

**REPUBLIC OF ALBANIA
THE ASSEMBLY**

DRAFT LAW

Nr. _____ dated _____ 2003

ON RECOGNITION, RESTITUTION AND COMPENSATION OF PROPERTY

In reliance on Articles 41, 78, 81 point 1, 83 point 1 and 181 of the Constitution, by the proposal of _____.

THE ASSEMBLY OF THE REPUBLIC OF ALBANIA

DECIDED

**CHAPTER I
GENERAL PROVISIONS**

**Article 1
Object of the Law**

The object of this law is:

- a. the just regulation, according to the criteria of Article 41 of the Constitution, of the issues of property rights that have arisen from expropriation, nationalisation or confiscation;
- b. the recognition, restitution, and where according to this law restitution of property is impossible, compensation;
- c. the procedures for accomplishing restitution and compensation of property and the administrative bodies charged with its completion.

**Article 2
Right to Property**

1. Every expropriated subject enjoys the right to request the recognition of the property right, in compliance with this law, if the property has been taken by the state according to legal acts, sub-legal acts, criminal court decisions or in any other unjust form since 29.11.1944, and has the right to ask for restitution or compensation of the property.
2. The expropriation, or the limitations equal to it, made by the state in implementation of the laws provided in Annex 1 of this law, are considered expropriation in the public interest, and this law recognizes and provides for just compensation to expropriated subjects.

Article 3 Definitions

For implementation of this law, the following terms have these meanings:

- a. **“Compensation”** – means just remuneration, according to the market value of the property at the moment this remuneration is recognised, in cash or in other items recognised to the expropriated subject in return for the property expropriated, confiscated or dispossessed unjustly from him in any other manner.
- b. **“Property”** - means an immovable item as defined in the Civil Code.
- c. **“Expropriated Subject”** - means natural or juridical persons or their heirs whose property was nationalized, expropriated or confiscated according to legal and sub-legal acts and criminal court decisions according to paragraph 1 of Article 1 of this law.
- d. **“Alienation”** - means the transfer of ownership or other real rights from one natural or juridical person to another.
- e. **“Building site”** - means land that is located inside the border line of inhabited zones at the moment this law enters into force.

Article 4 Exclusions to this Law

Provisions of this law are not applicable for:

- a. property gained as result of implementation of Law nr.108, dated 29.08.1945 “On Agrarian Reform”, with later changes.
- b. expropriation made against a just compensation and used for a public interest.
- c. property donated to the state for which official documents or related publications exist.
- d. property nationalised or confiscated for the implementation of Law nr. 37, dated 13.01.1945 “On extraordinary taxation”.

Article 5 Movable Property

Option 1:

The recognition, restitution and compensation of movable property will be done with a separate law.

Option 2*:

1. The right of ownership to movable objects is recognized to expropriated subjects when it is certified with documents, invoices, judicial decisions, state confiscation documents etc., that the state has unjustly taken these items.
2. In cases when the state has transferred the above mentioned items, including valuable objects, to third parties or has preserved them in its own bank account etc., they are restituted to the expropriated subject, whereas the third parties are compensated by the state. For objects that do not exist anymore, as well as for the stock of nationalized animals, the expropriated subject is compensated. For money and precious coins, the expropriated subject is compensated according to banking practices.

* (If this option is adopted, then the definition of “property” in Article 3 of this law should be reviewed)

CHAPTER II
RECOGNITION OF THE RIGHT TO OWNERSHIP AND RESTITUTION
OF PROPERTY

Article 6
Recognition of the Right to Ownership and Restitution of Property

Ownership to property is recognized and property is restituted without limitation to all expropriated subjects except for the cases when it is defined differently in this law.

