

The Issue of Ownership during Transition Period in the Former Communist Countries of Eastern Europe, as Poland, Hungary, Czech Republic and Albania

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Abstract

The issue of ownership, legal changes and legal re-conceptualization of property rights in these countries, Transition in the former communist countries of Eastern Europe, as Poland, Hungary, Czech Republic and Albania; This study was conducted in the view of legal changes applied by countries in transition in Eastern Europe. The transition to the post-communist society did not reflect the same features and results from the point of view of property rights. Problems of ownership have been different in these countries, which relates to the way of organization of the socialist regime, and the direction of each state, in the view of the right of ownership. The form of this organization has influenced in many problems of transformation of public ownership in the process of restitution and compensation of its in private property. According to this organization some societies have passed the transition faster and smooth, while others have passed, or continue to wander through the transition more difficult and problematic. Practical Uses in these countries in respect the right of ownership, have been different, for every post-communist country. They reflect different features from one country to another and that the concept and current practices for property rights remain open for improvement in countries such as Albania to achieve the standard for European right! The question that remains open for discussion is that of identifying the factors that have contributed to the field and the differences between them, for countries in transition and property rights among post-communist societies.

1. Introduction

The issue of ownership during the socialist regime was associated entirely with public property "State Property" Property that which belonged to the whole society, but may not belong to anyone. The right of ownership in socialist countries had significant changes from one place to another, regardless the same regime. Along with the arrival of democracy and other political changes came into effect a series of laws, which had as main objective the establishment or more accurately, balancing the rights violated before

Property in Albania was mostly public any property belonging to the state, Romania, in other countries, such as Poland and Hungary, individual private property is not nationalized to the extent as in Albania. So these countries have partly allowed the individual property.

Problems of ownership have been different in these countries, which relates to the way of organization of the socialist regime, and the direction of each state, in the view of the right of ownership. The form of this organization has influenced in many problems of transformation of public ownership in the process of restitution and compensation of its in private property.

In Scientific and professional literature, the notion of transition means the period of development, in which must be taken all inclusive processes, legal changes in respect of property rights. In order transformation of society from a low development centralized economy, in terms of society to a higher level by continuing the policy of civilization, for respect of property rights.

The process of transition in post-communist societies reflect different features and results from the point of view of property rights. Some post-communist countries have passed the transition faster and smooth, while others have passed, or continue to wander through the transition more difficult and problematic. In return process have affected various factors. The question that remains open for debate is that of identifying the factors that have in this process, the differences between the various countries of post-communist societies in transition, to respect the right of property.

This process represents a necessary product, which primarily has imposed social crisis of the socialist system itself in which were these countries.

The experience of countries of Central and Eastern Europe clearly shows that the transition process can be realized in two ways:

1. The constitutional reforms (need to draft legal norms such that adapt to the conditions of its development of this society, in line with international norms). The theory of property rights in maximum way respects all specificity of different institutional environments.

Economic reform (essence of the transition process lies in the transition from command economy to a market economy).

The existence of property specifications, and the shape of its organization, in this period.

These specifications can be summarized in the following points:

The rights have transitional character. Transfer of ownership from public property into private property does require many reforms that should be made in accordance with the conditions of economic development. The transition process has a great job and requires the involvement in this process of political factor.

In the period of transition the property rights are well specified or not specified clear respectively.

Objective necessity of some certain qualitative changes in the content of the structure, the forms and the right to property define necessity not only to improve the quality of form, but also the choice of property relations.

As specific characteristics of property in the transition economy is considered the existence of qualitative changes in the context of property and the undefined of her rights.

Development of the right of ownership has historical character. This feature is associated with two circumstances:

With the historic character of a property right is connected its transitional character, related with transfer of property from public property into private property to adapt with market conditions.

Transitional historicism of transitional character of the right of ownership depends on regional features and the features of certain countries.

The transformation of public property during the transition is related to the existence of different policies of socialist systems about the treatment of property rights:

During the communist period had acted three communist systems:

Systems of which have been clearly distinct and have operated in the region of Eastern Europe, as follows

1. Totalitarian Stalinist regime in Romania and Albania;

In Romania or Albania, the communists confiscated the largest private property including arable land and apartments, and has included it or in collective farms, where the nominal owners were farmers, or in state property.

