

31 January, 2000

## Immovable Property Privatization, Registration and Disputes in Albania

By: Kathrine M. Kelm

University of Wisconsin- Land Tenure Center

### I. Introduction:

One foundation for a democratic society with a market economy is the right to own property<sup>1</sup>. Ownership rights include the right to exclusive use and enjoyment as well as the right to transfer property through selling, making gifts, mortgaging, leasing, inheritance etc. At the same time, there are certain responsibilities for property owners that may limit some of these rights. Examples of these limits include zoning, environmental standards and urban planning laws. Equally important to the right of private ownership of property is the maintenance and use of property for public purposes. The state owns and administrates property in order to fulfill its obligations to the public and provide services ranging from national defense and essential infrastructure to education, health services and parks for public enjoyment.

Land is a unique commodity. It has features which set it apart from all other assets. First, it is immovable. It cannot be physically transferred from one person to another. Throughout history elaborate rituals and procedures were set up to acknowledge a transfer of ownership or other real rights. Historically, land transfers had to be witnessed in courts or before the village elders or tribal chiefs. Over time, registration systems developed which provide public notice of land ownership and other real rights as well as provide security to the owners.

Second, land lasts forever. Although land use may change or environmental damage may occur, the physical quality of the land remains. Every society regulates how rights are transferred from one generation to another. Legislation or customary law defines who can receive land through inheritance and the procedures that must be followed in order to complete the transfer.

Albania embarked on a rapid program of privatization less than a decade ago. Several privatization laws have been passed and a new Immovable Property Registration System (IPRS) has been set up to record ownership and other real rights. A Project Management Unit (PMU) was created to implement the Land Market Action Plan (LMAP), one component of which is the First Registration of all immovable property in Albania. A second component of the LMAP is to conduct land market studies that reflect current ownership trends and investment. The PMU and the Albanian Foundation for Conflict Resolution have also conducted research on conflicts over property. This article will review the privatization and registration process in Albania, note some results from the studies and comment on some of the problems and disputes that have emerged.

---

<sup>1</sup> For the purposes of this paper, "property" refers to immovable property or real estate including land and buildings.  
afdr2.doc/kmk

## II. Privatization in Albania

### A. Agricultural Land

Land privatization began with the approval of Law 7501, *On Land* (July 1991), for the assignment of agricultural land, and land used for housing in villages, to resident farm families. The Law *On Land* gave land initially “in use” to the workers of the state farm enterprises, but finally, the government granted ownership rights to the workers through Law 8053, *For Transferring Ownership of Agricultural Land Without Compensation* (December, 1995). Although foreign ownership of land is prohibited, foreigners can enter into long term leases up to 99 years. According to Ministry of Agriculture and Food statistics, 562,473 ha., or 80.4% of agricultural land is now in private ownership.

### B. State Owned Housing

In 1992, the government continued the privatization process by passing Law 7652, *On the Privatization of State Housing* (December 1992). The objectives of this law were to completely privatize state constructed housing, to create a free market for dwelling units and other buildings and to improve the use and administration of buildings.

Rights of ownership were sold to adult occupants who had rental contracts with the state as of December 1, 1992. This has led to a problem involving those occupants who were under 18 years of age at the time. Since those who were not 18 are not included as co-owners, they have no legal right to a share in the property. Some families have tried to remedy the situation by completing a gift contract to the younger family members but this requires the payment of notary and registration fees, an official valuation and transfer taxes.

In 1998 and 1999, an urban study was conducted by the PMU/IPRS in the 6 main cities of Albania. This study focused on land tenure, security and investment. The statistics from the study show that 94.6% of former state owned housing (apartments) are now privately owned.

### C. Municipal Sale of Urban Land

The Municipality has the right to privatize land within its jurisdiction according to Law 7980, *On Buying and Selling of Building Sites* (July, 1995) and Law 8405 *On Urban Planning* (September, 1998). The privatization procedures and corresponding documents vary depending on the year concerned and the administrative division of the city/village. There are more than 8 different procedures used and the accompanying documentation can be different for each category. In general, there are 2 steps in the process, one for the land or building site and one for the building. The Law *On Buying and Selling of Building Sites* regulates transfers of land which are designated for building purposes. Although Albanian citizens can freely buy and sell building sites, there are some restrictions for foreigners.

