

## **EXPROPRIATION & COMPENSATION IN GREEK LAND PROPERTY LAW IN COMPARISON WITH THE ECHR: REVIEWING CASES AND DISCUSSING PROPERTY MANAGEMENT WITH DLT / BLOCKCHAIN FUNCTIONALITIES**

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**Abstract:** *Nowadays, property management with DLT / Blockchain functionalities is a state-of-the-art topic. In particular, the real (land) property law is based upon two country-oriented concepts: “(Compulsory) Expropriation” and “due Compensation” as they projected to the European Convention on Human Rights (ECHR). This assignment after reviewing the compulsory expropriation of real property and the relative due compensation procedures in Greece, discusses: (a) cases before the Greek courts regarding violations and adaptations of the ECHR, and (b) real property management with Blockchain functionalities as a Distributed Ledger (DLT) technology. For this purpose, after introducing the compulsory expropriation procedure in Greece, a number of properly formulated questions (“What is the legal protection against the expropriation of real property?”; “Is it permitted expropriation extension to nearby properties?”; “Is it possible expropriation without compensation?”; and “Is it allowed revocation & lifted ipso jure of a concluded compulsory expropriation?”) are discussed, reviewed, answered, and projected both to ECHR and to upcoming DLT/Blockchain era.*

**Keywords:** *Real Property; Greek Property Law; Expropriation; Compensation; ECHR; Distributed Ledger Technology; Blockchain data structure; Property Management.*

### **1. Introduction**

The protection of ownership rights (rights in rem, rights of property use, rights in personam) guaranteed by the Greek State. Actually, the Greek Constitution provides that Property is under the protection of the Greek Democracy (constitutional Article 17). Deprivation of such as “ownership” due to a compulsory expropriation cannot occur, unless for: (i) public interest purposes; (ii) national economy issues; (iii) compliance with a legislative provision; and (iv) a payment of the due compensation. Hence, any rights derived from the constitutional protection may not be exercised contrary to public interest and national economy [1].

Nowadays, Property Management with DLT / Blockchain functionalities is a state-of-the-art topic. In particular, as a red-hot Property Management issue, the Real (land) Property Law is mainly based upon two country-oriented concepts: “(Compulsory) Expropriation” and “due Compensation” as they projected to the European Convention on Human Rights (ECHR). In this domain, real property cases before the national Courts and the European Court of Human Rights (ECtHR), are always examined on the compatibility of the national real property legislation (e.g. Greek) v. to ECHR Article 1 of Protocol No. 1 (“Protection of Property”).

This EPL assignment after reviewing the compulsory expropriation of real property and the relative due compensation procedures in Greece, discusses: Cases before the Greek

courts regarding violations and adaptations of the ECHR, and Real property management with Blockchain functionalities as a Distributed Ledger (DLT) technology. For the purpose of this assignment, after introducing the compulsory expropriation procedure in Greece (Law n. 2882/2001 as it has been amended), a number of properly formulated questions (“What is the legal protection against the expropriation of real property?”; “Is it permitted expropriation extension to nearby properties?”; “Is it possible expropriation without compensation?”; and “Is it allowed revocation & lifted ipso jure of a concluded compulsory expropriation?”) are discussed, reviewed, answered, and projected both to ECHR (i.e. the right to real property under the ECHR) and to upcoming DLT / Blockchain era. In particular, the concept of “ownership” in Human Rights Law is discussed over the (autonomous) interpretations of the critical (Art. 1 Prot. 1) ECHR terms “possession” and “property”.

The ECtHR has had a significant number of Article 1 cases up to 2006 particularly in matters of expropriation (v. Greece). But, after the introduction and ratification of the Greek Law No. 2985/2002 the number of cases before the Greek Courts and the ECtHR declined significantly. This is due to both (a) The adaptation of the Greek State to the infallible truth of the case Law (ECHR Art. 1 Prot. 1); and (b) The more effective administration of justice by the Greek Courts. Blockchain is a new data structure with great recording, synchronised (sync), and sharing functionalities used in distributed ledgers (DLT; peer-to-peer networking). In Blockchain the real property “data” and the asset ownership “transactions” are stored and transmitted in (cyber-cryptographic security) validated packages/blocks connected each other with pointers (i.e. Block-Chain). Regarding the ECHR Art. 1 Prot. 1, a new autonomous Case Law interpretation adopted by the ECtHR is needed for the term “possession” regarding the property rights hosted in these DLT / Blockchain blocks (i.e. an Art. 1 amendment interpretation to welcome decentralized ledgers).

