Property within the Boundaries of Justice: An International Perspective on Legal Harmonization in Albania

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Abstract

This study approaches property law through the lens of Private International Law, examining the influence of Albanian legal reforms and comparing them to international and European Union norms. The notion of lex rei sitae is highlighted as a crucial premise in deciding the relevant legislation for property, including the methods of obtaining and losing property for mobile and immovable objects. Special emphasis is placed on advances in Albanian law that align with European rules, such as the protection of intellectual property rights and cultural assets. The study examines how the European Court of Human Rights has contributed to the advancement of property protection by setting realistic requirements for the execution of Article 1 of Protocol 1 of the European Convention on Human Rights. Finally, the study discusses the obstacles of effectively implementing property law in Albania, highlighting the necessity for continued alignment with best international practices.

Keywords: *include property law, lex rei sitae, private international law, European Convention, legal harmonization, etc.*

1. Introduction

The Albanian state has given considerable emphasis to regulating this field of legislation, first with legislation No. 3920/1964 and then with Law No. 10428/2011. Albania signed the European Convention on Human Rights on July 13, 1996, ratified it by Law No. 8137 on July 31, 1996, and lodged the instruments of ratification with the Council of Europe's Secretary General on October 2, 1996. The European Court of Human Rights is an international court that, under certain situations, can receive petitions from persons who allege abuses of rights granted by the European Convention on Human Rights. This Convention is an agreement in which numerous European governments pledge to safeguarding some fundamental human rights. These rights are formulated in the Convention itself, as well as in several protocols, some of which have been signed by various states. When violations of these fundamental rights occur, individuals may appeal to the Strasbourg Court for the infringement (Qoku, 2014).

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agreement in which numerous European governments pledge to safeguarding some fundamental human rights. These rights are outlined in both the Convention and multiple protocols, some of which have been signed by various governments.

2. Methodology of the Study

This paper follows a combined methodology that intertwines legal analysis, legislative comparison, and the interpretation of case law, with the aim of drawing conclusions and practical recommendations for property law within the framework of Private International Law.

1. *The Method of Legal Research*

- **Documentary Analysis**: Albanian laws have been analyzed, including Law No. 3920/1964 and Law No. 10428/2011, which regulate property rights. In addition, international instruments such as the European Convention on Human Rights (ECHR) and its protocols have been examined.
- **Comparative Analysis**: A comparison between Albanian regulations and European Union standards has been used to identify areas of alignment and those requiring further harmonization.

2. *Jurisprudential Interpretation*

- **Study of International Case Law**: Key decisions of the European Court of Human Rights have been analyzed (e.g., the cases *Oneryildiz v. Turkey*, *Driza v. Albania*, and *Ramadhi v. Albania*) to understand their impact on the interpretation of property rights.
- **National Case Law**: Decisions from Albanian courts and administrative commissions concerning the restitution and compensation of property have been examined to assess the effective implementation of domestic laws.

3. *Historical and Analytical Method*

- **Historical Perspective**: The evolution of Albanian legislation on property rights has been examined, starting from the legal system of the communist era to the modern regulations.
- **Conceptual Analysis**: Key principles, such as *lex rei sitae* and the principle of territoriality, have been addressed to provide a clear theoretical and practical foundation.

4. *Data Collection and Analysis*

- **Primary Sources**: Legal texts, court decisions, and international conventions have been used as primary sources to support the analysis.
- **Secondary Sources**: Scholarly articles, comparative studies, and academic literature on property law and private international law have been consulted to enrich the study.

5. *Practical and Recommender Method*

- **Application to Specific Cases**: Through the analysis of specific cases, the practical impact of legislation and case law on property rights has been examined.
- **Formulation of Recommendations**: The conclusions drawn from the study have been used to propose legal changes and improvements that could help in better implementing property rights in Albania.

6. *General Approach*

The combination of the above methods has aimed to provide a comprehensive and in-depth approach to understanding and addressing the challenges of property law under Private International Law.

