

**Report
on a
Consultancy
in Albania
between
December 3, 1997 and December 18, 1997**

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Table of Contents

I. Activities

The consultant was in Albania from the 3rd of December to the 17th of the same month. The Terms of Reference asked him to participate in activities which primarily dealt with the Project Management Unit (PMU) s legislation-related activities and the Office of the Chief Registrar of Immovable Property. At the Chief Registrar s office the principal activities were: (1) reviewing the draft with the Registrar and Ms. Marita Qato, the legal officer. Most of the meetings were attended by the consultant and either Mr. Sharka or Ms. Qato or both.

Mr. Ismail Beka of the Ministry of Agriculture and Food was the general coordinator of activities and made suggestions that were followed up during the visit.

Inasmuch as the visit was a short two weeks, the consultant had to plan his time appropriately. Only one visit was made out of Tirana, to the Registries of Immovable Property in Durres and Kavaje.

The first of the activities of this consultancy was to advise the legal staff at the Ministry of Agriculture and Food on the revised draft act Buying and Selling of Land, Pastures, and Forests. The activities related to the draft act were: (1) reviewing the draft with the staff, (2) reviewing the draft with the Minister of Agriculture and Food to make sure the final preparations were complete and understandable prior to the formal submission to the parliament, and (3) to review the draft with the multi-party representatives of the Parliament who comprise the Agricultural Commission under the Chairmanship of Hoxhi Aliko.

The draft of the proposed law went through a number of versions before it was presented to the Minister. In the review that took place with the Minister, further revisions and clarifications were made. Finally, in the general meeting with the Agricultural Commission at their offices, a review of the buying and selling law took place. It was followed by a general discussion of the activities that had taken place during the consultancy. The members of the Commission responded to the activities that had taken place and a general discussion ensues for more than two hours. At the end of the meeting, it was felt that similar meetings should take place on a regular basis. It was felt that there should be a general review of the land-related matters every couple of months.

The second activity of the consultancy was the collaboration with Ms. Qato on the preparation of Special Regulations for First Registrationfor land which had activities pending, but was not registered. This activity was carried out principally in the Central Registry of Immovable Property with the collaboration of Ms. Qato. The visit mentioned above was made with Ms. Qato for the purpose of determining whether the Special Regulations for first Registration that were being prepared were compatible with the realities as they existed in the District Registries and to determine any other problems that might exist. The interviews in each of the Registries with the Registrar and his staff proved to be extremely useful and led to the smooth completion of the Special Regulations which are presented below.

The third activity was the preparation of proposed amendments to the Immovable Property Registration Act. This was done in coordination with the senior staff at the PMU and the legal office in the Chief Registrar s Office. It was discussed at the PMU and with the Agricultural Commission of the Parliament.

It was felt appropriate to ask the consultant to review the proposed agricultural land lease law draft inasmuch as some activity had taken place in the past relating to the leasing of agricultural land. Comments to the draft law were prepared which reviewed the general policies one attempts to deal with when creating leases; this was followed by a consideration whether a law or some other legal source might fulfill the needs; and finally the draft law was reviewed article by article with a consideration as to what source might fulfill the needs of the draft. The comments on the draft leasing

law were briefly discussed with the Agricultural Commission.

A contact was made with the new Director of Codification in the Ministry of Agriculture to discuss issues of common interest. The collaboration between the PMU and the Ministry of Justice had been strained in the past. It was felt that with the appointment of a new Director of Codification there was the possibility of discussion on issues of common interest. Contact was made with the Ministry of Justice and the Director, who is a busy person, asked that an agenda be sent to him. This was done, but over the time that the consultant was in Tirana, for one reason or another, it was impossible to set a firm date for a meeting. The consultant left without being able to discuss issues of common interest with the Director of the Codification Department.

II. Drafts and Other Written Statements

This was the agenda prepared for the meeting with the Agricultural Commission in the Parliament.

a. Axhenda/Agenda

1. Hyrja e Projektit - aktivitetet qe jane duke u kryer
2. Ceshtjet ligjore qe shtrohen per diskutim
 - a) Ligji i Shit-Blerjes se Tokes Bujqesore
 - b) Rregulloret e Vecanta per Rregjistrimin Fillestar
 - c) Komente mbi Ligjin e Dhenies me Qira
 - d) Propozime per ndryshime ne Aktin e Rregjistrimit te Pasurise se Paluajtshme
 - d) Periudha e afishimit
 - e) Disponibiliteti i informacionit nga Kartela; dhe
 - f) Procedura per te kerkuar kompensim

1.Introduction of the Project - activities that are taking place.

2.Legal questions for discussion:

- a) Buying & Selling of Agricultural Law;))
- b) Special Regulations for First Registration;
- c) Comment on the Lease Law;
- d) Proposals for amendments to the Immovable Property Registration Act.
- e) The period of display;
- f) Availability of information from the Kartela; and
- g) Procedure for requesting compensation.

b. Transfer of Ownership of Agricultural Land, Meadows, Pastures and Forests

The following is the draft law on the transfer of ownership of agricultural land, meadows, pastures and forests. This draft has been worked on by the legal staff of the Ministry of Agriculture and Food; it has been reviewed and discussed by the consultant together with the relevant members of the Ministry of Agriculture and Food; it has been reviewed by the senior staff at the PMU; it has been reviewed by the Chief Registrar and members of his staff; it has been reviewed and discussed with the Minister of Agriculture and Food together with members of his senior staff; and it was finally reviewed by the members of the Agriculture Commission of the Parliament.

Date 17.12.97

Draft

REPUBLIC OF ALBANIA
THE PEOPLE

S ASSEMBLY

LAW

FOR TRANSFER OF
OWNERSHIP OF AGRICULTURAL LAND, MEADOWS,
PASTURES, AND FORESTS

According to articles 16 and 23 of Law No. 7941, dated 29.04.1991 in constitutional
dispositions , with the Council of Ministers proposal,

THE PEOPLE
OF
REPUBLIC OF ALBANIA

S ASSEMBLY

D E C I D E D

Article 1

The aim of this law is the legal regulation of transferring the ownership of agricultural land, meadows, pastures and forests.

The transfer of ownership of agricultural land, meadows, pastures, and forests, is made by notarial acts which are governed by the requirements of the Civil Code.

Article 2

Agricultural land is land which is state property or is given in ownership according to Law No. 7501, dated 19.07.1991 For the Land and other legal and sub-legal acts for holding the agricultural land in ownership.

Meadows and Pasture Land are the state properties or the private lands given in ownership according to Law No. 7917, dated 13.04.1995, For Meadows and Pastu legal acts for holding meadows and pastures in ownership.

Forest Lands are the state properties or the private lands which are defined in given in ownership according to Law No. 7623, dated 13.10.92, For the Forests and the F and which are given in ownership according to Law No. 8118, dated 09.07.1996, and other legal and sub-legal acts for holding forest land in ownership.

Article 3

There are three variations of this article:

Variation No. 1

It is forbidden to pass the right of ownership of agricultural land, meadows, pastures and forests to a non-citizen of Albania.

Variation No. 2

It is not forbidden to pass the right of ownership of agricultural land, meadows, pastures and forests to a non-citizen of Albania.

Variation No. 3

This article shall be omitted altogether with the understanding that immovable property can be transferred to non-citizens

Article 4

When the family that possesses the land requests the transfer of ownership of agricultural land, meadows, pastures or forests to another person, family or physical or juridical person, the following documents must be presented to the Registrar of Immovable Property in the relevant Registration Zone:

The notarial act, in the form required by the Registrar, for the transfer of ownership;

The certificate of family status at the moment of the transfer of ownership; and

A notarized power of attorney which authorizes the person who is registered in the immovable property kartela as the head of the family, as stated in part of this article, to transfer ownership.

When one or more of the family members do not agree to the transfer of ownership of all or part of the agricultural land, meadow, pasture or forest to another, the relevant articles of the Civil Code in the Chapter on joint ownership shall apply.

Article 5

In the case of non-family lands the person or persons who is registered on the kartela of immovable property, shall present to the Registrar of Immovable Property in the relevant Registration Zone, a notarial act, in a form required by the Registrar, for the transfer of ownership which will be governed by the relevant articles of the Civil Code.