The rest of this assignment is organized as following. In Section 2, the expropriation and due compensation procedures in Greek real property law are presented. In Section 3, the right to real property ownership in Greece, as it projected to the ECHR, is discussed. Actually, in this Section the compatibility of the Greek real property legislation v. to ECHR Article 1 of Protocol No. 1 (“protection of property”) will be demonstrated. Finally, in Section 4, the state-of-the-art real property management in the DLT / Blockchain era is introduced and critical issues regarding decentralized digital ledgers for real property registration, ownership ECHR rights in a DLT conflict-free environment and due compensation payments in crypto-currency are discussed.

## **2. The Expropriation & Compensation in Greek Real Property Law**

In Greece, “land expropriation” and “contribution in land” are the main ways for the state to acquire the necessary land for public spaces and activities in rural and urban areas as well [2]. Normally, the local public authority (Peripheral Unit) and the owner reach an agreement regarding the due compensation. Otherwise, the compulsory expropriation procedure, the methodology for the due compensation amount determination, and the rights for the exploitation for both, the responsible central state authority (General Secretariat for Development) and the owner, are described by the Greek Expropriation Code [3,4].

### **The Greek Law No. 2882/2001 (“The Code of Obligatory Expropriation”)**

In Greece the Law n. 2882/2001 is bringing forth the Code on expropriation of immovable property. Actually this law brings forth the Code of compulsory acquisition (expropriation) of immovable property, and consisted of two articles (ratification of the Code and entry into force). The Code sets out: the rules and conditions under which the

Government may expropriate a person's ownership or other rights in or to immovable property for public purposes (Chapter A', art. 1-6); the procedures governing the conduct of the act of expropriation (Chapter B', art. 7-10); the conditions for cancellation or revocation.

### **The Compulsory Expropriation Procedure**

Generally, the following steps constitute the real property expropriation procedure within the Greek legal framework (Greek Law 2882/2001 – “Expropriation Code”) [5]:

(a) Collecting the Prerequisites (Declaration of Expropriation). In order to issue a “Declaration of Expropriation” the following documents are collected from the Hellenic Public Real Estate Corporation: (i) Cadastral Table (landowners); and (ii) Cadastral Diagram (area expropriated) [6].

(b) The “Declaration of Expropriation” Statement. This is an administrative decision issued by the General Secretariat of the due Region/Periphery or in case of a great national importance by the Government Cabinet. The “Declaration of Expropriation” is compulsory and it is published in the Official Government Gazette. On publishing this declaration the General Secretariat of the due Region dispatches a copy of the “Declaration of Expropriation”, the Administrative Act, the Expropriation Act, and two copies of the cadastral diagram and cadastral table, to the Greek Ministry of Finance and to local media as well. Finally, a copy of the “Declaration of Expropriation” is dispatched to the due “Cadastral” Office (or to the “Transcriptions and Mortgages” office) responsible for the private real property registration. For the State property the “Declaration of Expropriation” is dispatched and to the Hellenic Public Real Estate Corporation as well [6].

(c) Real Property Purchase/Exchange. The Greek State, as it represented by the General Secretariat of the Region, could “buy” (price determined by an evaluation committee) or “exchange” (the beneficiary get a real estate equivalent). In any case, both “buy / purchase” or “real estate exchanging swapping” must be completed before the juridical decision publication on compulsory compensation (if any).

(d) Beneficiaries Recognition. The General Secretariat of the Region has the assiduity for the recognition of the litigants (i.e. the beneficiaries and the applicant). For both cases a juridical decision is issued and the necessary documents are provided by the Hellenic Public Real Estate Corporation [6].

