

The Shadows of Capital in Tirana's Giant Towers: Banks in the Struggle to Protect Loans. The Silent Clash with SPAK and the Importance of the Bona Fide Principle!

An analysis of the clash between real rights, public criminal interest, and legal certainty in the Albanian construction market.

(By Eduard Halimi and Arlind Ahmetaj)

1. Introduction: Towers, shadows, and the mysteries of financing. The legal risk hidden beneath them!

In Tirana, the construction of new towers is radically transforming the cityscape. Unlike its counterparts in Macedonia or Montenegro, where the building boom that began a decade ago has stalled and abandoned structures with rusty scaffolding and overgrown trees dominate the landscape, Tirana is experiencing an intensive construction boom—with cement mixers operating 24/7—at a pace rarely seen even in more developed European cities like Milan and London!

When a client/friend recently told us that authorities were rejecting his 20-story project in central Tirana because the Prime Minister was allegedly requiring a minimum of 30 stories, we were skeptical. But after hearing a renowned European architect state at a recent event that the Prime Minister was personally involved not only in the height but also in the design and color of each tower's façade, we conceded. The client began to revise the project. But that was the easy part. The difficult part, as for any investor, was: financing—the money needed for a project that would increase by at least 10 floors and 30% in value.

Today, Tirana is the main hub of construction development in Albania, and Vlora is likely to become the second in the near future.

But Tirana is neither Milan, Monaco, nor Dubai, where the demand for purchasing buildings is naturally extremely high. The explosion of construction valued at tens of millions of euros in Tirana has raised a central question about mystery number one: ***Where does the financing come from?***

A year ago, Albania was removed from the Moneyval grey list, just like the United Arab Emirates recently. However, beyond legal bank financing, there is a growing public concern—fueled by data from mass surveillance platforms like Sky ECC and EncroChat, part of Operation “Vanilla”—about the involvement of criminal organizations in money laundering schemes through real estate investment. These concerns, along with the rather persistent efforts of the prosecution, have turned the construction market into a high-risk sector.

Public concern about the capital shadows in the rising towers stems from the suspicion that financing might be occurring outside the banking system. Could the capital come from informal chains starting with “the boys” in Dubai, Antwerp, London, Guayaquil, all the way to command centers of the criminal networks mentioned in the Sky ECC and EncroChat files? Is this a real threat or an urban legend? This is a real challenge for the state—but also a direct challenge for the banking system, which, through “compliance” rules, contractual integrity, and registered encumbrances, tries to stay protected in a market where capital circulates with less legal and financial oversight than anywhere else in the region.

Yet, the banking sector cannot remain outside this significant wave of economic development. It was skeptical of financing PPPs a few years ago—and rightly so—but it cannot remain disengaged from the construction market. Precisely in this complex terrain, our role as legal advisors to banks is to safeguard the legality and security of financing, to assist banks in risk management, and to uphold public trust.

In our daily legal counsel, we advise banks to:

- Maintain and continuously update compliance programs, regardless of market shifts;
- Remain cooperative with the prosecution and document clearly the potential damages—whether financial or reputational—that a criminal investigation could bring;
- Exercise heightened caution in high-risk markets.

It is important to emphasize to the public: banks do not “produce” money—they manage the savings of ordinary citizens, which they invest through lending, always backed by real guarantees (collateral). Nevertheless, even when banks follow all procedures and secure loans with real estate, situations arise where the property (i.e., the tower under construction) becomes subject to criminal seizure due to investigations into money laundering or organized crime.

In such cases, while the real guarantee (mortgage) is supposed to be a security mechanism for the bank in recovering the debt, it may fall victim to criminal confiscation, as property suspected to derive from criminal activity. This poses a serious threat to the legal security of bank financing and citizens' savings.

Albanian courts are increasingly facing this delicate dilemma: how to balance the legitimate rights of banks—as third parties acting in good faith—with the public interest in combating money laundering and organized crime?

This article aims to analyze these developments, offering possible solutions and lessons learned from European practices and cases we've handled in supporting banks in their mission for sustainable economic development and legality.

2. Banks and Developers. The Mortgage Right: The Legal Backbone of Bank Financing

The mortgage, as a legal instrument, is fundamental to the relationship between the developer-borrower and the lending bank. It ensures that, in the event of non-payment, the bank has the right and opportunity to execute the property and recover its debt through enforcement procedures.

Article 560 of the Civil Code grants the bank the right to claim repayment of the debt from the debtor's real estate through a real right. This right is acquired and guaranteed before the bank releases funds toward the tower's construction, through its registration with the Immovable Property Registration Office (ASHK), as a note in section "D" of the corresponding property title.

