

THE PRE-EMPTION RIGHT IN REAL ESTATE PROPERTY AND ITS CHALLENGES WITHIN THE ALBANIAN LAW

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Abstract

The pre-emption right, which dates as far back as the Roman times, constitutes an important legal element that shapes the nature of the legal transactions occurring over the sale of real estate property. This right is very specific in nature, for reasons related to the obligation to exercise such rights in real estate transactions, which in turn constitutes a limitation on the ownership rights by the entity that possesses them. The application of this right differs from one country to the other in terms of its applicable extent and legal meaning. In some countries this right belongs to the municipality, while in some others it is applied for instance in the sale of agricultural land. In Albania, due to its specific context as a former communist country, the application of this right is sanctioned by the Civil Code, as well as other legislation such as that related to the restitution and compensation of property expropriated during communism. This study will examine this right in some details, by analyzing the Albanian legislation and the social context that Albania faces nowadays. At first, the paper will portray an historical and legal overview in order to understand how this right has been established and how it has currently been put to use. This study will then explain the legal nature of this right, with the focus on defining whether it is a real or a contractual one. Then it will focus on the procedure and the guarantees set in place during its application. At last, this study will explore the possibility of restricting the pre-emption right in the Albanian environment, in order to decently balance the different interests of social groups and to better reflect the demands and conditions of the society.

Keywords: Pre-emption right; Albanian law; Real estate transactions; Real rights; Contractual rights