

Report on the Process of Urban First Registration and Other Issues

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The Terms of Reference for work to be accomplished during this visit included the following:

Urban First Registration – This topic included a number of issues. Most important was a review and recommendations concerning the process in general, a consideration of the period of display under Section 25 of the Immovable Property Registration Act, and a consideration of some of the specific issues concerning the accuracy of registration information.

A review of the concept of the “Bulletin” which is being developed to deal with problems encountered by Registrars and Coordinators.

Procedures for the delivery of first registration matters from Coordinators in the cadastral zones to the Registrars in the IPRS.

A further view of the drafts of the Public Property Law and specifically whether there should be one general law or a separate law on the registration of public properties.

Relations with the Faculty of Law.

Training programs to involve the Notaries and Registrars as well as employees of the IPRS. Amendments to the Immovable Property Registration Act with specific reference to the provisions “Access of Information” and “Display Period.”

1. Urban First Registration

1.1 General problems of the urban first registration process.

The system of urban first registration should have two immediate goals:

The completion of the inventory of the properties that have been privatized and registered in the Hipoteca since 1991; and

An ongoing consideration of properties that are involved in transactions since privatization.

The procedures involved to reach each of the goals requires varying processes. However, the same background information is required to facilitate reaching each of the goals. First, a map must be prepared of all the properties located in the cadastral zones included under the jurisdiction of a Coordinator. Second, once the relevant Index Map has been prepared, unique numbers, according to the adopted formula, should be assigned to each of the properties. The background information should include the number of apartments or other units in each existing building as well as all other background information that is necessary to facilitate the first registration of urban immovable properties.

1.2 Options for Resolving Problems

In order to move as many properties as efficiently as possible toward first registration, the following option could be followed for each of the goals mentioned above:

1.2.1 Completion of the inventory of Hipoteka files

Background: The office of the Coordinator [an employee of the PMU] has the responsibility for reviewing and completing an inventory of all Hipoteka activities since the beginning of privatization (1991) in order to clarify the history of all properties and to move them towards first registration. This process involves two steps:

Step 1. Prepare the inventory of all documents that are in the Hipoteka files, relating (or assigning) them to the respective cadastral zones of the Registration Office. Where possible, coordinators begin with apartments. When apartments are finished, other types of property will be inventoried. The inventory is entered on a data sheet that will provide information from all prior and related documents. These documents indicate some past history relating to that individual parcel of immovable property.

The rate at which the inventory can take place has been carefully calculated by a number of individuals. For Tirana District there are approximately 40,000 documents that have not been inventoried, according to the statistics of the Coordinator's office. The Coordinator is authorized to hire twenty persons to do this work. At present there are 12 people in the office. It has been suggested that desks and other basic supplies be acquired and the office staff be increased to the full complement of twenty people.

The PMU has urged its Coordinators to complete the Hipoteka information recording as soon as possible. This requires completion and evaluation of the inventory as well as first registration. In order to expedite the process, the Coordinators hire (or should hire) as many people as he/she is authorized. If a full complement of 20 people is assigned to the Coordinator (in Tirana District) and ten of them are assigned the duty of preparing the basic inventory, it is estimated that each person can prepare inventory sheets for 100 properties a day. If the 10 persons mentioned above [as we progress through this scheme the other ten people working in the Coordinator's Office will be accounted for] are working on the preparation of the inventory, 1,000 properties can be completed each working day, or optimally 5,000 each week. The Tirana Coordinator estimates inventory will be completed by the end of July, 1999. However, this is for Part A of the inventory sheet only. The next step, part B of the inventory sheet, requires the employees to assign the documents to the relevant cadastral zone and give the document an IPRS number. At this time, the Tirana Coordinator is unable to estimate how long this linkage between the Hipoteka system and the IPRS will take.

