

The Process of Legalization of Informal Areas and People's Real Life. *Kamza's Case*



Property Law

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Abstract

In this commentary will investigate with the process of legalization of informal areas in Albania. After 1990 the demographic movements were high. The incapacity of the state to control the free movement of the citizens, that in the end earned the right of 'choosing the residence'; their settlement was chaotic and unplanned. The space full of dwellings in all outskirts and big cities, whereas possible of economic force of everybody, is one of the major problem that the Albanian states faces these times. The number of buildings without permission in the whole territory of the Republic of Albania is estimated 400 thousand, which includes all categories of buildings, but most of them of housing nature. Facing this condition that surpasses a lot a local or isolated deviation, of law failing regarding the construction of dwellings, the only choice accepted by most of the pair, is the process of legalization. The dynamics of this process started with the adoption of the law nr.9482, date 3.4.2006, "For the legalization, urbanization and the integration of constructions without permission", have been multilateral and lots of changes that implies most of the pair that have affected much in the outline of ratio between power and the government promises. The people's real life continues under the rhythm of Albanian society, some undaunted, some safe, some under the pressure of the process. Kamza is the first informal area with massive construction in Albania and such it serves as an inductive example to see the progress, but also to reach the generalizations as allow the frames of this commentary. A special interest will be paid to the experience of Kamza's inhabitant cross through this process and the way they face the fact of being always under the pressure of the Legalization process, inside their state.

Introduction

The constructions have spread almost all the territory of the Republic of Albania, but have mostly affected the big cities and it remains a major problem of the Albanian state. The free movement and the right to choose the settlement that are gained immediately after the collapse of the communist system in Albania, gave everybody the opportunity to move. The rush to enjoy the Freedom and sorrow of former years passed under the total state control, inspired the Albanian 'to go'. Whenever they could, inside and outside the country, from the smallest toward the biggest village, from the smallest toward the biggest city, from the village towards the city, from the mountain towards the coast, from Albania toward other countries. Historically Albanians are people who have always moved, except the communism period from 1945 to 1990. This stoppage had charged and gave a strong start to the free movement.

Free Movement and Law

After the premise of free movement and the need and right of people to have a dwelling, and also the right that the economy of free trade gave to evolve the property, Albania was filled with constructions without permission, which means without the legal approval of the state. In the beginning I want to specify that this building process didn't happen furtively, but demonstrate in everybody's eyes.

The powerlessness of the state to control or orient the movement, to get under the umbrella of urban plans of the cities or villages can't be attributed as citizens' 'blame'. It cannot be thought that the plan of the communist state to keep away the 'destitute' in the face of nature and 'borders' territory filling with people, to continue its application even under the new democratic system that came after 1990.



Image 1. A view of Kamza.

The right of movement is the essential right; the most natural that everybody has had during human history. To specify this is enough to say that the history of the state as a body, to push the story however, is not more than 6 thousand years with the modern nation-state peak. The human history is a history of free movement, the history of cities and settlements is a story of free movement.

The state has interfered in order to orient and in most of the cases to legitimate this movement. If we speak with modern terms the state seeks to legitimate through border control, high security biometrics passports, and the creation of free economic areas, the creation of specific programmes towards business, tourism, agriculture etc.

So even today we cannot think that this principle of free movement to be replicated. In opposite is the only solution, the legitimization of this movement, and within the limits. The free movement has had an effect almost in all Southeast Europe towards the transformation of the cities, and the creation of whole informal areas around them. Cities were planned according to the socialist model, which have been accompanied even in the post socialist period, but were unable to face such a big wave of movement of the population. In this condition debates are engulfed from such ideas: inclusion or the increase of planning, centralization or decentralization, decision making up – down or down – up, state interference or free trade would decide¹. The real answers towards this phenomenon come very late. In Albania the law for Legalization is adapted in 2006; 16 years after the free movement had started.

