

## The Right of Property in Albania and Approach to Legislation Section 1 Prot 1 to the ECHR

Enkeleida Petanaj

Lecturer, "Department of Justice"  
University of Vlora, Albania  
Email: [kelapetani@gmail.com](mailto:kelapetani@gmail.com)

---

**Abstract:** *The right of property is regarded as one of human rights, even an absolute right. It is certain that ownership is a legal institution around which revolve yet been developed and today a series of debates and political battles. Certain forces could play politically to the right of property making the vehicle thereby leading to victory. It is considered a fundamental right and beneficial on the one hand, and on the other as a borderline between different social strata, and social injustice. The right of property in various legal orders has had a different defense. In countries with a democratic regime, its defense is given a special importance because it is considered as the basic condition for creating and ensuring a better status in the personal economy of different subjects and then at the national and international. But with all the legislative measures taken by the Albanian state, the legal status of property rights in Albania leaves much to be desired. It is also used as the main argument of the parties during their political campaign to obtain political office. In this way the legislative measures taken by the Albanian national state was born the need for Albania to obtain commitments at the international level, subject to the objectives of our state to participate in the large European family. Albania has had time to provide a legal standard and it will need even more time and commitment to implement them this fact.*

**Key words:** *property rights, the legislative approach, legal standards*

---

### 1. Introduction

Rights and fundamental freedoms are indivisible, inalienable and inviolable and stand at the foundation of all legal order.<sup>1</sup>

This is why occasionally turn to topics such treatment which address some of these basic rights. As such, the right of private property is guaranteed.<sup>2</sup> Every man is the direct holder of liberty and his rights from the moment it is created as human.

Human rights are fundamental principles without which people can live as human beings with dignity. Respect their progress enabled the individual and society. The right and freedom become the basic concepts once sanctioned by the Constitution or treaties of the important international conventions.

The right to property is regarded as one of human rights, even an absolute right. It is certain that ownership is a legal institution around which are developed and crawled still a number of debates and political battles. Certain forces could play politically with the right property to become the key tool in this way to victory. It is considered a fundamental right and beneficial on the one hand, and on the other as a borderline between different social strata, and social injustice.

Right of property although it is a "right" it is not an abstract entity and ideal, but the image of a particular social reality. The right of property in various legal orders has had a different defense. In countries with a democratic regime, its defense is given a special importance because it is considered as the basic condition for creating and ensuring a better status in the personal economy of different subjects and then at the national and international.

The Constitution of the Republic of Albania, finds a property right protection. Thus, if we refer to its section 41 have the opportunity to create a vision fast but deep on this right as a right guaranteed to win the ways that Constitution and Civil Code provides, which can be limited to interest public law and from which only the law can provide for expropriation only against fair compensation, etc..

#### **Article 41 of Constitution of Republic of Albania**

1. The right of private property is guaranteed
2. Property acquired by gift, inherited, purchase, or any other method provided for in Civil Code.
3. Law may provide for expropriations or limitations in the exercise of that right of property only for public interests.

---

<sup>1</sup> Constitution of the Republic of Albania, Law nr.8417 dated 21.10.1998 Article 15/1

<sup>2</sup> Constitution of the Republic of Albania, Law nr.8417 dated 21.10.1998 Article 41

4. The expropriations or limitations of the right to property based to expropriation are permitted only against fair compensation.

5. For disputes regarding the amount of compensation may be appealed in court.

Taking as cornerstones of respect and guarantee of property rights our Constitution, through this modest work will try to analyze the content of constitutional provisions guaranteeing their real as their reflections in the legislation. Standards of this legislation will be treated in a double perspective: as with the Constitution and the European standards in this field. The latter will also be analyzed from the perspective of European Court decisions on Human Rights, which are required for the Albanian state and be recognized by the courts and administration respectively. The paper will also reflect the practice of the Constitutional Court of Albania as well as cases from the justice system in general, including unifying decisions of the Supreme Court.

