
LEGAL ANALYSIS OF VARIOUS ISSUES INVOLVED IN THE REGISTRATION OF URBAN IMMOVABLE PROPERTY IN ALBANIA

by

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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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GLOSSARY

IPRA	Immovable Property Registration Act
IPRS	Immovable Property Registration System
LTC	Land Tenure Center
PMU	Project Management Unit

REVIEW OF THE INSTITUTIONAL AND ORGANIZATIONAL ARRANGEMENTS OF THE OFFICES OF THE IPRS AND THE PMU IN ALBANIA

by

Norman J. Singer*

In January 2000, the Project Management Unit (PMU) of the Immovable Property Registration System (IPRS) and the Chief Registrar's Office in Tiranë, Albania, engaged in a series of consultations on legal matters concerning the process of urban first registration. The consultations took place, for the most part, in the PMU's and the Chief Registrar's offices; meetings were also held with notaries and district registrars and with the staff of the Tiranë Coordinator's Office. The principal meetings during this period were held with a three-member Legal Group. The meetings with the Lawyers' Group also included much of the legal and legally related staff of the PMU, the Chief Registrar's Office, and the Tiranë Coordinator's Office. Participants deliberated many questions that had been causing concern for some time in the registration process. The collective discussions went well and decisions were made. This report presents the activities, decisions, and concerns that were discussed during this period of consultation.

1. URBAN REGISTRATION AND THE COORDINATOR'S OFFICE

1.1 STAFF LAWYERS

Two lawyers have been added to the staff of the PMU Coordinator's Office in Tiranë. They review problem cases and make recommendations as to how to resolve them for purposes of first registration. Inasmuch as the lawyers are in Tiranë, they see the full range of problem cases. Both are recent graduates of the Faculty of Law, University of Tiranë.[†] Although both of the new lawyers are bright, thoughtful persons, they would like more support from the PMU and the Chief Registrar's staff.

It was recommended that the PMU and IPRS specialists on the first registration process form a support group for the District Coordinators. The proposed support group should include those persons who are intimately familiar with the IPRS and the Immovable Property Registration Act (IPRA). The PMU First Registration Coordinator and Training Coordinator should be members of this group, as well as other specialists when available and as needed. It is important that the support group meets regularly and organizes policy recommendations in a format that is readily available to people in all districts of Albania.[‡]

The support group should meet with district (especially Tiranë) urban first registration procedural specialists every fifteen days so that the problem cases can be reviewed and firm recommendations made for individual cases.

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† There is no required property curriculum at the University of Tiranë Law School. This is a problem that has arisen over the years. At present, there seems little likelihood of cooperation in its resolution. It is a pressing problem, however, and should get attention as soon as possible. The importance of the concepts of property law must be emphasized at the Tiranë law school.

‡ It is also important that there is a system set up so that the districts can report to Tiranë on their problem cases.

The support group also needs to develop a procedure through these problem cases could be more widely reported. The two PMU/ Tiranë first registration lawyers, for instance, could create a catalog or index where problem cases can be reported. Issued on a biannual basis, the catalog could provide descriptions of the new types of cases and their proposed solutions to be disseminated to all district registries throughout Albania. The newsletter that the PMU has talked of issuing could also report on these cases. .

1.2 PMU LEGAL STAFF

It is important that the lawyers who work at the PMU get a better feel for the practical aspects of the registration of immovable property. Although the PMU lawyers are generally aware of the problem areas that arise, they are too far removed from the actual workings of the system. It is extremely important that each of the lawyers assigned to the PMU be allowed to acquire field experience by being assigned for a period to the Tiranë Coordinator's Office, so they can get the experience of dealing with the cases and problems that appear on a day-to-day basis. The fact that they are a step removed from the "real world" applications of registration affects the manner in which they look at the problems—their feel of the practical aspects—and their reports tend to be more "theoretical" than useful. In contrast, the lawyers of the Coordinator-Office approach problems in a practical, down-to-earth manner, which would be helpful for the lawyers who are assigned to the PMU.

It is recommended that the lawyers in the PMU do a six-month rotation with the Tiranë Coordinator's Office. Each lawyer should work as a member of the team of the lawyers that is already assigned to the office. It is important to implement this suggestion in order to give a more realistic, practical viewpoint to each of the lawyers who work with the system.

2. SITUATION IN WHICH ... COMMISSION VERSUS COURT DECISIONS

After 1993, the local/district/area(?) Restitution Commission was responsible for awarding land and buildings to ex-owners. Problems arise, however, involving challenges to these decisions. Once a Restitution Commission has been disbanded after its consideration of claims, its successor institution is the municipality. Yet the municipality often does not defend the challenges to its preceding Restitution Commission's decisions at court. As a result, the court often renders a decision that does not recognize the facts presented or is otherwise improper. This problem then extends to lawyers because, according to Article 193 of the Civil Code, a decision of a court "must be registered in the immovable properties register".

It is likely, moreover, that if no one represents the municipality (i.e., the ex-Restitution Commission) in court, then there is no one defending the bases of the Restitution Commission decisions. Therefore, a court may not have an adequate factual base for making its decision. If the claimant's presentation to the court goes unchallenged, the court would decide without proper factual information and a defective decision may be registered.

While such a situation must be avoided, there also must be an appeal process, starting with the opportunity to appeal.

There are two points that must be examined. In the cases where there has been no representation by the municipality, and the court has ordered the Office of the Chief Registrar to register a property in the name of a party who is clearly inappropriate, the Office of Chief Registrar should register the decision in Section E of the affected *kartela** and must block further transactions. It is then important to determine if the court will entertain an appeal by the Office of the Chief Registrar.

Article 32 of the Civil Procedure Code states that an action (including an appeal) can be taken only when a party has a "legal interest." While in most of these cases the Restitution Commission/municipality has been sued and is clearly a party with a legal interest, it must be determined that the court order requiring registration makes the Office of the Chief Registrar a party in interest. If the court decides that the Chief Registrar must register a particular property—and it is clear that the property should not be registered—then the Office of Chief Registrar can logically argue that it is a party in interest and should be allowed to initiate an appeal. But it is unclear at present

* Section E of the *Kartela of Immovable Property* provides space for recording the dates, descriptions, notes, and other details of outstanding mortgages, court decisions, restrictions, etc., on the property.

whether or not the court will accept this argument. In any case, it would apply only to cases where the period of appeal has not expired. It is possible, then, that some of the improper court decisions could end up being registered.

2.1 RECOMMENDATIONS

It is recommended that the PMU meet with municipalities, as soon as possible, to discuss this situation of the municipality not defending its legal case. Since it has been repeatedly noted that the municipalities do not intend to argue cases that go before the courts, the PMU will have to address this problem during first registration.

One option, at least for a year or two, would be for the PMU to offer legal assistance to the municipalities where Restitution Commission decisions are being challenged in local courts. A lawyer, paid by the PMU, could be hired to represent the interests of the ex-Restitution Commission and the municipality where the issue before the court could lead to an order for registration of an immovable property. This should be done to prevent more improper court decisions from coming before the Office of Chief Registrar of the PMU with an order for registration to take place. It is important to deal with the past mistake as effectively as possible, but it is imperative to prevent this activity from continuing in the future. If having the PMU's paid lawyers represent the government in cases before the court is the only way to ensure that the registration system is not distorted, then that action should be seriously considered.

The Chief Registrar should petition the Constitutional Court for clarification of court decisions that reverse or significantly alter decisions of the Restitution Commissions. In the interim, the PMU first registration field teams should create *kartela* and index maps that are based on the decisions of the Restitution Commissions, with a notation in Section E of the affected *kartela* that a pending court process could affect ownership.

Two lawyers who had been members of the Constitutional Court stated that court decisions that occur without municipality legal representation should not be registered to reflect a legal transfer of ownership. The lawyers accept putting the notation in Section E of the *kartela*. However, this reference to the Constitutional Court is only one possible way in which this situation could be rectified.

A registrar may refuse to register a court decision which is considered irregular or improper, especially when the interests of third parties, including the State, are affected. In this case, the registrar makes a notation on the *kartela* that there is an impropriety, and the third party who is affected by the decision can try to appeal the decision or even bring a new case. There should be a block on transactions imposed through the Section E notation. However, in many cases there is not a third party who is affected and the refusal to register the property must be followed by an appeal by the registration system itself. In this case, it would be appropriate to block any activity involving the immovable property in question until the question is resolved. The registrar could either appeal under the original case or institute a new suit. In any case, any transactions, including mortgages, affecting the property should be frozen until the appeal process is completed.