3. Understanding Property Rights under Private International Law

Different countries across the world approach the institution of property in their legislations by dividing things into two categories: mobile and immovable property, which have different legal repercussions. Because of its nature, immovable property is subject to lex rei sitae law, which requires the application of the law of the location where the property is situated. The legislation governing the property's location then dictates how ownership is acquired and lost(Kalia, 2023). In cases where a foreign national owns immovable property in Albania, property rights will be determined based on Albanian law, and vice versa. Albanian legislation regarding the classification of goods takes into account three criteria: a) the nature of the goods; b) their purpose; c) legal determination.

Our Civil Code distinguishes between movable and immovable property, stating that "Immovable property includes land, water sources and flows, trees, buildings, other constructions permanently attached to the land, and anything that is permanently and continuously incorporated into the land or building." All other items, including natural energy, are

considered movable property. (Official Publishing Center, 2013)

Given the emphasis that our local laws places on the protection of property rights, international law must provide a necessary and thorough regulation. The 1964 law regulated property rights in a vague manner, describing its provisions in a single item that stated:

> *"Possession, ownership, and other rights over movable and immovable property are governed by the legislation of the state in which the property is located."*

Ownership and other real rights over ships and aircraft are governed by the legislation of the state of the flag of the ship or aircraft. (Article 16 of Law No. 10,428, 2011)". Therefore, from this provision, we understand that it is insufficient to regulate property rights, especially when we know that ownership constitutes an important economic and legal category derived from the socio-economic relations tied to it (Kalia, 2023).

This provision does not address several important aspects of property rights, such as the acquisition or loss of ownership; it does not specify which legislation should be used to determine whether an item is immovable or movable; nor does it address intellectual property, goods in transit, modes of transportation, cultural heritage protection, or even securities. However, given the time period in which this law was enacted, we understand that one of the primary reasons why property rights were minimally regulated was that the then-communist state did not recognize private property, and immovable property was excluded from civil circulation under the prevailing legislation.

All of the aforementioned elements that were not covered by the 1964 Foreigners' Law have been addressed by the "Private International Law" of 2011. As previously stated, the concept followed in property law, both in foreign legislation and in Albanian law, is the principle of lex rei sitae, and this principle is explicitly described in our Private International Law, which states:

> *"Ownership, possession, and other real rights to moveable and immovable property are controlled by the laws of the state where the property is located. The acquisition or loss of ownership, possession, and real rights is controlled by the legislation of the state in whose territory the property is located at the moment the factual conditions determining the acquisition or loss of these rights are verified. The legislation of the state in which the property is located determines whether it is moveable or immovable". (Article 36 of Law No. 10,428, 2011)*

Securities are papers with a nominal value that may be exchanged into equal-valued shares, such as stocks, bonds, or mutual funds. (Civil Code, 2008) Ownership of these objects is gained by registration rather than delivery. The lex rei sitae concept is also applicable to securities.

The Private International Law provides that "the rights to registerable and negotiable securities are governed by the law of the state in which the registry is located.

> *"The acquisition and loss of these rights are controlled by the legislation of the state in which the security is placed at the time of the act on which the right is founded(Article 37 of Law No. 10,428, 2011)". As a result, every foreign citizen who purchases Albanian securities will be subject to Albanian law. Regarding the rights that were obtained, the 2011 legislation states: "In cases of a change in the location of the property, the rights acquired under the law of the state where the property was located cannot be exercised in contradiction with the law of the state of its new location".(Article 38 of Law No. 10,428, 2011)*

Article 39 of the statute states that the destination state's law governs genuine rights to commodities in transit. The rights to means of transportation are controlled by the laws of the state in whose territory they are registered(Article 41 of Law No. 10,428, 2011).

The new regulation on Private International regulation also concerns the preservation of culturally significant goods. The legislation reads:

> *"When things included in a state's cultural heritage are illegally taken from its territory, their reclamation is controlled by the law of the state from which the item was removed, in effect at the time of the item's removal. The state from which the object was removed may opt to apply the legislation of the state whose territory the item is in at the time of its recapture."(Article 40, Law No. 10 428, 2011).*

The new legislation on Private International legislation has also brought about changes in the regulation of intellectual property rights, such as writers' rights and other related protective rights like patents and trademarks. In this scenario, our law acknowledges either the *"territoriality principle"* or the *"state protection principle."* This implies that, in

this matter, the law of the state where the plaintiff seeks legal protection for intellectual property will be used. This is defined under Article 42, which reads:

