

The Joint Ownership and the Prediction of the Right of First Refusal in Some Laws and Judicial Practices in Albania

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Abstract

The property relations stand at the basis of the normal development and of the consolidation of the socio-economic report in a democratic society which relies on the market economy. The property can belong to a single person or to two or more people, which is defined as co-ownership of some individuals over one or more possessions as well as legal rights over the possession or shares. The foundation of the co-ownership state is achieved by the will of some people who willingly have agreed about their contribution in the common enterprise, respective parts, the kind of shares, membership fees etc. But, joint ownership can be established without owner / s the willingness. Such a prediction is made by the Albanian legislation in the Civil Code, in the law about "The Return and the Compensation of the Property" as well as in the law "About the Traders and Trade organizations" in which the right of first refusal is provided as a form of issuing the shares due to the increase or expand of the capital. Quite often, there have been problems and lack of clarity related to the implementation of the right of first refusal or about the distinction in the definition of this right by law. These problems have been topics of discussion in our courts of law and will be at the basis of the analysis of this paper.

Keywords: Co-ownership, the right of first refusal, law, code, judicial verdict, court of law, company.

1. Introduction

One of the characteristics of joint ownership as a way of proving ownership is the right of first refusal of the joint-owner or the real right over real estates. The definition that can be provided is that the right of first refusal is the right of the favorite joint owner to get the item in joint ownership with another joint owner, where the latter has an obligation that in case of selling his/her part, he/she has to propose a deal to the other joint owners prior to a third party. Therefore, one of the main rights of the joint owner is the alienation of his/her share in the joint ownership, but this right is not unlimited (Hasneziri, 2010, pg.177).

In order to reward the alienation of the joint property, the joint-owner should respect in advance the right of first refusal towards other joint owners as it is specified in the Civil Code. Consequently, when it comes to the institution of the right of first refusal, certain conditions should be taken into consideration. The right of first refusal is exercised only when the object is a real estate and not for goods, the alienation should be done as a result of rewarding that is given also to the third party that are not part of the joint ownership, therefore, in cases when the joint-owner sells or exchanges his/her part to one of the other joint-owners, there is no institution of the right of first refusal. However, the issue of the respect towards the right of first refusal provided by other laws is totally different. The law "On restitution and compensation", the object of which is the restitution and compensation of property to former owners expropriated during the years '45 -' 90 provides the right of first refusal by the former owners of buildings constructed on the land that used to belong to them.

Between this law and some other laws there have been enough controversies and interpretations not only in the decisions taken by the organs provided in these laws, but also in the decisions taken by the Council of Ministers, or even in the decisions and interpretations by our courts. The right of first refusal is provided in the law "On the merchants and trade companies" in the article 73, 120 and 174. The implemented rules in issuing of the shares will be taken into consideration according to the law of obligations in order to respect the right of first refusal of the obligation. A general rule is that the right of first refusal must be recorded in the real estate records [Law no. 33/2012 "On the registration of real estates"], due to the importance that this right has and particularly because it refers to real estates, as well as agricultural land and buildings built on it (Maho, 2009, pg 88).

2. Historical Overview

If we take into consideration the history of the creation of the institution of the right of first refusal, it can be said that this institution did not have the meaning that it has today.

The right of first refusal was supposed to be applied to properties near the national boundaries or to large families in which it was recognized the right of the neighbours to express their free will in cases in which the sale of real estates was concerned and when they refused than a stranger had the right to buy the property. In the Canon of Lekë Dukagjin it is provided the right of first refusal and more specifically in Section 250 entitled "Land sales hindrance" it is stated: Prior to selling any land or property, it should be offered first to the cousins, relatives and friends (the Albanian Customary Law, 1989, pg 245). According to the authors who have interpreted this Code, the rate that provides the right of first refusal is very old and is attributed to the teodosian Code which is taken by the Venetian right that was widely recognized in the thirteenth century on the eastern shores of the Adriatic. The scholars of the time have pointed out that this principle is drafted by Constantine the Great, based on the known customs in Illyria which he wanted to implement throughout the Roman Empire as *a right of retract*. By respecting the right of first refusal, as an important measure taken by the tribes of the time, the entry of a foreigner in fraternity, village, among relatives or rather *the entry of an unknown man in a family would become more difficult*. Under equal conditions as far as the price is concerned the neighbours were preferred compared to the other buyers, and if the neighbor did not want to buy the item he had to relinquish his right, an action done by means of a written statement to the notary and in the presence of witnesses. The appropriate note was written at the end of the contract of sale and served as a guarantee that the neighbor would not claim anything in the future (the Albanian Academy of Science, 2002, pg 570).

