Ministry for Europe and Foreign Affairs), the State Advocate, the Director of the newly formed Cadastre State Agency and representatives of former and existing agencies dealing with immovable property issues (Office for Immovable Property Registration (IPRO), Agency for Property Treatment (ATP), Agency for the Legalization and Urbanization of Informal Areas (ALUIZNI), parliamentarians, judiciary, local government, the Advocate of the People (Ombudsperson), civil society, experts, representatives of various association concerned, and other stakeholders. The Venice Commission is grateful to the Albanian authorities for the preparation of the visit and their hospitality.

5. The present opinion was prepared based on the contributions of the rapporteurs and the information provided by the interlocutors during the visit. The draft opinion was examined by the Sub-Commissions on Fundamental Rights, on National Minorities and on Gender Equality at their joint meeting on xx October 2019. Following an exchange of views, it was adopted by the Venice Commission at its … Plenary Session (Venice, … 2019).

II. Analysis

A. Background to the request

6. Property rights in Albania constitute one of the most complicated issues after the change of the regime in 1990, hampering the country's' economic development. The legal framework is at best characterized as fragmented, complex and incoherent. Immovable property cases have flooded domestic courts as well as the European Court of Human Rights. This influx continues.

7. Most of the problems, which Albania faces currently in the field of property rights have their origin in the first laws adopted in the early 90's of the previous century. The process regarding immovable property did not start with restitution of original owners unlike in other countries.

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Instead Albania follows the principle of "lawfulness of fact".[1] The Law No. 7501/1991 "On Land" foresaw the allocation of agricultural land under state's ownership to individuals and legal persons, other than the original owners to whom the land belonged before the communist regime. In practice this meant that the usage of the land was given to the families sitting on it (about 500,000 family farms, separated into nearly 2 million parcels), instead of the former landowners regaining it. As a result, the soil follows the usage and the former owner should have been compensated with other land or financially as provided for in different laws. In fact the distribution of the land of the so called "cooperative farms" did not follow "usage" – it was done on list of members, some of whom left the villages long ago and others never intended to "use" it and do farming. Later, a similar, controversial legalisation/expropriation procedure had been applied after to regulate the situation of people having occupied land, sometimes by force, and had building on it.

8. The Law No. 7698/1993 "On restitution to and compensation of former owners" started the process of restitution and compensation to the original owners expropriated during the communist regime. Both laws were amended several times. Up to date, this process remains incomplete resulting in cases in which the title to the land and the actual possession of it, and of any building erected on it diverge. Furthermore, overlap of agricultural titles in part or in whole is a frequent problem.

9. In addition, farm or land consolidation (regrouping of agricultural land to facilitate farming) seems not to be covered by the current legal framework.[2] This situation leads to rather small plots of land.

10. As to the **gender equality dimension,** although the Albanian civil and family law recognize women's equal right to land and property, only a small percentage of women, 8 per cent, own land, because the laws are not implemented and women continue to be marginalized in matters of inheritance. When it comes to informal settlements, properties are often registered under the name of the "head of household", a role reserved for men, effectively leaving women out. Women also lack information and awareness about their property rights.[3]

1. Allocation of agricultural land to new owners by specific administrative acts known as AMTPs

11**. Law No. 7501/1991** "On Land" gave land under State ownership to individuals and legal persons either granting ownership status, or allowing its use. The land was allocated by special land commissions, which issued legal administrative documents that formalized the ownership title or the right to use the land. These documents were respectively called Land Ownership Acquiring Act (Akti i Marrjes se Tokës në *Pronësi*-**AMTP**) and Land Usage Acquiring Act (Akti i Marrjes së Tokës në Përdorim-**AMTP**). The AMTP ought to be registered in the relevant registers of IPRO (Central office of Immovable Property Registration). During the visit the delegation of the Venice Commission was informed that AMTPs constitute administrative acts under Albanian law and are considered property titles, their registration being declaratory, the Albanian Constitutional Court in 2018 having pronounced also in this regard. Registration, however, did not occur or occurred inaccurately for many AMTPs, due to different reasons

[1] See parliamentary report p. 2.
[2] For a detailed description see https://www.researchgate.net/profile/Ferdi_Brahushi/publication/329402853_Land_Resources_and_Land_Market_Development_in_Albania_through_Land_Consolidation_characteristics_problems_and_policy_options/links/5c06c7f0458515ae544796fa/Land-Resources-and-Land-Market-Development-in-Albania-through-Land-Consolidation-characteristics-problems-and-policy-options.pdf?origin=publication_detail.
[3] See http://eca.unwomen.org/en/news/stories/2018/03/feature-an-albanian-womans-struggle-to-claim-her-property-rights.

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including: the lack of centralised maps, conflict between AMTPs, the fear that the authorities would invalidate the AMTP upon registration, the existence of forged AMTP documents. As a result, many individuals have only their AMTPs to show, often without a map attached to them, in support of their claims over agricultural land.

12. The Law "On Land" is complemented by Law No. 8053/1995 "On the ownership transfer without remuneration of agricultural land", according to which agricultural land, located outside the borders of cities and villages and which was given for use to agricultural families and individuals based on the provisions of the Law "On Land", would be transferred to their ownership. Also, the titles created by this law ought to be registered at IPRO and, after its merger into the Cadastre State Agency (CSA), by the latter.

13. In 2008, Albania adopted **Law No. 9948/2008** "On the review of legal validity for the creation of ownership titles on agricultural Land", which aims at putting an end to the process of land allocation pursuant to the former laws described above. Article 4 of Law No. 9948/2008 stipulates: "*Procedures and documentation of the ownership title. The provision of the agricultural land to ownership shall be realized and certified only through the base unique document which is the "act of getting the land under ownership". "The act of getting the land under ownership" is valid only when it is created according to the procedures stipulated in decision no. 230, dated 22.7.1991, of the Council of Ministers "on the establishment of the commissions of land" as amended as well as in instruction no. 2, dated 2.8.1991, of the Council of Ministers "On the functioning of the land commissions in districts and villages". The ownership titles on the agricultural lands of the former agricultural enterprises are valid only when they are established according to the provisions of law no. 8053, dated 21.12.1995 "On the transfer, without a reward of the agricultural land".*

14. Consequently, only ownership titles created in accordance with these three laws are considered to be valid. The reviewing process was foreseen to end on 31 December 2018. The validity of the ownership titles of agricultural land was essential for their registration at IPRO.

