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## Constituent element of the registration system of real estate in Albania, comparing with European countries

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### Abstract

*Property rights, constitutes one of 12 fundamental priority of EU which are required to be fulfilled by the Albanian government. The real estate, its registration, management, conservation of relevant documents for the identification of real estate, the holders of rights to real estate of real rights on them as well as representation of the data, compliance and accurate technical information and legal control over immovable property, constitute the key points of legal reforms in Albania over property rights. Creating a system of registration of real estate in Albania has gone through a long review analysis before its applying, which where considered the best European practices, but also socio-economic conditions in which was found our country. Since its creation until now has been more than 20 years, which carry progress and regression in the maintenance of the registration system of real estate. Analyze, review and comparison with other European countries brings constantly, the possibility of absorption of the best techniques that are used in different countries for a better management of the institution that manages real estate. Also, comparative reconciling of similar and distinctive elements of Albania with other European countries brings the necessity to speed up the relevant reforms in this direction in order to avoid legal and technical problems created today. The aim of this paper is to identify the characteristics of the registration and maintenance of real estate in Albania, compared with other European Countries, in order to apply legal reforms to improve them in the future.*

Keywords: real estate, European countries, registration, registration office, problems, comparison

### **I. Legal situation of registration of the properties in Albania before '90**

Albania, is one of the countries an integral part of southeastern Europe, has experienced fluctuations and instability in terms of recognition and registration of real estate. The reason of this facts has led the state to focus on the hands of all immovable property for about 50 years (from 1945- 1990), but also the obstacles of free private initiative which over the years gradually died out completely. The system of real estate registration in Albania belongs to roman germanic legal family, as well as other countries of Western Europe, such as Italy, France, Holland, Germany, Greece, etc. But this registration system has been gone through a number of stages to reach its present form. The network of Cadastral Offices inherited in Albania from the Ottoman Empire handled the registration of transactions involving rural properties. In Western market economies,

special institutions to deal with the identification of “true owners” have existed for hundreds of years, but in the completely “socialized” countries as was nearly the case in Albania after 1975, there was no use of such entities, since land and buildings were not privately owned. (Stanfield & Jazo, 2008, 1).

With the Constitution of 1976 (law 5506/28.12.1976), in Albania the private property on land and building lost its concept of law and fact, focusing entirely in the hands of the state. After the '90 years, together with political pluralism was necessary that in Albania to be selected registration system of real estate management. For this fact, required absorption and detailed analysis of European best practices, which would fit the actual situation in Albania. The property rights in Albania, passed in a dynamic process that involves massive legislative and institutional changes, highlighting the need to establish an appropriate balance between individual rights in front of collective rights. (Ministry of Justice, 2012, 7).

Institutions that administering property information were the same in the term as well as in other European countries, called cadastre and mortgage. Especially term cadastre is the term that is used in all European countries, a term which is still used even today in some of the mainly in Italy and Greece. But in Albania, before '90, the concept used for these institutions was different from other European countries, because the properties in Albania possessed only the state. While in other countries allowed the transaction on these assets. In Albania as well as in other Western Europe countries, it has existed mortgage cadastral system (cadastre and mortgages). Unlike other European Countries, in Albania during the socialist system, they were not allowed on real estate transactions, because they were possessed only by the state. Transactions carried out partially and in a small number, only for the buildings in rural areas.

## **II. Creating the dating system of real estate registration in Albania, compared with European countries.**

In 1991, after years of state ownership of all land and buildings, Albania joined other Eastern European countries in a transition to a market-oriented economy by privatizing the ownership of state properties. (Stanfield & Childress & Dervishi 1998, 1). In the early 90s in Albania launched a series of reforms in the land market, which brought as a consequence the creation of a special institution, which reflect the effective registration of all categories of properties in a single. After a though analysis and action plans, land survey, the factual situation and the possibility of management of legal documents in Albania was made possible in 1994, to draft law on real estate registration. (law 7843/13.07.1994)