Under this procedure, Article 145 of the Constitution (independence of the judiciary), which states that any decision of the judiciary must be obeyed, would be respected. If the court orders the registration of its decision, the registrars would register the content of the decision in Section E of the affected *kartela* and would block any transactions until the proper appeal process is completed.

It is important to develop guidelines for determining when a court decision "materially affects property rights." Under the provisions of the Registration Act, decisions that do not materially affect rights but do clarify the boundaries of a parcel, for example, would be accepted and the modifications on the index map would be made.

3. EXTERNAL LEGAL ADVISORY GROUP

The PMU has engaged three senior lawyers* who are knowledgeable in the area of property law. Two of the lawyers are former members of the Constitutional Court, one having been president. The third is a well-known former prosecutor with a reputation for being an excellent legal practitioner. We met three times and considered a wide ranging set of subjects.

* Rustem Gjata, Halil Kopani, and Mirvjena Laha, Ledia Plaku.

3.1 FRAUDULENT TRANSFERS OF IMMOVABLE PROPERTY: MEANING OF SECTION 44

Some confusion may exist concerning the wording of Section 44 of the Law for the Registration of Immovable Property. The Law states that the registrar may issue an order that “ndalon ose kufizon veprimit me kete pasuri” when there is some limitation on the right of ownership of the registered owner. The group interpreted “ndalon” to mean a block or prohibition of any subsequent transaction involving the property. It interpreted “kufizon” to include the idea of notification to the public that the owner may not be the legal owner of the property, and any buyer or mortgagor of the property runs a risk that the transaction could be annulled in the future. Transactions would be allowed, however.

The Legal Group recommended that the Council of Ministers make a clarifying order (Udhezues) concerning the meaning and use of Article 44. This order should imply the following.

- (1) “Block.” This is a remark, put in Section E of the *kartela*, which informs the public that there is something irregular about the legal status of the parcel. It prevents a transfer of the property. The block will end after a specific period of time, or when a condition is met, or when the registrar decides that the problem of illegality or conflict over ownership has been resolved, as supported by legal documents. The registrar does not guarantee, however, that the person or persons noted as owners in Section C (“Of Ownership”) are legally owners of the property.
- (2) “Restriction/notification.” This is a remark, put in Section E of the *kartela*, which informs any interested person that there is something irregular about the parcel and a restriction on the right of ownership. It does not prevent a subsequent transfer, but is meant to warn a potential buyer or mortgagor that there is at least one defect in the claims of ownership of the present or previous owners. The restriction as “notification” will end when a stated condition is met or when the irregularity ends. The registrar does not guarantee the ownership entry of the parcel with a restriction entered in Section E of the *kartela*.

3.1.1 Some general principles and specific cases

As outlined in N. Singer’s paper, “On the Manner to deal with the First Registration of Illegal Transfers” [publisher? Where available? Date?], there are three methods we may use to fill out the *kartela* and then complete first registration when there are properties affected by illegal transactions, *vertitim i faktit*,^{*} or inaccurate court decisions. The group agreed on the following procedures for two types of situation.

Situation No. 1

If a person’s claim of ownership is a direct result of his[†] fraud, under no circumstances should a *kartela* be prepared in his name. The *kartela* should be prepared in the name of the person who was the owner before the illegal transaction took place (in virtually all the cases this would be the “State”). A notation should be made in Section E of the *kartela* that there is an illegal transaction and that there should be a block against any further transactions on that property until the illegality has been resolved. The specific information on the illegality would be included in the backup dossier of the parcel.

Situation No. 2

The second case involves an illegal action that is followed by a transfer to a person or chain of persons who are purchasers in good faith.

When the present holder is a good faith buyer who has completed all the necessary procedures to acquire a legal title, including a notarial act and the payment of all taxes and fees, the first registration team should create a *kartela* and enter her name in Section C. The chain of previous buyers should also be entered in Section C. A notation should be entered in Section E of the *kartela*, imposing either a block or a “restriction” on the property. This notation either blocks any subsequent transfer of the property or puts a potential buyer on notice that s/he is buying a parcel with a defective title. The registrar would use her discretion to determine whether the situation warrants a restriction/notification or a block and make the appropriate order for the case. A block would be used in the more difficult cases. However, where there were serious and obvious illegalities, the registrar would order that

^{*} Declaratory judgment by a court.

[†] The reference to “his” or “he” shall include “her” or “she” or visa versa.

the State be entered in Section C of the *kartela*, even though the purchaser had acted in good faith. A block would be entered in Section E with the appropriate notation. The backup dossier would contain the specific information of the situation.

The registrar should inform the district prosecutor for the parties of the illegal action, particularly if a notary is involved. The registrar should also inform the present holder of the property of decision to block any further transactions and the reasons for that action.*

Situation No. 3

Specific Cases (The Legal Group also considered some specific cases that were presented to them by members of the PMU staff – see paper by K Kelm 18.01.00 and insert conclusions)

Although the Lawyers' Group was able to make recommendations on each of the three cases, it was obvious that there was a need for a similar group to be available for consultative purposes to assist the lawyers working for the PMU and the Coordinator's Office. The lawyers felt that because of the complexity of such cases, the IPRS probably should have a legal consultative group available to the registrars and the Chief Registrar to recommend appropriate action to the individual faced with such cases. (See Part 1 of this report dealing with legal staffing in the Coordinator's Office.)

3.1.2 Recommendations

The basic directive is for the PMU first registration teams to review the existing documents to determine who is the owner. The owner can be either the State or a private physical or legal entity. When the ownership interest is determined, that owner is registered in the Section C of the *kartela*

When there are no recorded documents in the Hipoteka which prove ownership or if the available information shows an illegal construction on a parcel of land, the following notations should be put in the *kartela* for that parcel:

- a) In the case where there is illegal construction, a notation should be included in the section that describes the property site (Section B, Of property description). The notation should read "illegal building present." In addition, the registrar should enter a restriction in Section E in order to show that there is an illegal building. In cases when there is more than one illegal building on the parcel, each should be noted.
- b) When the claim for ownership is based on a declaratory judgment by a court or *vertetimi i faktit*, or a document that is used to circumvent the Civil Code's prohibition on registering *vertetimi i faktit*, then the registrar should enter a block in Section E of the *kartela* to prevent any transaction in the property until proper ownership is determined. The person who possesses the parcel in accordance with the court's declaratory judgment should be registered in Section D ("Of leases, 'in use,' restrictive agreement, servitudes and other interests") as a "possessor."
- c) When documents recorded in the Hipoteka derive from a declaratory judgment (*vertetim i faktit*) and there have been transfers to good faith buyers, there should be an entry made in Section D of the *kartela* which names the current possessor and any previous possessor of the parcel. In addition, a notation is also made in Section E, saying that there is a "restriction" on the parcel. It means that the parcel may be transferred, but anyone who buys the interest does so at his own risk and understands that s/he does not have an ownership interest. It would be usual in these cases that the ownership in Section C is registered to the State. Any person who subsequently buys the property would be listed in Section D as a possessor of the property.
- d) When there is a discrepancy between the ownership of the land and the ownership of a building, two separate *kartela* should be opened, one for the land and the other for the building. In the case of an apartment building on a parcel of land about which there is some dispute concerning its ownership, each individually owned apartment would have the notice concerning the ownership question relating to the land. In the *kartela* dealing with

* Group member Halil Kopani firmly stated that any property that contains an illegal transaction somewhere in the chain of title must be blocked. He is of the opinion that the first registration teams can create a *kartela* with a good faith buyer noted in Section C; however, no further transactions should take place until the illegality is removed through future legislation, state policy, or action by the person in interest.

the building, the owner of the entire building and/or of individual apartments should be noted in Section C, with a restriction noted in Section E that there is a question concerning the ownership of the land. The questionable ownership of the land will naturally be noted in the *kartela* referring to the land. The Section E notice would be a block, with proper explanation of why it exists. The block would continue until the question of landownership is resolved.

3.2 IPRS DEPENDENCE: POTENTIAL CONFLICT OVER ULTIMATE ADMINISTRATION

A decision needs to be made concerning the ultimate placement of the IPRS when the process of first registration is completed. The decision involves the provisions of the Civil Code, on the one hand, and the provisions of the IPRA, on the other. In the Civil Code, Article 198 states that the Ministry of Justice administers the activities of the IPRS. Section 3 of the Immovable Property Registration Act states that the Council of Ministers has the direct authority over the Immovable Property Registration System until the first registration process is completed. Although it appears clear that the authority of the Council of Ministers ends when the process of first registration is completed, the idea of extending this authority needs to be explored inasmuch as the Council of Ministers presently has the authority to administer the system, an authority that was given to the Council of Ministers by an amendment to the IPRA after the Civil Code was promulgated.

