

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

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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.

1. Introduction

In the Albania of the early 90s, after the fall of communism and the replacement of the planned economy with that of the market based, private property, among a lot of other things was naturally faced with many legal changes. These changes had as their objective the establishment and guarantee of the private property as a fundamental human right. As such, real estate properties, that until this time had been excluded, were once again put in civil circulation. Naturally the need for such radical legislative changes had not sufficient time at its disposal, and in such cases the situation in reality often prevails the one portrayed in the legislation. This happened also with the uncontrolled demographic movement of the rural population of the country. The rural population, having it impossible to survive and continue with their life in the rural areas, where the planned economy had collapsed, was forced to move from the rural areas to the outskirts of the urban centers by occupying land and building their houses without a building permit by the relevant state authorities. This phenomenon had a considerable extent, both in terms of time and quantity. Nowadays it results that one third of the informal buildings are built over the land that belonged to the state, one third over the land that belonged to other third parties and the other third over the land of the informal builder. The unclear legal situation regarding the property rights and the urbanization of the cities was made part of the political and legal debate in 2004, when the country was somehow more stabilized, and the core question was on whether these informal buildings were to be demolished or legalized. Placed in front of this factual situation and the need to legally regulate the relations that were *de facto* established, the Albanian Parliament at first approved the Law no. 9304/2004, which in reality was not applied because of its legal gaps. This Law was substituted two years later with the Law no. 9482/2006 "On the Legalization, Urbanization and Integration of Informal Buildings", which with all the legal changes that followed offered the opportunity for the legalization of the informal buildings. The law created a mechanism for the transferring of ownership for the land plot over which the informal building has been erected. This mechanism incorporates also the right of the land's legal owner to be compensated

together with the calculating formula. The procedures for the transferring of ownership from the land owner to the state and later on to the one that possesses the land and the informal building are particular expropriation procedures, because of the fact that this law does not refer at all to the expropriation for public interest. As such these procedures differ from those foreseen in the law for the expropriation for public interest, which is the special law that regulates this right. Before this situation of the state's intervention in property rights, there needs to be addressed the question whether this intervention is in compliance with the human rights and constitutional standards. According to the latter, the state might intervene in the enjoyment of the private property until its full expropriation if this serves to the public interest, however this can happen towards a compensation of the owner according to a procedure foreseen by the law. This should be done by simultaneously complying with the standards placed by the Human Rights Court, such as the principles of proportionality, lawfulness, just compensation, etc.

The discussion on whether the legislation on the legalization of the informal buildings and the procedures foreseen in this law are in compliance with the international practice of human rights and with our constitutional right, will be the focus of this paper. During the analyses of the cases dealing with this issue we will note that this process fulfills a part of these criteria but it is lacking in the accomplishment of some others, such as the principle of proportionality and public interest. With the aim of standardizing its values as widely accepted by the international law, and especially by the Human Rights Convention, where Albanian is a signatory country, it would be necessary for the legislator to intervene on the legislation in focus of this paper.

2. The Limits of State Intervention in Private Property in the Context of Human Rights

In the Universal Declaration of Human Rights approved in 1948, on its Article 17, it is provided that: "(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property." (Article 17 of the Universal Declaration of Human Rights). At a regional level, the European member states of the Council of Europe, in order to give an effect to the Universal Declaration of Human Rights in the European context, signed in 1950 the European Convention on Human Rights. The rights of property were not protected by the Convention, but by its First Protocol, signed on March 20th, 1952 according to which: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*" (Article I of Protocol I of the *European Convention of Human Rights*).

It is clear that the Convention provides room for the member countries to set limits to the intervention on the property, by considering the property rights as being more elastic in nature, such as the right of speech, family, etc., compared to the absolute rights such as the right to live, on prohibition of slavery, torture, the right to an unbiased judgment, etc.

Meanwhile, in order to better understand the position that property rights hold within the human rights context, we must return and focus once again on the principles sanctioned by the European Convention of Human Rights and the standards defined by the judicial practice of the European Court of Human Rights (ECHR). In the case of the violation of norms that belong to the absolute rights' group, the ECHR is sufficed to find proof that such norms have been violated, and does not accept any justification whether such violations done by the state have been based on valid reasoning, or not. In regard to the second type of rights, the Court beside the violation of the norm must also evaluate the reasons or "justification" of the state in regard to the violation. Stated differently, the public authorities in regard to the absolute rights (norms) category, cannot undertake any limitations no matter the reasoning behind it, while in regard to the second category of rights, the states can set limits according to preset conditions, which will be discussed later on. Meanwhile, it is evaluated that nowadays, the right to own property is not classified as an absolute right, despite the fact that great scholars of all times do consider the right to own property as such.