2. The communist regime in Soviet- block and Bulgaria;

3. The communist regime of reformed communist system in Yugoslavia.

In Yugoslavia, as in Poland, most of the land was left to individual family farms during the socialist period and less residential buildings are confiscated.

Referring to legal changes in the ownership right in post-communist countries were applied new policies relying on the terms of the Union European countries as "**Legalistic theory of transitional justice**".

This Theory: Sees the dynamics and changes in property rights from these viewpoints (Damsa 2009):

as a Conception issue (Damsa 2009)

as a Law-making issue (Bell 2009, Teitel 2009)

As a Law issue (Sartori 2009, Friedman 2009)

as a Justification issue (Damsa 2009)

This Theory: connects the dynamics and changes in the Law of Property on these aspects (Damsa 2009):

property restitution (retributive justice)

the distribution / privatization of property (distributive justice)

compensation of property (retributive justice)

provides a model that estimates changes in the Law of Property over 6 elements:

concept behind changes

used instruments

process features

observed practices

influencing factors & conditions

observed effects

In this material will be treated dynamics and changes in the Law of Property with these aspects (Damsa 2009):

i. property restitution (retributive justice)

ii. the distribution / privatization of property (distributive justice)

iii. compensation of property (retributive justice)

According to these legal terms we will analyze the right of ownership in the period of transition.

That the post-communist transition is generally towards its end, it is noted by the fact that the great debate over its historical interpretation has already begun.

2. Property Rights in Poland during the Post-Communist Transition

Poland as all other countries in Eastern Europe, have accepted implementing of important reforms. The reforms have targeted the change of ownership, enabling within a short time, privatization and liberalization of general economic (financial resources, prices, opening of markets, etc.).

Poland has passed the transition process, and for this country is not used the term "country in transition", but used the term "country in the post-transition", a term which varies to other Eastern European countries as difficult transition countries, interrupt or delayed.

2.1 *Right of Property in Poland appears in the form correctly connected to the concepts of the legal state.*

2.1.1 *Poland's current legislation is not expressed in any of its provision for restitution and compensation of private property.*

This process of restitution and compensation of private property, individuals and interested persons who are ex owners may seek legal way through the court. In all cases for restitution and compensation of private property judicially realized was limited, due to legal gaps that has legal system. The same attitude has held the Polish government policy which does not make any effort in this direction considering **an expensive process the restitution and compensation of private property, and for this purpose does not make any effort.**

In the early 1990s, restitution and compensation for property seized by the communist regimes, has been a matter of concern for Poland. With the establishment of democracy, Poland, adopted legislative package to respect property rights in favor of the ex owners, whether in terms of property restitution or compensation of her.

Purpose and regulation of these measures, change and has had significant changes in the form of compensation, adopted by Poland. Similar processes were also conducted in other European countries that have taken, of course, the time necessary, but also gave the expected results for their economies.

Poland, has drafted new laws on property rights, since the political changes of 1990. The well-defined and manatory property rights are a prerequisite for the functioning of the market economy. Polish experience has shown several elements: From a legal perspective, it seemed logical to return to the ex- owners the confiscated properties, and a vast majority voted in favor of their return. In the context of Poland, laws that addressed property issues arising from different periods of history, from the time of communist transition to post-transitional period.

Property laws are distributed across several legal texts, regulating some aspects of property rights and often refer to institutions that no longer exist.

2.1.2 *Poland No Return properties.*

Poland, never collectivized large part of its land during the communist era, so there was a majority of private ownership of agricultural land throughout the period since II World War.³⁰⁸ Seventy-five percent of agricultural land has remained in family farms during the communist ^{0,309}. The same reform has practiced the ex Yugoslavia.

Both physical and juridical persons in Poland have full rights to own both land.³¹⁰ agricultural and non-agricultural.