1.2.2 Inaccurate and Non-legal Documents Deposited in the Hipoteka Offices

Once the inventory and linkage is completed, it is necessary to check the accuracy of the record of each property and record the history. This requires a team of two persons who review the legal and topographical information property-by-property. As this process is more complicated, it is estimated that it can only be completed at the rate of 25 properties per day per team of two. The work should be completed at the rate of 125 properties per team per week. If there are three teams working on the accuracy-check of the properties, they should

complete 750 [125 x 3] properties a week, or 3,000 per month [750 x 4]. It should take a maximum of 17 months, or slightly less than a year and a half to complete all of the apartments in the 25 cadastral zones that are under the jurisdiction of the Tirana Registration Office.¹ Once again, the figure should be adjusted upwards for absences, inefficiencies and other unforeseen events. We consider the estimate of 21 months to complete accuracy checking as optimistic.

The process should not be difficult. First of all the accuracy check should only be made back to the time of initial privatization in 1991. In Tirana, the privatization records from the National Housing Agency are virtually complete. Complications may arise among those apartments that have been transferred since 1991. However, it is estimated that a vast majority of apartments have not been transferred at all. That means the majority of the data which has been entered on an A3 [the size used in the registry] Kartela will be accurate. There will be a number of properties that will have been transferred by sale, gift or some other method to a second or third person. Again the estimates are that if there has been a transfer it is more likely than not that there has only been one transfer. This does not lead to a very complicated situation, although it will be time-consuming to integrate the inventory data with the data from the National Housing Agency. In fact, the only difficulties with apartments will be in the cases where there have been a number of transfers in the past eight years or there have been some unrecorded transactions. These can all be accommodated by the new system, even in cases where there are some irregular deals. If the team checking the accuracy finds insurmountable problems with the documentation, the property should still be sent forward for computerization and display, but first the Registrars under the recommendations of the Coordinators, should note a caveat or restriction in the Kartela in Section E. This will put any possible buyer on notice that there is something irregular about the property. In sum, it is the duty of the Coordinator's office to ensure that first registration is as accurate as possible. However, even if there are difficulties it is possible to include a notification of the type of difficulty to put any future buyer or renter, etc. on notice, and thereby complete the first registration process quickly.

When the apartments are completed, the inventory team will begin the first registration of all other properties in the urban zone until all the properties of all types are completed.² It is likely that there will be more problems with the non-apartments in Tirana. For example, there are a number of properties that have been registered through *vertetimet e faktit*, factual declarations of ownership made before a court. Since 1994, when the Civil Code was passed, it is illegal to use a *vertetimet e faktit* for purposes of declaring ownership. However, there are many such documents for properties deposited in the Hipoteka Offices.

¹ . This number will actually be decreasing as there will be ongoing transactions in properties that will not have been included in the basic inventory, but will not have had their accuracy check completed. Their accuracy will be checked as the transaction is reported and will therefore reduce the overall number of properties whose accuracy must be checked.

² This Report does not consider the properties other than apartments. However, the process for all properties should be the same. The apartments should be completed first. It is felt that there will be fewer problems among them and that the first registration process can be completed quickest because of the fewer problems.

There are also false documents, documents which illegally describe the properties involved in transactions and documents which cannot be registered due to incomplete information. The most common examples found in the Hipoteke are:

- 1) "vertitim e fakti" court decisions, issued post August, 1994.
- 2) Related to the Vertitim I Faktit (ViF)- gift or other contracts which try to hide the ViF origin
- 3) Incorrect names in the transaction documents, which do not correspond to the names of the previously documented acquirers of interests in the properties (e.g., not all co-owners included, inaccurate spelling, etc.).
- 4) Acquisition of ownership rights to land (trual) when in the previous transactions only interests in the building were transferred.
- 5) Properties whose boundary descriptions do not match previous transaction documentary descriptions.
- 6) Unsigned, unstamped documents from institutions some of which result from negligence or oversight on behalf of the institution, others are completely false.
- 7) Illegal Court Decisions- for example a court decision which gives more land than the KKP (Restitution Commission) awarded to an ex-owner.

Where the Coordinators and their teams detect such cases, they should recommend to the Registrars that they make a notation on Section E that clear title to the property may be in question. In any case, the use of this system will make transparent the irregularities that exist. Any potential buyer will be able to make a decision based on the full record reported on the Kartela, including notification of irregular transactions.

