
DEVELOPMENT OF A LAW ON THE PUBLIC OWNERSHIP OF PROPERTIES IN ALBANIA

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Terra Institute, Ltd., has provided technical assistance in Albania since 1994. Under both the Land Legislation and Policy Project (LLPP) and the Land Markets in Albania Project (LMAP), the Institute has archived almost 50 reports, papers, draft legislation, and commentaries on land legislation, land registration, land tenure, and other land market-related activities in Albania.

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DEVELOPMENT OF A LAW ON THE PUBLIC OWNERSHIP OF PROPERTIES IN ALBANIA

by

Dean T. Massey*

1. INTRODUCTION

This report provides an analysis of the draft law, “On the Public Ownership of Properties,” dated 13 July 1998 (see Annex 3). The draft was prepared to advise the Immovable Property Registration System’s Property Management Unit (IPRS/PMU) and various ministries within the Government of Albania on the development of a law on the public ownership of properties. Much of the report’s analysis is derived from comments received during discussions with a representative of the Prime Minister’s Office and various ministry attorneys who reviewed the draft. Two other draft laws based on review comments were also prepared; these are dated 21 July 1998, and 23 July 1998. The 23 July 1998 draft, “On the Public Ownership of Properties,” is attached as Annex 4. A draft Council of Ministers’ decision, “On the Transfer of Public Properties to Local Governments,” dated 18 July 1998 (see Annex 5), was prepared to implement the 13 July 1998 draft law.

After being translated into Albanian, the first draft law was distributed for comments to a public-ownership adviser to the Prime Minister and attorneys at the Ministry of Agriculture and Food, Ministry of Public Economy and Privatization, Ministry of Local Government, and Ministry of Public Works and Transport. Conferences were held with attorneys of the Ministry of Agriculture and Food, Ministry of Public Works and Transport, and Ministry of Local Government to discuss the draft law and receive comments. Considerable time was spent with individuals from the Ministry of Public Economy and Privatization in discussing, in general terms, privatization, state-owned property, transfer of state-owned property to organs of local government, and the process of preparing a law for enactment, that is, getting a sponsoring ministry, reviewing the proposed law by the involved ministries, and submitting the final version to the Council of Ministers. Since this ministry is the owner’s representative concerning state-owned property, its appraisal and observations were especially important for any redraft of a law on the public ownership of property. These same attorneys will review the final draft of the law submitted by the Ministry of Agriculture and Food for enactment.

2. OBJECTIVES

The objective of preparing the July 1998 draft law, “On the Public Ownership of Properties,” was to assist the Albanian government in establishing a coherent legal system for the public ownership of properties. Specific intentions were to: (1) refine the 16 June 1998 draft, “A General Law on Public Ownership of Immovable Properties”; and (2) remove any conflicts among a proposed law on public ownership of properties, previous laws, and Council of Ministers’ decisions that assigned powers over immovable properties to ministries or agencies other than the Ministry of Public Economy and Privatization. The result will be a new draft of the “General Law on the Public Ownership of the Immovable Properties” and this written report, observing: (1) why a law on public ownership of immovable properties is required, (2) what the law accomplishes, and (3) why certain formulations were used for the various articles in the newly prepared draft law.

* Legal Consultant, Terra Institute, Ltd., Mt. Horeb, Wisconsin 53572, USA. Report was submitted to the Terra Institute in August 1998.

3. REFINE DRAFT LAW

The draft law, "On the Public Ownership of Properties," dated 13 July 1998, was prepared for the Government of Albania after conference with government spokespersons. The draft was then officially given to the ministries and the Prime Minister's Office for review and comment. The Prime Minister's Office indicated that the law should include all public properties, not just immovable public properties, to encompass all three types of public property in Albania, that is, immovable, movable, and intangible or capital. Comments from the Ministry of Local Government, in turn, were exhaustive.

The Ministry of Local Government asked that a clear distinction be made between state-owned properties that are public and state-owned properties that are not public, such as those used by business enterprises. This is not the same as the distinction made when defining "types of publicly owned immovable property" in Article 2 of the draft law. The law, it was said, should more accurately concern itself with what are public properties and which of those properties should be transferred to local government. It was reasoned that there are public properties that are not state-owned, such as museums and galleries open to the public. The law, that is, should determine: (1) which properties are public, and out of those properties which are state-owned; and (2) which state-owned properties are not public. There is much confusion among the Albanians on publicly and state-owned property. The Ministry of Local Government felt that, contrary to the concept put forth in Article 7 of the draft law, the Central Government should decide which properties should be transferred to local governments rather than have the local governments specifically request which properties are to be transferred.

A draft Council of Ministers' decision, "On the Transfer of Public Properties to Local Governments," dated 18 July 1998, was prepared to implement the 13 July 1998 draft law, "On the Public Ownership of Properties." It may, however, be difficult to implement the transfer provisions in the draft decision as presently stated. Many of the problems arise because organs of local government must request that certain properties be transferred to them within strict time limits imposed during the request and transfer process. This relationship is to be revised.

4. CONFLICTS BETWEEN PROPOSED LAW ON PUBLIC PROPERTIES AND PREVIOUS LAWS

Several laws permitted organs of the Central Government either to transfer ownership of or use rights to immovable properties to organs of local government or to divest ownership rights of immovable properties to physical or juridical persons. Most privatization has been completed and most will continue under these laws. For example, under Law No. 7562, "On the Privatization of the State Housing," the National Housing Institution (Authority) had the power to privatize housing units in urban areas, and it retains that power to privatize the remaining units. On the other hand, the Ministry of Tourism had the power to privatize hotels, but the authority to privatize the remaining hotels now rests with the Ministry of Public Economy and Privatization, though it does rely upon the recommendation of the tourism agency, which now operates from within the Ministry of Construction. Law No. 7501, "On the Land," dated 19 July 1991, gave the Ministry of Agriculture and Food the authority to privatize agricultural land that was part of cooperative farms. Under Ministry of Agriculture and Food Regulation No. 308, "About the Transfer of Commercial Forests and Pastures for their Use and Administration," dated 26 January 1996, the Ministry of Agriculture and Food has the authority to transfer use rights in state-owned forests and pastures to organs of local government. That Regulation implements Law No. 7623, "On Forests and Forest Service Police," dated 13 October 1993, and Law No. 7917, "On Pastures and Meadows," dated 13 April 1995. The Ministry of Agriculture and Food stressed that it should retain the same authority and power, particularly relating to administration and management, that it now has under present laws over state-owned properties.

Various organs of the Central Government have been assigned responsibilities to represent the government in the privatization process. The National Privatization Agency, an organ of the Council of Ministers as established under Law No. 7512, "On the Sanctioning and Protection of Private Property, Free Initiative of Independent Private Activities, and Privatization," dated 10 August 1991, was the first organ to represent the Central Government in the privatization process. Under Law No. 8237, "For Some Changes in Law No. 7926," dated 1 September 1997, which is now the latest, the Ministry of Public Economy and Privatization is the owner's representative concerning state-owned properties. In addition, Law No. 8237 provides that the ministries, departments, directorates, and other institutions under the control of the Council of Ministers and the relevant organs of local government are responsible for the administration of state property under their control.