15. **Law No. 171/2014** "On the completion of legal procedures for the transfer of agricultural land of former agricultural enterprises in ownership of the beneficiaries" aims at finalizing the property administration process regulated by the Law No. 8053/1995, by transferring the ownership of agricultural land from the former agricultural enterprises (the State) to beneficiaries who fulfilled the criteria of possession and use this land (but do not own it yet), as provided by the law. The process regulated by this law was foreseen to end on 31 December 2018, too. The ownership titles obtained through these procedures are to be registered at IPRO.

16. During the visit, the delegation of the Venice Commission received information that these different laws appear to have been implemented in an often inconsistent manner resulting in legal uncertainty for all stakeholders, including municipalities, making it difficult for the legislature to find appropriate solutions without violating individual rights.

2. Restitution and compensation of former owners

17**. Law No. 7698/1993** "On restitution to and compensation of former owners" was repealed by the **Law No. 9235/2004** "On restitution and compensation of property". This law was repealed by **Law No. 133/2015** "On the treatment of property and finalization of the property compensation process".

18. The draft law aims at the harmonization of the transitional process (of the allocation of land) with the process of restitution and compensation of the original owners established in Law No.

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133/2015, stipulating at the same time that the mechanism provided for in Law No. 133/2015 should continue.[4]

19. During the visit, the delegation of the Venice Commission was made aware that the implementation of Law No. 133/2015 received much criticism for not providing restitution and/or compensation to the original owners, due to defective implementation by the authorities. The delegation members got the impression that even though restitution in kind (of the land previously owned) is foreseen in the law, even when it was possible the responsible institutions would rather opt for compensation, often keeping the available land as state property to be used for state programmes. The Venice Commission is not in a position to deal with possible shortcomings in this respect, as the implementation of Law No. 133/2015 lies far beyond the scope of the current request. Furthermore, the Venice Commission is aware that cases concerning the Law No. 133/2015 are pending before the European Court of Human Rights and that the Council of Europe, in the framework of its assistance programme for Albania, is assessing the practical implementation of this mechanism.

B. Previous involvement of the Venice Commission

20. Concerning immovable property laws, the Venice Commission has been requested three times to provide assistance, namely in 2004, 2007 and in 2016.

1. Opinion on the Draft Law of Albania on Recognition, Restitution and Compensation of Property (CDL-AD(2004)9)

21. In 2004, the Venice Commission provided an opinion on the Draft Law of Albania on Recognition, Restitution and Compensation of Property (CDL-AD(2004)9). Article 181 of the Albanian Constitution called for the adoption of a law on expropriations and confiscations effected prior to the entry into force of the Constitution. Various constitutional courts in other countries had addressed the issue of the restitution of property expropriated under the Communist regime, on the basis of the principle of equal rights. The new democratic constitutions did not have retrospective effect and any expropriations effected prior to their adoption would thus normally remain in force. States, however, were free to decide whether they wished to award compensation and if so, how much, with due regard to the principle of equality. Overall, the draft law was considered by the Commission to be in keeping with international standards, although it was noted that a few amendments would be required, for example, the word “recognition” should be deleted from the title of the draft law and a list should be drawn up of any laws and other legal instruments under which expropriations had been effected and which would now give rise to compensation. Concern was expressed as to provisions relating to the right of access to the courts. The opinion was forwarded to the Albanian Parliament, which was already examining the draft law.[5]

2. Amicus curiae opinion on the law on legalisation, urban planning and integration of unauthorised buildings of the Republic of Albania

22. In 2007, the Albanian Constitutional Court asked the Venice Commission for an amicus curiae opinion on the Law No. 9482/ 2006 on “Legalisation, urban planning and integration of unauthorised buildings” of the Republic of Albania. The law provides, inter alia, for the transfer of the ownership of the plots on which illegal buildings stand from the original owner of the land to the owner of the illegal building (CDL-AD(2007)029). The Commission did not take up a position on the constitutionality of the law as such, but gave the court some indications as to the compliance of the law with the European Convention on Human Rights, and about issues of comparative constitutional law. The case-law of the European Court of Human Rights relating

[4] See Chapter VI of the draft law.
[5] See Venice Commission CDL-AD(2004)9.

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to Article 1 of the First Protocol to the Convention recognises a broad measure of discretion for States in the matter of protection of property, within which this law seemed to fall. The law provided for transfers of ownership in conformity with the principle of legality and pursued a public-interest objective. The fact that the planned transfers were for the benefit of private individuals was not an obstacle for its pursuing a public interest. Not being a party to any specific contentious proceedings, the Commission was not in a position to say whether the law in all cases struck a fair balance between the competing interests. While the rules on compensation seemed a priori compatible with the requirements of the Convention, the Commission did not possess sufficient information about their application in practice. Finally, the rules relating to appeals were not clear enough for the Commission to be able to assess them. The Commission was informed at its December 2007 session that the Constitutional Court had finally concluded that the law was constitutional, largely on the basis of the amicus curiae opinion. The slight concern expressed by the Commission about the lack of co-ordination of the legalisation and compensation procedures was dissipated by the instruction given to the two committees responsible, one for each subject, to work together.[6]

3. Amicus curiae brief on the conformity of the Law no. 133/2015 "On the treatment of property and finalisation of the process of compensation of property" with the requirements of Article 1, Protocol No. 1 ECHR" and related case-law

23. In 2016, at the request of the Constitutional Court of Albania, the Commission prepared an amicus curiae brief on the conformity of the Law No. 133/2015 "On the treatment of property and finalisation of the process of compensation of property" with the requirements of Article 1, Protocol No. 1 ECHR" and related case-law of the European Court of Human Rights which was adopted at its October 2016 plenary session (CDL-AD(2016)023). The Commission observed that the restitution of property issue was a longstanding one in Albania, which had led to administrative or judicial decisions that in turn had led to several different situations: Final administrative or judicial decisions containing a specific amount of compensation to be granted, but which had not yet been enforced, indisputably raised a "legitimate expectation" and would not be reassessed under Law No. 133/2015. There was no "interference" in these cases, within the meaning of Article 1 of Protocol No. 1 to the ECHR, as long as these decisions were duly enforced. As to the new evaluation method introduced, leading to lower compensation, the Commission found this proportionate if the financial fund of 50 billion Albanian Leks attributed to the compensation scheme over a period of ten years had been carefully determined in light of the state budget and the Albanian GDP. The Commission underlined that the question of whether or not compensation for expropriated property meets the requirements of Article 1 of Protocol 1 will ultimately depend on the effective implementation of Law No. 133/2015 and its execution by national authorities.[7]

24. The implementation of Law No. 133/2015 was subsequently evaluated by the Committee of Ministers monitoring the execution of the ECtHR's pilot judgement in the case of *Manushaque Puto and Others* (final 17 Dec 2012). The Committee of Ministers decided to close the supervision of the execution with a final resolution in September 2018 (CM/ResDH(2018)349), based on the report of the government on the new compensation mechanism provided by Law No. 133/2015.

