

« Qendra Shqiptare e të Drejtave të Njeriut » (Albanian Center for Human Rights) and « Zyra Juridike Falas e CAFOD » (free legal assistance center of CAFOD) organized a workshop with prominent lawyers in September 2000. The objective was to discuss legislation on property (1991-1998) and to issue recommendations for a just solution of the problems. QSHDNJ published a book with the workshop's proceedings. The book and a commentary were handed to the then Speaker of Parliament, Mr. Skënder Gjinushi and, for the Government, to the then Minister against corruption, Mr. Ndre Legisi.

The presentation of Lawyer Totozani was published in the press as well. It shows that all legislation which is based on article 8 of law 7501 which was dealt with at the workshop is to be considered NUL and VOID. Despite efforts by the associations (Bregdeti and Pronësi me drejtësi), such wrongful legislation, and wrong management of property rights continue to be tolerated and even financially supported by, among others, international organisations.

The People's Advocate analyzed the presidential Decree no. 1431 based on the conclusions of the workshop. The study concluded that the Decree is "NUL". The conclusion was published in the press.

Lawyer Pirro A. Totozani

**CRITICAL OVERVIEW ON THE MAJOR PART OF THE LEGISLATION
IN PAWER (1991 - 1998) – RESTITUTION OF PROPERTY,
ROBBED BY THE DICTATORIAL REGIME,
TO LEGITIMATE OWNERS**

I would like to thank the organizers of this round – table, who kindly invited me to participate and give my modest contribution through a critical overview on the major part of the legislation in power (1991- 1998) – focused on the restitution of property to legitimate owners, robbed by the dictatorial regime, as well as on the way the right on private property was respected after the collapse of one-party system in Albania.

I believe that the workings of this meeting will be on the interest of democratic legitimacy and real establishment in our country of the rule of law, which seriously guarantees respect of the rights of legal landowners on the restitution of their properties, of which they were improperly deprived by the dictatorial regime. Even presently the properties are not yet restituted in the way defined by the Constitution of the Republic of Albania, Convention on Fundamental Human Rights

and Freedoms and its Protocol No.1, signed and ratified by Albania after 1991 with the establishment of the multi-party system. They said to belong to the left, right and center wing, and pretended to “carry the task” to transform Albania from the poorest country in Europe to one of its member states. This task was not performed as the parties which ruled after the collapse of communist regime were chaired by people of “communist ideology formation”, lacking democratic formation and will, although they used slogans called for changes. This task was not performed due also to the fact that in our country was created on this purpose a so-called specific pluralism, which differed from that ruling in other Eastern Europe countries. This polarized, on purpose, the Albanian politics into two main political parties. Thus, “the changes” touched only the surface, i.e. the political aspect. From the economic point of view, the parties that ruled after 1991, having the same political program and targets, never really wanted to reconstitute the properties back to the legal owners. This is specifically the reason that the post communist state, intentionally did not make a clear division between the regular state property and taken from the legal owners and that should be restituted back to them according to the universal principle “...robbed property is restituted to the legal owner, whether the robber owns it, or it is granted to third parties.” This principle is well known and recognized through all the time and by all the states. But in Albania, it often happens that the “left” defends economic strategies belonging to the right wing and vice versa, and no one can tell which is the real will and determination of the ruling party. Thus the property issue prevails only during electoral campaigns.

With regards to this issue, I do not agree to those who try to justify the non appropriate restitution of properties up to these days, as disadvantage or key weak point, not caused by the lack of will, but that the property issue was fundamentally mistreated lacking experience in the new pluralist system and trade economy, and because main state leaders and officers of “democratic” public administration which substituted the communist bureaucratic employers were still possessed by the “communist mentality”. I also do not agree with some others who claim that those who ruled in the post communist regime were mistaken while raising and treating the property issue, that they had good intentions, but, without having bad intentions, they were “not careful” in evaluating this problem, and that by no purpose considered the property as not fundamental before political issues. Thus, they continued with the old slogan “politics in the first place”, neglecting the experience of the communist regime which immediately after taking the power in 1944, expropriated the legal owners to destroy the economic basis of the overruled groupings! However, as you might clearly see, the communists had no real need to stabilize the trade economy regime.

Many others who think as I do, and myself, believe that this was an *conditio sine qua non* for those who ruled in pluralism to consider the property issue as a priority, especially because the Albanian state and its government after 1991, committed themselves in solemnity to work for the establishment of free society and market economy system in Albania. And, in this aspect, they should have worked very efficiently to reconstitute the properties back to the legal owners. There is no formal –

juridical act, which can justify the serious weaknesses verified in the process of restitution of robbed properties to the legal owners. If this process really took place, many conflicts would have undoubtedly been avoided, acting as a determining factor to prevent problems for the public order, maintenance of the stability in the country, especially at the progressive growth of criminal actions.

