

HISTORY OF THE RIGHT OF LAND OWNERSHIP IN ALBANIA

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ABSTRACT: *Theoretical definitions for the definition of the property in general and especially for land ownership are different from the legislation of different countries, but have evolved over time. However, despite the many deficiencies that these definitions have had, they have positively influenced the discovery of the substance of land ownership institute. The Property Rights Institute is the central institute of a socio-economic system, or of a legal system. The right to ownership represents a social relationship regarding the subject. While land ownership occupies the main place in any legal order and it directly or indirectly determines the content of other institutes and generally other forms of ownership. The 1998 Constitution of the Republic of Albania refers to the "private and public property" institutes as the basis of the economic system, and sets out four aspects for the composition of these institutes. First, both forms are equally protected by law. Second, the right to private property is guaranteed. Thirdly, the mechanisms for buying property should be defined in the Civil Code, and fourth, expropriation for public use is allowed only when there is a legitimate public interest and when they are fairly compensated. These constitutional measures provide significant protection to property rights, but the full composition of these rights should be defined within the wider context of civil code.*

KEYWORDS: Land Ownership, Socio Economy System, Property Rights Institute

INTRODUCTION

General understanding of land ownership

Many scholars have attempted to make the definition of property, in general, and in particular that of land, which itself is one of the oldest and most important forms of property. Theoretical definitions are different from the legislation of different countries, but have evolved over time.

Difficulties in the definition of ownership derive from the fact that, on the one hand, the entitlements recognized to the owner are numerous and on the other hand, on many occasions these entitlements are reduced so much that the owner's power over the item remains formal.¹ In this sense, but also for its complex value, the land has constituted and constitutes one of the fundamental problems in society.

However, despite the shortcomings and deficiencies that these definitions have had, they have positively influenced the discovery of the core of the land ownership institute. The Property Rights Institute is the central institute of a socio-economic system, of a legal system.

The right to ownership represents a social relationship with the object. While land ownership occupies the main place in any legal order and it directly or indirectly determines the content of other institutes and generally other forms of ownership.

¹ Dr. Avni Shehu, "Ownership", Tiranë 2000, pg.1

Legislations of different legal states and families have different definitions regarding ownership. In our legislation, the meaning of ownership has been reflected in the owner's entitlements (Article 149 and following of the Civil Code).²

This theory is developed in the classical Roman law, where ownership (*dominium*) is defined as full power over the object. Justinian claimed: "*Dominus plenam in re habet*", so the owner enjoys full power over the object. It is also given the content of the owner's full ownership over the object, consisting of three types of entitlements:

Jus utendi, means the right of possession and the right to use the object.

Jus fruendi, means the right to know the natural and civil rights of the objects.

Jus abutendi, means the right of alienation or creation on the object of a real right to the benefit of a third person as well as the complete or partial destruction of it.

Over time in Roman law was reached the definition: "*proprietas est jus utendi, fruendi, abutendi re sua, quatenus juris ratio patitur*". Thus, ownership is the right of possession, use, harvest of goods and disposition of its object in accordance with the legal order.

The 1998 Constitution of the Republic of Albania refers to the "private and public property" institutes as the basis of economic system, and sets out four aspects of these institutes composition. First, both forms are equally protected by law. Second, the right to private property is guaranteed. Thirdly, the mechanisms for buying property should be defined in the Civil Code, and fourth, expropriation for public use is allowed only when there is a legitimate public interest and when they are fairly compensated. These constitutional measures provide significant protection to property rights, but the full composition of these rights should be defined within the wider context of civil code.

The 1994 Civil Code provides basic principles, which indicate how a certain element of property rights should be applied. Article 149 of the Civil Code gives the meaning of ownership by defining: "Ownership is the right to enjoy and possess objects in a free manner, with the conditions set by law". The term "ownership" is the exact legal term used by the Civil Code and has the meaning of the right to enjoy and dispose of things freely, within the limits set by law. This term implies either a legal institute regulated by the norms of the Civil Code, or the right itself contained in the concept of ownership.³

An owner should be provided with legal possibilities in order to exercise his entitlements regarding possession, enjoyment and disposition. In the case of land ownership that in the earliest periods there has been a discussion of how far the owner extends his landlord entitlements, what are its landings, its entitlements on land and underground, are they unlimited or limited to a certain extent?