In front of these standpoints, returning to the analyses of the property rights and the limitation of interference of the state in it, as sanctioned by Article 1 of the First Protocol of the European Convention, three norms can be identified in the field of the protection of property: the first one is general in nature and sanctions the right of each individual for the peaceful enjoyment of his possessions; the second contains the limitations of the property rights by the states; while the third recognizes the authority of the states in controlling the use of property in compliance with the general objective. In regard to the second and third norm, the public authority may not take the property and neither place limitations on it without sound reasons for such actions. In this understanding, this authority must proceed according to the laws, and must put to balance the public's interest

on one side (that must also be the justification for the limitation of the property right) and the private interest on the other. Likewise, if the public interest prevails over the private one and the property of an individual is expropriated from him, then the latter must be compensated for it. However, the Convention leaves room to the States to decide for themselves which is the proper balance between the public and private interest.

Different states have given different answers to this issue. The reason behind these differences stands on the fact that the legislation reflects the development of a nation through century long norms and traditions. According to Roscoe Pound, an American philosopher of modern times, "*the law is a process of social regulation, which reflects the interests and the dominating values of the society.*" (Mallor et al, 1997, p. 8) Accordingly, there are these dominating interest that put pressure on a government, which then gets reflected in the legal system. In the view of other scholars "*a legal right is a social mechanism, meaning equilibrium among the competing interest of a society.*" (Mayneni, 2007, p. 511). On the other side, Savinji, a German philosopher, saw the law as being an unplanned, almost unconscious reflection of the spirit of the people of a given society. In this regard, the legislative change could be explained only historically, as a slow response to social changes.

In this understanding, the abovementioned authors, by emphasizing the influence of the dominating interests and values of the society, undermine the standpoints of the positivists that view the law as simply a command of a political authority. (Mallor et al., 1997, p. 9) From what is presented above, it can be said that the European Convention of Human Rights, and its dispositions relating to property rights, must be seen as a legal instrument that does not substitute the domestic law, but that places a minimum standard under which member states neither can, nor must fall. (Albanian Center for the Rehabilitation of Trauma and Torture, 2010, p 26) This means that the states despite their social conditions and their historical development, in order to comply with the Convention must not approve laws or any legal acts that lead to a more unfavorable and negative situation for their citizens, than that foreseen by the Convention.

Even though, there cannot be found a particular definition on property rights, in the Convention, it is self-implied that any definition of the content and limitations must respect the fundamental dispositions of human rights, according to their primary meaning, and similarly be in harmony with the other norms of the Convention among which we could particularly mention: the principle of equality, legal security, proportionality, etc. However, the interpretation and standards related to these principles remain at the discretion of the European Court of Human Rights (ECHR) and its judicial practice, as it will be discussed below.

First, under the interpretation of Article 1, the second sentence found within states that: "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." In relation to this the Court considers "property deprivation" in compliance with the Protocol only if these conditions are fulfilled in a cumulative manner:

1. The deprivation must be legal, in accordance with the principle of legitimacy. The court accepts as legal any action that is in compliance with the principles of the rule of law. This means that not only the deprivation must be based on law, but also the followed procedures must be in respect of the law, within the principles and standards of the rule of law. (Grgic et al. 2007, p 13) For the Court, if the criteria of legitimacy are not fulfilled then we have an illegal intervention on the property rights, and in this case the existence of the general interest or the principle of proportionality is not analyzed any further. (Iatridis v. Greece, 1999)

2. The preservation of proportionality. (Pressos Company Naviera SA v. Belgium, 1995; Broniowski v. Poland, 2004) In order to evaluate the respect of proportionality during the intervention of the lawmaker, with the consequence of the infringement of the individual's rights provided by the Constitution and the law, there must be taken under consideration the balance between the mean used to achieve and/or protect the public interest and the damage caused to the individual by such use of the means. In other words, the state, within its possibilities, must limit the intervention at a minimum, by seeking alternative solutions, and in general by tempting to achieve the objectives in the least harmful manner in regard to human rights. (Hatton and others v. United Kingdom, [2001]) The Court emphasizes that in the case of the limitation of rights, a measure, in order to achieve its objectives, must be as much appropriate as proportional. (Hentrich v. France, 1994.)