In the contract or transfer of ownership, the new owner must define the ownership form (individual, family or joint ownership).

Article 6

For those properties where a transfer is requested from one person to another, the property must have completed the first registration under Law No. 7843, dated 19.07.1994.

If the property in question is not registered according to Law No. 7843, dated 19.07.1994, special first registration Regulations, issued by the Chief Registrar, shall be utilized to add the property in question to the immovable property registration system.

Article 7

The Immovable Property Registration Offices do not register the transfers of ownership, when violations of this law are present.

Article 8

The second paragraph of Article 2 of the Law 7501, dated 19.07.1991

No. 7983, dated 27.07.1995

For the Land
 as of agricultural land, meadows, pastures

well as every legal and sub-legal act which is in opposition with this law, are repealed.

Article 9

This law enters into force 15 days after the printing in the Official Gazette.

COMMENTS ON THE TRANSFER OF THE RIGHT OF OWNERSHIP
OF AGRICULTURAL LAND, MEADOWS, PASTURES AND FORESTS

The law No. 7983, dated 27.7.1995,
presents some serious difficulties in its application, because it includes some complicated
institutional and organizational factors.

Buying and Se

The main disadvantages created by the current law are: (a) It defines the principals of free market activities in a limited manner and therefore limits the rights of families or individuals to make transactions with their properties; (b) it makes transactions lengthier and adds unnecessary bureaucratic obstacles in such transactions; (c) it permits transactions only through the registration system which does not cover the entire country. (d) it refers only to family land, excluding other physical and juridical persons which can take an active part in land transactions; (e) it cannot be directly supported by sub-legal acts (regulations), for the precise application which creates difficulties as well as unclear definitions concerning the farm family and its relationship to the ownership of land; (f) sales are considered as the only way to transfer ownership, leaving aside gifts and other transactions; and (g) sales are restricted to the agricultural land, which have been distributed according to Law No. 7501 of 19.07.1991, meadows and pastures, which have been given in ownership by Law No. 7917 of 13.04.1995, and does not include forests which comprises 36% of the area of Albania.

Because of these disadvantages a new law has been prepared. The new draft has much more flexible applications and in this respect is much simpler and less bureaucratic.

The advantages of the new draft law are: (a) it broadens the base of property which is included by adding forests and state properties; (b) it accomplishes the objectives of transferring ownership with minimal complications; (c) it allows the transfer of the property in an open and unrestrictive manner; (d) it allows transfers of property in ways other than just a sale according to the provisions of the Civil Code; (e) it law ensures that the law on registration of immovable property is respected at all times; (f) it establishes procedures for the transfer of farm family land; and (g) it repeals all contradictory provisions of other laws.

In addition, this draft presents three variations of Article 4. The first variation states it is not possible to transfer the to foreigners; the second variation allows the sale to foreigners by stating in the act that it can be done; and the third variation allows the transfer to foreigners, but there is not provision is the Law allowing it. It becomes understood. We favor the first variation that immovable property should not be transferred to foreigners. Other arrangement like long term leases can be utilized to make sure that the proper kinds of investments are made in Albania and the investor is provided with the necessary security. It is felt that it would be inappropriate to allow a scarce and valuable resource of Albania to go into foreign hands. We provide the variations in order to allow a discussion to take place of this issue.

PROJEKT

PROJEKT

**REPUBLIKA E SHQIPERISE
KUVENDI POPULLOR**

**LIGJI PER
KALIMIN NE PRONESI TE TOKES BUJQESORE LIVADHEVE, KULLOTAVE
DHE PYJEVE**

Ne mbeshtetje te neneve 16 dhe 23 te ligjit nr. 7491 date 29.4.1991 " Per dispozitat kryesore kushtetuese", me propozim te Keshillit te Ministrave,

KUVENDI POPULLOR

I

REPUBLIKES SE SHQIPERISE

V E N D O S I

NENI 1

Ky ligj ka per qellim rregullimin juridik te kalimit te pronesise mbi token bujqesore, livadhet, kullotat dhe pyjet.

Kalimi i pronesise se tokes bujqesore, livadheve, kullotave dhe pyjeve behet me ane te aktit noterial sipas dispozitave te Kodit Civil.

NENI 2

Toke Bujqesore Toka bujqesore eshte toka shtetore, toke qe eshte dhene ne pronesi sipas ligjit nr. 7501, date 19.07.1991 "Per Token " dhe akteve te tjera ligjore dhe nenligjore per dhenien e tokes bujqesore ne pronesi .

Toke Livadh dhe Jane livadhet dhe kullotat ne pronesi shtetore apo **Kullote** private qe jane dhene ne pronesi sipas ligjit nr. 7917, date 13.4.1995 "Per livadhet dhe kullotat" dhe akteve te ligjore dhe nenligjore per dhenien e tokes livadh ose kullote ne pronesi.

Toke Pyll Jane tokat shtetore dhe private te percaktuara ne ligjin nr. 7623 date 13.10.1992 "Per pyjet dhe policine e sherbimit pyjor" qe jane dhene ne pronesi sipas ligjit nr. 8118, date 9.07.1996 dhe akteve te tjera ligjore dhe nenligjore per dhenien e tokes pyll ne pronesi.

NENI 3

Toka bujqesore, livadhet, kullotat dhe pyjet prone e shtetit nuk mund te shiten deri ne kompesimin e ish-pronareve, pervec rasteve kur parashikohet ndryshe ne ligj.

Te gjitha kalimet e pronesise te tokes bujqesore, livadheve, kullotave dhe pyjet prone e shtetit, do te behen pas hyrjes ne fuqi dhe ne zbatim te ligjit "Per Pasurite Publike".

NENI 4

Ndalohet kalimi i se drejtes se pronesise te tokes bujqesore , livadheve, kullotave dhe pyjeve personave fizike dhe juridike te huaj.

NENI 5

Kur familja pronare kerkon te kryeje kalimin e pronesise mbi token bujqesore, kullotat, livadhet ose pyjet ne nje familje tjeter , person fizik ose juridik, i paraqet Regjistruesit te Zyres se Regjistrimit te Pasurive te Paluajtshem te Zones se Regjistrimit perkates , dokumentat si me poshte:

a) Aktin noterial te kalimit te pronesise ne formen e kerkuar nga regjistruesi i Zyres se Regjistrimit te Pasurise se Paluajtshme.

b) Certifikaten e gjendjes familjare ne monemtin e kalimit te pronesise.

c) Aktin noterial te perfaqesimit te antareve te familjes sipas pikes "b "te ketij neni , te cilet autorizojne personin qe eshte regjistruar ne kartelen e pasurise se paluajtshme si perfaqesuesi i familjes, te kryeje kalimin e pronesise.

Kur njeri ose disa nga antaret e familjes nuk jane dakort per kalimin e pronesise ne teresi ose te nje pjese te tokes bujqesore, livadheve, kullotave ose pyllit nje subjekti tjeter zbatohen dispozitat e bashkepronese ne teresi te parashikuar ne Kodin Civil.

NENI 6

Kur toka nuk eshte e regjistruar ne pronesi te familjes por eshte regjistruar prone e nje personi ose personave ne kartelen perkatese te pasurise se paluajtshme, ata duhet te paraqesin tek Regjistruesi i Zyres se Regjistrimit te Pasurise se Paluajtshme te rrethit perkates, aktin noterial sipas formes se kerkuar per kalimin e pronesise ne baze te dispozitave te Kodit Civil.

Zoteruesi i ri duhet qe ne kontraten e kalimit te pronesise te percaktoje formen e pronesise (individuale/ Familiare/ Bashkepronesi).

NENI 7

Kur kerkohet kalimi i pronesise nga nje person tek tjetri per pasurine e paluajtshme e cila nuk eshte regjistruar ne baze te ligjit nr. 7843, date 19.7.1994 "Per Regjistrimin e Pasurive te Paluajtshme", ne baze te rregullores per regjistrimin fillestar te vecante te leshuar nga Kryeregjistruesi, pasuria duhet te regjistrohet ne regjistrin e Zyres se Regjistrimit te Pasurise se Paluajtshme.

