

# **THE OWNERSHIP RIGHT IN TRANSITION SOCIETIES: AN ANALYSIS OF THE OWNERSHIP RIGHT IN ALBANIA**

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## **A B S T R A C T**

Transition from the model of state ownership to the model combining public and private forms of ownership is one of the characteristics that many scholars attach to the transition of post-communist societies toward free-market and democratic societies. One of the effects of such a transformation is the changes in the legal framework accompanying such a process and the juridical re-conceptualization of the ownership right.

Scholars, however, have observed that the transitions taking place in post-communist societies have not always shown the same features and outcomes when it comes in terms of the ownership right. Some of post-communist societies went through a smooth and quick transition others experienced or are still undergoing a problematic and difficult transition. In explaining this variation in features and outcome of transition in terms of the ownership right, various scholars have put their fingers on various factors as being responsible. The issue which factors account for such a variation in the transition of post-communist societies with regard to the issue of the ownership right remains open to debate.

This study looks at the changes and dynamics in the ownership right in the context of post-communist transition of Albanian society. It tries to identify what changes have taken place with regard to the ownership right, whether the changes observed are the same with those observed in the transition of other post-communist societies, and whether the changes in the legal framework and approach toward the ownership right that have taken place in Albania are conform to the historical and modern legal concept. The dynamics cover a 20-years period (1990-2010) and they focus on the legal framework accompanying and standing on the basis of the ownership rights changes and conceptualization.

Some preliminary findings lead to the conclusions that while the ownership right in Albania has undergone changes and transformation they are problematic as they do not reflect the same features observed in the transition of other post-communist societies and that the actual conceptualization and practices regarding the ownership right in Albania remain open to improvement and orientation toward the standards and practices of the European law!

**Key Words:**Ownership Right, Legal Framework, Transition, Albania

# 1. OWNERSHIP LAW in post communist Albania:

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## What makes interesting this case study?

### (-) It makes, in practical terms, 2 elements:

- First, the Ownership Law notes a difference from a conceiving and communist (abnormal) practice towards a conceiving and liberal (normal) practice of the ownership (Damsa 2009):

= **in the communist system, the ownership law** (Verdery 2003):

- + didn't be cancelled by books, but was restricted and was equalized with personal things ;
- + is treated more as administrative case than legal one;
- + is tightly related with owners' identity and reflects the relationships among them;
- + reflects 4 ownership's forms (State, cooperative, personal, private);
- + is realized through hierarchy and delegation by the party (Bregma&Lawrence 1990) ;
- + the managers have the right to manage it only, but not of the ownership (Dunn 2002) ;

= **the ownership law communist concept led the creation of**

(Verdery 2003):

+ a system of multiple overlapped

ownership laws;

+ a managers' class that decided to its turnover, not being its

owners;

- Second, the transformation of the Ownership Law has to do with:
  - = transformation of socialist ownership relations (Frydman&Rapaczynski 1994);
  - = transformation of the concept and values towards property (Heller&Serkin 1999, Verdery 2003) ;
  - = practices of return, distribution, justification (Edmundson 2004);
  - = moral dimension of return and distribution (Damsa 2009) ;
  - = impact over people of ways of ownership rights (Riha 1996, Berend 2009) ;

**(-) It makes, in practical terms, 2 elements:**

- First, Explanation of the transformation throughout Classic Ownership Theory. This explanation:
  - = is problematic because the classic ownership theories treat the practices of utilization, avoiding, transformation, but not these of return, and property's distribution (Damsa 2009)
- Second, The use of liberal concepts of justice-property-law. These concepts:
  - = has explained the transforming dynamics and the practices of return, and property's distribution even though the use will fit with specifications of postcommunist context.

**2. The ownership Law on the optic of the juris:**

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**From what theoretical point of view can be studied it?**

**(-) The Classic legal theory. This theory:**

- sees the Justice from the different points of view (Vallentyne 2007)
  - = as an issue of **profit and burden distribution** – incomes, social frameworks, legal systems;
  - = as an issue of **legitimacy** – non-intervention by thirds;
  - = As an issue of **proportional fairness** – awarding equally independently by what is moral, fair or deserved;
  - = As an issue of fairness – giving anyone all things belong to him;
  - = as an issue of moral obligation towards each-other – respecting the rights of any individuals;
- relates the Ownership law with following justice's forms:
  - = **formal justice** – formalization and consequent application of procedures (Weber 1978, Hart 1997, Hooker 1999);
  - = **substantial justice** – clearness of the rights people have to ask for from one-other and from the Government (Damsa 2009);
  - = **procedural justice** – fairness application of legal rules and equal treatment of everyone (Bell 2009, Solum 2009);
  - = **retributive justice** – failures' correction, damages' compensation (Aristotle, Coleman 1992, Hooker);