While Poland had less work to do on the privatization than many of its neighbors, it still had to privatize large state farms occupy one-fifth of Poland's arable land. Different from other countries in the EU acceptance, Poland has had the easiest the property restitution process during the transition. Since the fall of Communism in 1989, Poland has allowed passing of ex- state farm land in private ownership, and to allow corporate ownership.

At the end of the Polish state property problems during the period post - communist will be treated dynamics and changes in the Law of Property with the following aspects:

1. property restitution (retributive justice)

In Poland this process passed very quickly for the fact that a large portion of private property during the socialist system was not returned to public ownership because of the system's own policies. Cases of privatization or sequestration or nationalization of private property in this state has smaller size compared to other countries such as Albania and Romania, where public ownership was almost everything except personal items. During the process of property restitution this country has had much easier to implement and to arranged the violated rights from socialist system. Now the Polish new government post-communist had much easier to implement retroactive justice by returning nationalized or confiscated properties to citizens affected by the policies of the communist era. In this context, Poland is

one of the states that has implemented the first this process and today the return process has passed and this place is not called in transition but in the post transition.

2. The distribution / privatization of property (distributive justice)

This process in Poland was performed in support of democratic reforms aiming the membership in the EU, while collective form did not give the expected results in the economic development of this country, which went for inertia also in compliance with EU directives.

In this country the privatization of public property is realized after the problems in management as a result of democratic changes. A process which is performed in a relatively small period of time.

3. Compensation of property (retributive justice)

In Poland this process passed very quickly for the fact that a large portion of private property during the socialist system was not returned to public ownership because of the system's own policies and in those few nationalized or seized properties were very small as the Polish government on compensation of these properties doesn't damage the budget of this country to the extent that they were. During the process of property restitution this country has had much easier to implement and to arranged the violated rights from socialist system. Now the Polish new government post-communist had much easier to implement retroactive justice by returning nationalized or confiscated properties to citizens affected by the policies of the communist era which can not be returned physically or compensation object properties were necessary for public needs this country. In this context, Poland is one of the states that has implemented the first this process and today the return process has passed and this place is not called in transition but in the post transition.

In Poland the process of transition has passed quickly, but in the process have influenced social policies used during the socialist system that have made this place is distinguished from other countries in transition.

2.1.3 The right of property under the Hungarian state in post-communist period

European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention), is applied in Hungary from 5 November 1992. The right to property is protected by Article 1 of Protocol 1 Additional to the Convention. According to the jurisprudence of the European Court of Human Rights (hereinafter: the Court) **Article 1 protects only existing property and does not give the right to recover property lost already.**

In Hungary was adopted legal acts on property restitution procedures, where each ex property owner should be required the property within 6 months of its loss. This provision in paragraph 1 of Article 35 reflected of the Convention on the application for restitution may be filed only within 6 months after the loss of property. In this direction it is known that in Hungary the problems of nationalization and confiscation of property occurred during the socialist government, the fact that Hungary has acceded in 1992 would say that the Hungarian practice under Article 1 of the First Protocol Additional already expired.

Consequently, the ownership of movable and immovable property which is nationalized earlier in Hungary is lost and can not be requested before the Court. The exception to this rule is for those movable and immovable property which is situated their return through the final decision of the national authorities or court. In the event that the damage occurred after the final decision, the owner has the right to sue before the Court within 6 months.¹

Return of totalitarian systems in the community of democratic states in 1990 was dominated by the idea of the double. On the one hand, it was clear that such damage to property is necessary compensation from the state. On the other hand, poor economic conditions in Hungary and the high number of damaged people have prevented immediate and general compensation to the owners. Consequently, the Hungarian political changes were followed by the creation of the compensation laws in two areas: compensation of property and compensation for damage caused to the owner.

Aiming the regulation of property rights and providing enterprises needed for a market economy, led by the rule of law principle, the Hungarian Parliament passed the XXV Act in 1991 as the first step to fix the property of citizens and damage caused unfairly by the state.

This law gave partial compensation to individuals, who had their private property taken by the despotic regime after 8 June, 1949.

Second Law of property compensation was approved in 1992. XXIV Act of 1992 gave partial compensation to individuals who have their own private properties damaged from 1-st May, 1939 until 8 June, 1949.

