



## "BREGDETI ASSOCIATION" THE COAST

Defending Property, Pursuing Justice

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To: Dr. Jim Yong Kim  
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U.S.A.

CC: Democratic Institutions

September 28, 2012

**Your Excellency Mr. Jim Yong Kim, President of the Word Bank,**

In our previous letters<sup>1</sup> we complained about the fact that the World Bank's Report on the governance of private property in Albania (Report 62 519-AL<sup>2</sup>, hereinafter "the report"), namely its recommendations, violate **Article 181** read **in conjunction with Article 41 of the Albanian Constitution** of 1998. Art.181 stipulates that the restitution of property had to be resolved within three years from entry into force of the Constitution (*i.e.* within 2001), in conformity with art. 41 of the Constitution which guarantees the right of private property and foresees that property may be gained by gift, inheritance, purchase, or any other classical means provided by the Civil Code.

Our association represents the interests of owners whose properties were confiscated by the communist regime. Since 1993, when the Albanian Parliament adopted law no. 7698 on restitution of properties and compensation of owners spoiled by the communist regime<sup>3</sup>, we, rightful owners, despite the recognition of our ownership rights, have been in a permanent struggle with a deeply corrupted administration and judiciary to recover possession of our properties. The greatest majority of us have not yet been able to do so. Hundreds of cases are pending before the European Court of Human Rights.

A second edition of the report published in April 2012 allegedly "acknowledges comments received from civil society organizations". We observe that the situation is going from bad to worse<sup>4</sup>.

By prioritizing the "legalization" of illegal constructions and stolen properties, the report aims at a swift **regularization of abuses** of the last 20 years. In doing so, the report holds up to ridicule the respect of the Albanian Constitution as well as the respect of the European Convention on Human

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<sup>1</sup> Letter from Bregdeti.Association "The Coast" of 14 October 2011 and of 14 January 2012 to Robert Zoellick, The World Bank President

<sup>2</sup> <http://www.worldbank.org.al>

<sup>3</sup> See report, table 1, pg. 2

<sup>4</sup> All this despite admitting the problems and while declaring that the World Bank *has been consistently conveying its view that the Government of Albania must honor its legal obligations vis-a-vis its citizens, including the rights of expropriated owners emanating from Constitution, notably Article 181 guaranteeing "a just solution" to past expropriations and confiscations* as stated in the answer to our letter from Ms. Lovovsky, dated 31 October 2011

Rights and the European Court of Human Rights' jurisprudence. In the eyes of the Albanian public, the report is and is considered to be a clear support to kleptocrats and to corruption.

By suggesting to *limit* the execution of Article 181 and to *postpone restitution* to all sorts of "legalizations" of illegal occupations, the report violates the requirements of the Constitution. According to the report the deadline for restitution is to be postponed in 2020 or, better say, never: the report admits that, because of illegal occupations, soon there will be nothing left to return to the rightful owners.

The World Bank experts know that ***the restitution is an issue that the Albanian State had to resolve already at the beginning of the '90***, by virtue of law 7698 of 1993, or at the very latest in 2001 according to article 181 of the 1998 Constitution. Given that, to issue such recommendations is, to put it mildly, totally unprofessional. It is not just an insult to rightful owners. It is an insult to the ideas of justice and democracy and a clear message to thieves that the law can be violated and violations will eventually be regularized and that the management of property rights is to be considered (in Albania alone) as a political issue whose solution is subject to the will of corrupted politicians. Such mocking is served as a World Bank report and recommendation.

Unfortunately, World Bank experts have a bad record in property related projects in Albania. Let us remind just one case – the selective demolition of constructions in Jale<sup>5</sup>.

The restitution issue is treated professionally by the ***European Court of Human Rights***. On July 31, 2012 the Court introduced a pilot judgment procedure concerning the non-enforcement of administrative decisions awarding compensation for property confiscated under the communist regime in Albania<sup>6</sup>. Noting that complaints in that specific case reflect a widespread problem in Albania the Court applied the pilot-judgment procedure holding that Albania has to take general measures in order to effectively secure the right to compensation within 18 months from the date on which the judgment becomes final. The Court found that the authorities' award of financial compensation was not an effective means of enforcement due to a number of shortcomings and held that the compensation scheme and modalities thereof should be revisited in light of the Court's findings and its case-law. The Court also noted that frequent extensions in time of restitution and compensation, as has been the case to date, do not contribute to an expedient solution of the problems identified and further undermine public confidence<sup>7</sup>.