This is not to argue that the authority of the Civil Code has been eroded. However, the fact that the government saw it necessary to place the administration of the IPRS in a more neutral situation indicates that the inevitable collaboration of the various ministries brings about the placement of the IPRS in this neutral ground.

In a parcel-based property registration system similar to the one that Albania has adopted, there are two distinct aspects of the system: mapping and registration. In many systems mapping is considered an engineering process, which is the responsibility of the Ministry of Public Works or other agency that performs such technical service. Registration, on the other hand, is seen as a legal function, which in a number of countries is the responsibility of the Ministry of Justice. In the modern high-technology world, however, the parcel-based registration system has become the focal point of the Land Information System, which is a database of information on all land-related subjects that a country needs to run its affairs systematically.

There are many functions related to land that are all connected to this database. The general rule is that the Ministry of Justice is not necessarily the best-equipped government agency for being the home for the land information system. The operation of the system, with the core in the registration records and the register index maps, is generally housed in an agency that can deal with both the legal and the technical aspects of a system that has integrated both legal and technical functions. In many countries a new agency is created that can bridge the gap between the different disciplines that are included. For example, it is not unusual to create an agency that is responsible directly to the Council of Ministers that allows the many aspects of the system to be recognized by all the members of the Council as many of them have some aspect of the responsibility.

In recent years with the development of high technology, many countries have been converting the system of land records to a system that integrates land title registration with a cadastral system. This integrated system allows the government and the private sector to utilize a series of different databases to understand how the total land administration system is operating. The starting point for this information system is usually considered a full and accurate record of the landownership system. The goal is to create a "land information system" to assist with governmental and private sector decision-making.

Different governments structure the institutional support for this land information system in different ways. At this time, there does not seem to be one model of government structuring. It is usual, however, for individual ministries, authorities, and other relevant governmental organizations to collect and store land information according to their perceived need.

The land registration system as a whole in Albania is presently unable to provide the kind of information needed for effective management of land and land-related resources on a timely, consistent, and efficient basis. Among the negative consequences of failure to maintain a land information system are the loss of revenues, potential loss of investment opportunities, inability to plan for public services, and delays in dealing with land acquisition. When there are such inefficiencies it is usual that the strengthening of this aspect of administration is accorded a priority. The creation of a Land Information System will be the tool used for the collection of data

pertaining to land and should result in the proper management of land resources. The system should start with the following characteristics. It should:

- a) be based on a unique, defined, parcel numbering system;
- b) have a common referencing system;
- c) provide for central storage of widely needed information, with classified and specialized information being held by the most appropriate agency; and
- d) ensure the regular updating of data and timely access.

The core of this information base is the IPRS. It must be operating in a smooth and accurate manner with reliable information.

It is clear that in creating a land title register supported by comprehensive parcel mapping, more countries are continually realizing that the best manner in which to deal efficiently with this set of institutional information is to create a single government office to handle with both the maps and the title registers. The ministry or authority of ultimate assignment, however, varies widely.

The history of dealing with the land issues has been multi-ministerial and will probably continue to be. It would probably be better, therefore, to keep the general overall administration in a neutral zone where all ministries have equal access to the information that they need.

This issue was discussed with the Lawyers' Group, which recommended that the IPRS be made a direct part of the Council of Ministers.

4. INHERITANCE OF RIGHTS TO LAND AND THE AGRICULTURAL FAMILY

The Civil Code in Albania defines the members of the agricultural family as well as the persons outside who potentially can be successors of the deceased member of the family.

In 1991, when the state distributed land to the villagers, it was thought that, through agricultural production, the land should be able to provide for the subsistence of the private landowners. Thus in 1994, when the Civil Code was enacted, it defined that a "minimum size of parcel" should exist under the law, and no one should be able to release a parcel that is smaller than the minimum size.* Although this size was never precisely defined, the subdivision of agricultural is occurring every day. Given that the Civil Code allows outside members to inherit the land of a deceased member of the agricultural family, a son who lives in the city can become the owner of an interest in a small piece of land. The land can continue to be fragmented and possibly owned by many people who are not resident in the rural areas unless there is some definition of the size of the minimum-sized parcel.

The group agreed on the interpretation of the successions issues. The problem was in defining whom was a member of the agricultural family, for the law applied in the matter of succession appeared to be relatively straightforward and clear. The group decided to continue to work toward the resolution of these problems.

In February 2000, the Lawyers' Group met again to discuss issues raised concerning the "agricultural family" and the problems of inheritance. They considered the following questions.

1. How does one gain or lose membership in the agricultural family?
2. How does the agricultural family transfer rights in immovable property (rent, use, servitude mortgage, etc.)? Who makes the decisions about such transfers?
3. How will the family property be divided, in case this is requested by one or more members (considering the limited (space) area they own)?
4. Will the concept of "cultivation minimum unit" be kept? How can it be harmonized with the law on the Transfer of Ownership?

* The group agreed that it is important to set the minimum level in order to prevent fragmentation, but it also noted that Article 207 of the Civil Code prevents partition of interests when they should be kept together with the parcel as a whole. The owner who would like to sell his interest would have to take cash value for the land. This has the effect of preventing fragmentation. However, the actual point below which the holding can go is not precisely defined. It must be.

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5. Does the inheritance of agricultural family property occur at the death of each member or at some other time?
 6. How will agricultural family properties be treated when all its members have left the village and no longer engage in agriculture?
 7. How will the agricultural properties bought by individuals not in the family be treated for registration purposes?
 8. How will transactions in agricultural land by a juridical person be treated?

4.1 FAMILY MEMBERSHIP

No definition of membership in the agricultural family has been determined over the lifetime of the Land Markets in Albania Project. However, there has been one serious attempt at field research to understand the nature of how the agricultural family is defined and who is considered a member of the family.^{*} The Wheeler research used a large number of informants in three areas of Albania. Its results provide the kind of perspective that is needed to deal with the question of “who has membership in the agricultural family?” The problem in determining who has family membership arises because there is a different conception of what is “family” in various places within Albania. The family in Albania is in transition. As such, it would be difficult to dictate a firm definition of “the family” when the concept is regularly changing. At one time a family might consider their membership to include a broad number of relatives and later reconsider to define the membership more narrowly. This is not an unusual circumstance in societies that are going through a period of change. It is important that when such a state of affairs exists, the investigator maintains as flexible an approach to legal decisions as possible. Therefore, it is suggested that the family itself should be entitled to define who its members might be at any given point in time. A procedure that a family representative could follow to provide a clear statement of who is considered to be a member will be presented below.

The decision of family membership can be compared to the manner in which the Register of Civil Status (Gjendja Civil) presently lists any particular agricultural family on its rolls. The head of the family should be able to indicate through a notarial document at any time (with two or three other members of the family attesting to the decision) that the family is considered to include the listed members. If the existing or prior definition is altered and the new list of members does not match what is included in the Register of Civil Status, the head of the family should be required to notify every member of the family concerning the new definition of membership. This would allow a person who is no longer included to contest the decision soon after it is made.[†] However, it is important to note that members of the family must be defined when a transfer or any other activity relating to their immovable property is imminent.

There are situations when the definition of the membership of the family is important and the family has not taken formal steps to define itself. For example, when the head of the family dies, it is important to have a clear concept of who comprises the membership at the time of death to invoke the intestate law accurately. In the case where there is no definition of the “first order” family, as we will designate this group, it is recommended that the membership as registered on the Register of Civil Status should define the family. It is possible, as this discussion notes, to change the membership of the “first order” family at any time. However, in cases where it is difficult to predict that an event will take place (like death), it is necessary to have a working definition available in order to allow the family to go forward. This would be true, as well, in the case where a person who claims family membership dies and it is necessary to identify heirs to facilitate the inheritance process.

Thus, it is recommended that the membership of the agricultural family be determined by self-definition through agreement of the family members (including at least three individuals if there are that many). If the family

^{*} See Rachel Wheeler, “Past and Present Land Tenure Systems in Albania: Patrilineal, Patriarchal, Family-Centered,” Working Paper 13, Albania series (Madison: Land Tenure Center, University of Wisconsin, May 1998).