Both acts gave the right people who were Hungarian citizens or were damaged in relation to deprivation of

¹Brumarescu against Romania judgment of 28 October 1999

Hungarian citizenship and non-Hungarian citizens who were permanent residents of Hungary, from 31 December 1990. If the entitled party died, compensation was given to their descendants or surviving spouses.

Both acts didn't provide compensation for any damage to property, but the limited right in taking real estate (land, residential properties, and vacant plots), companies (factories, banks, plants, retail stores, etc.), gold objects, precious stones, platinum and valuable works of art.

According to relevant laws, compensation is a transferable carrier security that represents the nominal value of a claim against the state, equivalent to the amount of compensation. In the first years, there were several ways to benefit compensation for the caused damage; now the options are more limited. Compensation is left to the discretion of the state.

By now most of request compensation of property and personal claims in connection with it are accepted and reviewed by the Hungarian state. Hungarian Compensation Authority has followed an administration path for the compensation and restitution of property, even if these requirements were subject to judicial review.

The return of confiscated property to ex- owners of the former communist countries in Central and Eastern Europe was a political decision with significant implications, both in terms of the level of assets that were available to the Hungarian State, both in terms of the restitution of property ex- owners, four decades after nationalization, it was difficult to predict. The purpose of this analysis is to analyze the transformations that have occurred in the ownership of private property after the change of political regime in former socialist or communist countries concretely the Hungarian state.

The return of confiscated property to ex-owners in Hungary and the countries of Central and Eastern Europe has been little discussed and analyzed in the policy and political literature of transit. Things stand in obvious contrast to the subject of privatization, which is known far and has generated more discussion and analysis. This is just one of the many paradoxes and dilemmas presented in this report - because the stakes in the process of property restitution and compensation create major social consequences, as required to surrender in one way or another buildings, land, forests or industrial properties to their original owners, four decades after they were nationalized. Not only under-researched subject in theory, but also practical details of decisions taken by the legitimate authorities installed after 1989 were greatly confused.

The motives for nationalization were political and economic.

What procedures and institutions should be established, at central and local levels, to provide property restitution income accurately and rapidly?

This analysis describes the manner in which the six Eastern European countries - Romania, Bulgaria, Croatia, Bosnia, Serbia and Albania - are responding to these general challenges, in the context of their particular history of social and economic. Just as in Central Europe, they all had the difficult to cope with these dilemmas in the first years after the fall of the communist regime, because the process of return was delayed, and the more complicated the situation became. The liberalization of the economy after 1990 created a market for all types of real and as a result of this natural pressure, spread transactions, even in situations where property rights were not sure.

The collapse of communism in 1989-91 made possible the return of property in the countries of former Iron Curtain. Many countries have approved legislation to ensure the return of both private and communal property. (Municipal Property is property previously owned by religious and other organizations. It included churches, synagogues, community hall, parish schools, etc.)

The process of property restitution and compensation; in Hungary began in 1991 with the adoption of the law that allows religious organizations to apply for compensation for real estate nationalized after 1 January 1946.

At the end of state property problems in Hungary at the period post - communist are the same as those of the Polish state.

2.2 Czech Republic

Czech experience is unique in terms of the dimensions of the transition that passed, since its creation and then with its consolidation and up to the EU integration. On the other hand, its position in the region, geographical and population characteristics, the characteristics of an economy that came from a planned/centralized system to a market economy, and the country's aspirations towards the European Union make this interesting and valuable model to be studied in parallel developments in the Eastern Europe countries.

Czech passed a three dimensional transition.

- The transition from the socialist regime with a planned economy to a market economy.
- Parallel transition from a regional economy to the national economy, new and independent state on the path

towards the European Union.

Czech reform process based on two main political pillars:

1. The first pillar of this development was related to policies that aimed macroeconomic stabilization for market conditions, internal and external.
2. Second pillar of this development was related to structural and institutional reform, including among others the creation of institutions, privatization of state enterprises, etc ...