> *"The existence, validity, subject matter, ownership, transferability, duration, and infringement of the author's right, related rights, and other unregistered intellectual rights are governed by the law of the state for which protection is sought."*

The existence, validity, subject matter, ownership, transferability, duration, and infringement of registered industrial rights are controlled by the laws of the nation from whence the right was awarded or registered. Our legislation's control of intellectual property is consistent with the rule set by the Rome I control, which states that the relevant law for conflicts relating to intellectual property shall be the law of the state in which protection is sought. (European Parliament and of the Council, 2007) As a result, we recognize that our law is consistent with European law, and both legal systems use the "territoriality principle." Finally, we may underline that the comparison of both laws reveals that the "lex rei sitae" principle governs property rights.

3.1 Developments in Albanian Legislation in Alignment with European Legislation on Private International Law

Civil law requires a natural or legal person to have legal capacity and the ability to act in order to enter into various legal relationships. According to legislation No. 3920/1964, the capacity to act and the legal capacity of a natural person are governed by the individual's nationality legislation. This is governed by Law No. 10428/2011. However, it is important to highlight Article 3, Paragraph 2 of Law No. 3920/1964, which emphasizes:

> *"When a foreign national performs a legal act in the Republic of Albania for which they do not have the capacity to act according to the law of their nationality, it is considered that they have the capacity to act if the legal act would be valid for an Albanian national, except when the act involves family relations, inheritance matters, or the disposition of immova." (Article 3/2, Law No. 3920, 1964)*

This clause, which is not contained in the 2011 legislation, demonstrates that the Albanian state wanted to establish equality between Albanian people and foreigners. Even if they lacked the capacity to act under the law of their country, they were permitted to perform specific activities if they had gained the competence to act under Albanian laws. Other changes that can be identified by comparing the provisions regarding the legal capacity and capacity to act of natural persons include the fact that the 1964 law made no mention of individuals with dual or multiple nationalities, while persons without nationality were simply treated as equals in terms of rights to Albanian citizens.

In contrast, the 2011 legislation incorporates two new concepts: *"habitual residence"* and *"closer connections"* in respect to individuals with multiple nationalities and stateless persons. *"Habitual residence"* refers to the place where a person has opted to spend the most of his or her time, even if registration is not required and no permit or license to remain exists.

> *"Closer connection," on the other hand, is established by the court based on the facts of the case (Article 12, Law No. 10,428, 2011).*

To decide which country's law applies to the relationships involving these persons, it is necessary to grasp these two newly added notions.

Another new feature established by the 2011 legislation is a natural person's right to alter their name, which is governed by the law of the country of their nationality, or by a person who has their usual residence in Albania(Article 13, Law No. 10,428, 2011). However, no section of the 1964 statute addressed this right. Both laws, in terms of limiting or removing capacity to act and declaring someone missing or deceased, make the same provision, stating that the criterion of connection will be the person's nationality.(Article 11 & 14, Law No. 10,428, 2011) (Articles 12 & 13, Law No. 3,920, 1964).

According to the previous 1964 legislation, a legal person's legal capacity and ability to act were governed by the law of the state in which the legal person was headquartered(Article 4, Law No. 3,920, 1964). However, the new 2011 legislation expands the requirements, utilizing the law of the state where the legal person is registered or the law of the state where the legal person has its usual abode. We come across the notion of habitual residence again, but this time it is applied to legal individuals rather than natural beings. This rule states that the usual abode of a legal person, association, or organization without legal personality is the location of its central office. The usual abode of a natural

person doing commercial activity is their primary business location. (Article 17, Law No. 10,428, 2011)

If we look closely, the regulation created by the 2011 law is very similar to the regulation established by the European Council Regulation No. 44/2001, also known as the Brussels I Regulation, which addresses jurisdiction in the recognition and enforcement of civil and commercial decisions. The sole distinction is that Albanian law uses the word "habitual residence," whereas regulation uses the term "domicile." This rule states that an undertaking, another legal entity, or a group of natural or legal persons has its domicile in the nation where it has: a) its statutory seat; b) its central administration; or c) its place of business(The Council of the European Union, 2000).

Given the practical difficulty of determining a legal entity's central seat, the legislation addressed all relevant concerns and combined them into a single provision. Furthermore, this rule stipulates that the court would use private international law principles to determine the true domicile.