NENI 8

Zyra e Regjistrimit te Pasurise se Paluajtshme nuk ben regjistrimin e kalimit te pronesise kur veren shkelje te dispozitave te ketij ligji .

NENI 9

Paragrafi i dyte i nenit 2 te ligjit nr. 7501, date 19.07.1991 "Per Token", ligji nr. 7983, date 27.07.1995 "Per shitblerjen e tokes bujqesore, livadheve dhe kullotave", si dhe cdo akt tjeter nenligjor qe bie ne kundershtrim me kete ligj, shfuqizohen

NENI 10

Ky ligj hyn ne fuqi 15 dite pas botimit ne Fletoren Zyrtare.

**RELACION
PER
KALIMIN NE PRONESI TE TOKES BUJQESORE , LIVADHEVE, KULLOTAVE DHE
PYJEVE**

Ligji nr. 7983 date 27.7.1995 "Per shitblerjen e tokes bujqesore, livadheve dhe kullotave " paraqet disa vesh tiresi serioze per zbatimin e tij pasi kushtezohet nga nje sere faktoresh organizative dhe institucionale.

Pengesat kryesore qe krijon ligji ekzistues jane:

1. Deformon parimet e veprimit te tregut te lire dhe kufizon te drejten e familjes ose individit per te kryer nje transaksion me pronen e tij;
2. Zgjat kohen dhe shton pengesat burokratike per realizimin e nje transaksioni;
3. Sanksionon vetem transaksione ne prani te nje sistemi regjistrimi qe nuk mbulon te gjithe teritorin e vendit;
4. Vepron vetem mbi tokat e familjes duke lene jashte subjektet e tjera fizike dhe juridike qe mund te marrin pjese aktive ne transaksionet mbi token;
5. Nuk mund te mbeshetet drejt me akte nenligjore per zbatimin e sakte te tij duke u vesh tiresuar edhe nga percaktime jo te qarta te marredhenieve brenda-familjare lidhur me pronesine mbi token;
6. Shitblerja konsiderohet si e vetmja menyre e ndryshimit te pronesise duke mos perfshire dhurimin dhe veprime te tjera juridike;
7. Akti i shitblerjes kufizohet vetem ne tokat bujqesore te shperndara sipas ligjit nr. 7501 date 19.7.1991 "Per token", livadheve dhe kullotave duke perjashtuar pyjet, te cilat perbejne 36% te siperfaqjes se pergjithshme te vendit.

Per arsye te ketyre pengesa kemi pergatitur projektligjin e ri . Ky riformulim i nje ligji te ri eshte me i thjeshte dhe me pak burokratik.

Avantazhet e projektligjit te ri jane:

1. Projektligji i ri zgjeron bazat e tokes ne te cilin jane shtuar pyjet, kullotat dhe livadhet pasuri shtetore dhe private.
2. Projektligji krijon objektivat e kalimit te pronesise duke minimizuar komplikimet.
3. Lejon kalimin e pronesise ne nje menyre te hapur dhe te pakufizuar.
4. Lejon kalimin e pronesise jo vetem me shitje, por edhe me veprimet e tjera juridike sipas dispozitave te Kodit Civil
5. Siguron qe ligji "Per Regjistrimin e Pasurive te Paluajtshme " te respektohet ne cdo kohe.
6. Krijon procedura te pershtatshme per kalimet e pronesise te tokave te familjeve bujqesore.
7. Shfuqezon te gjitha kontradiktat e meparshme te ligjeve.

Perseri ne kete projektligj toka nuk mund t'u shitet te huajve. Ne mendojme qe kjo eshte nje pike qe meriton te diskutohet pasi , duhen te krijohen kushte te favorshme ne menyre qe te terhiqen investimet e huaja.

MINISTRI
Lufter XHUVELI
NE MUNGESHE DHE POROSI
zv/MINISTRI
Zydi TEQJA

REPUBLIKA E SHQIPERISE
MINISTRIA E BUJQESISE DHE USHQIMIT
DREJTORIA JURIDIKE

NR. _____ Prot.

Tirane, me _____ 1997

Lenda: Dregohet nje projektligj per mendim.

MINISTRISE SE FINANCEVE
MINISTRISE SE DREJTESISE
MINISTRISE SE EKONOMISE PUBLIKE DHE PRIVATIZIMIT
SEKRETARIATIT TE PUSHTETIT LOKAL
MINISTRIT TE SHTETIT PER REFORMEN LEGJISLATIVE

T I R A N E

Bashkengjitur ju dergojme per mendim projektligjin dhe relacionin perkates "Per kalimin ne pronesi te tokes bujqesore, livadheve, kullotave dhe pyjeve"

Lutemi mendimet Tuaja brenda dates 15.12.1997.

MINISTRI
Lufter XHUVELI
NE MUNGESHE DHE POROSI
zv/MINISTRI

Zydi TEQJA

c. Special Regulations for First Registration

The Special Procedures that apply to first registration have been prepared as a collaboration by the Legal Officer in the Chief Registrar

□s Office and the co

Chief Registrar, the Senior Staff at the PMU, The senior staff at the Ministry of Agriculture and Food and the Agricultural Commission of the Parliament. The Albanian draft does not appear to be the last one prepared. There is an inconsistency as two articles were added in the last version. They were added to both versions, but the consultant did not take a copy of the last Albanian version. Therefore the version that is included here is not the final Albanian draft of the Special Regulations.

Draft

Draft

SPECIAL PROCEDURES FOR FIRST REGISTRATION

REGULATIONS

No. __ date 14.12.1997

REGISTRATION OF IMMOVABLE PROPERTY IN SPECIAL CASES

According to Section 56 of Law No. 7843 dated 13.07.1994

□Law on the R

Property

□e Council of Ministers appr

REGULATIONS

Article 1

The legal owner of immovable property may request special registration by presenting an application for registration to the Registrar in the Registry office where the immovable property is located.

The applicant may appeal a decision of the Registrar to the Chief Registrar.

Article 2

The owner will include in this application a notarized declaration of the need for the special registration by indicating what circumstances such as transferring, mortgaging, subdividing, and other transactions create the need for the special registration.

Article 3

The person who is requesting registration under these Regulations cannot transfer the the ownership of the immovable property in question if the procedures for first registration under the Immovable Property Registration Act are not utilized.

Article 4

If there is no immovable property registration office in operation in the District where the immovable property is located, the application for special registration must be made to the Chief Registrar who will make the decision or forward the application to a District which he has delegated the authority to register the immovable property.

The data from the kartela, in such situations must be forwarded to the proper Registry Office within 30 days of the opening of the registry where the immovable property is located.

Article 5

In order to take advantage of the special registration, a person must provide all documents and other evidence necessary for the registration of the property as it is described in Article 24 of the Immovable Property Registration Law, including:

- a) title issued under law No. 7501 of 19.7.1991;
- b) contracts of sale under law No. 7652 of 23.12.1992;
- c) decisions of the Commissions of Restitution under law No. 7698 of 15.4.1993;
- d) other official instruments which confer private ownership;
- e) court decisions legally approved or reissued after 19.7.1991; and
- f) any other legal document proving ownership.

Article 6

The evidence which is required shall include any proof of ownership that the applicant or the representative of the applicant may present as set out in Article 3 as well as any unwritten evidence that can be presented, and a survey plan prepared by a licensed surveyor, in which all necessary coordinates are presented which should include:

- a) for agricultural parcels, a survey plan of an existing parcel of immovable property and a survey plan of the defined field of which it is a part;
- b) in the case of an isolated parcel, the location of the parcel in relation to a recognized physical feature;
- c) GPS coordinates if they are available;
- d) relationship to a geodetic control point; or
- e) any other manner which will define the immovable property with a level of precision acceptable to the Registrar.

Article 7

The person making the request must have a notarized declaration of adjoining owners that the applicant is the owner and a declaration of the Chairman of the Komuna or the Mayor of a Municipality stating that, according to the evidence that has been presented, this applicant is the owner of the property and no other claims of ownership exist.

Article 8

The Registrar shall assign a Unique Property Identification Number, in accordance with Article 16 of the Immovable Property Registration Act must be assigned to the parcel in question using the convention developed by the First Registration District Coordinator.