Another reason for the so called “carelessness disfavoring the restitution of the property to the legal owner” amidst other, was the fact that land as the most important of real estate property, the land, and especially the agriculture land, were judged in compliance with the disreputable law “On Land”, no. 7501, dated 19.07.1991, with the direct incentive of Ramiz Alia, President of the Republic of Albania at the time (1st phase of multi party system in Albania). This law is still in power nowadays and is maintained in power by the followers of Ramiz Alia. In the same light, they drafted the Law no. 7698, dated 15.04.1993, “On the restitution of the properties to the legal owners”, and all other laws drafted intentionally on a later period, to amend, add up, or abrogate the original law. The one and only reason for this was to create confusion on the way this issue was to be resolved. This was not accidental. It was the exact implementation of a specific wicked strategy sent by Gorbačov to Ramiz Alia, but elaborated by him. I was made known to this fact just by chance a Sunday, 17 July 2000, reading a fax edited by the newspaper “Balli i Kombit” entitled “Ramiz Alia and our democracy”, related to a decision of the Political Bureau of the Albanian Labour Party in October 1989. Although it was worldwide known Gorbačov plan of Katovica in Poland and it was sure that it was referred to Ramiz Alia, there was no official notification on the implementation of Moscow’s advice by Alia.

This is what Ramiz Alia said those present in the meeting of Political Bureau dated October 1989:

“Our system capitulated to capitalism, thus we consequently should change strategy in two directions: respect of human rights and establishment of multi party system. Human rights lay within us and they could be abused of to a certain limit, but multi-party system will be established at any cost! We will promote the creation of a good number of political parties belonging to the left, right and center wing. However, they should be headed and controlled by us; we will draft their political programs. We must do our best to enable our people to obtain the leading positions in these parties, people who support our strategy. The party, which will win the right to rule, will defame the communism as a whole. We will thus gain at the same time the sympathy of Western countries and anticommunist supporters in the country. Those in prisons will believe that “even we hate communism”; they will join and support us. We will offer them insignificant jobs, but never let them regain the power, because otherwise their revenge will make us their servants.

In compliance with the respect toward human rights, we will have given an amount of money as compensation for those imprisoned and offer living commodities to the sequestered and expropriated. We will give them a piece of paper recognizing their property, but this one, the property, will never be restituted to them. We will mess

them together and send them to the court where rotation will take place: from the court of the first instance to the second one, and because of technical deficiencies back again to that of the 1st instance. They are old and tired. We must be careful with their children. But we can also make it up with them, giving an international visa and send them abroad. Those who will insist and pretend will be hurt! All that property belongs to us, because we made it.

We could be intimidated by the intellectuals in pension. But we can suggest to them the creation of Warriors and Labor Association and offer them a mini pension playing the “good guy” with them. We have planned it all, you know the strategy already, and we have also made clear the ways to realize our mission. Through an extreme propaganda against communism and a few convictions of the high nomenclature, we the reformed communists, will implement our strategy...Through this strategy, within two or three legislatures we will have the former communist class converted into a capitalist one!”

There is no need to comment it. What I cited above clearly shows the real reason and aim for the drafting of the laws “On restitution of land property” which are still in power. Aren’t we all witnesses of the presently judicial practice of an unconceivable recycling of property issue in our courts of all instances? Isn’t it the implementation of Ramiz Alia’s strategy?

In this frame, we have studied that part of the legislation in power, which is contrary to the human rights and freedoms, article no.1 of Protocol 1 of the Convention on Fundamental Human Rights and Freedoms, European Parliament Resolution B – 4 1393/ 95, dated 14 December 1995; articles 4, 15, 17, 41/2, 122/2, and 181 of the Albanian Constitution in power.

I will cite hereinafter for you the most important part of the legislation in power and by – laws, which are not in conformity with the property right:

The Law “On Land” no.7501, dated 19.9.1991, (articles no.5, 8, 24, 25)

The Law “For some changes and amendments in the Law no. 7501, dated 19.7.1991, “On Land”, no.7715, dated 2.6.1993;

The Law “On the restitution of property to the expropriators”, no. 7698, dated 15.4.1993; (articles no. 5, 12/2, 19, 26);

The Law “On value or land compensation of expropriators of agricultural land, meadows, pasture, and forestry”, no. 7699, dated 21.4.1993;

The Law “On the development of zones with tourism as their priority”, no.7665, dated 21.1.1993 (articles 7/ç and 13);

The Law “On land buying and selling”, no. 7980, dated 27.7.1995 (articles 3/b, 4, 5);

The Law "For the adoption of some changes and amendments to the Decree no. 1359, dated 5.2.1996, "For some changes on the Decree no. 1254, dated 19.10.1995", no. 8084, dated 7.3.1996 (articles related to the limitation of the restitution of land up to 10 000 m², article 4 point 3/2, 4 and 5 concerning time limitation);

President's Decree no. 1431, dated 27.3.1996, "For a change in the Law no.8053, dated 21.2.1995".