[†] It is important to consider when the definition of membership might be changed. First of all, it could be increased by the inclusion of female siblings or children. It could also be limited by the exclusion of persons who have either gone abroad or moved to a metropolitan area of Albania and who no longer contribute to the farm economy. In terms of the decisions that are made, it is likely that the members of the family itself would not feel the decision is a radical one. It is also likely that a dispute-settling institution would accept the nature of the change in membership if the decision was a rational and not particularly radical one.

cannot decide who is a member, either because they have not defined themselves or because an event takes place that requires clear definition of who has membership, any person claiming family membership has the option of asking authorities to help sort out their difficulties. Of course, where there is a clear record in the Register of Civil Status, which will have to control. This appears to be the best approach to defining the membership of agricultural families in a time of transition. It is unpredictable how any agricultural family would define itself when the concept of what constitutes a family differs from one family to another. Thus, in accordance with the findings of the Wheeler research, a flexible approach to the agricultural family is needed. The remainder of the decision concerning how inheritance of rights by an agricultural family is to be handled appears to be directly legal. It requires a reading of the relevant articles of the Civil Code and Civil Procedure Code.

However, the membership question is answered by Article 222 of the Civil Code, which says “the ownership of the property of the members of the farm family belongs jointly to its members, who through labor or other rights gained, have contributed in the creation and maintenance of the farm family.” This allows membership to be given to persons who “through labor or other rights granted” are considered members. This clearly means that “membership” includes the persons who work on the land and contribute to the maintenance of the farm or any other person whom the family, through a procedure that they use, selects. Thus, Article 222 of the Civil Code allows the family itself to determine its own membership.

4.2 TRANSFER OF FAMILY LAND

The determination of family membership is possible at any time. This can be done by reference to the Register of Civil Status (Gjendja Civil), as noted above, or through reference to any other document that might provide additional assistance. The relevant document or other evidence must be presented to a notary who can prepare the proper documentation to indicate that the agricultural family consists of the individuals included. But when there is a transaction involving the property, it is necessary to determine who the members of the agricultural family are even though it may be that only the head of the family is included in Section C of the *kartela* (if one exists).

Now the composition of the family is defined by the Certificate of the Family at the moment of the transaction. The Civil Code considers the members of the family to be those persons who are accepted as members by the family. For this reason, the 1998 Law on the Transfer of Agriculture Land asks for a declaration of family composition for purposes of preparing the certificate.*

There are still two issues that have been raised concerning the timing of the declaration of who has membership in the agricultural family.

The first is to determine when the composition of the family should be determined. One view is that the membership should be declared when the family acquires the property, and the other is that it should be determined when there is going to be a transfer. There are arguments for both views. However, it is not mandatory that the membership in the family be declared for legal purposes at the time the property is acquired. This would assist the family in clarifying who has an interest and therefore who would be able to share in any returns from production from the land. Likewise, the family could determine at any time who is considered a member for its own clarification. Therefore, it certainly should be permissible to make a declaration of membership through a notarial document at any time. It should be considered mandatory to make a declaration as to the composition of the family at the time of an impending transfer. This would clarify the persons with a legal interest in light of the impending transfer. In that case, one would have to know the members of both the agricultural family that is selling and the family that is purchasing the property. The determination of who is a member could change as the family itself considers who should have an interest. This would allow the flexibility that is necessary at this time when the ideas of many social concepts are changing.

* It was suggested that the group find a way through the Civil Code, Civil Procedure Code, and other laws or through generally accepted practice to allow the members of the agricultural family to decide by themselves the composition of the family. This should be done through the preparation of a notarial document at the time of transfer or before that time.

It was then suggested that the procedure should be amended to make it necessary to give notice to all persons who had been included in the definition of the family prior to the time of decision to change. According to that proposal, the rights of those family members who are missing when the family decides to go to the public notary to define its composition of the agricultural family are not foreseen and protected.

If it ever becomes a requirement to register ownership in Section C of the *kartela* by listing the names of all family members, the register can be rectified to include all members of the agricultural family. On the other hand, at this time, when a transfer to a farm family takes place, the family itself can decide who will be listed in Section C, if they desire to include more than the head of family. There should be a notarial document that clarifies the membership in the agricultural family in the backup file to the *kartela* with a notation in Section C that the document can be read to determine who all the members of the family are.

If this recommendation concerning the determination of membership in the agricultural family is adopted, perhaps a notice should be sent to all notaries concerning the timing and preparation of documents that involve the membership of the agricultural family. This would encourage individuals to declare the membership in their own agricultural families.

In sum, an agricultural family could have a notarized document prepared at any time it chooses. The members can bring the document to the registrar either to have the register rectified by adding the names of the members or simply to provide a support document, which indicates the names of the members of the family who have an interest in the registered immovable property.

The second is sue concerning the timing of the declaration of who has membership in the agricultural family is to clarify the procedure for declaring membership. This does not pose any special problems for the registration of immovable property. Inasmuch as it is up to the family itself to determine who has membership in the family, the declaration can be made at any time it is felt to be relevant. When it is relevant to make a declaration of either membership in or changing composition of the family, a notarial document should be prepared on the basis of existing evidence of who might be included. The *kartela* can then be altered according to the wishes of the members of the family.

In the notarial act, at any time that the membership in the family is being declared, but specifically at the time of a transfer, there must be at least two signatures to attest to who has membership in the agricultural family. The first signature should be that of the person designated as “head of family,” and the second signatory should be a family member, preferably a spouse or child. This would help control any unauthorized transfers by the head of the family. However, the number of signatories required for the notarial document should include a certain minimum of family members attesting to membership, let us say three.*

4.3 DIVISION OF FAMILY PROPERTY

There are two matters to be considered.

4.3.1 Size

If the property is large enough that a request for partition would not reduce either the partitioned segment or the remainder of the parcel to an area which is smaller than the minimum-sized parcel allowed by law, the family member who requests to have portion(s) severed from the remaining parcel should be allowed to do so. If, however, either the portion requested for partition or the remainder of the parcel would become smaller than the minimum allowed by the law, there are special procedures in the Civil Code.

4.3.2 Method of valuation

Articles 228 and 207 of the Civil Code determine the method of the division of the property. If the parcel is too small or if the partition would go below the minimum allowable parcel size, then the portion that is sought to be broken off must be valued by the parties and the person seeking to partition must accept a negotiated cash value for that portion of the property. The assumption is that the value will be the current market value. If the parties cannot agree to an adequate value, they will have to either keep the parcel together and continue as joint owners or go to court to resolve their differences.

* But that does not preclude having everyone who is designated as a member sign the notarial document.

4.4 CONCEPT OF “CULTIVATION MINIMUM UNIT”

The concept of the minimum allowable unit should be kept in order to maintain a system of agricultural production that provides profit (support) for the farmers. However, when there are disagreements among members of the agricultural family, there will be instances in which it leads to conflict. (See section 4.3, above.)

4.5 INHERITANCE OF AGRICULTURAL FAMILY PROPERTY

The treatment of inheritance of agricultural family property is governed by the Civil Code and the Civil Procedure Code. The relevant articles of the Civil Code dealing with inheritance include:

- 336 (unknown or missing heirs),
- 344 (discovery of who are the heirs),
- 348 (proof of inheritance),
- 196 (notification to the Registration Office that there has been a change in ownership),
- 349 (request by an heir to determine status of property),
- 353 (any coheir has the right to request the division of the property, even if it is not according to the wishes of the deceased),
- 354 (division of the property may be made by agreement of the heirs),
- 355 (specifying the method of division of inheritance property),
- 207 (controls the determination of the partition if one of the heirs wants his property separate),
- 359 (straight reference to the agricultural family by noting that the interest of a member of the agricultural family passes on to his heirs irrespective of their involvement in the agricultural economy], and
- 360–371 (these are the general articles dealing with intestacy and the order in which people are able to take their shares).

The relevant articles in the Civil Procedure Code include:

- 369 (Articles 207 and 227 of the Civil Code are used to deal with division of property in joint ownership), and
- 370 (the finding that one makes to justify the individual interest involved in joint ownership).

This last set of articles seems to mean that inheritance, even in the agricultural family, is determined according to rows or degrees.

Inasmuch as there are no special provisions of the Civil Code dealing with inheritance among members of the agricultural family, one must conclude that the provisions on intestate succession are the same for members of the agricultural family as for any other heir or group of heirs.

