

Human rights violations and violations of property rights

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1. Introduction

The principle established in article 17 of the Universal Declaration of Human Rights, which was promoted by the United Nations (UN) in 1947 and subsequently concluded by United Nation Member States in Paris on the 10th of December 1948, represents the basis for the legal acknowledgement of property rights. The above-mentioned Declaration – which forms, along with the UN Charter, the backbone of the UN system – was aimed at, on the one hand, concluding the long process of recognition of rights and freedoms to which all women and men are entitled, through more efficient procedures of international protection, and, on the other, guaranteeing a wide application in Member States of the principles established by the Declaration.

On the 1st of December 2009, the Treaty of Lisbon became effective in the European Union (EU). This Covenant absorbs the progress made in human rights protection over the years, including the principle of private property, which is considered a fundamental freedom, thus strengthening the democratic legitimacy of the EU and highlighting the principles that are at the basis of the Union itself. Furthermore, the Treaty of Lisbon provides the EU with modern institutions and optimal working methods in order to respond more efficiently to the challenges of the current world.

Despite the best intentions and the multilateral agreements concluded, there are still rights that lack an adequate protection on both national and

international levels. Governments will be bound to discuss the great topics of the 21st Century and the right to private property, because of its economic and social importance, cannot (and, most of all, must not) be neglected.

There are, to this day, States in which property rights are not fully respected. Even in most democratic States such rights are systematically violated both directly, by means of expropriations without sufficient compensations, and indirectly, through excessive taxation, strict rental legislation and radical environmental regulations.

2. The role of UIPI

The UIPI (Union Internationale de la Propriété Immobilière) represents, since 1923, property on an international level by containing the national organizations for property and real estate. Italy is represented by Confedilizia (Confederazione italiana della proprietà edilizia). The UIPI's main goals are:

- representation of property right owners at European and International institutions;
- accurate and continuous information on property right owner positions regarding European and international real estate regulations;
- denunciation of violations to the principles of property protection on national and international levels, with the support of the involved national organizations;
- promotion of initiatives aimed at improving living in urban and extra-urban communities.

In order to pursue its goals, the UIPI considered the research and monitoring of the level of respect for human rights and fundamental freedoms in the world as a necessary action to take. With regard to this, the UIPI drew the EU's attention towards violations of property rights: albeit their inclusion in the Universal Declaration of Human Rights, keeping the attention high on these themes is of vital importance.

The UIPI, since its foundation, never cut back efforts to help national property associations, especially in Eastern European countries (such as Germany, Poland, Czech Republic, Slovenia and

Croatia), so as to reach the restitution of property expropriated from the legitimate owners during the communist regimes.

The results achieved, even though significant, have not wholly met expectations; as a matter of fact, the UIPI is still at present engaged in supporting Balkan States (Romania, Serbia, Albania, Bulgaria and Bosnia-Herzegovina) for the protection of property rights, as can be observed from the data included in this paper (Tables 1, 2 and 3).

UIPI official statements on this matter have been presented and illustrated to the public opinion in many national and international contexts, in congresses as in workshops, often lamenting the persistence of property rights violations over time.

TABLE 1:
Romania: Collective ownership of agricultural land

Year	Land Surface	Number of Families
1949	14.693	4.042
1950	288.900	67.700
1955	1.301.200	390.400
1956	1.837.500	683.300
1957	3.607.600	1.458.300
1958	4.501.700	1.848.000
1959	5.601.760	2.100.000

Source: Iancu (2001)

3. The situation in Europe

The UIPI instituted a Working Panel, which enquired the problems in private property in the above-mentioned States, and its results can be summarized as follows:

- Germany: the properties expropriated under the Soviet rule (1945-1949) have not been returned and the owners have been granted derisory compensations, greatly lower than the market value for their expropriated property.
- Poland: after a long period of disputes, a law was finally approved that provides for the restitution of 50% of confiscated properties. The law, however, excluded from such provisions all Polish nationals living abroad without Polish citizenship, and all their descendants.
- Czech Republic: two distinct laws were ap-

proved in 1990 and in 1994, providing for the restitution of properties to their former owners. The Constitutional Court extended this benefit to those who live permanently abroad. There are, nonetheless, many unresolved cases. Another factor that weakens the effectiveness of the norm is the continuous presence of tenants in the properties that should be returned, against the payment of a symbolic rent.