Decision of the Council of Ministers "For the reconstruction of the agricultural enterprises", no. 452, dated 17.10.1992;

Decision of the Council of Ministers no. 161, dated 8.4.1993 "For some changes and amendments in the DCM no. 452, dated 17.10.1992, Act no.5, dated 25.5.1993, of Central Agency for the Reconstruction and Privatization of Agricultural Companies in compliance with the Decision of the Council of Ministers no. 161;

Instruction no. 106, dated 23.2.1996 of the Water and Land Resources Department of the Ministry of Agriculture and Food.

Decision of the Council of Ministers no. 562, dated 9.10.1995 and DCM no. 883, dated 23.12.1996 (appendix DCM no. 562);

Points 5 and 7 of the Act no.1, dated 23.2.1999 "The criteria to implement DCM no. 666, dated 26.10.1988, "On measures taken related to the liquidation process in the companies depending on the Central Agency for the Reconstruction and Privatization of Agricultural Companies";

President's Decree no. 1359, dated 02.05.1996 "For some changes in the Decree no. 1254, dated 19.10.1995 "For the Compensation of expropriators of occupied land, of agriculture land with properties in tourist settings and living areas", changed by the Law no. 8024, dated 2.11.1995.

Everyone is presently insisting for the restitution of inherited property and implementation of the Constitution in power, but there is no way out as far as these laws, imperfect in their nature, are neglected or not implemented at all.

It is paradoxical the fact that real estate property confiscated by dictatorial regime, are still named as "state property", neglecting the fact that the Albanian Constitution of 1976 was abrogated by the Law no. 7941, dated 29.4.1991 "Main Constitutional Provisions", a date when the expropriators should have been economically rehabilitated, with a legal property title. This is the beginning of a series of mis-facts of the post-communist regime in Albania. There is no way to justify at any manner the legislation, which even presently allows that its own citizens are stripped off

their legal properties. Because we have the state of anarchy when the Constitution and legislation of a country are not implemented.

The right to respect, reconstitute and protect the private property commenced with the abrogation of the Constitution of the Popular Socialist Republic of Albania in 1976, but even these days it is not fully performed as a process. The expression "state property" does not hold any juridical value on properties confiscated from the legal landowners by the dictatorial regime as it was defined as such by the Constitution of 1976, abrogated by the Law no. 7491, dated 29.4.1991 "Main Constitutional Provisions", article no.45 stating that: "The Constitution of the Popular Socialist Republic of Albania adopted on 28.12.1976 as well as the later amendments made on it are abrogated." While article no.4 of the Main Constitutional Provisions states that: "Republic of Albania recognizes and guarantees fundamental human rights and freedoms, national minorities, acknowledged by the international documents. Article no.8 states that: "Legislation of the Republic of Albania recognizes, considers and respects principles and legal acts generally admitted by international law.

The Law no. 7692, dated 31.03.1993 "For an appendix in the Law no. 7491, dated 29.4.1991 "Main Constitutional Provisions", article 27 reemphasizes the same principle when stating that: "No one is deprived of the property right, alone or with other persons, as well as the right to put it for heritage...No one is expropriated, unless this is due to public interest and fully compensated." However the adverse behavior has taken place. Article no. 4 of the Constitution in power states that: "The right is the basis and the boundaries of state activity. Constitutional provisions are unequivocally implemented....."; Article no. 5 states: " The Republic of Albania implements the international law, obligatory to every state". Article no. 122/2 states: "An international agreement ratified by law prevails over the legislation of the country in case they do not comply with them." Thus, the Constitution in power, has only restated articles no. 4 and 8 of the Law no. 7491 "Main Constitutional Provisions"; as well as the article no. 27 of the Law no. 7692, and article no. 1 of Protocol 1 of the European Convention, clearly reiterating respect and guarantee over private property.

Article no. 181/1 of the Constitution in power states a 2 up to three year transition period to enact laws which could fully and legally regulate expropriations and confiscation done previous to the adoption of this Constitution, in compliance with the criteria defined by its article 41. This does not mean that Real Estate Agencies will continue to register for other three years property illegally provided to people without any property ownership by the dictatorial regime, as it happening presently, creating thus conflicts between people.