According to the Urban Land Study statistics, urban land has the following breakdown: Houses and villas are 87.8% privately owned, urban land with buildings are 62.4% privately owned, urban land used for commercial purposes is 46.5% privately owned with an additional 13.8% in mixed ownership (joint ventures, part private and part state) and vacant urban land is 21.9% privately owned.

#### D. Restitution and Compensation

Another component in the land privatization process has been the restitution of confiscated property. Law 7698, *On Restitution and Compensation of Properties to Ex-owners* (April 1993) is complex and at times ambiguous. It addresses expropriation of immovable property only and depending on various factors such as the former and current characteristics of the property, former and current use, investments and current ownership, there are various options for the Restitution Commission to choose from in adjudicating claims. These include “recognition of ownership and restitution”, “recognition of ownership and compensation” and, in the case of state owned enterprises, “recognition of ownership, restitution of land and the right to purchase the enterprise”. In Tirana, approximately 4,500 restitution commission decisions have been issued with each decision affecting multiple properties.

The most important aspect of the law is that it pertains to urban land or ‘land within the municipal boundaries’ expropriated after 29 November, 1944. Thus, there is no restitution of agricultural land. However, some villages in the North and mountainous areas ignored the law and distributed agricultural land to the ex-owners or their heirs but this has had little impact on the main agricultural growing areas. Although land distributed according to Law 7501 is not subject to restitution, Law 7699, *For Compensation in Value for the Former Owners of Agricultural Land* (April, 1993) recognizes property claims of ex-owners for the purposes of granting compensation for the value of agricultural land.

The principle of Law 7698 is to reconstitute urban property whenever possible. If restitution is not feasible, the ex-owner will receive compensation. In general, if the site is unoccupied or buildings unchanged as of April 1993, the ex-owner has the right to restitution. This is also true of sites that contain temporary constructions, defined by the urban planning office. If the site or buildings have been privatized to third persons but remain unchanged, the property will generally be reconstituted and the state must compensate the third party. If the site is occupied with buildings erected after 1 January 1991, the site is reconstituted to the ex-owner who then has the right to collect rent from the building owners or negotiate the sale of the site. Although the law provides the substance for the relationship between the occupants and the ex-owners, implementation of the law is difficult and there are many disputes between the parties.

#### E. Forest and Pastures

Forests and pastures occupy more than half of the surface area in Albania and are regulated by Law 7623, *On Forests and the Forest Service Police* (October, 1992) and Law 7917, *On Pasture and Grazing Land* (April, 1995). Although there is some private ownership of forests and pastures, only about 5% was privately owned prior to 1945. Restitution claims are being processed and land returned to the ex-owners, however, the percentage will be small when compared with the other privatization programs. According to Ministry of Agriculture and Food statistics, 6,134 ha. or 0.6% of forests and 18,595 ha. or 4.5% of pastures have been privatized.

#### F. Land for Tourism

Law 7655, *On the Development of Priority Areas Concerning Tourism* (January 1993) attempts to outline a strategy for and regulate tourism development. Albania obviously has a great potential for tourism, as a major source of employment and foreign exchange. However, this law has not been implemented to any significant extent.

## G. Privatization of Other State Assets

The authority to govern and organize the transfer of state owned property rests with the Ministry of Public Economy and Privatization. Transfers are conducted through auctions, private sale of shares or free distribution of shares after as assessment of the value has been made. The National Privatization Agency (NPA) is supervised by the Council of Ministers and is the sole institution authorized to carry out privatization procedures.

A series of Decisions of the Council of Ministers, particularly No. 248, *For the Acceleration of Privatization of Small and Medium Enterprises* (May, 1993) and No 510, *On the Privatization of Agricultural Enterprises* (October, 1993) and a strong political support for the privatization of small scale enterprises led to the implementation of rapid privatization. Approximately 4,000 retail business sites in 1991-92 were sold by municipalities to individual or corporate owners in order to stimulate the re-opening of commercial activities at the time of greatest social and economic need. By the end of 1994, the NPA transferred approximately 33,000 small scale enterprises to private ownership.<sup>2</sup>

### III. Immovable Property Registration System (IPRS)

Land Registration Systems serve both a public and a private purpose. Historically, land was surveyed and ownership was recorded for taxation purposes. There is evidence of land documentation for taxation purposes as early as 3000 BC in Ancient Egypt and 700 BC in China. Today, the public role of land registration systems has expanded to include land use planning, environmental regulation, infrastructure development and zoning.