25. The Council of Europe within its DG I cooperation activities provided assistance through the recently ended D-REX project (Supporting effective domestic remedies and facilitating the execution of judgments in Albania), followed since May 2019 by the 3 years' project "Supporting enforcement of judicial decisions and facilitating execution of ECtHR judgments in Albania" which is closely targeting the property-related issues, placing a particular emphasis on reinforcement of inter-institutional cooperation and dialogue.

[6] See Venice Commission CDL-AD(2007)029.
[7] See Venice Commission CDL-AD(2016)023.

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C. Scope of the request and the opinion

26. The new draft law is an initiative of the Albanian Government[8] and aims to provide effective legal instruments for resolving a remaining set of problems related to property rights on immovable properties and registration issues, which have dominated the country's socio-economic development for three decades as summarised above. According to the parliamentary report, the new draft law "aims to find solutions to all those undealt and pending situations, because proceeding with the current framework is impossible (either because of the legal vacuum or due to legal preclusive provisions, which only identify problematic issues, without setting out the way they shall be dealt with)."

27. The Albanian Parliament requests the opinion of the Venice Commission on whether the draft law is compliant with the standards enshrined in the European Convention of Human Rights and the case law of the European Court of Human Rights and specifically raises two questions:

- Does the draft law, especially articles 7 and 9, interfere with the right to the peaceful enjoyment of one's possession, as protected by Article 1 of Protocol no. 1 of the ECHR, having regard in particular to acquired rights and legitimate expectations?
- If yes, having in mind the complexity of the immovable property issue in Albania and the responsibility of the national legislator to ensure a legal and social stability on that matter, would you consider this intervention proportional and justifiable in a democratic society?

28. The comments therefore focus on Chapter II Section 2 (legalization of titles on agricultural land given before the entry into force of the law) and the related provisions in Chapter XII of the draft law (Transitional and Final Provisions) and in particular on Article 7 and 9 of the Draft Law concerning ownership titles for agricultural land.

D. Content of the draft law and related property laws

29. The draft law concerns the allocation of land to new owners and thus follows Law No. 7501/1991 "On Land" and the laws, which amended/repealed Law No. 7501/1991 (see above and the list of abrogated acts in the annex to the draft law). It does not concern the compensation of expropriated former owners, for which Law No. 133/2015 remains the relevant legal framework (see above).

30. The Venice Commission has been asked to focus in particular on articles 7 and 9 of the draft law, which have to be read in conjunction with article 8 and be put into the context of the draft law and related immovable property legislation. Articles 7 and 8 concern the validity of already granted titles for agricultural land known as AMTPs (see above). Article 9 regulates discrepancies in the title, the AMTP document, and reality on the ground.

31. As to the context, the draft law covers:
- the legalization of and provision with ownership titles on agricultural land (Chapter II),
- the legalization and registration of illegal constructions without permit, objects without ownership title and yards in use (Chapter III),
- the updating, inventorization, transfer and registration of immovable state properties (Chapter IV),
- ownership adjustment in the so-called stimulated areas (especially tourism areas) (Chapter V),

[8] Council of Ministers, see Art. 95 of the Constitution.

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- the coordination with the process of handling properties of expropriated subjects (see Law No. 133/2015) (Chapter VI),
- problems related to bad implementation of previous law (Chapter VII),
- privatization of state land in use (Chapter VIII),
- overlappings caused by material errors/inaccuracies of cadastral maps or ownership titles (Chapter IX).

32. Chapter II Section 2 of the draft law reads as follows:

Section 2
Legalization of titles given before the entry into force of this law
Article 7
Conditions for legalization of the act of ownership acquisition of the land
1. The act of ownership acquisition of the land (AMTP), acquired prior to the entry into force of this Law, is considered valid if the following conditions are fulfilled, at the same time:
a) the subject has been legitimated to acquire land under the legal and sub legal acts for the allocation of agricultural land or, even if it has not been legitimized, has benefited the land for which the ownership was abolished from him or the advisor during the establishment of the cooperative or agricultural enterprise;
b) the entity has benefited land only in the territory of a cooperative or agricultural enterprise;
c) the land divided with AMTP was not of the item (cadastral item) "land", "coastal sand" or "beaches".
ç) The land divided with AMTP does not affect works of public and agricultural infrastructure.
2. The criteria for defining the shortcomings in the elements of the form, which are the cause for the non-legalization of AMTPs, and the manner of completing AMTPs with non-essential shortcomings are determined by a decision of the Council of Ministers.
3. The control of AMTPs, in relation to the conditions for legalization, according to this article, is realized during the procedures for registration and/or improvement of the immovable property register.

Article 8
Treatment of titles that do not meet the requirements for legalization
1. When, after verification, SAC verifies that ownership title is granted in contradiction with the criteria set forth in this law, it files a lawsuit for declaring the invalidity of the administrative act "act of ownership acquisition of the land", its abrogation, at the competent administrative court and:
a) the return of land to state ownership, in cases when it is still possessed by the first holder of the title or his/her heirs;
b) the obligation to pay the value of land obtained in contravention of the law, in cases where the beneficiary no longer possesses the land in full or in part as a result of a transaction or expropriation for public interest. The value of the payment is calculated according to the land value map determined by the decision of the Council of Ministers for the alienated surfaces as a result of the transaction or the compensated value for the alienated surfaces as a result of expropriation for public interest.
2. The rules and procedures for reviewing the legal validity of property titles on agricultural land and making payments under this article shall be determined by a decision of the Council of Ministers.

Article 9
Discrepancies between the title of ownership and the state of possession in fact

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1. If, during the procedures for registering or improving the immovable property register, it is evidenced that the agricultural land area in AMTP is different from that effectively located on the ground, it is acted as follows:

a) When the surface possessed is greater than that determined in AMTP, the subject is entitled to benefit from the transfer of ownership of the additional state surface to the amount of twenty percent of the AMTP surface at the price determined in the map of property value. If the holder does not request, refuses or does not pay the value, the additional state surface passes for the account of the agricultural land fund under the administration of the local government unit and is leased from the latter, according to the legislation in force.

Exceptionally, when the additional state surface is a serving property, the possessor is in any case obliged to repay its value. Otherwise, legal mortgages are registered on it and on the main property.

b) When the area that is effectively on the ground is smaller than the one defined in AMTP, the State Agency of Cadastre proceeds with the registration of the title for the area that is effectively located on the ground according to the definitions of point 5, Article 30 of the Law "On cadastre".