Properties that have a questionable history or cannot be verified for their accuracy, should not delay the first registration process. There are two options:

- 1) The problematic cases could be separated from those with no problems. For those properties with incomplete or inaccurate documents, an option to consider is to have a special investigation team attempt to clarify the questions. If, after special investigation, the problem is resolved the property should go into the pool of properties that are moving forward to first registration. If it is not possible to clarify the situation after a reasonable further investigation and review, the property should be sent forward for first registration with a notice of the specific problem entered in Section E of the Kartela informing the public of the nature of the problem. The

display of properties with special problems and notations should be displayed separately from those whose accuracy is not in question.

2) The kartela for any property with an irregular document in its title history since 1991 is marked with a caution in Section E. The owners involved are responsible for correcting the irregularities, and no further time is spent by the Coordinators in investigating how to correct the irregularities. To complete first registration as quickly as possible, this would be the preferred option. However, where greater accuracy and completeness is desired, the first option would be preferred.

The properties that have been inventoried and verified for accuracy should move toward the completion of first registration as quickly and efficiently as possible. It is recommended that every month [or other period as may seem feasible, see Section III below] the properties which have been inventoried and their accuracy checked should be prepared for submission to the agency that does the computerization of the properties and prepares them for display.³ If there is a transaction on a property that has been submitted for computerization, the information for the Kartela should be updated until the period of display commences, and a special log be kept of these updates. The corrections can be noted on the first printing following computerization, with a note for each case in the special log that a correction has been made. The special log for transactions involving properties with kartelas prepared, should continue to be maintained. All changes after the first printing should be manually entered on the second printing.

No transaction should be allowed on any property during the last 30 days of the display period. It is anticipated that the Registration Act be amended to shorten the period of display, for some properties, to a period as short as 30 days. The fact that there will be no transactions allowed during the last 30 days of the period of display will not negatively affect the land market as the period is not overly long. For transactions that have taken place during the period of computerization, but have been completed too late to be included on the Kartela, a written amendment can be included in the display.

It is recommended that the display take place at multiple sites, including the print media, to ensure that the legal standard required of notice be satisfied. In fact, it is specifically recommended that the display of apartments includes the entryway to the apartment building where the apartment is located and where all persons pass to enter the building. At a minimum a notification of the display should be placed in each stairway of apartment buildings, telling people where to view the information about the legal owners of apartments and the recording of other rights to apartments.

³ It has been reported that because of the various readings that are necessary and display [which is now a 90 day period], it can take up to eight months before a property is ready for first registration. This is not acceptable. In fact, this unacceptability has been mentioned by many of the people who work with first registration and it is strongly recommended that an alternative procedure be developed by the PMU to deal with the computerization and display of the properties.

1.2.3 Procedure on properties that have transactions during the inventory and checking period.

Beginning on 1 January, 1999, kartelas (A4 format) have been prepared for properties involved in transactions for which documents have been deposited in Hipoteka. In these cases, the property is located on the provisional Index Map, its number noted on the kartela, and the transaction history of the property determined from Hipoteka documents recorded on the Kartela. With the inventory sheets completed, such notations are done relatively quickly. The time-consuming part of the process is to deal with the properties that have had a transaction, but are not yet checked for legality and accuracy .

When a person comes to the Registry Office to present a transaction, it could be helpful to have a person from the Registry staff located at the door of the Registry and scrutinize the documents that a person brings to report the transaction. One option is to require that the Notaries investigate the complete chain of title back to 1991, and not that chain in a title abstract, giving an opinion about the legality of every transaction. Under this option, if the Notary simply sends the contract of sale, or lease or gift, etc., and does not present any history of the document, the person at the door should give the documents back to the applicant and request that the Notary fill in the Forms which call for data on the history of the property. Such an option would require that the Notaries have staff to investigate the chain of title, and that these individuals would be given access to the Hipoteka archives to complete their investigation. The cost of this investigation would presumably be paid by the buyer.

Another option, which is presently used, is for the Coordinator to search the Hipoteka documents for the chain of title to be recorded on the Kartela. This option puts the burden of time and cost onto the project (Coordinators and staff) for investigating the chain of title. Consideration should be given to these two options, to see which results in a more rapid and more satisfactory first registration of urban immovable properties.