Article 7
Property not Subject to Restitution

1. Property is not restituted that:
 - a. is used to fulfill obligations of the Albanian State that are a result of treaties and conventions to which our state is a party;
 - b. has projects or investments on a national or local scale in the field of transportation of any kind, of energy, of telecommunications, of water works of any kind and other investments in the public interest;
 - c. serves for the preservation of the environment, health, culture and public education or pre-school education;
 - d. serves in the field of national defense;
 - e. is special cultural and historical property as defined according to the legislation in force;
 - f. *Option I* – has been divided according to the legal acts set forth in Annex 1 of this law.
Option II – delete point f; consequently point 2 of Article 2 should be deleted as well.
2. Property mentioned in point 1 of this article is compensated according to the rules defined in this law.

Article 8
Building Site

1. When a building site is alienated to third parties and there are no permanent legal buildings, it is restituted to the expropriated subjects, whereas the state will return to the third parties the compensation according to the market value.
2. When, on the building site of an expropriated subject, the state or third parties have made substantial investments in conformity with legislation in force, which are valued according to the market value at the moment the right to the property is recognized to the expropriated subject, the following is implemented:
 - a. When the value of the investment is up to 100% of the value of the building site, the property is restituted to the expropriated subject, after the latter pays for the investment.
 - b. When the value of the investment is more than 100% of the value of the building site, the state or third parties retain ownership and the expropriated subject receives compensation according to this law.

Article 9 Housing

1. When there are lessees in housing that is owned by expropriated subjects, they continue to live in that housing until the state finds housing according to points 2 and 3 of this article.
2. The state shall within 2 years from the date of entry into force of this law secure housing with the same surface area for the lessees who live in the housing owned by the expropriated subjects or shall secure low interest loans for them. The value of the rent for this 2-year period is defined by a Council of Ministers decision. After the 2-year period the state shall pay to the expropriated subjects the value of the rent on behalf of the lessees according to the market value.
3. If during this time the owner finds other housing for the lessee within the same location and with a surface area equal to the housing standards at the moment this law enters into force, but no more than is actually possessed, the lessee is obliged to move from the housing. With the termination of the time limit defined in point 2 of this article, if housing has not been secured, the state pays the value of the rent on behalf of the lessee.

Article 10 Property not Used for a Public Purpose

When an expropriation was done in the public interest but the immovable property is not used for this purpose, it is restituted to the expropriated subject while the expropriated subject returns to the state the remuneration received.

CHAPTER III COMPENSATION OF PROPERTY

Article 11 Forms of Compensation

1. For property mentioned in Article 7, the state compensates the expropriated subjects as follows:
 - a. With other property of the same type in state ownership.
 - b. With other property of any type of equal value in state ownership.
 - c. With shares in companies with state capital with a value equal to the property.
 - d. With the value of objects that are subject to the process of privatisation.
 - e. With tax credits as specified in respective finance laws.
 - f. With money.
2. The expropriated subject submits a written request, addressed to the Local Commission on Restitution and Compensation of Property, for the form of compensation to be given. Within 30 days from receipt of the request, the commission, through a reasoned decision, decides to accept or reject the request and offers the expropriated subject another form of compensation according to the definitions set forth in point 1 of this article. The expropriated subject has the right to appeal to the court against the Commission's decision not later than 30 days from the announcement of the decision.

Article 12
Location of Physical Compensation

Physical compensation according to Article 11 is done within the same administrative-territorial unit (within the village, commune, municipality, district, region) or in the nearest administrative-territorial unit.

Article 13
Valuation

1. For the valuation of property that will be compensated, the Local Commission for the Restitution and Compensation of Property establishes an independent expert group. In case the establishment of the expert group is not possible, the Commission can appoint as experts other experienced and specially qualified persons in the fields of law, economics or engineering that is related to the process of restitution and compensation of property.
2. For the valuation of immovable property that is to be compensated, the expert group takes into account the initial value, amortization, purpose, location of the object as well as the indexes of the market and currency price.
3. In carrying out its activities no member of the state bodies for the process of restitution and compensation of property or no expert group shall be subject to any conflict of interest provided in the Code of Administrative Procedure.