With regard to the horizontal areas, ie the earth surface it is clear that it belongs to the owner and it is the boundary of space and underground beginning. Normally the land area is defined in the property document, which determines the size of the land area of the owner and its boundaries. And as far as the alignment of the entitlements over the vertical space, ie the height above the ground and the underworld, are not unlimited. The owner's power or the extent of

²Dr. Avni Shehu, "Ownership", Tiranë 2000, pg.2

³ Dr. Nada Dollani, Protection of property by the European Convention on Human Rights (art. 1 protoc. 1), Tiranë 2011, pg.18.

the entitlements he has on the ground in depth and height reaches that point that it can gain useful or practical interests and which are likely to be realized and exploited by him. So they are not detectable in exact distances, expressed across metering units, but are variable on a case-by-case basis, referring to the possibility of realizing the power and controlling the landowner.⁴ This is also stated in Article 154 of the Civil Code where it is determined that the right of property over land extends to the height and depth that is useful for its practice under the conditions provided by law.⁵

With regard to the right of ownership, it is protected and sanctioned in almost all the constitutions of the countries. It is also guaranteed in many international documents.

Developing history of land ownership in Albania during the Ottoman Empire rule.⁶

The invasion from the Ottoman Empire of Albanian territories in the 13th-14th centuries set up a military feudal state system, as in other Balkan countries based on feudal military property and timar system. Though there are missing the historical sources of the XIV century to accurately reflect the dynamics of the timar's system expansion in space and time, it meant the nationalization of all lands and consequently the Albanian feudal generosity was disregarded by the right of ownership. The Albanian territory was divided into 335 timars, which were mostly used by military feudalists for merit demonstrated in war or were given for use to important empire officials. The timar man had also the obligation to serve with devotion to the empire.

In parallel with the land distribution, began the process of their cadastral registration, the earliest document discovered so far for the agrarian system that established the Ottoman invaders is a cadastral register, "Albanian Sandzak Register. There are recorded some of the provinces of Western Albania which stretch from Chameria to Mat River.

In the first half of the 20th century were undertaken a series of reforms, the Sultan promulgated a decree, which was called "sacred decree", with this decree began the reform period that was named Tanzimat. In this period we have the consecutive appearance of some agrarian laws in the years 1858, 1867 and 1875. Following the reforms undertaken, in 1858 came the special agricultural law, the law of the land. The law stated for the abolition of the feudal-military timar system and generalized the changes in the agrarian legislation until 1858. This law and other agrarian laws that came out in later years were affected by the relationship between the landowners and the villagers working in them. The great landowners continued not to direct themselves their great land possessions, but to rent them.

Developing history of the right of ownership in Albania after the declaration of independence.⁷

The state organs created after the declaration of independence of the Albanian state tried to undertake some reforms that had to do with land ownership and its legal regulation. Reforms concerned mainly with the processes of limitation and the fragmentation of sanctions. However, they continued to exist for a period of time. This reform mainly affected the territorial

⁴Dr. Avni Shehu, "Ownership", Tiranë 2000, pg.2.

⁵Civil Code, pg. 51, art. 154.

⁶Prof. Dr. Paskal Haxhi, "The legal regime of land in Albania", Tiranë 1995, pg 22.

⁷Prof. Dr. Paskal Haxhi, "The legal regime of land in Albania", Tiranë 1995, pg 34.

divisions of the Turkish invaders that were transferred to the ownership of the new Albanian state.

Fan Noli's government tried to undertake some essential reforms to remove the land ownership by supporting peasantry. For this purpose, a draft Law on Agrarian Reform "On Expropriation of State Property" was drafted. The reforms envisioned by this government failed to be implemented even for the very short period of its activity.