(e) Due Compensation Determination. For the final due compensation determination, the follow steps are needed: (i) Real property value estimation (by a local or national valuation committee); (ii) Cadastral data correction or completion (in case of errors or shortcomings in Cadastral Tables and Cadastral Diagrams); (iii) Temporary compensation determination (1-member court of first instance). The one-member court at first instance adjudges the applications of interest and the judge determines the day for the trial. The applicant has the obligation to send a copy of the application to the beneficiaries and to invite them for appearance in the trial; and (iv) Final compensation determination (court of appeal). Within a 30-day period from the 1-member court decision, anyone (even not a litigant in the 1st trial) in interest is eligible to apply for a final compensation determination in a court of appeal. In all cases and before any discussion regarding application for temporal or final compensation, the court tries to achieve a compromise between the litigants. Then, if a compromise is achieved a notarial document is issued and under the power of the signature in this document of both litigants the due compensation determination is finished.

(f) Expropriation Consummation – Land Registry Recording. Following the conclusion of the compulsory expropriation, the expropriation is consummated with the direct payment of the due compensation to recognized beneficiaries or with the deposit in the Greek

Fund of Deposits & Loans. Then, the beneficiary is obligated to register the property right to the competent Cadastral Registry (court decision).

(g) Expropriation Recall & Withdrawal. The expropriation declaration authority should recall or withdraw it (partially or totally) before or after the consummation. In this case a publication in the Official Greek Government Gazette is needed and the decision is submitted to the local Cadastral Office. The expropriation recall or withdraw must be recorded in the Cadastral Office registers, otherwise landowner's ownership and the implicit real property rights are not recovered.

### **The Legal Protection against the Expropriation of Property**

In Greece the protection of property rights (*rights in rem; rights in personam*) are guaranteed by the Greek Democracy State [7]. Deprivation of “ownership” through a (compulsory) expropriation cannot occur, unless for (i) a public interest; (ii) a legislative provision compliance; and (iii) a due compensation [8]. In Greece, in general, the legal protection against the expropriation of any kind of property is the “Petition for Annulment” (in Greek: “προσφυγή ακυρώσεως”) before the national Council of State. In particular, the legal protection against the expropriation of real property is the “Petition for Annulment” before the Council of State and, by means of injunction measures, the “Petition for Stay” before the Suspension Commission of the Council of State.

### **Expropriation Extension to Adjacent Nearby Properties**

In important real property cases with a critical interest for the Greek national economy (e.g. new road networks/highways) or a general public interest, expropriation of adjacent real properties is permitted [1]. In this case the reasoning (economical benefits, great public interest, etc.) supporting the expropriation extension, as well as the related terms and the conditions, must be specified by the General Secretariat of the Region and must be published in the Official Greek Government Gazette [9].

### **Expropriation without Compensation**

The Greek Constitution, and even more so the so-called "property clause", was the result of a compromise; actually, the end product of rigorous negotiations. With the property clause, the inevitable need to protect then-existing property rights were posed against the need to ensure that land shall be shared among those who work it [1]. It was also evident from the start, that this would mean that large-scale real-estate reforms (like the “Thessaly rural reform”, 1917) [10]; would be necessary to provide equitable access to natural resources, and that this would have some impact on established private (real property) rights. Hence, in Greek real property law there are not concepts for expropriation without a due compensation like the “Land Reform Decrees” or the “Change of Possession Decrees” in Germany [11].

However, (a) persons or institutions or religious organizations presenting official “superior Othman titles” can demand land assignment to them without compensation [12]; and (b) underground tunnels (apparent neighbourhood benefit and community interest or hosting public utilities) should be built without any compensation, provided that they will be positioned at an appropriate depth and the usual exploitation of the (situated above) real property shall not be hindered.

### **Revocation & Lifted Ipso Jure of a Concluded Compulsory Expropriation**

A concluded compulsory expropriation should be revoked (partially or totally) if the competent Greek authority deems that it is not necessary for the so-called “public benefit” and the beneficiary accepts the revocation within a 3-month period. In Greece, the compulsory

expropriation also could be “lifted ipso jure” if it is not concluded within a one and a half years (18-month) period following the official publication of the Court decision.