- = **distributive justice** – honestly resources distribution (Aristotle);
- = **commutative justice** – fairness with salaries, prices, and exchanges (Fleischacker 2004);

(-) **Anglo-American classic ownership theory**. This Theory:

- sees the Property from 3 points of view of practices and moral development (Damsa 2009):
  - = as a utilization issue;
  - = as a avoiding issue;
  - = and as transformation issue
- relates with Ownership Law with these aspects (Damsa 2009):
  - = with **the work** (Locke 1690) – the ownership law comes out by the work; by mixing of work with other means not having in ownership before;
  - = with **the profit** (Bentham 1789) – the ownership law comes out from the marginal profit of the thing;
  - = with **the human nature** (Hume 1772); = the ownership law comes out from relative lack of things, human nature for possession;
  - = with the **individual's will** (Kant 1785) – the ownership law comes out from the reason, will, being first possessor, and universal law of freedom;
  - = with the **individual's personality** (Hegel 1807) – the ownership law comes out from conscience and will of the individual to invest himself and his work on different things;
  - = with **moral development** (Green 1911) – the ownership law comes out from need of individual to fully realize own potential;
  - = with **the land** (Munzer) – the ownership law comes out from the work as social activity;

- = with **the efficiency** (Demsetz 1967) – the ownership law comes out from the fact that the private ownership makes more efficient distribution than any other method;
- = with **the freedom** (Nozik 1974) – the ownership law comes out from the negative freedom, the right to not face mandatory intervention by thirds towards it that is in possession;

### **3. The ownership law in postcomunist transition:**

#### **What theoretical point-of-view appropriates to its survey?**

- (-) **Legalist Theory of Transition's Justice.** This theory:
- Sees the dynamics and variations on the Ownership Law from the following points-of-view (Damsa 2009):
    - = as a **Conception** issue (Damsa 2009);
    - = as a **Justice-making** issues (Bell 2009, Teitel 2009);
    - = as a **Rule** issue (Sartori 2009, Friedman 2009)
    - = as a **Justification** issue (Damsa 2009)
  - Relates the dynamics and variations in Ownership Law with following aspects (Damsa 2009):
    - = property's return (retributive justice)
    - = property's distribution/privatization (distributive justice)
    - = property's compensation (retributive justice)
  - Offers a model that evaluates the variations in the Ownership Law on over 6 elements:
    - = the **conception** beyond the variations
    - = used **instruments**
    - = process's **characteristics**
    - = observed **practices**
    - = impact's **factors & conditions**

= observed **effects**

#### 4. Model of Ownership Law in Transition:

#### What kind of picture the analysis over 6 elements offers?

Model's element	<b>What should be expected to be found when a Property's Law Post-communist transformation on a specific country is analyzed?</b>
<b>As a concept beyond the variations</b>	<p><b>In relation with the Justice.</b> The Justice is perceived as (Cowen 2006):</p> <ul style="list-style-type: none"><li>• distributive justice</li><li>• retributive justice</li></ul> <p><b>In relation with the Ownership Law.</b> The ownership law is perceived as :</p> <ul style="list-style-type: none"><li>• transferring</li><li>• avoiding</li></ul>
<b>As used instruments</b>	<p><b>There are observed 3 main instruments:</b></p> <ul style="list-style-type: none"><li>• the property's return (in selective way)</li><li>• the property's distribution/privatization (in stages)</li><li>• The property's compensation (in selective way)</li></ul>
	<p><b>There are observed, ie should be expected to be found even in a case these characteristics:</b></p> <ul style="list-style-type: none"><li>• Regarding to the Government (institutions/politicians):<ul style="list-style-type: none"><li>= preferences for macroeconomic stability (Aslund 2007)</li><li>= pretensions for moral superiority (Appel 2002)</li><li>= discrepancy saying – making (Holmes 2009)</li><li>= strong political control over the ownership transformation process;</li></ul></li></ul>

