Social Impact of Governmental Policies on Property Rights in Albania in the Spirit of ECtHR Jurisprudence

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Abstract

This paper analyses the impact of the European Court of Human Rights (ECtHR) on property rights in Albania, focusing on the social and economic impact of European jurisprudence. Special focus on the paper is devoted to measure the perception of public servants regarding the social impact of ECtHR decision-making in this area. In more specific terms, the article examines how ECtHR decisions have influenced the initiation of legal reforms and adoption of social policies in order to improve the state of applicability of property rights in Albania. The study highlights ECtHR’s role in addressing historical injustices related to property confiscations, providing restitution and compensation to affected individuals. Also, the paper assesses the increase in public awareness of legal rights and growing trust in international judicial mechanisms, while acknowledging continuous challenges within the domestic legal system. Through an analysis of ECtHR jurisprudence, case studies and questionnaires, the paper provides a comprehensive overview of the social and economic impact of state policies on property issues.

Keywords: property, perception, social policy, ECtHR, legal reform

1. Introduction

The Albanian Government, since its membership in the Council of Europe (1995) and the ratification of European Convention on Human Rights (1996), continues to provide cooperation with the European Court of Human Rights. In this framework, as a result of interaction of national and international mechanisms in the field of human rights, during 1996-2023 period, ECtHR has reviewed about 1700 applications against Albania, wherefrom in more than 80% of the decisions taken, ECHR
found at least one violation of the Convention and implementation of European standards (European Court of Human Rights, 2023).

From the first decision “Qufaj Co. Ltd v. Albania” reviewed in 2004 until January 2023, ECtHR has taken 86 decisions against Albania, of which in 71 thereof, it found a violation of the provisions of European Convention on Human Rights. 44% of the decisions found as violations are related to the efficiency of justice system in litigations (the right to a due legal process) and 21% of the decisions found as violations are related to property rights and governmental reforms in this area (European Court of Human Rights, 2023).

Referring to the conventional obligations (Article 46 of the ECHR), the decisions taken by ECtHR are binding to be executed by the Albanian state. In this regard, based on data obtained from the Department of the Execution of ECtHR Decisions at the Council of Europe, until June 2023 Albania has executed only 59% of the decisions taken against it. Meanwhile, 41% of the final decisions against Albania are still awaiting the execution of measures taken by the ECtHR (Department for the Execution of Judgements of the European Court of Human Rights, 2023).

The amendment of legislation in Albania in recent years has been dynamic and increased the need for a systematic study of social and economic impact as well as factors giving rise to the change of case laws and adoption of social policies affecting the protection and guaranteeing of property right. Despite the frequent legal changes and importance of the study of reasons and factors that have encouraged its change, in Albania there has been a lack of social impact analysis of the European Court of Human Rights decisions in property issues.

Based thereupon, this paper is an attempt to analyse the social impact ECtHR decision-making had on Albania, especially in encouraging the adoption of political reforms aimed to improve the state of property rights in Albania. Through the assessment of the social impact of ECtHR decisions which have influenced the planning of public policies in Albania, the study aims to provide an evaluation framework that will serve public institutions when proposing strategic policies and sectoral strategic documents within their scope of competencies, in order to increase the effectiveness and efficiency of public policies oriented towards the protection of fundamental rights and freedoms of individuals within the jurisdiction of the Albanian state.

From the content of decisions analysed for the purpose of this study, it transpires that notwithstanding the level of violations found, decisions taken by the ECtHR have in some cases been effective in relation to social and legal impact which have encouraged the undertaking of political reforms, surpassing in this regard, the individual consequences of the Court’s decision-making in specific cases.

Also, the analysis performed for study purpose, showed that structural issues of legal framework and general measures at policy level in the country have also been a derivative of the low-level harmonization of standards set by the ECtHR by governing and policy-making bodies, bringing at the same time, two negative effects: i) firstly, the lack of guaranteeing international standards in the field of human rights and secondly, ii) an increase in the financial impact of Albanian state related to the amount of compensation for individuals whose fundamental rights and freedoms have been violated by public administration bodies and courts.