3. The deprivation must be made in the public's interest. The concept of public interest is a flexible concept that changes according to the particular interests of a society and time. In this context, the public interest remains at the discretion of the governments of the member states of the Convention, and the Court is not concerned and does not analyze the cases when exists a public interest able to prevail over the private one. However, it has been accepted in general lines that the public interest is the one that serves to the community, and this is noted and evaluated case by case. In this understanding, in order to somehow unify the practice of the member countries, but without dictating specific cases of 'situations in the public's interest', the Court has set some standards. The expropriation of property from an individual can be legitimized when the aim of such action is to undertake social, economic, educational or other reforms. (Hentrich v. 1994) In the Court case *James against the United Kingdom* a thorough analyses has been made on the regulation of the "public's interest" issue. (James v. United Kingdom, 1986 and Former King of Greece v. Greece, 2000) In sum of the above, in regard to

this principle the reasoning of the Court has now been unified in that although it is at the discretion of the states to evaluate the cases that fall under the “public interest”, the court reserves the right to determine whether the undertaken measures by the government of a country have been in proportion with the infringement made to the interests of the individuals.

Besides the above, during the judgment of specific cases, the Court has interpreted the Articles of the Convention by referring also to other principles sanctioned by the Convention, although they have not been claimed to have been violated. Under this understanding the violation of Article 1, of Protocol 1 of the Convention by the side of the state, it is also closely related with other principles such as that on legal security. In regard to this principle, it generally requires that a state must fulfill the legal expectations of its citizens. The principle of legal expectations has at its core the protection of the gained rights: the continuance of application of the law; the prescription in relation to the legislative decision making, ect. To illustrate this, for instance, if a country has taken over the responsibility by law to restitute and compensate the properties of the former owners that were unlawfully expropriated by a former regime, then this undertaken obligation cannot change along the way based on reason of financial difficulty.

The principle of legal security implies also the demand that the law in its thoroughness must have clear, well defined and understandable dispositions. The avoidance of legal gaps is in function of the principle of legal security. Thus, in the case of *Silver and others against the United Kingdom*, the Court has reasoned that in order for the laws to be valid they must be accessible, clear and predictable. (Silver and others v. United Kingdom, 1983) In summarizing the above, but without setting limits on the cases mentioned, on a general and practical overview, the property rights result to be not absolute, and the states themselves have rooms to set limits on such rights. Primarily, the European Convention of Human Rights sets the principles, which must guide the political activity of the lawmakers of any member country.

In the following part of this paper, the discussion will focus on the Albanian law of property which nowadays is guaranteed as a constitutional matter, even in respect of the set standards, in the context of human rights.

3.The Right of Property in Albania After 1990

The change of the political and economic system in Albania after the year 1990, and the fall of the communist regime found the country not only devastated economically, but also with a legal system that was not appropriate for the new conditions that the establishment of the free market economy required. The new transforming process brought the need of reestablishing the notion of private property and the rights associated with it, which up to that point belonged exclusively to the state. Thus, the first pluralist legislature had the burden to draft new legislation, especially that relating to property rights. In this context, the legislative changes that followed had at their foundation the rights for guaranteeing private property, as a constitutional and a basic human right matter, which were prerequisites for transactions in the market economy.

The first law that prepared the groundwork for transforming the legislation on property was the law with the Constitutional character “For the Main Constitutional Dispositions”, which did not only abolish the Constitution of 1976, but also paved the way for sanctioning the constitutional guarantees for the recognition and protection on an equal basis of all kinds of property. The effects of this law were stretched until the approval of the *Constitution of Albania 1998*, which under article 41 restated and reconfirmed once again the recognition and guarantee of private property, which could be limited only by law, for public interest and according to a just compensation. This is foreseen in Article 17 of the Constitution according to which: “1. *Restrictions of the rights and freedoms foreseen in this constitution can be placed only by law and for public interest, or for the protection of the rights of the others. The restriction must be in proportion with the situation that has dictated it. 2. This restrictions cannot violate the core of the rights and freedoms and in no case surpass the restrictions foreseen in the European Convention for Human Rights*”.