The provisions of Articles 360–371, which set out the order of inheritance by degree in the case of inheritance by law (intestacy), make it clear that one row (group) of heirs takes to the exclusion of the other groups if there is a member of the higher-ranking group. Therefore, as a practical matter the wife and children of a deceased head of family would inherit the estate to the exclusion of the other members of the agricultural family who are not in that class. Since the agricultural family holds their immovable property as a joint tenancy, the death of one person does not necessarily affect the holdings of the entire agricultural family. The same persons will remain as holders of an interest in the property, even though the heirs of the deceased person will succeed to the specific interest of the deceased. The heirs will simply join the agricultural family and succeed to an interest. Any heir that succeeds to an interest in the agricultural family may renounce her interest (not accept the interest) or ask to be compensated for the value of what s/he has inherited. The recognition of this inheritance interest does not disrupt the agricultural family nor seem to provide any conflict between any two or more laws.

The only potential problem is with Article 359, which states that an heir of a deceased member of the agricultural family may take his share irrespective of whether or not that person is part of the agricultural economy. Under the rules we are discussing here, it is possible that a person who is not actually working the land will inherit a share as a member of the agricultural family, but that the family does not accept anyone into membership who is not part of the group that is actually working on the land. They could therefore change the definition of the family after the inheritance to exclude this person from the family for ownership purposes. A person in such a situation would have an inducement to sell his inherited interest in the property as protection against being eliminated from membership by a redefinition of his family.

The Civil Code and the Civil Procedure Code contain provisions for joint ownership. These provisions only provide a direction to questions of how to distribute the share of a deceased member of the agricultural family. As noted above, there are two sections in the Civil Procedure Code that are related to the issue of joint ownership and therefore are of assistance in dealing with the issues confronting the agricultural family.

Articles 369 and 370 of the Civil Procedure Code directly support the idea that the inheritance issues of the agricultural family should be dealt with exactly as any other joint ownership issue. Articles 361–370 of the Civil Code determine the order of inheritance by the various persons claiming to be heirs of the deceased. The persons who are heirs qualify for a share of the particular interest of the deceased in the total property of the agricultural family. As noted immediately above, if the heir does not wish to keep her property interest with the agricultural family (or is afraid that s/he would not qualify as a member), s/he may request the value the interest in the property and receive cash or some other payment in kind according to the provisions of Article 207 of the Civil Code.

The manner of dealing with the heirs of a deceased member of the agricultural family does not differ from the provisions that conform to the joint ownership interests in general. If the heirs already have an interest in the property of the family, then they acquire a slightly larger proportion of the total property. If they have no interest and do not want one, they are able to claim cash or some other item in-kind for the value of their interest according to Article 207 of the Civil Code.

However, as noted above, one problem in the area of inheritance does exist when the agricultural family has not been defined by its members. It is not possible to redefine the family immediately after the death has occurred; the membership in the family must be in place at the time of the death. In that case the definition that would apply is the record as it appears in the Register of Civil Status. If there is documentation that indicates the membership should be considered alternatively, it is up to those claiming a different set of members to challenge the Register of Civil Status before an authorized conflict-resolving institution.

4.6 TREATMENT OF AGRICULTURAL PROPERTY WITH FAMILY MEMBERS NOT PRESENT

One would hope that when the agricultural family is no longer dealing with their land, they would attempt to sell or do something productive with it. If they just leave the village without considering the property, the principles of abandoned land become relevant. It is clear that when everyone has left the land for more than a set minimum period of time, the land should be considered abandoned. A procedure—possibly auction by the government—should be developed to deal with abandoned land. If a member of the family is still farming the land, it should not be considered abandoned. Whether the departure by most family members should be considered a reason for excluding those persons from the family (for ownership purposes) would be up to the family itself. If they cannot make a clear decision, a court or some other high authority should make that decision. In any case, if the land is abandoned and an auction takes place, the members of the family as it was defined at the time of the abandonment should be compensated by receiving a share of the price received through auction minus any administrative expenses for carrying out the auction.

4.7 TREATMENT OF AGRICULTURAL PROPERTY PURCHASED BY STRANGER

Single members of the agricultural family are restricted from selling the land because the land is held in joint ownership and the interests cannot be separated except through partition. Article 207 of the Civil Code deals with the issue of partition, saying that it is not allowed when an attempt is made to partition a small interest. If the interest is considered a separate interest by each member of the family, then it really would not be family property and there is no reason why it could not be sold. If it is considered agricultural family property then the family must discuss among its members the question of whether it would make sense to partition the property. To partition, a person might have to go to court to create his/her own parcel that could be sold. So unless there is a reason why the parcel should be restricted from partition one would have to say that after a partition is completed of the separate section a transfer may take place of the separate section.

4.8 TREATMENT OF AGRICULTURAL LAND TRANSACTIONS BY JURIDICAL PERSONS

These agricultural land transactions refer to joint ventures and should not be a problem, as long as all the members of the joint venture agree to transfer. However, if there is a large number of people involved, then ownership would be by shares and the shareholders should probably have either a formal vote or something similar.

5. IMMOVABLE PROPERTY MEDIATION BOARD

5.1 BACKGROUND

During January 2000, the Lawyers' Group^{*} considered the possibility of submitting a revised Immovable Property Tribunal Act[†] for review. In 1996, the Minister of Agriculture had been in favor of establishing an informal mediation board through which land disputes would pass; at the time, the lawyers decided that, as a matter of strategy, it would be best to provide a stronger justification for having a mediation board.

The mediation board could be justified by an assessment of the kinds of activity that existed in the district courts. In March 1996, investigation had indicated that the courts were in fact beginning to receive a number of petitions on land matters, though it was not clear at the time how the courts were processing these disputes. It was thought that an analysis of a number of courts (three to five) throughout the country might show that such land-related activities could impose a serious burden on the courts, thus justifying creation of the mediation board.

In 1996, a letter was prepared for the Minister of Agriculture to send to the Minister of Justice, asking for permission to carry out court observations and review statistics. In the past the Ministry of Justice had rejected the idea of administrative or special jurisdiction courts and had generally been unwilling to extend itself to the Land Markets in Albania Project. There the matter rested until now.

It is now clear, in January 2000, that the courts are seriously burdened with land and land-related disputes.[‡] The Minister of Agriculture has said, moreover, that there has been a change of attitude in the Ministry of Justice; he suggested that we might contact the Deputy Minister of Justice directly to see if there was a new spirit of cooperation. A meeting was set and indeed the Deputy Minister was most cooperative. He approved the proposal on the spot, and we planned for background assessment in preparation for fieldwork.[§]

Further, it seems appropriate to discuss a draft of the Immovable Property Mediation Board Act, since there was now a clearer picture of the range and number of disputes that have arisen concerning land and land-related disputes. There are many disputes. The types of dispute that the courts must face, though numerous, are repetitive to a certain extent. Under such conditions, it is appropriate to review the idea of whether or not there should be a special institution to deal with these types of dispute.^{**} The Lawyers' Group reacted positively to the idea after reading through the 1996 draft of such an act (see Annex 1). The draft is presented here for wider reading.

^{*} The Lawyers' Group comprised Rustem Gjata, Halil Kopani, Kathrine Kelm, Mirvjena Laha, Ledia Plaku, and Norman Singer.

[†] The precise name of this legal institution, whether it is to be called an Immovable Property Tribunal, Arbitration Committee, Mediation Board, or something else, is not considered at this time. The title "Mediation Board" is included here simply to provide a title. Once the decision is made to go forward with the idea of creating a separate body to deal with land and land-related disputes, many of the decisions involving terminology and basic procedure will have to be made. A draft act is presented at this time because the Lawyers' Group has reflected on the principle of creating a body to alleviate pressure on the court system by hearing land and land-related disputes apart from the "regular" court system. The group agreed unanimously that such an institution should be developed. The basic draft, presented below, should be considered as a prelude to the next step, in which detailed discussion takes place concerning the operation of such a body.

[‡] This conclusion is based on consultations with experienced people, since we were not able to review the court statistics kept by the Ministry of Justice to see whether there was indication of heavy land-dispute activity. Accurate statistical information of the type that we would need was not available.

[§] See Memorandum to Rachel Wheeler, in Consultant's Report of March 1996, Part 8, by Norman J. Singer, prepared for Terra Institute, Mt. Horeb, Wisconsin.

^{**} This institution should be more specialized than the District Court in resolving conflicts on land; its decisions, when appealed, should go directly to the Appeals Court, not to the District Court (though in dealing with factual matters for the most part, its decisions are not likely to be appealed). Additionally, the preliminary stage of the institution has a better chance to be successful in reconciling the parties than the normal courts, for it does not have too many procedures to follow and its informality is very gratifying.