2. Research Questions Raised and Methodology

This paper focuses on the analysis of social and legal impact of the jurisprudential practice of ECtHR in matters of property rights in Albania.

To achieve this objective, the study aims to analyse the following research questions:

• What social impact has the implementation of ECtHR decisions against Albania brought regarding property rights?
• Have ECtHR decisions influenced the formulation of social policies and legal reforms in the field of property rights?
• What is the perception of public servants regarding the social impact of ECtHR decisions in
the property field?

- Does the implementation of ECtHR decisions improved the situation of property rights in Albania?

In order to answer the research questions raised, this study is based on a combination of quantitative and qualitative methods of analysis of ECtHR jurisprudence against Albania and the existing doctrine within the same domain. In addition to the jurisprudential study and analysis of ECtHR decisions against Albania, as part of the methodology, this study also used quantitative methods such as focus group interviews and questionnaires.

In this regard, there were analysed:

- The ECtHR’s decisions against Albania regarding Art. 1 Protocol 1 of ECHR
- The reports of the Committee of Ministers related to the monitoring of implementation of the decisions of the ECHR by the Albanian state
- The final resolutions of the Committee of Ministers related only to decisions linked with the violation of Art 1 Protocol 1 of ECHR
- Action Plans of the Albanian Government highlighting the measures undertaken by the Albanian state for the implementation of general measures

In addition, the findings of this study are also a derivative of analysis of data collected from interviews and questionnaires conducted with representatives of the main stakeholders who have been influenced by the process of implementing ECtHR decisions, such as Ministry of Justice, Assembly, State Advocate’s Office, State Cadastre Agency, Property Treatment Agency, Supreme Court and Constitutional Court.

This combined method of data analysis has contributed to the formulation of important conclusions and recommendations not only in terms of the development of doctrine in the field of human rights, but especially in relation to the direct social impact of the ECtHR in the field of proprietary rights.

3. Impact of Property Legal Reforms on the National Economic and Social Stability

Immovable properties constitute one of the key elements for the economic and social development of Albanian society. Due to its importance on social and economic life of the country, property rights enjoy special protection both at national and international level. In Albanian legislation, the right to property enjoys special protection in Article 41 of the Constitution of Albania as well as a framework of legal acts and by-laws guaranteeing the peaceful enjoyment of this right. In the meantime, at international level, property peaceful enjoyment is the object of special protection in Article 1 of Protocol 1 of the ECHR.

The installation of socialist system after 1944 and communist ideology that overwhelmed all Eastern European countries, including Albania, set extreme restrictions on property rights over real estates in Albania in the name of building a centralized market economy. Changes in the economic-political-social structure of Albanian society after 1990s gave rise to the prerequisite of key legal and institutional reforms.

The development of free market economy and promotion of free initiative, enshrined in the provisions of Law no. 7491, dated 29.4.1991 "On the main constitutional provisions", gave rise to the undertaking of further legal and institutional reforms which would enshrine the recognition of private ownership, its expansion and special protection.

These reforms produced a key social impact in terms of firstly increasing the confidence of general public in the legal system, resulting in a growing rate of investments in real estates and related transactions. Increased confidence in the legal system is seen as a stimulating component in economic activity as well as contributing to social stability as a whole. The sustainability of property relations of real estates, guaranteed by ongoing reforms, has also been instrumental to reduce social conflicts between individuals or communities on sensitive property issues such as inheritance or use
of property, creating a social-friendly environment.

Strengthening of social and legal protection of property is seen as a key component stimulating economic development and encouraging long-term investments in real estates and infrastructure, which have led to improvements in infrastructure and services and thus improvements in living standards of the Albanian society as a whole.