Once the IPRS is totally in place, this will be a very simple process as it will all be evident on the face of the Kartela.

For either option, it would be helpful for the Registrars with a large number of Hipoteka transactions, to have a clerk checking the documents as they arrive for accuracy and completeness. Those that are acceptable should be given a number [as is done in some retail establishments] and the person bearing the documents should wait in the outside waiting room of the Registry where the benches are located. The persons coming to the Registry shall enter to have their transactions dealt with in the sequence of their numbers. There should be no more than five or six people at the Registry window at any given time. Therefore, with at least two persons from the registry staff dealing with transactions, it would be possible to process a large number of customers a day. If the traffic in the office warrants, there should be at least two additional persons who can leave their posts and act as additional receptionists to receive and process the transactions that are being presented.

Once again, it is highly unlikely that in dealing with apartments any very complicated situation will be encountered. There should be a maximum of just a couple of transfers. This would not necessarily be the case in dealing with other types of property. . In non-apartment properties there are likely to be more irregularities or vertetimet e faktit's noted in Section E.

Nonetheless, every daily transaction should be processed with the idea that it will go forward towards first registration

When the accuracy check is completed, and the documents are considered satisfactory for the first registration process, they can be prepared for computerization and display. Again the properties that are ready for computerization and display, could be sent every month [or what ever the designated period might be] to the agency that does this. So all the properties that have transactions, which have not yet been checked for accuracy in the usual systematic inventorying process, should be considered as the transactions are brought to the registration office. It should be noted, that these transactions should be considered as they take place and will be moved forward toward first registration.

These properties that have transactions shall be moved forward and notations shall be made concerning their status in the first registration process. It is possible to keep records of all the properties that have been prepared for first registration, by cadastral zone, property type, or any other incident that is felt necessary. If the properties that are considered ready for first registration are sent forward when the next date for passing a batch forward arrives, the number of properties whose accuracy requires checking will be reduced. It has been estimated that there are on the average approximately 100 transactions a day brought to the Hipoteka Section. If 25% of those transactions are for properties which have not been checked for their accuracy, the general inventory accuracy checking process will be reduced in time. Five hundred properties each month can be checked for accuracy and the ones that clear the review can be sent forward for computerization and display. This will reduce the number of months that it will take to check the accuracy of the apartments and will allow the inventory process to begin to consider other types of properties.

Once again, new transactions will be allowed on these properties that have been sent for computerization and display up until the time that the display period is going to begin. At that time, no new transactions will be allowed. When the display period is over, and the first registration process is complete, the registration process will continue with subsequent registration allowed on the property.

1.3 Some Additional Questions Relating to the Efficiency of the Process of First Registration

1.3.1 When a question arises concerning the accuracy or legality of the property which is to be registered, and a clarification does not seem to be available, the property can be dealt with in the context of first registration. However, as has been noted above, it is important to provide a concise and accurate description of the problem that has been encountered for the property. If there is a notification in Part E of the Kartela, the public has notice of the problem. When there is a clarification of the problem or if it disappears in some way, the notice in Part E can be crossed off with an explanation of the resolution of the problem. The property is then clear of the problem.

It should be noted, however, that a specific procedure should exist for the review and investigation of the problem. It is recommended that every property should be sent forward to first registration, and where a problem exists the notification should be

entered in Part E. The notation in Part E of the Kartela should be made when it is too costly in time and money for the Coordinators' to clarify the defect in the property.

1.3.2. It is important that any transaction that takes place on a property through the Hipoteka procedures, prior to the completion of first registration, be done according to legal procedures. Upon application by an owner of a property, a "Statement of Ownership" is issued for properties recorded in the Hipoteka Section. However, this statement is only meant to indicate that for the property involved, a previous transaction document has been recorded in Hipoteka Section. There is no implication that the stated owner is the legal owner. This latter determination comes after the completion of the first registration process.