Article 9

The Registrar will create a special file for all applications.

That file should contain the Application, all supporting documents, and the survey plan.

Article 10

The Registrar shall inform the Hypoteka in the cadastral zone of all special registrations that are made of all urban immovable properties.

Article 11

The Registrar or his representative shall inspect the immovable property to verify that the description of the property in the survey plan is accurate and that there are no existing conflicts relating to the immovable property which is the subject of the application.

Article 12

The survey plan and the application form requesting special registration shall be displayed in a public place of the cadastral zone in accordance with the Immovable Property Registration Act.

Article 13

When the procedures for special first registration are satisfactorily completed, the Registrar shall open a kartela for the property in question.

Article 14

Any physical or juridical person who uses these special registration regulations must pay all the costs related to the Registrar or his representative's field verification, as well as the fees that are related to the preparation of the Kartela and any other documents that are required to register the immovable property in question.

Article 15

The person requesting special registration must be responsible for all consequences arising out of omissions or misinformation relating to the property in question.

Article 16

These Regulations shall apply to state properties.

Article 17

These Regulations shall take effect upon the approval of the Council of Ministers.

Date:

Approved by the Council of Ministers

c. 1 Albanian

DRAFT PARAPRAK

PROCEDURA TE VECANTA PER REGJISTRIMIN FILLESTAR

RREGULLORET

Nr. ____ DATE 12.08.1997

REGJISTRIMI I PASURIVE TE PALUAJTSHME NE RASTE TE VECANTA

Sipas Seksionit 56 te Ligjit Nr.7843 date 13.07.1997 "Ligji per Regjistrimin e Pasurive te Paluajtshme", Keshilli i Ministrave aprovon

RREGULLORET

Neni 1

Ne zonat kadastrale ku regjistrimi fillestar nuk ka perfunduar, pronari ligjor i pasurise se paluajtshme mund te kerkoje regjistrim te vecante duke i paraqitur nje aplikim per regjistrim Regjistruesit te Zyres se Regjistrimit ku ndodhet pasuria e paluajtshme.

Pronari duhet te perfshije ne aplikimin e tij nje deklarate te noterizuar ne lidhje me nevojen e regjistrimit te vecante duke treguar se cilat rrethana te tilla si transferimi, hipotekimi, nen-ndarja, si dhe transaksione te tjera krijojne nevojen per nje regjistrim i vecante.

Neni 3

Me qellim qe ta perfitoje regjistrimin te vecante, nje person duhet te siguroje te gjitha dokumentat dhe evidenca te tjera te nevojshme per regjistrimin e pasurise siç pershkruhet ne Nenin 24 te Ligjit per Regjistrimin e Pasurise se Paluajtshme, te cilat perfshijne:

- a) tapine e leshuar sipas ligjit nr. 7501 dt. 19/07/1991
- b) kontratat e shitjes sipas ligjit nr.7652 dt 23/12/1992
- c) vendimet e Komisionit te Rikthimit sipas ligjit nr.7698 dt. 15/04/1993.
- d) instrumenta te tjere zyrtare te cilat japin pronesine private.
- e) vendimet e gjykates te aprovuara ligjerisht ose te rinxjera pas 19/07/1991, dhe
- f) cdo dokument tjeter ligjor qe provon pronesine.

Neni 4.

Evidenca qe kerkohet do te perfshije cdo prove te pronesise qe aplikuesi ose perfaqesuesi i aplikuesit mund te paraqese sic eshte permendur ne Nenin 3, si dhe nje plan rilevimi te pergatitur nga nje rilevues i licensuar, dhe ato duhet te perfshijne:

- a) per parcelat bujqesore, nje plan rilevimi te nje parcele ekzistuese te pasurise te paluajtshme dhe nje plan rilevimi te fushes se caktuar, pjese e se ciles ajo eshte;
- b) ne rastin e nje parcele te izoluar, vendndodhjen e parceles ne lidhje me nje tipar fizik te njohur;
- c) koordinatat e GPS nese eshte e mundur ;
- d) lidhjen me nje pike te kontrollit gjeotezik; ose
- e) çdo menyre tjeter qe do te percaktoje pasurine e paluajtshme me nje nivel saktësie te pranueshem nga Regjistruesi.

Neni 5

Personi qe ben kerkesen mund te kete nje deklarate te noterizuar te pronareve fqinje qe aplikuesi eshte pronar dhe nje deklarate te Kryetarit te Komunes ose Kryetarit te Bashkise ku thuhet se, sipas evidences qe eshte paraqitur ky aplikues eshte pronari i pasurise dhe asnje pretendim tjeter ne lidhje me pronesine nuk ekziston.

Neni 6

Personi qe kerkon regjistrimin sipas Regulloreve, nuk mund te transferoje pronesine e pasurise se palujtshme ne fjale, nese procedurat per regjistrimin fillestar sipas aktit te Regjistrimit te Pasurise se Palujtshme nuk jane ndjekur.

Neni 7

Regjistruesi duhet te caktojte nje numer unik te identifikimit te pasurise ne perputhje me nenin 16 te Aktit te Regjistrimit te Pasurise se Palujtshme i cili duhet t'i vihet parceles, duke perdorur mareveshjen e bere nga koordinatori i rrethit per Regjistrimin Fillestar.

Neni 8

Regjistruesi do te krijojte nje dosje te vecante per te gjitha aplikimet. Kjo dosje duhet te permbaje Aplikimin, te gjitha dokumentat mbeshetese dhe Planin e Rilevimit.

Neni 9

Regjistruesi ose perfaqesuesi i tij do te inspektojte pasurine e palujtshme per te vertetuar qe pershkrimi i pasurise ne planin e rilevimit eshte i sakte dhe qe nuk ka konflikte ekzistuese ne lidhje me pasurine e palujtshme qe perben subjektin e aplikimit.

Neni 10

Plani i rilevimit dhe formulari i aplikimit qe kerkon regjistrimin e vecante do te afishohet ne nje vend publik te zones kadastrale ne perputhje me Aktin e Regjistrimit te Pasurise se Palujtshme.

Neni 11

Kur procedurat per regjistrimin fillestar te vecante te kene perfunduar ne menyre te kenaqshme Regjistruesi duhet te hape nje karteles per pasurine ne fjale.

Neni 12

Cdo person fizik ose juridik qe perdor keto rregullore te regjistrimit te vecante duhet te paguaje te gjitha kostot qe lidhen me viziten ne fushe te Regjistruesit ose perfaqesuesit te tij si dhe te gjitha tarifat per pergatitjen e Karteles dhe te cdo dokumenti tjeter qe kerkohet per te regjistruar pasurine e palujtshme ne fjale.

Neni 13

Personi qe kerkon regjistrimin te vecante duhet te jete pergjegjes per te gjitha pasojat qe rrjedhin nga mangesite ose keqinformimi ne lidhje me pasurine ne fjale.

Neni 14

Keto Regullore do te aplikohen per pasurite shteterore atje ku eshte e mundur.

Neni 15

Keto Regullore do te hyjne ne fuqi me aprovimin e Keshillit te Ministrave.

Data:

The following are the amendments to the Immoveable Property Registration Act that have been prepared after discussion with the members of the PMU staff in the registration department. The proposals have been prepared jointly with the Legal Officer in the Chief Registrar s Office. They have been discussed by the Chief Registrar, Senior staff at the PMU and by the Agricultural Commission of the Parliament.

d. Proposed amendments to the Immoveable Property Registration Act

Practice has shown that there are certain problems in the administration of the immovable property registration system. It is time to recommend amendments. There are only three amendments at this time, although it is currently not anticipated that there will be others in the future. The following additions are recommended :

Section 25. Public Notice

Where special circumstances exist the Registrar may shorten the display period for first registration for a full cadastral zone or for individuals

The period of public display may not be set for a period of less than [35][42] calendar days.

Section 25a. Special Registration

In cases where the immovable property is not registered and a transaction or some other legal act must take place, special registration shall take place in accordance with special regulations issued by the Chief Registrar.

