REPUBLIC OF ALBANIA
NATIONAL ASSEMBLY

DRAFT-LAW

No….. date…….

ON RESTITUTION AND COMPENSATION OF PROPERTIES PURSUANT TO THE CONSTITUTION

The present draft law incorporates in a single text the existing 27 laws, 234 governmental decisions and their 356 amendments adopted from 1991 to 2013 on the issue of property restitution and compensation. Provisions that comply with the right of property as provided by Articles 181 and 41 of the Constitution and in the Code of Administrative Procedures are included as they stand. Provisions in the existing legislation which violate constitutional obligations have been rectified before being included in the present draft law.
Pursuant to the Constitution of the Republic of Albania (Articles 4/3, 122/2, 41, 44, 181), Article 1 of the Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and Article 17 of the Universal Declaration of Human Rights and ECHR decision of 31 July 2012 (pilot-judgment procedure), at the request of a group of deputies,

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA
DECIDED

Article 1
Object and Scope

1. This law shall recognize and restitute to the expropriated subjects or their legal beneficiaries, as applicable, the assets that have been nationalized, confiscated or sequestered by means of law or court decision after November 29, 1944, as well as the assets seized and owned unjustly and arbitrarily by the state after 1991, in violation of the right to ownership and constitutional obligations pursuant to "Constitutional Fundamental Dispositions" as of 29.04.1991 and the Constitution of Albania as of 28.11.1998, the latter one being currently in effect.

2. This law shall extend its binding effect to all real estate property nationalized, confiscated, sequestered or seized unjustly and arbitrarily by the government, irrespective of its cadastral classification or location (i.e. former state farm land, former cooperative land, building, city zoning land, agriculture or non-agriculture land, pasture, forest, etc).

3. Within a week of entry into force of this law, Agency on Restitution and Compensation of Property (AKKP) is replaced by the College on Property – Kolegji mbi Pronesine/Pronat (CoP). The CoP, similar to the College on Elections - Kolegji Zgjedhor, should be set up as a court of last resort for the properties related issues. It would be made up of Albanian and foreign lawyers, topographic, specialists from Albania's Military Geographical Institute, archive specialists, real estate specialists, economists, and other related property specialists as needed. The majority of CoP should be comprised of lawyers and specialists who are either foreigners or Albanians living abroad and selected through the consensus of the two main parliamentary groups and "Defending Property, Pursuing Justice" and "Riviera" associations - the main expropriated owners historical interest group, each of the these three groups proposing an equal number of members. CoP would be headquartered in Tirana and shall be responsible for undertaking the necessary measures to redress all the erroneous acts in granting of title deeds. It has also the obligation to verify, within two months, any claim over irregular property title deeds, for any type of property, irrespective of its cadastral classification or location, and to declare them invalid through court proceedings, being itself a court of last resort. This decision may be appealed directly to the Supreme Court.

4. Pursuant to this law, the Real Estate Appraisal Committee (REAC) shall be set up within a month of the creation of CoP. REAC will be comprised of licensed real estate appraisers, representatives of local government, of ZRPP (Real Estate Registrar's Office), representatives of the expropriated land owner and of the construction owner, as applicable.

Article 2

Restitution of Real Estate Properties

1. The procedure for the restitution of real estate properties to the expropriated subjects is, primarily, the obligation of the state.

Within 2 months of its creation, College on Property will establish the Electronic Property Registry/Database of the nation's real estate property as it was before 1945. This registry/database will contain the names of the owners before 1945 and will list their properties, its quantity and location, including listing the properties owned by the state and the state as the owner, where applicable.

An electronic national civil registry must be created based on the civil registry of 1945. Deficiencies should be fixed using the civil registrations made in 1930 and 1923. This civil registry should be used, among other things, to cross check and accurately identify the owners listed in the property registry using the date of birth, parents' name, place of residence and other civil registry data.
There should be full access to all archives. Many of the data for the same property are in several parts of a single archive or in different archives, hence in order to accurately and fully define the amount of the property, its location and ownership, the full access of all archives is paramount.

Wherever old measuring units are used in the archival data, the Measuring System of the Kingdom of 1933 (Sistemi Matës i Mbretërisë i 1933) should be used to explain and interpret these data.

Electronic Property Register/Database with the names of the owners as of 1945 and their legal beneficiaries (as established by court decisions) along with the data on their property as well as the data on all state properties should be published online.

2. All real estate property is recognized and restituted to the expropriated owners or groups of expropriated owners, with the exception of the cases as laid down in Article 5, paragraph 1 of this law. The common properties of the villages shall also be restituted and then administered by the assemblies of the respective villages.

3. The restitution of property shall be done based on, including but not limited to, documents of counties' cadastral and cities' real estate property recorder's offices, an array of governmental and foreign archives documents and any other official document which could be furnished, among others, from the expropriated owners themselves.

4. The third parties who, pursuant to the legislation in force after 29.04.1991, have obtained properties that do not belong to them (i.e. not inherited, bought or donated from the rightful owner) through first or subsequent generations of such transactions, shall be bound to recognize as the owner for that property the expropriated person or the state, as applicable.

5. All investments made by the third parties on the properties described in paragraph 4 of this article are subject to Articles 4 and 6 of this law.

6. All third parties described in paragraph 4 of this article are subject to Article 8 of this law, as applicable.

7. An automatic lien is placed on any property in the country as of the publication date in the Official Gazette. Any sales of real estate property made after 23.06.2013 are reversed. No sales of any real estate property can be made and title deeds issued without first a clearance from the CoP that will certify that there is no claim anymore on that property from the expropriated owner. Any violation by any entity of this paragraph is punishable by an automatic three years jail and a heavy fine.

8. In regard to properties recognized and restituted to the expropriated owners (individuals, groups of persons, villages, etc.), the latter shall act in conformity with the regulatory plans adopted by the competent bodies for the development of the respective zones.

9. Fruit orchards, olive and citrus plantations and forests restituted to their owners shall be protected by the state.

Article 3

Objects Built by the State and Privatized in Favor of Third Parties

1. In regard to constructions made by the state prior to 29.04.1991, with the exception of the cases provided for in paragraph 1 of Article 5 of this law, the right to "purchase first the construction" on the land shall be recognized and restitute the land to the expropriated owner even when, after 29.04.1991, the state has sold this construction, and later the land, to third persons, without the expropriated land owner exercising his right to "purchase first the construction". The sale/privatization of the land/property, in this case, is declared null and void, pursuant to the Code of Administrative Procedures and the effect of implementation of article 181 of the Constitution.

2. In cases as described in paragraph 1 of this article, the state shall indemnify/compensate the third person for the original purchase price (land and construction) adjusted according to the amortization and the cost-of-living index over the time in possession as determined by REAC.

3. For eventual investments made during the time of possession by the third person(s), Articles 4, 6 of this law shall also apply.

4. The expropriated owner shall compensate the state for the original purchase price of the construction only, adjusted according to the amortization and the cost-of-living index over the time in possession as determined by REAC, subtracting the value of the missed profit for the time in possession by the third party, if it is not calculated already according to paragraph 3 of this article. If the state is in debt it makes the payment within a few months deadline as determined by REAC; if the expropriated owner is indebted to, the payment is made under Article 6.

Article 4
Land Occupied by Constructions Made after 29.04.1991 by Third Parties
& Suspension/Demolition of Unlawful Constructions

1. If in the land that has not yet been restituted to its expropriated owner, constructions have been made by third parties, including the state, after 29.04.1991, that have no building permit or the permit was issued without being based on a partial zoning study, in conformity with the urban laws and regulations, or without the lawful ownership title deeds of the land of the construction, CoP shall order the relevant agencies to demolish it and return the land to its previous condition and the freed land restituted to the owners, unless paragraph 3 of this article applies.