Sir, given the World Bank experts' bad record in property related projects in Albania, given the important flaws of the report of April 2012, we address you a ***personal invitation*** to consider the following two issues as a matter of urgency:

- I. Putting right the report's recommendations, in accordance with the Albanian Constitution, European Convention on Human Rights and European Court of Human Rights (ECtHR) jurisprudence, namely with the latest pilot judgment of 30 July 2012;

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<sup>5</sup> See the World Bank internal audit on this issue

<sup>6</sup> Case *Manushaqe Puto and others v. Albania* (application nos. 604/07, 34770/09, 43628/07, 46684/07), see also Press Release « Pilot judgment concerning non-enforcement of administrative decisions awarding compensation for property confiscated under the communist regime in Albania » of 31.07.2012

<sup>7</sup> see §116 of the Puto decision

- II. Reflect changes in strategy and at the operational level at the World Bank Office in Tirana.

## I. PUTTING RIGHT THE REPORT'S RECOMMENDATIONS

### a. Restitution has priority over “legalizations”

The report should first recognize that restitution has priority over “legalizations” of illegal occupations. This is not just logic. It is consistent with historical, legal, economic and ethical perspectives as well as with the report’s own coherence.

From a *chronological and legal perspective*, it is to be noted that **law no. 7698 of 1993 on restitution to the owners spoiled by the communist regime** was the very first law on this issue to be adopted by the Albanian post-communist Parliament. It concerns *all types of immovable property*. It translated the aspirations of the people to enter a new era based on recognition and respect of property rights as one of the pillars of democracy.

Prior to that, **law 7501 of 1991**, signed by the last communist president, Ramiz Alia, was one of the last acts of the communist regime (see table 1 in the report, line 1). It provides for repartition of *agricultural land* only. It does not recognize property rights of owners spoiled by the communist regime (art.8). Now, according to article 181 of the **Constitution of 1998** laws that relate to expropriations and confiscations adopted before its entry into force shall be applied when they do not contradict it. This means that art. 8 of law 7501 is null and void and this law applies only as far as it respects the property rights of rightful owners. As well, **law 9235 of 2004** on property restitution and compensations foresees that any provisions in any previous law which are contrary to it are declared null and void. The report omits these important juridical developments and gives the impression that law 7501 of 1991 still constitutes a legal impediment to restitution, which is not true.

The report acknowledges that in most parts of the country the local commissions which distributed the land in accordance with 7501 did actually respect property rights which existed before communist confiscations and *de facto* ignored its art. 8. In places where they didn’t do so social unrest<sup>8</sup> continues.

It is to be noted that a majority of cases hanging before the courts actually stem from no/bad implementation of law 7698<sup>9</sup>. Indeed corrupted and illegal practices with urban land in big cities and economic and touristic valuable areas in Tiranë, Durrës or Vlorë deprived rightful owners from taking possession of their property.

The structure of the report suggests that the issue of restitution dates from 2004 only (chapter 3 on “restitution after 2004” comes after the chapter 2 on “legalizations”). This is false as law 9235 of 2004 is in fact an amendment of law no. 7698 of 1993, as also explained in table 1 of the report, line 6<sup>10</sup>.

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<sup>8</sup> More than 6000 murders have been reported since 1991 by Mr. Gjin Marku, president of Nationwide Reconciliation Committee. They are related to anarchy in property.

<sup>9</sup> See ECtHR pilot judgement of 31.07.2012

<sup>10</sup> So big seems to have been the desire to “prioritize” legalizations that table 1 of the report suddenly changes the chronological order it has adopted and puts October 2004 (law on legalization) prior to July 2004 (amendment of 1993 law on restitution)

Restitution has priority from an **economic perspective** as well. Despite the alleged merits of “legalizations” of illegal situations, the report admits that illegality brings uncertainty which is bad for investment. Uncertainty, according to the report, stems from the fact that legalizations are being done without first definitely resolving restitution as provided for in the law of 1993 and in the 1998 Constitution. So the logical conclusion according to the **report’s logic** should be that restitution should be done prior to legalizations and, as a matter of fact, had to be resolved years ago. As this is not yet the case, it seems logical that restitution has to be resolved as a matter of urgency. Instead, the report gives priority to legalizations as the proposed calendar shows. It seems schizophrenic to highlight pleas (bad execution of 7698, corruption, etc.) and then come up with “solutions” to legalize and perpetuate them in the name of pragmatism, as the report does.