The right of first refusal is included in the legislation of 1929 (the Civil Code of 1929), to prevent the entry of foreigners into joint ownership, due to the fact that joint ownership is created, or can be created within the family (through inheritance), by means of blood relations, husband and wife relations, friendship, therefore there must be a strong bond within the joint ownership (Benussi, 1931, pg.51). The respect for the right of first refusal is provided in Title V, Book III of this Code, which entitles the joint owner to notify the other joint owner within 15 days before selling it to a third person, so that the property can belong to the successor joint owner and what is more the notification must be respected in order for the parties involved to react for this action. The code imposes restrictions regarding the right of first refusal, not only in the cases of expropriation or confiscation by the court but also by administrative authorities. Moreover, this right will not be respected when the joint owner sells his share of property to unborn children, already born ones, her husband or his wife as well as the relatives until the fourth generation.

If we were to make a comparison with the regulation that the right of first refusal has today, we would notice that the Civil Code of the year 1929 has provided in a more detailed way its provisions of the right of first refusal, the conditions, the deadlines (the deadlines are shorter in this code), the right to sue, the rights of creditors over the joint ownership or when the property is mortgaged, etc.. By introducing the institution of the right of first refusal the legislator of that time wanted to eliminate the causes of quarrels and disputes which may arise between the joint owners, by stopping or making the entry of foreigners into family more difficult, or in relationships that arise between genders, friendship, occupation, therefore it had the intention to eliminate the prohibition of a foreign person in having the joint property (Memini, 2011, pg 33). However, only the joint ownership over a part of the real estate is defined here, something that originates from the Italian and French Civil Code, not joint ownership over the whole, which was based on the old German belief over joint ownership especially that of the families living in villages and dealing with agriculture (Nathanaili, 1974). Almost the same thing is provided today in the Italian legislation on inherited joint ownership: co-heir may sell its quota, but before selling it to others, he should offer it to the other joint owners. (Galgano, 2006, pg. 985).

The right of first refusal as an institution of the civil right has continued over the years '45 - '90, despite the fact that private property almost disappeared entirely, the Decree on ownership during '50s had provided the right of first refusal (Decree "On Property", 1956) . Regarding this provision I will provide an example of a court case of the time. In a case introduced in the Supreme Court regarding the defense of the legality by Head of this court, the facts were such that the parties had joint ownership over a house which was then divided by the court and as a result each party had taken the respective part. Then, one of the parties alienates the share to a third party. The other party rejects by judicial means the legal actions of alienation due to the right of first refusal.

The Supreme Court reasoned as follows: According to the Article 79 of the decree on ownership, the joint owners of a real estate in cases of the sale of a part of it to a third party, have the right of first refusal. When joint ownership has ended by means of a judicial decision or voluntary division of property, then each joint owner becomes an owner of his/her part and for the sale of it he/she is no longer obligated to respect Article 78 of the decree "On ownership"

(Decision of the Supreme Court, 1979). In 1981 the Civil Code in Article 84 provided that: The joint owner that will sell the share that belongs to him/her is obligated to make the proposal for the alienation to the other joint owners in a written form and, if they do not want to buy his/her part under the same conditions offered to the third party then the joint owner has the right to sell his share to a third person. The Civil Code in force in its definition provided for the institution of joint ownership has sanctioned in its provisions (no.204) that the right of first refusal must be respected by the joint owner for which will be discussed below.