Both laws follow essentially identical prerequisites for lawful legal action, including the law of the state where the action was carried out, as well as state law, which governs the legal action's content.

In addition to these two common prerequisites, the new 2011 regulation stated that for a legal transaction to be valid, two parties living in different countries must fulfill the rules of at least one of them. However, immovable property is subject to the laws of the country where it is located.

The former law offered an exemption regarding the form of legal transactions, stating that even if a legal act did not follow the requisite form, it would not be regarded illegal if carried out in accordance with Republic of Albania laws. (Article 21, Law No. 3920, 1964)

The institution of representation was initially governed by the new 2011 legislation, as the 1964 law did not include it. The 1964 legislation declared that: "The relationship between the representative and the represented is governed by the law chosen by them." If the parties have not chosen a law to govern their connection, the law of the state in which the representative works or has a habitual abode will apply." (Article 19, Law No. 10,428, 2011) Thus, we can see that the law accepts the autonomy of the partners' wills, giving them the right to pick the law that will regulate their relationship.

Furthermore, the new legislation on private international law includes the regulation of an institute such as prescription, which states that the prescription of rights is controlled by the law of the state that governs that claim. (Article 20, Law No. 10,428, 2011)

3.2 The Nature of International Norms vs. National Norms

The legal rules of private international law differ from those of civil law because they serve a distinct purpose. The term "private international law" (first used by American jurist Joseph Story (1779-1845)) is misleading because it implies that it deals with norms governing relationships between states, whereas these are internal state norms, which are a branch of the state legal order. As a result, the norms of private international law vary from the official system. They differ from the state legal system not by origin or nature, but by purpose, which is to govern relationships and facts including foreign components, and function, which is to establish the scope of domestic or foreign law. These standards are structured into two main elements:

3.3 Summary of the structure of norms in private international law.

3.3.1 The norms of private international law consist of two main elements:

1. **Object (First Element):** This element abstractly specifies the facts, events, and interactions between foreign elements governed by private international law. For example, Article 36 of Law No. 10428, issued June 2, 2011, addresses issues such as ownership, possession, and real rights to mobile and immovable property.
2. **Function (Second Element):** This element comprises the criteria of connection, which decides which legal regime will govern a legal relationship with an international element. The criteria of connection reflects the relationship between the event or relationship and the relevant legal order. These requirements could be: The legislature defines the objective, such as property location, in Article 36.1. Subjective: Parties choose the appropriate law (Article 45.1).

3.3.2 Classifications of the Connection Criteria

- **Objective and subjective** criteria are used to determine relevant laws based on facts or the parties' intent.
- **Factual and Legal Criteria:** Factual criteria refer to real conditions, such as an object's location, whereas

legal criteria refer to notions like nationality or domicile.

It should be noted that the connecting criteria, which many writers (including Raape) see as bridges connecting facts or connections to a given legal system, have diverse classifications.

In addition to this classification, the concept of private international law acknowledges two types of criteria: factual and legal. A factual criteria might be the location of an object, for example, but a legal criterion is a legal term, such as nationality, residency, the site where a responsibility ex delicto developed, and so on.

4. Article 1 of Protocol 1 of the European Convention on Human Rights.

4.1 The Concept of Property Rights According to the ECHR

Property is a formal civil relationship of a patrimonial type, with the goal being simply material things or rights having economic worth. Opinions on the object of property fall into two camps: the first stresses materiality and economic value, while the second, upheld by the European Court of Human Rights (ECHR), includes non-material rights such as copyright.

Article 1 of Protocol 1 to the European Convention on Human Rights safeguards legitimately acquired property while also assuring the protection of financial interests. The Court has broadened this definition to include property obtained unlawfully, as long as it has a major economic interest. The case ***"Oneryildiz v. Turkey"*** is particularly noteworthy because the European Court of Human Rights recognized property protection even when state authorities had implicitly condoned a violation of legal standards.

Since Roman law, property rights have been founded on possession (ius possidenti), enjoyment (ius utendi fruendi), and disposal (ius dispodendi). Claims of violation under Article 1 of Protocol 1 must show interference with any of these fundamental aspects of property rights. These characteristics combine to make property one of the oldest and most protected rights in legal history.

