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DECISION No. 222, dated 23.3.2016

On the treatment of the requests for the recognition of the right for property compensation¹ *(Amended with the DCM no 765, dated 20.12.2017)*

Pursuant to article 100 of the Constitution and article 37, of law no. 133/2015, “On the treatment of property and the completion of the property compensation process”, with the proposal of the Minister of Justice, the Council of Ministers

DECIDED:

This decision regulates the procedures on the collection, processing, administration of the acts of the expropriated subjects and the decision-making of the PTA during the process for the recognition of the right for compensation, pursuant to law no. 133/2015, “On the treatment of the property and the completion of the compensation of properties”.

CHPTAER I COLLECTION OF ACTS

1. The expropriated subject, his legal heirs or their representative with a power of attorney, lodges with the Property Treatment Agency (hereinafter referred to as PTA), directly or through the mail, the motivated request for the recognition and the compensation of the property, accompanied

¹ DCM no. 222, dated 23.3.2016 was published in the Official Journal no 50, April 4, 2016.
DCM no. 765, dated 20.12.2017, was published in the Official Journal no 226, December 22, 2017.

- with the necessary documentation, according to this decision, with which the subject tries his claims.
2. The request of the expropriated subject, of his legal representatives or of the representative with a power of attorney, shall be in accordance with the model form, enclosed to this decision, on the application of the requests for the recognition of the compensation, which shall be signed by the expropriated subject or his representative with a power of attorney. The model form shall contain a warning, which charges the applicant with responsibility according to the law, in case false data is declared or forged documentation is lodged.
 3. The accompanying documentation, which certifies the ownership of the expropriated subject, shall be composed of:
 - a) legal documentation;
 - b) cartographic documentation;
 - c) *any other supporting documentation.*
 4. The legal documentation shall be composed of, accordingly:
 - a) the mortgage, cadastral, archive documentation, the previous decisions of the former Commission for the Restitution and Compensation of Properties, Commission/Committee for the Restoration and Compensation of Properties, the former RORCP, ARCP, the document which certifies the removal or taking the right of property by the state from the expropriated subject, according to the legal and sublegal acts, according to the criminal decisions of the courts or in any other unfair way from 29.11.1944 or the document on the immovable properties of the Albanian nationals, created before April 7, 1939, which were sequestered according to article 14 of law no. 37, dated 13.1.1945 "Law of the extraordinary taxation on the war profits or any other legal document issued by the state institutions, necessary for the fair solution of the case".
 - b) when one of the above-mentioned legal documentations has shortcomings regarding the surface and the boundaries of the claimed property, the subject files the final judicial decision along with the plan-location of the property, under adjudication, sealed by the court as well as the expertise-act, in case the latter has been carried out during the adjudication of the case in the court.
 5. *The current cartographic documentation is composed of:*
 - a) *The map with the topographic and cartographic data of the claimed property, reflected on the current map and confirmed by the institution, which, according to the case, may be the Office of the Immoveable Property Registration or the Directorate of Forest Service, where the claimed property is located, or any other state institution, as well as the positioning of the claimed property with a licensed engineer/surveyor, except for the cases when the positioning of the property has been conducted through a final court decision.*
 - b) *The current map, where the claimed property with a licensed engineer/surveyor is positioned, except for the cases when the property positioning has been carried out through a final court decision.*

5/1. In the cases when there are incompatibilities in the specification of the surface between the legal documentation and the cartographic one, the PTA gives priority to the legal documentation for the specification of the surface for which it recognizes the ownership. The PTA positions the property based on the subject's best interest.

5/2. The other supporting documentation of the request is the documentation that is requested during the administrative reviewing of the request and may be composed of the following documents: certification on the profiting or not from the legal provision on the division of agricultural land, previous restitution or compensation decisions, which indicate previous benefits of the subjects, documents or other certifications which indicate previous benefits stipulated in article 6, paragraph 6 of law no. 133/2015, certifications or certificates issued by the offices of civil registry or any other documentation which serves to the fairest possible solution of the request that is reviewed.