<p><b>As process's characteristics</b></p>	<ul style="list-style-type: none"> <li>• Regarding the Judicial System (the courts, the judges) = difficulties to justify variations on ownership (Edmundson 2004) = plurality related to the point-of-view of order/legal authorities (Pospisil 1991)</li> <li>• Regarding to Legislative (parliament, law-makers) = variations and laws' amendments (Damsa 2009);</li> <li>• Regarding to the society (individual/social groups) = trauma and social unrest (Sztompka 2000, Verdery 2002, 2003) = unintended and perverse consequences (Verdery 2002, 2003)</li> <li>• Regarding to the Variations (by people, law-making, government, judicial system) = high cost (Verdery 2002) = property and ownership law's evaluation on political standards, not on market standards (Verdery 2003) = return/privatization more that an issue of the creation of a new property's laws' set is appeared as an issue of transformation of socialist relations of the ownership (Verdery 2003)</li> </ul>
<p><b>As attended practices</b></p>	<p><b>There are observed, ie have to be expected to be observed even in a case these practices:</b></p> <ul style="list-style-type: none"> <li>• <b>Regarding to Return/Privatization:</b> = variations' justifications (Brabant 2009) = underlining the ownership law related to the obligations (Verdery 2004, Alexander 2004, Sneath 2004); = unequal treatment of individuals by the point-of-view of sale price, winner's preselecting, treatment of similar cases (Damsa 2009) = Selective application of the procedures (Damsa 2009)</li> <li>• <b>Regarding to the Justice-making:</b> = the differentiated treatment of individuals/social</li> </ul>

	<p>groups by the point-of-view of compensation, damages and errors' remedy (Damsa 2009);  = Law application in an "elastic" manner (Verdery 2003)</p>
<p><b>As impact's factors &amp; conditions</b></p>	<p><b>There are observed, ie should be expected to be observed these facts&amp; conditions:</b></p> <ul style="list-style-type: none"> <li>• <b>In the group of legal factors:</b>  = Legal Framework (institutions &amp; laws).  Positive/negative impact (Macklem 2005, Sadurski 2001, Sweet 1993, Burley &amp; Mattli 1993, Burley, Ferejohn 2002, Bugaric 2001);  = Discrepancy of the law in paper with law in implementing. Negative impact (Maimon, Roscoe, Pound 1990, Schwarzschild 1986)  = Lack of rules and legal infrastructure (law, agents). Negative impact (Hanley 1999, Cofi, Pistor, Black 2009, Black, Kraakman, Tarassova 2000);</li> <li>• <b>In the group of inheritance factors:</b>  = paternalist culture of the State. Negative impact (Merrill &amp; Smith 2007)  = administrative character of the ownership. Negative impact (Verdery 2003);  = hierarchic character of the ownership (State, cooperative, individual, personal) Negative impact (Verdery 2002, 2003);</li> <li>• <b>In the group of the factors of social-political actors:</b>  = Leading principles based on the variation (the policy's role, positioning and values versus property, the restitution's policies). Positive/negative impacts (Verdery 1996, Heller &amp; Serkin 1999);  = Elites/Managers of socialist property. Negative impact (Verdery 2002, Ganev 2009)</li> <li>• <b>In the group of the policies followed by the Government:</b>  = condition: positioning towards rules of treatment and property management (lustration). Negative impact (Damsa 2009);  = condition: established priorities. Negative impact (Seidman, Seidman, Makgetla 1995, Rubin 1994, Brietzke 2009);</li> </ul>



<b>As observed effects</b>	<p><b>There are observed, ie should be expected to be seen these effects:</b></p> <ul style="list-style-type: none"> <li>• Regarding to the Privatization's Charater: = political capitalism, ie passing of the socialist property on the possession of individuals in a non-fair manner, political, no market standards applied (Staniszki 1991, Alexander 2009); = fshehje te aseteve, riformatim te borxheve (Stark 1996);</li> <li>• Regarding to the Actors: = state falling prey, privatization of state police (Ganev 2009, Los 2009);</li> </ul>
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## 5. Ownership law in Albanian transition:

**What table gives the analysis according to the model of justice in transition?**

**(-) The Property Law in Albania is examined throughout 4 Laws & 4 Elements:**

- L-7501, 19 July 1991, On Land; L-7652, 23 December 1993, On houses; L-7698, 15 April 1993, On Properties' Compensation; L-9235, 29 July 2004, On Properties' Restitution/Compensation;
- 1) Kind of justice, 2) Ownership's manner, 3) Used instruments, 4) Practices;

Model's Element	What is observed in the Albanian post-communist transition dynamics law?
<b>As justice-making type</b>	<p><b>DISTRIBUTIVE JUSTICE</b> (distribution by loyalty)</p> <ul style="list-style-type: none"> <li>• <b>Law 7501 (1991) On Land</b>, Article 2; Article 3, Article 3a, Article 6, The Land is given in heredity: = to natural and legal persons; = domestic or alien, = in village;</li> <li>• <b>Law 7652 (1993) On Houses</b>, Article 3, The houses are given gratis t</li> </ul>