3. The Institution of the Right of First Refusal in Force and the Judicial Practice

The right of first refusal is the right of the favorite joint owner to take the part of the possession which is in joint ownership with another joint owner where the latter has the obligation, in case in which he/she wants to sell this part to offer it first to the other joint owner before offering it to a third party.

In the interpretation of article n. 204 of the Civil Code [Civil Code of the Republic of Albania, 2010], it can be noticed that certain conditions must be met prior to the institution of first refusal such as: a) the existence of a real estate because there cannot exist such a condition about possessions and this is due to the nature and characteristics that these possessions represent b) this possessions must be sold, which means it should be in reward; c) their sale or alienation must be done to a person outside the circle of the joint owners, as there is not such a thing as the right of first refusal between the joint owners. As mentioned above, one of the conditions of the right of first refusal is that the sale is considered valuable when the object is sold to a third party, but it will be considered invalid when this is done to one of the co-owners, and in this case the co-owner who did not participate in it may not require invalidation of the contract of sale because it is not notified or could have expressed his/her approval without any written document. The same thing can happen even when the co-owners have a special relationship as spouses or brother and sister, just as it is the case of a request done to the Court of Appeal for a new judgement when the person with initials JH was sued by another person with initials Zh.H on the basis of *Proving the Invalidity of the Contract of Sale ...*

Based on the facts provided in this case, the plaintiff JH and the defendant Zh.H. are spouses and have a legal marriage since the year 1989. On the other hand Zh.H. and A.Gj. are siblings. The parents of the defendants A.Gj. and Zh.H., in 1997 have given a part of an undivided apartment (object) to their daughter (the defendant) Zh.H by means of a contract of donation. The donors had gained this apartment through the law 7652/1992 "On privatization of state housing" as co-owners with the third part owned respectively by each respondent including their son A.Gj. By means of the contract of sale No. X/2001, the defendant Zh.H. has sold to the plaintiff A.Gj a third of the integral part of the object, by relinquishing her right of ownership over this part. According to the plaintiff, the fact that his approval for selling the possession in joint ownership was not taken into consideration due to the fact that the item was gained during the marriage with the defendant Zh.H. renders invalid the judicial action of sale. The appeal court after taking into consideration the provisions of the Civil Code of the year '81 and the Code in force has come to this conclusion: The object of the contract for sale which is claimed for invalidity in this case, is the ideal part (undivided) of the real estate and not the possession of property as a whole, as required by the Article 87 of the Civil Code of 1981, where the plaintiff bases his claim on the ground of this provision. The sale that the plaintiff wanted to invalidate, in this case is made inside the circle of co-owners, for which, the lawmaker does not provide any condition or specific formal procedure (Decision No. 2206/2012, the Court of Appeals in Tirana). Therefore, this sale has just caused the change in the proportion of the joint ownership, which is not prohibited by law. By this juridical action the defendant has exercised the legal right to possess her share, which is not forbidden by law but on the contrary it is explicitly allowed, without being subject to the rules of Article 204 of this Code in which the right of first refusal is provided as long as the alienation is done within the circle of co-owners by changing only the proportion of shares and not inferring in the part of the other co-owner that in this case corresponds to the plaintiff. In this case the Court of Appeal is referred among other things to the unifying decision of the Supreme Court of the year 2002. The case for which the judicial practice is unified has had as a subject the right of first refusal according to the Article 204 of the Civil Code, in which the joint ownership has been formed - on the one hand the subjects that under the law for the privatization of state housing became owners of apartments that used to be on rent while the state of the time was the shareholder. Unified Colleges by unifying judicial practice have clearly stated that the joint ownership relation as well as alienation of the part of the co owner is conducted by respecting the provisions of the Civil Code on joint ownership, by interpreting that this Code constitutes a special law upon which the sectoral legislation on the restitution and compensation of property refers to, as well as the privatization of state housing [Decision no. 9/2002, Unified Colleges of the Supreme Court].