The second function of land registration systems supports private persons who purchase or use land. Since property is immovable, people need some form of recognition and security when they transact land. They cannot simply pick it up and take it with them. Land registration systems provide public notice of land ownership and other real rights as well as provide security to the owners. Security is an important aspect for land use and improvement. People who do not feel their rights to property are secure are less likely to make investments and improvements.

In order to identify, record and protect both private and public ownership and other real rights in property, the Albanian Parliament has approved Law 7843, *On Registration of Immovable Property* (July, 1994). This law is the basis for the current registration system and combines in a single system all property in Albania, whether rural or urban, public or private. There are currently 35 registration offices throughout Albania and a Central Office in Tirana. The IPRS is a decentralized system. The District Registrars operate and maintain the immovable property registers for their district.

The IPRS records relevant information on a single sheet of paper called a *Kartela*. The *Kartela* indicates the name of the owner, type of ownership, physical location and surface area of the property. It also indicates any encumbrances or limitations on transfer such as easements, mortgages, leases or court disputes. Each property, whether it is a parcel of land or a building, has a unique number identifier which is referenced on the *Kartela* and Index Map. The information in the IPRS is open to the public.

The Project Management Unit (PMU) of the Land Market Action Plan was created by a Council of Ministers decision in 1994, funded by USAID, EU-Phare, the World Bank and the Government of Albania. The PMU is responsible for the process of First Registration. Albania is divided into 3,046 Cadastral Zones with approximately 3.5 million properties. It is foreseen that First Registration will be

---

<sup>2</sup> Hashi, Iraj and Lindita Xhillari. 1999. "Privatization and Transition in Albania", Post-Communist Economies, Vol. 11, No. 1.  
afdr2.doc/kmk

completed in 70% of all Cadastral Zones by the end of 2001. As of December, 2000, more than 1.4 million properties have been formally registered and transferred to the IPRS.

In order to complete First Registration, the district PMU teams create updated maps and use privatization documents to identify the owners. Property which has not been privatized is registered in the name of the State. The maps and list of owners are then displayed in a public location for 90 days. During this time, claims against the information contained on the maps or ownership lists can be made. Depending on the nature of the claim, the Registrar either changes the registration accordingly or places a restriction on the property until the dispute is resolved by a competent court. After the public display process is complete, the properties are formally transferred to the IPRS.

#### IV. Registration Problems and Property Conflicts

##### A. Urban Registration

Although the Law *On Registration of Immovable Property* was approved in 1994, there was little move toward the first registration of urban property in the first few years. There are several reasons. First, the privatization of agricultural land was a relatively simple process because land was distributed according to one main law, Law 7501, *On Land*, and local land commissions were responsible for implementation. There has been relatively little problem with registration of agricultural land. More than 90% of agricultural properties proceed through First Registration, complete the public display and enter the IPRS with no disputes.

Urban property privatization was, and remains, subject to many laws and various commissions and agencies such as the Restitution and Compensation Commission, National Privatization Agency and the Municipality. There is little or no communication between these governmental units and it is not uncommon to have conflicting privatizations. These conflicting decisions and no clear policy directive from the Albanian government have caused delays in First Registration and numerous conflicts over ownership.

Another problem with urban property registration lies in the history and jurisdiction of Albanian land transactions and recording. Albanian property records (including privatization documents, sales contracts, gifts and mortgages) prior to 1909 are located in Istanbul among the Ottoman Empire archives. From 1909 to the mid-1980s, urban property documents were recorded in the Ipoteke office, part of the Ministry of Justice. In 1976, the new Constitution declared all property under state ownership and the Ipoteke offices were gradually closed. With the change in government and private ownership policy, the Ipoteke offices re-opened in 1992. These offices remained under the jurisdiction of the Ministry of Justice until January, 1999 when the Council of Ministers issued an order to move the Ipoteke under the jurisdiction of the IPRS. Thus, Ipoteke documents were not available to the PMU for First Registration until 1999.

The PMU First Registration teams are now in the process of using the Ipoteke archive to create a chain of title for each parcel. One of the main drawbacks of the former Ipoteke system is that there was no legal evaluation of the documents; it was simply a document depository. As a result, citizens and even some notaries and other legal professionals took advantage of the situation and deposited irregular, illegal and falsified ownership documents.