The Constitution guarantees the right of property through the definitions laxative that makes the possibility of limitations on this right. It is clear that in a democratic state, limitations of rights derived from the broad interests of coexistence between people. They are associated with a strong public interest. This coexistence implies multiple obligations for members of society. On the basis of this obligation is established and the rights and freedoms. From this point of law stems from the responsibility of every individual to respect or not to obstruct the realization of social life. The moment that the law determines whether there is a public interest to do the right balance between individual, with the significance that the public interest which would limit this right.

Precisely the degree of restriction of rights and freedoms, namely the right of property would be an important part of this paper. Here we will aim to balance the seriousness of the situation in limiting and protection of property rights. No rights and freedoms would make sense if there were not opportunities and mechanisms where each entity to protect against violations of the law. This guarantee is necessary in situations where governments, of whatever type they are likely to violate human rights because they are so easy to govern, or because they do not know the limit of the intervention. Matters relating to the limitation of rights have had their history. Society has had time to legally provide for standard and it will need even more time and commitment to implement them this fact.

## 1. General overview on the right of property in Albania

Attempts to determine the meaning of property are ancient. Property rights for "country" [land] since the encounter in the Old Testament of the Bible. Also the ancient Roman term "*proprietas*" means property or something that belongs to someone.

The period until today, has been an intensive effort to consolidate and provide a proper place of property rights in positive law.

Definition of property rights is difficult because one side of the recognized owner dues that are numerous and the other in some cases these reduced dues so that the power of the object remains the formal owner. (Shehu 2000)

Under Article 149 of the Albanian Civil Code "property is the right to enjoy, and dispose of the item freely, within limits prescribed by law".<sup>3</sup>

In conclusion, I can say that ownership is a civil legal relationship property, and property rights as a Constitutional right of the owner guarantees dues and as such it is guaranteed by the Constitution and specific laws.

To study the effect of periods of development of property rights in Albania have divided into:

1. Before the adoption of the Constitution
2. After adoption of the Constitution.

### 1.1. Before the adoption of the Constitution

Carve for the first time the right of property in Albania as part of human rights became the "Statute of the Albanian state" of 1922.

After coming to power King Zog tried to make some reforms in the field of legislation. The first step made with the approval of the Basic Statute of the Kingdom "of 01.12.1928 entered into force, which sanctioned the right of ownership

---

<sup>3</sup> Section 149 of the Civil Code, promulgated by Law no. 7850, dated 29.07.1994

for any property that is as inviolable.<sup>4</sup>

The first period is after the liberation of the country, with the advent to power of the Communist Party legislative measures were taken which were character relative to the adoption of the Constitution of the People's Republic of Albania. First constitution adopted after the liberation of the country in 1946 sanctioned the socialist system of economy and the socialist ownership of the means and tools of production. Notwithstanding that Article 11 of the Constitution of the People's Republic of Albania, sanctioned the "guaranteed private property and private initiative in the economy."<sup>5</sup> Turn state took measures to restrict private property and to accumulate all the wealth in his hands. So we have a restriction on the right of property, defined by the Law "On Agrarian Reform" no. 108, dated 29.08.1945, the maximum area of land which may be privately owned. Provisions of the Constitution of 1976 does not recognize any constitutional responsibility of state violations of individual rights because the manner of regulation of those rights in the Constitution, their source was the state of non human nature.<sup>6</sup>

### 1.2. After adoption of the Constitution.

After 1990 Albania joined the large political, economic, social, etc.. With the advent of democracy shifted from centralized economy to a market economy. The first democratic government was established with the arrival in power of the Democratic Party, took steps to repeal several laws enacted during the communist regime that violated human rights and fundamental freedoms, including the right of property which was a widespread problem concern that require immediate solutions.

Through Decree 7476 dated 12.03.1991 "On granting and protection of property and private activities" - was sanctioned freedom and protection of private activities. In this way private activity organized and operated as an individual, partnership, collective or cooperative, or joint stock company. These are the first efforts in the legislative framework which predicted the measures for the preservation of this property from destruction or damage. In Constitutional Law, no. 7491, dated 29.04.1991, "On the Main Constitutional Provisions" was repealed the 1976 Constitution, which declared "*de iure*" state monopoly of any branch of the sub-branch of the economy.<sup>7</sup>

Two years later another law was passed which provided for adjustments Constitutional concrete human rights modeled on the most important international agreements in the field of human rights in general and property rights in particular.<sup>8</sup>

Following the release of the aforementioned package, it was necessary to draft all legal, in order to establish a new economic order and to apply the transition from a centrally planned economy system and controlled by the state to an economic system based on free market principles.