However, in recent years' experience, registration alone has not proven effective. The government attempted a digital register for new constructions in 2020 to protect both banks and buyers, but the project stalled. If the property under mortgage is involved in illegal activities, it may become subject to criminal measures, including preventive seizure and eventual permanent confiscation—transferring ownership to the state.

Thus, the bank's responsibility is not limited to the formal registration of mortgage contracts or security interests. The *compliance process* within banks must include: (i) Verification of property title; (ii) Registry checks for blocks or other annotations; (iii) Due diligence on the borrower (the developer and shareholders if it's a company) for ongoing or past criminal proceedings.

Without proper verification and proactive actions by the bank, it risks losing the protection offered by the principle of good faith (bona fide).

3. SPAK and the Banks: Allies of the Public Interest or Misunderstood Parties? When the Collateral Becomes a Criminal Object. Should the Whole Tower Be Seized or Only the Suspected Segment?

In Albania, the increasing number of cases where properties used as bank collateral have been seized by the Special Prosecution Office (SPAK), in the context of money laundering or corruption investigations, has raised some fundamental questions:

- Is the bank a "protected third party"?
- Should the bank lose its collateral due to the debtor's behavior?
- Have the bank's rights to a fair process been respected?

- Should the entire tower be blocked, or only the respective share/portion?
- Who should decide whether the suspected asset in a tower belongs to the construction materials company?

Cases show that banks are often not invited to participate in criminal proceedings as parties with a legitimate interest, which violates their right to be heard as guaranteed by Article 6 of the European Convention on Human Rights (ECHR). The process of confiscating assets and transferring them to the administration of the Agency for the Administration of Seized and Confiscated Assets (AAPSK), and eventually to state ownership, proceeds without the presence of the bank, thereby depriving it of the right to collect the debtor's obligations.

In a market with investments approaching 1 billion euros in just a few years, if banks begin refusing to finance the tower market out of fear of asset seizure, the domino effect could trigger a construction crisis with serious social and economic consequences.

On the other hand, if the Prosecution begins to automatically freeze towers without involving the banks, this would lead to apocalyptic social and economic scenarios.

We advise banks to take an active role in criminal proceedings where asset seizures or confiscations are ordered over properties on which they hold real rights. Our advice differs from that of other lawyers who merely oppose the Prosecution's seizure or confiscation orders. We advise banks not to enter into the dispute between the Prosecution and the accused or defendant — that dispute is between them. However, if the Prosecution imposes asset security measures, it must recognize the real rights of banks. **There is no need for banks to be in conflict with the Prosecution.** Both have a public interest to uphold and must work together to safeguard it — the Prosecution to maintain public order, and the bank to protect the money of citizens.

At its core, the purpose of criminal legislation regarding asset confiscation is to punish and prevent the perpetrator of the criminal offense from enjoying the benefits and profits that result from violating criminal law. But does the public interest truly benefit from preventing financial institutions from executing their claims over such assets?

In prior years, Albanian court practices largely ignored this issue, relying on a “dry” reasoning that mortgage and collateral matters were entirely civil in nature, leaving the conflict unresolved and directing parties to civil courts. However, when a criminal subject’s assets were entirely confiscated, this legal diversion left financial institutions unprotected, as there was no recourse for enforcing their financial claims.

The incinerator cases and several others prosecuted by SPAK and ordinary prosecutors have led to some important developments in line with international practice, maintaining the mortgage

rights of financial institutions acting in good faith, even when the asset is transferred to state ownership as a result of confiscation — following the principle that the mortgage follows the fate of the asset.

In a country where a law on civil confiscation exists, but where the judiciary is in a state of collapse and judges face overwhelming caseloads and pressure, it is imperative to have standards in place to protect banks against a criminal system that heavily favors the state as the absolute beneficiary.

In Conclusion: The mortgage, as a tool for banks to recover unpaid debts, should not be ignored. Financial stability and the protection of third parties — especially banks that manage the wealth of citizens — are public interests just as vital as the fight against organized crime and the laundering of criminal proceeds. Law enforcement authorities, banks, and courts must work together, recognizing that these two interests are not mutually exclusive. Both can be achieved by conducting thorough due diligence on borrowers at the time of application and isolating only the suspected portion of the property in case of confiscation.