As the First Registration Teams struggle through the Ipoteke archive document inventory and evaluation process, the main areas of irregular or illegal documentation have been identified. It has taken substantial time, personnel resources and consultation to decide how to process the problem cases. In some cases, the IPRS cannot resolve them. The only solution is to define a parcel

provisionally and open a *Kartela* using the most accurate information available then place a restriction on the property until the problems are resolved through a clear governmental policy, additional legislation or further action from the claimants.

## B. Problems with Privatization Documentation

### 1. "Vertetim i Faktit" court decisions

The most common and arguably most problematic category of urban property documentation is the *Vertetim i Faktit* (ViF) court decision. A *Vertetim i Fakti* is a declaratory judgment issued by a court, a factual declaration of ownership. Typically, a person who builds a house or building petitions the court to verify that he/she is the builder and therefore the owner. Originally, this declaration was used to confirm ownership after a person presented all legally required documents such as proof of ownership for the land, building permits and the final building completion certificate. It was a way to consolidate all of the various permits and documents to facilitate registration in the old Ipoteke.

However, in the past decade, this court process was abused and *Vertetim i Fakti* were issued without any of the other supporting documentation, notably proof of ownership for the land. The majority of the *Vertetim i Fakti* found in the Ipoteke is the result of people who occupied state land, built illegally, petitioned the court for a *Vertetim i Fakti* and finally received a *Vertetim i Pronesie* from the former Ipoteke Office. A *Vertetim i Pronesie* translates roughly as "attestation of ownership". However, the name gives the wrong impression because it was only a verification that there was document registered in the Ipoteke. There was no chain of title search or analysis as to the legal validity of the document. The *Vertetim i Fakti* and *Vertetim i Pronesie* have given rise to incorrect expectations, in particular to 3<sup>rd</sup> parties who purchased the land and buildings from the illegal builder.

The occupied state land is usually public property such as parks, school grounds, beach front, vacant urban land which has subsequently been restituted to ex-owners or illegally acquired agricultural land near the cities. The latter case has resulted in the rapid and chaotic expansion of peri-urban areas without the benefits of urban planning or basic infrastructure.

In a survey of cases in the Tirana District Court, *Vertetim i Fakti* were numerous. For example, in March, 1996, 31% of all civil cases considered by this court were *Vertetim i Fakti*. In March, 1998, 22% of all civil cases were *Vertetim i Fakti*. Properties that were registered in the Ipoteke based on a *Vertetim i Fakti* will potentially reappear in further court cases as the actual private and public owners of the land bring suit against the illegal builder to reclaim their land.

The 1994 Civil Code Article 193 prohibited the recording of *Vertetim i Fakti* in the Ipoteke Offices. However, courts continued to issue *Vertetim i Fakti* without the other necessary supporting documents and notaries and Ipoteke employees then helped their clients circumvent the law by hiding a *Vertetim i Fakti* origin behind gift contracts or multiple and confusing sales contracts. The gift or false sales contract which is registered in the Ipoteke will reference a court decision as the origin of the property but the court decision itself is often not recorded.

### 2. Acquisition of ownership rights to building site (land) when in the previous transactions only interests in the building were transferred.

The Ipoteke documents reveal many cases where documentation for ownership of trull does not exist or is insufficient to register in private ownership.

1. There are National privatization Agency privatizations without mention of the land under and surrounding the privatized object. Thus, the building is floating in the air.
2. Other cases show that the land was rented for a period of years. The lease has often expired and there has been no extension of the agreement or privatization of the land.
3. Some old houses have documentation for the building but after the 1976 Constitution, the land was considered “in use” and there has been no privatization legislation to allow the IPRS to register the building site (the land) in ownership.
4. Prior to 1991, building site sizes in urban zones were limited to 150 m<sup>2</sup> in cities, 200 m<sup>2</sup> in villages, and 300 m<sup>2</sup> in mountainous zones. In many urban zones, the yard is surrounded by walls built more than 30 years ago and the surface area is larger than the above mentioned limits.
5. There are disputes over ownership in cases where the National Privatization Agency has privatized the building and the Restitution and Compensation Commission has subsequently restituted the land to the ex-owner. To further complicate matters, there are cases when the National Privatization Agency will sell the land to the building owner or the Restitution and Compensation Commission will grant the ex-owner a right of pre-purchase for the enterprise or building.

