

“WHAT SHOULD HAVE TO DO ALBANIA TO RESPECT THE RECOMMENDATIONS OF THE COURT IN THE AREA OF THE PROPERTY RIGHTS?”

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Abstract

In a democracy, the right of ownership is considered one of the fundamental rights of the individual, one of the main institutes of private law.

The paper will attempt to bring a description of the situation and state of properties in albania starting from 1991, the year of the change of political system in the country until nowadays.

1991 for albania but also for many countries of central and eastern europe was the year of economics and political transformations in the country. The transition from the centralized economy system to that of a free market economy was accompanied by numerous reforms in the area of justice.

In the paper i would like to address some laws that have been issued in this field in order to improve the situation. Most important but not the only was the law no. 7698/1993 where the albanian government has take the obligation to return and compensation of property nationalized, expropriated or confiscated, according to law, laws of judgments arising after the date november 29.1944. Under this law was created commissions property restitution and compensation in municipalities and the former district councils.

Unfortunately, the process of restitution and compensation resulted in deficiencies in some aspect. Over the years the echr has taken a series of decisions against albania government for violation of article 6 and 13 of echr, giving the relevant recommendations.

Although according to the last progress report on albania, prepared by the european commission in october 2013, the legal framework for economic and social rights has improved, its implementation is slow. Restitution and compensation of property and the illegal constructions are issues that must be addressed.

On the other hand, delays in implementing the decisions of the european court of human rights concerning the rights of ownership and the right to a fair trial, continue to be issues of concern.

Keywords: Right of ownership, albanian legislation, restitution and compensation, european court of human rights, european convention for the protection of human rights

1. Introduction

The paper will focus on one of the fundamental individual rights, the property right. In this paper, we will see the handling and adjustment of this right from two main systems that has characterized the albanian state, the communism system which is now part of the past and the actual democratic system.

The year 1991 for albania, like in many countries of the central and eastern europe, was an economic and political transformation year. Passing from a central planning economic system to the free market economy was accompanied with necessary reforms even in the field of law. It was necessary and indispensable that the reform system should reach even the property field, as one of the most important property rights.

The albanian state undertook the law no. 7698/1993, starting for the year 1993, even though with some limitation in quantity, the obligation to return and compensate the nationalized property, expropriated or confiscated by the acts of law, regulations and judicial orders that are published after november 29, 1944.

Unfortunately, this process resulted in deficiency in some aspects taking into account that even nowadays, after 25 years of democracy the albanian government still declares itself as the owner of the albanian lands discriminating the legal owners and heirs which are called ex-owners.

An other aspect that has affected negatively in the adjustment of the property right has been the construction in the informal areas, illegal buildings or contrary to its. Such constructions have limited in terms of individual right of the owner to exploit fully his/her property, and has caused generally a damage to the economy of the country and have significantly decreased the number of the investments of albanians and foreigners in the albanian territory.

Even though, according to the progress report prepared by the european commission for albania, the legal framework for the economic and social rights are improved, their implementation is slow. The return and compensation of the properties to the ex-owners, the illegal buildings that have not yet been legalized, and the unregistered buildings are some of the cases that show insecurity and instability in the real estate market.

Regarding this ownership dispute situation, throughout the years the european court of human rights has taken many orders against the albanian state for breaking mainly the articles no. 6 and no. 13 of the european convent of human rights giving also the relevant recommendations that will be examined in this paper.

2. The property right throughout years

*“ownership is the right to enjoy and possess objects freely, within the limits established by law.”*¹, a judicial relation with ownership nature *“property is acquired through ways defined in this code and through other ways defined by specific law.”*².

During the communism regime, the private property didn't exist. The communist government, headed by enver hoxha declared “agrarian reform law”³, which in a masive way expropriated and alienated without compensation the private agricultural lands, private and religious entities. Excluded by this expropriation were:

- private agricultural lands that were worked by the owners with modern tools, without the help of farmers up to 40 hectares
- private religious agricultural lands that were worked by the owner or administrator with simpler tools up to 20 hectares *and*
- private agricultural lands that were not used for farming up to 7 hectares with the condition that two years after the day of the publication of the agrarian reform law they needed to be worked otherwise they will be administrated by the state.
- work tools that will be served to the owners to exploitation of the land that was unexpropriated.