CHPTAER II ADMINISTRATION OF ACTS

- 6. In the cases when the PTA finds shortcomings in the accompanying documentation of the request, the expropriated subject shall be asked to complete the required documentation within 30 (thirty) days from the moment the notification is received. In this case, the legal time limits for the review of the request shall be suspended up to the moment the documentation is completed. When the request misses the exact mail address, the notification shall be made through public announcement in the premises of the PTA and in the local governance units, where the property, which is the subject of the claim, is located as well as in the residence of the subject or of his heirs. The notification is considered conducted when the institution of the local governance unit confirms that the announcement has been carried out for 30 days. This confirmation becomes a part of the file.*
 7. Any expropriated subject is entitled to be equipped by the office of the protocol of the PTA with the respective certification on the number of the protocol of the registered file, which shows the date of the submission of the request and its documents.
 8. The requests of the expropriated subjects, which are deposited through the mail service and have shortcomings in the accompanying documentation, which is something that makes their evaluation impossible, shall be returned to the applicant in the given address, asking the applicant to fill in the information in a detailed way. The requests, which lacks the exact mail address, is evaluated as not well-founded and shall be reactivated only upon the applicant's interest at the offices of the PTA. At the moment of the identification, the respective structure of the PTA makes the public notification at the premises of the PTA and at the local governance units, where the property, which is the subject of the claim, is located.
 9. After the PTA reviews from the formal aspect, according to the criteria stipulated in this decision, the documentation attached to the request, it notifies the subject about the payment made
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pursuant to the stipulated fees, upon a joint order of the Minister of Justice and the Minister of Finance. In this case, the practice deposited by the subject is administered in the capacity of the file.

Otherwise, when the request and the documentation attached to the practice, after the review, are not in compliance with the criteria stipulated in this decision from the formal aspect, and after the expiration of the time limit for the completion of its shortcomings, the PTA decides on the merits of the request based on the documents and information it possesses.

CHPTAER III

PROCESSING OF THE ACTS AND DECISION OF RECOGNITION

10. In the cases when the legal documentation administered by the applicant has shortcomings or when it needs to be completed, the PTA carries out the verification and the confirmation of the documentation in the respective institutions which have issued it.
11. The cartographic documentation on the geographical positioning of the land, which belongs to the nearest period with the legal document, which contains ownership data, any topographic and cartographic data, shall be administered and processed (positioning) by the surveying engineer of the PTA, who is a part of the working group for the administrative review of the request.
12. In the function of the process for the property recognition and compensation, the PTA coordinates the activity with the Office of the Immovable Property Registration, the Agency of Legalization and Urbanization of the Informal Zones and Constructions, the Directorate of the Public Property Management, the State Advocacy, the State Authority for the Geo-Space Information (ASIG), the State Archive, the Central Technical Archive of Construction, the bodies of the local power and any other institution, whose activity is connected or has responsibilities for this process. Any state institution, whose activity is connected or has responsibilities for the process of the property recognition and compensation, is compelled to cooperate and to provide without fees and taxes, the information or the documentation required by the agency and to report the reasons for the non-fulfilment of a required measure or recommendation.
13. The verification in the site for the positioning and the factual condition of the property as well as the preparation of the respective verification act shall be carried out in the presence of the applicant. The verification act shall be according to the model form approved with the order of the director general of the PTA.
14. *Repealed.*
15. *The PTA requires from the respective local and central authorities, the information if the property claimed by the applicant is considered occupied, in the meaning of law no. 133/2015, if a construction permit is approved on it, or another right has been given in compliance with the legislation in force, or if the procedure for giving this right has started. In any case, the PTA requires information by the Albanian Agency of the Development of Investments and the Agency of the Treatment of Concessions.*

16. *With regard to the requests for fair recognition submitted for treatment prior to law no. 133/2015 enters into force, for which there is no decision, the PTA starts to review them immediately, as follows:*

- a) Within 30 (thirty) days from the entry into force of this law, it creates the requests without a decision, based on the chronological order of their application attached to the responsible structures at the time when they were submitted, at district level.
- b) Within 90 (ninety) days from the entry into force of this law, in the process of notification of the expropriated subjects for the documentation that shall be completed, in compliance with the requests stipulated with the decision of the director general of the PTA, according to the priority provided for in paragraph 3, article 15 of law no. 133/2015.
- c) The procedures for the collection, processing and administration of the acts from the expropriated subjects during the treatment of the requests that are subject to the provisions of the Code of Administrative Procedures.