From a **social and ethical perspective** as well, we notice that restitution according to law 7698 functioned well in most of the country. Problems with illegal occupations mainly concerned the three districts of Tirana, Durrës and Vlorë (see also Table 4 of the report). These economic and touristic attractive areas were infested by “businessman” who illegally occupied land and built constructions which they sold to third people or transferred in between them to lose track and gain millions of dollars. Given this fact, two are the logical questions which the report does not answer:

- How to justify *ad hoc* “solutions” only for this part of legitimate owners (as opposed to others in the rest of the country who regained possessions thanks to law 7698)?
- How to justify “legalization” of illegal occupations which were not done by “people in need” but by “businessman” with the backing and in the interest of corrupted politicians?

Legalizations in Albania do not regulate “**extra**legality” as in De Soto’s theory<sup>11</sup> but “**il**legality”, namely theft and abuse at the expenses of the rightful owners with existing and recognized right to restitution or compensation. Legalizations (reward of illegality) may only be done once the rightful owners have been satisfied. Even then, legalization should only be made under well identified objectives and criteria. As the report admits it should also be limited in time. If the aim is to help people in need, the state could use its own surfaces for that. But, as the World Bank experts know, legalization in Albania in its greatest majority has nothing to do with “social justice”. It is a pure reward for theft and personal enrichment of mafia and politicians to the expenses of rightful owners. The report’s recommendation that Government changes this in the future is only cheap words and wishful thinking, unless there is a stick to oblige the Government to do so.

The report abusively compares the situation in Albania with measures introduced by the Macedonian Government after the earthquake in Skopje. This is insulting because corrupted practices of Albanian authorities are deemed comparable to Act of God in order to justify adoption of the same limitations in restitution. If Macedonia is to be taken in example, we would suggest referring to the law on restitution of property confiscated by the former regime, approved as a matter of urgency upon strong recommendation from Monetary Fund and the World Bank in April 1998.

The report’s pessimism about restitution (see §15 of the report) and optimism about legalizations (see §14 of the report) is, to put it mildly, unprofessional and unacceptable.

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<sup>11</sup> Another abusive reference is that to the “The mystery of capital”. De Soto does not preach legalization of stolen properties but legalization of occupation of government land. See Hernando de Soto, *The mystery of Capital*, Great Britain 2001, in particular « The obstacles to legality » in chapter 2 « The mystery of missing information ».

## **b. Physical restitution has priority over other compensations**

As foreseen in the law, restitution of property is the first remedy to past wrongs. Its priority is to be supported also for financial and social reasons.

**Law 9235 of 29.07.2004** provides for:

- first, restitution of property (see articles 6 and 8).
- second, compensation in kind with property of same kind and value (art. 11.1.a)
- third, compensation in kind with property of other kind but same value (art. 11.1.b)
- forth, compensation with participation of same value in societies of state capital or where the state is co-owner (art. 11.1.c)
- fifth, object value derived from privatization (art. 11.1.ç)
- sixth, monetary compensation (art. 11.1.d).

Physical restitution should have priority also according to **financial** and **social** considerations. Why should Albanian taxpayers have to pay for enrichment of people who occupy land or build illegally thus provoking a subsequent impossibility to return property to the rightful owner? Why should donor countries' taxpayers be made to pay for projects which never succeed as the report admits<sup>12</sup>, due to lack of political will to correctly manage property and retribute properties to rightful owners?

## **c. Financial compensation at market value**

When financial compensation occurs it can only be at market value! **Legal** and **moral** arguments support it.

Fair compensation and compensation at market value are foreseen in the Constitution (art. 41) and in the law of 2004 (art. 13.2) as well as in ECtHR jurisprudence (latest example in the Puto group of cases). Ignoring such rules and basic principles as the report does by suggesting a limited financial compensation is at least amateurism.