2. If the location of the area effectively occupied by the AMTP beneficiary is different from that defined in the latter, but within the territory of the cooperative and/or the enterprise, the legalization and the registration are made according to the location of the area possessed when this is state property. If the area that is effectively possessed is outside the territory of the co-operative and/or enterprise or is owned by third parties and between the parties no legal-civil agreement is reached, the area is legalized and registered according to the location in AMTP.

3. At the end of the procedures under this Article, when free state lands are created, they are transferred to the agricultural land fund of the local self-government unit and leased from the latter, according to the legislation in force for the lease of agricultural land owned by the state.

4. Detailed rules on how to identify discrepancies, the norms and criteria for additional surfaces sold or transferred to the agricultural land fund as well as for serving properties are determined by a decision of the Council of Ministers.

33. The draft law is linked to Law No. 111/2018 "On cadastre". This law created a new agency named "The Cadastre State Agency", which is established as a jointure of the former Office for the Registration of Immovable Properties (IPRO), the former Agency for the Legalization and Urbanization of Informal Areas (ALUIZNI) and the Agency of Inventory and Transfer of Public Properties (AITPP).[9] The Law "On cadastre" replaces Law No. 33/2012, dated 21.3.2012, "On the immovable property registration", as amended (see Art. 72 para. 1 of the Law "On cadastre").

34. One of the main tasks of the Cadastre State Agency is to create and administer a national cadastral register, in which all ownership titles have to be registered (Art. 22 of the Law No. 111/2018).

35. The Agency for Property Treatment (ATP), established by Art. 26 of the Law No. 133/2015 shall remain the competent body to carry out the finalization of the recognition and compensation process according to the rules stipulated in the Law 133/2015 (Art. 53 of the draft law). The institutional and legal framework for the process of the allocation of land to news owners on one hand and for the compensation of the former owners on the other hand thus remain independent as they were from the beginning in the 1990s. The draft law does not

[9] Art. 67 para. 1 of Law No. 111/2018.

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abrogate Law No. 133/2015, but tries to harmonize both processes (Art. 53 subs. of the draft law).

36. However, it is unclear whether and to which extent both regulations overlap. For example, Art. 7 para. 1 lit a, second half of the sentence, of the draft law ("the subject …if it has not been legitimized, has benefited the land for which the ownership was abolished from him or the advisor during the establishment of the cooperative or agricultural enterprise") seems to interfere with the restitution process for the benefit of former owners.

E. Domestic constitutional framework and international law

37. The Albanian Constitution stipulates in

Article 18
1. All are equal before the law.
2. No one may be unjustly discriminated against for reasons such as gender, race, religion, ethnicity, language, political, religious or philosophical beliefs, economic condition, education, social status, or parentage.
3. No one may be discriminated against for the reasons mentioned in paragraph 2 without a reasonable and objective justification.

Article 41
1. The right of private property is guaranteed.
2. Property may be acquired by gift, inheritance, purchase, or any other classical means provided by the Civil Code.
3. The law may provide for expropriations or limitations in the exercise of a property right only in the public interest.
4. Expropriations or limitations of a property right that amount to expropriation are permitted only against fair compensation.
5. In the case of disagreements related to the amount of compensation, a complaint may be filed in court.

Art. 181
1. The Assembly, within two to three years from the date this Constitution enters into force, issues laws for the fair resolution of different issues related to expropriations and confiscations done before the approval of this Constitution, guided by the criteria of Article 41.
2. Laws and other normative acts, adopted before the date this Constitution enters into force, that relate to the expropriations and confiscations shall be applied when they do not come in conflict with it

38. The gist of the two questions relates to the compatibility of Art. 7 and 9 of the draft law with Article 1 of Protocol 1 No.1 to the ECHR, which provides:

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.

F. Assessment

39. The Venice Commission is called to assess the compliance of the draft law (not the allocation process at all) with the ECtHR and the case law of the European Court of Human Rights. Evaluating the draft law, the Commission is not in a position to determine whether the

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previous laws as described above and their implementation are compliant with international standards. Possible doubts with regard to Article 1 of Protocol No. 1 to the ECHR that may derive from former amendments of the rules and regulation for the allocation of agricultural land therefore remain disregarded.

1. Whether there is a "possession" within the meaning of Article 1 of Protocol No. 1 to the ECHR

40. According to the ECtHR, an applicant can allege a violation of Article 1 of Protocol No. 1 only insofar as the impugned decision relates to his or her "possessions", within the meaning of this provision. The wording "peaceful enjoyment of his possessions " and "droit au respect de ses biens" in the authentic language versions of the Protocol express a broad international legal concept of property comprising all "acquired" rights that constitute assets.[10] The scope of protection of Article 1 of Protocol No. 1 includes, at any rate, claims awarded to an individual by a "final and binding" judgment or arbitration award.[11] Furthermore, it comprises claims in respect of which a person has "legitimate expectations of obtaining effective enjoyment of a property right".[12] In order to determine whether or not such "legitimate expectations" exist, the ECtHR does not consider a "genuine dispute" or an "arguable claim" as criteria, but requires that the claim have a sufficient basis in national law. An example of this is settled case law by domestic courts confirming the claim.[13]

During its visit to Tirana the delegation of the Venice Commission learned about problems with the implementation of court decisions having also amounted to disrespecting them. The Venice Commission hopes that as a consequence of the judicial reform, domestic court decisions will be fully respected and implemented by all administrative entities in the Republic of Albania.

41. According to Art. 6 para. 1 lit a of the draft law the provisions of Chapter II aims at consolidating the legal relations of ownership over agricultural land through legalization of property titles deriving from all legal and sub legal acts on agricultural land that have had effects before the entry into force of the law, and their coverage in the register of immovable properties. Articles 7 and 9 of the draft law apply to all these titles. This includes:

- ownership titles that have been validated according to Law No. 9948/2008, registered or not,
- ownership titles acquired before the entry into force of Law No. 9948/2008, registered or not registered, and not (yet) re-evaluated according to Law No. 9948/2008.
- ownership titles acquired according to Law No. 171/2014, registered or not.

42. It is unclear whether Art. 6 para. 1 lit a and Art. 7 of the draft law also apply to ownership titles acquired before the entry into force of Law No. 9948/2008, but declared void during the evaluation process according to Law No. 9948/2008.