In compliance with this Constitutional disposition, after Albania’s accession in the Convention in 1996, the Albanian Parliament has approved law no. 8561/1999, “*on expropriation and temporary takings of private property for a public interest,*” as a special law that foresees strict and clear procedures of expropriation for public interest. The reasons that were considered as justification for public interest are foreseen specifically in this law summed up as: 1. Projects and investments in the area of energy, telecommunications, water works; 2. Projects and works in function of the protection of the environment, health, public education, culture; 3. Projects in the national defense area. While, regarding the subjects in favor of whom the expropriation takes place they are the state, or the legal person being this public or private. As noted, subject of expropriation cannot be only the physical person (the individual).

Despite these positive steps, in order to understand the still problematic situation regarding property matters, it is worth looking into some more details in the first approved laws that constituted the legal bases for

transferring the assets and the real estate property from the state to the favor of the private subjects. The legislation on property and on benefiting the right to own real estate, still under continuous change, can be summarized as follows in these four directions:

A-Property restitution and compensation of the former owners: According to the legal norms drafted for this aim, all the property owners that after the year 1944 had their properties taken unfairly from them by the state, would benefit from the right to have their properties restituted, and when this was not possible due to the changes in the urban plans they would be compensated according to market prices.

B-Privatization Process: The laws that oriented the process of privatization made possible the transfer of properties from the state to the private actors. Initially these laws had as their objectives the living houses, which were privatized by the citizens that lived in them. Later on the privatization process continued in the small economic sectors and this process is still underway in the important and strategic sectors of the Albanian economy.

C-The distribution of agricultural land: According to the respective laws the aim was to distribute the land of the former agricultural cooperatives in favor of their members.

D-The legalization of informal buildings: The respective legislation has also an historical context. During the years of transition, Albania was faced with a rapid domestic migration from the rural to the urban areas, a phenomenon that had its own consequences. The panorama was one with numerous buildings being erected without a building permit and with vast occupations of land without the necessary legal authorization, especially in the outskirts of the capital and the coastal areas, by thus creating informal urban settlements. The constructions were made without taking into consideration the laws for regulating the territory or the laws regulating the construction standards, without a permit from the responsible authorities, or the necessary infrastructure and often (but not always) on the land that did not belong to the builder. As a consequence many properties in the cities were considered to be illegal. On an evaluation of the World Bank (June 2011) throughout the country it was estimated to have been built without a building permit 350000 – 400000 informal buildings. The other options, such as the demolition of the informal buildings would bring social unrest. On the other hand continuing with the chaotic situation was also unproductive because it had stopped the economic movement in the real estate property market, by leaving out of the formal system a considerable real capital.

In total, all these buildings created a significant urban chaos, which to make matters worse resulted to be unmanageable by the competent state authorities. Faced with this fact, this situation had only two solutions, the first was to reconstitute the initial status of the land by demolishing the informal buildings, while the second was to accept the situation and establish a legal and urban discipline of these buildings. The legislators chose as the most appropriate the latter by thus approving the law on *“Legalization, Urbanization and Integration of informal buildings” 2006*.

Critics have not been absent, in regard to the law on the legalization of the informal buildings, which gave full ownership title to a subject that had informally built on the land that belonged to a former owner, while the latter would be vested off the right to regain ownership on the land, by being obliged to accept a financial compensation. This compensation would be paid out of the state budget, by placing a burden on the taxpayers, and this makes up another type of criticism against this law. The case mentioned above is only one among the numerous ones that have spurred debate in this regard and which is part of discussion in the next chapter.

4. Legalisation of Informal Buildings - Expropriation for Public Interest

As discussed above, the property rights nowadays are guaranteed by both the European Convention on Human Rights in the international level, and the Constitution in the national one. Based on these two legal bases the state has the right to set restrictions that go as far as expropriations, if this is justified by the public interest, and if it happens towards a just compensation foreseen by legal procedures. Based on the legal provisions above, the discussion will follow on the question whether the legislation on the legalization of the informal buildings fulfills the international and constitutional criteria regarding the restrictions on the property rights by the state, without forgetting the reflection of the principles and standards set forth by the European Court for Human Rights.

At first there will be listed the criteria and the standards mentioned above in order to confront them with the provisions of the law on the legalization of the informal buildings, in regard to the state's intervention in the private property rights. As such they are:

1. The restriction on the private property is set by law.

2. The reason for the restriction is the public interest or the protection of the right of the others.
3. The preservation of the proportionality between the restriction of the property and the benefit from such action.
4. The compensation on the restricted property must be a just one.