2. In the case of ongoing constructions, the Construction Police (INUK & INUV) and KRRT shall suspend and immediately revoke the construction permits in all those cases when the construction permit was issued without being based on the zoning urban study, in conformity with the urban planning laws and regulations, or without the lawful ownership title deeds of the land of the construction, according to the spirit and letter of the Article 41/2 and 181 of the Constitution.

3. If the appropriate city planning agencies acknowledge that the construction made by the third party meets the technical building parameters and are in conformity with the urban planning and development plan of the zone, at the written request of the expropriated owner of the land, the construction shall not be demolished. The third party who has built or purchased the building shall be treated pursuant to Article 6 of this law.

4. All cases are subject also to Articles 6 or 8, as applicable.

Article 5
Properties that do Not get Restituted & Other Special Cases

1. Land which has been nationalized, confiscated or sequestered by the state but which have been occupied with apartment buildings or with buildings used for public purposes built and used for such purposes prior to 29.04.1991, as well as the monuments of culture, to the extent they remain so in the meaning of the relevant law, do not get restituted to the expropriated person but the latter shall be compensated pursuant to the relevant legislation.

2. Any lateral additions made after 1991 to the pre-1991 apartment buildings, without construction permit, or if the construction permit was issued without being based on the zoning/urban planning study, or without the ownership title deeds of the land of the construction, are demolished and the land is freed and restituted to the expropriated owner, unless the technical and urban requirements are met and an agreement is reached to purchase the land from the expropriated land owner.

3. Any construction made after 1991 on a land nationalized, confiscated or sequestered, without construction permit or without the ownership title deeds of the land of the construction, even if the construction is done on a land where a previous public or private use building had been erected before 1991, is demolished and the land is freed and restituted to the expropriated owner, if he has not already been compensated, unless an agreement is reached to purchase the land by the interested party and provided that the technical and urban requirements are met.

4. If a construction, built for private or public use, has been built before 1991 but a change of situation occurs and the construction is not anymore for reasons not related with the expropriated land owner (i.e. because of a fire, earthquake, disintegration from extensive use, demolishment by the owner of the construction to build something new, etc.), the land is considered freed and automatically restituted to the expropriated owner, if he has not already been compensated, unless an agreement is reached to purchase the land by the interested party. Any subsequent construction is, hence, considered according to article 4 & 6.

5. Compensation with land/property for the persons of this article, depending on the area, shall be made by REAC with land/property that the state has the right of ownership in the meaning of Article 41 of the Constitution and not with properties of expropriated persons that have not yet been restituted to them.

6. If the land mentioned in the first paragraph of this article have been occupied prior to 1991, with one or two floor apartment buildings, the owner of the land shall be recognized the right to the land and shall be entitled to build extra floors or lateral extensions, provided that technical and urban requirements are met.

Article 6
Indemnification for Constructions Made by Third Parties and Legalization

1. CoP shall determine the value of the indemnification of the third parties for the buildings this article applies to, through an ad hoc commission, a subcommittee of REAC. This commission shall be composed of the representative of local government, the representative of ZRPP (Real Estate Registrar's Office), the representative of the land owner and the representative of the third party which has made the construction in accordance with the law at the time of construction or who has purchased it through a regular public notary act.

2. The above mentioned Commission, in its indemnification report, shall calculate the actual expenditures at the time when the construction was made, deducing from it the amortization of the construction, the missing profit of the land owner resulting from failure to use his property for the time it was used by the third party and other damages that might have been inflicted to the land owner (restitutionary damages), adjusting it for the cost-of-living index. The Commission shall determine the deadline and the manner of indemnification of the appraised value.

3. If the land owner or the construction owner does not agree with the appraisal value of this commission, CoP shall order the demolishment of the construction and the return the land to a free state, as defined by paragraph 1 of Article 4 of this law.

4. The construction owner, when agreed as described above, is compensated for any legally built structures, as determined by REAC, by:
   a. Expropriated land owner or,
   b. State. State puts a claim on expropriated land owner's land for that value and he is given a soft interest rate loan to pay for the value of the structures that the state paid to construction owner. The land serves as collateral for the state in case of non-payment of the loan.

5. If the construction is legally built, instead of solutions at above paragraphs, expropriated land owner and the construction owner can also enter into collaboration where construction owner can buy at a mutually agreed price the land from the expropriated land owner or both can enter into an enterprise where each is entitled to the

respective shares at the value of the building and the value of the land. If neither of these solutions is agreed upon until a certain deadline, within two months of the decision on the value of construction, as determined by REAC/CoP, it is immediately resorted to the solutions of above paragraphs of this article.

6. Any non legally binding transfer of the property is not recognized and the possessor of the property who has obtained the property through means that are not based on the legislation at the time of purchase/possession, the transaction is considered null and voided, like it never happened, and that party is not recognized for any compensation, unless some other article/paragraph of this law can apply. Any compensation that can be claimed by third parties would be valid only if it comes from parties who have obtained the property based on legislation effective at the time of purchase or construction, unless some other article/paragraph of this law can apply.

7. Process of Legalization:
A. The law on the legalization of the illegal constructions is suspended. No such construction built on a land of an expropriated owner cannot be legalized until the expropriated owner of the land where the construction has been erected, is first treated according to this law. The legalization process should continue, according to the relevant laws, only after it has been accurately determined which property is owned by the state and which is owned by the expropriated subjects. It is imperative that this be done before the legalization process takes place because of the rampant abuse that has happened in this process because of the ownership issues. In addition to the above conditions, the legalization process should continue only after the completion of the partial urban planning study of the respective area.

B. In the process of legalization of informal settlements are included only the residential buildings and to the extent that the legalized area of these constructions is proportional, through a predetermined coefficient, to the number of household members. Any construction that is on the excess area beyond the legalizable limit amount for a respective household and any construction that is not built for residential housing purposes is not included in the process of legalization. All informal settlements constructions that do not appear in the 2006 country's orthophoto are not included in the process of legalization either. All the constructions not included in the process of legalization are treated as illegal constructions, on the land of someone else or not, and, in turn, are treated accordingly under this law.
C. Constructions such as schools, places of worship, health centers or used for other public or community service, only in the designated informal settlements areas, are exempted from the application of paragraph B of this article. These constructions are legalized, instead, with the condition that they go and remain, for at least 25 years, in the ownership of the local government, state government or the respective religious organization, as applicable, otherwise paragraph B applies.

D. The process of legalization for the illegal additional floor(s) on the buildings built before 29.04.1991 continues without hindrance from the process determined by this law, according to the relevant laws. Informal settlements on the land that belong to the expropriated subjects classified under Article 4, paragraph 3, are legalized, when applicable, according to the procedures of Article 6 of this law.

E. If the approved informal settlement area is on a land that is within the official city boundaries, in regards to the the subjects of this area who qualify for legalization but are not included in paragraphs 7C or 7D of this article, depending on the urban planning study of the respective area and after the conditions set forth by paragraphs 7A & 7B of this article are met, in order to help create a more sustainable solution, the government takes steps to build, as soon as possible, multistoried apartment buildings where these subjects would be accommodated. These subjects will pay the state the value of the apartment(s) for which they would qualify, with a qualified apartment area determined on the basis of the number of household residents, subtracting from this latter value the adjusted value of their legalizable informal construction, as defined under paragraph 2 of this article, adjusted value that is limited to the extent of the area of construction in a predetermined proportion to the number of household residents as defined in paragraph 7B of this article. In addition, the state offers these subjects a soft rate mortgage loan for a period of 5 years to pay the remaining unpaid value of the apartment(s).
Apartment(s), which would be registered under the ownership title of these subjects, are sold to them at the market but competitive price and the respective apartment(s) serves as collateral for the loan.