The majority of the unexpropriated land was distributed for free to the farmers (farmers that lived in those lands, farmers that would be dislocated by the areas damaged by the war and those where the land was missing, fermers that didn't own land or that didn't have enough land, and also those that were graduated from an agricultural school and gardeners) and the other part was declared state land.

The expropriation was against the newly approved constitution⁴ of the country which predicted the private property to be limited and unexpropriated only in the presence of a general interest and based on a law that defined the cases and the amount of compensation that will be awarded to the owner.

¹ Civil Code of the Republic of Albania, 1994, Article 149.

² Civil Code of the Republic of Albania, 1994, Article 163.

³ Law no.108, dated 29.8.1945 "Agrarian Reform"

⁴ The Statute of the People's Republic of Albania, (1946), Tirana, article 9 provides: “ The private property and iniciative are garantued in economy. The inheritance of the private wealth right is garantued. Noone can use the private property right *in the detriment of the community. Private property can be limited and expropriated according to the general interest/ It will be predicted by law in which case will the owner be compensated and how much. Some branches of economy or enterprise can become state property according the general interest with the some conditions. Monopoles, trustees, cards, etc. that aims to dictate prices, to monopolized the markets in the detriment of the national economy are banned”.*

Even though the government of that time considered the execution of the reform one of its biggest successes and achievements that involved the farmers, the negative effects of the reform continue even nowadays because the majority of the lands and properties that were distributed by this reform, has not returned to their legal owners yet.

The property owner's right faded gradually and in 1967, "de facto" there wasn't any private property on the land meanwhile "de jure" in the constitution of 1976⁵ was definitely ratified that the land was property of the state⁶.

After the decline of the communism in 1990-1991, Albania, like many other countries of the central eastern Europe had to face with the challenge to get over the economic and political difficulties of the country. The economic system that Albania inherited at that time was a weak and centralized system. The impetuously political and social changes that accompanied the country, justified the measures and reforms that were taken in the law. In 1991, the newly elected parliament approved the land law⁷ which initiated the beginning of the process of transformation of the property right of state property to private property. Based on this law, the land was divided:

- 1- The agricultural land (planted with nuts, orchards, vineyards and olives) that were in the villages, in cities or other inhabited areas,
- 2- Land that are forest, pastures and meadows
- 3- Non-agricultural land (inhabited buildings, economic, social and cultural buildings)

The agricultural lands were given in use and property without compensation in favour of the physical or judicial persons⁸. The owners or users of these lands had to register them in cadastre and also to reflect the changes made after the initial registration. The families that benefitted the land were given the property title which is known as land patent, otherwise as the act of the land property (alp). The land could be given in rent in favor to the physical or juridical persons, natives or foreigners, but they could not be sold or bought⁹.

Firstly, what was expected from this reform was the possession of the land by the legitimate owners, thus the return of the land in the hand of the expropriated owners during the communist regime. Apart from making impossible the return of the land to the legitimate owners, the law increased the conflict between the legitimate owners and those that benefitted from the granting property and use of the land. The law no. 7501 remains one of the most disputed even nowadays.

In 1993, the Albanian state assumed by law¹⁰, obligation of knowledge, return or compensation of the properties towards all the subjects that were expropriated during the communism regime.

Based on this law, ex-owners of the expropriated properties from the communist regime and their heirs were acknowledged the right of inquiry of the property on the original properties. If the property is considered that exists, ex-owners and their heirs has the right to be given the original return of the property, compensation in kind or material compensation. The council of the ministers of Albania is the responsible organ to define the rules regarding the compensation and the applicable deadlines.

This law is the first attempt to give a solution, even though with some limitation on the quantity, the state property case, expropriated or confiscated according legal acts, regulations and judicial orders published after November 29, 1944 that taken without any rights by the state. According to this law, the commission of property return and compensation in the municipalities and in former district council.