Section 30a. Availability of Information from the Kartela

Every physical and juridical person has the right to get from the Office of Immoveable Property Registration the data from the Kartelas and maps for every property registered in these offices. The Registrar, however, does not have the right to give data for all property of any physical and juridical persons, except in the cases when the owner requests the data or the court has issued a written order to provide it.

In the case of agreement between the Chief Registrar and any other government institution which deals with data related to the immovable property which is entered on the kartela, there shall not be a violation of the above paragraph.

Section 49. Procedure for Requesting Compensation.

Upon the request of any interested party, the Registrar shall make a rapid decision as to whether any right to compensation should be awarded for damages caused, which resulted from incorrect information on a kartela, except in circumstances where the damage was a result of first registration.

Upon approval by the Chief Registrar, the awarded compensation for the damages caused shall be defined.

e. Leasing Law Comments

Comments on the Proposed Law on Renting Agricultural Land, Forestry Land, Meadows, Pastures and State Property

The draft law which applies to leases on Agricultural Lands, pastures, meadows, forests, and State Lands appears to be an example of a law that includes too much. An examination of what the government would like to accomplish and an analysis should take place to determine what aspects of leasing policy can be included in the body of the lease and what should be included in a law.

Leasing of land is legal according to the Civil Code (Articles 801- 850) and therefore the provisions of the Code will control many of the aspects of the leasing possibilities for immovable property.

Therefore, as long as the provisions of the Civil Code are followed, and a legal lease is created, it is most important for the Ministry of Agriculture and Food to set out parameters within which their lease expectations will be followed. This is normally done through the creation of a standardized lease form simple variation included it in, but which will contain a standard set of basic principles.

Let us look at the policies that are usually part of lease policy and see how much of it should be dealt with by the provisions of a contract of lease and how many of the policies should be reflected by a law:

Type of Policy	Possible source	
	Lease	Law
a) Length of Lease	Yes	
a. Renewal possibilities	Yes	
b. Procedures on death or disability of lessee	Yes	Civil Code
c. Transfer of lease to another (sub-leasing or assignments)	Yes	Civil Code
d. Convertibility to ownership	Yes	
e. Termination of lease	Yes	Civil Code
f. Compensation to lessees for improvements	Yes	Civil Code
g. Removal of improvement	Yes	Civil Code
h. Repairs	Yes	Civil Code
j) Rent Payments	Yes	Civil Code
k) Liability for land tax	Yes	Civil Code
l) Conditions for termination	Yes	Civil Code
m) Land use requirements	Yes	Civil Code
n) Selection of Lessees	government policy	
o) Lease agreement (writing of lease)	yes	Civil Code

It is clear that the Civil Code is the dominant legal reference point for leases. The contract of lease itself is also important for the specifics of the agreement between the parties to the agreement. The question that seems to be most pressing is whether or not the government should develop a number of standardized lease agreements for various situations. There would be blanks that would be filled in for the specifics of each lease.

Let us consider the draft law section by section. A reference will be made whether it would be more

appropriate for the provision to be in the contract of lease, regulations or a separate lease law. In addition, mention is made whether the provision is covered by the Civil Code.

<u>Draft law</u>	<u>Potential source of provision</u>
Article 1 -	Civil Code.
Article 2 -	If there is to be a law or regulations definitions would be appropriate.
Article 3a -	Civil Code.
Article 3b -	lease agreement.
Article 4a -	Civil Code.
Article 4b -	Civil Code and lease agreement.
Article 5 -	Civil Code and lease agreement.
Article 6 -	Law on Expropriation and lease agreement.
Article 7 -	lease agreement.
Article 8 -	lease law, regulations or lease agreement (according to government policy).
Article 9 -	lease law, regulations or lease agreement (most appropriate).
Article 10 -	lease agreement.
Article 11 -	lease law, regulations or a government policy document.
Article 12 -	lease law or regulations if a reference to a minimum is needed. This should be part of government policy
Article 13 -	lease law or regulations if a reference to a minimum is needed. This should be part of government policy
Article 14 -	government policy (part of negotiations for lease).
Article 15 -	lease law or regulations if a reference to a minimum is needed. This should be part of government policy.
Article 16 -	lease law or regulations (application for a lease).
Article 17a -	lease law, government policy or regulations (creation of a body of experts).
Article 17b -	government policy, lease law or regulations.
Article 18 -	government policy, regulations or lease law.
Article 19 -	government policy, lease law or regulations.
Article 20 -	lease law if one is to be prepared.

Recommendation: The best solution for the development of a government leasing policy is to develop a series of standardized leases which can be backed up by Regulations to the Civil Code to elucidate the policy of leasing immovable property. There are a number of Articles in the draft lease law which could be part of a lease law or regulations. It is preferable that Regulations be prepared rather than having a lease law. Therefore, there should be very careful consideration given to the need for a special law on leasing state agricultural, forests, meadows and pasture land.

The following is an article by article comment on the draft lease law.

Article 1

This law defines the right of the state to rent to the physical, juridical persons, natives or foreigners the land which is in its own ownership.

Comment: This provision is covered by the Civil Code, Article 801, 828

Article 2

The definitions of this law are as follows:

Land means state owned land, classified as agricultural, forestal, forest agricultural land,

meadow and pastures.

Lender means the state represented by any state organ to whom the law gives the authority to deal rental contracts for the land in its own jurisdiction.

Renter means every physical, juridical person, native or foreigner that rents the state land according to the requirements of this law.

Comment: If it is decided that a lease law or regulations would be pursued a definitions section would be appropriate. The definitions might read

immovable prop

Article 3a

The conditions of land renting are being regulated between contractual parties in a special contract according to the requirements of the Civil Code and legal and sublegal acts for the agricultural land, meadows, pastures, forests, hunting, waters, fishing and the environment.

Comment: As the sub-section states the basic relevant reference is the Civil Code, Article 801.

Article 3b

Conditions, which are not specified in the rental contract between the parties, but come up latter on, can be solved out in agreements between the parties. In case of disagreement, parties ask the competent court.

Comment: The provision relating to the amendment of the lease agreement or conflicts that arise latter should be part of the agreement.

Article 4a

Non-observance of the conditions of the land rental contract, between the parties brings payment charges according to the respective dispositions of the Civil Code for the damages done by any party.

Comment: The provisions of the Civil Code, Art 810, 814 and 815.

Article 4b

Any claim of one party should be presented to the other one at least 90 days before the contract will finish.

Comment: Civil Code, art. 810 refers to a reasonable time. The time can be altered by providing 90 daysin the contract of lease.

Article 5

When the renter wants to cancel the land rental contract before the deadline that is foreseen on the contract he is obliged to address a written requirement to the leaseholder at least 180 days before the required period is finished for closing the lease contract.

Comment: Civil Code article 797 appears to control this matter. However, if 180 days is to be specified then the construct of lease should deal with it.

Article 6

At the contract, contracted between parties, the lender informs the renter for the state land which he has given by lease, that he has the right to retake it again before the contract has finished, when in this land surface, based on the urban plan is foreseen the performing of one investment for public interest.

The lender is obliged to inform the renter by writing at least 1 year before the date of retaking in possession the land given by lease.

Comment: This first paragraph of this article should be governed by the Law on Expropriation. The second part of the article would be controlled by a provision in the contract of lease if the lessor is required to give the lessee a full year's notice prior to retaking the property.

Article 7

The period for lease contract will be decided based on the manner of using the land and investments that are made on it.

The lease period for forestry, pastures and meadows will be decided according to the respective dispositions (similar) of the laws "For the forestry and forest policy" and "For pastures and meadows".

Comment: The article is controlled by the contract of lease which will include the period of the lease.

Article 8

The term of the lease for state owned lands will be:

1. Until 10 years for lease contracts with short terms, where are included the activities for field plants production, saplings production and industrial crops.
2. Until 30 years for lease contracts with middle terms, where are included the activities for animal productions, protected environments, low forestries (cungishte).
3. Until 99 years for lease contracts with long terms, where are included the activities for tourism, recreation, and fruit-trees.

When the activity according to the points 1 and 2 of this article is associated with investments for their processing, they will be treated as lease contracts with a long term.

Comment: The contents of this article represent government policy which can be included in the articles of a separate lease law, in Regulations that reflect the government policy, or in a statement of government policy relating to immovable property.