This long non – reaction period from the state, is in disfavor not only of the state itself but first of the inhabitants which continue to experience this situation, from the environmental specialists, urban planner and political decision making. ‘The damage’ is already done, and the difficulty to concept the urban planning starting from the new conditions, that have in foundation the free trade, it’s too big. The researchers itself have been under the effect of change knowledge, and transformation of concepts of the socialist past in itself, but the situation which face is challenging for every urban specialist. Poverty, unemployment, continuous political instability, economic informality, the absence or law vacuum and institutional to face the new situations, are determined factors for a solution. This period has seen a clash between those who were in favor of re planning

¹ Tsenkova, Sasha, ‘Urban Planning and Informal Cities in Southeast Europe’, Journal of Architectural and Planning Research, 24:9, Winter 2012.

and those in favor of private enterprise. It is to say that in the whole country were constructed without permission 400.000 buildings.

According to an analysis of the World Bank, approximately one third of the land in which the illegal buildings were erected belongs to builders, one third to the state and one third another person, for example an owner to whom the property was restored or a person to whom has taken land according to the law of 1991 for the land.

Law Nr. 9482, date 3.4.2006, "*For the legalization, urbanization and the integration of constructions without permission*", was changed 6 times, which shows a great instability of it. The situation in Albania is much more complicated in relation to the property. Some laws have created on placement, but also have added chaos and clashes inside the society. Some category of owners emerges after 1990. Between 1991 and 1993, '*the deal*' of migration and land invasion had occurred. Some were used in 1991 by the Law for the Land, which had given land to citizens who had worked for the former state in farms and cooperatives, through the law 7501 which was based on the principle '*per soul*', in the same land that were part of the law for the return and compensation of property. This double contradiction was soon complicated due to a third variable. The state actually had maintained the property over certain land for urban growth and also this land can be used to compensate individuals with which the state was in debt, like for example the ex – owners². The number of laws that affects orients or obstructs the process of legalization is too high and complicates the problem.

This number is 16th and some of them are: law granting agricultural land use and ownership, privatization of residential apartments for the privatization of land state land and facilities for the verification of property titles, for the development of tourism priority areas for the integration of informal settlements. These laws regulate different sectors and also create a number of agencies for their implementation. 9 agencies for the properties were created which also create over position of property's titles. In the Ministry of Justice is raised the Directorate of Property Coordination and its structure and organic is part of structure and organic of the ministry of Justice. It coordinates the activity of state institutions involved in it.

The Agency for Restitution and Compensation of Property care about expropriated subjects, the Registry of Immovable about Property Registration, Bailiff Service for the execution of the Agency for the Legalization, Urbanization and Integration of Informal Areas for legalization of informal settlements, state Attorney's Office for the protection of property interests of the state and representing the ECHR, the Agency for the Inventory and Transfer of Immovable property for state assets, the Department of Administration and Sales of Real estate for state assets, the Government Land validity of titles ownership and National Housing for social housing. As we see the system is much complex and cannot be solved only with the law of legalization.

In 2006 when this law was composed, had the assistance of one of the highest authority for the process of legalization, Hernando de Soto, who with his theory of formalization of the economy and mainly the legalization of '*dead capital*', as he calls the informal areas, has had a major impact in this process. According to him these areas were in bad economic situation, paradoxically, in such condition because they are not capitalized, that means are not legally acknowledged by the state, and this fact affects different ways of law breaking. They are wealth used by the inhabitants but are not part of the legal system, and nobody knows that who has what and where, who is responsible for the liabilities and which is the mechanism to pay for the goods and the services. If these areas were to legalize, and if would be part of the trade, then the inhabitants of these areas would be integrated and overcome the economic difficulties. Business would become sprightly and economy would grow, the parallel economy would be erased but above all the people of these areas would have

² Bardhoshi, Nebi, "*The 'Citizen' and the 'Transformation' Period in Albania: The case of Tirana's Periphery*", Citizenship and the Legitimacy of Governance, Anthropology in the Mediterranean Region, Edited by: Italo Pardo and Giuliana B. Prato, University of Kent, UK, p 122-123.

the opportunity to show their talents, enthusiasm and their abilities which until the legal recognition of their properties stays dormant³.