	<p>1970;</p> <p><b>RETRIBUTIVE JUSTICE</b> (Errors' remedy, damages' compensation)</p> <ul style="list-style-type: none"> <li>• <b>Law 7652 (1993) On Houses</b>, Article 7, Article 7/a, Article 8, Article given as compensation and reimbursement to: <ul style="list-style-type: none"> <li>= ex political homeless persecuted; <ul style="list-style-type: none"> <li>= housed built after natural disaster, in demolition's risk that requ</li> </ul> </li> <li>= the flooded people by Hydroelectric power stations;</li> <li>= the displaced people by force;</li> <li>= homeless people to whom home was destructed due to regulatory</li> </ul> </li> <li>• <b>Law 7698 (1993) On Restitution and Property's Compensation</b>, A the criteria and conditions of the compensation of ex-owners to: <ul style="list-style-type: none"> <li>= lands</li> <li>= grounds</li> <li>= premises/buildings</li> </ul> </li> <li>• <b>Law 9235 (2004) On Restitution and Property's Compensation</b>, A the rights of ex-owners for the compensation though: <ul style="list-style-type: none"> <li>= other state real estates,</li> <li>= lands on touristic areas,</li> <li>= shares in companies with state capital</li> <li>= value of premises proclaimed to be privatized</li> <li>= conferring first refusal right;</li> </ul> </li> </ul>
<p><b>As ownership manner</b></p>	<p><b>Assignment</b> (of the right)</p> <ul style="list-style-type: none"> <li>• <b>Law 7501 (1991) On Land</b>, Article 3; The land is given in ownership recompense;</li> <li>• <b>Law 7652 (1993) On Houses</b>, Article 1; The houses are given to the privatization;</li> <li>• <b>Law 7698 (1993) On Restitution and Property's Compensation</b>, A recognizes the ownership right to ex-owners: <ul style="list-style-type: none"> <li>= on terrains where the premises are constructed throughout the trans proprietors with premise's owner;</li> <li>= on terrains occupied by state buildings (shops, warehouses, factories of ex-owner;</li> <li>= on state premises in rate 1:2 for one-floor buildings, 1:3 for two-flo</li> </ul> </li> <li>• <b>Law 9235 (2004) On Restitution and Property's Compensation</b>, A recognizes the ownership right to ex-owners on properties: <ul style="list-style-type: none"> <li>= expropriated, nationalized, seized, and sequestrated by the state from</li> </ul> </li> </ul>

throughout the restitution and compensation with special law;  
= up to 100 hectares;

**Restitution** (right's recognizing)

- **Law 7698 (1993) On Restitution and Property's Compensation, A**  
Article 7, Article 8, Article 9, Article 10, Article 11, Article 13, Article  
recognizes to the ex-owners and their hirers the ownership right for:
  - = expropriated, nationalized, seized, and sequestered properties after 1991
  - = real estate as land, terrain (no land), dwelling houses, factories, work
  - = agricultural land up to 5000 m<sup>2</sup>;
  - = free terrains, expropriated with recompense when the owner restitute
  - = terrains occupied after 1991 by building houses, premises, after the r
- **Law 9235 (2004) On Restitution and Property's Compensation, A**  
recognizes to ex-owners the right for:
  - = terrains occupied after 1991 by building houses, premises, after the r
  - purchasing amount;
  - = terrains occupied by temporary premises;
    - = free terrains within bordering lines of towns and touristic areas, a
    - plans up to 5000 m<sup>2</sup>;
    - = premises/objects purchased by the state without ex-owners' conse
    - restitute the price taken where they were expropriated;
    - = premises/objects alienated by thirds are there are not permanent p
    - restitution by the state to third party the relevant recompense;
    - = premises/objects on which significant investments are made by th
    - for the investments when it composes 20% of the object's price,
    - of the investment amount if it is in between 20-50%;
    - = premises illegally privatized, privatized properties without activit
- **Law 9235 (2004) On Restitution and Property's Compensation, A**  
recognizes to ex-owners the right for:
  - = properties and expropriated lands within touristic territories as pe
  - Development of Touristic Areas (21 January 1993); on the posse
  - agrarian lands on possession of the researching-scientific institut
  - hydroelectric power plants;
  - = lands in use by companies and these last refuse to pay land's valu
  - = terrains alienated to third persons, without permanent and legal pr
  - by the state to third persons;
  - = private terrains occupied with permanent and legal premises in sta
  - premises are not used for public interest, and ex-owner is ready t
  - when it is rented by thirds;
  - = properties expropriated for public interest but are not used anymo