43. Articles 7 to 9 of the draft law do not apply to persons or entities who did not yet obtain an ownership title, even if they fulfil the criteria for the acquisition of a title stipulated by the current law. The finalisation of processes of obtaining ownership titles of land users of former cooperatives and former agricultural enterprises (Art. 6 para. 1 lit. b of the draft law) is regulated in Chapter II section 3, Art. 10 of the draft law. Those persons or entities fulfilling the criteria for the acquisition of a title stipulated by the current law (especially by Law No. 171/2014) may enjoy possessions within the meaning of Article 1 of Protocol No. 1 to the ECHR, if they have "legitimate expectations of obtaining effective enjoyment of a property right". However, they are not affected by Art. 7 to 9 of the draft law. There may be an interference with their

[10] ECtHR 26.6.1986, No.8543/79 and others, Van Marle/Netherlands, § 41.
[11] ECtHR 9.12.1994, No. 13427/87, Stran Greek Refineries/Greece, § 59 f.
[12] ECtHR 28.9.2004 (GC), No. 44912/98, Kopecký/Slovakia, § 35.
[13] Ibidem, § 45 f.

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"possessions" by Art. 10 to 13 of the draft law, which do not only apply to new requests within the time limit of Art. 6 para. 1 lit b, but also to requests submitted before the entry into force of the draft law (Art. 66 para. 8). The interference depends on whether Art 10 to 13 significantly change the conditions for the acquisition of an ownership title, which would need separate examination. A possible discrimination based on whether the AMTP is issued before the enforcement of the draft law or afterwards may occur, too, especially if the land was used for agricultural purposes during the submission of the request but its usage has been changed afterwards.

44. Unquestionably, ownership titles, which have been validated by the competent bodies according to Law No. 9948/2008 and afterwards registered are "possessions" within the meaning of Article 1 of Protocol No. 1 to the ECHR. The same applies to ownership titles, which have been validated according to Law No. 9948/2008 and fulfil the formal criteria for the registration, even if the registration process has not yet started or is not yet completed. They confer property rights or, if registration has a constitutive function, at least give rise to "legitimate expectations". However, during the visit to Tirana the delegation of the Venice Commission was assured by the authorities that the registration is declaratory of existing property and that the draft law does not intend to change this. The Commission appreciates this clarification and recommends the legislator to provide for clarity in this regard in the draft law.

45. Furthermore, ownership titles that have not yet been validated according to Law No. 9948/2008 may be considered as "possessions" within the meaning of Article 1 of Protocol No. 1 to the ECHR, if - taking into account the case law of domestic courts - there is sufficient basis for their validation according to the Law No. 9948/2008.

46. Ownership titles acquired according to Law No. 171/2014 and registered must also be considered as "possessions" within the meaning of Article 1 of Protocol No. 1 to the ECHR. The same applies to these ownership titles, if they are not yet registered, but fulfil the formal criteria for registration.

47. Those ownership titles, which have been declared void during the re-evaluation process according to Law No. 9948/2008 (if the draft law applies to those titles at all, see para. 42 above) no longer qualify as "possessions" within the meaning of Article 1 of Protocol No. 1 to the ECHR.

2. Whether there is an interference

48. According to the ECtHR Article 1 of Protocol No. 1 contains three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest…. These rules are not 'distinct' in the sense of being unconnected: the second and third rules, which are concerned with particular instances of interference with the right to the peaceful enjoyment of property, are to be construed in the light of the principle laid down in the first rule".[14] Hence an individual could allege a violation of Article 1 of Protocol No. 1 insofar as the impugned decision relates to his or her "possessions", within the meaning of this provision.

49. It is no question that the withdrawal of an ownership title that is considered valid according to the current law means a deprivation of property within the meaning of the second rule of

[14] ECtHR 29.3.2006, No. 36813/97, Scordino/Italy, § 78.

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Article 1 of Protocol No. 1. Declaring such an AMTP invalid according to Article 7 and Art. 8 para. 1 of the draft law and the legal consequences thereof in Article 8 par 1 lit a and b of the draft law thus interfere with the right to property. It does not matter whether the former granting of the AMTP was lawful or not, as long as the ownership title was considered valid nevertheless.

50. The criteria and procedures under Art. 7 and 8 of the draft law shall be inapplicable, if, by a final court decision, before the entry into force of the draft law, it is otherwise decided (Art. 66 para. 1 of the draft law). That means, in those cases there is no interference with "possessions". This includes the case when the Court has imposed the obligation to register the AMTP (Art. 66 para. 1 sentence 2 of the draft law).

51. The partial withdrawal of an ownership title according to Art. 9 para. 1 lit b of the draft law in cases where the area effectively used by the owner is smaller than the one defined in the AMTP interferes with the right to property, too.

52. Whether Art. 9 para. 1 lit. a sentence 1 of the draft law constitutes an interference with the right to property depends on how the surface that is larger than that determined in AMTP is treated by the current law. If - according to the current law - the possessor can claim to have "legitimate expectations of obtaining effective enjoyment of a property right" concerning this part of the land without any remuneration or subject to a remuneration that is lesser than that stipulated in Art. 9 para. 1 lit. a of the draft law, there is an interference with the right to property within the meaning of Art. 1 of Protocol 1. That applies both, when the additional surface is larger than the amount of twenty percent of the AMTP surface (he is entitled to benefit from the transfer of ownership only up to this amount) and/or when the price determined in the map of property value is higher than the remuneration stipulated in the current law.

53. The interference is especially strong if the additional surface is a serving property as defined in Art. 4 para. 16 of the draft law, because, according to Art. 9 para. 1 lit a subpara. 2 of the draft law, the possessor is forced to acquire the additional surface.

54. In such cases in which the possessor does not request or pay for the additional land (Art. 9 para. 1 lit a subpara. 1 sentence 2 of the draft law), it is unclear what means "it is leased from the latter (the local government), according to the legislation in force". In particular it is unclear whether it is leased *by* the possessor (compulsorily?) or whether the possessor is allowed to stop the use of the additional land.

55. Art. 9 para. 2 sentence 1 of the draft law stipulates that, if the location of the area effectively occupied by the AMTP beneficiary is different from that defined in the AMTP, but within the territory of the cooperative and/or enterprise and state property, the legalization and the registration are made according to the location of the area possessed. That means a deprivation of the property acquired by the AMTP and thus an interference with the right to property within the meaning of Art. 1 of Protocol 1 which would then have to be proportionate in order not to constitute a violation.

56. Art. 9 para. 2 sentence 2 of the draft law applies to an area differing from the AMTP and possessed outside the territory of the cooperative and/or enterprise or owned by third parties. In those cases, there is no deprivation from the property as defined in the AMTP, because the area shall be legalized and registered according to the location in the AMTP. But there may be an interference with possessions within the meaning of Art. 1 of Protocol 1, if the possessor can - according to the current law - claim to have "legitimate expectations of obtaining effective enjoyment of a property right" as far as the area is concerned that he effectively uses.

