

The right of property and its social function

PhD Erida Pejo
University of Tirana

Abstract

Rights of property are the main prerequisites for the existence of any political society, as it is an objective necessity for their normal functioning and continuity. Property and right of property are the constituent of autonomous life in the realization of the world of individual or collective goals, without the protection and guarantee of which, it is often stated that the respect and enjoyment of the entirety of other constitutional rights can not be imagined. Rights of property are presented and considered as one of the most important issues of legal and political doctrines, and it represents one of the fundamental issues of national and international policy.

The classic liberal property concept has dominated the modern legal and political debates and imagination. The property institution is often conceived as a *quasi* absolute subjective right, a concept that, in the modern era, competes with alternative concepts that have influenced both state policies and modern legal culture and consciousness, the consequences of which are reflected in legal systems. One of the most influential alternative concepts is the social function of property,¹ of course in modern legal culture the property is understood as an individual right, limited not only by the rights of others, but also by the public interest. Thus, modern legal thinking, although it regards it as a basic element of the normal functioning of the Rule of Law, the private property institution has given a new emphasis to this right, altering the basis for the attribution of property power by the fact that, the relation of the individual to his/her personality in a social organization, is considered as substantive to the juridical order, therefore the volume of ownership power may not be more unconditional. The social function can not be identified with the external limitation of ownership which is reserved to collectivity, but it is presented as an elitist, unifying expression of the assumptions of legal qualification, so as to identify the content of the considered situation.²

In the doctrine it is often argued that private property is indispensable for the ethical development of the individual or for the creation of a social environment in which people can progress as free and responsible agents, but that the property is no longer considered a myth, which was considered inviolable, as was the case with Article 29 of the Albertin Statute.³

It is enough to bear in mind the Aristotelian argument, which stated that property promotes virtues as prudence and responsibility, or Plato in his work "Republic"

¹ Articulated by French lawyer Leon Duguit in a lecture held in Buenos Aires in 1911. In his argument, it was emphasized that the property has not only external borders, but also internal borders.

² Quoted by Rodotà Stefano, in the book of Alpa Guido, Bessone Mario, Fusaro Andrea, "Poteri dei privati e disciplina della proprietà", Publishing house S.e.a.m., Rome 2002, pg. 379.

³ The Albertin Italian Statute, 1848, in its Article 29, sanctioned that, "All properties, without exception, are intangible. However, when a legally justified public interest requires it, the properties may either partially or completely divest it against a fair remuneration in conformity with the laws".

when he argues that collective ownership is necessary to promote the importance of recognizing common interest, also to avoid social "disruption". According to the theory of natural law, with the main representatives of the 17th and 18th centuries John Locke and Thomas Jefferson, people by nature are free and equal and possess inalienable and intangible rights, which state power can only protect, but not restrict or cancel them, as the individual's rights and freedoms in essence constitute justice as a value. This was also the attitude of the founders of the nations of Western democracies inspired by the principles and innovative ideas elaborated by representatives of the illuministic theories in Europe, which thought that the protection of private property was conceived as a mission and one of the essential tasks of the state. Ownership is one of the constitutional rights that has undergone a significant transformation compared to its original configuration. First legal-constitutional acts ⁴ of the XVIII century, inspired by modern *natural ius*,⁵ proclaimed the sacred and intangible character of the property, so the concept of private property was presented as being born before the state, and the latter had the duty to recognize and guarantee it. With the overthrow of philosophical theories influenced by *natural ius*, private property continued to resist and be at the center of philosophical doctrine as well as legal-constitutional provisions,⁶ even advanced until it was considered an absolute subjective right, which was identified with the notion of liberty itself.

Keywords: property, right, law, social function.

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Academic Journal of Business, Administration, Law and Social Sciences ISSN 2410-3918 (print)

ISSN 2410-8693 (online)

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