The solution to any problems concerning conflicts between a law on the public ownership of properties and previous laws permitting organs of the Central Government to transfer and privatize is very simple: Insert an article in

a law on the public ownership of properties that states that the law does not alter any previous laws permitting organs of the Central Government to transfer or privatize state-owned properties or to administer state-owned properties under their control. To do otherwise would cause confusion and administrative alarm in addition to political problems among organs of the Central Government.

5. PREPARATION OF NEW DRAFT LAWS

A new draft law, “On the Public Ownership of Properties,” dated 13 July 1998, was prepared and distributed to attorneys at various ministries and the Prime Minister’s Office for comments. After comments were received, two more drafts, dated 21 July 1998 and 23 July 1998, were prepared. At this time, comments must be received from the Director of Privatization and Director of Program Development within the Ministry of Public Economy and Privatization before a final draft can be prepared for the Ministry of Agriculture and Food to submit for formal review and enactment.

6. NEED FOR LAW ON PUBLIC OWNERSHIP

The primary purpose of a law on public ownership of properties is to define state and local government ownership of public properties and transfers of property from the state to organs of local government and from organs of local government to the state. For registration purposes, a need exists to determine which organ of government has ownership or use rights on specific properties. At present, ownership of all public properties rests in the Central Government. In addition, a need exists to determine which organ of Central Government has administrative authority over state-owned properties where use rights have been transferred to organs of local government. Some state-owned property, such as buildings used by local government for administrative purposes, is not assigned to any organ of Central Government for administration and management. Emphasis should be placed on the process of registration as requiring a law on public ownership of properties since the law will be introduced for enactment by the Ministry of Agriculture and Food at the request of the PMU/IPRS.

7. ACCOMPLISHMENT OF LAW

The adoption of a law on public ownership of properties will accomplish three things: (1) define those public properties owned by the state and those owned by local governments; (2) permit the transfer of properties from the state to organs of local government and from organs of local government to the state; and (3) permit organs of local government to request the Central Government to transfer specific properties to them. The issuance of the accompanying draft Council of Ministers’ decision, “On the Transfer of Public Properties to Local Governments,” dated 18 July 1998, will indicate the types of properties that may be transferred, procedures for transfers, financial responsibilities, contents of the transfer agreement document, and conditions and restrictions placed on the properties after they are transferred.

8. OWNERSHIP VERSUS USE RIGHTS

Various draft laws on the public ownership of properties have provided for the transfer of ownership or use rights to organs of local government. Article 7 in both the 13 July 1998 and the 23 July 1998 draft laws, “On the Public Ownership of Properties,” indicates that organs of local governments may acquire ownership rights in state-owned properties. However, Council of Ministers’ Decision No. 204, “For Competencies, Functional Duties and Financing of Local Governments,” dated 26 March 1998, provides only for the transfer of use rights in state-owned properties to organs of local government.

The difference between the rights that owners and users (lessees) have in property appears to be confusing. Owners of property, whether an organ of government or a private physical person, enjoy all the rights in that property—they can sell it, give it away, lease it, make alterations to it, construct buildings on it if it is immovable, and use its value to secure loans. Some of those rights may be restricted by laws relating to immovable property use planning. In addition, the Central Government can place certain restrictions on the use of properties when it transfers ownership to local organs of government, such as restriction on its sale. The organ of local government possessing ownership rights in properties is responsible for the administration, maintenance, operation, and financing of the properties. Organs of local government having only use rights in properties do not have any of the rights of owners; they are lessees or tenants of the properties. The Central Government can give organs of local government

administrative and maintenance responsibilities over the properties; however, the Central Government, as owner, retains financial responsibilities for maintenance and repair.

9. ANALYSIS OF DRAFT LAWS ON PUBLIC OWNERSHIP OF PROPERTIES

Analysis and comparison of both the 13 July 1998 and the 23 July 1998 drafts laws, “On the Public Ownership of Properties,” are made as follows.*

1. Article 1 provides for the purposes of the law. It was suggested that the purpose of the law was to define state and local ownership of property and transfers of property between state and organs of local government. Article 1 of the 23 July 1998 draft law represents a consensus of the comments.

2. Article 2 contains the definition of terms. It was suggested that the definitions be grouped in accordance with subject matter; that grouping was done in the 23 July 1998 draft law. The definition of “types of publicly owned immovable property” in the 13 July 1998 draft was eliminated; its content should be included elsewhere in the law. A definition of “publicly owned property” was included in the 23 July 1998 draft. The 23 July 1998 draft includes changes made resulting from comments received.

3. Article 3 of both the 13 July 1998 and the 23 July 1998 draft laws indicates the various types of properties owned by the Central Government unless previously transferred to organs of local government or privatized. In most instances they are administered by various organs of the Central Government, and the Ministry of Public Economy and Privatization represents the Central Government in any transfer to organs of local government or in any privatization action. Water resources considered in Article 3 (C) are very broadly defined in Article 2 (1) and 3 (1) of Law No. 8093, “On Water Reserves,” dated 21 March 1996, as being under state ownership. Article 3 (M), 3 (N), and 3 (Nj) should also include those immovable properties given to the state for educational, health, or cultural activities, since some properties are privately built and donated to the state. Forestlands, pasture and meadowlands, and agricultural lands in Article 3 (Q), 3 (R), and 3 (Rr) are under the administration of the Ministry of Agriculture and Food, which also has the authority to transfer those lands to organs of local government or to lease them; this authority should remain with that ministry. The introduction to Article 3 was changed in the 23 July 1998 draft law.

4. Article 4 requires the registration of the immovable property in the name of the owner.

5. The purpose of Article 5 is to require organs of local government and physical and juridical persons believing that a property in Article 3 has already been transferred or divested to them to prove their claims by providing the government with a document. It was felt that this article could be simplified.

6. Article 6 requires that the transfer of state-owned immovable property be in accordance with a Council of Ministers’ decision or specific legislation. A draft Council of Ministers’ decision has been prepared (see Annex 5). A specific article requiring the preparation of such a decision should be added at the end of the law. The transfer of minerals and petroleum requires specific legislation.

7. Article 7 provides that organs of local government may acquire ownership of state-owned property by making a request to the Central Government. It was felt that the Central Government, not the organ of local government, should take the initiative to transfer state-owned properties to local governments. Council of Ministers’ Decision No. 204 outlines the types of immovable properties and activities to be transferred. Article 7 in the 23 July 1998 draft specifies the content of the transfer agreement document, which was contained in Article 16 of the 13 July 1998 draft.

8. It was suggested that Article 8 of the 13 July 1998 draft (Article 11 of the 23 July 1998 draft) be rewritten to omit the 12-month requirement, just saying “according to a Council of Ministers’ decision.”

9. Few comments were received on Articles 9, 10, and 11 of the 13 July 1998 draft (Article 12, 13, and 14 of the 23 July 1998 draft).

10. It was suggested that Article 12 (B) of the 13 July 1998 draft be eliminated since it is covered in other legislation. It has been eliminated (in Article 16) of the 23 July 1998 draft law.

* All references to immovable property in the 13 July 1998 draft were eliminated, where appropriate, in the 23 July 1998 draft.

11. It was suggested that more work was needed on Article 16 of the 13 July 1998 draft, basically, that the sentence relating to the content of the transfer agreement document should instead be put into a Council of Ministers' decision. The content requirements have been inserted in the draft Council of Ministers' decision.

12. The variant clauses in Article 17 of the 13 July 1998 (Article 8 of the 23 July 1998 draft) regarding immovable property transferred to an organ of government provoked minor comment.