4.2 Types of property according to Article 1 of Protocol 1 of the Convention.

Property can manifest in a variety of ways, but the following are protected under Article 1 of Protocol 1: immovable property, movable property, in rem rights, in personam rights, intellectual property, rights related to the practice of a profession, legitimate expectations, and potential ownership claims.

4.3 Subjects of Article 1 of Protocol 1 of the Convention.

Article 1 of Protocol 1 defines the right to peaceful enjoyment of possessions for both natural and legal people, allowing them to file claims for property rights infringement. The European Court of Human Rights considers both natural and legal persons to be direct victims. However, the article also applies to indirect victims—those who have a special personal relationship to the primary victim and can establish suffering or a legitimate personal interest in resolving the infringement.

Cases involving shareholders underscore this idea, as seen by the European Commission of Human Rights' recognition of a shareholder with 91.66% of a business's shares as a victim, despite legal actions targeting the company itself. Article 1 also applies in circumstances where property interference is caused by a third party (a private individual), as long as a public authority is indirectly engaged.

4.4 The content of Article 1 of Protocol 1 to the Convention.

After considering the nature of property, the scope of application of Article 1 of Protocol 1, and the categories of subjects who may be protected by this article, we believe it would be beneficial to revisit the article's formulation and analyze each of its three sentences. As previously stated, each of them prescribes a particular form of interference.

The first statement reads as follows:

> *"Every natural or legal person has the right to peaceful enjoyment of his possessions."*

The first statement is auxiliary in the sense that it proves that the state interfered while we are not dealing with property deprivation, as in the second phrase, or control over property use, as in the third sentence.

A typical example can be drawn from the case Sporrong and Lönroth v. Sweden. The main facts of the case were presented earlier. Continuing with this idea, we can mention another case, Poiss v. Austria (Mole & Harby, 2001). According to the circumstances of the case, on April 22, 1963, the applicants' land was distributed to other owners as part of a property consolidation program. The latter was utilized for municipal reasons. The second phrase discusses and expands on the broad premise established in the first statement. It begins with the following phrase:

> *"No one shall be deprived of their possessions except in the public interest and in accordance with the conditions provided by law and the general principles of international law" .*

The second phrase of Article 1 of Protocol 1 of the European Convention on Human Rights is an ideal location to define loss of property. Deprivation of property refers to expropriation, which is the transfer of ownership rights from a private individual to the state. When the owner preserves the rights that come with property ownership, this is not termed expropriation.

Thus, in Sporrong and Lonroth v. Sweden, the European Court of Human Rights examined whether the absence of formal expropriation resulted in de facto expropriation, as claimed by the petitioners. In conclusion, the Court determined that the applicants' property rights had become insecure, unstable, and had lost some of their meaning. However, they did not disappear. The applicants could still use the land. Although selling property in Stockholm became more difficult due to expropriation permits and development restrictions, the opportunity to sell persisted.

The government verified this information. Several sales had already occurred. As a result, the effects of the government's actions did not represent a loss of property. As a result, the second statement was not relevant in this situation. The European Court of Human Rights recognised the existence of de facto expropriation (Papamichelopoulos and Others v. Greece).

- The second phrase's formulation makes it easy to identify the conditions under which it is applicable:
- The deprivation must serve the public good.
- The standards established by law must be met.
- The general principles of international law must be observed.

The case of Vasilescu v. Romania is a crucial ruling in this regard since it ensures the wrongful deprivation of property by a member state's authorities against the property of foreign persons.
(Bianku, 2007). According to this decision, violation of property rights by state authorities that happened before a country joined the European Convention on Human Rights (ECHR) can still be challenged under Article 1 of Protocol 1 if the illegality persists after ratification (ratione temporis).

This principle protects property interests, whether owned by Americans or foreigners, that were harmed by arbitrary or illegal acts before to the Convention's adoption, as long as the violations continue after ratification. Individuals in Albania who had their property illegally expropriated after 1944, before Albania ratified the ECHR in 1996, are entitled to protection if the violations persist. Similarly, Albanian nationals (Cham Albanians) who were expelled from Greece at the end of WWII and lost the capacity to illegally retain and utilize their property may claim restitution. If they exhaust legal proceedings in Greece without result, they can submit an appeal with the European Court of Human Rights, claiming a continuous violation of Article 1 of Protocol 1, since the illegality of their property rights continues to this day (ratione temporis).