Article 14
Right of First Refusal (Right of First Purchase)

1. For property occupied by state objects, expropriated subjects have the right of first refusal for these objects when they are privatised.
2. The expropriated subjects shall have the right to waive their right of first refusal and receive compensation based on Article 11.

CHAPTER IV
STATE BODIES FOR THE PROCESS OF RESTITUTION AND
COMPENSATION OF PROPERTY

Article 15
State Committee for Restitution and Compensation of Property

1. The State Committee for Restitution and Compensation of Property is created for the implementation of this law. The State Committee is made up of 5 members who are appointed by the Assembly. One member is proposed by the President of the Republic, two members are proposed by the parliamentary majority and two members are proposed by the parliamentary opposition. The member proposed by the President is the Chairperson of the State Committee for Restitution and Compensation of Property.

2. A member of the State Committee for Restitution and Compensation of Property can be any Albanian citizen who:
 - a. has a bachelors degree as a lawyer, economist or in the engineering field related to the process of restitution and compensation of property;
 - b. has a minimum of ten years of work experience in the profession;
 - c. enjoys a good reputation and professional capabilities in their field;
 - d. is not a member of a steering body of any political party;
 - e. has not been found guilty by final court decision of committing a crime;
 - f. has not had a disciplinary measure taken against him if he has been working in public administration;
 - g. has full capacity to act.
3. Membership in the State Committee for Restitution and Compensation of Property is incompatible with any other state or political activity.
4. The salary for the members of the State Committee for Restitution and Compensation of Property is equal to the salary of a deputy minister while that of the chairperson is 10 % higher than the salary of the other members.

Article 16

Competencies of the State Committee for Restitution and Compensation of Property

1. The State Committee for Restitution and Compensation of Property has the following competencies:
 - a. examines and makes decisions for appeals against the decisions of the Local Commissions for Restitution and Compensation of Property related to procedural issues in the implementation of the law or in issuing decisions, except for the case provided in Article 19 of this law,
 - b. makes decisions to unify the practices for the process of restitution and compensation of property, on the basis of and for the implementation of the law.
 - c. nominates and discharges the chairpersons and members of the Local Commissions for Restitution and Compensation of Property.
 - d. monitors the implementation of this law by the Local Commissions for Restitution and Compensation of Property.
 - e. approves the draft-budget, organizational structure, organizational chart and salary for the administration of the State Committee, Local Commissions and their administration.
 - f. collects and analyzes data for the process of restitution and compensation of property and reports to the Assembly at least once per year or as many times as the Assembly or its permanent commissions require.
 - g. approves the Regulation for the Organization and Functioning for the Committee itself and for the Local Commissions for Restitution and Compensation of Property.
 - h. defines, in co-operation with the Ministry of Finance, the fees for services that will be paid by the expropriated subjects for the process of restitution and compensation of property.
 - i. defines by a decision the methods for co-operation between Local Commissions when the property that is to be recognized, restituted or compensated is located in two or more Local Commission jurisdictions.
 - j. defines the manner for replacement of experts or members of the Local Commissions in cases when they are subject to legal restrictions for the exercise of their duty.

2. For the understanding of this law, the term “procedural issue” means:
 - a. the cases when the Local Commission for Restitution and Compensation of Property has violated the provisions that regulate its jurisdiction and competencies;
 - b. a decision is issued based on incomplete documentation and verifications;
 - c. when the necessary documentation, on the basis of which recognition, restitution and compensation of property is made, has not been requested.

Article 17

Local Commissions for Restitution and Compensation of Property

1. Local Commissions for Restitution and Compensation of Property are created and function where Immovable Property Registration Offices function. The competencies of each Commission stretch throughout the territory covered by the respective Immovable Property Registration Office.
2. Local Commissions for Restitution and Compensation of Property are made up of 5 members who are proposed by the Prefect of the Region and approved by the State Committee for Restitution and Compensation of Property.
3. A member of the Local Commission for Restitution and Compensation of Property can be any the Albanian citizen who:
 - a. has a bachelors degree as a lawyer, economist, agronomist or in the engineering field related to the process of restitution and compensation of property;
 - b. has not been found guilty by final court decision for committing a crime;
 - c. has a minimum of 7 years of work experience in the profession;
 - d. has not had a disciplinary measure taken against him if he has been working in public administration;
 - e. has full capacity to act.
4. Membership in the Local Committee for Restitution and Compensation of Property is incompatible with any other state or political activity.