13. No problem was found regarding Article 18, 19, or 20 in the 13 July 1998 draft law.

ANNEX 1. LIST OF CONTACTS

Project Management Unit (PMU), IPRS

Ahmet Jazoj, Director
Albert Dubali, Head of Department of Land Policy
Mirvjena (Mira) Laha, Head of Supporting Registration Offices Department
Robert Harasani, Specialist

Prime Minister's Office

Gjergj Buxhuku, Assistant for Public Properties

Ministry of Agriculture and Food

Arben Pataj, Chief, Legal Directorate
Lisa Mara, Attorney, Legal Directorate

Ministry of Public Economy and Privatization

Tefta Komino, Chief, Legal Department
Vasil Pano, Director of Privatization
Ilir Ciko, Director of Program Development

Ministry of Public Works and Transport

Agim Munca, Chief, Legal Department
Amila Bajraktari, Attorney, Legal Department

Ministry of Local Government

Zyher Beci, Director, Functions of Local Governments

Registry of Albania

Sami Sharka, Chief Register

Soil Science Institute

Dr. Sherif Lushaj, Director

Urban Institute, Washington, D.C., USA

Richard E. Winnie, County Council, Alameda County, Oakland, CA

Terra Institute, Ltd., Mt. Horeb, WI, USA

Prof. Norman J. Singer, College of Law, University of Alabama, Tuscaloosa, AL

Volunteers in Overseas Cooperative Assistance (VOCA)

Kristin Griantis, Country Representative

Others

Professor William A. Doebele, Department of Urban Planning and Design, Harvard University, Cambridge, MA

ANNEX 2. SUMMARY OF ACTIVITIES AND DAILY LOG

**Dean T. Massey, Legal Consultant
Terra Institute, Ltd.**

3–22 July 1998

3–4 July, Friday–Saturday

Left Madison, Wisconsin, U.S.A. The next day, I arrived in Tirana, Albania, was met at the airport, and driven to apartment. Later I met with Norman Singer, University of Alabama, and Mark Marquardt and Kathrine Kelm of the Land Tenure Center, stationed in Albania.

5 July, Sunday

Kathrine Kelm and I met with Richard E. Winnie, an attorney consultant to The Urban Institute, Washington, D.C., to discuss the 16 June 1998 draft of “A General Law on Public Ownership of Immovable Properties,” prepared by University of Wisconsin Land Tenure Center personnel stationed in Albania, based on previous drafts prepared by the Terra Institute, Ltd. We also discussed comments that Gjergj Buxhuku, assistant to the Prime Minister on public lands, had made to Kathrine Kelm on the 16 June 1998 proposed draft law.

6 July, Monday

During the morning, I met briefly with Sami Sharka, Chief Register for Albania, and discussed the proposed draft law pertaining to public ownership of properties. Early in the afternoon, Kathrine Kelm, Richard Winnie, Gjergj Buxhuku, and I met to discuss Mr. Buxhuku’s concerns with any law pertaining to public ownership of immovable properties, particularly with the 16 June 1998 proposed draft, “A General Law on Public Ownership of Immovable Properties.” Later in the afternoon, I reviewed the 16 June 1998 draft law in light of Mr. Buxhuku’s comments and the 23 June 1998 E-mail received from Mark Marquardt.

7 July, Tuesday

I made changes in the 16 June 1998 draft and prepared a new draft, “A General Law on Public Ownership of Properties,” dated 7 July 1998, based on comments of Gjergj Buxhuku and the 23 June 1998 E-mail from Mark Marquardt. Mr. Buxhuku was concerned that our previous drafts pertained only to immovable properties. He said that there were three types of properties in Albania: immovable, movable, and capital or intangible.

8 July, Wednesday

I completed the draft, “A General Law on Public Ownership of Properties,” dated 7 July 1998, and had it translated into Albanian. Early in the afternoon, I met with Albert Dubali of the PMU/IPRS to explain the 7 July 1998 draft law and the procedure of distributing it to the various ministries for review and comments. He suggested that copies be given to the Prime Minister’s Office and attorneys in the Ministries of Agriculture and Food, Public Works and Transport, Local Government, and Public Economy and Privatization. Mr. Dubali had complained that he had not been kept informed on the progress in preparing the draft laws relating to public ownership of properties. Later in the day, I met with Mira Laha of the PMU/IPRS to discuss how immovable property owned by the Central Government should be registered and how immovable property transferred to organs of local government in ownership or for use should be registered. Immovable properties should be registered under the name of the owner, whether that owner be the Central Government or an organ of local government. A notation can be made indicating the Central Government organ having administrative responsibility for the property.

9 July, Thursday

Kathrine Kelm and I met with Richard E. Winnie to discuss the 7 July 1998 draft law. Mr. Winnie felt that a law and not a decision was necessary to implement the proposed law. Early in the afternoon, I distributed a copy of the 7 July 1998 draft law to Gjergj Buxhuku of the Prime Minister’s Office and Ms. Tefte Komino, Chief, Legal Department, Ministry of Public Economy and Privatization. A meeting date was established with Ms. Komino to discuss the draft law. Later in the afternoon, I started to study laws relating to powers and limits of those powers of Central Government organs to privatize or divest publicly owned properties to private physical and juridical persons.

10 July, Friday

In the morning, I distributed copies of the 7 July 1998 proposed draft law to Arben Pataj and Ms. Lisa Mara, Ministry of Agricultural and Food; Agim Munea and Ms. Amila Bajraktari, Ministry of Public Works and Transport; and Zyher Beci, Ministry of Local Government, and established dates to meet with them to discuss the proposed draft law. All are attorneys for their respective ministries. Later in the afternoon, I continued to study laws relating to the privatization of immovable properties and the authority of various ministries to do so.

11–12 July, Saturday–Sunday

I prepared a new draft of the law, “On the Public Ownership of Properties,” from the 7 July 1998 draft, taking preliminary comments from the various ministry attorneys into consideration. Mark Marquardt, Kathrine Kelm, and I met to review the draft and made several changes and additions.

13 July, Monday

The proposed draft law, “On Public Ownership of Properties,” dated 13 July 1998, prepared by Mark Marquardt, Kathrine Kelm, and me, was translated into Albanian and distributed to the Prime Minister’s Office and attorneys in the Ministries of Food and Agriculture, Public Economy and Privatization, Public Works and Transport, and Local Government. It was decided that this draft be reviewed for comments. When the 13 July 1998 draft was distributed, I reaffirmed meeting dates and times with the attorneys for reviewing the draft law and discussing their comments. Later in the day, I met with Albert Dubali and Robert Harasani of the PMU/IPRS to discuss the 13 July 1998 draft law and the privatization of state-owned property and its divestiture to private persons. It was concluded that with few exceptions, the Ministry of Public Economy and Privatization is the only Central Government organ with the authority to divest state property to private and juridical persons. The exceptions exist under previous laws permitting other organs of the Central Government to privatize state-owned properties. I had a long discussion with Meers. Dubali and Harasani on the expropriation of private property and methods for valuation, using several examples.