The European Court of Human Rights, as expressed in the case of *Handyside v. the United Kingdom*, (Handyside v. the United Kingdom) should limit its supervision to the legality and the purpose of the restriction in question. Logically, this means that not every state intervention for the purposes outlined in the second paragraph is permissible.

5. Appeals submitted to the European Court of Human Rights

Albanian citizens can file lawsuits for property restitution and compensation under the European Convention on Human Rights (ECHR). The ECHR does not require states to return property or compensate citizens, but if a state has enacted legislation for this purpose, citizens have the right to it. According to the rulings of the European Court of Human Rights (ECHR), the state has the right to determine the amount of compensation, and it does not need to guarantee "full compensation in all circumstances, as legitimate public interest objectives may require an amount lower than the full market value." The ECHR decisions have also addressed the date and the norm (generally the market value) that should be used for assessing compensation. Over the past two years, the ECHR has accepted a growing number of cases filed

by Albanian citizens seeking their property rights, a fair trial, and effective remedies. Most of the lawsuits have been related to property issues, especially the restitution and compensation of property. It is estimated that 200 cases are still pending before the ECHR. Considering that over 80% of the ECHR rulings have been in favor of former owners, the Albanian government is facing large compensation bills and significant penalties. If all or at least many of the ongoing cases are transferred to the ECHR, Albania is likely to face a compensation bill of several billion euros, which would be an unbearable burden on the country's public finances. The ECHR has emphasized that "the non-implementation of domestic court decisions and administrative decisions regarding the restitution and/or compensation of former owners in Albania is a systemic problem," while the European Commission's Progress Reports mention this issue among the human rights concerns in Albania (Becaj, 2012).

Albanian citizens can file lawsuits for property restitution and compensation based on the European Convention on Human Rights (ECHR) (Official Publications Center, 2010). The ECHR does not require states to return property or compensate citizens, but if a state has enacted legislation for this purpose, citizens acquire this right. According to the rulings of the European Court of Human Rights (ECtHR), the state has the right to determine the amount of compensation and does not need to guarantee "full compensation in all circumstances, as legitimate public interest objectives may require an amount lower than the full market value." Over the past two years, the ECtHR has accepted an increasing number of cases filed by Albanian citizens seeking their property rights, a fair trial, and effective remedies. Most of the lawsuits have been related to property issues, particularly regarding the restitution and compensation of property.

5.1 The obligation to respect the right to property, according to Article 1 of Protocol No. 1, includes both positive and negative obligations.

The main object of this provision is to protect individuals from unjustified state interference with their right to enjoy their property (European Court of Human Rights, 2014). Negative obligations would include, for example, expropriations or destruction of property, as well as restrictions imposed by urban planning, rent controls, and temporary seizures of property. The effective exercise of the right to protection does not only depend on the state's obligation not to interfere, but may also require positive protective measures, especially when there is a direct connection between the measures that the applicant legitimately expects to be taken by the authorities and the right to enjoy their property. There has been rather limited case law regarding the positive obligations of the state under Article 1 of Protocol No. 1 (European Court of Human Rights, Council of Europe). The right to property protection is not absolute. It is subject to limitations. Interference with the right to enjoy property will be allowed if: They are provided by law, are in the public interest, and are necessary in a democratic society. All three conditions must be met.

A breach of the Convention happens when one of its terms is not satisfied. Interference with property rights must follow the law, as the idea of legal certainty is essential in a democratic society. Any interference with property must be justified in terms of public interest. The European Court of Human Rights has said unequivocally that any intervention, whatever its categorization, must serve a valid public or general interest.

In respect to Albania, the Court has addressed issues affecting property rights under Article 1 of Protocol No. 1, such as *Ramadhi v. Albania, Qufaj Co. sh.p.k. v. Albania*, *Beshiri v. Albania*, *Driza v. Albania, and Gjon Boçari et al.* These instances frequently include judicial decisions or rulings from the Property Return and Compensation Commissions or the Land Commission. In other cases, these entities acknowledged property rights over immovable property but failed to enforce them effectively. Alternatively, several rulings ignored allegations regarding property rights for certain things. This demonstrates continued difficulty in implementing property rights in Albania, even when they are recognized by legal authorities.