The land where these apartment buildings would be built may be owned by the state or a private party (including expropriated subjects whose land would be returned under this law), within the meaning of Article 2, paragraph 1 of this law. The state may buy the land from the private party at the market price or compensate him in kind with apartment (s) in these buildings built on his land after previously agreeing upon for the extent of the compensation

in cash/kind. The state should do everything it can to achieve as soon as possible an acquisition/compensation contract with the owner of the land by offering better than market prices for his land.

To realize this, the state contracts with state-owned construction companies, which can be set up solely for the purpose of the construction of such buildings or, if that is not possible, other companies that would offer lower than market rate of return for themselves. The full financial profit the state would gain using its own construction company or a construction companies that would offer lower than market rate of return, makes possible more profit for the state. This profit is very important because it will self-finance the state cost of this process as well as it would provide more negotiating room with the land owner in order to achieve an agreement with him as soon as possible because of the immediate need to provide housing for the subjects of these informal settlement areas. The apartments that the state is entitled to from these buildings, because of its own land ownership, because the state is the owner of the construction company, or because the state is the parties mediator, after the accommodation of all the subjects of the informal settlements of that area with apartments on the basis of the family composition, are sold in the market and this profit serves to cover the loans that were issued to subjects in question or goes to REAC's general fund to be used for carrying all the aspects of the process under this law. The state helps again these subjects by assuming all the costs for the additional infrastructure in the informal settlement areas where these buildings would be erected.

F. Informal settlements areas on the agricultural land are not legalized, including housing constructions, unless the construction serves the agriculture or animal husbandry development. The area of construction for these types of needs should be in a preset proportion to the amount of land owned where the construction lies in. In regard to these types of constructions, there should be clearly specified and recorded the type of construction to be used for such as, for example, stables, temporary constructions, warehouses, etc. which would specifically serve the development of the agriculture and animal husbandry.

G. Informal constructions in the priority areas for the development of tourism are not legalized.

H. To enable the application of this article as soon as possible, all the relevant state agencies shall implement a zero tolerance policy for all the illegal constructions that are not legalized, as determined by this law. All these illegal constructions that clearly dot get legalized, i.e. the constructions that are not in the 2006 orthophoto and any new illegal ones, should be demolished immediately. Any new illegal construction should be discouraged by acting swiftly to prevent or demolish any partial illegal construction, by charging the illegal constructors (i.e. the construction company and the people that order it) high fines, charging them to remove all the inert, remaining material of the demolished construction as well as criminally prosecuting them. Finally, there should be a clear differentiation between constructions involved or not in the process of legalization: there should be no investment in infrastructure, such as for roads, water, electricity, schools, etc. in the informal settlement areas not included in the process of legalization, in the meanwhile, there should be maximal encouragement for investment in infrastructure and offering of the incentives for the informal settlement areas involved in the process of legalization under this law.

Article 7
Declaration of Invalidity

1. CoP shall restitute immediately the former state farm land to the expropriated persons. This should be done immediately because of the simple fact that most of this type of land has never legally been transferred the title to third parties even with the legislation after 1991.

2. CoP shall declare invalid all those acts, through which, the state institutions have privatized, after 1991, the land and any other real estate property to third parties, and all the acts derived from these invalid acts on the account of the fact that the property was not acquired in conformity with Articles 181 and 41 of the Constitution (i.e. property was not inherited, purchased or donated by the original owners, as prescribed also by the Civil/Administrative Code). Accordingly, CoP, through a regular judicial process, shall declare invalid any registration of the property that are done according to these invalid acts and, in turn, ZRPP (Real Estate Register's Office) shall do the corresponding de-registration and the registration of the property to the expropriated owner. Any affected party is entitled to appeal the de-registration in the Supreme Court and the court shall make a final decision within a month. There should be no TRO (Temporary Restraining Order) of the order of CoP for registration of the property to the

expropriated owner and any potential legal proceeding by the affected party is done while the registration of the property is under the name of the expropriated owner.

3. The practice of set prices for the land is declared invalid and the price is set according to the market.

Article 8
Expropriated Land or Other Real Estate Given Away or Sold by State to Third Parties

This article is triggered when the real estate property of an expropriated owner O, land or any other type, has been given away or sold by the state, wrongfully or/and illegally, as described by Article 7, paragraph 2, to a third person A through legislation after 1991. C is the last person who, by 23.06.2-13, through the legislation at the time of purchase, is in possession of property. Any purchase of the property done after 23.06.2013, is reversed and considered null and void (this restriction is done to cut the abuse). Paragraph 6 of Article 6 applies in this case as well.

Let us take an example. Through the legislation after 1991, the third person A described above has kept it for himself or has sold the property for 50 ALL to person B1, and then B1 sold it to person B2,…and person Bn sold it further to C, who is the current possessor who buys it for 60 ALL. This assumes transactions that are legitimate under the legislation at the time when occurred. All other transactions are considered null and void like it never happened.

A->B1->…Bn->C
50 ALL 60 ALL

In addition to other articles that may be applicable, this article applies as follows:

1. Land/Property is restituted to O, its expropriated owner.

2. All the property purchase prices and their corresponding adjusted values cannot be more than the respective market values at the time of the event. All the values, in cash or in kind, mentioned in this article are appraised by REAC.

3. If there is no Bi, hence no C, A is returned the money paid to the state for the property, if any, subtracting the amortization for use of property and the missing profit for non use of the property by O, both calculated over the time in possession by A (from the original selling/awarding date to present), adjusting all values with the cost-of-living index from the time of the event up to now. If the value to compensate A ends up non positive, A owes nothing but the state pays O the rest of the value *(alternatively, A may pay a percentage of the obligation for the missing profit of O for his time in possession while the rest is paid by state).*

4. If there is a Bi, hence a C, then C, who is a second generation buyer, may be compensated in the following way:

First & Second Solutions:

C is compensated by the state *i) in cash* or *ii) in kind with a state-owned property*, proportionally, depending on the value of real estate property used as compensation, 100% or a fraction of it, depending on the time of reimbursement, for the smallest of the original property purchase price (this is A's purchase price from the state; if zero, A's selling price is considered the original purchase price), adjusted down for the amortization for the use of property and the missing profit for the non-use of property by O, both calculated over the time from A's selling date to present, on one side, and C's property purchase price, adjusted down for the amortization for the use of property and the missing profit for the non-use of property by O, both calculated over the time from C's purchase date to present, on the other side, adjusting beforehand all of these previous values with the cost-of-living index from the time of the respective event up to now.