**Compensation** (of the right)

- **Law 7501 (1991) On Land**, Article 19; recompenses ex-owners natural property:
  - = is used for public purpose;
- **Law 7698 (1993) On Restitution and Property's Compensation**, Article 10, Article 11, Article 12, Article 13, Article 18, Article 23, Article 24, Article 25; recognizes the recompense to ex-owners for terrains:
  - = 100% terrains up to 10.000 m<sup>2</sup>, + 10% terrains up to 100.000 m<sup>2</sup> m<sup>2</sup>;
  - = which have permanent premises up to 5000 m<sup>2</sup> (with state obligation for the construction of surfaces, terrains on touristic areas;
- **Law 7698 (2004) On Restitution and Property's Compensation**, Article 10, Article 11, Article 12, Article 13, Article 18, Article 23, Article 24, Article 25; recognizes the recompense to ex-owners:
  - = for the part of not-restituted/compensated property;
  - = with real estate for public use being destined for the alienation;
  - = for the property with premises illegally built by under legalization;

**Exception** (by the right)

- **Law 7501 (1991) On Land**, Article 19; Article 21 avoids by the owner's right regarding to:
  - = utilization of private property for public interest;
  - = illegal property's occupation.
- **Law 7652 (1993) On Houses**, Article 10, Article 11, Article 12, Article 13, Article 23, Article 23/a; avoids by the ownership's right regarding to:
  - = terrains in co-proprietty;
  - = excessive and over allowed rates residential surface;
  - = persons desiring not to purchase the property by pay the rent;
  - = state premises ex private property remaining in the managing of houses from 1990 upwards;
  - = peasants that has awarded the resident permit into city after 1991;
  - = citizens who have rented the houses of emigrants;
- **Law 7698 (1993) On Restitution and Property's Compensation**, Article 10, Article 11, Article 12, Article 13, Article 18, Article 23, Article 24, Article 25; recognizes the recompense to ex-owners of:
  - = agrarian lands, out bordering lines of residential centers at the moment of the expropriation;
  - = premises and terrains expropriated for public interest recompensed at the market price;
  - = premises donated to the state with the desire of ex-owner;
  - = properties that were part of urban arrangement plans, and on which the ex-owners acted according to the legal procedures;
  - = building with investments carried put by the state more than 50% of the total value;

	<p>becomes co-proprietor with the state);</p> <ul style="list-style-type: none"> <li>= premises illegally privatized, privatized properties but without an</li> <li>= royal properties and these of foreign/common companies;</li> <li>= Those who have collaborated with the Nazi-fascist occupiers, ex-communist regime, and the condemned for the property's appropriation</li> </ul> <ul style="list-style-type: none"> <li>• <b>Law 7698 (2004) On Restitution and Property's Compensation, A</b> expels restitution/compensation of the ownership right to: <ul style="list-style-type: none"> <li>= individuals who have profited by the Agrarian Reform (Law no. 1 Law no. 7501 On Land (19 July 1991); were expropriated for the recompensed; have donated their properties to the state with their</li> <li>= agrarian lands;</li> <li>= expropriation for public interest and to which the recompense was Properties with public interest; serving to the realization of Albania occupied with legal acts related to the planned urban, economic and</li> </ul> </li> </ul>
<p style="text-align: center;"><b>As used instruments</b></p>	<p><b>For the distribution of the socialist property.</b> 2 Legal instruments:</p> <ul style="list-style-type: none"> <li>• Law 7501, 19 July 1991, On Land;</li> <li>• Law 7652, 23 December 1993, On Houses;</li> </ul> <p><b>For the restitution of the property to ex-owners.</b> 2 Legal Instruments</p> <ul style="list-style-type: none"> <li>• Law 7698, 15 April 1993, On Property Compensation;</li> <li>• Law 9235, 29 July 2004, On Property Restitution/Compensation</li> </ul>
<p style="text-align: center;"><b>As surveyed practices</b></p>	<p><b>For laws as Legal Instruments.</b> Amendments and frequent variations:</p> <ul style="list-style-type: none"> <li>• Law 7501, On Land, amended 5 times;</li> <li>• Law 7652, On Houses, amended 4 times;</li> <li>• Law 7698, On Property Restitution/Compensation, amended 12 times.</li> </ul> <p><b>For Privatization/Restitution/Compensation Policies:</b></p> <ul style="list-style-type: none"> <li>• privatization in stages, politicized in character, preferential in implementation</li> <li>• restitution and property compensation in selective way</li> </ul>