During Ahmet Zogu's period, there were some very important changes in the field of legislation. The first step in this direction was the adoption of the Statute of the Republic, but in the field of civil relations in general was the Civil Code of the Albanian Kingdom. This code defined the capitalist principles of private property as sacred and intangible. In the Civil Code it is stipulated that: "Commitment is the right to enjoy and dispose things in an absolute manner, with the condition that no harassment of laws or regulations is practiced"⁸. While in the other article it was stated that: "He who has possession of the land has also what is above and below its surface, except when by law it is determined differently"⁹. So it was sanctioned as a natural right of man who was born with it and as such is unlimited and sacred. The restriction of this right was an exception only when expressly provided in the law.

After the entry into force of the Civil Code, the law "On mortgage offices and their taxes" was also approved. According to this law, mortgages had to do only with the transcription of sales acts, donation and other acts, and by inspection of mortgages or real rights on agricultural or urban property. Characteristic is the fact that the mortgage offices were not involved in the registration of ownership because they required to carry out geodetic measurements. When the owner of an unregistered land or building wanted to sell it or mortgage it, he was obliged to register it.

The Basic Statute of the Republic and then The Basic Statute of the Albanian Kingdom established the right of inviolable property for any kind of property. No one could be expropriated without regularly proving the need for a world wide interest, without paying a reasonable estimate and without a special law regulating exactly the expropriation procedures.¹⁰

Determination of the legal nature of expropriation should be seen depending on the interest of the ruling class and its ambitions for the country's governing. In determining the expropriation, some essential elements of expropriation are missing, as the complete, preliminary and immediate compensation that should be made to the owner. The components that legitimize the expropriation were not fully included either in the definition made later by the Civil Code of the Kingdom of Albania, which refers to a prepayment of reasonable compensation. The formulations of these two provisions would leave a path to multiple abuses that would be made later in the expropriation field.

Any government's need for new land would be considered a public interest, any economic and social reform part of the government program would be considered a public interest. In the law that deals with expropriations in the capital, it is noticed the arbitrariness that justifies the

⁸Civil Code of Albanian Kingdom, 1929, art 794.

⁹Civil Code of Albanian Kingdom, 1929, art 798.

¹⁰The Founding Statute of the Albanian Kingdom, art 198

compensation of expropriated owners at a price that does not have the actual value of the expropriation.

The law "On property expropriation in the capital" was approved, and this justified the immediate need to regulate the capital city, where the town hall of the capital was authorized to expropriate any property, thereby implementing the capital's plan. The price of the property to be expropriated was determined according to the value it had since January 21st 1920 when the Congress of Lushnjawas held and the value it had at the time of expropriation. Property assessment was made by a commission consisting of four members whose decision was final and irrefutable. With this law the owner was not only harmed to the ownership right because he was not compensated for the full value of his property but also in the exercising of his subjective right. Thus, the owner had no legal possibility for the judicial realization of the right because the decision of the commission was uncontested.

Developing history of the ownership right in Albania during the communist regime period¹¹

With the end of World War II and the establishment of the communist regime in Albania, drastic changes occurred in the political system, which directly affected the issue of private land ownership. On August 29, 1945, the Anti-fascist National Liberation Council approved the law "On Agrarian Reform". By this law it was stipulated that state sanctions, generally confiscated agricultural properties, private agricultural properties, lands of religious sites, and lands given to immigrants from King Zog's reform would be expropriated. Also would be expropriated the olives, vineyards, orchards, agricultural tools etc. which were involved in lands to be expropriated.

After the end of agrarian reform we had a new state of land ownership. From this reform benefited many families who had no land or had little and on the other hand were expropriated many other families, which had relatively large land ownership. Albania entered a process of class struggle "the driving force of socialist society", which was very harsh and radical.

In the years that followed, a number of laws were adopted, which in themselves restricted the private land ownership and created its collective system. The period 1945 - 1955 was the first phase of the collectivization of agricultural land. In 1961, was announced the full collectivization of agriculture. The management of agricultural lands was made through the creation of collectivizing forms of agricultural cooperatives and agricultural enterprises, which were actually controlled directly by the state.