This law instituted the system of real estate registration that applies today. The system of real estate registration based on the parcel, so to real estate. The drafters of the whole system recognized the deficiencies actions proposed to privatize land and settle in law and public posting registration of real estate in order for people to accept or to complain about the boundaries of parcels or any other claim. Complaints resolved by agreement between the parties and local government which also recorded, while conflicts are resolved in court blocking the actions of the registration office until the decision of the court. The registration system of real estate is unique and integrated with cadastral system, its also register as land and buildings as inextricably to the land. (web [www.zrpp.gov.al/historiku](http://www.zrpp.gov.al/historiku), p.7). One of the fundamental reasons for the selection of

this system was that it was built and was designed to be implemented on the basis of the most advanced principles of European countries and is contemporary.

Characteristics of the system of real estate registration in Albania are:

- Protect the rights of owners of real estate.
- It is simple and not expensive to maintain and administer.
- Provide the necessary information to the public.
- Facilitate the collection of taxes on the land.
- Allows the creation of geographic information system. ( Stanfield 2003, 10, 11).

Unlike Albania, Western Europe have recognized a consolidated legislation regarding registration and processing of data on real estate. In developed European countries might not be consider for the creation of the system of properties registration, because it has existed for years. But what seems like Albania's system is the effort of European countries to improve the registration system and the transition from a cadastral system (where are given the property datas) in a transcription system, the property registration. All European countries, especially Italy, which has fulfilled with the best targeted objectives, seek to improve the registration system in order to make efficient for its citizens.

In Albania, works a registration of real estates office, that has local offices for registration of properties spread in all the territory of the Republic of Albania. All existed property in Albania registered in the new system of real estate, where its main principle: "Fixed property, the owner variable", which means how important is the right legal identification and technical of the property, because the owner, due to its transaction may be change. In this respect, Albania seems like French system and Sweden, which has a unique registration ("The public register of land" in France and "The Real Property Register" in Sweden) and is different from Italy, Greece and Germany, which have dublex system of property registration. Regarding the regional census offices of real estate registration which are spread throughout the country, they are unique because they apply the same legislation and the same rules as the central office of real estate registration. This situation is similar with other European countries, with exception of Switzerland, which is divided in 26 cantons, each of them applying its legislation regarding real estate registration.

The principles that are followed for the creation of a system of registration of real estate are the same with other European countries. This institution work in a way that is open and transparent with the public. Among the key principles of the registration system of real estate in Albania are:

- **The principle of security** - the security that gives itself the registration system which is such system that the register property can not be violated or to change the technical and legal elements if this is not required by a legitimate interest.
- **The principle ease of access in this system** – This registration system is created and functions in a way that is transparent to the public and easy to obtain information, because the identification of the property is made through the property number and not from the property holder. In the registration system of the real estate can apply any individual who represents a legitimate interest on the real estate, for requesting information, but also special legal entities, recognized by the law as are the notaries. In this way, works even in other countries of Western

European. In Italy, France and in German notaries have access to obtain information from the registry office for the execution and registration of the real estate transaction.

- **The Principle of comprehensive** – the registration system was established and operates as a whole for all types of real estate. In it are register real estate, land and building, categorized all types of assets under voices cadastral, eg. land, forest etc. Available information on property regardless of its location, urban or rural areas. Also in this system are integrated and function together the legal information on property, to the ownership, to the possessors, or to the beneficiaries of the property and the real rights over them. But together with this information in the new registration system are given data for the technical elements and mapping of the real estate. So, the legal information is associated with the mapping. In some of the Western European countries, where it continues to exist and function still cadastre, or in countries where is duplex system of the real estate registration the information on property deals in both institutions in the same time, which must match each other in the coverage of data (eg in Italy) or can be obtained at the special office where is registered the properties of rural area and the properties of urban area.

However, in Albania, as well as in other Western European countries belonging to the civil law system, there is no state guarantee of title to a real estate. But if the individual affected by the actions or inactions of the administration that serves in the registration office, he has the right to complain and seek his right, and also require compensation through the court.

