

PRINCIPLES OF INTERNATIONAL LAW IN CONJUNCTION TO THE RECOGNITION, RESTITUTION AND COMPENSATION OF PROPERTY IN DIFFERENT STATES

Hemion Braho^{1*} and Jonlinda Hada²

¹PhD, Private Law Lecturer, ALBANIA, hemion.braho@uet.edu.al

² PhD Candidate, Private Law Lecturer, ALBANIA, jonahada@gmail.com

*Corresponding author

Abstract

Historically, property has been the foundation of the existence of human society and of states at all times. The “Rule of Law” in every democratic state guarantees and protects property. In a chronological period of time, how has the Albanian legal systems guaranteed private property? After the change of dictatorial system caused by the democratic developments during the 90’ which happened in all the East Europe, the democratic state although it wasn’t responsible for the past injustice, took over the moral and legal obligations to adjust, as soon as possible, some of the previous regime injustices, from 29 November 1994 and after. The first step was Law nr.7512 in August 1st 1991 “For sanctioning and protection of private property, for free initiative independent private activity and privatization”.

Two basic elements of this process are: recognition/restitution and compensation of property. Both elements have encountered difficulties in their materialization in practice. The jurisprudence of European Court of Human Rights and the Constitutional Court of the Republic of Albania have tried to give the legal definition “restitution and compensation of property” meaning not the same as the right of property in a constitutional sense and rules of international law, but an understanding based on the principle of fairness and justice and more to the principle of the welfare state. An important role had the unification of these decisions, that taking into account the decisions of the European Court of Justice, unified judicial practice in regard to the question of restitution and compensation. Besides the repeated decisions and frequent recommendations as to improve the situation, Albanian state hasn’t built yet appropriate and effective mechanisms for tackling this problem.

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