As no other country in the former socialist bloc, in Albania the Constitution sanctioned the existence of socialist property only in the city and in the village it was not only allowed the private property, but private activity as well.¹² In the domestic market, the state defined production levels and supply sources, purchase and sale prices of goods, salaries, etc. The villagers were allowed to maintain a limited number of cattle and poultry just to meet their personal needs, in this way transforming it into consumers like in the city. The implementation of the principle of "building socialism relying entirely on our own strengths" introduced the country into a self-isolation. Manufacturing co-operation and other contemporary forms of cooperation between states and manufacturing firms were ideologically unacceptable and politically damaging. Foreign economic relations were limited to exchanges of goods and

¹¹Florian Bjanku, phd, pg. 89.

¹²Constitution of the Republic of Albania, Tiranë 1976, art. 16.

services. The state had the monopoly of foreign trade and, as stated in article 28 of the Constitution, "in Albania it is forbidden the grant of concessions, the establishment of companies and other foreign economic and financial institutions or joint ventures with monopolies and capitalist states, bourgeois and revisionists, as well as getting loans from them."¹³

In 1989 all lands in Albania were owned by the state. The principle of state ownership exclusivity was found in the 1976 Constitution, which was the last legal action prohibiting any other form of collective or private land ownership.

Developing history of the ownership right in Albania after the collapse of the communist regime.¹⁴

The legislative changes in 1991 when the political regime changed, parliament adopted law no. 7491 on. 29.04.1991 "On Constitutional Provisions", which rejected the 1976 constitution and served as a basic law until the creation of the New Constitution on 1998. This law referred to the private properties and obliged the state to develop economic relations based on market principles. The Constitutional Law sanctioned that the country's economy is based on the diversity of property, the free initiative for all economic entities. It gave power to parliament and the government to review the ownership structure of land and property in Albania.

Land-based reform programs are initially linked to Law no. 7501, on. 19.07.1991 "On land". Agricultural lands, formerly state-owned and administered by agricultural cooperatives and state farms, were already to be dispensed to the members of farm families and farm workers per capita. A legal document gave land ownership to the head of the family.¹⁵

Habitations, including apartments and houses with yard, would be transferred to the ownership of their occupants in two categories:

1. Previously state-owned habitations had to go through low-value sales, where owner was named the most senior family member.¹⁶
2. Small habitations (apartments) which were also known as personal property during the communist era remained in the ownership of the families they owned by trying purchasing or administrative transfer.

Land and buildings used for commercial, industrial or service purposes could be privatized or leased to various entities.

Meanwhile, families who were owners of non-agricultural land and properties before 1945 could seek their return, or otherwise require physical or financial compensation.¹⁷

Law No. 7501, dated 19.07.1991 "On land", and authorized the division and transfer of agricultural cooperative land to family members in equal shares.

¹³Constitution of the Republic of Albania, Tiranë 1976, art. 28.

¹⁴Florian Bjanku, PhD, fq. 91.

¹⁵Law no. 7501, on. 19.07.1991 "On the land".

¹⁶Law no. 7652, datë 23.12.1992, "On the privatization of state housing".

¹⁷Law no. 7698, on. 15.04.1993, "On Restitution and Compensation of Property to Former Owners".

Law No. 7652, dated 23.12.1992, "On the Privatization of State Property Homes", allowed urban households to own the apartments and individual houses in which they lived.

Law No. 7512, dated 10.08.1991, "On sanctioning and protection of private property and free initiative, independent private activities and privatization", allowed the transfer of buildings and business premises as part of privatization.

These laws brought in the Albanian legal system basic civil law institutes, related to immovable property, ownership, lease contract and the rights of use. However, the full content of these institutes could not be clarified because the revision of the civil code was not complete until 1994. The terms and conditions for purchase, retention, and use could be determined only by category of land or property, as described in each law and according to the documents provided by state agencies when the objects were transferred.

The land and property privatization programs, authorized by the 1991, 1992 laws, strengthened the structure of the categorical definition of property and land rights. Each law was organized under a special committee hierarchy and each had the responsibility of defining property units, determination of the appropriate persons, and authorizing transfers of relevant units to each person.¹⁸

Forests and pastures were held in state ownership based on the idea that only the state could provide the environment protection and resource-management regime.

In the division of farmland, farm collective separate units were measured in size and value on the basis of the number of persons but were transferred in a consolidated manner to the head of the family. Similarly, the transfer document for an apartment or house marked the head of the family as owner, but usually the family members were listed in the transfer act, too.

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