Article 18

Competencies of the Local Commissions for Restitution and Compensation of Property

1. Local Commissions for Restitution and Compensation of Property have the following competencies:
 - a. verify the truth of documents submitted by expropriated subjects and compare them with legal acts, sub-legal acts and criminal court decisions, according to Article 2 of this law, that were the basis for the expropriation, nationalization or confiscation of property.
 - b. verify or determine the financial obligations of the state to the expropriated subjects or third parties as defined in this law.
 - c. nominate experts who help the Commission with technical issues during the process of restitution and compensation of property
 - d. confirm the ownership right to expropriated subjects, issuing the respective documentation for the recognition, the size and method of restitution or compensation according to the model set forth by the State Committee for Restitution and Compensation of Property.

- e. order institutions that administer state or public property to submit documents or data which they consider necessary.
 - f. define cases that do not profit from this law, in accordance with the law and on the basis of documentation.
2. Decisions from the Local Commissions for Restitution and Compensation of Property shall be in writing, made during its meetings, contain reasoning and include other requirements foreseen in the Code of Administrative Procedure.
 3. While defining property restitution and compensation, the Local Commissions base their work on a written certificate from the Immovable Property Registration Office regarding the legal status of the property that will be restituted or the legal status of the property with which the expropriated subject will be compensated. The request to the Immovable Property Registration Office is addressed by the chairperson of the Local Commission in writing before the Commission makes a decision. The Immovable Property Registration Office shall issue a written response within 5 working days from submission of the request and the written response shall be deposited in the respective file.
 4. According to this law, at the end of the term for appeals, the Commissions shall send an original copy of their decisions for the recognition, restitution and compensation of property to the Immovable Property Registration Office.

Article 19 Time Limits

1. Expropriated subjects must submit any new requests to gain rights foreseen in this law within 2 years from the date of entry into force of this law.
2. Local Commissions for Restitution and Compensation of Property restate or compensate property within 3 months from submission of the request. In cases when, within this term, it is impossible for these Commissions to decide with a reasoned decision, they can postpone the time period for issuing a decision but not for a period of more than 1 month.
3. In cases when the Local Commissions do not issue a decision within the period defined in point 2 of this article, the State Committee for Restitution and Compensation of Property makes the decision within 30 days upon the termination of the time period mentioned in point 2 of this article.

Article 20 Appeals

1. Expropriated subjects are entitled to appeal to the State Committee for Restitution and Compensation of Property against a decision of the Local Commission related to the procedural issues set forth in Article 16, within the limits and manners provided in the Code of Administrative Procedure.
2. The State Committee for Restitution and Compensation of Property shall issue a decision for the appeal within 30 days from the moment the complaint is filed, leaving it in force or returning the case for review to the Local Commission for Restitution and Compensation of Property.
3. For issues other than procedural mentioned in Article 16, the expropriated subject is entitled to appeal the decision of the Local Commission to the court within 30 days from the day the decision is made. In case the court decides that the appeal is related to the procedural issues according to Article 16, it transfers the appeal to the State Committee and the time period from which to consider the request starts from the day the appeal is received from the court.

CHAPTER V FINAL DISPOSITIONS

Article 21 Establishment and Functioning of Commissions

1. Subjects provided in Article 15, within 30 days from entry into force of this law, must submit to the Assembly the candidates for members of the State Committee for Restitution and Compensation of Property. The Assembly nominates the members of the State Committee within 30 days after the name for each candidate is given.
2. The State Committee for Restitution and Compensation of Property, within 30 days of its appointment, appoints the members of the Local Commissions for Restitution and Compensation of Property. Within 60 days from the date this law enters into force, the Council of Ministers takes measures and secures the budget and office space for the State Committee and Local Commissions for Restitution and Compensation of Property. Expropriated subjects can begin to present their requests for the recognition, restitution and compensation of property law beginning on __ / __ / 2004.