4. The Right of First Refusal According to the Law "On Restitution and Compensation of Property"

The right of first refusal is applied even in other laws but in another sense due to the fact that here there is no form of co-ownership, but adjustment of situations arising in an earlier time in connection with expropriations, confiscations due to the different connotations that were given by the political cast of the years 1944 -1990.

One of the laws that provides the right of first refusal is the one about "On the restitution and compensation of property" with corresponding changes done over the years, namely: Article 21 In the territories occupied by state buildings, such as stores, warehouses, workshops etc., former owners have the right of first refusal of these buildings, when privatized with prices set under the dispositions in force (Law No. 7698 /1993). The right of first refusal, provided in the Article 21 of the Law mentioned above, is a possible right to be carried out to those buildings that were built by the state on the land of former owner and which continue to be owned by the state at the time in which the law came into force, so it seems that there was not a legal process of passing to the real owner even though the state decides to privatize them. The same thing is then formulated into a law on the same subject therefore, the restitution and the compensation of property in no.14, (Law no. 9235, dated 29.7.2004). So it can be concluded that the right of first refusal in this form is a restoration of a right violated by the state in a historical period of time, where the land on which the state buildings that are supposed to be privatized had belonged to the former expropriated owners and these buildings on this property can be purchased through the right of first refusal by the former landowner.

Judicial practice concerning the right of first refusal under the law "On restitution and compensation of property" has varied when referring to the decisions and justifications that the courts (including) and the Court of Appeal or the Supreme Court have taken. In one case which was not presented in the Constitutional Court, the circumstances, the court decisions and justifications were: In the context of the privatization of state property, the National Privatization Agency, relying on specific laws (Law nr.7512/1991) has authorized the action of giving the Hotel "Rozafa" to 40 ex-prisoners for political reasons even though that did not belong to them. A part of this land upon which the facility was built was owned by another citizen, who as a former co-owner of a part of this land under the built object, has required the invalidity of the juridical action stated in this contract of sale on the court based on the claim that, under the Article 21 of the Law no.7698/1993 he/she (the former owner) has the right of first refusal on this object. The Court of the District of Tirana due to decision no. X/1996, concluded that the suit should be cancelled for lack of subject, a decision which the Court of Appeal in its decision no. X/1996 has annulled and by judging the issue concerned, decided to accept the claim and to declare the juridical action as invalid as well as to return the parties involved to the previous state. The issue was introduced on the court of Cassation where the Civil College of the Court of Cassation, with decision no. X/1997, has decided the annulment of this decision and leaving in force the decision of the district court by adding that the lawsuit is invalid for lack of active legitimation of the plaintiff party and that the right of first refusal of the former convicts would arise based on the Law "On the status of the former convicts for political beliefs by the communist system" (Law No.7748, date 29.07.1993). In the actual case, the former owner's right to gain ownership of the building situated on the land owned by him/her is sanctioned in law no. 7698/1993 as a right of first refusal. The Constitutional Court has reasoned that the right of first refusal is a principal right of the former owners of the land on which the building which is subject to privatization is located and as a way of gaining the property by law, constitutes an important constitutional right, which can not be denied unless it is the will of the former owner, regardless of the portion attributable to privatization [Decision No.7/1998, the Constitutional Court].

5. The Right of First Refusal on Joint Ownership Deriving from Inheritance

What constitutes a problem as far as the right of first refusal related to inheritance is concerned, has been part of judicial practice in which it was introduced in order to be solved and unified the question if the right of first refusal could be donated by means of a contract of donation due to the characteristics that represent this contract, where by it could pass only one item or real rights, and the next question if the right of first refusal of property returned by law could constitute a real right?... By the decision no. 23/2002 the United Chambers of the Supreme Court during the judiciary session with the lawsuit the proving of invalidity of the contract of donation have noted that: The decision of the no. X/1994 regarding Property issues, the heirs IB : SB, etc. given the right of ownership over a land of X m², by acknowledging the right of first refusal for the object X according to the law no.7698/1993 "On Property Restitution and Compensation of former owners". This is done by means of the contract of donation of the year 1995, SB, as one of the heirs of the IB, has donated her part (1/7) of the inheritance belonging to the defendant HB The plaintiff had requested the invalidity of this contract of donation based on the argument that: - The contract of donation is inconsistent with Article 762 of the Civil Code. - The donator was not an owner at the time of donation, because due to a decision of the court the ownership over