The transitory period up to three years stated by article no. 181/1 of the Constitution would be appropriate only for the restitution of a missed "rent" in compliance with the Strasbourg Court practice. As far as state properties converted as such with force and without any compensation at all by the regime, they should immediately and undoubtedly be restituted according to article no. 1, of Protocol 1

of the Convention and articles no. 4, 5, 41/2, 122/2, 182/2 of the Constitution, because they are taxable and compulsory to be implemented.

The Constitution clearly states the cases of limitation to freedom of economic activity, in case of important public interest, but this is accomplished through laws and in compliance with articles 11/3 and 17, defining that this limitation must be in proportion to the circumstances which caused it, without infringing the core of human rights and freedoms and without tolerating in any case the conditions set by the European Convention of Human Rights.

The structures of public power, according to their responsibilities, must respect "The fundamental human rights and freedoms" and contribute to accomplish them (article no. 15/2). As far as a property is obtained through granting, heritage, act of buying, and any other classic manner stated by the Civil Code (article no. 41/2 of the Constitution), everyone possesses the right to be rehabilitated and/or be reimbursed in compliance with the law, in cases the individual was damaged as a consequence of a legal act, illegal activity or inactivity from the public structures. (Article no. 44). All other laws and by – laws which have entered into force earlier than the adoption of this Constitution related to expropriations and confiscation, will only be implemented when they are in compliance with it (article no. 181/2).

Legal analysis with the Law "On Land" No. 7501, dated 19.07.1991

This law is absurd and with legal paradoxes. It was enacted in 1991 by the pluralist Albanian Parliament, of an authoritarian communist inspiration, under the influence of the former President Alia, intentionally to not solve appropriately the restitution of private property to the expropriated landowner. Later on, this law was maintained in power and implemented by the Democratic Party and former President Berisha, who although declared for the restitution of properties to the legal owners, maintained in power this law, implemented it seriously former President Alia's strategy, even deteriorated the confusion by enacting the Law no. 7715, dated 2.6.1993 "For some changes and amendments to the law "On Land", no. 7501, dated 19.7.1991. To prove our point of view let us cite the article no. 2 of the Law "On Land", which is so contradictory while defining that the state grants land property to physical and juridical individuals, who enjoy the right of property over the land all other rights obtained through this law, but deprives them of the right to sell or buy it. Thus, according to the law, these persons are "landowners and enjoy every right on their property", but this right is being conditioned and limited in cases they wanted to sell or buy their own land; so they in fact do not own their property.

The Law "On Land" defines that "the state grants land property to physical or juridical individuals", but does not provide any wording for the restitution of confiscated property to legal landowners, as promised in compliance with the original property ownership, as it should have been acted after the collapse of dictatorial regime and establishment of free trade market economy. Stating that the state gives property to physical and juridical individuals, does not define the kind of property, does not define its origin either the source, according to the equivocal article no. 3 of the law stating that soil land is given in property or for use without compensation. In this case we do not have a clear definition of the ownership, or cases when this property is given for use or in ownership. Since the beginning of pluralism in Albania, those who ruled, of communist mentality, to survive and obtain the economic power in their hands intentionally used the term "expropriated" instead of "legal owners", so as to attribute this term to those who would be "granted property through special acts". Despite this, for the same reason, were introduced and are still used the terms "land" and "soil", instead of "immovable object" or "real estate"; this was done at purpose to create confusion while restituting the property back to the violent expropriated landowner.

During the post communist period, the laws that treated the "restitution of the properties" completely differ from those, which treated the restitution of "soil" and "agricultural land". I would like to underline that "state property" cannot be defined the one confiscated unreasonably from the legal owners. Thus, the article no. 5 of the Law "On Land", states: "The families, members of the agricultural cooperatives, after land's division, enjoy the right to get on their own and become landowners, a right which they enjoy as being part of the cooperative. The place and size of the land will be defined by the special committee on land". This clearly shows that the state still considers itself as the owner of confiscated property, and uses them as it wishes, i.e. it is the "political will" deciding on these issues, not recognizing thus neither previous ownership, or those before collectivism took place. The pluralist state is thus the private property guaranteed by the article no.1 of the European Convention, as it approves the collectivism process, accomplished through violence by the dictatorial regime. We cite here article no. 8 of the law: "While giving properties in ownership and for use to physical and juridical individuals, neither previous ownership or its size and boundaries are recognized." Article no.24 states: "The criteria for the division, registration, changes, ownership, estimation, or lease, a well as responsibilities of land registry offices are assigned by the Council of Ministers". Article no. 25 states: "Agriculture land taken in ownership in compliance with this law, is inherited according to the legal provisions on heritage, to be adopted in the future". This is absurd as the law on heritage existed and there was no need for a further adoption?!