In the last first 4 cases, there is generally no dispute over ownership, rather the legal basis for recording ownership of the building site does not exist. Furthermore, subsequent transactions registered in the Ipoteka often include the building site as part of the property when in fact, the building and the building site are legally two separate parcels.

In the last case, a lack of communication between the National Privatization Agency and the Restitution and Compensation Commission result in overlapping claims for the same property.

### 3. Properties whose boundary descriptions do not match previous transaction documentary descriptions.

The IPRS is based on 2 legal aspects. The index map shows the physical boundaries of each property and identifies them by the Cadastral Zone and Unique Parcel Number. The Kartela records ownership and other legal rights to the parcel. These 2 documents provide the legal and technical for a particular property.

There are some documents in the Ipoteka which do not match the information on the new IPRS index maps. The good example is a 3500 m<sup>2</sup> piece of land in the city of Kavaje which was restituted to the ex-owner. The ex-owner sold 1000 m<sup>2</sup> but in a location different than where his parcel was located. He falsified the Restitution and Compensation Commission’s map and with the collusion of the notary, sold a 1000 m<sup>2</sup> state-owned parcel to the 3<sup>rd</sup> party. It was only after the map found in the Ipoteka was compared with the original found in the Restitution and Compensation Commission archive that the falsification was proven.

A problem which is less easy to deal with when maps for Restitution or Privatization decisions do not exist or are not registered in the Ipoteka. For example, out of a 10,000 m<sup>2</sup> parcel, 4,500 m<sup>2</sup> was restituted but there is no map to show where the boundaries are located. The field teams attempt to identify the 4,500 m<sup>2</sup> but the original restituted parcel is often subdivided and sold before the field teams begin updating the maps.

### 4. Unsigned or Unstamped Documents from Institutions

Some documents located in the Ipoteka archive lack legally required signatures or institutional stamps. In some cases it is the result of negligence or oversight on behalf of the institution but in

other cases the signatures or stamps have been falsified. Although the original documents found in the Institutional archives (such as the Restitution and Compensation Commission, National Privatization Agency and Municipality) should be used by the PMU First Registration teams, this procedure has been difficult and in some cases impossible due to a lack of cooperation between the PMU and the privatization institutions. In many cases, the institutions refuse to make the original documents available to the PMU, even though by law they are required to do so.

### 5. Problematic Court Decisions

Court Decisions recorded in the Ipoteka reveal a lack of understanding by the judges about the IPRS. The right of the court to change Restitution and Compensation Commission decisions as well as to order the Municipality to transfer ownership in favor of a particular person are causing problems to the First Registration teams. A common example is the case of a Restitution and Compensation Commission decision which offers compensation for nationalized property rather than actual restitution. The Commission worked under strict guidelines regarding which kind of properties could be restituted and which were subject to compensation. In subsequent petitions to the courts, judges often do not follow these guidelines. As a result, the ex-owners go to the court and get a decision which restitutes the property without considering the ownership, both public and private, of the parcels that are affected. A good example is the case of the Palace of Culture in the city of Permet. The Restitution and Compensation Commission decided to compensate rather than restate the land (on which the state had built the Palace of Culture) due to the important public value of the property. The Orthodox Church took the case to court and received a court decision granting that land and building in ownership, leaving Permet without a building to carry out an important public function.

There are also cases when a district court will order a Registrar to register a property, even though it is based on a *Vertetim i Fakti* decision. This order is not only against the *Law On Registration of Immovable Property*, it is clearly against the Civil Code Article 193 which states “*Vertetim i Fakti* shall not be registered”.

Finally, there are decisions from the courts ordering district registrars to register transactions on agricultural land, even though Law 8337, *On Transfer of Agricultural Land* clearly prohibits transactions unless the property has been first registered. The *Law On Registration of Immovable Property* provides for a Special First Registration of agricultural land although the owners are responsible to pay the costs of surveying and registration. Systematic First Registration has, to date, been provided to property owners free of charge.

### C. Property Conflicts

Property conflicts are numerous, take up much of the courts’ time and resources and cause social problems. In a recent survey of cases in the Tirana District Court Archive done by The Albanian Foundation for Dispute Resolution and the University of Wisconsin Land Tenure Center, the following results were recorded:

In March, 1996, 45% of all civil cases in the Tirana District Court were property related.  
In March, 1998, 38% of all civil cases in the Tirana District Court were property related

The study is continuing in the Tirana District Court as well as in the Berat and Shkoder District Courts. However, it is expected that the percentage of property related cases will remain high regardless of the year or district.