the land was known, but the land was not given back to them. The District Court of Durrës, by means of the decision no.X/2000, decided: the partial acceptance of the plaintiffs claim, by announcing as partially invalid the contract of donation. The Court of Appeal of Durrës decided by means of the decision no.X/2000 to amend the decision of the district court and the lawsuit of the plaintiff was declared invalid and not based on law and evidence. The plaintiff has made clear their position against the decision of the Court of Appeal. The United Colleges of Supreme Court during the unification of the judicial practice reasoned: *The right of first refusal of the former owner (his heir) provided by Article 21 of Law 7698/1993, by being real and right and, as such, according to the Article 761 of the Civil Code, may be possessed by passing it to the third parties by means of donation. There is another wrong claim of the plaintiff, according to which the donation is invalid for the reason that it was made for a future fortune and not for a current one, referring to Article 762 of the Civil Code.*

In the case under consideration we are dealing with an existent fortune of the donator. This wealth has existed since the time of the inheritance and has become effective after the coming into force of the Law no. 7968 / 1993, based on which is taken the decision of the Commission of Property. It is true that the scope of the contract thus the transferred rights to the defendant, are not defined in terms of their volume, but nonetheless, this object is determinable in time, and not only the right of first refusal of the former owner (his/her heirs) but also their right to compensation, are such rights, for the availability of which there is no prohibition provided by law. In conclusion, the Article 761 of the Civil Code explicitly provides that the subject of the contract of donation can be items or real rights. The right of first refusal of the former owner (his/her heirs) recognized in the Article 21 of the Law "On Restitution and Compensation of the Properties of former owners", is considered a real right and, as such, it may be available through the contract of donation (Decision no. 23/2002, United Panels of the Supreme Court).

I consider this unifying decision as fair and if analyzed according to the provisions of the Civil Code as well as the specific law of return and compensation of property, we can come to the conclusion which has served and continues to be taken as a reference point for solving the problems or issues introduced before the courts. In the concept provided by the law, the contract of donation is considered a real gift, called valid at the time of delivery of the item and that the only case that the contract of donation can be considered unrealistic, but consensual, is when one of the co-owners donates to another the ideal part of the joint possession. By continuing the reasoning I would like to emphasize that the law for the restitution and compensation of property, does not constitute a new way of acquiring property, but this stratum of the population, or subjects involved in it, have been given or compensated the unfairly confiscated property which is even the purpose of the implementing of this law. In addition I would add that despite the fact that the former owner or his heirs have not taken this wealth effectively, in the essence it remains their property until the property confiscated in the '45 - '90 is fully restored - and for this they may donate it to anyone, always through the contract of donation, because otherwise we would face a different kind of the right of first refusal, in which case the property or the right of first refusal of the buildings built on the property of former owners would respect the right of first refusal between their co-owners or co-heirs.

6. The Right of First Refusal in Commercial Enterprise

The creation of commercial companies is one of the innovations of the social, economic and legal changes that accompanied the '90s. The unions of individuals in the creation of legal persons, or the unions of legal persons created the first forms of joint-ownership in the society. For the disputes arising in the exercise of commercial activities, their solution would be done by commercial legislation, while other issues that arose during the implementation of the provisions of this Law regarding the joint ownership - their solution is found by the current Civil Code. In trade companies, regardless of their type, joint ownership is the basis from which the commercial activity develops, and is therefore a joint ownership created voluntarily, where the right of first refusal is provided only for shares in joint stock companies (Bachner, Schuster, Winner, 2004, pg.71), and the status of this company and limited liability companies may provide a right of first refusal (Law no. 9901/2008). In respect of the right of first refusal is that equity (share) remains the property of the founders of the corporation who have foreseen such an action in the charter of incorporation of the company as a form of issuing shares under the prism of the increase of the capital. Therefore, a capital increase comes by the shareholders of the company themselves who have decided to issue shares that will be taken through the right of first refusal by the existing shareholders.