The commission decisions were subject of reconsideration only by the courts and within 30 days defined by the law. This decision is considered executive titles as long as they defined the knowledge of the property rights and the return or the compensation of it.

⁵The Constitution of the People's Socialist Republic of Albania, 1976, act no.16 provides: "*The economy of the People's Socialist Republic of Albania is a socialist economy which is based on the socialist ownership of the means of production. In the People's Socialist Republic of Albania there are no exploiting classes, private property and the exploitation of man by man have been liquidated and are forbidden.*".

⁶ <http://zrpp.gov.al/doc/historiku>

⁷ Law no. 7501, dated 19.07.1991 "On Land"

⁸ Law no. 7501, dated 19.07.1991, article 3

⁹ Law no. 7501, dated 19.07.1991, article 2

¹⁰ Law no.7698, dated 15.04.1993, "About the restitution and compensation of property to ex-owners"

After ratification from the republic of albania, the european convention of human rights in 1996 and especially after the approval of the constitution in 1998, the albanian lawmaker was engaged in adopting new standards regarding the guarantee of the property rights that has to do with the public interest and the right compensation and also respecting the principles of justice, proportionality and social state, drafting a new law property no. 9235/2004 which repealed the previous law.

The law of 2004 provided two forms of real estate returns, which were respectively the original property return or, if possible, the compensation of it. Expropriated subjects were acknowledged the right of ownership and the return without restriction of the real estate properties, except of the agricultural land, which could be return or compensated up to 100 hectares¹¹. The compensation manners become wider. It was an obligation for the creation of a fund for the physical compensation of real estates, and also an obligation for the creation of a fund for financial compensation. The 2004 law provided for the implementation of the decisions that acknowledged the compensation within the first six months of each financial year. The property law of 2004 was amended by the property law of 2006¹² that abrogated the provisions regarding the implementation of the compensation decisions.

Based on article 13 of this law, the agency of property return and compensation (akkp) was created, headquarter in tirana and with 12 regional offices in districts, serving as the main administrative organ in charged to implement the property law and at the same time responsible to decide about the return and compensation of the property requests¹³. The grievance against a decision of the regional office of the agency could be made near the central agency while the decision of the central agency would be appealed in the court of tirana district within 30 days for its publication. The legal changes that happened in 2009¹⁴, the local offices of property return and compensation was deprived and the whole administrative process of reviews and decisions was concentrated in akkp, in tirana.

Based on article no. 23 of the 2004 law on the property, which created the fond of financial compensation, the government approved some decisions during the years 2005-2009, in charge of the financial compensation of ex-owners¹⁵. Based on this decision, ex-owners would be awarded the right of the financial compensation with the condition that he/she had not been awarded before from:

- A) the previous compensation;
- B) restoration/partial return of the property;
- C) the right of the first refusal;
- D) implementation of the law on land (law no.7501, dated july 19, 1991).

The requests will be reviewed on a chronological order based on the date and the number of the commission's or regional office's decision. The amount of financial compensation will be calculated based on the value map of the property was limited up to 200 m². The maps contained the reference price per meter square all over the country.

The law no. 10239/2010 "*on the special fund of compensation*" extended significantly the source of income for financial compensation and facilitated the procedures for its administration. The fund includes the incomes from the state budget, the incomes of sales in the auction of the nationalized properties up to 65 % for objects and 100 % for lands, the incomes from individuals on behalf of whose the construction land are legalized, incomes from different donators, the incomes created by akkp itself during the process of alienation of the nationalized areas, incomes by law or regulations, are transfered in account of the compensation of the properties fund.

The beneficiary subjects of this fund are in addition to the expropriated subjects and the owners that have awarded the right of compensation during the process of legalization.

¹¹ Article 6, point 1, Law No. 9235, dated 29.7.2004, amended with the Law No. 9583 dated 17.7.2006.

¹²Law No. 9583, dated 17.7.2006, "Changes to the Law No. 9235 dated 29.7.2004, "On restitution and compensation of the property", amended (Law no. 9583), published on Official Journal No. 81, dated 2.8.2006. Came into force on August 17, 2006.