It is worth stressing that the law that we are discussing does not mention at all the notion of expropriation. Likewise this law is in contrast with the provisions of the Law "On Expropriation for public interest". Thus the law on the legalization does not foresee well defined procedures as the law for the expropriation. Its subjects could also be the physical persons, contrary to the law on expropriation that excludes this category from its scope. Despite this deviance, the law on the legalization, as we will see during our analyses, violates the property rights by expropriating *de facto* and *de jure* the private property of the third parties.

As discussed in the second section, about one third of the informal buildings have been built on the land that is under the ownership of third parties. (Council of Ministers Progress Report, 2009) According to this law, through special procedures the state has the possibility to give the land to the requesting subjects that do not own the land where they have constructed the building that will undergo the process of legalization. The mechanism of regulating the relations created between the owner of the land on one hand and the possessor of the land on the other is as follows: The authority of the public administration established by this law proposes to obtain the private land and to transfer the ownership in favor of the state by a Council of Ministers Decision. Then with a subsequent Council of Ministers Decision the land is transferred to the subject requesting the legalization, who gains the ownership title on the land and on the object built on it. To sum up the above, when despite the will of the legal owner of the land, the property is taken from him by the state, we are naturally in front of an expropriation process. The issue to be discussed further is whether this expropriation complies with the required standards and criteria.

In regard to the first criterion, according to which the restriction of the property cannot be made without a law, it means that the intrusion of the state in the private property must be done only through a legal act, which in a strict sense is the act produced by the parliament. In our case this criterion is fulfilled since the law on the legalization is approved by the Albanian Parliament.

As regards the second criterion of the existence of the public interest, our case must receive careful attention, because of the lack of a definition of the matter both in the Convention and the Constitution. In this understanding the limits of its extent remain subject to interpretation and discussion. The notion of the public interest is presented in a wide form and as in accordance with the power of the policy making by the state authorities over different practices. In the Albanian legislation, the notion of the public interest is provided in the law on the expropriation for public interest, cited above. But the notion in this case is determined as such only for the effect of this law, while in a constitutional sense the notion of the public interest continues to be undetermined. In the field of the jurisprudence it is accepted that the notion of the public interest is found even in the implementation of those policies that try to promote the social justice in the community. This wide interpretation however is objected by the lawyers of the private property rights, according to which the public interest treated in this wide sense takes off the meaning of this notion itself. To them, in a situation where the owner of the private property is asked to make many sacrifices in the interest of the public, and where the state reserves the right to intervene in the private property by giving a wide interpretation to the "public interest", the private property itself and the interest of the private actor to develop it would fall together with the dynamics that the development of the property incorporates. The success remains at finding an equilibrium point, which varies from one state to the other.

Judging from the above, and by analyzing mainly the motive and the political context of the drafting of this law, we would notice that this legislation was a pragmatic need of the state, which had the responsibility to regulate a factual and illegal situation where a massive number of citizens were found. The creation of this situation as discussed in the second section had resulted not only due to the fault of the citizens, but also due to the lack of the state's responsibility. Nevertheless there were only two alternatives remaining for the solution of this situation. These informal buildings would either be demolished or legalized. The first alternative, judging by the fact that in their majority these buildings were used for living purposes, was evaluated as having too many costs, being these not only political but also social and economic. These costs had a magnitude that a poor country like Albania could naturally not bear. It was at this point that the law makers found the argument that justified the state's intervention for public interest.

The same stance is also held by the Constitutional Court, during the discussion of the constitutionality of this law in 2007. The court concludes that the law on the legalization has as its object the legalization of the informal buildings and especially the urbanization of the areas, informal blocks, as well as their integration in the infrastructural and territorial development of the country, by improving the living conditions, and as such

there exists the reason of the “public interest” that can justify the state in the expropriation of the legal owners and the transferring of their ownership in favor of the builders of the informal buildings. (Decision of the Constitutional Court 35/2007)