57. In view of the detailed analysis provided above the Venice Commission underlines that the agricultural titles issued and referred to as AMTPs, whether registered or not constitute

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protected possessions under Article 1 Protocol 1 to the ECHR. Likewise, the continuous use of an agricultural property if coupled with the legitimate expectation to be provided with an AMTP under Albanian law may constitute a protected possession, depending on the individual circumstances of the case. The legislator is invited to take this into account when providing the necessary clarity in the said provisions of the draft law, notably its Article 9.

3. Justification for the interference with the right to property

a) Whether the interference is in accordance with the law

58. Article 1 of Protocol No. 1 requires that any interference by a public authority with the peaceful enjoyment of possessions should be lawful.[15] The second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law". The principle of lawfulness also presupposes that the applicable provisions of domestic law be sufficiently accessible, precise and foreseeable in their application.[16]

59. In this respect, it is questionable why and to what extent Art. 7 para. 2, Art. 8 para. 2 and Art. 9 para. 4 of the draft law leave decisive criteria and rules (for defining relevant or non-relevant formal shortcomings of AMTPs, for reviewing the legal validity of property titles and for identifying discrepancies between reality and property titles) to be determined by a decision of the Council of Ministers. These provisions call for further definitions of crucial rules to enable their implementation. It appears to be possible that the failure to meet certain, not yet defined, formalities will lead to a refusal to validate the title and hence to the loss of ownership, and the land to be returned to the State, see Article 8 of the draft law.

In view of this severe consequence it is necessary that parliament assumes its responsibility and defines the formal criteria already in the draft law itself. Otherwise there is a risk of potential Art. 1 Protocol I ECHR violations which could lead to further cases for domestic courts and the European Court of Human Rights. It is important however while trying to remedy the existent problems, to avoid persisting in the approaches that had contributed to it as described in para. 19 above concerning the way Law 133/2015 is applied.

Furthermore, as stated in The Venice Commission's Rule of Law Checklist, "[o]bstacles to the effective implementation of the law can occur not only due to the illegal or negligent action of authorities, but also because the quality of legislation makes it difficult to implement. Therefore, assessing whether the law is implementable in practice before adopting it […] is very important." (p. 14, § 54).[17]

60. Many previous laws are abrogated, but certain vital legal definitions there are not carried over expressly to the new draft law. For instance, the definition of what constitute "beach" or "coastal land" is probably clear in Law No. 7501/1991 but is not defined in the draft law. Likewise, while there is an apparent reliance on the criteria of legality of the Law No. 9948/2008, the criteria of Articles 7 and 8 are very vague. For instance, the fact that AMTPs given for what was classified "urban land" at the time of issuing the AMTP cannot be validated (Article 7) calls for more precision in the draft law, Article 7 being understood in that manner that AMPTs issued for agricultural land that was later re-classified into urban land can be validated.

61. In particular, the draft law does not contain a definition of AMTP but it refers to a definition contained in Law No. 9948/2008. AMTPs were issued under different laws and by different

[15] See Former King of Greece and Others v. Greece [GC], no. 25701/94, § 79, ECHR 2000-XII, and Latridis v. Greece [GC], no. 31107/96, § 58, ECHR 1999-II.
[16] See Beyeler v. Italy [GC], no. 33202/96, §§ 109-110, ECHR 2000-I.
[17] See also European Commission for Democracy through Law (Venice Commission) Rule of Law Checklist 2016, II. A. 4. p. 12 Law-making powers of the executive.

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state bodies to cover ownership but they can also only cover the use of land. In view of the aim of the draft law to achieve legal certainty, a definition of AMTP in the draft law itself would be necessary to achieve legal clarity. A failure to do so would risk a breach of Art. 1 Prot. I for lack of a precise law endorsing an interference with a property right.

b) Whether the interference pursues a legitimate aim

62. States enjoy 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 is only the deprivation of possessions which is manifestly without reasonable foundation that does not satisfy the public interest requirements.[18] The ECtHR recognises that, "*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".[…]{I}t is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures to be applied in the sphere of the exercise of the right of property, including deprivation and restitution of property. Here[…] the national authorities accordingly enjoy a certain margin of appreciation.*"[19]

63. According to the parliamentary report the need to draft and propose the draft law has arisen as a result of noticing weaknesses both in material and procedural aspects of the current legal framework and in the institutional structure. The purpose of the draft law is to create a simplified and harmonized legal basis for the completion of administrative processes for the treatment of state and private immovable property within a 10-year-term and thus to achieve legal certainty within a reasonable time. This aim seems to be legitimate.

c) Whether the interference is proportionate

64. The principle of proportionality between the means employed and the aim sought to be achieved must be respected.[20] This requires that the measures of deprivation of possessions be suitable to achieve the aim pursued. An interference with the right to the peaceful enjoyment of possessions must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure applied by the State, including measures depriving a person of his possessions.[21]

65. In determining whether this requirement is met, the ECtHR recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. Nevertheless, the Court emphasizes that it cannot abdicate its power of review and must determine whether the requisite balance was maintained in a manner consonant with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of Article 1 of Protocol No. 1.[22]

[18] ECtHR 28.7.1999 (GC), No. 22774/93, Immobiliare Saffi/Italia, § 49; Jahn v. German, § 91; James and Others v. UK, §46; The former King of Greece and Others v. Greece, §87; Zvolský and Zvolská v. the Czech Republic, § 67.
[19] Maria Atanasiu and Others v. Romania, op. cit., §166; See also Kopecký v. Slovakia [GC], op. cit. §37.
[20] ECtHR 28.5.1985, No. 8225/78, Ashingdane/United Kingdom, § 57.
[21] ECtHR 29.3.2006, No. 36813/97, Scordino/Italy, § 93.
[22] ECtHR 29.3.2006, No. 36813/97, Scordino/Italy, § 94.

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66. According to the parliamentary report, the draft law aims at:

- Systematic treatment, which means that the various property-related processes (legalization, updating, property treatment, AMTP (act of ownership acquisition of the land) registration, inventory of state property) will be perceived and implemented concurrently and systematically and no longer slovenly;
- Proactiveness, based on the idea that, for property-related issues, state structures should effectively take over the role of the regulator rather than that of the mere problem solver/observer;
- Legalization of the fact, which constitutes the spirit that will have to lead the temporary processes related to the legalization … and registration of AMTPs;
- Unification of the cartographic basis on the functioning of all processes related to immovable properties, which constitutes one of the fundamental conditions to enable the realization of the reform;
- Deregulation, which means the shortening of procedures and documentation accompanying the administrative process, facilitating the burden of bureaucratic burden on the subjects concerned (owners/possessors of immovable properties);
- Deburocratization, which means that any unnecessary elements producing burden, whether for the interested subjects, or for the state structure itself, will be eliminated from the current legal mechanism;
- Digitalization of all other administrative (transitional) processes related to ownership on immovable properties. The materialization of this principle is another prerequisite for the success of the reform.