¹³ Act. 15, Law No. 9235, dated 29.7.2004, amended with the Law No. 9583, dated 17.7.2006.

¹⁴ Act. 6, Law No.10207, dated 23.12. 2009

¹⁵ Council of Ministers Decision (VKM) no.13, dated November 17, 2005; VKM no.758, dated November 16, 2006; VKM no.566, dated September 5, 2007; VKM no.1343, dated June 4, 2008 and VKM no.487, dated May 6, 2009.

The decision of the council of the ministers on financial compensation up to 200 m² to the ex-owners was criticized by the strasbourg court, and in 2011 the formula of the distribution of the financial compensation was reformed extending the compensated surface from 200 m² to 600 m², and also eliminating restrictions for its benefit.

The process of acknowledgement, return and compensation of the real estate properties should be finished in april 30, 2014 (postponed before in the law no. 55/2012), except the payment of the compensation that had to be finished before the deadline predicted in article no. 23¹⁶ of this law. However, during 2013-2014 the number of the requests for the return and compensation of the property increased. Based on the judicial decisions, their reviews could not finish before the deadline, and also because the determination of the process of return and compensation of the property is one of the conditions decided by the european commission. The actual government in its bill that is expected to be approved by the parliament in may 2015, proposed to postpone the deadline of the process of acknowledging, return and compensation of the properties, defining as its deadline april 4, 2015. The extended deadline is done to protect and to guarantee the constitutional right of ownership, taking in account the principle of legal security and the rule of law.

Another problem that is worth to be discussed in the field of the property rights are the informal constructions that are built during the transition years, the legalization and the necessity of a reform to prevent them.

The internal migration of the population during these years toward cities that have a higher economic standard than that of the origins, started to spread the constructions without a permit that were built even in the tourist areas of the country. The consequences of the migration and lack of control from the authorized institutions, especially from the institution that gives the permit to exploit the land for construction and also not privation of it, made possible the numerous buildings and informal extenuation not only in the properties that belonged to the state but also to those that were private. This brought another consequence that of property dispute which involved three actors: the occupants, legal owners and the state.

The created situation needed a compilation of an applicable strategy with institutional supervision aiming the control of the territory. The efforts started in 2004 but became more certain in 2006 with the law no. 9482 “on the legalization, urbanization and integration of illegal constructions”¹⁷, based on which the legalization, urbanization & integration agency for informal buildings/areas (aluizni) as the responsible institution for the necessary procedures of the legalization. Based on the law, all the subjects that have illegal buildings are required to self-declare them after 60 days of the coming into force of the law. The non declaration of them within the deadline will be accompanied by sanctions¹⁸. The process of legalization is accompanied with a financial invoice in charge of the owners of these buildings. The amount of income deriving from this process will be administrated by the agency of return and compensation of the properties in favor of the owners, properties that have been occupied and also the financial compensation of expropriated subjects. The council of ministers decision no. 40, dated 11.1.2012 has speeded up the procedures for the legalization certification within 30 days after the payment from the holders. The new law of legalization defines that this will be applied only to the illegal buildings built before 15.1.2009, that are inhabited buildings, economic or other social and cultural functions and those that were built before this date and before entering in force of the law with the condition that they are built in the holders’ property¹⁹.

¹⁶ Law 55/2012, Article. 23/2, provides: “Starting from 2005 and for a subsequent period of ten years, the Assembly, at the proposal of the Council of Ministers, defines a Compensation Fund administered by the Property Restitution and Compensation Agency for monetary compensation to expropriated subjects. For the period from the recognition of the right of ownership 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.

¹⁷ Law No. 9482, dated 03.04.2006, “On the Legalization, Urbanization and Integration of Illegal Constructions”, (amended with law no .9786, dated 19.07.2007, Law no. 9895, dated 09.06.2008, decision no 3, dated 02.02.2009, of Constitutional Court, Law no.10 099, dated 19.3.2009, Law no. 10 169, dated 22.10.2009 Law no.10 219, dated 4.2.2010 and Law no.141/2013, dated 02.05.2013).

¹⁸ Law No. 9482, dated 03.04.2006, article 8.