In addition, statistics from the Albanian Foundation for Conflict Resolution (AFCR) show that

property conflicts are the most common type of civil conflict that has been solved through alternative dispute resolution:

In 1998, 49% of all civil cases solved through AFRCR mediation centers were property related. In 1999, 49% of all civil cases solved through AFRCR mediation centers were property related. January-September, 2000, 48% of all civil cases solved through AFRCR mediation centers were property related.

### 1. Boundary Disputes

Boundary disputes are common problems in both rural and urban areas. In urban areas, there are various types of problems related to boundaries. First, there are numerous cases of people expanding their former boundaries onto state land such as parks, other green spaces, sidewalks, roads and gardens. Although there has not been consistent enforcement of the public's right to these areas, there will certainly be more disputes in the future. Second, there are boundary disputes related to valid but opposing privatization documents. The most common example is the conflict between Restitution and Compensation Commission decisions and National Privatization Agency decisions. Third, although restitution decisions may define the percentage of land for individual heirs, the physical division of the land, where the boundaries are located, are often the cause for disputes.

In rural zones the *Tapi*, the documents issued by the Land Commissions that record the division of agricultural land, are often inaccurate and the size of the parcels noted in the document are often substantially different than the actual area of land the farmers possess. First Registration procedures have been established to correct these errors when they are "reasonable" but some problematic cases exist when a farm family possesses substantially more land than documented in the *Tapi*.

There are also cases when agricultural land was divided more than one time. In most villages, the *Law On Land* was implemented. Local Land Commissions divided the land and handed out a *Tapi* to each farm family. In 1996 after the elections, the new government reconvened the Land Commissions in 15 villages and redivided the land, resulting in two "owners" for each parcel of land. In a few villages, the land division has occurred 3 times.

### 2. Apartments

One of the main problems with apartments involves inheritance issues. As noted above, only children over the age of 18 were included on the list of co-owners along with the parents. Children under the age of 18 were not included as co-owners and unequal division of shares among heirs can potentially create tensions and ultimately divide the family. Even when parents intend to leave property to children in equal portions, any child who was an adult at the time of privatization will end up with a larger property interest than his or her minor siblings. For example:

At the time of privatization:		After death of the father:	After Death of the mother:
Father-	33.3%		
Mother-	33.3%	Mother-	44.4%
Adult child-	33.3%	Adult Child-	44.4%
Minor child-	0%	Minor Child-	11.1%
			Adult Child- 66.6%
			Minor Child- 33.3%

Thus, any person who was not 18 years old at the time of privatization receives substantially less unless parents consciously bequeath their property in unequal proportions. It is a dilemma for families: Either the minor child receives a lesser property interest from a straight division among

heirs or the adult child must receive a lesser testamentary share in order to equalize the ultimate property interest. In either scenario one of the children receives less than the other and may cause a real problem for family relationships.

Another problem arises when both children have shares in the parent's apartment but one of the children moves out to start his or her own family. For example, the eldest child marries and leaves the apartment. On the death of the parents, the eldest child should receive a share of the property but this is difficult when one considers the fact that the apartments are small, physical division is almost impossible and most family members do not have the available cash to buy the other member's share.

Another problem that causes conflicts are the rights and obligations of co-owners. Former state owned housing was privatized without clear indications of which areas are common property such as the roof, stairwell, outer walls and infrastructure. For example, if the roof leaks, most apartment owners in the building consider the problem to concern the owners of the apartments on the top floor, not all apartment owners. In addition, many new apartments are sold without clear co-ownership rights of common areas. Many new owners have no co-ownership rights. Conflicts later arise over repairs and cleaning issues.

### 3. Illegal Occupation of Land and Illegal Constructions

Illegal occupation of land is not an unusual phenomenon in Albania. Every city and village has examples of illegal constructions or boundaries that have been illegally extended. The most common case is occupation of state land. Although there has been little action against the illegal occupiers, at some time in the future a public entity will begin to recover public space that has been lost. In urban areas, there are many cases of restitution of land where illegal constructions are located. The Restitution and Compensation Commission treated land with temporary structures or illegal buildings as "unoccupied" and therefore available for restitution. This creates conflicts between the ex-owners of the land and the illegal occupiers.