If the missing profit of O for the period from the awarding date by the state up to the selling date by A is not counted in the above calculation (the case when property is awarded free of charge to A by the state), this value is paid to O by the state. If the value to compensate C ends up non-positive, C owes nothing but the state pays O the rest of the

value *(alternatively, C may pay a percentage of the obligation for the missing profit of O for his time in possession while the rest is paid by state).*

(Note 1: The whole missing profit of the land/property owner, though implicitly, is included as an obligation of the last illegal possessor of the land/property C and the state – for this, it is essential that C is compensated with the minimum of two values, one of which being the original purchase price. It is understandable that this obligation is up to the extant profit value for C (if the value to compensate C ends up non-positive, C owes nothing but the state pays O the rest of the value). In these two solutions, there is less chance of abuse by keeping reselling the property fictitiously/abusively in order to obtain more compensation because C's compensation is also tied to the original purchase price. In these two solutions, the state and C have a higher cost favoring the original and in between possessors in order to simplify things and lessen the abuse. Alternatively, C may also pay a percentage of the obligation for the missing profit of O while the rest is paid by state).

Third & Fourth Solutions:

a. C is compensated *in cash* by the state for his purchase price (in this example this is 60 ALL), 100% or a fraction of it, depending on the time of reimbursement, subtracting the amortization for use of property and the missing profit for non use of the property by O, both calculated over the time in possession by C, adjusting all values with the cost-of-living index from the time of the event up to now. If the value to compensate C ends up non-positive, C owes nothing but the state pays O the rest of the value *(alternatively, C may pay a percentage of the obligation for the missing profit of O for his time in possession while the rest is paid by state).*

b.1. State is compensated by A for his selling price of the property, less the amount, if any, paid originally to the state (in this example this is 50ALL – buying price from the state), adding the amortization for use of property and the missing profit for non use of the property by O, both calculated over the time in possession by A, adjusting all values with the cost-of-living index from the time of the event up to now. State pays O the rest of the missing profit and the amortization of the property for the time in possession by Bi-s (from the time of sale by A up to the time of purchase by C)*(alternatively, A may pay a percentage of the obligation for the missing profit of O for his time in possession while the rest is paid by state).*

or

b.2. State is compensated by A, B1, B2...Bn for their own margin of profit from the buying/selling of this property (amount to be recovered, in total, from A and all Bi-s, in this example, is 60ALL – buying price from the state), adding the amortization for the use of property and the missing profit for non use of the property by O, both calculated over the time in possession, respectively, by A and each Bi, adjusting all values with the cost-of-living index from the time of the event up to now *(alternatively, A and Bi-s may pay a percentage of the obligation for the missing profit of O for their time in possession while the rest is paid by state).*

c. If A (or Bi) cannot compensate the state right away, state puts a lien on any real estate property that A (Bi) or his/her spouse own and A(Bi) is forced to take a soft interest rate loan in order to pay for the amount owed because of the property wrongly and illegally, though innocently, obtained. A (Bi) or his/her spouse can be subject to backup withholding on any salary A (Bi) or his/her spouse has and a freeze on their bank accounts in order to pay the loan. Any real estate property that A (Bi) or his/her spouse own serves as collateral for the state in case of nonpayment of the loan. State should find all the means to retrieve the monetary compensation from A (Bi), including denial of services, back up withholding of salary, freezing of assets, jail, etc.

(Note 2: In case Bi-s are not included in this scheme, a strict deadline, some time before the enforcement of this law, say Dec. 31, 2011, should be embedded in the law as a set deadline for considering the last buyer/purchase price. Also, a freeze/lien on all sales of real estate property should be enforced as provisioned in article 2, paragraph 7)

(Note 3: In the third solution, there is more chance of abuse because the property may be kept reselling fictitiously and abusively in order to gain more compensation, unless a hard deadline stop of sales, before the entrance in effect of this law, is set. The fourth solution minimizes the abuse and lessens the burden of the state but at the expense of going after intermediate buyers/sellers to get the money back)

5. Any construction built on the land, even by the party who may have obtained the land through legislation after 1991, is dealt with according to articles 4 and 6.

Article 9

All the laws and legal provisions that run counter to this law are repealed.

Article 10

This law shall take effect 15 days following its publication in the Official Gazette.

Speaker of the House

Rationale of the Law

"Private property is the most important guarantee of freedom."
- Friedrich A. Hayek, prominent economist & philosopher & Nobel Prize in Economics Recipient

Property rights are "the most basic of human rights and an essential foundation for other human rights."
- Milton Friedman, most influential economist & Nobel Prize in Economics Recipient

"The program of liberalism, therefore, if condensed into a single word, would have to read:
property, that is, private ownership of the means of production...
All the other demands of liberalism result from this fundamental demand."
- Ludwig Von Mises, prominent economist & philosopher who influenced Hayek & Friedman

1. Whereas European integration and aspirations of humankind have been firmly rooted in a shared commitment to universal values of inviolable and inalienable rights of the human person, including the right to enjoyment and respect of property, which have proved fundamental for securing justice, peace, freedom, rule of law, and developing prosperity, which are also values that serve as the "first pillar" for enlarging the European Union, this law shall fully respect the right to property in conformity with the constitutional obligations, the European Convention on Human Rights, Universal Declaration of Human Rights and several legal well established concepts in the most democratic countries.

2. Many great philosophers and economists assert that property rights arise from social convention, finding origin in morality or natural law. John Locke, one of the philosophers who had a great influence on the democracy, in the Second Treatise, claims that civil society was created for the protection of property. He relies on the etymological root of "property," Latin proprius, or that which is one's own, including oneself. Thus, by "property" he means "life, liberty, and estate." This means that when you deny someone his property, you deny him not only his estate but also his life and liberty. Each individual, at a minimum, "owns" himself; this is a corollary of each individual's being free and equal in the state of nature. To deny a person his property is tantamount to denying his labor that has created this property, is tantamount to denying himself, it means enslaving him.
From Inca Empire to Aristotle's "Politics", from Torah, Bible and Qu'ran to the Albanian Code of Lek (Kanuni i Lekes), they all established the first laws, principles and rules that advocated private property and were a blanket, early protection of private property while prohibiting stealing.

The right to own and enjoy property is a fundamental part of rights of people and referred to as an extension of human rights. Indeed, property rights are basic to all rights.

Functioning of the state protection of property rights in a formal property system where ownership and transactions are clearly, incontestably (unquestionably) marked and recorded makes possible greater independence for individuals to protect their assets, and provides clear, provable, and protectable ownership; it increases the serious and long time investments and especially the foreign ones; it increases trust arising from a greater certainty of punishment for cheating in economic transactions; it permits easier assumption of shared risk and ownership in companies and of insurance against risk; it permits greater availability of loans since more things could be used as collateral for the loans, easier access to and more reliable information regarding such things as credit history and the worth of assets; increased fungibility, standardization and transferability of statements documenting the ownership of property which paves the way for structures such as national markets for companies and the easy transportation of property through complex networks of individuals and other entities; greater protection of biodiversity due to minimizing of shifting agriculture practices. Lastly, all of the above enhance the economic growth.

An important part of protecting property rights is the inheritance. The relationship between wealth and children's education, schooling, neighborhoods and social class has a direct correlation to inheritance leading people who receive inheritance to a more prosperous and fulfilling life. The degree to which economic status and inheritance is transmitted across generations determines one's life chances in society.

Defining and assigning unambiguously property rights may help resolve environmental problems by internalizing externalities and relying on incentives of private owners to conserve resources for the future. Strengthening

markets and property rights would reduce such environmental problems and would strengthen sustainable development.

Disrespect of property rights breeds profusely corruption. Corruption is a mortal threat to democracy, it undermines and may eventually destroy people's confidence in political institutions and state administration. By not respecting property rights, there is a real risk that democracy will not function, become a charade or even simply disappear.