However, notwithstanding the positive social effects these reforms have had in the life of Albanian society, property issue in Albania continues to be cited again in the Council of Europe reports on Albania as one of the most sensitive and probably the most problematic in the Albanian reality. In its progress report for Albania 2023, the European Commission of the Council of Europe would state that:

"despite the progress made, Albania still faces significant challenges related to the issues of ownership of real estates, especially in view of finalizing the transitional processes of ownership, such as privatization, legalization and stable administration of property as well as fair compensation of expropriated entities for properties taken unjustly during communist regime or initial registration of properties in Albania" (EU Progress Report Albania, 2023)

Notwithstanding the positive effects each of these processes brought both in safeguarding the right to private property and social stability as a whole, the Albanian society faced multiple problems which have given rise to confusing and conflicting situations. Some of the problems are a result of adjustments and inconsistencies arising from the processes of privatization, restitution of properties as well as from the often chaotic activity of informal buildings subject to the legalization process. Laws and processes for their implementation served the special needs of economy in transition, but their drafting and implementation has not always ensured clarity, stability and security in the land-related legal relations.

4. Impact of ECtHR Jurisprudence Decisions on Property Issues in Albania

Due to importance on social and economic life of the country, property issues also constitute one of the main issues addressed in the ECtHR jurisprudence. In most of the decisions ECtHR has found the violation of property right (Article 1 of the Protocol 1 to the Convention) due to the non-enforcement of judicial and administrative decisions on property restitution and compensation within reasonable time limits associated with violation of the right to a due legal process (in many cases the lack of access to the court) (ECHR, Article 6/1) as well as the lack of effective remedies for the protection of violated rights (prevention or compensation for the offence committed) (ECHR, Article 13).

ECtHR has found the continuous failure of the competent Albanian authorities to take proper legal, administrative and budgetary measures, to set up an effective compensation scheme for properties nationalized or expropriated by the previous regime as well as defining procedural rules and institutional coordination to ensure the execution of judicial and administrative decisions within reasonable terms, in view of the recognition of property right, has led to unjustified interference with the right to property peaceful enjoyment, in the meaning of Article 1 of Protocol no.1 to the ECHR (ECtHR, Ramadhi et al v. Albania, 2007). In the social aspect, this has led to a situation of uncertainty for legal owners in the realization of their ownership rights and therefore, unstable property relations on real estates.

In an analysis of ECtHR decisions regarding the violation of the right to property for one of the main group of cases, Driza group of cases, ECtHR attributed the violation of guarantees of Article 1 of the Protocol 1 to the Convention to flaws in the internal legal system related to the frequent and fragmented changes in the legislation for property restitution and compensation, lack of rules, procedural deadlines for guaranteeing the right and effective remedies of executing decisions, lack of financial, human resources and institutional coordination as well as difficulties created by the process of legalizing informal constructions (Committee of Minister, 1120th DH Meeting, 13-14 September
In order to address the flaws, ECtHR directly and repeatedly requested that Albanian state undertakes not only individual measures but also measures of a general nature in the form of administrative and institutional legal measures to guarantee the right of ownership for the expropriated subjects, some of which as a matter of urgency.

Under their influence, the Albanian authorities undertook a number of legal and administrative initiatives to find an effective compensation solution, thereby citing:

- Legal initiatives for the amendment of Law no. 9235 dated 27.7.2004 "On property restitution and compensation to clearly define the responsible institutions, rules and procedural deadlines for the examination of applications, creation of adequate funds, human resources, effective remedies for the execution of decisions as well as.
- Approval of legal acts and by-laws for procedures and distribution of financial and in-kind compensation and approval of property valuation maps.

However, it is worth stressing that despite the legislative and institutional initiatives undertaken by the authorities, they fail to build an effective compensation scheme and find effective remedies to guarantee property right, deepening the state of confusion and lack of trust, among legal owners, in the existence of an effective legal system to realize the property right.