67. This justifies the necessity to concentrate the competencies at the Cadastre State Agency. However, this reasoning does not explain why it is necessary to redefine the material and/or formal conditions for the validity or scope of ownership titles, as Art. 7 para. 1 and 2 and Art. 9 of the draft law seem to do. In its current wording it appears as Art. 7 para. 1 of the draft law amends the material conditions for the validation of ownership titles. Art. 7 para. 1 lit b to ç of the draft law define further criteria that have to be fulfilled for the validation of ownership titles. The titles already issued should be considered valid unless they are invalidated by the competent authority (court). The very notion of validation – apparently a new one in Albanian law – is concerning because it suggests that AMTPs are not, per se, valid: they require validation. These risks having retroactive detrimental effect on acquired rights. It is also possible to raise an issue of unequal treatment: irregular AMTPs that were transferred are regularised (Art. 8 par. 1 lit b of the draft law), while irregular AMTPs that have remained in the hands of the beneficiary are revoked. The delegation of the Venice Commission was assured in its meeting with the Prime Minister, that the purpose of Article 7 is to not infringe the subjects' entitlements acquired by them for almost 30 years (since the entry into force of Law No. 7501/1991), by "absolving" all the shortcomings that the ownership act might have, except for some basic conditions. The Venice Commission is most grateful for this clarification in particular as it appears to be a source of grave concern for many individuals holding AMTPs or are still in the process of obtaining one. However, it is not clear, whether the draft law achieves this aim in every single case. For example, the draft law narrows down the validation of ownership titles to land in the territory of a cooperative or agricultural enterprise (Art. 7 par. 1 lit. b). That may exclude other agricultural land titles granted in accordance with the previous or current law.

68. The same reasoning applies for the formal shortcomings of AMTPs. The stipulation of the criteria for formal shortcomings that prevent from validating an ownership title is left to the Council of Ministers (Art. 7 para. 2 of the draft law).

69. Especially with regard to those ownership titles that have been validated according to Law No. 9948/2008 by the competent body (see Art. 66 para. 2 of the draft law) or even registered afterwards, it is questionable whether a new validation process strikes a fair balance between the public interest in the completion of all processes that have been associated with the

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ownership over immovable property on one hand and the requirements of the protection of the individual's fundamental rights on the other hand. The proportionality may depend on the number and obviousness of faults that occurred during the validation or registration process. The trust that the AMTP should not be invalidated is stronger if the title has been validated or registered after a thorough procedure. It is thus important to take into account not only the formal criteria stipulated in the draft law but also the level of trust in the procedures conducted so far.

70. In order to assess the proportionality of the possible interference of Art. 9 para. 1 lit a of the draft law with property rights, it would be necessary to know, whether and if so, why the draft law amends the conditions for the acquisition of ownership with regard to the additional surface. Furthermore, it is not explained why Art. 9 para. 1 lit b of the draft law gives priority to the actual use over the ownership title, when the area that is effectively used is smaller than the one defined in AMTP. The principle of "lawfulness of fact" as such may not necessarily overrule the requirements of the protection of the individual's property rights as documented in and administrative act constituting an agricultural land title such as the AMTP.

71. Article 9 provides for solutions in case the agricultural land possessed is of different size compared to the size stated in the AMTP. The criteria for assessing whether the land is in use appear to be missing. During its visit, the delegation of the Venice Commission learned about many practical problems on the ground such as cultivating land regardless of border areas not due to inconvenience or to lack of knowledge of the legal boundaries as a reliable cadastral map still does not exist. In these cases, the consequences on the ownership appear to be too severe and thus disproportionate. They contradict the underlying principle of legalization of facts. In case the size of the land on the AMTP is smaller than in reality, the financial consequences might not be the best option notably if the size difference is not noticeable and, i. e. less than 5%. Legal consequences on the right to gain the ownership should be expectable, but in case the person cannot foresee the difference of size, they are not.

Art. 9 does not contain any good faith or bad faith considerations. Quite often, some smaller differences between the size of the land plot stem from different results or accuracy of the land surveying. In such cases, the law should allow some margin of error.

G. Further observations

72. The Venice Commission acknowledges the need for consolidation of the fragmented legal framework. During its visit to Tirana the delegation of the Venice Commission received a lot of information on the lack of reliable cadastral maps, archives burned, lost, improperly maintained, boundaries of parcels not identified and on deficiencies in AMTPs as to form, content, undefined geographical position, overlaps that is 2 or more owners on whole or on part of a parcel including for parcels classified as state propriety, AMTPs having been issued for very small parcels, as well as for territory not used and not usable for farming (sand, rocks), and 200 – 300 year old buildings for which there is neither legal documentation providing ownership nor technical, cartographic identification.

73. It is in the spirit of acknowledgement for the existing practical problems that the Venice Commission draws attention to the following issues.

74. The Venice Commission is of the opinion that the basis for legal clarity is one unified reliable cadastral map for the Republic on Albania duly reflecting the reality on the ground and the established rights of the respective owners alike. Digitalisation seems to be indispensable and concentration in one agency appears logical. Discomfort expressed about the concentration of power in one state agency, the newly established one on Cadastre can be balanced by providing for judicial review of the decisions taken by this agency. In this regard, the newly established Task Force to monitor also changes in state property at the coast line

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can play an important role when it comes to alleged violations of property rights and the need for judicial review.

75. While acknowledging that detailed regulation can and often need to be left to administrative decrees, the Venice Commission observes that the current draft law leave crucial definitions and decisions throughout the whole draft law including in Articles 7 and 9 to the Council of Ministers. Thus, the legislator does not assume its role of essential law making and is consequently invited to formulate essential conditions itself. Deadlines for title holders as well as basic procedural steps should be made clear by the legislative act too.

76. Furthermore, it appears necessary to address the problems related to the land cadastre, which the law on cadastre addresses only in general, lacking details. It is important to guarantee the right to participate in any decisions related to the size, exact borders and use (e.g. beaches, forest, arable land, land under constructions etc.) as well as to the value of the property. While there might be persons whose rights to become the owner are not clear when such decisions are made, the law should state clearly who has the right and may by which deadline complain; who can request to amend the current data in the register based on changes of the data over time (e.g. market value or factual usage); who has to be heard before the authority decides on the complaint or on its own initiative. The law should provide for the duty for the competent authority to provide for clarifications and explanations on the procedure as well as reasoning of any decision made. It is important to keep an electronic database on the position and exact data on the borders in order to avoid any further overlapping before the validation of ownership continues. This would also help to avoid situations where some small-sized state-owned properties which cannot be used individually due to their size or shape would exist between privatized land properties (e.g. by Article 9(3) of the draft law).