As reported by the National Reconciliation Committee, to date, more than 8,000 Albanians have been killed and more than 5,000 families have been self-confined as a result of blood feuds, all because of the anarchy with the property rights that the 'law 7501'and its derivative laws after 1991 have caused. A solution to the property rights issue which will provide clear ownership titles will prevent the loss of other human lives and increase security. The property rights are a security issue for any country and more men you give an interest in the welfare and safety of the state by respecting their property rights, the greater is the security of the state.

3. An unjust enrichment is a benefit by mistake (of law or fact) or by chance. It has been well established in jurisprudence of most democratic countries that, morally and ethically, the one who gains a benefit that he or she has not paid or worked for should not keep it to the rightful owner's detriment. The party that received money, services or property that should have been delivered to or belonged to another must make restitution to the rightful owner. An unjust enrichment is enrichment that lacks an adequate legal basis: it results from a transfer that, legally, is ineffective to work a conclusive alteration in ownership rights. This is based on a general equitable principle that a person should not profit at another's expense and therefore should make restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained.

4. Let us consider the innocent case of wrongdoing when A intentionally pays money to B, via mistake of fact or law, and B intentionally receives it as payment from A. Even if we assume that the title has formally been passed, the money has been paid under a proper case of mistake and, it has well been established in western jurisprudence, a court compels B to restore to A the money so received, not because the court does not regard B as the legal owner thereof, but because it is inequitable that he should retain it. The equitable principle which enables A to recover in this case, as in quasi-contractual obligations, is the principle of unjust or wrongful enrichment, well accepted in many democratic countries jurisprudence that "One shall not be allowed to unjustly enrich himself (shall not profit) at the expense of another"

Once a doctrine of restitution or unjust enrichment is recognized, the distinction as to mistake of law and mistake of fact becomes simply meaningless.

5. The case of the expropriated, nationalized or sequestered properties through the laws from 29.11.1944 until 1991 or the laws after 1991 that still did not restitute but gave the property away to third parties is not even a case where the title has been passed legally, though wrongly; this is a case where the title has simply not passed at all legally because the transaction lacks the consent of the rightful owner in accordance to the Civil Code and Constitution because property has not been donated, bought or inherited from the rightful owner in order to change hands. Furthermore, the expropriated property, according to the laws enacted after 29.11.1944, was given only for use to third parties and thus, technically, the property was not even in the ownership of neither the third party or of the state but, legally, remained in the ownership of the rightful owners even with the laws from 29.11.1944 until 1991. This is reconfirmed by the Decision nr. 24 of the United Colleges of the Supreme Court of Albania, dated 13.3.2002, which concluded that the rightful owner, by not possessing the property during all these decades, has not been deprived from its ownership title but he has just simply been deprived from the possession while he is still legally the owner of that property.

The case of the expropriated, nationalized or sequestered properties through the laws from 29.11.1944 until 1991 or the laws after 1991 that still did not restitute but gave away the property to third parties is not even a case where the property has innocently, though wrongly, been passed away and for which, the concept of unjust enrichment still demands restitution of the property to its rightful owner; this is a much stronger case because, here, the property has been simply robbed, has been taken away unjustly without any compensation, this is a case when even the title has not even passed legally. It stands to clear reason that, at a minimum, it is an absolute justice to return the property to the rightful owner.

6. *Law of Compensation* undoes the plaintiff's (rightful owner or A) loss as a result of the tort, whereas the *Law of Restitution* requires the defendant (the third party or B) to give up any gain made. These terms are used strictly in the context of this article and do not apply to other articles of this law where they may take another meaning.

7. Limitations on Restitution: Change of Position in reliance on the payment is a defense to restitution. If we apply inequitability to restitution for wrongs, it may be unjust to require an innocent wrongdoer to make restitution. Fundamentally, a person who commits a legal wrong without bad faith acts honestly and this is a legitimate reason to limit their liability if they have changed their position. Where an innocent defendant's position is so changed that he will suffer an injustice if called upon to repay in full even the gain, the injustice of requiring him so to repay may outweigh the injustice of denying the plaintiff restitution. This proposition cannot be fully assessed until we consider the specific wrongs to which change of position could apply.

8. Limitations on Change of Position Defense:

a. It is possible that a 'wrongdoer' is simply someone who acts through want of probity, a bad faith, for example where the defendant (B) pays money away with knowledge of the plaintiff's (A) entitlement, this is an act done through want of probity. Both bad faith and wrongdoing are grounds of disqualification from the defense of change of position.

b. The law must always reverse wrongful transfers of value, for to do otherwise would be to legitimate the wrong. The implication is that change of position can only limit the reversal of a wrongful transfer of value to the extant of the gain, not of the loss. A defendant (B) should always compensate a plaintiff (A) for losses caused. To allow even an innocent defendant to escape liability frustrates the aim of compensation: to undo the effect of the tort. Furthermore, as a matter of logic, a defendant's change of position can never alter the fact that a plaintiff has suffered loss and ought to be compensated for it; the defense is gain-based and is inappropriate where loss is at issue.

9. Sustainable Solution: All those who convert a plaintiff's (A) goods should be accountable for benefits they receive. The goods are plaintiff's, and he is entitled to reclaim them and any benefits others have derived from them. Liability in this regard should be strict, subject to the defense of change of position only. Each person owes their neighbor a duty to refrain from dealing with their neighbour's goods in a way inconsistent with their neighbor's title to them. For this reason, it is said, conversion is a tort of strict liability: *people dealing with goods do so at their peril*. However, there is also a Change of Position defense but which must be compatible with the law's protection of proprietary rights. This requires examination of the legitimacy of strict liability as a mechanism for achieving this end and whether change of position can temper it in appropriate cases without frustrating this rationale. Change of position is a valuable mechanism for doing practical justice between the parties, by ensuring that only the extant/surviving gain of defendant (B) must be given up, subject to bad faith and wrongdoing behavior, while the loss of plaintiff (A) is always restituted. This will establish a sustainable solution. There will be no peace without justice and any pretentious, rationed or delayed justice is denied justice.

We cite hereinafter the most important part of the legislation in power and by – laws, which are not in conformity with the property right:

The Law "On Land" no.7501, dated 19.9.1991, (articles no.5, 8, 24, 25)

The Law "For some changes and amendments in the Law no. 7501, dated 19.7.1991, "On Land", no.7715, dated 2.6.1993;

The Law "On the restitution of property to the expropriators", no. 7698, dated 15.4.1993; (articles no. 5, 12/2, 19, 26);

The Law "On value or land compensation of expropriators of agricultural land, meadows, pasture, and forestry", no. 7699, dated 21.4.1993;

The Law "On the development of zones with tourism as their priority", no.7665, dated 21.1.1993 (articles 7/ç and 13);

The Law "On land buying and selling", no. 7980, dated 27.7.1995 (articles 3/b, 4, 5);

The Law "For the adoption of some changes and amendments to the Decree no. 1359, dated 5.2.1996, "For some changes on the Decree no. 1254, dated 19.10.1995", no. 8084, dated 7.3.1996 (articles related to the limitation of the restitution of land up to 10 000 m2, article 4 point 3/2, 4 and 5 concerning time limitation);

President's Decree no. 1431, dated 27.3.1996, "For a change in the Law no.8053, dated 21.2.1995".

Decision of the Council of Ministers "For the reconstruction of the agricultural enterprises", no. 452, dated 17.10.1992;

Decision of the Council of Ministers no. 161, dated 8.4.1993 "For some changes and amendments in the DCM no. 452, dated 17.10.1992, Act no.5, dated 25.5.1993, of Central Agency for the Reconstruction and Privatization of Agricultural Companies in compliance with the Decision of the Council of Ministers no. 161;

Instruction no. 106, dated 23.2.1996 of the Water and Land Resources Department of the Ministry of Agriculture and Food.