Article 9

The criteria for the yearly value of land lease, for state property, are defined with Ministers Council Resolution.

The lease value will be calculated based on the period and the kind of activity of contract lease, the increasing and usage phase, and the defined rate from the respective sublegal act.

Comment: The contents of this article might be included in either a special lease law, regulations on leasing or in the lease agreement. The general terms which are found in the first paragraph might be most appropriate in a policy document issued by the Council of Ministers. The second paragraph should be part of the contract of lease.

Article 10

The renter will pay all the value of lease period, according to the defined criteria in the Ministers Council in the respective sublegal act.

Comment: This is covered by Civil Code Article 813(2) and should be clarified in specific terms in the lease agreement.

Article 11

The giving by lease of the land, state property, from the respective organs, is made through public information (publicity)

The taking by lease of the land and auction procedures regulations are defined by the Council of Ministers.

Comment: This article which discusses the government policy related to the procedures for making known the government's intention to provide leases and their procedure through which the lessee will acquire the leasehold property should be presented either in a government policy statement of regulations. If there is a lease law it could also be included in the law.

Article 12

The minimum land area which is given by lease to a subject cannot be smaller than what is defined in this law.

a) 5 ha for state agricultural land.

b) The leased parcels of forestry land, meadows and pastures will not be smaller than minimal limit of a subdivision.

Comment: The reference to minimum size parcels should be included in a lease law or in regulations. This will deal with government policy.

Article 13

For agricultural land, the base unit of the minimal area is parcel. After giving by lease to a part of a parcel of state land, the remaining part cannot be smaller than minimal area.

The minimal area cannot be created as the sum of different parcels which are not contiguous. Rather this minimal area can be achieved only when leased parcels are contiguous, and their joining will create a single unit.

Comment: The reference to the minimum size and configuration of the parcels should be in a lease law or regulations

Article 14

For forestry land, forest subdivisions cannot be divided.

Comment: The reference to the fact that sub-divisions can not be made should be in a lease law or regulations.

Article 15

The minimal area criteria according to the article 12, do not apply when for the purposes of developing the tourism, agrotourism, the protection of the zone biodiversity, is requested the lease of a land area which is composed of different kinds of lands.

Comment: This reference should be included in a lease law or regulations.

Article 16

Every physical or juridical person, native or foreign, who applies to lease state land must present a written request which fulfills these conditions:

- a. Describes the activity that will be performed and the impacts on the environment.
- b. Is in agreement with articles 13,14,15 of this law.
- c. A certification that he has no legal or financial obligations pending with the state.

Comment: This information should be included in a lease law or regulations.

Article 17a

When a state organization leases land, it will create a council with specialists of agriculture, forestry, city planning, environment and jurists whom will solve the technical requirements of giving the land by lease, foreseen from this law.

Comment: This should be contained in a lease law, regulations or in a statement of government policy.

Article 17b

The council defines the land area which will be given by lease according to these criteria:

1. The land area which will be given by lease shall not be subject to the application of the laws for restitution of the property to its owners.
2. The land area will not be subject to public investments for at least a period 10 years.

The state organization discuss the requirements at the council for giving the land by lease and will present for approval to the Ministry of Agriculture and Food.

Comment: This paragraph should be contained in a lease law, regulations or in a statement of government policy.

Article 18

For the lands which are within a tourist zone and for national parks, the respective approval must be done by the Albanian Council of Territory Regulation.

Comment: This Article should be contained in a lease law, regulations or in a statement of government policy.

Article 19

The contract registration of giving the land by lease in the Immovable Property Registration Office according to this law is excepted from the payment of fees at this office.

Comment: This Article should be contained in a lease law, regulations or in a statement of government policy.

Article 20

This law enter in force 15 days after the publication in Official Newspaper.

Comment: If there is a lease law this is a statement that should be contained in it.

e.1 Comments in Albanian on Leasing Law

KOMENTE MBI LIGJIN E DHENIES ME QERA TE TOKES BUJQESORE, PYJEVE, LIVADHEVE DHE KULLOTAVE PASURI SHTETERORE

Projektligji, ne lidhje me dhenien me qira te Tokes Bujqesore, Pyjore, Livadheve, Kullotave dhe Tokave Shteterore, paraqitet si shembull i nje ligji dhe permban shume gjera ne vetvete. Permbledhja e asaj qe Qeveria do te donte te permbushte dhe analizen qe do te behej per te percaktuar se cilat aspekte te politikave se dhenies me qira mund te perfshihen ne konceptin e qiradhenies dhe cilat duhet te perfshihen ne ligj.

Qiradhenia e tokes eshte 805 dhe sipas Kodit Civil (nenet 801 klauzolat e Kodit, do te mbeshtesin shume nga aspektet e mundesive per qiradhenien ne Pronat e Paluajtshme.

Prandaj per sa kohe qe ndiqen klauzolat e Kodit Civil dhe per sa kohe eshte krijuar nje qiradhenie legale, eshte shume e rëndësishme per Ministrine e Bujqesise dhe Ushqimit te vendose disa parametra, ne baze te te cilave do te shikohen rezultatet e pritura per qiradhenien. Kjo zakonisht arrihet nepermjet nje forme qiradhenie te standartizuar e cila mund te kete nje ndryshueshmeri te thjeshte te perfshire ne te, por qe do te permbaje nje forme standarte te parimeve themelore.

Le ti hedhim nje sy politikave, te cilat jane pjese perberese e politikave te qiradhenies dhe te shikojme se sa prej tyre mund te lidhen me klauzolat e kontrates se qiradhenies dhe sa prej tyre mund te reflektohen ne ligj:

Burimi i mundshem

Lloji i Politikes	Qiradhenia	Ligji
a) Kohezgjatja e qiradhenies	Po	
b) Mundesite e rinovimit	Po	
c) Procedurat ne rast vdekje ose pamundesite e qiramarresit	Po	Kodi Civil
d) Kalimi I qirase nje tjetri	Po	Kodi Civil
e) Shnderrueshmeria ne pasuri	Po	
f) Perfundimi I qiradhenies	Po	Kodi Civil
g) Kompensimet e dhena Qiramarresit permiresimet	Po	Kodi Civil
h) Zhvendosja e permiresimeve	Po	Kodi Civil
i) Riparimet	Po	Kodi Civil
j) Pagesa e qirase	Po	Kodi Civil
k) Pergjegjesia per taksen e tokes	Po	Kodi Civil
l) Kushtet e Perfundimit	Po	Kodi Civil
m) Kerkesat e perdorimit te tokes	Po	Kodi Civil
n) Perzgjedhja e Qiramarresve	Po	Kodi Civil
o) Marreveshja e Qiradhenies	Po	Kodi Civil

Eshte e qarte se Kodi Civil eshte referenca legale dominuese per sa i perket qiradhenies. Vete kontrata e qiradhenies eshte gjithashtu shume e rëndësishme per vete specifikat qe permban ne marreveshjen midis paleve. Ajo qe shquhet me teper eshte pyetja nese duhet apo jo qe Qeveria te zhvilloje nje numer marreveshjesh qiradhenie te standartizuara per situata te ndryshme.

Le ta shqyrtojme draftin ne cdo paragraf te tij. Do te behen referime, nese do te jete me mire qe klauzolat te perfshihen ne kontraten e qiradhenies, ne rregullore apo ne nje ligj te vecante qiradhenie. Pervec kesaj tregohet edhe nese klauzolat mbulohen nga Kodi Civil apo jo.