While determining the exact borders of the land plots, the authorities should be obliged to point out in reality (in nature) the exact borderlines of the land both to the owner / possessor and neighbours to avoid future conflicts over the location of the borders and discrepancies between factual usage and ownership.

77. As the draft law bases the decision-making on whether the land is in use (for agriculture, construction etc.), it is important to regulate in detail the process of submission of evidence by interested persons and their right to be heard before any decision is made. Clear provisions stipulating who has the right to access the evidence already collected, who may provide for further evidence and whether all interested persons, including neighbours, are to be heard, are currently lacking. These questions have a significant role in assessing Articles 7 and 9 of the draft law. It includes also the issue of the current possessor, as the rights of possessing owners and non-possessing owners as well as those who have illegally occupied the land are regulated differently. The draft law regulates the duty of the competent authority to collect data on the land, but not so clearly on the possessors and their status. It would be advisable to close this gap.

78. Furthermore, it should be taken into consideration that in many cases, there may be several possessors jointly using a plot of land, such as co-owners, married persons or heirs. The draft law does not specify clearly whether requests and complaints can be made or the ownership can be transferred to several persons nor whether the procedure is suspended in case of death of the person until the heir or heirs are verified. The legislator is recommended to address such issues.

79. Last it appears that the value assessment based on a decision of the government through so-called value maps has raised and still raises a number of problems such as proper identification of the plot, lack of transparency, substantive deviation from the market value. It could therefore be considered to base the value assessment on the individual characteristics of the land with the help of independent expertise.

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80. The Venice Commission has always been critical of rushed adoption of acts of Parliament, regulating complex and sensitive matters, having a major importance for society, without consultations with the opposition, experts or civil society and without a necessary impact assessment.[23] The Commission therefore highly values the request of the Speaker of the Albanian parliament to pronounce itself on this important draft law potentially impacting on individual human rights, the economic development of the country and its social climate. During the visit the delegation of the Venice Commission was informed about grievances concerning a new draft law on corporate investments that could impact negatively on immovable property rights. While the Commission is not in a position to comment on this specific draft law, it seizes the opportunity to recall that transparency and public consultations are essential for good law making. During the visit the delegation of the Venice Commission learned that the Ombudsperson had not been asked to comment on the draft law.

81. During the visit of the delegation, many interlocutors expressed discomfort about the lack of public consultations. The Venice Commission acknowledges that there had been certain consultations, but they appear to have been limited and do not constitute public consultation in *stricto sensu*. Consequently, the Commission invites the legislator to remedy this, have a public hearing with all stakeholders and possibly the public at large including the communities/municipal level. For a draft law such as the one currently under examination, it is particularly important that all stakeholders affected by the draft law be consulted which reportedly was not the case so far. In the opinion of the Commission, a broad and inclusive public consultation could improve the material quality of the draft law, enhance its legitimacy and make it easier to implement.[24]

82. The Commission is of the opinion that is in the interest of the legislator to have fully fledged public consultation in order not to be subject to allegations of corruption notably when it concerns valuable property within the today boundaries of Tirana and the coastal line as such unresolved property issues bear an inherent potential for social unrest. During the visit the delegation of the Venice Commission learned that that between 8,000 to 10,000 people have died in Albania as a result of conflicts related to agricultural land. Anxiety was expressed that the new draft law could create further severe unrest in an already deeply divided country in political crisis.

III. Conclusions

83. The Venice Commission is well aware of the severe difficulties faced by the Albanian legislator aiming to resolve problems in the highly sensitive area of immovable property law that have accumulated over decades. The Commission therefore acknowledges the intention to finally solve the issue. In this spirit and in order to support this intention, the Venice Commission wishes to underline the following. The draft law in its current version lacks clarity and precision due to lack of definitions and far reaching regulatory power for the Council of Ministers, lack of basic procedural steps and clearly defined deadlines for title holders. There is a high risk that

[23] See CDL-AD(2019)014, Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice of Romania, §11; CDL-AD(2012)026, Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, § 74; CDL-AD(2018)017, Opinion on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy of Romania, §§33 and 34; CDL-AD(2017)022, Opinion on Article XXV of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education of Hungary, §54; CDL-AD(2011)001, Opinion on three legal questions arising in the process of drafting the New Constitution of Hungary, §§ 16-19.

[24] See also CDL-AD(2010)017, Opinion on the Draft Law on Normative Legal Acts of Azerbaijan, § 46.

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the draft law may raise issues of compatibility with Article 1 of the First Protocol to the European Convention on Human Rights and other provisions as well as with the Albanian Constitution. In particular Articles. 7 and 9 of the draft law are inherently unclear and imprecise and therefore bear a high risk that their implementation will lead to infringements of the European Convention on Human Rights, notably Art. 1 of Protocol 1, and Art. 6 I, 13, 14.

84. Therefore, the Commission invites the legislator to re-examine the draft law and if need be existing or planned legislation related to it and, in so doing, take into consideration, in particular the following recommendations:

- To stipulate the declaratory nature of the act of registration of titles, notably AMTPs, in the draft law.
- To review Article 7 and 9 and articles related to it, taking into account that agricultural titles in the form of AMTPs as well as continuous use of the land with the legitimate expectation to be provided with an AMTP constitute protected possessions under Article 1 of Protocol 1 to the ECHR.
- To define the formal shortcomings preventing AMTPs from being validated in the draft law itself and to limit the areas open for regulations by decisions of the Council of Ministers to the strictly necessary.
- To provide for precise deadlines for title holders and basic procedural steps in the draft law notably when related to transferring agricultural property titles.
- To include the essential definitions for agricultural property titles into the draft law.
- To stipulate in the draft law the rules for submitting evidence, access to evidence and the right to be heard prior to a decision of the authorities to declare an AMTP invalid.
- To hold public consultation with all the parties concerned.

85. In the opinion of the Venice Commission, it would be useful if the authorities conduct detailed studies on the causes of the shortcomings of the current legislative framework possibly with the help of international expertise and assess the impact in terms of budget and human resources of the new draft law. To request specific practical support in the framework of already existing Council of Europe cooperation activities would be advisable for drafting legislation as well as for implementation.

The Commission also wishes to emphasize the importance of a fully-fledged procedure including public consultations for revising and passing of the draft law.

86. The Venice Commission remains at the disposal of the Albanian authorities for further assistance in this matter.

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