Decision of the Council of Ministers no. 562, dated 9.10.1995 and DCM no. 883, dated 23.12.1996 (appendix DCM no. 562);

Points 5 and 7 of the Act no.1, dated 23.2.1999 "The criteria to implement DCM no. 666, dated 26.10.1988, "On measures taken related to the liquidation process in the companies depending on the Central Agency for the Reconstruction and Privatization of Agricultural Companies";

President's Decree no. 1359, dated 02.05.1996 "For some changes in the Decree no. 1254, dated 19.10.1995 "For the Compensation of expropriators of occupied land, of agriculture land with properties in tourist settings and living areas", changed by the Law no. 8024, dated 2.11.1995.

Everyone is presently insisting for the restitution of inherited property and implementation of the Constitution in power, but there is no way out as far as these laws, imperfect in their nature, are neglected or not implemented at all.

It is paradoxical the fact that real estate property confiscated by dictatorial regime, are still named as "state property", neglecting the fact that the Albanian Constitution of 1976 was abrogated by the Law no. 7941, dated 29.4.1991 "Main Constitutional Provisions", a date when the expropriators should have been economically rehabilitated, with a legal property title. This is the beginning of a series of mis-facts of the post-communist regime in Albania. There is no way to justify at any manner the legislation, which even presently allows that its own citizens are stripped off their legal properties. Because we have the state of anarchy when the Constitution and legislation of a country are not implemented.

The right to respect, restitute and protect the private property commenced with the abrogation of the Constitution of the Popular Socialist Republic of Albania in 1976, but even these days it is not fully performed as a process. The expression "state property" does not hold any juridical value on properties confiscated from the legal landowners by the dictatorial regime as it was defined as such by the Constitution of 1976, abrogated by the Law no. 7491, dated 29.4.1991 "Main Constitutional Provisions", article no.45 stating that: "The Constitution of the Popular Socialist Republic of Albania adopted on 28.12.1976 as well as the later amendments made on it are abrogated." While article no.4 of the Main Constitutional Provisions states that: "Republic of Albania recognizes and guarantees fundamental human rights and freedoms, national minorities, acknowledged by the international documents. Article no.8 states that: "Legislation of the Republic of Albania recognizes, considers and respects principles and legal acts generally admitted by international law.

The Law no. 7692, dated 31.03.1993 "For an appendix in the Law no. 7491, dated 29.4.1991 "Main Constitutional Provisions", article 27 reemphasizes the same principle when stating that: "No one is deprived of the property right, alone or with other persons, as well as the right to put it for heritage…No one is expropriated, unless this is due to public interest and fully compensated." However the adverse behavior has taken place. Article no. 4 of the Constitution in power states that: "The right is the basis and the boundaries of state activity. Constitutional

provisions are unequivocally implemented……"; Article no. 5 states: " The Republic of Albania implements the international law, obligatory to every state". Article no. 122/2 states: "An international agreement ratified by law prevails over the legislation of the country in case they do not comply with them." Thus, the Constitution in power, has only restated articles no. 4 and 8 of the Law no. 7491 "Main Constitutional Provisions"; as well as the article no. 27 of the Law no. 7692, and article no. 1 of Protocol 1 of the European Convention, clearly reiterating respect and guarantee over private property.

Article no. 181/1 of the Constitution in power states a 2 up to three year transition period to enact laws which could fully and legally regulate expropriations and confiscation done previous to the adoption of this Constitution, in compliance with the criteria defined by its article 41. This does not mean that Real Estate Agencies will continue to register for other three years property illegally provided to people without any property ownership by the dictatorial regime, as it happening presently, creating thus conflicts between people.

The transitory period up to three years stated by article no. 181/1 of the Constitution would be appropriate only for the restitution of a missed "rent" in compliance with the Strasbourg Court practice. As far as state properties converted as such with force and without any compensation at all by the regime, they should immediately and undoubtedly be restituted according to article no. 1, of Protocol 1 of the Convention and articles no. 4, 5, 41/2, 122/2, 182/2 of the Constitution, because they are taxable and compulsory to be implemented.

The Constitution clearly states the cases of limitation to freedom of economic activity, in case of important public interest, but this is accomplished through laws and in compliance with articles 11/3 and 17, defining that this limitation must be in proportion to the circumstances which caused it, without infringing the core of human rights and freedoms and without tolerating in any case the conditions set by the European Convention of Human Rights.

The structures of public power, according to their responsibilities, must respect "The fundamental human rights and freedoms" and contribute to accomplish them (article no. 15/2). As far as a property is obtained through granting, heritage, act of buying, and any other classic manner stated by the Civil Code (article no. 41/2 of the Constitution), everyone possesses the right to be rehabilitated and/or be reimbursed in compliance with the law, in cases the individual was damaged as a consequence of a legal act, illegal activity or inactivity from the public structures. (Article no. 44). All other laws and by – laws which have entered into force earlier than the adoption of this Constitution related to expropriations and confiscation, will only be implemented when they are in compliance with it (article no. 181/2).

Legal analysis with the Law "On Land" No. 7501, dated 19.07.1991

This law is absurd and with legal paradoxes. It was enacted in 1991 by the pluralist Albanian Parliament, of an authoritarian communist inspiration, under the influence of the former President Alia, intentionally to not solve appropriately the restitution of private property to the expropriated landowner. Later on, this law was maintained in power and implemented by the Democratic Party and former President Berisha, who although declared for the restitution of properties to the legal owners, maintained in power this law, implemented it seriously former President Alia's strategy, even deteriorated the confusion by enacting the Law no. 7715, dated 2.6.1993 "For some changes and amendments to the law "On Land", no. 7501, dated 19.7.1991. To prove our point of view let us cite the article no. 2 of the Law "On Land", which is so contradictory while defining that the state grants land property to physical and juridical individuals, who enjoy the right of property over the land all other rights obtained through this law, but deprives them of the right to sell or buy it. Thus, according to the law, these persons are "landowners and enjoy every right on their property", but this right is being conditioned and limited in cases they wanted to sell or buy their own land; so they in fact do not own their property.

The Law "On Land" defines that "the state grants land property to physical or juridical individuals", but does not provide any wording for the restitution of confiscated property to legal landowners, as promised in compliance with the original property ownership, as it should have been acted after the collapse of dictatorial regime and establishment of free trade market economy. Stating that the state gives property to physical and juridical individuals, does not define the kind of property, does not define its origin either the source, according to the equivocal article no. 3 of the law stating that soil land is given in property or for use without compensation. In this case we do not have a clear definition of the ownership, or cases when this property is given for use or in ownership. Since the beginning of pluralism in Albania, those who ruled, of communist mentality, to survive and obtain the economic power in their hands intentionally used the term "expropriated" instead of "legal owners", so as to

attribute this term to those who would be "granted property through special acts". Despite this, for the same reason, were introduced and are still used the terms "land" and "soil", instead of "immovable object" or "real estate"; this was done at purpose to create confusion while restituting the property back to the violent expropriated landowner.