For existing Hipoteka archived documents, as noted above, the Coordinators and their staff are examining each document to identify the problematic documents. This process, in itself, does not guarantee that each document without an identified problem is in fact without problems. The PMU's goal is to have notations in Section E for all properties with any questionable transactions in their title histories. However, we can never be 100% sure, particularly in conditions of legal uncertainty. To increase confidence in the kartela information, it may be desirable that once the first registration process is completed, including display, any subsequent transaction be done by Notaries to include a "title search" for any property with a transaction after privatization.

1.4. Data Entry

During our interviews, many people mentioned the process of computerization leading up to display as an area that should be reviewed. It seems elementary that the process must be speeded up in order to get as many properties as possible satisfactorily completed and with completed first registration. There have been some sensible suggestions made for reviewing the current procedure. First of all, it might be possible to decentralize the process by contracting with different companies in the different regions. This would put less of a burden on any individual contractor and could potentially provide returns at a much faster pace, as each contractor will be providing the service to an office closer at hand and would have a smaller task to cope with.

Potential contractors should be required to make some trial runs to see how efficiently each handles the project.

1.5 Transfer of first registration information to the Registration Offices

The process of handing over the final first registration Kartelas after display has often been delayed. It is in the interest of everyone to get the property information into the IPRS system as quickly as possible. It appears impossible to ensure that 100 percent of all properties in a particular Cadastral Zone get into the IPRS at the same time. Clearly the first registration through display of apartments can be done separately, since the boundaries of these apartments are clearly defined.

When the Coordinators complete their review of apartments, they should be induced to send “as many” completed Kartelas for computerization (usually updating only) and display as they have available.

The problem is how to handle the computerization and display of non-apartment properties. In these cases it is recommended that the Cadastral Zone be divided into blocks, and the kartelas for each block be assembled and completed, and sent for computerization. Subsequently, each block can be displayed, and once completed, the Registrar should order the Hipoteca Section to not accept any document for recording within a displayed and finalized block.

An option is for the Coordinators to send for computerization all kartelas as they are completed, regardless of their location. The problem that would be encountered would be in organizing and monitoring the display of these dispersed properties. People from all parts of the city would have to be constantly monitoring the displays, and would not be able to monitor only the displays of areas where their properties are located.

After display the Registrars should immediately receive the completed properties and add them to the IPRS in order to facilitate the full activity of the land market.

It should again be noted that some of the Kartelas that will be sent forward by a Coordinator for computerization and display may not be cleared for transactions. In these cases, a caveat or other notice of an existing defect will be entered in Section E of the Kartela and the public will have notice of the problem. During the display, these Kartelas will be separated from those that do not have any notices in Section E. This will help ensure an understanding that the Kartela has not been completely approved for market activity.

In the review of the properties, the Coordinator and his/her team will attempt to send forward as many Kartelas as possible. However, where there are documented reasons for the Registrar to question the legality of present and past transactions, and when the Coordinator and Registrar come to a conclusion that based on the facts of that individual case there is no more information available, he/she should be able to send that Kartela for computerization with the proper notation as to the problem indicated in Section E. The existence of a problem should not prevent the first registration of a property, as long as a clear description of the problems is referenced in Section E.

Likewise, a Registrar must accept all the Kartelas the Coordinator has sent for computerization and display if they have followed all the necessary procedures to ensure the accuracy of the contents of the Kartela.

1.6. Period of Display.

There has been some concern that the legally required 90 day period of display is too long and must be shortened. However, it is clear that in some cases the period of display should be a full ninety days and in other instances it should be shorter. For example, it has repeatedly been noted that when apartments are put up for display, if the place of display is chosen carefully, there is no reason why everyone who is interested in the particular apartments would not be able to review the display rather quickly. So, it seems that in the cases of

apartments that have been prepared for display where there are no problems, a 30-day display period might be sufficient. That would not necessarily be the case for properties with problems or missing information. They would probably require a longer period of display. Thus, it becomes clear that the Registration Act might possibly be amended to allow for differing periods of possible display.

The question arises as to how the law concerning display periods should be amended. There have been several suggestions. Four alternatives have been suggested. They are:

Leave the length of the display period to the Registrar's discretion;

- a) Enumerate different periods for various types of property with no discretion allowed;
- b) Reduce the display period to 30 or 45 days for all transactions; or
- c) Simply leave it as it is at present, namely 90 days.