4. The *Bona Fide* Principle: A Shield or an Illusion?

We advise banks to place great importance on prior verification and to document it thoroughly, because for us as legal professionals, the bona fide principle is a cornerstone of the legal system — particularly in commercial relationships. It aims to protect third parties acting in good faith, relying on officially registered titles. The legal evaluation of this principle, even in the context of criminal investigations, must not remain an illusion but must serve as an effective tool for protecting the interests of third parties.

This legal debate has already been explored by international institutions and courts, and to assess its application, we will analyze several key practices.

Directive 2014/42/EU of the European Parliament on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union states in Article 6 that: "*only those natural or legal persons who enter into financial agreements with subjects with knowledge of their legal issues, or with the intent to assist in evading confiscation of the property by enforcement bodies,*" shall be penalized.

The Palermo Convention, in Article 12, point 8, in the context of due legal process, provides a series of safeguards for individuals subject to preventive property measures and third parties, stating that State Parties must not infringe the rights of third parties acting in good faith during asset confiscation proceedings. The Council of Europe Convention on Laundering, Search, Seizure

and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention) in Article 21 similarly guarantees protection for third parties acting in good faith.

4.1 Strasbourg (ECHR) Jurisprudence: 21 Strasbourg Cases That Can Guide the Albanian System

In the cases *Canea Catholic Church v. Greece* (para. 50), *Glod v. Romania* (para. 46), *Albina v. Romania* (para. 43), *Lungoci v. Romania* (para. 48), *Yanakiev v. Bulgaria* (para. 82), the European Court of Human Rights (ECHR) has stated: “*Where a party is not granted access to court in violation of Article 6 of the Convention, and this is linked to the right to property under Article 1 of Protocol No. 1, the Court must not speculate as to what might have happened had the subject been party to the proceedings — it must find a violation ipso jure.*” Banks should be treated as third parties in these proceedings.

Furthermore, in the cases *Andonoski v. North Macedonia*, no. 16225/08, §§12 and 36, 17 September 2015; *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, §48; *Yasar v. Romania*, §49; *Aktiva DOO v. Serbia*, §7 — the Court found that denying third-party intervention where the confiscated object was the property of such third parties amounted to a permanent deprivation of property, violating the ECHR (notably Article 1 of Protocol No. 1). In *Gladysheva v. Russia* (2011), the Court emphasized that: “*The right of a party who has bought a property in good faith and registered it under the law must be proportionally protected, even if the initial title was defective. The state is responsible for ensuring legal certainty in transactions and must protect those who act in good faith and in accordance with the law.*”. This is directly analogous to situations where a bank mortgages a property that later becomes subject to criminal investigation. If the bank acted in good faith, it must be protected under the European Convention.

Crucially, the Court has also stated: “*Recognition under national law of a third party’s right to seek damages for harm caused to their property by the accused does not constitute an effective remedy for the protection of this right (the right of property/acquired real rights in good faith), especially when the accused may not be in a position to pay damages.*”. In *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia* (see also *Bowler International Unit v. France*, no. 1946/06, §§44–45, 23 July 2009; and *Vasilevski v. North Macedonia*, no. 22653/08, §57, 28 April 2016), the Court held that: “*A compensation claim does not offer the owner in good faith a sufficient opportunity to bring their case before competent domestic authorities.*”. In *Gogitidze and Others v. Georgia*, paragraphs 105 and following, the Court clearly ruled: “*Assets of third parties can only be confiscated where the bona fide element is absent, i.e., when the purpose of the transfer to this third party was to conceal the asset subject to confiscation.*”. The Court expanded this principle further in cases such as *Raimondo v. Italy* (para. 30), *Arcuri and Others v. Italy*, *Marabito and Others v. Italy*, *Butler v. UK*, *Webb v. UK*, *Saccoccia v. Austria* (para. 88), *Silickiene v. Lithuania* (para. 65), all of which held that: “*The confiscation of property under*

investigation for criminal offenses may only extend to third parties when those third parties have not acted in good faith (bona fide)." Moreover, the Court has clarified that close family members and relatives are presumed to act in bad faith. This presumption, however, does not apply when the third party is outside that circle — and even less so when the third party is a financial institution.

4.2 Case Law of the Luxembourg Court (CJEU): Two Relevant Decisions, Banks and Albania

In decision C-752/21, dated 9 March 2023, the CJEU assessed that: *"National legislation must explicitly include provisions allowing appeals against decisions that produce legal and economic consequences, such as the seizure of property owned by a natural or legal person. National legislation that excludes a third party from the category of persons entitled to appeal the seizure of property they own is not compatible with European Union law."*

In the case T-Mobile Netherlands BV and Others (C-8/08), the Court emphasized that the protection of legal certainty is part of a fundamental right within the EU legal order. Parties relying on official documents, such as property registries, cannot be held liable for unlawful actions they could not have known or controlled.