During the post communist period, the laws that treated the "restitution of the properties" completely differ from those, which treated the restitution of "soil" and "agricultural land". I would like to underline that "state property" cannot be defined the one confiscated unreasonably from the legal owners. Thus, the article no. 5 of the Law "On Land", states: "The families, members of the agricultural cooperatives, after land's division, enjoy the right to get on their own and become landowners, a right which they enjoy as being part of the cooperative. The place and size of the land will be defined by the special committee on land". This clearly shows that the state still considers itself as the owner of confiscated property, and uses them as it wishes, i.e. it is the "political will" deciding on these issues, not recognizing thus neither previous ownership, or those before collectivism took place. The pluralist state is thus the private property guaranteed by the article no.1 of the European Convention, as it approves the collectivism process, accomplished through violence by the dictatorial regime. We cite here article no. 8 of the law: "While giving properties in ownership and for use to physical and juridical individuals, neither previous ownership or its size and boundaries are recognized." Article no.24 states: "The criteria for the division, registration, changes, ownership, estimation, or lease, a well as responsibilities of land registry offices are assigned by the Council of Ministers". Article no. 25 states: "Agriculture land taken in ownership in compliance with this law, is inherited according to the legal provisions on heritage, to be adopted in the future". This is absurd as the law on heritage existed and there was no need for a further adoption?!

Injustice weighed more on landowners when the law no. 7715, dated 2.6.1993, "For some changes and amendments in the law no. 7501, dated 19.7.1991", passed. Its article no. 3 states: "The owners of agriculture land can give it for rent to physical or juridical individuals, either domestic or foreign." but the owner is not the original one, but he who gained the right of this property according to this law without any ownership. Article no. 8 of this law was changed with the article no. 21 of the Law "On Land" which states: The right to denounce the breaches specified by this article can be forwarded by owners and users of the land, provided with the act of ownership". The denouncement is reflected in a minute recorder, and is presented within two days to the Commune Council or municipality where the violation has taken place." According to point ©, it is the Commune Council, which decides on the penalty amounting up to 5 lek/m2, equal to 1/3 of the present cost of city transportation.

While article no. 23 of the Law "On Land" stipulated: "Individuals who act contrary to the provision defined by this law, as well as special provisions and legal acts enacted by the Council of Ministers on this issue, who do not self-exploit the land under their property or use but give it to third parties, who do not take protective measures, allow illegal construction…and when these breaches do not constitute a penal act, are condemned for administrative violation and a penalty of 2000 – 5000 lek by the district offices of the Land Registry. This article does not mention the legal owner at all, while the state is still supposed to be the owner of the confiscated properties during the dictatorial regime. This all means: "Pay your penalty and build illegal constructions."

Article no. 9 of the law no. 7715 abrogated in the article no. 23 of the law "On Land" we above cited, the words: " who do not self-exploit the land given to them in ownership or use, but give it to third parties instead", and the words " who build illegal constructions". This is as if to say: "Go everywhere you can and build illegal constructions, as the penalty does is withdrawn." You might see "Bathore" and other repercussions as such. Neither the right of private ownership guaranteed by the above mentioned laws, or unwritten traditional customs rights were respected. We have to make it clear to everyone that in all northern districts, and party in other areas of the country where the tradition was pursued, people respected the boundaries of 1945, despite of what the dictatorship asked them to do.

Article 1 of the law "On the restitution and compensation of property to the expropriators" No.7698 dated 15.4.93 says: This law acknowledges the ex-owners or their successors the right of property for the state-owned properties, ex-propitiated or confiscated ones, according to the legal and sub-legal acts as well as the court decisions announced after 29 November 1944, or those taken unfairly by the state in different ways and at the same time defines the methods for giving back and restituting them." Through this under law-making it accepts openly and clearly the unfair land seizure by the state and proves that the state has violated the property rights for the legal owners, but because of the reasons mentioned above, it continued to not respect the pure ownership title and to keep the owners without his property right. Through Article 5 this law restricts and discriminates unfairly the legal ex-propitiated owner when it says: "the amount of restitution or compensation by equivalent surface will be complete

up to 10 000 square meters (1 ha). When the land property is from 1 ha to 10 ha, the degree of restitution or compensation will be plus 10%, while for properties bigger than 10 ha it will be plus only 1%." In article 12, there is repetition on purpose of well-known expressions for denying the real land owner and in article 19 there are some definitions similar to those of article 5 such as: "For the free land within the border lines of the cities, according to the regulatory plans approved at the moment of entering into force of this law, that will be restituted to the ex-owners, the degree of restitution will be 0,5 ha (corrected in 1 Ha pursuant to law 8084 dated 07.09.96.") Article 26 says: "The price of the land is decided by a special law", at the same time when the prices cannot be commanded (forced) but they are defined by the free market and specific conditions.

Law No.7699, dated 21.04.93 "For the compensation in value (cash) or land to the ex-owners of the agricultural land, meadows, pasture grounds, forestry land and forests, this law has not been dealt with here, because if true ownership title will start to be respected this law is automatically abrogated.

Law No 7665 dated 21.1.93 "On the development of zones with tourism as their priority" (articles 7/ç and 13); In the construction and Tourism sector:

Illegal acts have been identified in this sector harming the owners with the true ownership title and which can be punished by the law, such as the invasion of the free territories, illegal constructions the cities, done by juridical or physical persons without any ownership title or any other right. These actions are results of the indifference or abusive attitudes of the Territory Regulation Council (KRRT) and other organs and thus this leads to not restituting the property to its owner. Unfair restrictions made by the dictatorship harming the ex-propitiators have been followed by those of the Law No 7665 dated 21.1.93 "On the development of zones with tourism as their priority". According to article 1 of this law "stimulated person" is called each juridical or physical person, national or foreigner, authorized to exercise stimulated activity, who is being recognized some facilities in the other articles on the condition that he be engaged in a long-term rent agreement with the Ministry of Tourism, as the legal representative of the owner. Article 7, point ç of this law determines: "the rights to be engaged in stimulated activity are given to a stimulated person on the condition that he accepts to sign a rental agreement with the Ministry of Tourism and who is defined in this law as the legal representative of the owner that takes the land for using it together with the real-estates that are built on it for exercising the stimulated activity. The Minister of Tourism can sign an agreement for selling the land with a stimulated person in the conditions preset in the Albanian legislation." This disposition is clearly unfair and non-judicial because it gives the right to the official of a state institution without any ownership title to decide on and sign agreements for the alienation of giving for usage of a land or real-estate that belongs to somebody else. What kind of agreement can the Minister or the Chair of the Committee for the development of tourism for a piece of land or a real-estate that belongs to the owner ex-propitiated by the dictatorship, and that is not being restituted to him mainly because of that piece of legislation that has been attacked as anti-constitutional, as long as it violates and denies the fundamental rights of the citizens who have been ex-propitiated violently and without any compensation.

The nonsense from the point of view of the juridical technique is obvious in article 13 of this law, which says: "For the issues foreseen by this law, its dispositions will be implemented despite of what the other legal dispositions foresee." So this law becomes inviolable although it contradicts the dispositions of other current laws or those that can come later. It is not allowed and it is anti-constitutional that the Tourism Development Committee makes any rental agreements and long-term too with a third person primarily for 25 years and which can go up to 99 years. All the contracts that might have been signed for the land of the ex-owners are against the constitution because they deny the rights of the legal owners. At the same time it is not allowed that the law "For Urban Planning" is violated. This requires the land-registry office document (land deed of ownership) for the ownership of the square, as the condition for issuing the construction permission, but this is not respected by the law "On Tourism".