It is recommended that a variable system be chosen with a range of display periods ranging from 30 days on the low side to, the current 90 days as the high figure. It is also recommended that the Registrar be allowed to vary the display period for particular properties after consultation with the Chief Registrar. Alternatively, the law could be amended to set out the period of display for each type of property and no discretion be allowed to the Registrar. See Section 7 below.

1.7 During the period of display, claims about the inaccuracy of kartela or boundary information are recorded. The Coordinator's office under the authorization of the Registrar should provide the opportunity for any person wishing to file a claim to do so at a stated time and place away from the Registration Office as well as at the Office. The proper Forms for filing a claim must be provided to the claimant. There should be proper communication to all potential claimants that a claim can be filed either at the Registration Office or at a specially designated place. There shall be a time limit put on the filing of claims. If a claimant fails to make a timely claim, the claim can be processed as an ordinary dispute in the proper court.

2. Bulletin

The idea of a periodical "bulletin" to be produced by the Central Office of the IPRS is a very good one. Registrars, Coordinators and other people working for the system of registration should be encouraged to submit questions and problems that they are facing in order to disseminate the same, correct, information to all persons working within the system. This will provide information to persons and potentially answer questions and clarify procedures that people may not understand. Since it is fundamental that the answers to the queries be correct, it is recommended that an editorial board be set up to review the questions, answers and anything else that may appear in the "bulletin" to ensure that the material is correct and reflects the position of the authorities of the Central Registration Office and the PMU. The editorial board should be made up of persons who possess the expertise of the areas in which the questions and comments will arise.

3. Procedures for delivery of completed First Registration Kartelas from the PMU Coordinators to the IPRS

To date, completed Kartelas have been transferred from the PMU's Coordinators to the IPRS only when a cadastral zone is completed, without problem cases. This has caused some problems. It is reported that some Registrars have refused to accept the Kartelas from a cadastral zone unless the zone is 100% completed, without problem cases, and the PMU presents a completed Kartela for every immovable property in that zone.

First of all, it is virtually impossible to "totally" complete a cadastral zone so that there are no problem properties. The new system of registration that is being implemented has some important features that do not require a Registrar to be so strict about accepting properties that may have problems and are not completed. Section E of the Kartela allows a notification to any potential buyer, renter, etc. of any problem that might exist with the property. This includes situations in which there are potential problems of "clear title."

Therefore, not only should the Registrars be willing to accept properties that might not have totally clear title, but the Coordinators should be willing to send forward for computerization and display properties that do have problems. When there is a problem with the property, not only is it made clear on the Kartela what the problem might be, but in the display period the properties with problems are isolated from those that do not have problems thus providing further notice of the problem. The Registrar should accept whatever the Coordinator sends forward as long as the problem with the property, if there is one, is clearly stated on the Kartela.

However, in addition, it is now being proposed that there should be a modification in the process involved in sending properties from the Coordinator's Office for computerization and display. It is proposed that this process be done periodically. This means that every so often, [the period within which this should happen should be decided by the Chief Registrar in consultation with the PMU] the files that have been completed [which will include those that cannot be completed, but will be posted for display with a notification in Section E of an irregularity] will be sent forward. The files that are completed would be processed for computerization and display. If files were sent forward upon completion, there would be absolutely no justification for waiting until a full cadastral zone is completed prior to accepting the completed first registration.

It is important that the Registrars cooperate with the PMU's Coordinators in processing each immovable property as fast as possible to complete first registration. Then the system will take on the attributes of regularity as soon as possible. Again, one must accept the fact that the properties that have one or more irregularities, should go through first registration and have the proper notice of the irregularity included on the Kartela in Section E.

4. The Public Property Law

I participated in two seminars in Struga, Macedonia in which drafts of the Public Property Law were considered. The original draft of the law is now split into two parts: one relating to the concept of public property, and the second dealing with the transfer of public property. I have heard that there was a new draft of the law prepared following the second Struga meeting at which the law was considered. I had not seen the new draft of the law. It appears that the situation has not changed from January, when the second meeting was held, or later

when the seminar to consider the public property transfer law was held or the new version of the law drafted. It is important that either the law should be passed in some acceptable form, or the PMU should take steps to have an amendment made to the Immovable Property Registration Act in order to clarify how public property should be registered.