In Conclusion: The case law of both the ECtHR and CJEU has exhaustively analyzed two key issues. First, third parties must not be stripped of their ownership or real rights without being called into the proceedings to be heard. Second, if such parties prove they have acquired those rights in good faith (bona fide) and exercised the proper duty of care, those rights should not be infringed.

5. International Practices in the Construction Sector: Anti-Mafia Laws, Crime, Banks, and Collateral in EU Countries and the USA

No European state allows the automatic confiscation of assets or buildings under a real security interest (mortgage) without verifying the good faith and transparency of the bank at the time the loan was issued. Albania cannot be the exception.

In Italy, even during the height of anti-mafia operations, bank mortgages are protected if it is proven that the bank acted in accordance with the law—because lending is not collusion, but an economic necessity.

In all EU countries, bank mortgages are considered part of the state's financial stability. Interfering with them without clear legal process and without hearing the bank is not justice—it is a systemic risk. Law no. 159/2011 ("Anti-Mafia Code") in Articles 20-28 provides that seizure and confiscation can extend to third parties, but only if their collaboration or knowledge of the criminal origin of the assets is proven. The Italian Court of Cassation (United Sections) has ruled in several

cases (e.g., Sez. Pen. no. 39201/2021; Sez. Pen. no. 13024/2023) that third parties retain their real and property rights so long as they have not collaborated or had knowledge of the criminal origin.

According to §73b(1) of the German Criminal Code (StGB), the confiscation of property can affect third parties only if they did not acquire the rights in good faith. **The German Constitutional Court** has made it clear: banks' real rights are part of the fundamental right to property. Criminal seizure cannot erase bank collateral as if it never existed (Article 14 of the Basic Law – German Constitution).

In France, every third party with a real right over a seized asset must be notified and heard during the legal process. In Albania, this happens rarely—and often, not at all.

In the United States of America, in the case *United States v. Huntington National Bank*, 682 F.3d 429 (6th Cir. June 14, 2012), the court reasoned that: “the good faith purchaser rule applies also to financial institutions because the bank 'purchased' its security interest in a legally created asset, and because the bank had no knowledge of the borrower’s criminal activity at the time it acquired the interest in the asset subjected to forfeiture.”

In Conclusion: By analyzing various international legal practices, it becomes clear that the position of the bona fide third party is protected, and confiscation should only apply to the criminal subject or third parties who, through civil-legal acts, aim to conceal or obstruct confiscation. Foreign investors and EU banking groups do not invest in markets where property under a bank mortgage can be confiscated without being heard, without warning, and without compensation. No EU country allows this. Albania cannot be an exception.

6. Conclusions and Legal Advice for Bank Lawyers Concerning Skyscrapers in Tirana

For more than 20 years, our focus on the banking system and its protection has made us modestly successful in our legal advisory work. The banking system is the most regulated sector in Albania. 80% of banks are subsidiaries of their European parent companies. In Albania, banks could not stay out of a market that is rapidly developing. However, this market presents significant risk, especially as the treasure of operation "Vanilla" continues to reveal transfers of gold and suitcases of unbelievable value.

If banks are forced to pursue only “risk-free” projects in a market that even the authorities have failed to properly monitor, then this is a recipe for stagnation. If banks withdraw from financing towers, developers will resort to informal funds, and if the developer feels safer than the one seeking a loan from a bank, then we don’t have a system crisis—we have failure and a slide into a banana republic.

To minimize legal risks, banks and their legal advisors should:

- Maintain strong compliance programs—regardless of market volatility.
- Collaborate with the prosecution and document potential damages a criminal investigation might cause (financial or reputational).
- Be cautious in high-risk markets—especially where criminal organizations or hostile foreign states may be involved, such as in the construction of towers, resorts, or other areas.
- Develop rigorous procedures for verifying ownership and its history.
- Obtain notarized declarations and legal guarantees from developers regarding the origin of funds.
- Use preliminary agreements with clauses on transparency and criminal background checks.
- Request official information from justice authorities about whether the developer is subject to criminal proceedings.
- Seek to be represented as an interested party in criminal proceedings that affect collateral.

All of the above will guarantee them the application of the bona fide principle, which in a mysterious market of financing and towers under construction is not an illusion, but our tool as lawyers to defend them in court proceedings.

And if we have this tool, the banks are protected, the investors are protected, and so are the public and citizens' deposits.

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