However, the registration system of real estate in Albania, estimated to be the best eventual system in our country in relation with the registration and administration of real estate, which has persisted over time. (Olldashi & Saliaj, 2015, 77).

### **III. Issues of property registration system in Albania compared with other European countries.**

After the sometimes violent turmoil accompanying regime changes in the late 1980's, with the shift to private land and building ownership through privatization policies and programs, the management of significant proportions of land and buildings became the responsibility of the private owners. (Stanfield & Jazo, 2008, 1)

The registration system of real estate in Albania, although created later in time, as well as other countries of Southeast Europe, is guided by contemporary and democratic principles for the management of real estate, with the aim of absorbing elements that belong to Western European. But what sets it apart Albania from other countries of Western Europe is the fact that in Albania, the issues related to the identification of the properties, the property, of the real rights over them, or the first registration of a property, division of rural lands to the inhabitants of the village that were owned in 1991, according the special law, have been in existence and a part of them still continue to be injured and creating pressure on the property registration system. In the Western Europe countries these problems or have not existed or have been settled a long time. In this way, they do not affect and does not infringe the system of real estate registration. While in Albania, with all the democratic principles that are determined to respect the right of ownership, the proceeding issues have been and continue to be present. Most of judicial disputes have as object the the real estate. While 90% of problems are directed from Albania for solutions to the European Court of Human Rights, they have as their object the injustice and claim the rights of ownership.

Even why the Albania built a modern registration system for properties, must confront always more issues which together with pluralism born after 90-s. Such were: The initial registration of real estate, which means the registration of all the real estates that are located in the Republic of Albania to a new registration system established in 1994. Another issue was the solutions of conflicts over ownership through establishing and reviewing their special legal bodies (agency of restitution and compensation of property to former owners) which change the title of ownership, but also the data and specifications of the property.

Also at the same time the new registration system should also afford the registration of Court decisions that establish for the solution of conflicts which were always growing with object: the real estate and the real rights over them. Another reality with which the albanian society was faced, was the mass privatization of public property, flats, units, shops, enterprises, etc., which passed through the transaction by the state as the seller to private individuals or private legal persons, who possessed by that time these assets. All this volume of requests for registration but also to identify the assets and property, together with the relevant transactions being conducted in notary offices (service which started to function an absence of 50 years), brought more problems in the office of registration, which had neither the technical conditions, neither the experience and the qualified staff to afford it. In Albania, as in other European countries, there is a lack of completion of initial registration of property, mainly in rural areas, but also problems that have arisen because of the informal settlements in urban areas. Such concern has existed before in Western Europe but now registration of property almost had ended, although not 100 % of assets. Still there are real estates, especially in rural areas; wich must be recorded by the respective offices of real estate.

The problems in Albania concerning the property and their registration, during these years relate mainly to”:

- Lack of initial registration in many areas, due to the mapping problems that do not comply with the legal information of the property.
- Lack of training and guidance for the staff of real estate registration office, but also frequent changes of administration that operate in these.
- Inappropriate time for delivering the service, increased workload as a result of increased enrollment and types of asset registration.
- Negligence of digital information update broadly in cadastral areas where the initial registration has been completed, damage maps, etc.
- Uncompleted service “one stop shop” to all local offices of property registration, service that will facilitate the long queue and bureaucracies created in the local office of real estate registration.

Although legal reforms, as regards registration of ownership in Albania have been numerous, they have not managed to reduce the growing problems of conflicts over ownership to the Court. However, unlike other European countries, Albania still needs to take action and continuous reforms, training, legal consultancy, etc., to eliminate this problematic. In this way, the Ministry of Justice or other different foreign and domestic organizations have taken continuously a series of measures dealing with legislative changes, establishing a system of monitoring service delivery, strict control of the local office property registration in districts, training the staff etc. But these measures must be continuous and long term plan to bring the expected results. Also ad hoc institutions that are set up to review the titles of ownership in Albania are numerous in

comparison with the surface of the Albanian territory. A part of these committees still exist yet, which together with their decisions, were the majority were challenged in court; they have brought damage and uncertainty regarding real property.