The De Sotos theory has affected almost all the countries encountering this problem and in principle has seen it as the only alternative. The problem of the property remains a key problem for the solution. In East Europe solutions have been different and with different criteria, like the physic compensation of the seized properties, the limitation of the land that is going to be compensated, land evaluation with the trade market, the evaluation of the land with the value when they were seized, etc. the case of Albania is different. Engulfs as we said many other processes, but the most important is the property's case. The purpose remains the same: the Integration through the legalization and urbanization of these areas to the cities.

Inhabitants Experience and Politics. *Kamza's Case*

Looking from a legality point of view and the ratio to written law implementation the situation is surely rigid. The tendency to contour the movement inside the legal frame is incorrect because it excludes, as it happens frequently with laws, the real experiences of people and that that really happens in society. The fast changes towards values, norms or behavior models, even in the direction of political transformation, economic and institution, opening at the same time toward the world and us, in a general plan put the Albanian society faced with many challenges at the same time.

Kamza (positioned in northwest of Tirana, and only 7 km far from its centre), specifically the area of Bathore, it's the first marker of movement of settlement. The first images of this settlement are still fresh among the inhabitants. In June 1995 the Albanian government of that time took the decision to dislodge from the area of Bathore the inhabitants settled there, by intervening with the police forces. This moment constitutes the turning point for what would happen afterwards in whole Albania. The inhabitants clashed with the police with every means, and men, women, elderly, kids and youth were involved.

The government was forced to retreat, and this retreatment resulted from this protest is the cause of the overrun without obstacles by everybody that were able to move. The cottages situated in open sky, without any condition and the absence of care even for the essential things like potable water, absence of electricity, health care, education have accompanied and in most of the cases continue to accompany the inhabitants of this area. But the case of Bathore has become a case public chirp, that treat this in different ways, like the case of failure of the state as a case of nonconformist in freedom condition, as the node of fear killing to earn the right of choosing the settlement, etc.

Also people have been labeled as the anti – state people, wild people that act without asking about the rules, as underdeveloped and culturally backward, etc. They have been calling names like: Chechens, highlanders, smeary, alpines, comers, Bathore's people, etc.

I want to clarify a very important note in this commentary. The land of Bathore was part of the fund of the land that was at disposal of Kamza's Commune at that time (1991) to allocate for Kamza's inhabitants that were part of farms of the time and consequently subject of the famous law 7501. This part of land has a story: a part of inhabitants, knowing the low fertility of the land had refused to take their part according to the law, a good part of this land was land of the state and was decided not to allocate it, the former owners were not pretentious and in large number preferred to be treated by the law of property restitution and compensation, another part was land of Agricultural University of Tirana which used the land for professional practice.

³ De Soto, Hernando. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Black Swan published 2001, p 18-30.

This specification helps to understand that the inhabitants didn't seize the land which had their owner and was the landlord, so that used it and was known publicly that the land had an owner. This point is important because in the socio – psychological structure of Albanians is internalized the inviolability of others' property. This formation conceived from the Albanian traditional culture, well – known even from the authorities has made the people more aware in their decisions. So this land was property of the state, and with former owners who didn't show any interest to have it. With this I don't want to legitimate those cases where land was seized abruptly from the inhabitants, but such cases are few compared to the massive phenomena. This specification is necessary to understand the initial event of the clash, because the given arguments from the inhabitants at that time were: we haven't seized nobody's land; we can't live in the village because we don't have land and incomes; we're doing nothing to the state, we're citizens of the republic; we have no conflicts with the owners. The settlement's performance in the area of Bathore, Kamza and whole Albania, of the new inhabitants must be done respecting some rules of the time for land purchase by dealing with the owners. Kamza's case testifies that all the remaining land was bought from the inhabitants, from the new owners who had profited from the law 7501. This logic was followed everywhere. The above cited tangle towards different categories of owners produced after this law, it's not inhabitant's fault. The law for the construction was broken. So they had built without permission, and in absence of the minimal urban conditions. The reasons towards the outskirts of the cities must be searched at the need for a better life, the fulfillment of individual wishes, the role of the government in the urban development, role of the industry of properties...also even at the geographic, technologic, etc⁴.

