

Extracted from:

**Unifying Decision of the United Colleges of the Supreme Court, no. 24,
dated 13 March 2002.**

(original decision is in Albanian)

In this decision having the same effects as the law, the Court has stated:

The United Colleges of the High Court estimate that it is necessary to unify judicial practice as provided in this decision:

... law no. 7698, dated 15.04.1993 “Law on Restitution and Compensation of Property to the Former Owners” does not define new ways of acquiring property. It adjusts injustices which occurred and thus abolishes *ipso lege* all previous legal acts based on which property was wrongfully taken away from the legitimate owners. [Law 7698] does not create a new situation (has no constitutive effect), but restores law and justice. Abolition of the aforementioned acts has the effect to restore the parties in their previous situation, correcting as much as possible, the illegal situation which was created with respect to the most important right *in rem*, the right of property (not the other rights in rem and clearly not the contract rights). From this prospect, the restoration of the previous situation is not entire, but partial (*restitutio in parte*)”.

....

The Unified Colleges of the Supreme Court consider the legal acts concerning the former owners not as new ways to acquire property for them, but as means that protect and guarantee the right of property and make it effective, also based in analogical reasoning. The title of the law (*rubrica legis fit lex*) as well as its content use the notion of property restitution. In other words, restitution of property to the former owners or their heirs is at the core of these laws and their main aim (*anima legis, ratio legis*).

The notion of property restitution, or more precisely, the restitution of the object which is subject to property rights, is dealt with by article 296 and following of the Civil Code in the context of the restitution claim (*actio rivendicatio*). If the claim is accepted, the possessor without property rights must reconstitute the object to the claimant, whose title of ownership (property right) is recognized. Judicial case law and literature never put it into discussion

the ownership rights of the owner not possessing the object. The owner has never lost its property ownership - he has just been deprived from possessing his property. This is exactly the reason why the law restores the previous situation, recognizing the right to restitution of the object and its fruits (*restitutio in integrum*), or, if this is not possible, only restitution of the object (*restitutio in parte*).