It was not so necessary to adopt further legal and other acts such as the Law no. 7512, dated 10.08.1991 "On sanctioning and protecting private property, free initiative, independent private activities and privatization", then change the laws, no. 7653, dated 23.12.1992, no. 7723 dated 21.06.1993, no. 7925, dated 19.04.1995, no. 8159, dated 07.11.1996, no. 8306, dated 14.03.1998, no. 8333, dated 23.04.1998, no. 9070, at 22:05 in 2003.

On this basis, the new constitutional and legal, and other legal acts of executive power, began the process of 'self expropriation'<sup>9</sup> rule in favor of individual property ownership.

It should be said that despite the adoption of this legal framework and legal state was not immediately expropriated property which at that time appeared '*de jure*' in its possession. Instead he continued to operate his capacity as owner and, as such, it defines the state properties that can be privatized, the authorities in charge to make privatization and ways of its realization. So in the second paragraph of the Law no. 7512, dated 29.04.1991 sanctioned that "enterprises or other state entities, the important branches of the economy, national ... can be privatized in special cases by law. " For his law enforcement envisioned the creation of the National Privatization Agency, a body under the Council of Ministers, which was granted the right to manage , organize and coordinate the work in the privatization process.

Also in 1991 was also adopted another law foundation for the democratic system which began to live the Law no. 7501, at 19:07 in 1991, "On Land", gave the right of acquiring agricultural land to all persons residing in the village, in

<sup>4</sup>Art.198 of "Basic Statute of the Kingdom of Albania" Printer "Christo prosperity" P. Luarasi 1928 "

<sup>5</sup> Article 11 of the Constitution of the People's Republic of Albania.

<sup>6</sup> Constitution of the People's Socialist Republic of Albania, Sections 1-3.

<sup>7</sup>Referring article 27-28 of the Constitution of the Socialist People's Republic of Albania, 1976.

<sup>8</sup> Law No. 7692, dated 31.03.1993, "On the Rights and Fundamental Freedoms of Individuals."

<sup>9</sup>Decision of the Constitutional Court of the Republic of Albania, No. 4, dated 08.04.1994

order to improve the difficult economic situation due to economic and social change that was passing the place. Whilst the division of agricultural land was approved by special decision of the Council of Ministers no. 255, dated 02.08.1991. Admittedly, that adoption of these laws was followed by other laws which in themselves were intended privatization of other parts of state property.

Another area of privatizations that had the attention of lawmakers was the privatization of public housing and the creation of free-market private housing.

With the entry into force of Law no. 7652, dated 23.12.1992, "On privatization of state housing," public housing tenants can apply for state enterprises carrying out activities for the recognition of their ownership.

I put the acute problems faced political, economic and social policy system therefore already passed the totalitarian communist privatization process of state property and put the new democratic state facing a new reality to private owners. The latter appeared already stripped of their legal properties with all arbitrary action without any legal basis, through nationalization, expropriation, confiscation and other measures based on legal acts and regulations and judicial decisions, which fall contrary to the spirit of justice and human dignity, with universal and inalienable rights of all accepted the western democratic world.

Through Law no. 7698, dated 15.04.1993, "On restitution and compensation of property to former owners," a new democratic state, although it was not responsible for the injustices of the past, took over the moral and legal obligation to put in place, as is best possible, some of the injustices of the former regime to cover the period after 29 November 1944. This law sanctioned the right of property to former owners and their heirs on immovable properties nationalized, confiscated, taken by the state unfairly.

Soon after 7698 Law, "On restitution and compensation for property taken legislative measures to ensure the compensation of former owners in cases where there could be physical return of their property. So with Law No .7699, dated 21.04.1993" for compensation in the amount of the former owners of land (amended by Law no. 7981, dated 27.07.1995), was recognized former land owners or their legal heirs the right of compensation to former property on land that had in owned at the time of issuance of the Law No. 108, dated 29.8.1945 "On agrarian reform," outside the bounds of residential areas, which operates within the law No. .7698 dated 15.4.1993 "On restitution and compensation of property to former owners."