Injustice weighed more on landowners when the law no. 7715, dated 2.6.1993, "For some changes and amendments in the law no. 7501, dated 19.7.1991", passed. Its article no. 5 states: "The owners of agriculture land can give it for rent to physical or juridical individuals, either domestic or foreign." but the owner is not the original one, but he who gained the right of this property according to this law without any

ownership. Article no. 8 of this law was changed with the article no. 21 of the Law "On Land" which states: The right to denounce the breaches specified by this article can be forwarded by owners and users of the land, provided with the act of ownership". The denouncement is reflected in a minute recorder, and is presented within two days to the Commune Council or municipality where the violation has taken place." According to point ©, it is the Commune Council, which decides on the penalty amounting up to 5 lek/m², equal to 1/3 of the present cost of city transportation.

While article no. 23 of the Law "On Land" stipulated: "Individuals who act contrary to the provision defined by this law, as well as special provisions and legal acts enacted by the Council of Ministers on this issue, who do not self-exploit the land under their property or use but give it to third parties, who do not take protective measures, allow illegal construction...and when these breaches do not constitute a penal act, are condemned for administrative violation and a penalty of 2000 – 5000 lek by the district offices of the Land Registry. This article does not mention the legal owner at all, while the state is still supposed to be the owner of the confiscated properties during the dictatorial regime. This all means: "Pay your penalty and build illegal constructions."

Article no. 9 of the law no. 7715 abrogated in the article no. 23 of the law "On Land" we above cited, the words: " who do not self-exploit the land given to them in ownership or use, but give it to third parties instead", and the words " who build illegal constructions". This is as if to say: "Go everywhere you can and build illegal constructions, as the penalty does is withdrawn." You might see "Bathore" and other repercussions as such. Neither the right of private ownership guaranteed by the above mentioned laws, or unwritten traditional customs rights were respected. We have to make it clear to everyone that in all northern districts, and party in other areas of the country where the tradition was pursued, people respected the boundaries of 1945, despite of what the dictatorship asked them to do.

Article 1 of the law "On the restitution and compensation of property to the expropriators" No.7698 dated 15.4.93 says: This law acknowledges the ex-owners or their successors the right of property for the state-owned properties, ex-propitiated or confiscated ones, according to the legal and sub-legal acts as well as the court decisions announced after 29 November 1944, or those taken unfairly by the state in different ways and at the same time defines the methods for giving back and restituting them." Through this under law-making it accepts openly and clearly the unfair land seizure by the state and proves that the state has violated the property rights for the legal owners, but because of the reasons mentioned above, it continued to not respect the pure ownership title and to keep the owners without his property right. Through Article 5 this law restricts and discriminates unfairly the legal ex-propitiated owner when it says: "the amount of restitution or compensation by equivalent surface will be complete up to 10 000 square meters (1 ha). When the land property is from 1 ha to 10 ha, the degree of restitution or compensation will be plus 10%, while for properties bigger than 10 ha it will be plus only 1%." In

article 12, there is repetition on purpose of well-known expressions for denying the real land owner and in article 19 there are some definitions similar to those of article 5 such as: "For the free land within the border lines of the cities, according to the regulatory plans approved at the moment of entering into force of this law, that will be restituted to the ex-owners, the degree of restitution will be 0,5 ha (corrected in 1 Ha pursuant to law 8084 dated 07.09.96.)" Article 26 says: "The price of the land is decided by a special law", at the same time when the prices cannot be commanded (forced) but they are defined by the free market and specific conditions.

Law No.7699, dated 21.04.93 "For the compensation in value (cash) or land to the ex-owners of the agricultural land, meadows, pasture grounds, forestry land and forests, this law has not been dealt with here, because if we regard the time at the disposal we value that if this true ownership title will start to be respected this law is automatically abrogated.