5.2 COMMENTARY AND EXPLANATION OF THE MEDIATION BOARD ACT

The Immovable Property Mediation Board Act is one component of the set of legislation that will assist in the development of a functioning property registration system in Albania. In 1996, it was prepared “because it is highly likely that there will be a significant number of cases involving immovable property over the years.” It was felt necessary to create a separate hearing body to deal with immovable property matters. This is a special, and informal, court-like institution which will be in existence in each district and will have wide jurisdiction in matters relating to immovable property.”

The Mediation Board is created to deal with cases involving immovable property, but it is not set up to avoid the regular courts from hearing immovable property matter that involves an issue of law. The appropriate court will hear these matters, if the disputants feel it is necessary, as a matter of appeal or judicial review if the dispute contains a legal, as opposed to a factual, question.

The reality in matters of immovable property is that an overwhelming percentage of cases involve factual issues, like the location of a border or whether a tenant is still in possession. It is fundamental that a resource be made available to persons with such disputes. However, it is also fundamental that such disputes are not given license to clog up existing court agendas. Thus, it is proposed, through this legislation, that there be created a special informal court, called an Immovable Property Mediation Board, which hears a broad range of immovable property disputes.

An Immovable Property Mediation Board will be set up in each of Albania’s thirty-six districts. Each mediation board will have a chairperson who will have both the qualifications of a trained legal person and the civil service status of a judge in a court of first instance. Each mediation board will also have two assessors who are upstanding persons of their community, who will not have a civil service status, but who will receive an allowance provided by the Ministry of Justice for the service they render. All persons so selected will serve for a nonrenewable term of five years as assessors on the mediation board.

The two assessors and the chairperson will sit as a single panel for each of the disputes brought before the mediation board. The decisions of the board will be made by majority vote unless there is an issue of law involved, in which case the chairperson will have the controlling vote.

Each mediation board will also have a clerk (and as many assistant clerks as necessary) who will be responsible for all the administrative activities of the mediation board, including providing all relevant persons with notice.

The jurisdiction of subject matter, set out in Section 10, is meant to be broad and to capture as many immovable property-related matters as possible.* This includes issues relating to the distribution of immovable property, which started in 1991, and is meant to include all issues involving ex-proprietors that have to be processed through a court. The act explicitly includes all issues relating to registration.

The process of the mediation board is designed to expedite cases. The chairperson has the authority to attempt to conciliate a matter at any stage. The chairperson can also call for a pre-trial conference to elaborate on specific issues that need to be clarified by special evidence or for any other reason that s/he so determines. All hearings are open, but there is a possibility of closing the hearing, with the agreement of the parties, if the chairperson feels that statements of a witness should not be taken publicly. However, the overall process is designed to be informal, and each of the parties is given the chance to present the evidence that it deems relevant. There are no rules of evidence applicable to a hearing in the mediation board. However, the chairperson does have the authority to make a determination that certain evidence is irrelevant to the dispute at hand and need not be heard.

Although the purpose of the mediation board is to hear matters informally, if a party to a dispute chooses, legal representation is possible. Experts in immovable property matters can participate and the parties are encouraged to use persons who have special training or knowledge to help resolve the dispute at hand.

The procedure for filing a petition, answering it, and filing counter-petitions is presented in the Act, with all the necessary standards for notice, and the like. There are requirements relating to how much time can elapse (21 days)

* It was later suggested that Article 10, specifically, and the entire draft, in general, be carefully studied in order to define precisely the competencies, jurisdiction, composition, terms, organization, fees, and so forth of the mediation board.

between the filing of a petition and the actual trial. The language of the Act is set up to require the schedule to be met whenever possible and, for that purpose, includes a procedure that allows additional persons to be appointed as presiding judges and assessors, who will comprise extra panels in order to facilitate meeting the time schedule set out in the Act.

Judgments are rendered by majority vote except, as noted, when an issue of law is present. Any party has the right to petition for reconsideration of a decision within ten (10) days of the issuance of a final judgment. A written opinion, which deals with the petition for reconsideration, must be issued. The mediation board also has the power to issue a default judgment when the accused does not appear. In this case, an accused loses both the right to petition for reconsideration and the right of judicial review.

The mediation board can also order the accused to pay monetary damages to a petitioner in installments, if the circumstances so require.

Finally, the mediation board will keep records of all activities and will charge fees for services. The fee schedule is set up to be reviewed and changed periodically.

ANNEX 1 IMMOVABLE PROPERTY MEDIATION BOARD ACT (DRAFT)

PARLIAMENT LAW

**On the Creation and implementation of an
Immovable Property Mediation Board
for the settlement of disputes relating to issues
involving immovable property**

**in conformity with Article 16 of Law nr. 7491,
dated 29 April 1991, on “Main Constitutional Provisions”
proposed by the Council of Ministers**

THE PARLIAMENT OF THE REPUBLIC OF ALBANIA HAS DECIDED:

PART I DEFINITIONS

Section 1

“accused” means the person defending against the accusation of wrongdoing;
“answer” means the papers filed by the person(s) accused of the wrongdoing;
“chairperson” means the presiding judge of each District’s Mediation Board and the chief administrator of the Immovable Property Mediation Board in a District;
“clerk” means the officer in charge of the court records;
“counter-petition” means a claim by an accused against a petitioner;
“default” means failure to defend against the petitioner’s claim by failing to answer or to appear for trial;
“immovable property” means land, water sources, buildings as well as immovable objects defined in the Civil Code;
“judgment” means the decision of the Mediation Board;
“Minister” means the Minister responsible for the immovable property administrative system of Albania;
“petition” means the paper filed by the person making the claim;
“petitioner” means the party commencing the case;
“subpoena” means an order of the court requiring a witness to attend or testify at a trial;
“summons” means the paper issued by the clerk of the Mediation Board which orders the accused to admit or deny the petitioner’s claim.

PART II LOCATION AND STAFFING OF MEDIATION BOARDS

Section 2

- 1) There shall be one Immovable Property Mediation Board in each District in Albania, located in the administrative center of the District.
- 2) The Mediation Board of each District may also sit, at the discretion of the chairperson of the District Immovable Property Mediation Board, in the principal town of any *komuna* when there are disputes that involve immovable property located in one of the outlying areas.

Section 3

- 1) The chairperson and assessors who will sit on the Immovable Property Mediation Board shall be appointed by the Minister for a non-renewable term of five years.
- 2) The chairperson shall be considered as a member of the judiciary, as an ordinary employee of the Ministry of Justice, and shall receive the pay and benefits equal to a District Court Judge.
- 3) The assessors shall receive an allowance, to be determined by the Ministry of Justice, for each case in which participation takes place.

Section 4

- 1) Each panel shall consist of a chairperson and two assessors who shall hear the dispute over which the Mediation Board has jurisdiction as set out in Section 10.
- 2) The chairperson shall be considered as a member of the judiciary, as an ordinary employee of the Judiciary Department, and shall receive the pay and benefits equal to a District Court Judge.
- 3) The assessors shall be persons who do not necessarily have a background of legal training, but who do have the qualifications as set out in Section 5 (2) and (3) below.
- 4) The assessors shall not be considered as members of the judiciary and they shall receive an allowance, to be determined by the Judiciary Department, for their participation on the Mediation Board as assessors.

Section 5

- 1) The qualifications considered appropriate for appointment as chairperson of the Immovable Property Mediation Board shall be legal training, an understanding of issues relating to immovable property, general leadership abilities, and the possession of skills necessary for the resolution of disputes.
- 2) The qualifications for appointment as an assessor shall be residence in the District where the Immovable Property Mediation Board is located, a reputation of high status in one's community for fairness, considered as a wise and learned person in terms of culture and social practices who is looked to for decisions, a special knowledge in matters of immovable property, and an accepted sense of integrity.
- 3) If possible, the person serving as an assessor should be one of the elected officials from a village.

Section 6

- 1) Each Immovable Property Mediation Board shall have appointed a chairperson in each District, who shall be the chief administrative officer and preside in all hearings and as many assessors for each District as are necessary to deal with the disputes of that District.
- 2) The chairperson of each District's Mediation Board will sit on all panels as the presiding judge with two of the appointed assessors resident in the District where the dispute is being heard.

Section 7

- 1) To ensure that this schedule is adhered to, special Immovable Property Mediation Board Presiding Officers and additional assessors shall be appointed by the chairperson of the District Immovable Property Mediation Board, in consultation with the Minister, to assist with hearings, if the schedule set out in Section 23 cannot be followed.
- 2) Special presiding officers shall receive the same allowance as an assessor.