14 July, Tuesday

I continued to examine various Albanian laws to determine if any of them permitting organs of the Central Government to privatize state-owned properties would conflict with the proposed draft law on public ownership. I concluded that there is not a conflict; however, a provision should be inserted in any law on public ownership of properties that the law does not conflict with any previous laws permitting an organ of the Central Government to privatize specific state-owned properties and that those organs still have that authority. I started to prepare a draft Council of Ministers’ decision to implement the 13 July 1998 proposed draft law, “On the Public Ownership of Properties.” During the afternoon, I met with Ms. Kristin Griantis at the VOCA office. Later in the afternoon, I had another discussion with Albert Dubali and Robert Harasani on the expropriation of private property for public purposes. I had the table of contents of my book, *Admissibility of Evidence of Valuation Highway Condemnation Cases*, translated into Albanian and given to them for review; both felt that several parts might be useful, so I gave them the book to have those pertinent parts translated.

15 July, Wednesday

I met with Amila Bajraktari, an attorney with Ministry of Public Works and Transport, and Zyher Beci, attorney with the Ministry of Local Government, to discuss the 13 July 1998 draft law, “On the Public Ownership of Properties.” Both attorneys had extensive comments, particularly Mr. Beci. After the meetings, I tried to determine how their comments would fit into the draft law. Later in the afternoon, I continued to prepare the draft Council of Ministers’ decision implementing the 13 July 1998 draft law.

16 July, Thursday

During the first part of the morning and late afternoon, I continued to prepare the draft Council of Ministers’ decision. Later in the morning, I met with Arben Pataj and Lisa Mara, attorneys with the Ministry of Agriculture and Food, to discuss their comments on the 13 July 1998 draft law. Early in the afternoon, I had an appointment to meet with Tefta Komino, attorney with the Ministry of Public Economy and Privatization; however, because of schedule conflict, she had me meet with Vasil Pano, Director of Privatization, and Ilir Ciko, Director of Program Development, within the Ministry. Neither was prepared to make comments on the 13 July 1998 draft law, but promised to make formal written comments in the very near future and send them either to Sami Sharka, Chief Register, or to Ahmet Jazoj, Director of the PMU/IPRS. Our meeting lasted two hours during which time they explained the procedures for introducing legislation, approvals by various affected ministries, and final adoption by Parliament. We also discussed the needs and concepts of a public properties ownership law, authority and powers of various ministries in the privatization process, and the authority and power of the Ministry of Public Economy and Privatization. The two-hour discussion was basically a primer on the Albanian legislative process.

17 July, Friday

I prepared a draft of a Council of Ministers' decision, "On the Transfer of Public Properties to Local Governments," applicable to the proposed 13 July 1998 draft law, "On the Public Ownership of Properties." I started to revise the 13 July 1998 proposed draft law, taking comments received from the attorneys in the Ministries of Agriculture and Food, Public Works and Transport, and Local Government into consideration.

18–19 July, Saturday–Sunday

I made final revision on the draft Council of Ministers' decision and dated that draft, 18 July 1998. The next day, I continued to make revisions on the 13 July 1998 draft law, taking comments referred to on Friday, 17 July 1998, into consideration.

20 July, Monday

David Stanfield, Kathrine Kelm, and I met with Gjergj Buxhuku of the Prime Minister's Office to discuss Mr. Buxhuku's comments on the 13 July 1998 proposed draft law. Almost all of the time was spent on Article 2 relating to definitions. Mr. Buxhuku suggested, among other things, that the definitions be grouped according to subject matter. This same suggestion was made by Ms. Amila Bajraktari, an attorney with the Ministry of Public Works and Transport, but was rejected at the time. During the afternoon, I continued to make some revisions on the 13 July 1998 proposed draft law.

21 July, Tuesday

During the morning, I completed a new draft law, "On the Public Ownership of Properties," dated 21 July 1998; I also prepared a short statement on the needs and purposes of a public ownership law.

21–22 July, Tuesday–Wednesday

Left Tirana, Albania, for overnight stay in Zurich, Switzerland, then returned to Madison, Wisconsin, U.S.A.

ANNEX 3. ON THE PUBLIC OWNERSHIP OF PROPERTIES, 13 JULY 1998*

**The People's Assembly
of the Republic of Albania**

Decided:

CHAPTER 1. GENERAL PROVISIONS

Article 1: Purpose of this Law

1.1 This Law defines those properties that are presently owned by the Central Government of the Republic of Albania and are under the administration of an organ of the Central Government.

1.2 It is the intention of this Law to permit organs of local governments to request the transfer of such Central Government properties that no longer have a Central Government public purpose to organs of local government where necessary for their administration and operations.

Article 2: Definitions

“Administration of an immovable property” means the management of the use of the property and its maintenance, including supplying with materials of general consumption, water, electric power, heating, painting, and other services of this kind.

“Transfer” of publicly owned immovable property means the granting of such property by the organ of government that owns the property to another organ of government either the ownership of the property or the right to use the property subject to the terms of Article 6 of this Law.

“Types of publicly owned immovable property” include: (1) immovable property to which the State or an organ of local government assures access for public uses; and (2) immovable property to which the State or an organ of local government reserves the use of official, administrative purposes. The transfer agreement document designates the type of immovable property being transferred as well as other conditions or restrictions on the use, leasing, or divestment of such property.

“Organ of local government” means the council of a *komuna*, municipality, or district as established under the legislation of the Republic of Albania.

“Organ of State government” means the Ministry of Public Economy and Privatization or its successor organ of Central Government, or another specific ministry previously designated by legislation or Council of Ministers’ decisions as having the administrative or divestiture responsibility over the immovable property.

“Property” defined according to the Civil Code of the Republic of Albania.

“Immovable property” means land, water resources, buildings, and other immovable objects defined in the Civil Code of the Republic of Albania.

“Public ownership” refers to the ownership of property by the Central Government or by an organ of a local government, such as a district, *komuna*, or municipality, under the Civil Code of the Republic of Albania pertaining to the ownership of public property.

“State ownership” under this Law means the property is owned by the Central Government as represented by the Ministry of Public Economy and Privatization or its successor organ of Central Government designated by legislation or Council of Ministers’ decisions as administratively responsible for the property.

“State” refers to the Central Government of the Republic of Albania.

“Divestiture” means the transfer of ownership of a publicly owned property to physical or juridical persons.

* Draft, dated 13 July 1998, by Dean T. Massey, Legal Consultant, Terra Institute, Ltd., prepared for the Project Management Unit of the Immovable Property Registration System (PMU/IPRS) in the Republic of Albania.

“Central Government” means the Government of the Republic of Albania.

“Central Government property” means that property defined in Article 3 of this Law.

“Transfer of capital” means the transfer of ownership of that portion of the value of the property in the State enterprises to joint venture entities as indicated in the transfer agreement document.

“Usufruct” means the rights of an organ of local government or a physical or juridical person to enjoy the use of immovable property owned by the State, with the obligation of good maintenance of it.

“Movable properties” means all properties other than immovable objects as defined in the Civil Code of the Republic of Albania.

“Capital in State enterprises or joint-venture entities” means the shares of stock owned by the Central Government in such enterprises or entities.

CHAPTER 2. TYPES OF PROPERTIES UNDER CENTRAL GOVERNMENT OWNERSHIP

Article 3: The Central Government owns the following types of properties defined in this article subject to the transactions in Article 9 and 12, unless such properties have been previously transferred to organs of local government or divested to physical or juridical persons pursuant to previous legislation or Council of Ministers’ decisions. Such kinds of properties are represented by the Ministry of Public Economy and Privatization or its successor organ of the Central Government, unless other legislation or Council of Ministers’ decisions have designated another ministry or organ of the Central Government to have administrative authority over the following types of State-owned property.

