

General Overview on Law no.133/2015 "For the Treatment of the Property and the Completion of the Process of Property Compensation" in Albania

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Abstract

As a matter of fact, this material is concentrated on a general overview of law no.133/2015 drafted over the property "For the treatment of the property and the completion of the process of property compensation". Through the new formulas that this law provides, it is aimed to be regulated and completed the process of return and compensation of the properties to the proprietors, by ending the efforts of 23 years of democracy, along which this case did not get the right solution. According to it, despite experts of the Agency of Return and Compensation of the Properties, governors, through the assistance and support of the European Council and experts of the World Bank has drafted the basis of an important reform, is considered that this law despite its positive aspects, violates the rights and fundamental freedoms of the property. Respecting the fundamental rights is an expression of the state of the right. In our country, the respect of fundamental human rights is a guarantee for the integration in the European Union. Protection of the Right of Property has certainly a great importance. But unfortunately it still remains an unsolved problem in our country even with law no.133/2015. This law treats this right basing on the actual situation of the matter of fundamental rights in Albania and in a special manner, the right of property, which is an obligation that comes as well from the European Judicial Order, through the Card of the Fundamental Rights (Article 17). This law is treated from the standpoint of the problems which still accompany this process in our country. It is a matter of fact that the Albanian reality is shown to be very problematic in the standpoint of the standards which are required by Article 1 of Protocol 1 KEDNJ. Respect and protection of the right of property has been in focus of a considerable number of complaints submitted near GJEDNJ from Albanian citizens. The concern regarding this situation is doubled because are violated the rights of individuals and the Albanian state is induced to pay considerable amounts as a result of such decisions. The number of similar complaints has been growing in numbers. Despite the commitment of the Albanian state and the measures that are taken, this matter still continues to be a problem for our reality. This law in its entirety does not treat the ascertained problems and attacked by the civil society, Albanian Citizens and the international institutions. Regarding the problems treated, this law is in contradiction with the constitutional principle of the legal security and is not effective at all as it is required by GJEDNJ.

Keywords: Law no. 133/2015 for return and compensation of properties, legal security, respect of human rights and the right of property.

Law no. 133/2015 " For the treatment of the property and the completion of the process of property compensation" is the last attempt of the government of Albanian state within the framework of the reforms to respect the right of property. Is this the right solution in this direction?

The Strasburg Court recently requested to Albania the drafting of a list of final court and administrative decisions that recognize, return and compensate the right of property to former proprietors. The list, according to Strasburg, shall consist of data regarding the property status, location, surfaces that return, compensate and compensation forms; approval of the map of property value with the most reasonable and real values; the financial bill of the process of property return and compensation; creation of an efficient mechanism for the execution of all of the final decisions, administrative and court decisions which recognize, return and compensate the property of the former proprietors.

For this purpose was drafted the law no. 133/2015 " For the treatment of the property and the completion of the process of property compensation". Regarding this law there have been numerous objections by representatives of the civil society up to not being decreed by the President of the Republic. Approval of this law for the second time from the parliament after refusal to be decreed by the President of the Republic, this law is believed to violate the right of return and compensation of the property as a fundamental right.

The law targets: a) The regulation and fair compensation, according to the criteria of Article 41 of the Constitution, of matters of the right of property which have arisen by expropriations, nationalization and confiscations; b) Creation and administration of the Compensation Fund which shall serve for property compensation. c) Determination of the procedures for property treatment and completion of the process of property compensation, as well as administrative organs charged to their accomplishment.

This Law aims to: a) complete the process of the treatment through the recognition and compensation of the properties to the expropriated subjects in compliance with this draft law, according to the legal/sub-legal acts, criminal decisions of the courts or taken in every other illegal form from the state since 29.8.1944; b) Regulation and right remuneration of the property compensation, execution of the final decisions of compensation, as well as completion of the process of compensation within the determined period in this law, through the administration of the compensation fund.

This law acts for all the requests which are being reviewed in AKKP, on the day of its entry into force, as well as for all those requests which shall be submitted within the terms of this draft law, regarding the recognition of the property right. 2. This law is effective even on the evaluation and execution of all the decisions for the recognition of compensation right, given by the administrative or court organs, including the cases which are being reviewed in the courts of all levels, in the Supreme Court, as well as in the European Court of the Human Rights. Are not subject to the dispositions of this law: 1. the properties obtained as a result of enforcement of Law no. 108, dated 29.9.1945 for the "Agrarian reform", with the subsequent amendments; 2. expropriations against a right remuneration, according to the definitions of that time; 3. For the properties which are awarded to the state, an action for which there are official documents.

The main rules for the process of compensation may be summarized as follows:

1. All the final decisions for return and compensation of the property, for the completion of the compensation process, shall be submitted to the evaluation as follows: a) The returned property is evaluated according to the actual cadastral entry and to the former cadastral entry, in this way calculating the difference between the value of this property according to the actual cadastral entry and the value that property had according to the cadastral entry in the moment of expropriation. ; b) The property recognized for compensation is evaluated according to the former cadastral entry and is subtracted the difference which came out according to point "a" of paragraph 1 of this Article.
2. The compensation which will be awarded to the expropriated subjects will be the calculated value of the recognized property minus the difference of the value of the returned property.
3. The final decisions which have recognized only the compensation right are compensated according to the cadastral entry which the property had at the moment of expropriation.
4. The evaluation for the final decision which has recognized the compensation right is made by taking as a reference the cadastral entry according to the property origin, which is found near to the property which shall be compensated basing on the value map in the time of entry into force of this law. In case that near the property that shall be compensated are found some cadastral entries similar to the one of the property origin, with similar distance but different values, then for calculation references is taken the area with the highest price.