It must be clarified another side of the issue that has to do with the political aspect and the escalating tendency of the state to invest and to be present in these areas, in different forms, through investments from the state budget or through the orientation of different human organizations (like world Vision, etc.) or with urban professional character (like Co Plan etc.). At the end of 2012 'The National Council of Territory' has adopted 'The General Local Plan' proposed by Kamza Municipality. Even though this plan has to undergo revisions to be adjusted to the new administrative division realized in Albania which unites Kamza and ex- commune of Paskuqan this has identical characteristic of Kamza, an informal area and its sequel. Even that this plan can receive criticism, let's suppose that would have the full approval for implementation, and if the authentication process allows standards to be implemented this plan, again will remain limited due to lack of funds for infrastructure and due to the reluctance of owners to change the status quo. The problem lies at Kamza's Area, which has been a political arena where political parties have clashed in Albania.

The leftist attribute to the Democratic Party the urban chaos in Albania, because allowed in 1995 the inhabitants of Bathore to settle there, while the rights accuse their opponents that don't want these citizens because they aren't their voters. But it must be stated that both sides have played politically hard with the legalization process, the Democratic Party to profit certain areas and the Socialist party to profit at a national level, because as we mentioned the number of these families related to this process is about 400 thousand, multiplies more than 3 voters (figure taken with great reserve because the average number per family in this areas is 4.5 persons) constitutes the overwhelmingly mass of political power in Albania. When we ask the inhabitants how they feel today, in 2016 in Kamza, and how they experience the process of legalization, understand how thin the ordinary perception about the phenomena is. One of our informants says: 'we are being deceived, for votes, because its 20 years since we are here and each government, each time there are elections promise us. The last one promised us free legalization. And it's costing us an arm and a foot'.

⁴ Shtëpani, Vasilika, Urban Sociology, Ora Botime, p 67-69.

Another inhabitant around 50s tells us a very interesting story comparing the state behavior in two different political period. The story goes like this: *'in my native village, in Nangë of Kukës, during the communism around 1985, a juvenile friend had great difficulties because had no home. Had 7 children and lived in very difficult conditions. He had gathered the materials needed to build the house, in a part of land that was his according to his familiars, and one summer night called us for help. As we were juvenile friends, during all night we managed to cover the house with the roof and light the fire in it. When in the morning the Chairman of the Board was found before the fait accompli didn't say anything else but 'Enjoy. Here there's smoke, and the smoke can't be stopped'.* This story that is legitimated by the Roman law is very special to compare paradoxically the state behavior in two periods, dictatorial and democratic.

Paradoxically the communist system knew this right based on the principles or Roman law, while the state during the democratic system put them under pressure of the legalization system. Treatment like 'illegal' the inhabitants is one of the hard point for them, because its 20 years they live in the houses constructed with so much sacrifice. Treatment like *'the other'*, inside the state and society where one lives surely is hard to face, even though I've encountered during my ethnographic work that face with dignity this stigmatization. In one of the interviews realized in Laknas' area, as we were talking to our informatory A. Lama, one of the TV stations was airing a satirical show titling one of the rubric 'Bathore News'. Our informatory laughed with this figuration and told me: 'can you see how they look at us? For them we are uncultured, but we don't care, because we are this, even we will be cultured one day because we've come here for this'. This showdown with yourself and others is a very interesting example where should be explored to see the psycho – social structures that makes possible this dignified confrontation. Feeling *'the other'* in your country makes the inhabitants differs but also wins strength to see forward. The comparison of their dwellings at the time of beginning is the most essential fact of the force to transform the place of living. The illegality in which these inhabitants has live for years hasn't made them to retreat, on the contrary it can be said that they have factored themselves, as much as in all electoral campaign, as to start from 2000 and ongoing, the first big promise from all the parties is 'legalization'. Kamza's case can serve as a variable to generalize the behavior of *'illegal'* inhabitants in all Albania, when it is known in these years that almost $\frac{1}{4}$ of the population has changed settlement, and around 40% of the new dwellings without permission are in the outskirts of the big cities as inside them. But the biggest 'pressure' comes from Kamza, and specifically Bathore's inhabitants. *Negotiations* with politics has been a continuous feature, using different means; the governments after the 90s have turned a blind eye and a deaf ear when the movement started and retreated from the tentative of 1995 to dislodge; but remains important the protest of 2001, in which the inhabitants of Bathore asked conditions related to the improvement of living conditions, mainly with potable water, electricity, sewages, schools, health centres, etc.