In rural areas, especially peri-urban zones, land privatized according to the Law *On Land* has been illegally occupied. There are many conflicts between the privatized owner (the *Tapi* holder) and the illegal occupier. In other cases, the *Tapi* holder illegally subdivided the land and sold the plots to 3<sup>rd</sup> parties.

For apartments, illegal additions are common. People in one wing of the building get together to extend the foundation and build up, adding space to existing apartments. In the case of new apartment buildings, builders receive permission for a certain number of floors but in fact, build more floors than the plans and permission indicate. Many people who think they have bought an apartment on the top floor of the building find out that the agreement is not honored. In addition, the foundation and infrastructure are seldom adjusted to accommodate the additional floors, increasing the risk of structural collapse or poor public utility services.

'Self-help' compensation is engaged in by individuals who justify their unauthorized occupation of land as compensation for property that was expropriated from their family by the previous regime. This self-help compensation is especially prevalent in the coastal areas and other areas with tourism potential. Since the state has no available cash to give to ex-owners and vouchers are worthless, especially after the fall of the pyramid schemes in 1996, the only readily available and acceptable option is to provide alternative land. However, rather than waiting for an official assignment of land, individuals eligible for compensation are occupying the beach front and are building permanent structures for homes, restaurants and hotels. Not only has this hindered the plan for tourism development, but the rampant building is completed without proper zoning and infra-structure such as

electricity, sewer and water lines. The coastal waters near these areas are becoming increasingly polluted and the trees adjacent to the beaches are often cut down, increasing the extent of barren lands precisely in areas whose value could be maximized by preserving their natural beauty.

#### 4. Good Faith Buyers

Good faith buyers of properties whose chain of title is clouded are a special problem for the IPRS and the social structure of Albania. Although there is an illegal or irregular registration in the history of the property, the good faith buyer often completed his transaction based on an *Vertetim i Pronesie* (Ownership Attestation) issued by the former Ipoteke office and a subsequent valid transfer based on notarized documents and registration in the Ipoteke<sup>3</sup>. Although the Civil Code allows for good faith ownership of moveable property, it is not allowed for immovable property. A strict legal interpretation would indicate that buyers in good faith will not be considered as legal owners and , therefore, not able to transact their property. This restriction causes conflicts between the First Registration teams and the good faith buyers.

From a practical point of view, good faith buyers should be allowed to transact their property. They have completed all legal procedures for creating a valid transaction. The seller presented a *Vertetim i Pronesie* from the Ipoteke office and a notary completed a transaction document. The defect lies in the chain of title for the property and the issuance of the *Vertetim i Pronesie*. A Registrar's refusal to register a transaction document is not going to prevent transactions from taking place, especially when good faith buyers consider themselves legal owners. The IPRS will quickly become out of date as transaction occur but are not registered.

In Spain for example, the good faith buyer who registers his transaction retains ownership. The injured party, the former owner, must bring a suit against the person that committed the fraud. The remedy is monetary compensation for the injured party, not a return of the property. The good faith buyer retains ownership of the property.

An alternative way to handle the situation is to allow transactions for good faith owners but with a caution from the Registrar. This means that a transaction can take place as long as the transaction document acknowledges the defect in the history of the property and the new buyer accepts the risk. This would allow First Registration to proceed more easily and lower social tensions until the case can be adjudicated in the courts. Whichever method the government decides to follow, whether full ownership or allowing transfers with a caution, a policy decision by the government and corresponding legislation is needed.

#### 5. Restitution vs. Privatization

After roughly a decade of transformation from a communist or centrally-planned economy to the Western style market economy, Albania is still struggling to find closure to the past while at the same time, continue forward in the demanding global market. These simultaneous activities often divide a community, both politically and economically. This division is due to opposite goals: to look back and try to find a remedy for the wrongs committed in the past or to look forward and try to attain economic stability and competitiveness. This struggle is evident when dealing with land and other immovable property.

Albania offers a good example of the struggle and the problems which result from it. Albania has a government entity, the Ministry of Public Economy and Privatization, which oversees the

---

<sup>3</sup> A *Vertetim i Pronesie* (Ownership Attestation) is different than the Ownership Certificate that is now issued by the IPRS according to the Law On Registration of Immovable Property. The Ownership Certificate is issued after First Registration and has a state guarantee.

privatization of state owned property in what might be called a “forward-looking” policy. The privatization process is designed to rapidly redistribute state enterprises to the private sector. This policy is endorsed by the IMF, World Bank and other aid organizations in the hopes this redistribution will encourage investment, revitalize failing industries, provide jobs and allow competitiveness in the global marketplace.