5.2 The case of Beshiri and others v. Albania

The case began with a complaint (No. 38222/02) against Albania filed on October 9, 2002, by six Albanian citizens (Shyqyri Ramadhi et al.) against the expropriation of their father's property without compensation under the communist period. The property in Kavajë consisted of 46,000 m² of land and 150 m² of stores. The petitioners requested the return of the property under the 1993 "On the Return and Compensation of Property" statute. In 1995 and 1996, the relevant Commission acknowledged ownership of 15,500 m² and agreed to restore 10,000 m² of land, while compensating the stores with an extra 5,500 m². In 1998, the property Commission acknowledged ownership of 30,500 m² of agricultural property for three applicants, but excluded the remaining three owing to lack of habitation in the region.

The first three applicants registered their property at the immovable property registration office, which was later

validated by the Kavajë Land Commission based on the responsibilities given by the Kavajë District Court in 2003. However, the first three petitioners, who had acquired property ownership documents, later learned that the local authorities had transferred the aforementioned plots to third persons, rendering the Commission's ruling invalid. According to the Immovable Property Register, the land parcels listed under numbers 89/15 and 89/16 (equivalent to the applicants' titles Nos. 462, 460) are owned by third parties. The other petitioners alleged that the Property Restitution and Compensation Commission's (PRCC) ruling on 5,500 m² remained unenforced (ineffective). Given the circumstances, the petitioners petitioned the European Court of Human Rights (ECHR) for infringement of Article 1 of Protocol No. 1. Regarding Article 1 of Protocol No.1, the ECHR (Judgment of the European Court of Human Rights, 2007).

5.3 In the case of Driza and others v. Albania

The case in question began based on the complaint (no. 33771/02) against the Republic of Albania submitted to the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Albanian national, Mr. Ramazan Driza ("the applicant"), on September 4, 2002 (Judgment of the European Court of Human Rights, 2007). The applicant filed a complaint with the Court, citing various breaches of Article 6/1, as well as the failure to execute a final and binding ruling. In line with Article 13 of the Convention, he stated that there were no effective legal remedies available for the aforementioned complaint. To prove his claims, the applicant submitted the circumstances of the case as the facts on which he relied.

Regarding Article 1 of Protocol No. 1, the ECHR "notices that the applicant filed a claim for the restitution of his former property in accordance with the Property Law." The authorities considered the confiscation of his father's property illegal and granted him two plots of land with a surface area of 5,000 m² as compensation, replacing his prior property, which had an area of 6,000 m². Despite the participation of state officials, the petitioner never obtained control of the land, which was held by other parties. In 2001 and 2000, two court decisions were issued, one as a result of the public interest appeal procedure and the other as a result of parallel proceedings, declaring the applicant's title to both plots of land invalid and ordering his compensation in one of the ways provided by law. Since then, the petitioner has not received compensation."

6. Discussions and Conclusions

6.1 Comparison with Efforts to Harmonize Property Law in the Balkans and the EU

In the effort to align property law with European standards, Albania is not alone. Other Western Balkan countries have faced similar challenges, yet some have undertaken different measures to accelerate the process.

1. **Montenegro**
   - Montenegro has improved its property registration system through the digitization of the cadastre, making the recognition of property rights faster and more transparent.
   - Unlike Albania, where property restitution remains an unresolved issue, Montenegro has completed most of the compensation process for property owners expropriated during the communist regime (Gore", 2021).
2. **Serbia**
   - Serbia has implemented a more detailed law on property restitution and compensation, incorporating financial mechanisms supported by international organizations.
   - The country has established a more transparent process for reviewing property claims, significantly reducing conflicts and delays (Srbije, 2025).
3. **Croatia (as an EU Member State)**
   - The harmonization of property law with EU standards has been achieved through alignment with the jurisprudence of the European Court of Human Rights (ECtHR).
   - The process of compensating properties confiscated by the former regime has been successfully finalized through a well-defined financial compensation scheme (novine, 2025).

6.2 Contextualizing Albania

- Compared to these countries, Albania still faces significant challenges in implementing property law reforms, including a lack of transparency and bureaucratic delays.