The new constitution in force in its general principles considers as legal and moral the restitution of the real and non-real estate that the state of dictatorship had stolen to the true owner. Within this point of view, "The stimulated person" should be exactly the true owner with full rights pursuant to the law No.7665 dated 21.1.93 and in this case the Ministry of Tourism and KRRT as the organs who co-ordinate the interests of the individuals with the state should force the legal owners that when they become fully responsible for their property, they obey the rules of the urban and tourist development of the area, by respecting the procedures for building according to all the

appropriate dispositions. This is the way how we can avoid a source which feeds the corruption to the officials and the conflicts that are created artificially among the true owners and those fakes who have been blessed by the dispositions we are mentioning. Aktualisht ky nen është çfuqizuar, por pasojat nuk janë rregulluar. Currently this article is abrogated, but the consequences are not adjusted.

Articles 3/b, 4 and 5 of the law no.7980 dated 27.07.1995 "On land buying and selling" states:

Article 3: Until the physical compensation of the expropriators finishes, passing of the free land from state property into private property is allowed only in the following cases: Point (b) of this article states: " Upon the Decision of the Council of Ministers, for sale, for key important investments for the country. In this way Article 3/b, authorizes the Council of Ministers with the right to sell the Albanian land to the foreigners…… This is as much unacceptable as it is unfair, anti-constitutional, and anti-national despite of the fact that the investment might be important or not.

Article 4 of these law states: The transition of state property occupied land into private property is obligatory when the interested one requests it in the cases:

The land belongs to objects that are private ones or that are being privatized. The transition is made favoring the owners of these objects.

The land will be used for extensions or reconstruction by the private persons that win this right through the urban planning as it is stated in the second paragraph of article 1. The transition is made favoring the owners of the object that will be extended or reconstructed.

The land has unfinished investments. The transition is made favoring the owner of the unfinished object.

(ç) In any other case according to the Decision of Council of Ministers all expropriators may use their physical compensation right to make up for the land as per the above cases. Article 4, besides the fact that it is anti-constitutional, is at the same time diametrically in contradiction with the interest of the expropriators as it is with the juridical logic. The formulation of this disposition seems to have been made on purpose for being that meaningless and evasive. As per this article the transition of the occupied land from a state property into a private one is obligatory, when it is required by the interested in the following cases: when the land belongs to the objects that are private or will be privatized and the transition is made favoring the owners of these objects. Thus the object has been nationalized or built by the state a robbed land. This object is sold by the sate to a defined person and this person is given the right to ask for the privatization of the land as well according to this law, and this right in fact should be recognizable to the owner of the expropriated land as it is determined by the law no.7698 dated 15.04.93. In this way the legitimate owner is denied the right of the legitimate restitution of its property, while the state sells without being the owner equipped with the legal property documents with juridical values. The same analyses is true also for points a, b, c, ç of this law.

Article 5 of Law No.7890 according to which the foreigners is born the right to buy from the state land with funny prices when their investment goes to a certain value. In this law the Albanian owner is never taken into consideration while the foreigners are given the land let's say for free. In this way the foreigners become the owners of the Albanians' land robbed by the dictatorial regime.

Law No. 8084 dated 7.03.96 in its whole violates the rights of the owners by restricting these rights in the restitution amount of 10 000 m^2 . These arbitrary restrictions go against the definitions of the Main Constitutional Dispositions, Article 1 of Protocol 1 of the Conventions and the Constitution in power. Just to illustrate it let us mention Article 1 which states:….."the amount of restitution or compensation in kind is complete in all the cases when the land is not more than 10 000 m^2 "and "The free land within the bordering line of the cities, fitting tot he bordering plans approved at the moment of entering into force of this law, will be restituted to the expropriators and the amount will be up to 10 000 m^2." Restrictions of this kind violating the constitution can be found everywhere in the text of the law along with other practices that aim at restricting in maximum what should be restituted to the expropriator.

Për përmirësimin e legjislacionit në fuqi, Qeverisë dhe Kuvendit në vitin 2000 i është kërkuar sa vijon

To improve the legislation in force, the Government and the Parliament in 2000 was asked the following:

The government should order the ministries and other central institutions as well as the relevant structures to study the legal basis of their activities and propose to stop changes in that part of the legislation which is in contradiction with the Constitution of the Republic of Albania, with article 1 of Protocol 1 and articles 14 and 17 of the Convention for "The Fundamental Human Rights and Freedom" compulsory for implementation.

Për këto kërkesa adresuar Qeverisë dhe Kuvendit të Shqipërisë që në Shtator 2000 nuk është bërë asgjë konkrete. Për pasojë anarkia e pronës dhe pasojat e saj janë thelluar më tej . Të gjitha ligjet e miratuara pas vitit 2000 përfshi Ligji 9235/2004 (i ndryshuar) bien ndesh me detyrimet kushtetuese dhe specifikisht me nenin 181 dhe 41 të Kushtetutës sepse kanë ruajtur të pa ndryshuar nenin 8 të ligjit 7501 të komentuar më sipër.

Nothing concrete is done regarding the requirements addressed to the Government as well as the Parliament in September 2000 . As a result ,the anarchy due to property related issues and its consequences are further deepen All laws passed after 2000 including Law 9235/2004 (as amended) collide with constitutional obligations and specifically with Article 181 and 41 of the Constitution because they keep unchanging the Article 8 of Law 7501 as commented above.

Theksojmë se deri më tani janë afro 27 ligje, 234 vendime, 356 amendime, 152 udhëzime, 289 formular, 6 dekrete. Funksionojnë 8 institucione që japin akte për tituj pronësie, të cilat nuk rakordojnë me njëra tjetrën dhe legjislacioni që zbatojnë është kontradiktor. Në 23 vjet, janë rreth 6 milion procese gjyqësore. Vendimi pilot i GJEDNJ datë 31 Korrik 2012, ka caktuar afatin 18 muaj për zgjidhjen e problemit të pronave konform detyrimeve kushtetuese. Sa më shumë shtyhen afatet kohore për zgjidhjen e problemit të pronës aq më shumë thellohen dëmet sociale dhe ekonomike.

We note that so far are about 27 laws, 234 decisions,356 amendments 356, 152 guidelines, 289 forms,and six decreesThere are 8 functioning institutions that provide acts for titles that do not match with each other and implement legislation that is inconsistent In 23 years, there are about 6 million lawsuits. Pilot ECHR decision dated 31 July 2012, has fixed a 18 month term for solving the problem of properties conform constitutional obligations.. The more the deadlines for solving the problem of property are postponed,the more the social and economic damages deepened.

Burimi kryesor i korrupsionit është mos zgjidhja e pronës dhe korupsioni është bërë aq i madh sa rezikon gjithçka që është aritur nga pluralizmi politik dhe rrezikon demokracinë.

The main source of corruption is the failure to solving the property problems and corruption has become so dominant and threatning as it risks everything acomplished by political pluralism and it risks democracy.

Për plotësimin e detyrimeve kushtetuese dhe të kërkesës së GJEDNJ, lidhur me pronën, që mbetet parakusht për mundësinë e marrjes së statusit kandidat në BE, dhe kalimin nga pluralizmi dhe tranzicioni anarkik për në demokraci, gjykojmë se miratimi me procedurë të shpejtuar i këtij projektligji, zgjidh në mënyrë të qendrushme dhe pa faturë financiare problemin e pronës së trashëguar

For the fulfillment of constitutional obligations and the request of the ECHR concerning the property, which remains a precondition for the possibility of obtaining EU candidate status, and transition from anarchic transition and pluralism and democracy, we believe that the accelerated approval procedure of this draft law, solved in a sustainable manner and without any financial bill the problem of inherited property.