Alleged "equivalent" examples of reduced compensation in other eastern European countries are not applicable as none of them reflects the same reality as in Albania where the cause for reduced financial compensation is massive legalization of illegal occupation and constructions. We challenge the World Bank experts to cite just ONE Albanian case where financial compensation of rightful owners was necessary because restitution was not possible as a result of the property being used in the PUBLIC INTEREST! This is reason more not to accept compensation lower than at market value.

## **d. Adequate institutional capacities to resolve restitution**

To resolve the mess created for clear enrichment purposes we first and foremost need a clear political will to do so. A clear will translates into adequate institutional capacities.

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<sup>12</sup>See discussion of IPRO and LAMP projects

The “success story” of ALUIZNI, the legalization agency, as reported, illustrates the fact that if there is a will, there is a way. The will to rapidly legalize illegal occupations and buildings has translated into huge institutional capacities and money for this body as compared to the one which manages restitution and compensation. Under the light of just this example all “fatality” and “resignation” related to restitution has no credibility. The report should draw the right conclusions from this fact: the restitution requires **political will** and **adequate institutional capacities**.

It would be a very good initiative of the World Bank to finance a true reinforcement of institutional capacities for restitution (already identified in the report) so as to resolve this problem as a matter of urgency. All suggestion to postpone restitution to 2020 (and when else later?) is a bad pleasantry. It gives the impression that the World Bank is relying on age, resignation and memory lost to “naturally” solve the restitution “problem”. It may be interesting to know that this “solution” was suggested also by the last communist president Ramiz Alia to his colleagues at one of the last communist politburo meetings where he explained how to take economic power and evict rightful owners<sup>13</sup>.

### e. Alignment with ECtHR jurisprudence

World Bank experts and the report do not need to experiment “pragmatic” *ad hoc* solutions in Albania. They should stick to **respect of human rights**, of the Albanian Constitution and of ECtHR decisions and suggested way forward (pilot judgement). The **report** needs **to be reviewed in the light of the ECtHR jurisprudence** and rectified accordingly. Namely the deadline for restitution should be the same as the one identified by the ECtHR (18 months) and no more 2020. Furthermore restitution should have priority over compensations; other forms of compensations foreseen in the law should be used and financial compensation should only be made at market value.

## II. NECESSARY CHANGES AT THE WORLD BANK ALBANIA

To be credible all World Bank and donor money aid to Albanian Government should be **conditioned by** and measured against Government’s **success in finalizing restitution** in accordance with ECtHR jurisprudence **and in normalizing property management** (i.e. beating corruption at all levels). To achieve such goal, World Bank representatives in Tirana should respect basic rights and the Albanian Constitution. So called “pragmatic” solutions which do not respect basic human rights further weaken the foundations of the Albanian State and do not serve the long-term interests of good governance and European integration of the Albanian people.

**Consultation** of representatives of rightful owners should be **systematic** in relation to any World Bank property related project, such as the report. This has not been the case so far.

**Past projects** should undergo **serious critical exams**. Failures must be identified and discussed. Conclusions should be drawn and taken into account when launching other property related projects.

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<sup>13</sup> Reported on [http://www.facebook.com/note.php?note\\_id=142436519159213](http://www.facebook.com/note.php?note_id=142436519159213), consulted on September 16, 2012

Sir, in order to be exhaustive, we can send you upon request an **annotated version** of the report containing our detailed critics. Furthermore our **legal experts** are available for further information and action. If you or a trusted team will schedule a **visit to Albania**, we can accompany you and show you the negative impact of some of the World Bank financed projects.

It is vital for future success of World Bank policies in Albania and its credibility towards the Albanian people as well as towards donors, to rectify the report and execute its future projects in conformity with the Albanian Constitution and basic Human Rights. Our critic and disillusion with the report is proportionate to the hope we place in international institutions such as yours to impose respect for basic democratic values to the Albanian predominantly corrupted political class. Please be reassured of our firm intention to actively cooperate in finding a just solution to this problem.

Yours faithfully,

For Bregdeti Association, the Coast  
Dr. Niko Nesturi