#### **IV. The reforms and the challenges of improving the system of registration of real estate in Albania and the countries of Western Europe.**

Despite the problems that have been encountered, the creation of the new system of registration of real estate, Albania remains a country in terms challenger legal reforms on real estate registration. Albania has undertaken major reforms in order to improve this service, among which is the digitization of real and online application information of real estate, through the service “one stop shop” for notaries, service which is still far away and difficult to implement for some European countries, such as Greece. Since 1995, Greece has been in the process of implementing a National Cadastre system. But there are still technical and legal difficulties which have prevented this process. While Italy is the country that has carried out deep reforms on real estate registration. Germany and France are also applying such a service, but remains behind Spain, England and Greece. Referred to the progress report of the European Community in 2015 for Albania, it aims to successfully complete:

- The initial registration for the remaining assets in rural and urban areas of major cities.
- Improving asset data in the priority areas of the property market, which are also potential economic development, such as coastal areas.
- Updating of digital information, design, development and implementation of a computer system computer for the registration of real estate, which will give life and priority to the functioning of a public register efficient and rapid registration of real estate. The legal framework for the protection of human rights is broadly in line with European Standards. However, implementation is limited and enforcement of human rights remains insufficient. The processes of property registering, restitution and compensation are not completed.

Under this World Bank supported project, millions of Albania’s land records – previously only in paper form – have now been digitized and are part of a centralized information system used in nine of the country’s biggest and busiest property registration offices, which the project has also renovated. As part of the same project, an estimated 400,000 Albanians are getting their properties registered via a systematic registration process, supported by a public media campaign, and which includes the help of government-paid specialists who do all the necessary collecting of documents, free of cost. (Global Legal Group, 2015, Section Albania). According to the Law 33/2012 “On the Registration of immovable property”, article 68, only the owner or person who has a legitimate interest has the right to verify the status of the property at the real Property Registry. Notaries in Albania follow the Latin system, as same as Italy, France, Germany, Holland, Switzerland, Sweden etc.

Real Estate Electronic Database, administered by the Immovable Properties Registration Office. In it may obtain information on the legal status and mapping of the real estate, but also of real rights on them personally by the individual who has a legitimate interest on it, or through one stop shop service of notaries. The Republic of Albania is a unitary state and there are no different systems of law. Law in Albania refers to a system of civil law, and there is no mixed system of law, federal law system or cantons, and thus these are not applicable to the execution of local

laws in the field of immovable properties as there are no legal systems on a territorial basis. (Global Legal Group, 2015, Section Albania). The law of the registration of real estate, respective legal acts and instructions are the same for all the local registration offices of real estate in Albania. Such practice is followed even in Western Europe, with the exception of Switzerland, which is divided in cantons, but also in some parts of Germany which had optional online verification of real estate. In Albania as well as in other countries of Western Europe, the state does not guarantee the validity of a title. The state only guarantees the functioning of the system of property registration and other real rights recorded in it. (Global Legal Group, 2015, Section Albania).

Planimetric map production is a basic graphic documentation element of the Immovable Property Registration System in Albania and is one of the main objectives of the Land Market Action Plan. This paper focuses on the implementation of photogrammetry program mapping of index maps for the registration system being developed for Albania. Photogrammetric work occupies an important place among the well-known methods of mapping. Methods for various types of map production based on aerial information are being developed. Analytical photogrammetry is completed theoretically, on an advanced technological base and with hands-on experience in all phases. At present, photogrammetry and remote sensing is changing from analog to digital, from aerial to space-based imaging/mapping, from local to global concepts, and from manually managed to computerized information systems such as the geographic information system. It is not always possible for technology to change from the old to the new. This depends on economic and financial possibilities, on existing technological bases, and, more importantly, on efficiency of the new technology to resolve the problem. In a lot of cases, analogical equipment has been adapted using various types of alterations in order to process as much information as possible and gradually to pass on to higher levels of technology. This paper examines the way aerial photography has been used for surveying in Albania. (Gjika & Leka & 1997).