### **3. The Right to Real Property Under the ECHR (European Convention on Human Rights) – The Greek Case**

In this Section the compatibility of the Greek real property legislation as compared to Article 1 of Protocol No. 1 (“Protection of Property”) of the European Convention on Human Rights (ECHR) will be discussed [13]. The right to any kind of property (real, intellectual, etc.), is regulated by Art. 1 of the First Additional Protocol annexed to the convention on Human Rights in March 1952. This Article No. 1 consists of two (2) paragraphs and entitled “Protection of Property” [13].

The 1<sup>st</sup> Paragraph states that *“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided by Law and by the general principles of International Law”*.

The 2<sup>nd</sup> Paragraph provides that *“The preceding provisions shall not, however, in any way impair the right of a State to enforce such Laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties”*.

The above Paragraphs referred to both *“possessions”* and *“property”*, but the ECHR does not contain any definition on these two terms. In contrast, the Inter-American Court of Human Rights has adopted a definition of the term *“property”* (Article 21; IACHR) [14]: *“Property can be defined as those material things which can be possessed, as well as any right which may be part of a person’s patrimony; that concept includes all movables and immovables, corporal and incorporeal elements and any other intangible object capable of having value”*. Also, in contrast to ECHR (Human Rights Law), the International Investment Law terminology speaks for *“Investment”* instead of *“Property”*, and the *“Protection of Property”* concept is referred as *“Protection of Investment”* [15].

The European Court of Human Rights (ECtHR), independently of domestic Laws, has adopted an autonomous interpretation of the term *“possessions”* [16]. Hence, in the case *“Beyeler v. Italy”* the ECHR said: *“Possessions in the first part of Article 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law...”* [17]. Also, similarly, the ECtHR autonomous interpretation repeated in a number of Greek related cases, e.g. *“Tsiridakis v. Greece”* [18]. In some cases (on the other hand) the ECtHR has given significance to the treatment under the domestic Law of the property in question before the interference. So, in the case *“Former King of Greece v. Greece”* [19]; the ECtHR said:

*“65. ...the Greek State itself repeatedly treated it as private property and had not produced a general set of rules governing its status. [This fact] prevents the Court from concluding that it had a sui generis and quasi-public character to the effect that it never belonged to the former royal family”* [20]. Also, similarly, the ECtHR gave significance to the treatment under the domestic Law of the property in question before the interference in a number of other Greek related cases, e.g. *“Papastavrou et al v. Greece”* (App no 46372/99) [21]; and *“Katsoulis et al v. Greece”* (App no 66742/01) [22].

Regarding the Greek constitutional provision on ownership rights, there are ownership restrictions (constraints and limitations) as mentioned above in the paragraph: *“The Legal Protection against the Expropriation of Property”*. In the Greek real estate market and under the ECHR concept, expropriation should be regarded as a special restriction (because of the

ownership totally disposing) regarding the “peaceful enjoyment” of a real property asset (property right).

Particularly, special Greek legislation underpinning disposal of rights to quarries, mining rights, underground tunnel rights, real property ownership and management in hot-water springs, archaeological sites, caves, etc. For instance, the Law 3498/2006 (amended Law 4844/1930) imposes a special land use and non-building distance restrictions (limitations) within a 1.000 m radius from a hot spring. Similar restrictions apply in favor for the Public Power Corporation (Law 3175/2003; amended Law 4483/1965) and the Public Gas Corporation Law (Law 1929/1991). All these restrictions, as an “ownership deprivation”, should be deemed as a de facto expropriation.

According to an article by Christos Rozakis (former Vice President of the European Court of Human Rights – Strasbourg) [23], the European Court of Human Rights (“Court”; ECtHR) always has had a significant number of cases of Article 1 up to 2006 particularly in matters of expropriation. But after the introduction and ratification of the Greek Law No. 2985/2002 the number of cases before the “Court” declined significantly. This is due to both: (a) the adaptation of the Greek state to the infallible truth of the case law (ECHR: Article 1, Protocol No. 1); and (b) the more effective administration of justice by the Greek courts.