TABLE 2: Land Ownership, 1945

Land-owner class	14.450 ha	3,67%
Rich proprietors	87.970 ha	22,37%
Middle & small property owners	237.668 ha	60,44%
God-fearing Agency	3.163 ha	0,80%
State-owned property	50.000 ha	12,71%
Total	393.251 ha	100%

Source: Association of ex-owners "Property with Justice"

TABLE 3: Residential property confiscated, nationalised and expropriated by Romanian communist authorities, 1945 – 89

Decade	Legislative framework	Number
1940s	L. 187/1945, decree 83/1949	1.263
1950s	Decree 92/1950, decree 11/1951, decree 224/1951, decree 513/1953, decree 409/1955	139.145
1960s	Decree 218/1960, decree 712/1966, L. 18/1968	4.662
1970s	L. 4/1973, decree 223/1974	62.116
	Unspecified	33.882
	Total	241.068

Source: Stan (2006)²³⁷ quoting the Official Journal part II, 11 June 1994, p.9.

- Slovenia: a law has been issued regarding the restitution or compensation for most former owners. The procedures, however, are so complex and woolly that, thirteen years following their introduction, there still are more than 20% of unresolved cases.
- Serbia: the greatest part of properties have been confiscated or nationalized and no adequate legislative measure has been adopted for the restitution to the legitimate owners.
- Croatia and Bulgaria: there are legislative measures in force for the partial restitution,

but these procedures require years before the owners may re-enter into possession of their properties.

- Albania: the Parliament has passed a law for the restitution and compensation to the original owners, but this law is now under close examination by the Constitutional Court. These measures are also carefully scrutinized by the European Union, in order to verify if these measures fully respect property rights.
- Romania's case is emblematic of the problem: properties have been confiscated in different periods of time and with different pretexts. The current Government seems determined to solve the issue of restitutions, both for urban and agricultural property.

Finally, some States that have partnerships with the EU have eliminated prohibitions intending to limit the acquisitions, by neighbouring populations, of real estate. Croatia, for example, which will conclude the procedure for the accession to the EU in 2011, has abrogated the sixty-year old law that prohibited Italians to purchase properties in Istria. Since 1991 – since Croatia's declaration of independence from Yugoslavia – the Croatian real estate market has opened to foreign investors, except the Italian ones. This discrimination followed from the controversies created during the Second World War and the territorial disputes (over Pola, Fiume and Zara). Notwithstanding the recent efforts, the current procedure for the purchase of property in Croatia by Italian nationals is still subject to the granting of a Croatian authorization, issued by the Croatian Ministry of Justice, or to the constitution of a legal Croatian company who would then become the registered holder of the property in question. There is yet another obstacle to transactions regarding property in Croatia: if a property happens not to be owned by the Croatian State or by a Croatian citizen, it could belong to the category of property abstracted from the exiled and, therefore, be under contentious procedure (recent statistics show that 80% of agreements of willingness for contracts of sale underwritten by Austrian and German nationals fall under this category and are, thus, frozen).

Given the results of the above-presented research, UIPI's Executive Committee thought it convenient to get the European Parliament involved in the issue, and presented a petition (665/2006) with which it demanded clarifications on the protection of property rights in Europe. The Petitions Committee decided to research the problem in depth in order to clarify the situation, and ordered two distinct studies by external institutions.