Three distinctive features that characterize the transition in the Czech Republic compared to other countries arising from the communist regime and centralized planning are:

- Czech Republic chose a gradual transition direction.
- Czech transition from a planned economy to a market economy was accompanied by a transition from a regional economy in the national economy.
- Czech inherited an ownership structure of enterprises that was special and based on self-management and in specific institutional arrangement as well as state property. The issue of property compensation in the Czech Republic has been and continues to be very sensitive, complicated, difficult to solve and which is often political, by not taking into account the impact that has on the economy and social relations, not only resolution of this issue, but the way or methodology to be used or attempted to be used in the Czech Republic. In the Czech Republic the property compensation process is treated on an unrealistic and not equal to the subjects, and it isn't in full compliance with international standards of human rights. The most significant and most important practice on this issue is the practice of the European Court of Human Rights. Property protection in international law ,property right ,protected by Article 17 of the Universal Declaration of Human Rights, Article 14 of the African Charter on Human and Peoples' Rights, Article 21 of the American Convention on Human Rights and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. While the International Covenant on Civil and Political Rights does not include in the catalog of the rights protected by it, property right.² However, the decision taken during the 72nd Session on 9 – 27 July 2001,³ on the appeal made by American citizens with Czech origin emphasized that citizenship is not an original application (initial) for ownership of the property, and that although the pact does not protect this right, the law which regulates property restitution shouldn't do it on discriminatory basis. Article 26 of the pact and base on article 2 of this pact require the Czech Republic to take measures to eradicate this violation.

At the conclusion of the Czech state property problems during the post - communist period are the same as those of the Polish state.

2.3 Albania

Albania experience is unique regarding the dimensions of the difficult transition in Eastern European countries for the fact that the socialist system was among the most difficult in those countries which nationalized all private property. Albanian transition process has not been completed and it is in a very difficult road for these reasons.

Private property in Albania until 1997 was not registered in the whole territory of Albania. In this context was supposed intervention of international institutions that passed the registration process. With the passage of this procedure are eliminated a number of problems on the overlap of properties subject to review the state institutions and those judicial.

During the transition was observed migration of Albanian citizens from one place to another being located in properties that were not recorded and were on the restitution or privatization procedure. This problem prevent the work of state institutions in the implementation of specific legislation.

Another change of the ownership right in Albania with other states is that immediately after the transition from the socialist state at the post socialist were approved legal packages for transformation of public property to the private property equally without studying that this process would put into economic difficulties the state budget in compensation of property to ex- owners which may return without putting in difficulties the economy of this country.

In Albania was created various state institutions for the management of private property in the privatization process, and interference in each other's competences brought consequences in respect of legislation.

² Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

³ The communiqué no.857/1999

Albania as less developed country from the economic, political, social and cultural view to undertake fundamental reforms towards market economy appeared more differently than in common with other countries in the post-transition as Hungary, the Czech Republic and Poland.

In this context it is worth mentioning that frequent changes in the legal framework and legal packages, particularly that relating to land ownership, for its improvement, not only didn't improve but on the contrary it has grown further the degree of confusion. On the other hand the frequent changes in the legal framework in most of it did not leave enough time to evaluate the positive or negative effects of the implementation of this legal framework.

Abusive implementation or failures of the legal framework on land ownership are supported by a high level of corruption in all relevant structures that treat or use property documents.

- The study begins with comments on legal basis, comments that in our view display gaps and uncertainties that legislation carries within itself, but also in relation to constitutional rights.

Some countries like Albania, the Czech Republic, Hungary, Poland, have drafted new laws for property rights, since the political changes in 1990.

The Changes of regime impose and the change of relationship with land ownership. A jumble of laws, regulations, administrative instructions, court practices and directives combine to create a complicated system and seemingly impenetrable to determine the dispute over the ownership of real property in Albania. An important role has influenced international standards for human rights affecting on property rights. Article 1, Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms (the Convention) provides the right for peaceful enjoyment of possessions and prevents the deprivation of possessions "unless when they are in the general interest and when they are submitted to the conditions provided by law." Additionally, "deprivation essence of property is the extinction of the legal rights of the owner."