Law No 7665 dated 21.1.93 "On the development of zones with tourism as their priority" (articles 7/ç and 13); In the construction and Tourism sector:

Illegal acts have been identified in this sector harming the owners with the true ownership title and which can be punished by the law, such as the invasion of the free territories, illegal constructions the cities, done by juridical or physical persons without any ownership title or any other right. These actions are results of the indifference or abusive attitudes of the Territory Regulation Council (KRRT) and other organs and thus this leads to not restituting the property to its owner. Unfair restrictions made by the dictatorship harming the ex-propitiators have been followed by those of the Law No 7665 dated 21.1.93 "On the development of zones with tourism as their priority". According to article 1 of this law "stimulated person" is called each juridical or physical person, national or foreigner, authorized to exercise stimulated activity, who is being recognized some facilities in the other articles on the condition that he be engaged in a long-term rent agreement with the Ministry of Tourism, as the legal representative of the owner. Article 7, point ç of this law determines: "the rights to be engaged in stimulated activity are given to a stimulated person on the condition that he accepts to sign a rental agreement with the Ministry of Tourism and who is defined in this law as the legal representative of the owner that takes the land for using it together with the real-estates that are built on it for exercising the stimulated activity. The Minister of Tourism can sign an agreement for selling the land with a stimulated person in the conditions preset in the Albanian legislation." This disposition is clearly unfair and non-judicial because it gives the right to the official of a state institution without any ownership title to decide on and sign agreements for the alienation of giving for usage of a land or real-estate that belongs to somebody else. What kind of agreement can the Minister or the Chair of the Committee for the development of tourism for a piece of land or a real-estate that belongs to the owner ex-propitiated by the dictatorship, and that is not being restituted to him mainly because of that piece of legislation that has been attacked as anti-constitutional, as long as it violates and denies the fundamental

rights of the citizens who have been ex-propiated violently and without any compensation.

The nonsense from the point of view of the juridical technique is obvious in article 13 of this law, which says: "For the issues foreseen by this law, its dispositions will be implemented despite of what the other legal dispositions foresee." So this law becomes inviolable although it contradicts the dispositions of other current laws or those that can come later. It is not allowed and it is anti-constitutional that the Tourism Development Committee makes any rental agreements and long-term too with a third person primarily for 25 years and which can go up to 99 years. All the contracts that might have been signed for the land of the ex-owners are against the constitution because they deny the rights of the legal owners. At the same time it is not allowed that the law "For Urban Planning" is violated. This requires the land-registry office document (land deed of ownership) for the ownership of the square, as the condition for issuing the construction permission, but this is not respected by the law "On Tourism".

The new constitution in force in its general principles considers as legal and moral the restitution of the real and non-real estate that the state of dictatorship had stolen to the true owner. Within this point of view, "The stimulated person" should be exactly the true owner with full rights pursuant to the law No.7665 dated 21.1.93 and in this case the Ministry of Tourism and KRRT as the organs who coordinate the interests of the individuals with the state should force the legal owners that when they become fully responsible for their property, they obey the rules of the urban and tourist development of the area, by respecting the procedures for building according to all the appropriate dispositions. This is the way how we can avoid a source which feeds the corruption to the officials and the conflicts that are created artificially among the true owners and those fakes who have been blessed by the dispositions we are mentioning.

Articles 3/b, 4 and 5 of the law no.7980 dated 27.07.1995 "On land buying and selling" states:

Article 3: Until the physical compensation of the expropriators finishes, passing of the free land from state property into private property is allowed only in the following cases: Point (b) of this article states: " Upon the Decision of the Council of Ministers, for sale, for key important investments for the country. In this way Article 3/b, authorizes the Council of Ministers with the right to sell the Albanian land to the foreigners..... This is as much unacceptable as it is unfair, anti-constitutional, and anti-national despite of the fact that the investment might be important or not.

Article 4 of these law states: The transition of state property occupied land into private property is obligatory when the interested one requests it in the cases:

The land belongs to objects that are private ones or that are being privatized. The transition is made favoring the owners of these objects.

The land will be used for extensions or reconstruction by the private persons that win this right through the urban planning as it is stated in the second paragraph of article 1. The transition is made favoring the owners of the object that will be extended or reconstructed.

The land has unfinished investments. The transition is made favoring the owner of the unfinished object.

(ç) In any other case according to the Decision of Council of Ministers all expropriators may use their physical compensation right to make up for the land as per the above cases. Article 4, besides the fact that it is anti-constitutional, is at the same time diametrically in contradiction with the interest of the expropriators as it is with the juridical logic. The formulation of this disposition seems to have been made on purpose for being that meaningless and evasive. As per this article the transition of the occupied land from a state property into a private one is obligatory, when it is required by the interested in the following cases: when the land belongs to the objects that are private or will be privatized and the transition is made favoring the owners of these objects. Thus the object has been nationalized or built by the state a robbed land. This object is sold by the state to a defined person and this person is given the right to ask for the privatization of the land as well according to this law, and this right in fact should be recognizable to the owner of the expropriated land as it is determined by the law no.7698 dated 15.04.93. In this way the legitimate owner is denied the right of the legitimate restitution of its property, while the state sells without being the owner equipped with the legal property documents with juridical values. The same analyses is true also for points a, b, c, ç of this law.