- Unlike Montenegro and Croatia, Albania has yet to establish a fully digitized property registry, creating legal uncertainty for property owners and investors.
- In terms of compensation, Serbia has demonstrated a more effective approach by utilizing international funds, whereas Albania continues to bear substantial financial obligations to former property owners.

7. Challenges in the Implementation of Property Rights in Albania

1. **Government Inefficiencies and Bureaucracy**
- Procedures for the recognition and registration of property remain complex and often time-consuming, hindering legal certainty for property owners.
- The lack of coordination among institutions such as the Immovable Property Registration Office, the Agency for the Treatment of Property, and Administrative Courts has resulted in overlapping decisions and delays in their execution.
2. **Corruption and Administrative Abuses**
- Numerous cases of property alienation through manipulated administrative decisions or document forgery have undermined public trust in the legal system.
- Instances of arbitrariness by public authorities in enforcing property-related decisions have led to prolonged judicial proceedings, often without a definitive outcome for legitimate owners.
3. **Issues with Restitution and Compensation of Property**
- The European Court of Human Rights (ECtHR) rulings in cases such as *Driza v. Albania* and *Beshiri v. Albania* have highlighted chronic delays in the restitution and compensation of property.
- Despite reforms, the financial compensation scheme remains insufficient, creating significant fiscal liabilities for the Albanian government and uncertainty for property owners.

7.1 Recent Legal Reforms and Their Impact on Property Rights

1. **The Law on Property Treatment and the Finalization of the Property Compensation Process (Law No. 133/2015)**
- This reform aimed to accelerate the compensation process by introducing a new property valuation methodology.
- Critics have deemed this law insufficient, as it significantly limited the compensation value for property owners, failing to reflect market value.
2. **Decisions of the Constitutional Court and Administrative Courts**
- Decision No. 1, dated 16.01.2017, of the Constitutional Court confirmed that certain provisions of Law No. 133/2015 violate property rights protected by the Constitution and the European Convention on Human Rights.
- Administrative courts have ruled in several cases that delays in the implementation of compensation decisions constitute a violation of citizens' rights.

8. Discussions and Conclusions

This study highlights Albania's progress in aligning property law with European standards, particularly through the application of the **lex rei sitae** principle and increased compliance with **Article 1 of Protocol No. 1 of the ECHR**. However, persistent challenges—including bureaucratic inefficiencies, delays in enforcing property restitution and compensation, and lack of a fully digitized property registry—continue to hinder effective implementation.

8.1 Key Findings

1. **Harmonization with EU Standards**: Albania has made significant strides in aligning its property law with European legal principles, but gaps remain in enforcing property rights, particularly concerning restitution and compensation.
2. **Legal Uncertainty and Institutional Weaknesses**: The failure to execute court rulings and administrative decisions creates legal uncertainty for property owners and foreign investors.

3. **Challenges in Compensation Schemes**: Albania's current financial compensation model remains insufficient, leading to costly and prolonged litigation before the **European Court of Human Rights (ECtHR)**.

8.2 Proposed Legal Reforms

1. **Strengthening Judicial Enforcement Mechanisms**: Establishing **a specialized property court** or **an independent oversight body** to ensure compliance with ECtHR rulings on property rights.
2. **Comprehensive Property Digitization**: Accelerating the digitization of Albania's **Immovable Property Registration Office** to enhance transparency and prevent fraudulent claims.
3. **Introducing an EU-Aligned Compensation Model**: Creating a **clear and predictable financial compensation scheme**, modeled after **Croatia and Serbia**, to ensure fair restitution for former owners.
4. **Reforming the Legal Framework for Foreign Property Ownership**: Simplifying legal procedures for foreign investors and aligning national regulations with **EU property directives**.
5. **Improving Intellectual Property Protections**: Strengthening the **territoriality principle** in line with EU law to better safeguard copyrights, patents, and trademarks.

9. Final Thoughts

While Albania has made progress in harmonizing property law with EU standards, it must now focus on **enforcement and institutional efficiency**. By implementing these reforms, Albania can foster a more **transparent, predictable, and investment-friendly** legal environment, strengthening both **domestic property rights and international confidence** in its legal system.

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