In May 2010, in the Petitions Committee of the European Parliament, presided by Honourable Erminia Mazzoni (from the PPE Parliamentary Group), the results of the two studies were presented:

- *“Private properties issues following the change of political regime in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia”* carried out by Laura Stefan from the *Romanian Academy Society* in collaboration with the Centre for Liberal Strategies from Bulgaria and the *Partnership for Social Development* from Croatia.
- *“Private properties issues following the regional conflict in Bosnia and Herzegovina, Croatia and Kosovo”* conducted by Michaela Salamun, Tatjana Josipovic, Meliha Povelakic and Evis Halili (Baholli) from the University of Graz.

The researches, that show how complex the restitution process is, commence from the properties confiscated by the Governments or Authorities of Central and Eastern European States during the Second World War, specifically in the period under the Communist regime.

The geographical area of investigation was limited to European Union member States and to the other States in the Balkan Peninsula. In addition, it concerned the situation in candidates and in potential candidates to EU accession (Albania, Bosnia and Herzegovina, Croatia and Serbia). The key goal of the studies was to evaluate, from an economic, financial and social point of view, the scale of the problem pertaining to the properties to be returned and the actions undertaken in this direction by the implicated States. The

political debates on these issues were closely analysed in each State, and all legislative and administrative measures attempted by these States were examined and outlined.

The starting point was the evaluation of property registration systems in the Ex-Yugoslavia area. Here, a double system, similar to the Austrian and Bulgarian systems, was adopted: the Registry and the Cadastre carry out two different tasks. The Registry is in charge of the definition and legal assessment of a property, whilst the Cadastre deals with everything connected to the factual details of a property. This system was in use in all the Former Yugoslavian Federation since 1931 (except for Kosovo-Metochia, as it was then called), continuation of the old Ottoman Tabien system. After 1945, all expropriations and requisitions were registered in detail on special property registers. This is of considerable importance, in that this system enables to identify on which grounds the property was confiscated and, consequently, define the actions necessary for the restitution.

Owing to the war the process of restitution got more complicated in these areas of Europe. In particular, an assessment was made of the concrete measures implemented by each State and suggestions were formulated for the purpose of improving the restitution process.

Moreover, the studies address in detail the role of international law, as well as the role of the European Union with reference to the European Court of Human Rights.

Once the Communist regime was overcome, all the analysed countries became members of the Council of Europe, an intergovernmental organisation created in 1949 with, today, 47 members – that means almost all European countries (see Table 4).

TABLE 4:
Dates of Accession to the Council of Europe

Country	Date of ratification ECHR
Albania	2.10.1996
Bosnia Herzegovina	12.7.2002
Bulgaria	7.9.1992
Croatia	5.11.1997
Romania	20.6.1994
Serbia	3.3.2004

Among the Council of Europe's main goals there are the development and preservation of democracy, the respect for human rights and the rule of law. The Council has promoted several agreements and documents, and one of the most significant is the Convention for the Protection of Human Rights and Fundamental Freedoms. This Convention does not only list and define the main civil and political rights, but also introduces an innovative mechanism for the collective reinforcement of such rights through the European Court of Human Rights (see Tables 5 and 6).

Almost 70% of appeals against Romania have been declared inadmissible, as have been approximately 80% of those against Croatia and around 60% of those against Bulgaria. There is no statistical information on how many of those appeals regarded expropriated property during the Communist regime. The Court's database only contains information on the admissibility rulings made by a seven-judge Chamber, and nothing on the applications assigned to a three-judge Committee. In addition, it is convenient to note that the total number of decisions of inadmissibility relating to confiscated property under the Communist regime may give a simple indication of the real number of cases declared inadmissible.