At present public property is registered as “State” land. This is perfectly acceptable and can continue as is. But if it will make people feel more at ease to have an amendment to the immovable property registration act which would say, in essence, that public property should be registered to the “state” to indicate it is held as public property, that is acceptable. Also it would be nice if there was an authority of the central government which had responsibility for the maintenance and divestiture of public property when privatization or some other action takes place. It would also be good if an institution of the central government would be responsible for making sure that organs of local government which are or should be responsible for the maintenance and upkeep of public property perform these duties properly. Other than the clarification of how public property is dealt with in a registration mode, it is not necessary for the PMU to have a stake in the passage of a public property law.

A third draft entitled Registration of Publicly Owned Immovable Property, has also been proposed. This is not necessary as separate legislation if the general law is passed in the near future. It can form a chapter of the general law.

The real issue is to provide a clarification of how public property is to be dealt with [Referring to Draft # 1]. This consultant has made minor editorial changes to the language of the first draft law on public property. Most of the changes were minor matters of language. The concept of “capital” as a third type of property, in addition to immovable and movable properties was eliminated as redundant. The definition of “Organ of Local Government” was stated thus: “An organ of local government is an organ of government that is not an organ of central government.” The definition of “Administration” of property was revised to state “Administration is the right to control and the obligation to maintain the property without the right to transfer it.”

Article 3.1 should read “Organs of local government may hold public property in ownership or administration.” If that article is included, there should be an additional article which comes before 3.1, probably named 3.01, which states that “The Central Government has the right to transfer property to an organ of local government in ownership or administration.” Otherwise, the editorial changes are simply changes in the language of the Act to make it read more smoothly.

5. Relations with the Faculty of Law

A meeting was held with the Dean of the Faculty of Law, Ms. Vasilika Hysi. The meeting was attended by the Consultant, Ledia Pleku, Mark Marquardt, and Kathrine Kelm. Although the Dean was on her way out of town, she set aside time to discuss the possible input that might result. For the first time, there was a general acceptance that the Project can offer a service in dealing with Property Law.⁴

⁴ It should be understood that there have been a series of meetings held with the Faculty of Law over the years since the PMU came into existence. A number of years ago, a course was

The main point discussed revolved around the curriculum and the fact that there was no required course in the area of property law. The second point was that there are currently no textual materials in the property area available to the students.

There are, of course, a number of interventions in the curriculum that could be made at different levels, from the inclusion of a general required course in “property law” or “ownership” to specific courses or research seminars in the new system of registration. The Dean noted that because of the structure of the Faculty, it might be difficult to get the Civil Law Department to accept any direct intervention in the courses that are already being taught by the Faculty in that department. She suggested that we plan to offer a course in a “summer school” session; that we design the curriculum intervention with her involvement; and that we test the waters to see what kind of a response we get from the students. It was briefly considered that any course would be jointly taught by the consultant, who has a number of years of teaching experience, and the senior legal officer at the PMU who is already teaching part-time at the Faculty of Law.

It was thought possible that the Faculty, with the help of the legal staff at the PMU, might apply to an appropriate funder for support for the endeavor. It was decided to pursue this more specifically during the consultant’s next visit, tentatively scheduled for the beginning of August 1999.

In the area of text development, we briefly touched on the need for a commentary or other text material for the efficient teaching of property law. This point was then developed with the Ministry of Justice in a series of meetings. It was shelved for further discussion as at the time we were meeting in the Ministry of Justice, the position of Minister was temporarily vacant and the Director of the Codification Division had been appointed to the Court of Cassation. It was decided when a new director was appointed, a further contact would be made to determine whether the files of the Civil Code would be made available to the legal staff at the PMU. This could potentially provide assistance to the Faculty of Law by making available published teaching materials and even a general analytical [as opposed to a descriptive] commentary on the relevant ownership provisions of the Civil Code.

