

EXPROPRIATION OF REAL ESTATE ACCORDING TO LEGALISATION OF ILLEGAL CONSTRUCTIONS IN THE PRESPECTIVE OF HUMAN RIGHTS AND CONSTITUTIONAL LAW

Irene Dule

Ms, Phd candidate, European University of Tirana, Albania, irenedule@gmail.com

Abstract

Immovable property rights in Albania represent an important governance challenge after the fall of communist regime. After 1990, a rapid internal migration has resulted in informal occupation of land and unauthorized construction on a mass scale. One-third of illegal buildings were erected on land belonging to a third party. In the situation above, the Albanian Parliament approved the law 9482/2006, "*On Legalization, Urban Planning and Integration of Illegal Constructions*," which, as amended, provides a mechanism for legalizing illegal constructions and extensions and establishes a system for urban planning approval. The law also sets up a mechanism for transferring ownership of land on which a legalized construction is built to the applicant, and includes a right of compensation for the former owner and a formula for calculating compensation. Special expropriation procedures enable to expropriate the privately owned land to the government, and once it becomes state land (by virtue of government decision), it is transferred to the applicant land to applicants who do not own the land on which an illegal construction is erected. The essay will examine if these special expropriation procedures are in conform of article 1, of first protocol of human rights convention, and article 41 of Albanian Constitution, under which a state must not deprive any one in his property, except in the public interest and subject to the condition provided for by law. In addition, we will see if the law of legalization is in respect of principle and standard, such as proportionality, legitimacy, etc defined and treated widely by the judicial practice of the European Court of Human Rights (ECHR).

Keywords: Immovable Property, Expropriation, Legalization, Public Interest, Human Rights.