In this context, are approved by the Albanian parliament a series of laws, where the most important is the adoption of the new law "On restitution and compensation", 2004, which aimed to make some amendments to the effects creating maximum opportunities for full restitution or compensation to former owners, without the restrictions that had old law regarding compensation and settlement of disputes that had arisen but that may arise after the entry into force of this law. The law was reviewed by the Constitutional Court and Supreme Court. On March 24, 2005, the Supreme Court found that the Law of Property Act 2004 had no retroactive effect and thus its provisions may not have impact on property rights, recognized by a court or administrative decisions, the data before its entry into force. In November 2005, the Government (recently selected on 3 July 2005) presented to Parliament a new draft law on property restitution and compensation, which proposes several amendments to the Law of Property Act 2004.

On July 11, 2006 in **Court of Human Rights** was examined Beshiri demand against Albania. Court on this issue among others estimates that:

*Legal 1.tools referred to by the Albanian side, were insufficient to remedy the alleged breach.*

*2. authorities deprived the applicants of their right to pay compensation value and the joy of owning their own money.*

*3. Court decided a respondent State is to pay the applicants 120 000 EUR in respect of pecuniary and non pecuniary.*

In 2006 parliament adopted a law, which define the method which should be assessed real property in order compensation. Its implementation was left to the State Committee for Restitution and Compensation of Property, which should ensure the proper maps for evaluation of properties.

Property Law of 2004, no. 9235, dated 29.07.2004 has been amended six times by the Albanian Parliament by law: Nr.9388 dated 04.05.2005, No. 9583 dated 17.07.2006; Nr.9684 dated 06.02.2007. Section 9 repealed by No. 11 dated 4.04.2007 Constitutional Court; Nr.9898 of 10.04.2008; Nr.10095 dated 12.03.2009; Nr.10308 dated 22.07.2010 declared unconstitutional by Constitutional Court No. 43 dated 06.10.2011.

## Conclusions

The new constitution adopted on 28 November 1998 which was the most important step of state in these years of democracy, also contains regulations that provide state guarantees for the protection of human rights and fundamental

freedoms in general and the right property in particular. Understanding that the Constitution guarantees the right has become private property, is the meaning of a fundamental right to individual freedom is closely related to maintaining its function so private. But on the other hand, has undeniable social function after its use serves the general public welfare. In this context it remains a fully constitutional category restrictive and no absolute character.

Guarantees provided in the Constitution and other laws and regulations to protect the rights of property are numerous, but despite this, the problem of property, did not find a fair and final adjustment, causing in this way a series of problems that require solutions. Property rights as a Constitutional right is restrictive by law and only in the public interest. This is the slogan, say, which justifies the state, in turn, for his actions, in violation of the right of property. But his notion of 'public interest' is a flexible concept that leaves due to interpretation by the state authorities and the more the notion of fair compensation in case of such restrictions. But with all the legislative measures taken by the Albanian state, the legal status of property rights in Albania leaves much to be desired. These solutions, rather than legal, political solutions have been bound by the terms of our country. Given that the compensation of former owners, who, for a long time will have to wait to receive remuneration, in cash for their properties, and even longer to wait until the state to recognize the right of movable.

Finally we must recognize that the biggest challenge in Europe is the unification of the right of property, and the approach of the legislation of European countries, in order to guarantee the right of property to have a standard across the European Union.