Judicial practice regarding the right of first refusal or action quota is small and it is related more to the experience and time that commercial companies had to develop in Albania. The issues introduced in the courts have had a relation with the laws of trade companies and those of returning and compensation of the properties, without forgetting their reference to the provisions of the Civil Code. In the following case which was introduced in the Supreme Court it is

noticed: Due to judicial review, according to the claims of the plaintiff, it resulted that based on the Decisions no.X/1996, the Commission of Returning and Compensating of the Properties Tirana, the plaintiffs with the quality of the former owners (legal heirs) is granted the right to purchase the objects on the surface of the building site called Porcelan at the moment of privatization. The Limited Liability Company "Castellania-Tirana" is a corporation registered in 1993 as a joint venture owned Italian-Albanian company, with the approval of the relevant ministries established under the law no.7638/1992 "On Commercial Companies" between partners: *The Company "Castelania" srl. Italian legal person; Albanian former State Plate Production Enterprise, Tirana.* The joint venture is registered as an Albanian legal person by the decision of the Tirana District Court no. X/1993. With the contract of sale of the shares in the year 2004, the foreign partner, the Company "Castellania" s.r.l has sold to the suit Company "Neon" Ltd, quotes of the initial capital of 55.7% owned in the Company "Castellania Tirana" Ltd, passing to the legal person of Albanian law all the rights of the non-state partner in the former joint venture. The plaintiff party claims that this contract did not give her the opportunity to exercise the right of first refusal, as a real right. At the same time, this right is not recognized to a non-state partner in any of the provisions of the Law "On commercial companies".

As far as we mentioned above, the plaintiff party sought the admission of the lawsuit seeking absolute invalidity of the contract of sale no.X/2005 and consequently returning the parties to return to the previous state of the right-quota holding, land surfaces of objects situated on the state land, the creation of legal conditions of a state of fact, so that the plaintiff could exercise the right of first refusal, and the declaration of invalidity of contracts of sale-purchase no.X/2005. In this point of view it results that the court of first instance, during the trial, on its own right it had concluded that in the contract of privatization of the parts of the capital no. X/2005, by which the defendant "Neon" Ltd has acquired ownership of parts of the founding capital of the Company "Castellania Tirana" Ltd owned by the state, is disposed of in violation of the law as regards some of its essential elements dealing with the content and the targets of the parties involved and the action for transfer of ownership of state shares of the capital with the contract subject to suit in favor of the defendant "Neon" Ltd, is an absolutely invalid legal action, which due to effect of law should not bring any consequence in the ownership of shares of the initial capital of the company, "Castellania Tirana" Ltd, in the sense of Article 92 letter "a" of the Civil Code. Furthermore, due to the invalidity of the above actions as well as the contracts of sale are subject to judgment noX/2005 and were found invalid, therefore the legitimate rights of the plaintiff were violated and must be restored, then eventually admitted being ascertained the Suit and declaring invalid the contracts of sales no. X/2005 and consequently returning the parties to the previous situation, turning the right of possessing quotas as well as the land surfaces and objects situated on it to the state and ordering the deletion of the relevant consequences of The Office of Registration of the Real Estates (ORRE) no.X/2005 mortgage registry Tirana.

Joining the reasoning and evaluation of the Civil College of the Supreme Court it can be concluded that legal actions of the sales of quotas that represent the surfaces where the buildings are placed, land for which the ownership is known by the decisions no.X/1996 of the Commission for Returning and Compensating the Property, Tirana and by these decisions they were given the right of first refusal of facilities built on known land, which are legally invalid. A legally invalid action does not have consequences and therefore the parties return to the previous situation, and in this case as determined by The Supreme Court... the declaration of invalidity of the contracts of sale made between the defendants, .. thus it should be returned to the state the amount of shares sold, .. by giving them the possibility to exercise the right of first refusal, ... (Decision No. . 416/2013, the Civil Division of SC).