Article 5 of Law No.7890 according to which the foreigners is born the right to buy from the state land with funny prices when their investment goes to a certain value. In this law the Albanian owner is never taken into consideration while the foreigners are given the land let's say for free. In this way the foreigners become the owners of the Albanians' land robbed by the dictatorial regime.

Law No. 8084 dated 7.03.96 in its whole violates the rights of the owners by restricting these rights in the restitution amount of 10 000 m². These arbitrary restrictions go against the definitions of the Main Constitutional Dispositions, Article 1 of Protocol 1 of the Conventions and the Constitution in power. Just to illustrate it let us mention Article 1 which states:....."the amount of restitution or compensation in kind is complete in all the cases when the land is not more than 10 000 m² "and "The free land within the bordering line of the cities, fitting tot he bordering plans approved at the moment of entering into force of this law, will be restituted to the expropriators and the amount will be up to 10 000 m²." Restrictions of this kind violating the constitution can be found everywhere in the text of the law along with other practices that aim at restricting in maximum what should be restituted to the expropriator.

Other incompatible acts with the Constitution, where the state following its old mentality is violating the ex-property owner's rights by behaving as the owner of these properties are as follows:

President's decree no. 1359 dated 5.2.96, for the same reasons presented above, attacks article 2 (regarding arbitrary limitation of land restitution up to 5000 m²), article 3 repeals article 4 of the law no. 7917 dated 13.04.1995, article 4, point 3, paragraph 2, article 4, point 4, and point 5 of article 6.

President's decree no. 1431 dated 27.03.1996 'For a change in the law no. 8053 dated 21.12.1995' which in the second paragraph says: "Users of agriculture lands within limited areas or in areas with priorities for tourism development will be compensated with land in urban or coast areas, when their land will be used for physical compensation or in cases of public constructions." In this case, the President decrees that for the properties, which have been expropriated with violence and without compensation from the past dictatorship, third parties should become owners who do not have any connection with ownership title, whereas the President as a Statesman and Chairman of the High Council of Justice should do the contrary. This injustice is becoming a scandal and a shame for the justice as well as problematic for the free cost areas especially in Vlora, where the Chairman of Regional Council decides on the ownership based on "...the correspondence with the Parliament, Ministry of Agriculture, and the State Committee for Return and Compensation of the properties". We can mention Ksamil area as another negative example.

Decision no. 452 dated 17.10 1992 of the Council of Ministers "For the reconstruction of Agricultural enterprises", point 2 defines that "The land of those agricultural enterprises or their units, which will be distributed and used to be property of agricultural cooperatives, will be given to the families of agricultural enterprises as their property. According to the logic of these decisions, the Government does not distribute the property stolen from dictatorship and named as "state property" in the Constitution of 1976. Instead the government manages it as a mere state property. Although this decision was amended, changed many times and practically repealed, other decisions have derived from the original one which are still into force. Also, a result of the implementation of that decision was the reclamation of private property (belonging to the expropriated) as well as of the property of the state farms, from those persons who wanted to get personal benefits while holding a political or administrative position. For that reason, that decision as well as its derivatives should exclude at least the land belonging to the expropriated from dictatorship.

Decision no. 161 dated 8.4.93 point 1, issued by the Council of Minister, repeats clearly the same unfair definition for the expropriated. What has to be given back to the expropriated is mutilated further by the Ministry of Agriculture's instructions allegedly issued for the implementation of those decisions. So, Instruction no. 5

dated 25.5.93 point 1 says: *Only those families 'which have been living and still continue to do so in the respective city' are entitled to benefit*, while point 7 of the same instruction adds another time limit that is not in the law, *"In order to benefit land according to the above points, urban families should verify themselves as founders of the former co-operatives of Agriculture Enterprises until June 1993*. So even Instruction no. 106 dated 23.2.1996, point 3, 4 and 5 adds as a condition that *..."The number of family members on 1 October 1992 with their respective certificates."*

Based on the approval of the above-mentioned laws, the expropriated owner, in whose land the farm was established and foreseen to be dissolve, has the right of "bonds". On the other hand, the former directors and the third parties without any property titles become owners as if they were the real heirs of the expropriated. The expropriated has to fulfill the condition of being an employee of the farm and habitants in the same city, in order to have the right to benefit the area decided by the Ministry of Agriculture and the chairman of land commission. Also, it is up to the commission and not to the expropriated to decide on the location of the land.

Decision no. 562 dated 9.10.1995 of the CoM, decision no. 883 dated 23.12.1996 of the CoM (annex of decision no. 562 of the CoM) continue to call the expropriated properties under the state ownership as "State properties".