Section 8

Each District Immovable Property Mediation Board shall have a clerk and one or more assistant clerks as is determined by the amount of activity that takes place in each District Mediation Board.

Section 9

- 1) to receive the petitions and counter-petitions and other documents of persons with claims which come under the jurisdiction of this Act;
- 2) to set the location and schedule for hearing disputes by the Mediation Board;
- 3) to ensure that each person who should receive notice of completed or pending action of the Mediation Board is so notified;
- 4) to issue all subpoenas for the discovery of evidence;
- 5) to notify persons who have been appointed special presiding officers or assessors of their appointment and assignments;
- 6) to coordinate all activities with the assistant clerks who are located in the Districts to ensure that the procedures are followed; and
- 7) to perform any other function that ensures the procedures of the Mediation Board operates smoothly.

PART III SUBJECT MATTER JURISDICTION

Section 10

The Immovable Property Mediation Board shall have primary jurisdiction over proceedings instituted where parties have conflicting claims to immovable property, including the following issues (include restitution commission issues and bashkia cases – building permit issues):

- a) actions involving claims of a right to ownership, a right of usufruct, and/or a right to possession in respect of any immovable property;
- b) demarcation of immovable property that is connected to activities related to the subdivision of parcels and any matter for which demarcation or surveying must be carried out;
- c) registration of immovable property;
- d) use, development, and capacity of immovable property;
- e) partition of holdings in which potential multiple ownership is involved;
- f) immovable property valuation and issues involving compensation for immovable property;
- g) matters relating to the issuance of building permits;
- h) removal from possession or eviction from immovable property;
- i) expropriation of immovable property by the government;
- j) agricultural or agro-industrial contracts of lease;
- k) transfer of property in contravention of the applicable law;
- l) exchanges, illegal subdivisions, and other irregularities involving improper division or partition of immovable property;
- m) succession to immovable property;
- n) possession of both urban and agricultural immovable property;
- o) applications for the use of immovable property which involves issues of the environment;
- p) use and development of immovable property for purpose of conservation and development and the use of natural resources;
- q) the recovery of publicly held immovable property from a person in possession; and
- r) all other matters relating to immovable property.

Section 11

The parties shall have access to conciliation at any stage of a dispute and if possible they shall, in collaboration with the chairperson, shorten the trial and deliberations in order to reduce the duration of the process.

Section 12

- 1) In the course of the proceedings, the chairperson may unilaterally, if s/he deems it appropriate, issue an order that is designed to expedite the process.
- 2) The parties may agree with the chairperson to abbreviate and concentrate deliberations with a view to reducing the duration of the process.

Section 13

The hearings of the Immovable Property Mediation Board shall be informal, the object being to dispense justice promptly between the parties. However, in order to allow for the organization of the system, a structured hearing system, with pre-trial information and conferences, shall be part of the procedure.

Section 14

With the agreement of the parties involved, the judges may close the proceedings for the examination of witnesses, for the taking of statements, or at any time such a course is deemed appropriate.

Section 15

- 1) Any party may participate in the hearing in person or, if the party is a juridical person, by a duly authorized legal representative.
- 2) Whether or not participating in person, any party may be advised and represented, at the party's own expense, by a legal practitioner, or where allowed by law, any other representative.

Section 16

- 1) Where technical evidence is required, experts deemed appropriate by the agreement of the parties to the action may be brought to testify from government or non-government bodies or any other source deemed appropriate by the parties to the action and the judges.
- 2) Where the parties cannot agree on the appropriateness of a particular individual, and the judges feel that the person in question is the most appropriate, the chairperson may call in a neutral person, acceptable to the parties, who shall determine whether or not the selection of the expert is appropriate.
- 3) The judges are not obligated to accept the statements of the experts brought to testify in any matter before the Mediation Board as the testimony is merely the opinion of the experts.

PART IV PROCEDURE FOR THE MEDIATION BOARD

Section 17

- 1) A case shall begin when the petitioner files with the clerk of the Mediation Board, in the District where the immovable property in question is located, a short and plainly written statement showing what the petitioner claims and why s/he claims it.
- 2) The petitioner may combine as many claims in one case as may exist against an accused and more than one accused may be included in the case if the petition includes reference to more than one person.

Section 18

- 1) The accused shall file a short and plain reply showing what the accused admits, what is denied, and why it is denied.
- 2) An answer may not be made by a motion to dismiss.

3) The court shall be very lenient in the allowance of changes or amendments to petitions, answers, and counter-petitions when it is necessary to assist in reaching a fair and equitable judgment.

Section 19

1) If the accused believes there is also a claim against the petitioner, it shall be filed as a counter-petition at the office of the clerk, in the District where the original petition was filed, together with the answer.

2) The clerk shall cause a copy to be delivered to the petitioner.

3) Failure of the accused to make a counter-petition which is based on events that give rise to the petitioner's claim, will not of itself prevent the accused from raising such a claim in another case so long as the accused either wins his case in the Immovable Property Mediation Board judgment or prevents the judgment of the Mediation Board from becoming final by filing a notice for judicial review as provided in Section 39.

Section 20

1) Upon the filing of a petition, the clerk shall issue a summons to each accused through personal service or through the postal system, whichever is more practicable in the situation of the case.

2) If the summons is personally served on the accused, the server shall locate the person to be served and shall deliver the summons and a copy of the petition and any accompanying documents to the person to be served. When the summons and the petition have been personally delivered, the server shall endorse the date, place and time of delivery on a copy of the summons, and return it to the clerk, who shall make note on the appropriate agenda.

3) When the server is unable to personally serve the summons and a copy of the petition within fourteen (14) days, the server shall endorse that fact and the reason for non-delivery on the summons and return the summons and the petition to the clerk, who shall make note on the appropriate docket and immediately notify the petitioner, in the most practicable manner, of the inability to deliver the summons and petition. The fact of notifying the petitioner shall be made on the appropriate docket.

4) If the clerk elects to serve the summons and the complaint by registered mail with a return receipt, the server shall endorse that fact on a copy of the summons and return it to the clerk, who shall make an entry on the appropriate docket.

Section 21

1) All time periods shall be measured by starting to count on the first day after the petition was served on the accused or on the first day after the judgment was entered or on the first day after any other event happens by which this Act starts the running of a time period.

2) If the last day is not a working day, then the last day is not considered to have arrived until the next working day has arrived.

Section 22

1) The accused shall file his answer or counter-petition in the office of the clerk, where the original petition was filed, within fourteen (14) days after a copy of the summons and petition have been delivered to him by an official server or a person otherwise authorized to make service.

2) If the service has been made by registered post with a return receipt required, an answer must be filed within fourteen (14) days of the receipt of the summons and petition which shall be calculated from the time the receipt is signed.

3) The accused does not have to have a copy of his answer personally served on the petitioner unless his answer contains a counter-petition.

Section 23

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- 1) The chairperson, together with the clerk, will determine the schedule of disputes to be heard. The time schedule set out in this Act shall be closely followed, whenever possible.
 - 2) Under no conditions shall a case be heard more than one month after the summons and petition are delivered to the accused.

Section 24

The parties to any dispute arising under this Act are encouraged to make a voluntary exchange of information before the trial, but under no circumstances shall the Mediation Board require such an exchange.

Section 25

The chairperson of the Mediation Board shall confer with the parties before any trial takes place, whenever it appears that such a conference might simplify the issues or shorten the hearing or lead to a voluntary exchange of information which might promote a settlement of the dispute.

Section 26

If a pre-trial conference is held the chairperson shall:

- a) set the time and place of the proposed conference;
- b) give reasonable notice to all persons entitled to notice which includes all persons who should be present at the conference;
- c) include in the notice anything which the chairperson feels is desirable to assist in expediting the proceedings; and
- d) issue an order based on the result of the pre-trial conference which is aimed at either terminating the dispute prior to trial or narrowing the issues which shall be heard at the trial.

Section 27

- 1) The chairperson shall set the time and place of a hearing and give written notice in advance to all parties and persons who have petitioned to intervene in the dispute.
- 2) The notice must include a copy of any order issued by the Mediation Board in the matter under consideration.
- 3) The notice may also include any other matters the chairperson considers important to assist in expediting the proceedings.