At the same time, the Restitution and Compensation Commission accepts and adjudicates claims for restitution of property to former owners or their heirs, an example of the “backward-looking” policy. These two entities operate independently, without coordination. An example of the result is found in a case from Librazhd:

- Building (a hotel) privatized by the National Privatization Agency to Person A  
Person A sells 50% of business to Person B  
The Restitution and Compensation Commission restitutes land to Person C  
The Municipality sells the land under the hotel to Persons A and B

Albania has generally followed the principles of privatization through the sale or free distribution of state property. As noted above, the Law *On Land* distributed agricultural land to the workers rather than subjecting it to restitution. There were two reasons for the decision not to reconstitute. First, the majority of the population lived on the cooperatives and state farms and a decision to force them off the land would have been politically and economically unfavorable. Second, there was a large decline in agricultural production in late 1980s and early 1990s, leaving the country in desperate need for basic food supplies. By quickly distributing the land to the people who knew how to work it, production increased rapidly.

Former state owned enterprises are also in the process of privatization. However, even though a business, which includes buildings and movable property such as machinery, has been sold to the private owners, there is often no mention of the land.

In the sample case above it was in this gap of time, between privatization of the business and privatization of the land, that the Restitution and Compensation Commission decision contradicting that of the National Privatization Agency was made. However, it is not only in cases where there is a gap in time that the contradictions occur. The main problem is the fundamental conflict between restitution and privatization when agencies operate independently. A secondary problem is in the procedures used for both the restitution and privatization process. There is a lack of communication between the Restitution and Compensation Commission and National Privatization Agency regarding their work. One solution to the problem is to require First Registration of all properties before any privatization decision is made. In this manner, conflicting claims could be identified and conflicting decisions prevented before privatization takes place.

Finally, there is a problem with the implementation of Restitution and Compensation Commission decisions. In many cases, restituted houses and buildings have occupants and, according to Law 8030, *On the State Contribution for Families Without Housing*, (November, 1995) these occupants cannot be forced to leave until there is alternative housing for them. The state has made little progress in building suitable alternative housing. Although the laws envisage mutual agreements between the parties, such as rental agreements or sharing the property, the reality is that there are conflicts between the current occupants and the ex-owners. In other cases, vacant land was illegally occupied and by the time the Restitution and Compensation Commission issued a decision to reconstitute the land, numerous illegal constructions have been built, leaving the restituted owners to fight with the occupants to establish their legal rights.

## 6. Public Property

The rapid privatization of immovable property in Albania has encouraged private enterprises, investment and improvements. There is little doubt that these privatization programs have been fairly successful. More than 90% of agricultural land and 50% of urban land is now in private ownership. However, in the rush to complete the privatization process, one important category of property has not been adequately addressed- public property.

Albania does not yet have a law on public property. There has been a political prejudice against ownership in favor of private ownership. The perception is that public land is land that has not yet been privatized. There are no clear ownership or administrative rights that are necessary for the proper maintenance and protection of property that is used for public purposes. Important public land such as parks, coastal areas, sidewalks and roads have been illegally occupied and there has been little action by the government to reclaim these public spaces. When the government does finally assert its ownership rights, there will be many conflicts. The longer the time before the reclaiming, the more difficult and bitter the disputes will be.

## V. Conclusion

Albania has made significant progress in changing from a centrally planned economy to a market oriented economy. One of the factors which underlies this progress is the rapid privatization of property through the various privatization laws. The Immoveable Property Registration System supports the privatization process and enhances the step toward a dynamic property market by securing rights to property and tenure. Although there are problems related to ambiguities or conflicts in the privatization process, illegal occupation of land and other property disputes, the initial step toward privatization is well underway. The properties where conflicts hinder their access to the market are relatively small in rural areas. In urban areas, the problems are more numerous and complex but they generally confined to particular categories such as non-apartment urban properties and restitution. Although people tend to focus their attention on the problematic cases, more than 90% of rural and urban apartment properties complete First Registration and enter the IPRS with no conflict of ownership or other restrictions. With some clarification of legislation, clear governmental policies and clear and quick methods for dispute resolution, the other properties should be able to enter the immovable property market.