Point 5 of Instruction no 1 dated 23.1.1999 for the criteria of the implementation of decision no. 666 dated 26.10.1998 issued by the CoM "For some measures regarding the liquidation process of the enterprises dependant from the former Central Agency for the Reconstructing and Privatization of agriculture enterprises" defines that: "For the objects privatised from former CARP of AE and its branches in the districts, the land of which have not been privatised according to decision no. 305 dated 20.7.1992 of the CoM, the land underneath buildings and that functional will be sold to the owners of the buildings, according to decision no. 562 dated 9.10.1995 of the CoM, decision no. 883 dated 23.12.1996 of the CoM, meanwhile its evaluation will be carried according to decision no. 312 dated 30.6.1994 of the CoM. Point 5 of this instruction says that "The sales' contract for the objects and land under these objects as well as for the functional land, according to these instruction, should be prepared by the branches of the National Agency for Privatization of the respective district or city, according to the documentation presented from the Directory of Food and Agriculture of the respective district. The land evaluation will be performed by the Finance Sections of the District or City Councils.

These are well-prepared tricks and in full contradiction with the freedom and rights of the expropriated, since the state even considering itself as a democratic one after 1991 and accepted free trade market as well as the fundamental human rights and freedom, was and still continue to behave as the owner of stolen properties. These decisions allow the NAP to sell the land to the third parties, who in a way or another have bought such buildings when they were ruined or even non-existent and when the acquisition process is made based on the documents of inventories of former

agriculture enterprises. These decisions created the possibility to former directors of state agriculture enterprises (in the role of AE liquidators) to sell everything they could from what belonged to expropriated or state, giving a push in that way to corruption. Considering all that, the post-communist government instead of running the democracy through law and according to Euro-Atlantic direction, denied the real democracy.

Proposal for improvement of the legislation into force
This round table comes up with the following:

I. The Government should ask the Parliament to abrogate the following laws and normative acts:

The Law "On Land" no.7501, dated 19.9.1991, (articles no.5, 8, 24, 25)

The Law "For some changes and amendments in the Law no. 7501, dated 19.7.1991, "On Land", no.7715, dated 2.6.1993;

The Law "On the restitution of property to the expropriators", no. 7698, dated 15.4.1993; (articles no. 5, 12/2, 19, 26);

The Law "On value or land compensation of expropriators of agricultural land, meadows, pasture, and forestry", no. 7699, dated 21.4.1993;

The Law "On the development of zones with tourism as their priority", no.7665, dated 21.1.1993 (articles 7/ç and 13);

The Law "On land buying and selling", no. 7980, dated 27.7.1995 (articles 3/b, 4, 5);

The Law "For the adoption of some changes and amendments to the Decree no. 1359, dated 5.2.1996, "For some changes on the Decree no. 1254, dated 19.10.1995", no. 8084, dated 7.3.1996 (articles related to the limitation of the restitution of land up to 10 000 m², article 4 point 3/2, 4 and 5 concerning time limitation);

President's Decree no. 1431, dated 27.3.1996, "For a change in the Law no.8053, dated 21.2.1995".

Decision of the Council of Ministers "For the reconstruction of the agricultural enterprises", no. 452, dated 17.10.1992;

Decision of the Council of Ministers no. 161, dated 8.4.1993 "For some changes and amendments in the DCM no. 452, dated 17.10.1992, Act no.5, dated 25.5.1993, of Central Agency for the Reconstruction and Privatization of Agricultural Companies in compliance with the Decision of the Council of Ministers no. 161;

Instruction no. 106 dated 23.2.1996 of the Water and Land Resources Department of the Ministry of Agriculture and Food.

Decision of the Council of Ministers no. 562, dated 9.10.1995 and DCM no. 883, dated 23.12.1996 (appendix DCM no. 562);

Points 5 and 7 of the Instruction no.1, dated 23.2.1999 “The criteria to implement DCM no. 666, dated 26.10.1988, “On measures taken related to the liquidation process in the companies depending on the Central Agency for the Reconstruction and Privatization of Agricultural Companies”;

President’s Decree no. 1359, dated 02.05.1996 “For some changes in the Decree no. 1254, dated 19.10.1995 “For the Compensation of expropriators of occupied land, of agriculture land with properties in tourist settings and living areas”, changed by the Law no. 8024, dated 2.11.1995.

II. The government should order the ministries and other central institutions as well as the relevant structures to study the legal basis of their activities and propose to stop changes in that part of the legislation which is in contradiction with the Constitution of the Republic of Albania, with article 1 of Protocol 1 and articles 14 and 17 of the Convention for “The Fundamental Human Rights and Freedom” compulsory for implementation.

Tirana, 7 September 2000