<u>Projektligji</u>	<u>Burimi Potencial i Klauzolave</u>
Neni 1	Kodi civil
Neni 2	
Neni 3a	Kodi Civil
Neni 3b	Marreveshje qiradhenie
Neni 4a	Kodi Civil
Neni 4b	Kodi Civil dhe Marreveshje qiradhenie
Neni 5	Kodi Civil dhe Marreveshje qiradhenie
Neni 6	Ligji mbi shpronosimin dhe marreveshje qiradhenie
Neni 7	Marreveshje qiradhenie
Neni 8	Ligj qiradhenie, Rregullime ose Marreveshje qiradhenie (sipas politikave te Qeverise)
Neni 9	Ligj qiradhenie, rregullime ose marreveshje qiradhenie (me e pershtatshmja)
Neni 10	Marredhenie qiradhenie
Neni 11	Ligj qiradhenie, rregullime ose dokument I politikes se njekur nga Qeveria
Neni 12	Ligj qiradhenie, ose rregullime ne rast se ka nevojte per referime. Kjo duhet te jete pjese e politikes se ndjekur nga Qeveria.
Neni 13	Ligj qiradhenie, ose rregullime nese nevojiten referime ne minimum. Kjo duhet te jete pjese e politikes se ndjekur nga Qeveria
Neni 14	Politika e qeverise (pjese e bisedimeve per qiradhenien)
Neni 15	Ligj qiradhenie, ose rregullime nese nevojiten referime. Kjo duhet te jete pjese e politikes se Qeverise
Neni 16	Ligj qiradhenie, ose rregullime (aplikim per qiradhenie)
Neni 17a	Ligj qiradhenie, politike qeveritare ose rregullime (krijimi I nje grupi ekspertesh)
Neni 17b	Politika e Qeverise, Ligj qiradhenie ose rregullime
Neni 18	Politika e Qeverise, rregullime ose Ligj qiradhenie
Neni 19	Politika e Qeverise, Ligj qiradhenie ose rregullime
Neni 20	Ligj qiradhenie, nese po pergatitet

Rekomandim: Zgjidhja me e mire per te zhvilluar nje politike qiradhenie, per Qeverine eshte, te zhvilloje nje seri qiradheniesh te standartizuara, te cilat mund te ruhen nga Rregullimet ne Kodin Civil, per te hedhur drite mbi politikat e qiradhenies ne pronat e paluajtshme. Ka nje sere nenesh ne projektligjin e qiradhenies, te cilat mund te jene pjese e nje Ligji ose rregulla te qiradhenies. Eshte me e preferueshme te pergatiten disa rregulla se sa nje ligj qiradhenie. Prandaj, nevojtes per nje ligj te vecante ne qiradhenien e Tokes bujqesore shteterore, pyjeve, livadheve dhe kullotave, duhet t

i jepet nje vemendje shume e rendesishme.

Komentet per cdo nen te projektligjit te qeramarjes jane si vijon:

NENI 1

Ky ligj percakton te drejten e shtetit te jape me qera personave fizike, juridike, vendas ose te huaj,

toke qe eshte ne pronesi te tij.

Koment: Kjo ceshtje eshte e shjelluar ne Kodin Civil, Neni 801, 828.

NENI 2

Percaktimet e ketij ligji jane si vijon:

"Toke" nenkupton token si pasuri shteterore, te klasifikuara ne fondin e tokes bujqesore, pyjore, me bimesi pyjore, livadh dhe kullote.

"Qiradhenes" nenkupton shtetin perfaqsuar nga cdo organizem shteteror qe me ligj ka autoritetin te lidhe kontrate qeraje per token ne juridiksion te tij.

"Qiramares" nenkupton cdo person fizik dhe juridik, vendas dhe te huaj qe merr me qera token shteterore ne zbatim te kerkesave te ketij ligji.

Koment: N.q.s. eshte vendosur ligji i qerese ose rregullat qe do te ndiqen do te ishte i pershtatshem nje paragraf me sqarime. Per t'u sqaruar do te lexohen, "pasuria e paluajteshme", "qeradhenesi", "qeramarrresi".

NENI 3a

Kushtet e dhenies me qera te tokes rregullohen midis paleve kontraktuese me nje kontrate te vecante ne perputhje me kerkesat e Kodit Civil dhe akteve ligjore dhe nenligjore per token bujqesore, livadhet, kullotat, pyjet, gjuetine, ujrat, peshkimin dhe ambientin.

Koment: Ne nje nenparagraf paraqiten bazat perkatese referuar Kodit Civil, Neni 801.

NENI 3b

Kushtet te cilat nuk specifikohen ne kontraten e qerese midis paleve, por qe mund te dalin me pas, zgjidhen ne marreveshje midis paleve. Ne rast mosmarrveshje, palet i drejtohen gjykates kompetente.

Koment: Ceshtja ne lidhje me amendamentin e marrveshjes se qerese ose konflikteve qe mund te krijohen me vone, do te ishte pjese e marreveshjes.

NENI 4a

Mosrespektimi i kushteve te kontrates te qerese se tokes midis paleve krijon detyrimin e pagesave sipas dispozitave perkatese te Kodit Civil, per demtimet e shkaktuara nga secila pale.

Koment: Ceshtje te Kodit Civil, Neni 810, 814, dhe 815.

NENI 4b

Cdo pretendim i sejciles pale duhet te paraqitet tek tjetra te pakten 90 dite para mbarimit te kontrates.

Koment: Kodi Civil, neni 810 sygjeron kohen e mundeshme. Koha mund te ndryshohet nga "90 dite" qe eshte ne kontraten e qerese.

NENI 5

Kur qeramarrresi kerkon te nderprese kontraten e qerese se tokes para mbarimit te afatit e parashikuar ne kontraten e lidhur, ai eshte i detyruar qe me nje kerkese me shkrim t'i drejtohet qiradhenesit te

pakten 180 dite perpara mbarimit te periudhes se kerkuar per nderprerjen e kontrates se qerasese lidhur.

Koment: Kodi Civil, neni 797 paraqet menyren e drejtimit te kesaj ceshtje. Megjithate, n.q.s. duhen 180 dite per kete veprim , atehere edhe kontraktimi i qerasese lidhet me te.

NENI 6

Ne kontraten e qirasese te lidhur midis paleve, qiradhenesi i ben te ditur qiramarresit qe per token ne pronesi shteterore qe ka dhene me qera, ka te drejte ta rrimarre ate perseri para mbarimit te kontrates kur ne kete siperfaqe toke, ne baze te planit urbanistik parashikohet kryerja e nje investimi me interes publik.

Qiradhenesi eshte i detyruar te njoftoje me shkrim qiramarresin te pakten 1 vit perpara dates se rrimarrjes ne zoterim te tokes se dhene me qera.

Koment: Paragrafi i pare i ketij neni do ti referohej Ligjit te Shpronesimit. Pika e dyte e ketij neni do t'i permbahej kushtit te kontrates se qerasese, n.q.s. qeradhenesit i eshte kerkuar te beje njoftimin mbi qerane nje vit me pare nga rrimarrja e pasurise.

NENI 7

Kohezgjatja e kontrates se qerasese vendoset ne baze te menyres se perdorimit te tokes, te investimeve te kryera mbi te.

Kohezgjatja e qerasese per pyjet, kullotat dhe livadhet do te behet sipas dispozitave respektive (te ngjashme) te ligjit "Per pyjet dhe policine Pyjore" dhe "Kullotat dhe Livadhet".

Koment: Ky nen i permbahet kontrates se qerasese e cila perfshin kohen e qerasese.

NENI 8

Afatet e dhenies me qera per token, pasuri shteterore do te jene:

1. Deri ne 10 vjet per kontratat e qerasese me afat te shkurter, ku perfshihen aktivitetet per prodhimin e bimeve te arave, prodhim fidanash dhe eterovajore.
2. Deri ne 30 vjet per kontratat e qerasese me afat te mesem, ku perfshihen aktivitetet per prodhimin blegtoral, ambientet e mbrojtura, pyjet e uleta (cungishte)
3. Deri ne 99 vjet per kontratat e qerasese me afat te gjate, ku perfshihen aktivitetet per turizem, rikrijim, pyll i larte dhe pemet frutore.

Kur aktiviteti sipas pikave 1,2 te ketij neni shoqerohet me investime per perpunimin e tyre, ato do te trairohen si kontrata qeraje me afat te gjate.

Koment: Permbajtja e ketij neni tregon politiken e qeverise, e cila mund te perfshihet ne nene te ndryshme te ligjit te qerasese, ne Rregullat qe pasqyrojne politiken e qeverise, ose ne deklaraten e qeverise ne lidhje me politiken per pasurine e patundeshme.

NENI 9

Kriteret e vleres vjetore te qerasese se tokave, pasuri shteterore, percaktohen me Vendim te Keshillit te Ministrave.