In another group of cases, that of Manushaqe Puto et al v. Albania, ECtHR deemed that frequent change of legislation and the resulting inconsistent case law had inevitably contributed to an overall lack of legal certainty (Manushaqe Puto et al v. Albania, 2012, parag. 110). Therefore, it firstly recommended that changes of legislation in the future should be seen under the analysis of legal and financial implications and governmental institutional reforms, in order to enhance institutional cooperation and avoid overlaps or reduce operating costs.

In the direct impact of ECtHR findings for the group of cases Manushaqe Puto et al v. Albania, a number of key legal initiatives were taken regarding the property issue. At this point, we firstly cite the approval of Law no.1332015 "On property treatment and completion of property compensation process" 2015 with the assistance and by constant consultation of the Committee of Ministers of the Council of Europe.

In view of guaranteeing property rights, the main innovations of Law no. 133, 2015 are related to:

- Identification of a new compensation scheme and new property valuation methodology aimed to set a balance between property right and public interest.
- Identification of clear and transparent rules to determine the property compensation fund and its distribution method as well as setting reasonable and specific time limits for the completion of the entire process.

The adoption of Law no. 111 "On the Cadastre", 2018 and Law no. 20 "On the completion of transitional processes of property issues in the Republic of Albania", 2020 firstly gave a positive rise to the process of initial registration of the still unfinished property and secondly helped to provide inter-institutional cooperation between institutions that issued property titles.

ECtHR findings for the group of cases Manushaqe Puto et al v. Albania had a direct impact on the undertaking of institutional measures, while worth mentioning the creation of the Inter-institutional Commission and Property Treatment Agency as a body that coordinates cooperation between institutions which are directly or indirectly linked with this process such as State Cadastre Agency, State Advocate’s Office, State Authority for Geospatial Information (ASIG), State Archive, Central Technical Archive of Construction, local government units and any institution to which the law attributes certain functions or responsibilities (Law no.133, 2015, article 36).

Creation of the State Cadastre Agency is another innovation in view of inter-institutional cooperation for the rapid and efficient completion of the property compensation process (Law no. 111, “On Cadastre”, 2018) as well as creating and updating the register of final decisions as a database on the decisions taken by property restitution bodies from 1993 to date.

Legal amendments in the Law no. 133, 2015 on the new compensation scheme and methodology used for the valuation of property recognized for compensation even though evaluated by ECHR in 2011).
the case "Beshiri v. Albania and 11 other applications" (2020) as effective remedies for the realization of the right to property in economic and social aspect, the effects of this legal reform were seen as an extreme burden for expropriated subjects, recommending to the Albanian state a floor limit regarding the amount of compensation which, regardless of the form of compensation, should reach at least 10% of the value the applicant is entitled to, if the financial assessment is carried out with reference to the current cadastral category of the expropriated property.

ECtHR's decision-making in the Case of Beshiri v. Albania (2020) directly influenced the undertaking of legal initiative for the amendment of Law no. 133, 2015 and adoption of Law no. 77 "On some amendments to the Law no. 133, 2015 "On property treatment and completion of the property compensation process", 2022 accompanied by the amendment of by-laws for its implementation, bringing new innovations in the process of property treatment with the main aim of finalizing the process of property treatment and compensation within legal term in fulfilment of the state international obligations in the framework of the European Convention on Human Rights. This is essential for the further progress of integration process in the EU.

Notwithstanding that, it is also worth noting that ECtHR leaves open the question of review of its effectiveness in the future, depending on the progress of property compensation process and social effects it will produce on the Albanian society in the future.

5. Perception of Public Officials on the Social and Legal Impact of ECtHR Jurisprudence Concerning the Guarantee of Property Right

This part of article aims to provide an interpretation of data collected on the perception of public servants regarding the social and legal impact of ECtHR jurisprudence in guaranteeing the right to property in Albania. Findings and discussions are the result of primary data collection through pilot questionnaires developed with public administration and judicial officials. The questionnaire was distributed to all the institutions being competent for the undertaking of legal and political initiatives, adoption of laws, proposal of governmental reforms or highest local courts.