¹⁹ Article 2, for some changes and additions in Law No. 9482, dated 03.04.2006, “On the Legalization, Urbanization and Integration of Illegal Constructions”, amended.

The new law “*on territorial planning and development*”²⁰ seems like the albanian government wants to give an end to the illegal building legalization and also those that had the construction permit but have changed the building project will be taken drastic measures starting from fines, demolition and confiscation of the object.

The nowadays achievements, as a result of approvals of a series of laws in the field of property rights, guarantee the property rights as a fundamental individual rights. The well-defined of the property rights and the elimination of the legal insecurity are some of the main conditions for the development of a country that aspires to be a member of the european union. Related to the achievement of this object, the inter-sectoral strategy reform in the field of property rights, 2012 – 2020 was approved.

The document supported on the recommendation of memorandum of the committee of ministers of the european council, which suggests an entire solution of the property rights problem, based on the previous experiences of the other countries members of the european council and executing the decisions of european court of human rights (echr). Guided by the principles of the constitutional nature related to the public interest, remuneration, the rule of fairness, proportionality and welfare state, the reform in the field of property aims to find the right solution to the final settlement of the process of return and compensation of property, the integration of the informal areas and constructions, the completion of the initial register of all properties and the systems digitalization²¹.

Violations of european convention on human rights and the recommendation of european convention of human rights

The european court of human rights (echr) continues its activity based on the european convention on human rights and its protocols. Albanian state ratified the european convention in 1996²² assuming the obligation to ensure within its jurisdiction, respecting the rights and freedoms set forth in this convention, to accept the compulsory jurisdiction of the echr on all the matters concerning the interpretation and application of the european convention on human rights and its additional protocols, after the exhaustion of all the national juridical means known generally from the international rights²³.

The decisions that are given by the strasbourg court for albanian citizens are mainly decision about the return and compensation of the properties. Delays in the implementation of these echr decisions, concerning the property rights and fairness rights, have been some of the worrisome problems recorded by this court, more specifically the violations of albanian state refer to article no. 6 § 1²⁴, no. 13²⁵ and article no. 1²⁶ of the protocol no.1 of the convention.

Regarding the scale and persistent lack of effectiveness of the current compensation mechanism, european court of human rights took a pilot decision in the manushaqe puto case and others, in which the albanian government should find effective compensation mechanism within 18 months until june 17, 2014. In its 1186th meeting (december 2013), the committee of ministers expressed its deep concern that regardless of the persistent requests of the committee to take necessary measures, the last request was done in the interim resolutions cm/resdh (2013)115, the deadline was approaching (june 17, 2014), defined by the court for the implementation of the pilot decision “manushaqe puto”, authorities still haven’t presented a clear information which will demonstrate the progress and that they have a strategy for the implementation of the decision²⁷.

²⁰ Law No. 107/2014 “*On territorial Planning and Development*”

²¹ http://www.drejtesia.gov.al/files/userfiles/Strategjite_ndersektoriale/Strategjia_Reforma_ne_fushe_e-te-drejtave_te_pronesise.pdf

²² Law No.8137, dated 31.7.1996, “*On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms*”.

²³ Article.1, 32 and 35 of European Convention on Human Rights

²⁴ Article. 6 § 1 European Convention on Human Rights

²⁵ Article 13 European Convention on Human Rights

²⁶ European Convention on Human Rights, article 1 Addition Protocol Shtesë No.1

²⁷ Publication of Official Journal, no. 97 extra, dated July 18, 2014, p 5-6

The committee of ministers in european council, which supervises the implementation of the european court of human rights decisions, has repeatedly requested to albanian authorities to take as soon as possible all the necessary measures to establish an effective mechanism of properties' compensation that were expropriated during the communist regime as state property and the implementation without further delay of a series of local decisions taken in this regard.