**Greek Law No. 2985/2002** Adapting to the Greek Constitution the provisions of the Code on expropriation of immovable property (European property law). The first Article of the present law brings forth amendments throughout the text of the Code on expropriation of immovable property in order to comply with the provisions of the Greek Constitution. In particular, a new article (Article 7a) is added to the Code, dealing with the procedures governing the conduct of the act of expropriation. The second and last Article sets out the entry into force of such amendments.

### **Property Protection - Reviewing Greek Court Decisions**

Reviewing Greek court decisions, as they projected to ECHR and after its amendment by the Law 2985/2002, it should be said that has been developed from 2010 onwards a rich jurisprudence which affects a lot of property protection questions based on the three (3) key concepts of Art. 1: (i) “peaceful enjoyment” (a general clause); (ii) “no one shall be deprived of his possessions” (a common form of property protection); and (iii) “exclusions and limitations of property protection” (the restrictions; e.g. a regulated forced expropriation).

So, the recent Greek jurisprudence is referred to:

(a) A number of cases of the first sentence of Art. 1 (“peaceful enjoyment”), which is regarded as an “omnibus imperative” and is used mainly in cases concerning pension rights where there is not the necessary ground for the implementation of the other two key concepts.

(b) A number of cases of the first sentence of Art. 1 (“peaceful enjoyment”), regarded as immovable property expropriations remaining pending for a long time. In these cases we have restricting owner’s rights to a peaceful enjoyment (using or exploiting) of his property (ECHR violation). These cases do not fall in the “property deprivation” category (2nd key concept) and the Greek Courts were considered these cases in relation to the 1st key concept.

(c) A number of cases concern the State reasoning and the reviewing of the State responsibility to follow the expropriation procedure regarding the “property deprivation” (2nd key concept). A typical case in this category is the “Loizidou v. Turkey”.

(d) A number of cases related to the 3rd key concept, the restrictions (exclusions and limitations) of property protection. In this domain there are cases where the Greek State requires the landowner to plant trees in it for environment protection, cases with

seizure/confiscation of real property for non-payment of taxes (actually, a lot of cases thanks to economical crisis in Greece the last decade).

According to Christos Rozakis in the above cases the so-called “fair balance” has been examined ad hoc in each case and for every case. So, in one case the Court applying the “fair balance” concluded that the reduction of social security benefits did not violate the ECHR [23]. In contrary, in a case of a total interruption of the pension (“Apostolakis v. Greece”), the ECtHR has diagnosed an ECHR violation.

Finally, According to Greek Courts jurisprudence, an asset intervention by the Greek State does not automatically trigger a violation of the ECHR. The Courts always check the existence of supporting clauses that have led to this intervention.

#### **4. Real Property Management in the DLT / Blockchain Era**

In this Section, the state-of-the-art real property management with Blockchain functionalities as a Distributed Ledger (DLT) technology is introduced and critical issues regarding: (a) Decentralized digital ledgers for real property registration; (b) Ownership ECHR rights in a DLT conflict-free environment; and (c) Due compensation payments in crypto-currency are discussed.

Applications of this state-of-the-art technology already reported in corporate social responsibility (CSR), digital entrepreneurship, green management, corporate governance, etc. [24, 25, 26].

##### **DLT / Blockchain Property Management**

The term “DLT” refers to a new state-of-the-art technology (approach) for recording, synchronized, and sharing data (e.g. real property data) across multiple data centers or through the cloud computing. This is actually a Peer-to-Peer (P2P) technology because allows both “data” and “transactions” to be recorded, sync, and shared across a distributed network of computer servers (nodes) [27].

A trusted real property management must ensure both: (i) an asset (asset ownership) is only transferred by its true and legislative owner; and (b) the asset (asset ownership) cannot be transferred more than once (i.e. no double-spending functionality). Obviously, double-spending is a great issue in real property management particularly in digital networking environments. The DLT technology does solved the double-spending problem and guarantees transfers and keeping records authentication in real property management (with time, lawyer, and manpower much more lower cost).