The Court declares the inadmissibility of an application for various reasons, most of which refer to articles 34 and 35 of the Convention. The first comma of article 35 provides that the appeal should be lodged within a period of six months following the last judicial decision in the case (which will usually be a judgment by the highest court in the country concerned). The second comma sets out that the appeal should not be substantially the same as a matter that

has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

TABLE 5:
Statistics on cases before ECtHR, all six countries

Country	Total number of Applications pending	Number of applications declared inadmissible	Number of judgments finding violation	Judgments finding a violation of Right to property *
Albania	228	139	18	9
Bosnia Herzegovina	2.071	861	13	7
Bulgaria	2.728	4.164	292	35
Croatia	979	4.332	170	4
Romania	9.812	19.417	646	372
Serbia	3.197	2.455	40	5

* Article 1 of Protocol No. 1

TABLE 6:
Number of applications declared inadmissible before the ECtHR 1998-2009

Country	Total number of applications allocated to a judicial body	Number of applications declared inadmissible	%
Albania	380	139	36%
Bosnia - Herzegovina	2.948	861	29%
Bulgaria	7.099	4.164	58%
Croatia	5.455	4.332	79%
Romania	28.883	19.417	67%
Serbia	5.356	2.455	45%

According to UIPI representatives, who attended the Petitions Committee meetings, the studies, to be exhaustive, must face the following issues in detail:

- I. Evaluate the property that could be subject to the process of restitution. For each State, the type of property subject to restitution should be defined.
- II. Give an estimate of the actual financial value of the goods subject to restitution; the State

will have immediate financial and budgetary repercussions when adopting the system of compensations and indemnities.

- III. Assess the economical and social consequences originating from the restitution system of compensations and indemnities; for example, analysing the difficulties (in terms of costs) of the original owner of a confiscated property and those of the current possessor who could, in some cases, be holding the property from decennia.
- IV. Analyse which legislative measures have been undertaken by the States involved in the process: starting from the legal and administrative systems, consider constitutional provisions, national legislation and their implementation.

Furthermore, the following aspects should be verified:

- the conditions connected to the citizenships;
- the different restitution and compensation methods;
- the administrative proceedings and the management of restitution requests;
- the possible assistance of a mediator in the legal and/or administrative proceedings;
- the presence or absence of minorities or different religious groups.

The UIPI identified the principal factors that did not allow the solution of the problem, and they are:

- insufficient political will;
- delayed adoption of specific legislation for the restitution of confiscated property;
- scarce clarification of procedures for compensation;
- lack of funds for the payment of indemnities.

There is a further observation made by the UIPI on these two studies, and it relates to the working methods used by the experts; the analysis considered a too restricted number of cases, with respect to the actual scale of the phenomenon and its complexity. What is more, the researchers only gathered data from the offices of the involved Governments without taking into account any information or useful facts from those directly

hurt by the problem. In this way, only a partial examination of the situation was achieved, and this led to the conclusion that the problem of property restitution is partially completely settled and that the other part cannot be solved.

4. Conclusions

The UIPI, at the European Parliament's Petitions Committee sitting, pressed for and secured that the petition remain open, so to give European Parliamentarians, interested Governments and organizations representing confiscated property owners the opportunity to further investigate the question and gather additional information.

Moreover, the UIPI has engaged in the organisation, in the next autumn at the European Parliament, of a one-day event on the theme, calling on all representatives and institutions of the States involved. *"Keeping the matter open – stated President Stratos Paradias – sends a direct message to Governments, indicating that the European*

Parliament has attentively studied the subject and sees that national institutions get concretely activated in finding a solution and thus respond to all the European citizens that are forced to fight, from generations, for the recognition of their property rights".

With the fall of the Berlin Wall, over twenty years ago, and with the dissolution, more recently, of many Balkan regimes following the eclipse of the Communist ideology, millions of Europeans regained freedom, but most of them did not regain possession of their property! The UIPI, for the purpose of drawing the European institutions' and national governments' attention to the subject, underlined the noteworthy role of the right to property in the economy and in society, and has declared the 10th of December as "World Property Day". On the same day as the celebrations for the signing of the Universal Declaration of Human Rights, it is vital to remind all States that the right to property as a fundamental freedom is a human right, and as such should be defended from all abuses.