The strasbourg court, in its decision regarding the return and compensation of properties recommends:

1. Internal measures that the albanian legislation offer should become more effective towards the respect of the rights and the fundamental freedoms of the individual in a way to decrease the requests in strasbourg court.
2. National authorities should take measures to restore the violated rights based on the subsidiary of the convention²⁸, in such way that the court should not find violations in a series of similar cases.
3. The improvement of internal measures of appeal, effective measures can make possible that the courts take a decision within a shorter time or at least could be compensated for an extended deadline of the trial period.
4. The execution of the judicial orders given by the strasbourg should be considered as part of "the judicial process" according to the aims of article 46 point 1. Delays in the execution of the judicial orders could be justified in specific circumstances, but they shouldn't be against the essence of the right that guarantee the article 6, (beshiri vs. Albania, no. 7352/03; gjonbocari vs. Albania, no. 10508/02).
5. Everyone has the right to a final decision, within a reasonable time, on disputes over civil rights and obligations. The contracting states accordingly have the obligation to organize their legal systems so as to allow the courts to comply with this requirement (gjonbocari vs. Albania).

The actual government, formed after the election on june 2013, expresses its commitment in the implementation of the pilot decision within the deadline defined by the court (june 17, 2014) and to present to the committee, without further delay, a detailed and comprehensive action plan for the implementation of the pilot decision of the european court of manushaqe puto and others²⁹.

Regarding the process of execution of the decision that has to do with the decision of the echr, until now, the financial obligation is executed entirely for the 38 decisions, while two decisions are in the process of approval and execution³⁰. According to the ministry of finance, the albanian state has respected the execution of the strasbourg court decisions and actually doesn't have any unpaid decision or that aren't in the process of execution. In 2015, in the state budget are predicted 2 million albanian leke for this case.

Conclusion

The right of ownership is considered as a fundamental right of the individual. For many years, the owners have been prevented by the full enjoyment and possession of the property: this happened because of the nationalization of the property by the communist regime, expropriation without a fair compensation and delays in the implementation and respect of the echr's decisions.

The albanian governments tried during these last 15 years to find a mechanism for the regulation and normality of this situation, but often they have resulted ineffective, reducing the credibility of the citizens towards judicial system and questioning about the reliability of the state. Some of the weakness of this process has been:

- Prolonged process and the deadlines of the trial.
- The application and the duration of law no. 7501/1991
- The beginning of the unfinished process of legalization, return and compensation.
- Lack of funds
- Application of article no. 16 of law no. 9235/2004, which was declared unconstitutional in 2010.

For these reasons, the number of the strasbourg decisions against albania has coherently increased which means that the albanian state is facing a huge financial invoice. The return and compensation of the properties to the ex-owners is one of the six priorities that the albanian government has included in the national strategy for development and

²⁸Article no 1 European Convention on Human Rights

²⁹ Prime Minister Order, No. 236, dated 23.4.2014 "For the approval of the action plan for the implementation of the pilot decision of the ECHR, Manushaqe Puto and others vs. Albania".

³⁰ <http://www.financa.gov.al/al/njofitime/deklarata-per-shtyp/ministria-e-financave-ja-sa-kemi-paguar-per-strasburgun>

integration³¹. For the realization of this objective, the albanian government has undertaken some measures, the most important are:

1. Changes in the property legislation,
2. Inventory of the state properties available for compensation in kind,
3. Identification of financial invoice for the financial compensation,
4. Institutional reform,
5. Institutional coordination among the key actors for the management of this process.

Biography of the author

Valbona alikaj was born in 21st november, 1982, in saranda, albania. From 2013, she is a candidate of phd in tirana university, law faculty, research thesis “defense means of property law”. She received her master of science degree in law sciences, from modena and reggio emilia university in 2009, italy. She was a presenter in the academic conference organized by marin barleti university in collaboration with andrei shaguna university of constanta, rumania. It was held in april 2012, in tirana and its topic was: “high council of justice and its role in organization of judiciary”, and also in the international scientific conference, topic: albania and the national, ethnic and cultural minorities”, organized by law faculty and albanian institute for public affairs at marin barleti university, in february 2013, in tirana. Her presentation topic was: “international acts and minorities’ rights”. Since february 2010, she has been working as a professor in marin barleti university, law faculty, private law department. Her field studies are in civil and obligation law.

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