A) Territorial waters up to a specified distance from the shoreline of the sea and from the shorelines of any lake through which an international boundary runs in which such boundaries are established by International Law and appropriate treaties.

B) Bodies of natural water resources that form external boundaries of the country, and lakes as well as rivers and streams which ultimately flow permanently or intermittently into the sea and their tributaries and beds up to the high-water mark in accordance with appropriate laws relating to natural water resources.

C) Seacoast land unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers’ decisions.

) Water resources as defined in relevant legislation and the Civil Code of the Republic of Albania.

D) Facilities constructed by the State to produce hydroelectric power and provide electrical services, including transmission lines.

Dh) Piers, jetties, sea walls, and other port constructions.

E) Roads, streets, and bridges including roads and bridges entirely within State-owned immovable property, such as forests and national parks, even though they do not connect two or more districts.

E) Parks, plazas, gardens, and other such immovable properties used for similar activities and purposes constructed or established by the State.

F) Railway systems, including tracks and depots.

G) Airports, buildings, and all construction connected with them.

Gj) Airspace over the Republic of Albania as established by International Law.

H) Military installations.

I) Immovable properties owned by the State prior to 1991 and still being used by a Central Government organ, such as government offices and other public buildings, including land under and around such buildings as needed to fulfill their Central Government functions and administered and maintained by the organ of Central Government processing them.

J) Immovable properties which were owned by the State prior to 1991 and still remain in public ownership, or which were acquired by the State in ownership after 1990 for the use by any institute or enterprise of the Central Government.

K) Immovable properties which were used by Central Government institutes and enterprises, but have since been dissolved, unless transferred by a legally empowered organ of the Central Government to an organ of local government as defined in this Law or divested to private ownership under specific legislation or Council of Ministers' decisions, criteria, and procedures.

L) Immovable properties acquired by the State in another country.

L1) Immovable properties within the boundaries of municipalities and villages, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

M) Universities, schools, and all other immovable properties used for educational activities and purposes constructed or established by the State.

N) Hospitals, clinics, and all other immovable properties used for health care and service activities and purposes constructed or established by the State.

Nj) Cultural centers, including libraries, art galleries, museums, theaters, and sport activities, and all other immovable properties used for cultural activities and purposes constructed or established by the State.

O) Artistic and historic monuments and buildings constructed by the Central Government for the purposes of ornamentation, education, and comfort of visitors in public places on State-owned immovable property.

P) Archaeological monuments.

Q) Forest lands under the administration of an organ of Central Government, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

R) Pasture and meadow lands under the administration of an organ of Central Government, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

Rr) Agricultural lands under the administration of the Central Government, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

S) Deposits of minerals, precious stones, salt, and combustible minerals, and petroleum and natural gas deposits in accordance with specific legislation and Council of Ministers' decisions.

Sh) Capital shares of stock in State enterprises or joint-venture commercial enterprises.

T) Meteorites and all mineral, metallic, stone, or mixed objects originating from outer space which have fallen into and have been recovered within the Republic of Albania.

Article 4: Central Government-owned immovable property enumerated in Article 3 shall be registered with the relevant office of the Immovable Property Registration System in the name of the State. Immovable properties transferred in ownership to organs of local government or physical or juridical persons shall be registered in the name of the new owner.

Article 5: Organs of local government or physical or juridical persons believing that a specific immovable property enumerated in Article 3 has already been transferred to them in ownership or usufruct have ninety (90) days after the effective date of this Law to provide written documentation to the organ of Central Government administering that specific immovable property proving that the ownership or usufruct has been transferred to that organ of local government or physical or juridical person.

Article 6: The transfer of State-owned movable property to an organ of local government or divestiture to a physical or juridical person shall be in accordance with specific legislation or Council of Ministers' decisions.

CHAPTER 3. REGARDING THE TRANSFER AND DIVESTMENT OF STATE-OWNED IMMOVABLE PROPERTY

Article 7: Organs of local government, including district, *komuna*, and municipality, may acquire the ownership of State-owned immovable properties not reserved for State ownership under Article 3. Regulations approved by the

Council of Ministers shall describe the procedures for the assignment of State-owned immovable properties to organs of local government in ownership or in usufruct.

Article 8: Within twelve (12) months after the Council of Ministers' decision has been issued under this Law, each organ of local government must provide the Ministry of Public Economy and Privatization or its successor organ of Central Government with an inventory of the State-owned immovable property enumerated in Article 3 that that the organ of local government proposes to be transferred to it either in ownership or in usufruct for the purpose of performing local government functions.

Article 9: Immovable property is owned by the organ of government that may acquire it by transfer from another organ of government or by expropriation or which comes into its possession through legislation aimed at establishing additional territory for that organ.

Article 10: State-owned immovable properties deemed in excess for public purposes may be divested by the Central Government to physical or juridical persons.

Article 11: For State-owned immovable properties which the Central Government intends to divest or lease, the organ of the Central Government with authority to divest or lease the property shall notify the organ of local government with jurisdiction over the area within which the immovable property is located of this intention within thirty (30) days prior to the divestiture or lease.

Article 12: With the exception of the stipulations contained in other legislation regulating special aspects of publicly owned immovable property, it is the responsibility of the organ of government to which the immovable property is transferred to:

- A) Possess, protect, conserve, maintain, repair, and administer publicly owned immovable property;
- B) Grant and revoke concessions for the use of and the assignation of benefits from or exploitation of the publicly owned immovable property;
- C) Keep up-to-date the appraised value of publicly owned immovable property under the relevant laws and other requirements; and gather, review, and determine the norms and procedures for complying with this task;
-) Enter into coordination or joint-effort agreements, in accordance with existing and future Council of Ministers' decisions, with other institutions or bodies of the public administration, with organs of local government, and with individuals or corporations, to combine resources and efforts to efficiently carry out those actions with regard to immovable property under their ownership and administrative responsibility; organs of government may own shares in trade associations or other corporate organizations.

Article 13: The Central Government shall reimburse any organ of local government for maintaining and repairing any State-owned immovable property transferred for use.

CHAPTER 4. REGARDING THE UTILIZATION OF PUBLICLY OWNED IMMOVABLE PROPERTY

Article 14: Physical and juridical persons and agencies and organs of government have only those rights regulated by this Law and other legislation and appropriate Council of Ministers' decisions and regulations in matters of the use, utilization, and exploitation of publicly owned immovable property.

Article 15: The inhabitants of Albania may avail themselves of the use of publicly owned immovable properties only in accordance with legislation and regulations approved by the organ of government which owns the immovable properties or which has the responsibility for the administration of immovable properties.

Article 16: The transfer of State-owned immovable property from the Central Government to an organ of Central Government or to an organ of local government shall be in accordance with a Council of Ministers' decision issued under this Law. The terms of the transfer are stipulated in a formal transfer agreement document between the Ministry of Public Economy and Privatization or its successor organ of the Central Government or other organs or agencies of the Central Government having authority over specific immovable properties and the relevant organ of local government. That transfer agreement document shall specify at least: (1) the responsibilities of the organ of local government for the administration of the property being transferred; (2) the source of funding for carrying out these responsibilities; (3) whether the organ of local government has the authority to divest the property according to legally defined procedures; (4) the type of immovable property being transferred; and (5) any conditions or restrictions on the use, lease, or divestment of such property by the organ of local government.