Article 22 Previous Decisions

1. In case the files submitted to the Local Commissions for Restitution and Compensation of Property, opened according to Law nr. 7698, dated 15.4.1993 "On restitution and compensation of property to the former owners", contain the necessary documentation for verification of the property to be gained from this law, the expropriated subject submits only a written request for recognition, restitution and compensation of the remaining part of the property. Decisions that were issued based on Law nr. 7699, dated 21.04.1993 "On compensation in value or with sites to ex-owners of agricultural land, pastures, meadows, forestry land and forests" which have not been implemented, are considered valid as to the recognition of the property rights, and the Local Commission defines whether restitution or compensation of the property is possible.
2. The process of restitution and compensation re-starts in the manner, form and conditions set forth in this law.

Article 23 Fund of Compensation

1. Starting from 2004 and for a subsequent period of ten years the Assembly, at the proposal of the Council of Ministers, appoints a special compensation fund in the state budget, administered by the State Committee for Restitution and Compensation of Property for monetary compensation to expropriated subjects. For the period from the recognition of the property right to receiving compensation in cash, the expropriated subject is also entitled to receive the bank interest rate calculated according to the annual average rate issued by the Bank of Albania.
2. Based on the Local Commission or court decisions, and by its own order, the State Committee uses the fund to complete monetary compensation to expropriated subjects.

Article 24
Termination of the Process

The process of recognition, restitution and compensation of immovable property ends on 31.12.2006, except for the completion of payments for compensation, which will end within the term defined in Article 23 of this law.

Article 25
Keeping Documentation

The documentation for the process of recognition, restitution and compensation of property is kept according to the legislation on archives. Upon the termination of the process according to Article 24 this documentation is submitted to the Central State Archive.

Article 26
Auditing

An economic and financial audit of the State Commission for Restitution and Compensation of Property and of the Local Commissions is conducted by the High State Auditor at least once every eight months. Audit results are always made public.

Article 27
Abrogation

Law nr. 7698, dated 15. 04. 1993 “On restitution and compensation of property to the former owners”, with subsequent amendments, Law nr. 7699, dated 21.04.1993 “On compensation in value or with building sites of agricultural land, pastures, meadows, forestry land and forests to former owners”, Decree nr. 1254, dated 19.10.1995 “On compensation of the former owners of agricultural land, non-agricultural land and occupied construction sites with sites in tourist lands and in the inhabited zones” and Article 10 of Law nr. 8030, dated 15. 11. 1995 “On the State Contribution for unsheltered households”, and any other provision which is in violation with this law is abrogated.

Article 28
Entrance in Force

This law enters in force on __ / __ / 2004.

Speaker
Servet Pëllumbi

ANNEX 1

1. Law nr. 7501, dated 19.07.1991 ‘On land’
2. Law nr. 7512, dated 10.08.1991 “On sanctioning and protecting private property and free initiative, private independent activities and privatization”
3. Decree of the President of the Republic nr. 378, dated 2.12.1992 “On giving working studios to painters and sculptors”
4. Law nr. 7652, dated 23.12.1992 “On privatization of state housing”
5. Law nr. 7665, dated 21.01.1993 “On devepoment of zones that have priority in the development of tourism”
6. Law nr. 7698, dated 15.04.1993 “On restitution and compensation of property to former owners”
7. Law nr. 7980, dated 27.07.1995 “On buying and selling building sites”
8. Law nr. 8053, dated 21.12.1995 “On granting ownership of agricultural land without compensation”
9. Law nr. 8312, dated 26.03.1998 “On undivided agricultural land”
10. Law nr. 8405, dated 17.09.1998 “On urban planning”