

The restitution of property in Albania, a continuing problem after 25 years of democracy

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Abstract

The restitution of private property to the former owner after 1990's turned to be a real problem not only for the prior owners, but also for the Albanian governments after the communist regime. As a result of the mistakes done from the institutions and the discrepancies of Law No. 7501 date 17.07.1991 "For the Land" and Law No. 7698 date 15.04.1993 "For the restitution of property to the former owners" this problem is still not resolved definitely. After 25 years of democracy this problem should be solved as in other ex communist countries. The long line of cases in the Albanian courts and Court of the Human Rights in Strasburg show that this problem needs to be resolved very fast, because of the economic damage that has caused to the Albanian state budget. This paper aims to highlight the problems with the property restitution, especially the cases in the Court of Human Rights and to make a clear picture of the problem and also to show the measures that the Albanian state has taken to solve this problem.

Keywords: *Private property, economic development, political transition, legitimate owner, Court of Human Rights.*

Introduction

Private property remains one of the unresolved issues of Albanian society after 1990's and a source of conflicts. A legacy lost in the years of the communist regime turned into one of the main problems of society and government. In none of the other ex-Communist countries has the process of restitution of property caused so many damages.

During the communist regime, the nationalization of property culminated with the collectivization of property forming Agricultural Cooperatives and farms. But the particular thing was the power that the Albanian communist rulers had on this property, which would be envied even from the greatest monarchs in the world. Despite the way the communists acted with the property, it was still there, not lost but transformed and looted.

In other ex-communist countries after the fall of the socialist regime the property was restituted to the owner, immediately after the new democratic governments came into power. In Albania, none of the governments after 1990's did completely resolve this important issue. The laws after the '90's even though gave the possibility to the former owners to require their property or their parents' properties were not applicable because of the disagreements that law No. 7698 "For the compensation and restitution of the property to the former owners" date 15.4. 1993 and law No. 7501 "For the Land" date 19.7.91 had with each other and made it impossible to retribute the physical property in the actual condition.

A brief analysis of the Albanian legislation

The need to amend the legislation after the 1990's was an emergency in terms of Albania where the word "private" was abolished from the legislation during communism. As a result of this need and the dissolution of Cooperatives and agricultural farms Law no. 7501 "For the Land" date 19.7.1991 was adopted which gave the land to the farmers for usage without any financial cost by discriminating the former owners who expected that their rights would finally be resolved and injustice against them would cease. This law was not in compliance with the Constitution of Albania (1998) and with Section 41 of the Constitution which states that:

- *The right of private property is guaranteed;*
- *The property is profitted by donation, inheritance, buying and other classical method forseen in the Civil Code;*
- *The law can foresee the dispossession or limitation in the right to the private property only for the public interest;*
- *Dispossessions or limitations of the property rights are allowed only to a proper compensation.*

The method of acquiring the land under Law no. 7501 is contrary to the methods of acquiring property under the Constitution, therefore, we can say that this law is unconstitutional. Law no. 7698 "On the restitution and compensation of former owners", dated 15.4.1993 states in its Article 1 that:

"The law recognizes former owners or their heirs the right of ownership for the nationalized property, expropriated or confiscated, according to laws, legislation and court decisions arising after 29-th of November, 1944, or taken unjustly from the state and defines the ways and measures for their restitution and compensation "

Clearly with this article the legislator recognizes the confiscation of property without any right from the state and also admits that the state has violated the right of property to the detriment of the rightful owners, but for the reasons stated above continued not to respect the proper title of ownership and the owner was kept bare of his legal property, as this law in section 5 restricts and unfairly discriminates the former owner, when it states:

"... the return or compensation with be implemented with an equivalent area up to 10,000 m² (1 hectare)"

Agency of Restitution and Property Compensation

The Agency for Property Restitution and Compensation (APRC) is a legal public entity with headquarters in Tirana and under the jurisdiction of Ministry of Justice. This institution was established in 2010 with the Council of Ministers Decision no. 256 date 13.05.2010, which envisions exactly the objectives that this institution needs to fullfil as well as its functioning. Since 2010 when it was created until the end of 2014, this institution has given decisions which have not been able to solve all the problems of this difficult and complex process. This agency took over the role and responsibility to provide solutions to

all these files coming from all regions of Albania.

It took 23 years in the process of property restitution and compensation to establish the electronic register. The need to resolve this prolonged process is urgent, not only referring to the cramp that the huge property anomaly created in the country development, but also the huge bill that the state budget faces from the ECHR decisions.

Another obstacle for the implementation of the restitution process is the fact that a part of the former owners' property is affected by informal settlements which are waiting to be legalized by the local offices through the legalization process.

The European Court of Human Rights for the issues of property restitution

The European Court of Human Rights (ECHR) has given many court decisions against the Decisions of Albanian Courts concerning property restitution. Particularly, in the Driza Case this Court found problems in the implementation of article 61 of Law no. 7698 "On the restitution and compensation of former owners", dated 15.4.1993 on the failure of local courts to execute the final decisions which acknowledged the rights of the complainers for their property, and the right of compensation.¹

In the Ramadhi et. al case the European Court stated that the country's legislation did not have any dispositions to apply against the decisions of the regional commissions for the restitution and compensation of property. In particular, the Albanian laws of property do not provide any effective specific legal means for their application. The court noticed that on the date of its decision, the Minister's Council did not have determined rules for the compensation. The European Court noted that in Driza and Ramadhi et. al the violations caused unjustified obstacles for a peaceful enjoyment of property, which came as a result of non-implementation of court orders and decisions of the Commission which provide compensation on the basis of the provisions of the law of property.

There are 530 property restitution cases in the ECHR. During 2010 there were 26 ECHR decisions given in favor of former owners, which unfortunately are not seen as damages to the country's fragile economy.

Conclusions

By analysing the problem of property restitution and compensation it is noted that although the Albanian government has issued laws „On Restitution and Compensation of Property“ and law no 7501 “For the land” the economic damage due to wrong implementation is very high. Over the years the negligence of this process, was caused from the disability of the Albanian courts, the regional commissions, and the two laws „For the Land“ and the Law „On Property Restitution and Compensation of the former owner „and in the interests of the Albanian governments that have succeeded each other in 25-years without giving a final solution. This process is difficult but not unresolvable, as long as the Albanian state would not restate the property to the right owner, as long

¹In Driza case the ECHR stated that the absence of the funds of the Albanian state can not justify the failure to implement the decisions of the court for the payment of the former owners (§ 108).

this process will be held hostage the Albanian government will continue to pay large compensations to former owners.

It would be appropriate for the Agency of the Property Restitution and Compensation to take the appropriate reforms for a final solution after 25-years of free market economy.

References

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