Article 17: With regard to immovable property transferred to an organ of government*

VARIANT 1: Any divestiture, lease, or change of use shall be carried out according to law and regulations approved by the Council of Ministers.

VARIANT 2: No divestiture, lease, or change of use may be carried out without the prior authorization by the district council for such proposed actions by any *komuna* or municipality within the district, or by the Council of Ministers for such proposed actions by a district council. Once the proposed divestiture, lease, or change of use is approved, the organ of local government may carry out the action according to law and regulations approved by the Council of Ministers.

VARIANT 3: Any organ of local government which intends to divest, lease, or change the use of an immovable property which it owns shall notify the Council of Ministers and the District Registrar of Immovable Property of this intention. If there is no objection about carrying out this intention from any minister or from the Registrar within 60 days of the date of the receipt of the notification, the organ of local government may carry out the proposed action according to law and regulations approved by the Council of Ministers.

Article 18: The Ministry of Economy and Privatization or its successor organ of the Central Government, or other organs or agencies of Central Government having administrative control over State-owned immovable properties, shall authorize the divestiture, transfer of capital, lease, or change of use pertaining to State-owned immovable properties.

Article 19: State-owned immovable properties subject to restitution claims cannot be transferred to any organ of local government or divested to any physical or juridical person until such claims have been resolved.

Article 20: This law shall become effective . . .

* These different variants are provided here for comments of which of the three to use.

ANNEX 4. ON THE PUBLIC OWNERSHIP OF PROPERTIES, 23 JULY 1998*

**The People's Assembly
of the Republic of Albania**

Decided:

CHAPTER 1: GENERAL PROVISIONS

Article 1: Purpose of this Law

It is the intention of this Law to define State and local government ownership of public property and transfers of property from the State to organs of local government and from organs of local government to the State.

Article 2: Definitions

Rights to property

“Public ownership” refers to the ownership of property by the State or by an organ of a local government.

“State ownership” means the property owned by the Central Government or ministry designated by law to exercise administration and divestiture rights over the property.

“Immovable property” means land, water resources, buildings, and other immovable objects defined in the Civil Code of the Republic of Albania.

“Movable properties” means all properties other than immovable objects as defined in the Civil Code of the Republic of Albania.

“Publicly owned properties” include: (1) immovable property, (2) movable property, and (3) capital.

“Central Government property” means that property defined in Article 3 of this Law.

“Administration of a property” means the supervision of the use of the property and its maintenance, including supplying with materials of general consumption, water, electric power, heating, painting, and other services of this kind.

“Capital in State enterprises or joint-venture entities” means the shares of stock owned by the Central Government in such enterprises or entities.

“Usufruct” means the rights of an organ of local government or a physical or juridical person to enjoy the use of State-owned property, with the obligation of good maintenance of it.

Government agencies

“Organ of State government” means the Ministry of Public Economy and Privatization or its successor organ of Central Government, or another specific ministry designated by law or Council of Ministers’ decisions as having the administrative or divestiture responsibility over the immovable property.

“Organ of local government” means the council of a *komuna*, municipality, or district as established under the law of the Republic of Albania.

“Central Government” means the Government of the Republic of Albania represented by Parliament.

“State” refers to the Central Government of the Republic of Albania.

Transfers

“Divestiture” means the transfer of ownership of a publicly owned property to physical or juridical persons.

* Draft, dated 23 July 1998, by Dean T. Massey, Legal Consultant, Terra Institute, Ltd., prepared for the Project Management Unit of the Immovable Property Registration System (PMU/IPRS) in the Republic of Albania.

“Transfer” of publicly owned immovable property means the granting of ownership or use rights by an organ of government to another organ of government or to physical or juridical persons.

“Transfer of capital” means the transfer of ownership of that portion of the value of the property in the State enterprises to joint venture entities as indicated in the transfer agreement document.

CHAPTER 2. TYPES OF PROPERTIES UNDER CENTRAL GOVERNMENT OWNERSHIP

Article 3: The Central Government owns the following types of properties defined in this article subject to the transactions in Article 9 and 12, unless such properties have been previously transferred to organs of local government or divested to physical or juridical persons pursuant to legislation or Council of Ministers’ decisions. Such types of properties are owned and administered by various organs of Central Government as registered under the Immovable Property Registration System.

A) Territorial waters up to a specified distance from the shoreline of the sea and from the shorelines of any lake through which an international boundary runs in which such boundaries are established by International Law and appropriate treaties.

B) Bodies of natural water resources that form external boundaries of the country, and lakes as well as rivers and streams which ultimately flow permanently or intermittently into the sea and their tributaries and beds up to the high-water mark in accordance with appropriate laws relating to natural water resources.

C) Seacoast land unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers’ decisions.

) Water resources as defined in relevant legislation and the Civil Code of the Republic of Albania.

D) Facilities constructed by the State to produce hydroelectric power and provide electrical services, including transmission lines.

Dh) Piers, jetties, sea walls, and other port constructions.

E) Roads, streets, and bridges including roads and bridges entirely within State-owned immovable property, such as forests and national parks, even though they do not connect two or more districts.

E) Parks, plazas, gardens, and other such immovable properties used for similar activities and purposes constructed or established by the State.

F) Railway systems.

G) Airports, buildings, and all construction connected with them.

Gj) Airspace over the Republic of Albania as established by International Law.

H) Military installations.

I) Immovable properties owned by the State prior to 1991 and still being used by a Central Government organ, such as government offices and other public buildings, including land under and around such buildings as needed to fulfill their Central Government functions and administered and maintained by the organ of Central Government processing them.

J) Immovable properties which were owned by the State prior to 1991 and still remain in public ownership, or which were acquired by the State in ownership after 1990 for the use by any institute or enterprise of the Central Government.

K) Immovable properties which were used by Central Government institutes and enterprises, but have since been dissolved, unless transferred by a legally empowered organ of the Central Government to an organ of local government as defined in this Law or divested to private ownership under specific legislation or Council of Ministers’ decisions, criteria, and procedures.

L) Immovable properties acquired by the State in foreign countries.

L1) Immovable properties within the boundaries of municipalities and villages, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers’ decisions.

M) Universities, schools, and all other immovable properties used for educational activities and purposes constructed or established by the State.

N) Hospitals, clinics, and all other immovable properties used for health care and service activities and purposes constructed or established by the State.

Nj) Cultural centers, including libraries, art galleries, museums, theaters, and sport activities, and all other immovable properties used for cultural activities and purposes constructed or established by the State.

O) Artistic and historic monuments and buildings constructed by the Central Government for the purposes of ornamentation, education, and comfort of visitors in public places on State-owned immovable property.

P) Archaeological monuments.

Q) Forest lands under the administration of an organ of Central Government, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

R) Pasture and meadow lands under the administration of an organ of Central Government, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

Rr) Agricultural lands under the administration of the Central Government, unless otherwise transferred to an organ of local government or divested to private ownership in accordance with specific legislation or Council of Ministers' decisions.

S) Deposits of minerals, precious stones, salt, and combustible minerals, and petroleum and natural gas deposits in accordance with specific legislation and Council of Ministers' decisions.