This protest urged the political pairs to it 'use' politically, that led to their activation to offer a solution. And one of the solution that pleased more the pairs was the legalization process, which at the same time legitimated the constructions by pleasing the inhabitants with the fact that would not be anymore 'illegal', 'informal', at least legally, but it gave governments breathing that were not able to offer the needed investments to urbanize the area. This model served to calm down the situation in the whole country. Even though the saga of legalization continues, that is testified by the published figures from ALUIZNI (Agency for Legalization, Urbanization of Informal Areas) where results legalized 81 thousand constructions out of 400 thousand, and from this process the inhabitants have not given up. One of them express: 'I know that they lie to us, but I'm faithful' we are going to Europe and nobody's saying anything, not even in our country. But Europe doesn't accept, if we are treated like foreigners in our country'. So there's hope, and even insist by offering a master from abroad like the European Union. This local cosmology, with European traits, global, is seen as a condition from the inhabitants for being part of the EU.

The debate has also accompanied the political pairs has been tied to the urbanization of these areas. The rights tapped legalization and its association to the urbanization, while the leftist (when in opposition) stated urbanization and then legalization.

But both parts in practice have followed a rhythm of investments according to budgets' plans with relevant priorities, regardless that can be said that in Kamza's area during the government of the rights it has been invested more. The process of legalization surely has encouraged all pairs, even the inhabitants itself, to invest more towards infrastructure.

Kamza's inhabitants and those of the outskirts represent categories and different stratum of population. There are inhabitants of medium stratum, teachers, nurses, medics, military, police officers, etc., just like there are inhabitants of poor stratum, and a minority of businessmen that can be considered as rich. We make this note to specify that the outskirts' inhabitants are not composed of inhabitants belonging to marginalized stratum or vulnerable population, or special population. So they are not Roma, ethnic groups, minorities, emigrants, etc., not even the poor stratum of the population. These inhabitants are Albanian citizens that do not represent the rich stratum of the population, but is the mirror of the evolution of the Albanian society, with all the colours of cultural, economic and demographic diversity.

This is to be reflected even at the buildings they have constructed, because today you can find whole areas with beautiful villas, just like can find houses almost inhabitable, you can find beautiful streets and with standards just like you can find streets where you cannot pass, look how the family business had developed but even models of successful business, there are school with good standards but also schools where it is impossible to hold lesson. Their actual situation is the status of the Albanian society in miniature. Of course, this generalization is operational in the analysis function, as understood that this picture is not static. One point that has a lot of importance for the future of informal areas, and specifically for Kamza's area which is the object of our analysis, is the integration of these areas in the evolutionary Master – Plan of the cities. The street that opens the legalization process is the integration of the outskirts with the cities. In Kamza's case *'The General Local Plan'* is completely incomplete and naive, not for the fact that is not in harmony with the Paskuqan's plan, even not for the technical specifications that in certain cases open up to the palaces rather the opposite occurs, but for the only fact that this plan is not integrated with the big development Master – Plan of the city of Tirana. So this kind of integration is essential for the future of Kamza, but for the future of all outskirts areas of the cities. The capacities to design and integrate such plans must be high, because the application in practice demands successive assessment of the projects, because of the constructions.

Even at this point, due to the great space available the outskirts' areas can be more favorable to plan developments plan with standards, that simply increase the chance of the Master – Plan to breathe towards them. Such a case is the planned park at the lake's area of Paskuqan.

Conclusions

- Legalization is a complex process that has affected almost all countries of Southeast Europe.
- The problem of property, the category of owners that are created, the high number of laws and the instability of the legalization law itself, is even today the barriers to the solution of the problem.
- Politics had used and instrumentalised the process politically.
- The inhabitants of these areas are in continuous negotiations, but have experienced and continue to experience from the socio – psychological aspect this process.

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