Blockchain is a new data structure with great recording, sync, and sharing functionalities used mainly in distributed ledgers (DLT). In Blockchain the (real property) “data” and the (asset ownership) “transactions” are stored and transmitted in validated (cyber-cryptographic security) packages connected each-other (with pointers and algorithms) and called blocks [27].

##### **Decentralized Digital Ledgers (Real Property Registration)**

In the DLT/Blockchain real property management any (digital currency) property rights transaction, firstly is recorded and following is transmitted to the network in a data block, which after a validation procedure (by authorized network members) is linked to an existing chain for the real property’s right official registration in a DLT/Blockchain ledger (i.e. a digital decentralized ledger instead of alphabetic or digital centralized cadastral registers in European property law).

### **Ownership ECHR Rights in a DLT Conflict-Free Environment**

It is important to note that, as this linear block-chain grows, none of the old (earlier) blocks could be retrospectively altered by any authorized network member. Hence, DLT / Blockchain offers a great transparent and conflict-free functionality to real property management. Regarding the ECHR Art. 1, a new case law interpretation adopted by the European Court of Human Rights (ECtHR) is needed. Actually we need, independently of domestic Laws, an autonomous judicial interpretation of the ECHR term “*possession*” regarding the “*property rights*” hosted in these DLT / Blockchain blocks (i.e. we need an Art. 1 amendment interpretation to welcome in the Peer-to-Peer era the decentralized ledgers for recording and documentation purposes).

### **Due Compensation Payments in Crypto-Currency**

During the expropriation procedure and if a compromise is achieved, a digital notarial document should be issued and under the power of the e-signature of this document of both litigants, the crypto-currency payment (e.g. in Bitcoin, Ethereum, Litecoin, etc.) and the linking of all details as a data block in a DLT / Blockchain ledger, the due compensation is finished and the property rights transfer is completed in a transparent conflict-free environment [28].

## **5. Conclusion**

In Greece, the ownership rights protection (property rights, rights in personam, rights in rem) guaranteed by the State and it is under the ambit of Article 17 of the Constitution. Deprivation of such “ownership” in case of a compulsory expropriation is permitted for national economy and public interest reasons. Expropriation is regulated by the Law 2882/2001 (“The Expropriation Code”) as it has been amended.

Executive legislative is referred to the expropriation tools that should be used for ownership acquisition (or other *rights in rem*) in favor for the State, the public Sector, or even private entities but always for public interest and benefit. Also, there are special legislative provisions, deviating from the host expropriation Law, for fast-track, strategic investments, and shortening time-scales functionalities (national economy interest).

The protection framework to (real) property rights is the European Convention on Human Rights (ECHR) and the judicial organ of protection is the European Court of Human Rights (ECtHR). The ECtHR has developed recently a very rich jurisprudence, affecting the majority of property protection cases. The key concepts involved in ECtHR/Art. 1 reasoning are: “peaceful enjoyment” (a general clause); “no one shall be deprived of his possessions” (a common form of property protection); and “exclusions and limitations of property protection” (the restrictions; e.g. a regulated forced expropriation).

According to ECtHR jurisprudence (the same apply to Greek Courts), an asset intervention by a State does not automatically trigger a violation of the ECHR. It is important to know that, the ECtHR always checks the existence of supporting clauses that have led to that intervention.

In Greece, recently (last 10 years), just a smaller number of (real property) expropriation / due compensation appeals before the ECtHR is recorded; which should be attributed to the gradual adaptation by the Greek State and the Greek Courts of both: (a) The ECHR Art. 1 itself; and (b) The infallible truth of the recorded ECtHR case law juridical interpretations.

Finally, in the DLT / Blockchain era, a new case law ECHR/Art. 1 amendment interpretation adopted by the European Court of Human Rights is needed. Actually we need,



in order to legally welcome decentralized ledgers in real property management -independently of domestic Laws- an autonomous judicial interpretation of the term “possession” regarding the “property rights” hosted in DLT / Blockchain blocks.

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## **7. Competing Interests**

The Author has declared that no competing interests exist.

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