The case of judicial practice, which will be analyzed afterwards, has the purpose of selling of the shares without respecting the right of first refusal of other co-shareholders in the item in common. The Civil College of the Supreme Court assessed that both lower courts have done a thorough and comprehensive investigation of the case under trial by respecting everything of the Civil Procedure. Based on all the judicial investigation it was proved that, with the emergence of the Law no.7926/1995 *"On the transformation of enterprises into commercial companies"*, the tourist enterprise "Drini" Tirana, was transformed into a commercial company, which was registered as a legal entity in the form of a joint stock company called "Drini" JSC by decision no.X/1995 of the Tirana District Court, where its only shareholder, initially, was the Ministry of Finance. The capital of this company was composed of the value of the hotel building "Drini" in X ALL, and the value of the land in X ALL. Similarly, after some changes in the composition of the shareholders of this society it has been concluded that, eventually the company has had as a shareholders V.A. who owned 75.32% of the shares, LV, who owned 5.81% of the shares and the remaining 18.87% of the shares were owned by 90 minor shareholders. By the Decision of the Council of the Ministers no.220/1998 and no.325/1997 the Company "Vefa Holding", VA and L.V. have been declared as "persons associated with the credit companies", and subjects of control. Based on the laws and regulations adopted at that time as well as according to the Law no.8215/1997 *"For financial control of the non-banking persons who have borrowed from the general public"*, the administrators of the Company "Vefa in administration" have sold the shares of the Company "Drini" Joint Stock Company to third persons, who are considered as defendants in this

trial, which is a legal action that is challenged by the petitioner (minor shareholders). The Civil College of the Supreme Court, has estimated that administrative acts undertaken by the administrators of the Company "Vefa in administration" in connection with this sale are absolutely worthless, as they were taken in violation of the law and therefore the contract of sale of the shares is an a totally invalid legal action (Decision no. 251/2011 of the Civil College of the Supreme Court).

By supporting the line of reasoning of the Supreme Court we conclude that, the disregard of the right of first refusal of the shares by the administrators of the Company "Vefa in administration" results in administrative acts taken by these managers in order to sell 100% of the shares to be contrary with mandatory provisions of law. The right of first refusal is provided in law bonds, where the issue of bonds may be converted into shares of the company (Law no. 10158/2009). The realization of the right of first refusal of the shares in any case and all the time remains desire and will of the shareholder who wants to benefit from the participation and material benefits that brings the action, or the realization of goals that the owner of the bond might have.

7. Conclusions

The Institute of the right of first refusal has not had the meaning that it has today and has been further extended in respect of the boundary properties or within large families, or the right of preference for neighbors, similar to the institution of the right of first refusal. Such a right is found in the Canon of Lek Dukagjin, in the legislation of the King Zog, the Civil Code of 1981, and continues to have a great importance today, as provided in the Civil Code as well as in the other laws. The Right of first refusal is exercised only when the object is a real estate, the alienation should be done by means of a reward towards the third parties outside the joint ownership. But if the co-owner sells or exchanges his part with one of the co-owners, there is no possibility for the right of first refusal to take place since alienation is done within the group of the co-owners, by changing only the relation between co-owners and without damaging in any way the joint ownership.

The right of first refusal provided in the law for compensation of property to former owners is a restoration of a right violated by the state in that historical period, where the land on which the state buildings that would be privatized are constructed have in fact has been a former property of the dispossessed owners, and these facilities on this property can be purchased through the right of first refusal by the former landowner. As far as the law is concerned, the right of first refusal of former owners by being a real right and as such, according to the Article 761 of the Civil Code it may be enjoyed and passed to the third parties through the contract of donation, in support of the attitude held by the United Chambers of the Supreme Court. In terms of commercial right, the action / quota is nothing more but the totality of the rights which constitute the economic interests of the shareholder / partner in a business. Legal actions of the sale of units / shares that represent the land surfaces of the objects, a land for which the ownership is recognized by law and is recognized also the right of first refusal of the buildings constructed on that land, would be legally invalid when the right of first refusal is not respected in their case.

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