The system of registration of real estate in Albania, as well as in the majority of European countries and transparent is open to the public. The procedure for obtaining the requested information becomes this: In a part of the registration office, an outside applied by notaries, while in other parts legal/physical persons, local or foreign, are given the entry code and the right of taking extracts of data directly, only from the electronic registry, ensuring the impossibility of manipulation of the electronic register through the electronic system. Legal entities/individuals, local or foreign, that have the right to access the electronic system, can take extracts/proprietary electronic documents directly after they have received the consent of those who are registered as owners of property. Registration system, can obtain information only person who is legitimate, meaning that there are direct or indirect interest in the assets. Subjects have the right to require from the Office of Property Registration the relevant information, electronically or through the post, upon realisation of the requirements of this law. Length of service offered by the administration of the office real estate registration has now changed, improved. If you previously had more bureaucracy and delays, now through the digital Albania is trying to compete with European countries in terms of service quality and timeliness of carrying out the service.

Decision of the Council of Ministers no.375, dated 06.06.2012 “On creation, registration, operation, management and interoperability and security of the system of registration of real estate” are defined on the detailed criteria of access to electronic order data and electronic applications and it is completely possible under this decision to obtain an application for the registration of documents electronically. In all European countries the law on real estate

registration stipulates that the state does not guarantee title, but if someone is harmed by the actions or inactions or if it/they makes a mistake of the relevant administration has the right to offset, to complain, compensation, etc. According to Articles 66 and 67 of Law no.33/2012, any interested person who claims they have suffered because of the registration or non-registration of an information request has an indemnity guarantee which can be pursued administratively and then through the court system.

There are no restrictions on information that can be obtained from the register of immovable properties. Currently, any person interested in buying real estate can access any information recorded in the register of immovable property through a public notary or by presenting themselves at the Office of Property Registration through a request in writing and the payment of a fee prescribed by law. (Global Legal Group, 2015, Section Albania).

## V. Conclusions

The registration system of immovable property in Albania was chosen for four basic reasons:

- (1) It protects the right of immovable property owners by providing strong and reliable evidence about ownership and other interests in immovable properties.
- (2) It is simple and inexpensive to administer and maintain.
- (3) It provides the public with easily accessible information which they need to buy and sell, mortgage, and rent immovable property, thereby providing the basis for a market-oriented economy and,
- (4) It permits the building of a Geographical Information System with property information as an integral and fundamental segment.

The registration system in Albania is similar in concept to what is used in Nordic countries, Austria, the Netherlands, Germany, Hungary, Slovenia, the Czech Republic, the Slovak Republic, Croatia, Macedonia, the United Kingdom, and the northern provinces of Italy. It is different from other European countries in that it is expressly "property" or "parcel" based and not simply a recording of transactions. It is an improvement over both types of European systems in that it combines property mapping with the recording of legal rights into a single administrative system. This paper describes Republic of Albania's Law on the Registration of Immovable Property and includes a copy of the law as an annex. ( Stamo&Norman 1997).

Our registration system is created to be geared towards the countries of Western Europe. The Ministry of Justice has undertaken continuous reforms in order to improve service in the system, increase public credibility, ease of access to information etc. In this way, the legal reforms have been numerous in number, over 100 legal reforms of ownership since the year 1991 until today. Although these reforms have not completely eliminated problematic that are connected with the registration and administration of real estate, they have contributed to alleviation these problems and the achievement of their final settlement. Compared with other European countries, we can say that our system of property registration problems still carries the identification of ownership. But these problems are not exclusively related to the system of registration (the registration application form), because our registration system as a whole is a contemporary, but with other elements affecting the registration system. Such as:

- Initial registration of properties.
- Special bodies to examine the title of ownership (agency of return and compensation of property).
- The lack of a specialized staff and properly trained.
- Lack of total digitalization online in the form of real estate throughout the country, etc.

In this way, these problems hinder the process and legal reforms for the modernization of the real estate registration, making this even for this system to be vulnerable, and completely trusted by the citizens. However, the challenge of this system is that in recording its objectives and be adapted to resemble those of European countries

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