From the collected data, it transpires that 33.3% of the questionnaire respondents belong to the Assembly, 29.2% to the Ministry of Justice, 20.8% to the State Cadastre Agency, 8.3% to the State Advocate’s Office and 4.2% to the Supreme Court and Constitutional Court. As divided by gender, 79.2% of the respondents were females and 20.8% were males. In view of the foregoing, it is worth stressing the need for a wider degree of cooperation between public institutions and the judiciary in Albania and legal scholars, to reach valuable conclusions in view of improving the situation of human rights in the country. The chart below specifically details the target group of this questionnaire divided by the institution they represent and gender:

Graph no. 1: Participating institutions
When asked about the level of information on ECtHR jurisprudence against Albania concerning the violation of the right to property (guaranteed by Article 1 of the Protocol 1 of ECHR), the results showed that only 12.5% of the officials who participated and answered the questionnaire, were not informed about ECtHR case law. Meanwhile, the majority (45.8%) were only partially informed. 41.7% of the questioned participants were fully informed about ECtHR jurisprudence to date.

5.1 How informed are you about ECtHR jurisprudence against Albania in property issues?

When asked about the existence of ECtHR decisions which have brought social impact in Albania regarding the guarantee of property rights, the participants, while acknowledging their existence, list as the most important reforms related to ECtHR findings in the field of property rights, specifically citing the cases of Manushaq Puto v. Albania or Beshiri v. Albania. Meanwhile, only 12.4% of the respondents admit that ECtHR decisions have not brought any social/legal impact in the country. 54.2% of the respondents who participated in the questionnaire are of the opinion that ECtHR Decisions have had a positive impact on legal/political reforms in the field of property rights. Meanwhile, the remaining participants either have no information (33.3%) or believe they were partially influenced (12.5%).
6. Have ECtHR Decisions had a Social/Legal Impact on Property Issues?

Graph no. 4: Social/legal impact of ECtHR decisions in property field

Meanwhile, for the purpose of this paper, it is worth stressing that 83.3% of the respondents are of the opinion that ECtHR jurisprudence has influenced the improvement of the state of the right to property peaceful enjoyment. However, most of the respondents express skepticism about the direct impact of Strasbourg jurisprudence regarding the legal and institutional reforms undertaken in the last 20 years in Albania in the field of property rights. More than 50% of the participants are of the opinion that ECtHR jurisprudence has only partially influenced the adoption of these reforms and only 29.2% of them link the legal and political and institutional reforms adopted by the Albanian government as a direct consequence of ECtHR jurisprudence.

The last part of the questionnaire refers to the perception and level of knowledge of public authorities regarding the most problematic areas identified as a result of ECtHR decision-making against Albania, as well as specific decisions that have brought wider social impact in the field of property rights. 50% of the respondents admit that “violation of property rights” has been more problematic, followed by “protection of the right to a due legal process” (29.2%), execution of decisions by the competent bodies (12.5%) and protection of the right to private and family life (4.2%).

6.1 To your best knowledge, which have been the most problematic areas identified by ECtHR in the jurisprudence v. Albania?

Graph no. 5: The most problematic areas identified by the ECtHR in the jurisprudence against Albania
Based on the areas identified above, the questioned respondents identify as decisions which have brought wider social impact on issues related to property rights:

a) The Decision “Manushaqe Puto v. Albania”
b) The Decision “Beshiri v. Albania”

7. Conclusions and Recommendations

The legal and institutional reforms undertaken in Albania to address ownership issues have had a significant social impact, especially in increasing citizens’ trust in the legal system and protection of their property rights. Through the adoption of new legislation and improved compensation mechanisms, the government has aimed to ensure a fairer and more efficient treatment of nationalized or confiscated property cases. This process has contributed to the consolidation of property relations and reduction of social conflicts arising from property disputes.