The response from the Faculty of Law was the best yet received by the PMU. It is important that this contact be continued and concrete plans be developed for real action as soon as possible.

6. The Proposed Training Program

An agreement had been made in Struga with the Head of the Chamber of Notaries, Shpresa Kurti that a two-day training program would be developed. As part of this consultancy contact was made with the President of the Chamber of Notaries, the Vice President, Mimoza Sarducci, and other Notaries to review the process for the training program and to move

actually taught by the legal officers at the PMU. This course was offered once and, in my understanding, never repeated.

forward to put the plan into reality. Contact was also made with the Director of the public sector division at the Ministry of Justice, Agron Caushi and Doneta Kamberi, that staff person of the division responsible for Notary affairs.

It had been decided that the training program would be for two days. The first day would be led by Mirvjena Laha and Myzafere Kallabaku. It would consist of an introduction to the registration system [a review of the law and the regulations] and the process of developing the urban and rural first registration systems. The second day would be led by Fatos Lazimi who would be developing a set of materials that would introduce in a systematic and in-depth manner the interaction between the Notaries and the IPRS. The materials would consider, on the one hand, the kind of specific contact that would take place between Notaries and the System and secondly the introduction of contracts for the various transactions that the Notaries prepare for consideration by the IPRS. It will also include the introduction of the specific Forms for the transactions of the IPRS which will be used by Notaries and others who will be involved in presenting materials for registration. The prototype of many of the necessary Forms have been developed in draft and should be part of the training program so that they can be put into a final version.

The Notary training program will only be one of the ongoing training sessions that now must proceed immediately. There shall be training programs for the Registrars, the employees of the IPRS and the Notaries. The logistics of these training programs should be the responsibility of the person in the PMU who shall be appointed head of the training section. It is, therefore, recommended that a training section be set up in the PMU to deal with the ongoing issues of training.

The proposed structure of the Notary training program will take the following form. In as much as there are presently 207 Notaries throughout Albania, a core group of approximately 30 Notaries will be chosen to go to Tirana and learn to become the “trainers” of the Notaries. These trainers will go to the areas of Albania to which they are assigned and conduct training programs of the Notaries in their areas. The schedules should be coordinated so Mirvjena Laha and Myzafere Kallabaku, the presenters of Day One of the training program, would be available to make their presentations for the trainees. In addition, Fatos Lazimi should be available as a resource person to explain to the Notaries what the contents of the contracts and Forms should be. The Notary who is designated as the trainer for the session should work in coordination with these three members of the PMU.

Similar training programs adapted for the Registrars and Registry Office personnel are being developed. It is recommended that there should be ongoing training programs to upgrade workers within the registration system periodically. It is also recommended that the examinations which have been administered in isolation of any programming should be administered in conjunction with the training programs. Both licensing procedures for the Notaries and employment opportunities for Registrars and other employees of the IPRS should be tied in to the training programs and examinations.

7. Amendment to the Registration Law – Section 30

It is proposed that an amendment to Section 30 be made which would prevent a person going in to a Registry to ask for information on “all” the property belonging to any one individual.

This is the version of an amended Section 30 that the consultant and the senior legal officer produced after some discussion. The rationale for the two-part new section is that the information of the IPRS should be open to the public, but there should be a prohibition for anyone, not properly authorized by law or legal institutions, to come into the IPRS and ask for information relating to a person's "total" holdings. Therefore, a restriction on the request to provide information on the total holding of a registered individual is entered in subsection (b) in all cases except where a court order requires it and the law allows this information to be available. The amendment to subsection (a) notes that there is a restriction in subsection (b). The text as we revised it should be something like the following:

Section 30

(a) Any person can examine and consult any register and can request a certified copy of it, a part of the Registry Index Map, any filed instrument or survey plan deposited in the registry, by presenting a written request and by paying the appropriate fees, subject to the restriction of subsection 30 (b).

(b) The Registrar does not have the authority to provide any information related to all the properties of any juridical or physical person except when access to this type of information from the Immovable Property Registration System is requested by a court order or is otherwise required by law.