17. The approach of the treatment, reviewing and rendering the decision on the requests of the expropriated subjects shall be done in compliance with law no. 133/2015 “On the treatment of the property and the completion of the process for the property compensation”.

17/1. For the requests submitted before the law enters into force, for which there is a decision on the recognition of the right, these decisions are transferred for compensation with the other requests according to the chronological order.

18. *After controlling, evaluating and reviewing the requests submitted for the recognition of the right to compensation, the PTA takes the decision to accept or object the request. In case of an acceptance, the PTA, with the same decision, determines the measure and the mode for its compensation, according to the stipulations of decision no. 223, dated 23.3.2016, of the Council of Ministers. The decision of the PTA for the recognition of the right for physical compensation, is registered in the Office for the Registration of the Immovable Property.*

In case the PTA takes a decision for the physical recognition and compensation in the subject’s property, the property is evaluated as follows:

- a) The property recognized for compensation shall be evaluated based on the cadastral unit it had at the moment of expropriation;
- b) The restituted property is evaluated according to its current cadastral unit and according to the cadastral unit it had at the moment of expropriation, calculating the difference of the value, which will result from the change of the cadastral until;
- c) When according to this evaluation, it results that the subject benefits a property which has a higher value than the property the subject had at the moment of expropriation, then the subject shall be compensated physically for the surface which corresponds to the evaluation and the other part of the property is transferred to the land fund with a decision of the PTA. The positioning of the property after the evaluation shall be conducted by the work group. In case the fund of the physical compensation is not used completely even after the completion of the procedure of the auction, the PTA acts directly with a decision for the

physical compensation. This fund is transferred upon a memo-report adopted by the director general of the PTA for the treatment of the new requests for recognition and physical compensation, taking into consideration the location of the property claimed by the applicant;

ç) In the cases when there is an overlapping of the properties claimed for recognition and compensation, the parties may solve the case of overlapping with an agreement with each-other or through the judicial ways.

The PTA continues with the procedures for the recognition and compensation of the property for the part which does not have overlapping.

19. The correction of the decisions with material mistakes shall be done by the PTA any time with the request of the interested subject.

The treatment of these requests shall be made based only on the acts and documents in the file, without accepting the presentation of the new acts.

The treatment of these requests is completed upon the rendering of the decision accordingly by the director of the PTA, a decision which is attached to the amended decision.

20. Decision no. 255, dated 13.4.2010, of the Council of Ministers “On the procedures for the collection, processing and administration of the acts of the expropriated subjects, during the process for the recognition and restitution or the compensation of the property”, repealed.

21/1. In the model form which is enclosed to this decision, the title of the form shall be amended as follows:

“Application or the treatment of the requests for the recognition of the right to compensation”.

21. The property Treatment Agency shall be responsible for the enforcement of this decision.

This decision enters into force after the publication in the Official Journal.

DEPUTY PRIME MINISTER

Niko Peleshi

**APPLICATION FOR THE TREATMENT OF THE REQUESTS FOR THE RECOGNITION OF THE PROPERTY AND
ITS COMPENSATION**

Addressed to: _____

Date when the request was submitted: ____/____/____

Name/father's name/last name of the subject who submits the request: _____

Address: _____ tel.: _____

Personal identification number: _____

Name/father's name/last name of the expropriated subject: _____

The request is for (*tick the square*):

1. Recognition of ownership, physical compensation in the recognized property/compensation:

Land Building Agricultural land Forest/Meadow/Pasture

2. Decisions that have been made:

Reviewing the previous decision Review/New request

No. _____, date _____, District _____

Please, find attached the following documentation:

1. Heritage certification

2. General/Special Power of Attorney

3. Legal documents

4. Decisions of the former CRCP/RORCP/ARCP

5. Court decisions of the Judicial District/Appeal/High Court

6. Cartographic documents

7. Certifications for benefiting from the legal provisions for the division of the agricultural land

8. Identification document

9. Payment receipt

I, the undersigned _____, declare with full legal responsibility that I accept and agree to apply regarding the criteria on the recognition of the property and its compensation and the conditions stipulated by the DCM, no. _____, date ____/____/2016.

The submission of false data or hiding them causes the immediate exclusion from any further procedure as well as criminal liabilities according to the law.

Signature of the applicant: _____

Signature of the receiver: _____