The third point that we need to discuss deals with the criteria of the proportionality principle. According to the procedures of this law the possessor of the land and the informal building on it, with the completion of the legal criteria gains the legalization title, which also constitutes the title of ownership for the land and the building. Subsequently, the right of the compensation is recognized to the legal owner, which he benefits some months later. By analyzing these dispositions, we can notice that while the new owners gain the ownership title as soon as they fulfill the legal criteria set by this law, the former owners are left waiting on the compensation of the value of the land, which is now expropriated from them. This procedure raises a question on the fulfillment of the proportionality principle, according to which it is required that during the intervention of the legislator, with the consequence of the restriction of the property right, there must be taken into consideration the balance between the means used for the accomplishment and/or protection of the public interest and the damage caused to the individual by these used means. Taking away the property rights without an immediate compensation cannot be considered as a proportional solution. Thus we can notice that the legislator has not drawn a just balance between the interest of the legal owners, who have not infringed on any law, and the interest of the citizens that have occupied the land and have illegally built on it. The disproportionality between the benefit of the legal owners and the citizens that have built illegally is also noticed in the manner that these parties gain and lose the ownership rights, in the price value of the land, as well as in the time that they benefit these respective rights. Likewise it is worth pointing out the fact that the legalization of the informal buildings, including also the value of the land where it rests, costs less than the market value and what the legal owner must benefit. This leads to the difference of the funds being drawn from other sources of public funds, thus from the Albanian taxpayers, by infringing in this way the public interest itself. Despite this, the legal owners do not get compensated for the damage caused as a result of the unlawful possession of the land by third parties for the time before the *de jure* expropriation of their land. The law should have had taken into account this fact also, which was widely known and therefore proven.

On the fourth point, regarding the just compensation criterion, the compensation must be reasonably related to the value of the land, by being just and real. In regard to the just compensation, the law on the legalization does not regulate in itself the manner and the criteria for the compensation of the expropriated legal owners. It neither sets norms for the quantity of the compensation that will be given to the legal owner. This law, under the article 15, point 5, refers to the Law no. 9235, date 29.07.2004 “On the restitution and compensation of property”, and in this way it is this latter that is applied in regard to the legal owners of the land where the informal buildings have been built. According to this law, the manner of evaluating the property for compensation reasons is defined under its article 13. This article states that the value of the property that is compensated is defined based on the market value in compliance with the methodology proposed by the State Committee for the Restitution of Property, approved by the Parliament.

5. Conclusion

The property right is part of the human rights and it constitutes a right that is elastic in nature, and therefore one that can be restricted at times. During the first part of this section we saw how the state during its activity can intervene in the property rights by restricting, or even expropriating it. However there were limits in doing so. Intervention is foreseen by law, towards a just compensation and for the public interest. Likewise the intervention is possible by also respecting other principles such as that on the proportionality, lawfulness, just compensation, etc., principles that have been set forth by the practice of the European Court for Human Rights.

Further on we discussed on how Albania, as a member country of the Convention has incorporated within its Constitution the principles sanctioned in it, and more concretely under Article 17 where it is stated that the right of the state to intervene in the private property must be made in respect to the respective criteria. In the second section we drew an historical panorama of the development of the property rights in Albania, by emphasizing mainly the approval of the law on the legalization of the informal buildings that was the study object of this paper. Thus we saw how due to the internal massive migration from the rural to the urban areas, the country was faced with a situation where the lands that belonged to third parties were occupied and where buildings without any legal permit were constructed. These circumstances led to the approval of this law, which besides the positive effects such as the regulation of the territory and the normalization of a chaotic situation had also its negative effects as was the infringement on the private property rights. The latter becomes the core of the discussion in the third section of this paper, by raising the question on whether the application of the law on the

legalization respects the criteria and the standards set forth by the European Convention on Human Rights. During the analyses of the legal procedures followed during the state's intervention for the legalization of the informal buildings, we noticed that some of these international standards were fulfilled, while some others lagged behind. Thus, while the restriction of the property is made based on the law and towards a just compensation, the same cannot be said without discussion for the respect of the principle of proportionality and the existence of a strong public interest.

In conclusion, we can assume that the private property right although being at the core of many modern Constitutions, is often found in situations of conflict with the need to regulate the public property. The manner on how this conflict is solved depends on the sustainability and importance that the private property holds within the policies of a given state. In general, it can be said that the state can for public reasons restrict the private property rights even through expropriation procedures, but in its activity it is the obligation of the state to find the most appropriate means for compensating the loss incurred to the legal owner. The intervention must be made within a certain legal framework and according to consolidated principles recognized in the international and constitutional law. This should have been reflected also in the law on the legalization of the informal buildings, which was under the focus of this paper.

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