1. This law acts for all the requests which are being reviewed by AKKP, on the day of its entry into force, as well as on all those requests which shall be submitted within the terms of this draft law, regarding the recognition of the property right.

2. This law expands its effects even over the evaluation and execution of all the decisions for the recognition of the compensation right, given by the administrative or court organs, including the cases which are being reviewed in courts of all levels, in the Supreme Court as well as in the European Court of the Human Rights.

Some opinions about this law can be summarized as follows:

In Article 5 of this law is noticed a lack of some terms, which are related to the provision of recognition and compensation of movable property confiscated from the subjects. It is noticed that this right of the subjects whose movable property is confiscated is not taken into consideration anymore.

Non-provisioning of compensation of movable properties, constitutes a violation of property rights.

By taking into consideration that what and how does this draft law provides to regulate the relationships on the property, is unclear how it will expand its effects after approval on the cases which are being reviewed in the European Court of the Human Rights.

For this reason it is thought the review of the enforcement field of the law, regarding to the cases which are in a reviewing process in the European Court of the Human Rights, by not causing in this way a post-acting effect of the new

law, approved by the Assembly.

Meanwhile, the explanation of the terminology of the term "compensation" provided in this law is not expressively provided as a way to profit the ownership, neither in the Constitution dispositions nor in the Civil Code in force. The "compensation" provided in this draft law as a profiting form of ownership, seriously infringes the ownership right and is in contradiction with the dispositions of the Constitution and the Civil Code. According to the provisions of the Article 6/1, the evaluation of the property is not subject to the same methodology, thus for the category:

- a) *The recognized properties for compensation, shall be evaluated based on the cadastral entry at the moment of the expropriation, while,*
- b) *For the returned properties according to the actual cadastral entry and of that in the time of expropriation, by calculating the difference of the value that comes as a result of the cadastral entry.*

It seems unfair and ungrounded the Article 6/1, where the property recognized for compensation is evaluated based on the cadastral entry that has been in the time of expropriation. According to the law, the proprietor whose property is recognized by a decision of AKKP, or the court, and this decision is not executed until now, shall be compensated with the value of the property, according to the cadastral entry in the time of expropriation. With all the changes that have happened to the territories until today, the cadastral entries have changed since the expropriation time. In case that the proprietor would not be expropriated from this property, he would benefit from it nowadays, with similar rights to the contemporary cadastral entries.

Similarly the provision 6/1/b seems not to be right, where it is determined that for the properties returned according to the actual cadastral entry and of that which has been in the time of expropriation, shall be calculated the difference of the value which comes as a result of the amendment of the cadastral entry. The returned property is the real property of the proprietor which has been returned as it was and still remains the same. The fact that the cadastral entries have changed as a consequence of the changes of the administrative territorial borders, cannot infringe the right of property, with the same value as it is. The first paragraph of Article 6 of this law constitutes a violation of the principle of legal security of the property and proprietors.

This disposition creates problems in the process of property evaluation, as most of the territories and free constructions are found in rural areas, reducing so the amount of proprietors' benefits, meanwhile the fairest method of the property evaluation is the one of evaluation by the market value.

Based on this law, in Article 26 is created the Property Treatment Agency (PTA) with extended duties and responsibilities, such as the review of the requests from the expropriated subjects, treatment and management of budget funds and the physical fund of lands for the property compensation, financial evaluation of properties, organization of auctions for the lands part of the lands fund, receive and execution of decisions for compensation of expropriated subjects etc. give to it the attributes of a very big institution, which in order to take over the solution of this major problem that has not been solved for years, will create a kink, pointing PTA as guilty.

The problem in this direction shall be the status of this agency and in the case of the auction, Article 12/2, PTA shall prepare the folders of the public fund in this law and not in other sub-legal acts. Furthermore basing in the pilot decision of the European Court of Human Rights shall have been drafted the law transparency pursuant to DCM.

It shall be provided that in the case of auction (Article 13/2), PTA prepares the folder of the physical fund of the land, together with the evaluation, meanwhile the auction to be performed from the Directory of Direction of Public Properties, near the Ministry of Finance, to avoid the conflict of interests.

The new formula of treatment of the proprietors essentially constitutes changing of respective decisions, but also an essential infringement of the proprietorship right.

The first paragraph of Article 7 is in contradiction with the principle of the juridical security as an important component of the constitutional principle, of the state of the right, as it provides post-acting reinforcement of the provisions of the draft law even to those decisions which have been already taken for the return or compensation of the property before this law enters into force. For these reasons we suggest that this Article shall be reviewed.

The 6-month period provided for the completion of the documentation from the interested subjects is short and insufficient, by taking into consideration the fact that a part of the proprietors are persons that have emigrated abroad.

Furthermore, the evaluation of PTA with the minimal price, in a time when in other cases are evaluated with other favorable prices, constitutes a discrimination of the approach of the relevant requests. For these reasons we suggest to be reviewed the paragraph 2 and paragraph 4 of this Article.

Finally it can be said that this process shall still be "under surveillance" in the following years.

There exists an emergent necessity for an acceleration of the process of the payment of compensation of the expropriated proprietors, to ensure the credibility to the law, to stop the lawsuits and to eliminate the obstacles towards

the legalization process.

A complete solution would have to take into consideration even the status of a great number of informal properties, which for the moment remain outside the process of legalization, and to clarify the legal rights of the requesting subjects of legalization meanwhile the process is under development. The right of the property, just like the other fundamental rights, in this phase of integration processes, seems reasonable to get even stronger than before. We hope in a final and effective solution of the right of property in our country with these laws, despite the problems noticed by the experts and the social society.

As above read, this law is believed to violate the right for return and compensation of the property as a fundamental human right.

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