Vlera e qerases do të llogaritet mbi bazën e kohezgjatjes dhe tipit të aktivitetit të kontratës së qerases, fazës së rritjes dhe shfrytëzimit si dhe tarifës së përcaktuar nga akti nenligjor përkatës.

Koment: Cështjet e këtij neni mund të përfshihen ose në një ligj të vecantë të qerases, rregullat mbi qerane ose marrveshjen e qerases. Në përgjithësi fjalet e përdorura në paragrafin e parë mund të ishin me të përshtatshme në një dokument mbi politiken, nxjerrje nga Këshilli i Ministrave. Paragrafi i dytë do të ishte pjesë e kontratës së qerases.

NENI 10

Qiramarsi do të paguaje për të gjithë kohezgjatjen e qirases vlerën e saj, sipas kritereve të caktuara nga Këshilli i Ministrave në aktin përkatës nenligjor.

Koment: Kjo është shtjelluar në Kodin Civil, Neni 813(2) dhe do të saktësohet me terma specifike në marrveshjen e qerases.

NENI 11

Dhenia me qera e tokës, pasuri shtetërore nga organet përkatëse bëhet nëpërmjet njoftimit publik.

Marrja e tokës me qera dhe rregullat e procedurave të ankandit përcaktohen nga Këshilli i Ministrave.

Koment: Ky nen i cili paraqet politiken e qeverisë në lidhje me procedurat e berjes së njohur të planit të qeverisë për të mbështetur qerat dhe procedurat e tyre, nëpërmjet të cilave qiramarsi do të siguronte që pasuria e qeradhenesit ekziston gjithashtu në deklaratën e politikës së qeverisë për rregullat.

NENI 12

Sipërfaqja minimale e tokës që i jepet me qira një subjekti nuk mund të jetë më e vogël se ajo e përcaktuar në këtë ligj.

a) Për token bujqësore shtetërore 5 ha.

b) Për sipërfaqen e tokës pyjore, livadhet dhe kullotat nuk duhet të jetë më e vogël se kufiri minimal i një parcele.

Koment: Madhësia minimale e parcelës për t'ju referuar do të përfshihet në ligjin ose rregullat e qerases. Kjo është e lidhur me politiken e qeverisë.

NENI 13

Për token bujqësore njësia baze referuese e sipërfaqes është parcela. pas dhenies me qera të një pjesë të vogël të parcelës së tokës shtetërore, pjesa tjetër që mbetet nuk mund të jetë më e vogël se sipërfaqja minimale.

Sipërfaqja minimale nuk mund të formohet si shumë e pjesëve të vecanta që janë me distancë nga njëra tjetra, por kjo sipërfaqe mund të krijohet vetëm kur ato janë afër njëra tjetres dhe bashkimi i tyre krijon njësine e vetme.

Koment: Për madhësinë minimale dhe formën e parcelave do t'i referohemi ligjit ose rregullave të qerases.

NENI 14

Per token pyjore nenparcela pyjore nuk mund te ndahet.

Koment: Pika te ciles i referohemi, sipas te ciles nen-ndarje nuk mund te behen gjendet ne ligjin ose rregullat e qerases.

NENI 15

Kriteret e siperfaqes minimale sipas nenit 12, nuk aplikohen kur per qellime te zhvillimit te turizmit, agroturizmit ose ruajtjes se biodiversitetit te zones, kerkohet me qera nje siperfaqe toke qe perbehet nga lloje te ndryshme toke.

Koment: Kjo reference do te perfshihej ne ligjin ose rregullat e qerases.

NENI 16

Cdo person fizik ose juridik, vendas ose i huaj, qe kerkon te marre toke me qera duhet te paraqese nje kerkese me shkrim qe permbush keto kushte:

- a. Pershkruan aktivitetin qe do te kryeje dhe qendrimin ndaj ambientit.
- b. Nuk bie ne kundarshtim me nenet 13, 14, 15, te ketij ligji.
- c. Kur personi verteton se nuk ka detyrime financiare ose ligjore te pashlyera ndaj shtetit.

Koment: Keto kushte do te perfshiheshin ne ligjin ose rregullat e qerases.

NENI 17a

Kur organizimi shteteror do te jape toke me qera krijon nje bord me specialiste te bujqesise, pyjeve, urbanistikes, ambientit dhe juriste te cilet zgjidhin kerkesat teknike te dhenies se tokes me qera te parashikuara nga ky ligj.

Koment: Ky paragraf do te perfshihej ne ligjin ose rregullat e qerases ose nga deklarata per politiken e shtetit.

NENI 17b

Bordi percakton siperfaqen e tokes qe do te jepet me qera sipas ketyre kriterëve:

1. Siperfaqja e tokes qe do te jepet me qera te mos jete objekt pretendimi ne zbatim te ligjeve per rikthimin e prones ish-pronareve te saj.

2. Zona te mos jete objekt investimesh publike ne nje afat kohor prej 10 vjetesh.

Organizimi shteteror shqyrton kerkesat ne bord per dhenien me qera te tokes dhe ia paraqet per miratim Ministrise se Bujqesise dhe Ushqimit.

Koment: Ky paragraf duhet te perfshihet nga ligji ose rregullat e qerases ose nga deklarata per politiken e shtetit.

NENI 18

Per tokat qe shtrihen ne zonen turistike dhe per parqet kombetare, aprovimi perkates duhet te behet nga Keshilli i Rregullimit te Territorit te Shqiperise.

Koment: Ky nen do te perfshihet ne ligjin ose rregullat e qerases ose nga deklarata per politiken e shtetit.

NENI 19

Regjistrimi i kontrates se dhenies me qera te tokes ne Zyren e Regjistrimit te Pasurise se Paluajtshme sipas ketij ligji eshte i perjashtuar nga pengesa e tarifes prane kesaj zyre.

Koment: Ky nen do te perfshihet ne ligjin ose rregullat e qerases ose nga deklarata per politiken e shtetit.

NENI 20

Ky ligj hyn ne fuqi 15 dite pas botimit ne Gazeten Zyrtare.

Koment: Pas formulimit te ligjit duhet te behet kjo deklarate.

f. Memorandum to Ministry of Justice

The following is the memorandum sent to the Director of Codification in the Ministry of Justice. As noted above, there was no opportunity to meet with Mr. Hohxa during the two weeks of the consultancy.

December 9, 1997

To: Artan Hohxa, Director of Codification

From: Norman J, Singer, PMU

Re: Cooperation between Property Registration Project & the Ministry of Justice.

It was a pleasure to see you on Monday the 8th of December. As you suggested then, I would like to propose a brief agenda for a meeting sometime later this week (Wednesday preferably shortly after 12 Noon, if you have some time. I would like to have Sami Sharka, Chief Registrar, Marita Qato, Legal Advisor to the Chief Registrar and myself participate in the meeting.

Our agenda would be:

1. To discuss the problem where the Registrar corrects the Registry Index Map and the Documents of privatization state that the area of the holding is not the same as their map measurement. The Registration law assumes that there is a presumption of correctness in the distribution that took place under Law No. 7501, but the presumption can be rebutted. The corrected Index Map should be the evidence of the rebutting of the presumption.
2. The discussion of the overlapping provisions in Law No. 7843 and the Civil Code concerning Registration of Immovable Property.
3. How to prepare a concordance (reference index) and commentary which would develop the sources of the Civil Code in order to assist both the persons who are working with the law and the students of the Faculty of Law, University of Tirana (and ultimately in the other Faculties in the Albania). This would commence with the provisions on property, but the coordination of the project would attempt to simultaneously prepare the concordance in different areas with the coordination of our project and your office in the Ministry of Justice.
4. To start a dialogue to prepare materials for the teaching of various courses in the Faculties of Law. Our interest would primarily be in the immovable property area, but in light of the development of No. 1 above, we could develop a material development project in coordination with members of the Faculty of Law and the Ministry of Justice. Our discussion and feeling about such an activity would lead to more formal discussion with the Faculty of Law.

I would limit our agenda to the above four points so we can attempt to build a working relationship in these areas and work to other issues in the future. I will look forward to meeting with you, at your convenience this week.

Thank you.