Section 28

- 1) If a party to the dispute fails to attend or participate in either a pre-trial conference, a trial hearing, or any other meeting called to discuss the matter at issue, the chairperson may serve written notice on all parties of a proposed default order. This notice shall include a statement of grounds for such an order.
- 2) If after fourteen (14) days no answer has been received, as accused shall be given an additional fourteen days (14) from the time the accused receives that notice to state the reason why a response has not been made to the accusation. If no satisfactory response is received by the end of the second fourteen (14) day period, the members of the panel may then issue a default order.
- 3) Within seven (7) days after the service of a proposed default order, the party against whom it has been issued may file a written notice requesting that the proposed default order be vacated and s/he shall state the reasons for such request.
- 4) During the time within which a party may challenge a proposed default order, the chairperson shall adjourn the proceedings until the time for challenge has passed.
- 5) The chairperson shall either issue or vacate the default order promptly after the expiration of the time within which the party may file a written notice under Subsection (3).

6) After issuing a default order the chairperson shall conduct any further proceedings necessary to complete the matter that was before the Mediation Board without the participation of the party who was found to be in default.

Section 29

1) The chairperson shall grant a petition for intervention by any person in a dispute scheduled to be heard by the Mediation Board if:

- a) the petition is submitted in writing to the chairperson, with copies distributed to all parties who are named by the chairperson as persons interested in the outcome, at least three days before the hearing is scheduled.
- b) the petition states facts that demonstrate the petitioner's interest may be substantially affected by the proceeding or that the petitioner qualifies under a provision of law to intervene in the matter.
- c) the chairperson determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the petition.

2) The chairperson may grant a petition for intervention at any time, upon determining that the intervention sought will serve to assist in a fair disposition of the dispute and will not impair the orderly and prompt conduct of the proceedings.

3) If a petitioner qualifies for intervention, the chairperson may impose any reasonable conditions on the intervenor's participation in the proceedings either at the time the intervention is allowed or at any subsequent time as conditions may require.

4) The chairperson must give notice to the petitioner and any party in interest of any decision allowing or denying intervention at least twenty-four (24) hours prior to a scheduled hearing, specifying any conditions attached to an order of intervention and briefly giving reasons for the order.

Section 30

The chairperson, on his own decision or at the request of any party, may issue a subpoena for discovery, for protection of a party, or for other purposes which will make the process go more smoothly. These orders shall be in conformity with the Code of Civil Procedure or any other law relevant for such a matter.

Section 31

A subpoena requiring a witness to attend and to testify at a trial shall be issued by the clerk, in the District where the petition was filed, on the request of one of the parties.

Section 32

1) A trial shall be scheduled to take place, whenever possible, no more than twenty-one (21) days following the answer of the accused and in cases where a counter-petition or petition for intervention is filed, whenever possible, no more than twenty-one (21) days following the answer to the counter-petition or decision whether the intervention of an additional person will be allowed.

2) At least fourteen days (14) before the scheduled trial date, the clerk, in the District where the petition was filed, shall notify the parties of the time and place of the trial.

3) At the trial, whether or not there is a lawyer who represents either party, each party shall have the right to put questions to the other party or witness.

4) An opportunity shall be provided for non-parties to present oral or written statements concerning the dispute. The parties then must be given a chance to question the non-party.

5) The members of the Mediation Board, in their discretion, may participate freely in the examination of the parties and witnesses.

6) The Mediation Board may receive properly certified written or recorded statements of witnesses or parties who are not present at the trial.

Section 33

- 1) There shall be no rules applicable to the hearing which limit the presentation of evidence the parties feel is relevant to the case at hand.
- 2) The chairperson may, however, limit the presentation of evidence that is deemed irrelevant, immaterial, unduly repetitious, or in any other way delays the normal progress of the hearing.
- 3) Any part of the evidence may be received in writing if doing so will expedite the hearing without prejudicing the interests of any party.
- 4) Any documentary evidence can be presented in the form of a copy, but if any party requests, an opportunity must be given to compare the copy with the original, if the original is available.

Section 34

- 1) All decisions of the Mediation Board, whether the final judgment or interim matter, shall be made by majority vote of the three sitting judges, the chairperson and two assessors.
- 2) However, the chairperson shall have a deciding vote on all questions of law.

Section 35

- 1) Any party to a dispute which has been before the Mediation Board may, within ten (10) days after the issuance of a final judgment, file a petition for reconsideration, stating the specific grounds upon which the request for reconsideration is made.
- 2) The petition for reconsideration must be disposed of by the same panel of persons that issued the judgment, if those persons are available, and if they are not all available, by as many as are available who made the first decision to participate a second time.
- 3) The chairperson shall issue a written opinion denying the petition, granting the petition and dissolving or modifying the judgment, or granting the petition and issuing an order for further proceedings.
- 4) The petition for reconsideration is deemed to have been denied if the chairperson does not issue a written decision within twenty (20) days from the time the petition for reconsideration was filed.

Section 36

- 1) When an accused does not answer within the required time or fails to appear when the case is set for trial, after a fourteen (14) day wait following the second notice issued under Section 29 (2), the petitioner will be required to present evidence in support of his claim; if the members of the panel find that the evidence supports the petition, the clerk, in the District where the petition was filed, shall enter a judgment against the accused.
- 2) If a default judgment has been entered, the person against whom such a judgment has been entered does not have the right to petition for reconsideration of the judgment.
- 3) If the accused does not appear when judgment is found against him or her, s/he loses the right to petition to a higher court for judicial review in accordance with the provisions of Section 40.

Section 37

Enforcement of any final judgment may proceed through any means available under the law, regulations, or rules and deemed appropriate and in force under the law of Albania.

Section 38

- 1) The Mediation Board may order that any final judgment, when the payment of money is involved, shall be paid in installments by setting a schedule of payments over a stated period of time.

2) The Mediation Board may also revise the schedule of installment payments when the paying person, after presenting to the Mediation Board evidence of the difficulty in making payment, has convinced the Mediation Board that a rescheduling of payment is necessary.

3) Under no conditions may the installment system created for the payment of a monetary judgment be extended for more than three years.

Section 39

1) Judicial review may be sought after a judgment has been rendered, involving a matter of law, by filing a notice for judicial review in the office of the clerk, in the District where the original petition was filed.

2) Judicial review is not available for disputes where the sole issue is the determination of compensation.

Section 40

1) The Mediation Board shall maintain an official record of each proceeding that has taken place under this Act.

2) The record shall consist of:

- a) all notices issued by the chairperson;
- b) any pre-hearing order;
- c) any request made by any of the parties;
- d) any petitions for intervention;
- e) any written evidence submitted or received;
- f) any judgment issued; and
- g) anything else that has transpired since the initial petition was filed that has any bearing on the matter that has been before the Mediation Board.

PART V MISCELLANEOUS

Section 41

There shall be fees payable to the Immovable Property Mediation Board for the filing of a case and the costs that are necessary for the dissemination of any materials necessary for the clarification of the issues which are part of the dispute before the court and for the time spent.

Section 42

The Minister may make regulations in general to give effect to the purposes and provisions of this Act and in particular without compromising any general regulations, for prescribing the manner in which the procedure relevant to this Mediation Board shall be carried out, and for prescribing anything under this Act which may be allowed.

Section 43

Any matter not provided for in this Act or in any other law in relation to the administration and procedure relating to the processing of disputes involving immovable property shall be decided in accordance with the principles of justice, equity, and good conscience.

Section 44

1) All laws or portions of laws in conflict with the provisions of this Act shall be deemed to be repealed and anything done under a repealed law shall be deemed to have been performed under the provisions of this Act.

2) All pending cases prior to the commencement of this Act shall be dealt with in accordance with the provisions of the repealed laws.

Section 45

The Act shall come into operation on a date to be fixed by the President published in the Official Gazette.

FORMS THAT GO WITH THE TRIBUNAL ACT

There are twenty-four (24) Forms that go with the Act. The Forms state that they go with the “Tribunal” Act, but the truth is the final decision of what to call the institution that is helping to decide the multitude of issues that involve land and various issues. The drafts of the Forms are therefore prepared in the name of the “Land Tribunal.” These can be edited if the decision is made to go forward with the Act and a final “name” is allocated to the institution. Second, the decision on what to call the parties who either petition the institution or are accused of a wrongdoing has also not been decided. Whether the person instituting a matter before the institution should be called “plaintiff,” as in a regular lawsuit, or “petitioner,” to imply that the reference to the institution is different than a regular court suit, has not yet been decided. It is assumed that these issues will be presented to the “Lawyers’ Group,” which has been a very helpful group (see p. 13, n. *).