In the case where an individual is deprived of property rights guaranteed in the Convention, Article 13 guarantees the right to "effective remedy before national authorities." and when that remedy involves the courts, the judgment should be right under Article 6 (1).

The practical side of realizing property rights in Albania is considered a serious problem, and here the legal system and in particular the work of judicial institutions are very important in the realization of property rights. This problem in other countries does not face much because of the change of the socialist system and the consequences that has left in this country.

How can require infringing persons restore their right on their own property?

On the other hand, it is important to mention that the judicial path is followed precisely, to restore their owners' legitimate rights, of which the most important is the jurisprudence displayed of the European Court of Human Rights, which in many cases has punished Albania on policies practiced and suggested the adoption of effective legal packages to fit the international standards. Along with the arrival of democracy and other political changes came into effect a series of laws, which had as main objective the establishment or more accurately, balancing and balancing the rights violated previously. "Property Restitution and Compensation" and "The Land", Laws are just some of the numerous legal arrangements that raged in the years of democracy.

Referring to judicial cases where the courts have reviewed property cases between individuals and institutions are not execute these decisions, despite widespread criticism from European authorities. the failure to execute decisions "constitutes a violation of the applicant's right of access to court over non-implementation of decisions of domestic courts."⁴

The lack of clear ownership titles puts the persons who use the property, including those with legitimate ownership rights over land, between a variety of risks when engaging in transactions with property." The objective of the return of property rights is not deleting all the injustices, but reducing them. Return of property rights should not cause other irregularities. From this viewpoint, regulation of property restitution and compensation in its origins, aims to correct, as far as possible "within the possibilities and the social-economic conditions of the country", the injustices of the past regime, committed to the detriment of private property by nationalization, expropriation, confiscation or any other unfair.

At the end of the Albanian state property problems during the period post - communist will be treated dynamics and changes in the Law of Property with the following aspects:

1. property restitution (retributive justice)

In Albania, the process of restitution is proceeding slowly, the fact that the whole private property during the

⁴The issue "Puto and Others against Albania".

socialist became public property because of the system's own policies. Cases of privatization or seizure or nationalization of private property in this state has been almost entirely, compared to other countries such as Romania, where public ownership was almost everything except personal items. While other states have had a large amount of private property that has not stopped the economic development of these countries to pass post-communist transition. During the process of restitution this country has had very difficult to implement a regulated rights by the socialist system. Now the Albanian new government post-communist was hard to implement retroactive justice by turning nationalized or confiscated properties to violated citizens to communist-era policies. In this context, Albania is the worst case, that does not realize this process and today the return process continues and it is not known how many will last, so this country has remained for 25 years in transition.

2. The distribution / privatization of property (distributive justice)

This process in Albania was implemented immediately without foreseeing what the result will adopt the legal package for the distribution of agricultural land to agricultural cooperatives employees. The privatization process in this country has continued rapidly but unpredictable problems brought following this process. In this place the privatization of public property is realized after the problems in management as a result of democratic changes. Process which is performed in a relatively small period of time. This process has implications for the policies of property restitution to ex owners, who had run to court to resolve property rights. Process which continues endlessly for 25 years of transition.

3. Compensation of property (retributive justice)

In Albania, the process of restitution is proceeding slowly, the fact that the whole private property during the socialist became public property because of the system's own policies. Cases of privatization or seizure or nationalization of private property in this state has been almost entirely, compared to other countries such as Romania, where public ownership was almost everything except personal items. While other states have had a large amount of private property that has not stopped the economic development of these countries to pass post-communist transition. During the process of restitution this country has had very difficult to implement a regulated rights by the socialist system, due to infrastructure problems in mapping the property, approval of legal packages without preconceived about the consequences that have brought on implementation. Now the Albanian new government post-communist was hard to implement retroactive justice by turning nationalized or confiscated properties to violated citizens to communist-era policies. In this context, Albania is the worst case, that does not realize this process and today the return process continues and it is not known how many will last, so this country has remained for 25 years in transition.

In Albania the process of transition for the right of property continues, but this process has influenced social policies used during the communist system and legal policies adopted by the new government during the period of transition. This process continues and does not know deadlines of closing the process.

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