Sh) Capital shares of stock in State enterprises or joint-venture commercial enterprises.

T) Meteorites and all mineral, metallic, stone, or mixed objects originating from outer space which have fallen into and have been recovered within the Republic of Albania.

Article 4: Central Government-owned immovable property enumerated in Article 3 shall be registered with the relevant office of the Immovable Property Registration System in the name of the State. Immovable properties transferred in ownership to organs of local government or physical or juridical persons shall be registered in the name of the new owner.

Article 5: Organs of local government or physical or juridical persons believing that a specific immovable property enumerated in Article 3 has already been transferred to them in ownership or usufruct have ninety (90) days after the effective date of this Law to provide written documentation to the organ of Central Government administering that specific immovable property proving that the ownership or usufruct has been transferred to that organ of local government or physical or juridical person.

Article 6: The transfer of State-owned movable property to an organ of local government and/or divestiture to physical or juridical person shall be in accordance with specific law or Council of Ministers' decisions.

CHAPTER 3. REGARDING THE TRANSFER AND DIVESTMENT OF STATE-OWNED IMMOVABLE PROPERTY

Article 7: Organs of local government, including district, *komuna*, and municipality, may acquire the ownership of State-owned properties. Regulations approved by the Council of Ministers shall describe the procedures for the assignment of State-owned properties to organs of local government in ownership or in usufruct. The terms of transfer are stipulated in a formal transfer agreement document between the Ministry of Public Economy and Privatization or its successor organ of the Central Government or other organs or agencies of the Central Government having authority over specific immovable properties and the relevant organ of local government. The transfer agreement document shall specify at least: (1) the responsibilities of the organ of local government for the administration of the property being transferred; (2) the source of funding for carrying out these responsibilities; (3) whether the organ of local government has the authority to divest the property according to legally defined procedures; (4) the type of immovable property being transferred; and (5) any conditions or restrictions on the use, lease, or divestment of such property by the organ of local government.

Article 8: With regard to immovable property transferred to an organ of government.*

VARIANT 1: Any divestiture, lease, or change of use shall be carried out according to law and regulations approved by the Council of Ministers.

VARIANT 2: No divestiture, lease, or change of use may be carried out without the prior authorization by the district council for such proposed actions by any *komuna* or municipality within the district, or by the Council of Ministers for such proposed actions by a district council. Once the proposed divestiture, lease, or change of use is approved, the organ of local government may carry out the action according to law and regulations approved by the Council of Ministers.

VARIANT 3: Any organ of local government which intends to divest, lease, or change the use of an immovable property which it owns shall notify the Council of Ministers and the District Registrar of Immovable Property of this intention. If there is no objection about carrying out this intention from any minister or from the Registrar within 60 days of the date of the receipt of the notification, the organ of local government may carry out the proposed action according to law and regulations approved by the Council of Ministers.

Article 9: The Ministry of Economy and Privatization or its successor organ of the Central Government, or other organs or agencies of Central Government having administrative control over State-owned immovable properties, shall authorize the divestiture, transfer of capital, lease, or change of use pertaining to State-owned immovable properties.

Article 10: State-owned immovable properties subject to restitution claims cannot be transferred to any organ of local government or divested to any physical or juridical person until such claims have been resolved.

Article 11: Within twelve (12) months after the Council of Ministers' decision has been issued under this Law, each organ of local government must provide the Ministry of Public Economy and Privatization or its successor organ of Central Government with an inventory of the State-owned immovable property enumerated in Article 3 that that the organ of local government proposes to be transferred to it either in ownership or in usufruct for the purpose of performing local government functions.

Article 12: Immovable property is owned by the organ of government that may acquire it by transfer from another organ of government or by expropriation or which comes into its possession through legislation aimed at establishing additional territory for that organ.

Article 13: State-owned immovable properties deemed in excess for public purposes may be divested by the Central Government to physical or juridical persons.

Article 14: For State-owned immovable properties which the Central Government intends to divest or lease, the organ of the Central Government with authority to divest or lease the property shall notify the organ of local government with jurisdiction over the area within which the immovable property is located of this intention within thirty (30) days prior to the divestiture or lease.

Article 15: Any organ of local government may transfer its right to an immovable property to the State through a transfer agreement. Procedures for this transfer shall be issued by the Council of Ministers.

CHAPTER 4. REGARDING THE UTILIZATION OF PUBLICLY OWNED IMMOVABLE PROPERTY

Article 16: With the exception of the stipulations contained in other legislation regulating special aspects of publicly owned immovable property, it is the responsibility of the organ of government to which the immovable property is transferred to:

- A) Possess, protect, conserve, maintain, repair, and administer publicly owned immovable property;
- B) Keep up-to-date the appraised value of publicly owned immovable property under the relevant laws and other requirements; and gather, review, and determine the norms and procedures for complying with this task;
- C) Enter into coordination or joint-effort agreements, in accordance with existing and future Council of Ministers' decisions, with other institutions or bodies of the public administration, with organs of local government, and with individuals or corporations, to combine resources and efforts to efficiently carry out those actions with

* These different variants are provided here for comments of which of the three to use.

regard to immovable property under their ownership and administrative responsibility; organs of government may own shares in trade associations or other corporate organizations.

Article 17: The Central Government shall reimburse any organ of local government for maintaining and repairing any State-owned immovable property transferred for use.

Article 18: Physical and juridical persons and agencies and organs of government have only those rights regulated by this Law and other legislation and appropriate Council of Ministers' decisions and regulations in matters of the use, utilization, and exploitation of publicly owned immovable property.

Article 19: Albanian physical and juridical persons and foreign residents may avail themselves of the use of publicly owned immovable properties only in accordance with legislation and regulations approved by the organ of government which owns the immovable properties or which has the responsibility for the administration of immovable properties.

Article 20: This law shall become effective . . .

ANNEX 5. ON THE TRANSFER OF PUBLIC PROPERTIES TO LOCAL GOVERNMENTS*

**The Republic of Albania
Council of Ministers**

Decision No. _____

Date:

ON THE TRANSFER OF PUBLIC PROPERTIES TO LOCAL GOVERNMENTS

In implementation of Article 7 of the Law No. _____, "On the Public Ownership of Properties," dated _____, and upon proposal of the Ministry of Public Economy and Privatization, the Council of Ministers:

Decided:

CHAPTER 1. GENERAL PROVISIONS

Article 1: Purposes of this Decision

- 1.1 To permit organs of local government to acquire ownership or use rights in State-owned properties so that they can perform their independent and delegated functions.
- 1.2 To indicate the types of State-owned properties that may be transferred to organs of local government, the nature of the rights of organs of local government over such properties, and the procedures for transferring properties from the Central Government to organs of local government.
- 1.3 To indicate the types of State-owned properties the Central Government may divest to physical and juridical persons and the procedures for such divestitures.
- 1.4 To indicate the administrative and maintenance responsibilities of organs of local government of the State-owned properties transferred to it.
- 1.5 To indicate the financial responsibilities of the Central Government and organs of local government when properties are transferred.
- 1.6 To indicate the content of the transfer agreement document.
- 1.7 To indicate the nature of the conditions and restrictions placed on the transfer of properties.

Article 2: All the definitions enumerated in Article 2 of Law No. _____, "On the Public Ownership of Properties," dated _____, are incorporated into this Decision.