## Bibliography

### Scientific Publishing

- Abdulla Ali, "Real right (ownership)" Pristina 2004.  
 Adrian Nuni, "Business Law", the despot of 2005.  
 Andrea Nathanaili, Nonda Papuli, "Some issues on ownership and inheritance", Publication of the Ministry of Law, despot 1961.  
 Arta Mandro, "Roman Law", the despot of 2007  
 Aurela Anastasi, "The history of constitutional law in Albania" Tirana 2007.  
 Avni Shehu, " It's property ", Editions Albin, despot 2000.  
 ECS. Wade and A. Bradley "Constitutional and administrative LA ", 1991.  
 Livio Paladini, "Dirito Costituzionale "CEDAM Padua, 1991  
 Marek Antoni Nowicki, "Stone guide", edition of Human Rights, the despot of 1999.  
 Marjana Tutulani Semini, "Law on Obligations and Contracts", the despot of 2006  
 Monica Carss - Frisk, "A guide for implementation of Article 1 of Protocol 1 of the European Convention on Human Rights".  
 Plays Omar, Aurela Anastasi "Constitutional Right" Publishing house ABC, publishing it, the despot of 2008.  
 Prof. Ismet Elezi, "Protection criminal law of property", the despot of 2002  
 Valentina Kondili, "Ownership, real rights and inheritance temporary " Geer 2008.  
 Vasil Xhai ,Christo Çevi, "Legal regime of land in Albania", Publication of the Ministry of Agriculture,1956.

European Commission Democracy means the Law (Venice Commission) Opinion on the draft "For and compensation the properties of " Albania Republic- Adopted by the Venice Commission the 58th Session (Venice, 12-13 March 2004)

"Declaration of Human Rights et t Human and Citizen" of 1879 t.

"Constitutional Debate", Issues SS OSCE Presence and Albanian new n.

### Statutes and the Constitution

- "Fundamental Statute of King s Bobcat of Albanians", Printer Mbrothesia, Kristo P. Luarasi, 1928  
 "Extended Statute of Lushnja s", 1922.  
 Constitution of the People's Republic of Albania, 1946  
 Constitution of the Socialist People's Republic of Albania, 1976.  
 Constitution of the Republic Albania, 1998

### The court decisions of European Human Rights .

- Pine Valley everywhere against Ireland, since 1991.  
 Akdivar, etc., everywhere against Turkey ,date 16.09.1996.  
 Golder everywhere against United Kingdom  
 Airey everywhere against Ireland.  
 Dombo Behera everywhere against Netherlands ,date 27.10.1993  
 Stratis Andrathis everywhere against Greece ,date 09.12.1994.  
 Axen everywhere against Federal Republic of Germany, date 08.12.1983



*Jahnes and everywhere against United Kingdom , date 21.02.1986.*  
*Jahn, and everywhere against Germany ,date 30.06.2005.*  
*Former King of Grecece and everywhere against Grecece ,date 23.11.2000.*

**Codes, laws, decrees and decisions of the Council of Ministers**

Civil Code of 1929, the despot of Toena Publications, 1998.  
Civil Code of the People's Republic of Albania.  
Criminal Code of the People's Republic of Albania.  
Civil Code of 1981 the Socialist People's Republic of Albania, approved by Law no. 6340, date 26.06.1981.  
Civil Code approved by Law 7850 date 29.07.1994.  
Code of criminal procedures and approved by Law no. 7905, date 21.03.1999  
Code of civil procedures and approved by Law no. 8116, date 29.03.1996  
Law Date 29.08.1945 " On Agrarian Reform" and relevant amendments.  
Law no. 7501, date 19:07 in 1991, " For Land."  
Law no. 7698 date.15.04.1993, "For and compensation of property to the former owner of V's", as amended by the relevant acts.  
Law no. 7699, date 21.04.1993, "For compensation value of former owners"  
Law no. 8337, date 30.04.1998, " For over it's owned by the assembled farmers, forest, meadows and pastures. "  
Decree no. 7406, date 31.07.1990, "For investment protection foreign ".  
Decree no. 7407, date 31.07.1990, "For activist Economic and Taking the part of the capital foreign of Albanian republic .  
Decision of the Council Ministers no. 228, date 11.07.1990, "For reorganization of herbs and crafts."  
Decision of the Council Ministers no. 255, date 02.08.1991.  
Decision of the Council Ministers no. 610, date 12.09.2007

**Decisions of the Constitutional Court of Albania**

Decision no. 4, 14.09.1994.  
Decision no. 30, 01.12.2005.  
Decision no. 3, date 20.02.2006.  
Decision no. 35, date 10.10.2007.  
Decision no. 43. date 10.10.2011