At international level, the commitment of the European Court of Human Rights has encouraged Albania to take clearer and coordinated measures to address issues inherited from the communist period and the subsequent transition. The court is attributed a key role in improving national legislation, ensuring that legal amendments are in line with the international human rights standards.

Notwithstanding the improvements made, difficulties continue to exist, especially in the effective implementation of legislation and management of compensation and property restitution processes. The full and timely non-implementation of court decisions remains a key challenge, which adversely affects public perception and trust in legal institutions.

Referring to the level of information and perception of employees of state institutions on the social impact of legal and institutional reforms in Albania concerning property issue on the impact of ECtHR jurisprudence, we may conclude that despite the great interest of public authorities and their commitment to recognize and enforce ECtHR decisions, their level of information regarding ECtHR jurisprudence against Albania continues to remain low.

To address these challenges, a stronger institutional commitment and better cooperation between state agencies is recommended, as well as an effort to increase transparency and inform the public on processes and decisions affecting their property rights. Further improvement of legal infrastructure and administrations dealing with property issues would be key to guarantee a fairer and more efficient treatment of this sensitive issue.

References

Council of Europe (2019) “Commentary on the law “On property treatment and completion of the property compensation process” Tirana
CM 1120th DH Meeting (13-14 September 2011) - Cases concerning the non-enforcement in Albania of final domestic decisions relating to the right of applicants to restitution or compensation for property nationalised under the communist regime - General measures to comply with the European Court’s judgments - Memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights (33771/02)
CM 1193 meeting/réunion - 4-6 March/mars 2014 (DH) - Decision cases No. 1 / Décision affaires n° 1 - Manushaqe Puto and others, Driza group against Albania / Manushaqe Puto et autres et groupe Driza contre Albanie 604/07, 33771/02.
CM 1144 (DH) meeting/reunion, 4-6 June/juin 2012 - Decision cases No. 1 / Décision affaires n° 1 - Driza Group against Albania / Groupe Driza contre Albanie 33771/02)N.
CM 1172 meeting/réunion - 4-6 June/juin 2013 (DH) - Decision cases No. 1 / Décision affaires n° 1 - Manushaqe Puto and others and Driza group against Albania / Manushaqe Puto et autres et Groupe Driza contre Albanie 604/07, 33771/02.
Constitutional Court, Decision no.4, 2021.Albania.


Department for the Execution of Judgments of the European Court of Human Rights (2023), “Execution of the European Court of Human Rights’ Judgments “Main achievements in member states-Albania”

Department for the Execution of Judgements of the European Court of Human Rights (2023), Country Factsheet “Albania”


European Court of Human Rights (2023). The ECtHR and Albania.


ECtHR, Driza et al. v. Albania (2007) Application no. 33771/02

ECtHR, Ramadhi et al. v. Albania (2007) Application no. 38222/02

ECtHR, Caush Driza et al. v. Albania (2011) Application no. 10810/05

ECtHR, Manushaqe Puto et al. v. Albania (2012) Application no. 604/07, 43628/07, 46684/07, 34770/09

ECtHR, Karagozci et al. v. Albania (2014) Application no. 25408/06

ECtHR, Metalla et al. v. Albania (2015) Application no. 30264/08

ECtHR, Sharrar et al. v. Albania (2015) Application no. 25038/08

ECtHR, Rista et al. v. Albania (2015) Application no. 5207/10

ECtHR, Beshiri et al. v. Albania, (2020) Application no. 29026/06

Law no.133 “On property treatment and completion of the property compensation process” (2015, December 12), Albania.

Law no. 111 “On the Cadastre”. (2019, February 7) Albania


Law no. 77 “On amendments of law no. 133 “On property treatment and completion of the property compensation process” (2022, December 30). Albania.