CHAPTER 2. TYPES OF PROPERTIES TO BE TRANSFERRED OR DIVESTED

Article 3: Pursuant to Articles 7 and 8 of Law No. _____, "On the Public Ownership of Properties," dated _____, organs of local government may acquire ownership or usufruct rights in State-owned immovable properties enumerated in Article 3 of the Law not reserved for State ownership if the organ of local government provides the Ministry of Public Economy and Privatization with a list of the properties that it proposes to be transferred to it within twelve (12) months after the issuance of this Decision.

Article 4: Pursuant to Article 10 of Law No. _____, "On the Public Ownership of Properties," dated _____, the Central Government may divest State-owned properties enumerated in Article 3 of the Law to physical and juridical persons it deems in excess for public purposes.

* Draft, dated 18 July 1998, based on 13 July 1998 draft of "On the Public Ownership of Properties" Law, by Dean T. Massey, Legal Consultant, Terra Institute, Ltd., prepared for the Project Management Unit of the Immovable Property Registration System (PMU/IPRS) in the Republic of Albania.

Article 5: Related immovable properties, including equipment and supplies, that are regularly used in conjunction with the immovable properties may also be transferred to the organ of local government along with the immovable property.

CHAPTER 3. PROCEDURE FOR PROPERTY TRANSFER

Article 6: Within twelve (12) months after this Decision has been issued each organ of local government shall provide the Ministry of Public Economy and Privatization with a list of State-owned immovable property enumerated in Article 3 of the Law No._____,“On the Public Ownership of Properties,” dated_____, that the organ of local government proposes to be transferred to it either in ownership or in usufruct for the purposes of performing its independent and delegated functions.

Article 7: The Ministry of Public Economy and Privatization shall review the lists submitted by the organs of local government and within three (3) months after submission determine the State-owned properties on the lists which are administered by the various organs of the Central Government and submit the lists of those properties to that organ of the Central Government.

Article 8: Within three (3) months after receipt of the list each organ of Central Government administering State-owned property must notify the Ministry of Public Economy and Privatization of its decision to either approve or disapprove the transfer of specific immovable properties to the organ of local government submitting the list.

Article 9: The Ministry of Public Economy and Privatization shall prepare a list of State-owned properties to be transferred to any organ of local government that has failed to submit one pursuant to Article 6 within the specific time.

Article 10: The Ministry of Public Economy and Privatization will assume the responsibility in Article 7 over any State-owned properties that are not administered by an organ of the Central Government.

Article 11: Within six (6) months after receiving the notification from the various organs of the Central Government on their decision of which properties to transfer to each organ of local government, the Ministry of Public Economy and Privatization shall publish a list of the properties proposed to be transferred and deliver it to the council of the organ of local government for examination.

Article 12: No later than ninety (90) days after receiving the list of immovable property to be transferred the council of any organ of local government may submit objections to the content of the list to the Ministry of Public Economy and Privatization. The Ministry normally resolves any objections submitted by an organ of local government to the properties contained in the list.

Article 13: No later than twenty-seven (27) months after the effective date of this Decision the Ministry of Public Economy and Privatization shall present its final recommendations to the Council of Ministers on the properties to be transferred to organs of local government and any conditions and restrictions that shall apply to such properties. The Council of Ministers shall issue its final decision on the list of properties to be transferred within three (3) months after receiving the recommendations from the Ministry of Public Economy and Privatization.

Article 14: If an objection remains unresolved when the Council of Ministers issues its final decision, any organ of local government which initially submitted a list of property proposed for transfer may submit its objections to an arbitration panel. The decision of the arbitration panel shall be binding on the Central Government and the involved organ of local government.

Article 15: The Ministry of Public Economy and Privatization, as representative of the Central Government, shall complete the transfer of property.

Article 16: No transfer may become final without the signature of a person within the Ministry of Public Economy and Privatization authorized to transfer properties.

Article 17: Ownership and use rights on property transferred to organs of local government under this Decision and any condition and restrictions placed upon the property at the time of transfer will be specified in the transfer agreement document.

Article 18: Each transfer agreement document containing all the conditions and restrictions imposed upon the transferred properties is registered with the Registrar under the Immovable Property Registration System.

CHAPTER 4. FINANCIAL RESPONSIBILITY

Article 19: Organs of local government are responsible to provide the financial support for the maintenance, improvements, and operations of State-owned properties when ownership rights are transferred; however, as provided in Council of Ministers' Decision No. 204, "For Competencies, Functional Duties and Financing of Local Government," dated 3 March 1998, organs of local government are allowed to raise finances for maintenance and operations of the properties through local taxes and fees and the economic use of the properties.

Article 20: Unreturnable financial aid is provided to organs of local government from the Central Government for assistance in the maintenance, improvement, and operation of State-owned properties when only use rights are transferred and the properties are used only for public purposes.

CHAPTER 5. CONTENT OF TRANSFER AGREEMENT DOCUMENT

Article 21: The transfer agreement document transferring use rights in State-owned properties to organs of local government shall specify the following: (1) types of properties being transferred; (2) legal description of the properties; (3) purposes for which the properties may be used; (4) responsibilities of the organ of the local government for the administration and maintenance of the properties being transferred; (5) anticipated sources of financing the administration and maintenance of the properties being transferred; (6) intended use to be made of the properties by the organ of local government; (7) any conditions or restrictions on the use or leasing of the State-owned properties by the organ of local government; and (8) that the use rights provided to the organ of local government be registered under the Immovable Property Registration System.

Article 22: The transfer agreement document transferring ownership rights in State-owned properties to organs of local government shall specify the following: (1) types of properties being transferred; (2) legal description of the properties; (3) purposes for which the properties may be used; (4) responsibilities of the organ of the local government for the maintenance of the properties being transferred; (5) anticipated sources of financing the maintenance of the properties being transferred; (6) whether the organ of local government has the authority to divest the properties to physical or juridical persons; (7) intended use to be made of the properties by the organ of local government; (8) any conditions or restrictions on the use or leasing of the State-owned properties by the organ of local government; and (9) that the transfer of ownership rights to the organ of local government be registered under the Immovable Property Registration System.

CHAPTER 6. CONDITIONS AND RESTRICTIONS

Article 23: Transfer of use rights to organs of local government:

23.1 The Ministry of Public Economy and Privatization may impose reasonable conditions and restrictions on use of the properties.

23.2 The conditions and restrictions are provided in the transfer agreement document.

23.3 Properties no longer needed for the purpose for which they were transferred to organs of local government may revert to the organs of the Central Government previously having administrative authority over the properties.

23.4 Properties that are not being properly maintained or not being used by the organ of local government in accordance with the terms established by the Central Government and set forth in the transfer agreement document shall revert to the Central Government after the organ of local government is given a ninety (90) day notice.

23.5 Restrictions and regulations may be imposed on leasing the properties to physical or juridical persons or using the properties for purposes of financial gain.

Article 24: Transfer of ownership rights to organs of local government:

24.1 The Ministry of Public Economy and Privatization may impose reasonable conditions and restrictions on the use of the properties.

24.2 The conditions and restrictions are provided in the transfer agreement document.

24.3 The organ of local government may be required to maintain the properties in a manner that is unique to their characteristics.

24.4 Restrictions and regulations may be placed on the divestiture of the properties to physical or juridical persons when no longer needed for the purpose of the original transfer.

Article 25: This Decision shall become effective _____.