

RESEARCH ARTICLE

(Open Access)**Analysis of Land Reforms and the Review of Legislative Aspects in Rural Land in Albania**VALBONA SINANI¹, PETRIT HARASANI², ADEM META³, SEIT SHALLARI⁴, FATBARDH SALLAKU⁴¹PhD student, ⁴Department of Agroenvironment and Ecology, Agricultural University of Tirana, Albania²Polis University, Tirana, Albania³Cuyahoga Community College, Cleveland, Ohio, USA⁴Department of Agroenvironment and Ecology, Agricultural University of Tirana, Albania**ABSTRACT**

Albanian agriculture has been experiencing a dramatic and difficult transition period from a centralized, planned economy to a market economy. The main reasons for these difficulties are because of the expropriation of peasant property and their incorporation into the cooperative system transformed them into salaried workers with one of the lowest per capita income levels in the world. Also the laws restricting the mobility of rural people kept about 65 percent of the population in the countryside and increased impoverishment of the rural population reduced the supply of food for the cities. Ownership rights include the right to exclusive use and enjoyment as well as the right to transfer property through selling, making gifts, mortgaging, leasing, inheritance etc. At the same time, there are certain responsibilities for property owners that may limit some of these rights. Examples of these limits include zoning, environmental standards and urban planning laws. Equally important to the right of private ownership of property is the maintenance and use of property for public purposes. The purpose of this research is to move beyond the rather simplistic notions of land use and land tenure that have informed research on postsocialist land reforms. Land use generates or modifies a large variety of products and services, as highlighted by recent research on the multifunctional nature of European agriculture.

Keywords: Land, reform, land tenure, agriculture, urban planning laws.

1. INTRODUCTION

Research on postsocialist transitions in Central and Eastern Europe (CEE) has examined land reforms and land use from various angles. Some studies examine the choice of privatization policy at national levels, rooting policy choices in competitions for voters and power. Some investigate the implementation of policy and changes in land tenure at the local level, highlighting political negotiation processes among differently positioned rural interest groups. Other studies analyze the effects of land reforms on agricultural production, attesting to its negative effects in conjunction with market liberalization [1].

The research on postsocialist land reforms thus speaks to core themes in property rights theory. The research explores the utility of different theoretical approaches to the study of institutional change in

postsocialist societies. It highlights the importance of distributive conflicts and discursive strategies as determinants of changes in land tenure at national and local levels. The research also contributes to a better understanding of the linkages between property rights and resource use. It calls into question the presumed causal link between private ownership and efficient land use. Assigning private ownership rights to individuals is not sufficient for efficient land use, and efficient land use may not require private ownership rights.

The purpose of this research is to move beyond the rather simplistic notions of land use and land tenure that have informed research on postsocialist land reforms. Land use generates or modifies a large variety of products and services, as highlighted by recent research on the multifunctional nature of European agriculture. It produces commodity outputs,

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such as corn, together with non-commodity outputs, such as soil protection. In contrast to commodity outputs, many non-commodity outputs have the nature of public goods, i.e. that they cannot be exclusively appropriated by individual owners. As for land tenure, property rights theory calls attention to its highly differentiated nature. Land tenure includes a series of rights and duties influencing access to, withdrawal from, management of, exclusion from, and alienation of land [2]. The rights and duties may be bundled in the hands of a single actor, but they may also be held by multiple actors.

Empirical findings from CEE demonstrate the utility of these more nuanced concepts of land use and land tenure [3, 4, 12]. Land reforms have affected land use in much more complex ways than reflected by trends in commodity outputs and the hand-over of legal titles. First, trends in commodity production have hidden important changes in other outputs from land use. For example, the decline in the numbers of animals grazed in less favored areas has been accompanied by the deterioration of traditional landscapes and changes in species diversity. Second, land reforms have in many areas not led to the envisioned exclusive ownership rights that bundle all rights and duties in the hands of a single actor [5]. Instead, many farmers have been satisfied with land held under lease arrangements. Others with legal ownership titles have not been able to utilize their rights in practice.

Albanian agriculture has been experiencing a dramatic and difficult transition period from a centralized, planned economy to a market economy. The main reasons for these difficulties are summarized below: (i) the through expropriation of peasant property and their incorporation into the cooperative system transformed them into salaried workers with one of the lowest per capita income levels in the world; (ii) laws restricting the mobility of rural people kept about 65 percent of the population in the countryside; (iii) increased impoverishment of the rural population reduced the supply of food for the cities [7, 8]. During the 80s, agriculture provided 35 percent of national GDP, employed half of labor force, and made up 40 percent of exports. The dismantling of the planned economy system in 1991 resulted in an immediate 20-30 percent drop in production. Enactment of Land Law led to the dissolution of agricultural cooperatives that had controlled three-quarters of the land. On the other

hand, confidence and authority over state farms was lost, domestic production of fertilizers, pesticides and spare parts was halted, and foreign trade was suspended.

2. LAND REFORM IN ALBANIA

Any survey of land and land administration institution in Albania must be based in reality: what is happening on the ground; what has been the main thrust of the changes that have taken place in land relations since the end of the communist era in 1991. One foundation for a democratic society with a market economy is the right to own property. Ownership rights include the right to exclusive use and enjoyment as well as the right to transfer property through selling, making gifts, mortgaging, leasing, inheritance etc. At the same time, there are certain responsibilities for property owners that may limit some of these rights. Examples of these limits include zoning, environmental standards and urban planning laws. Equally important to the right of private ownership of property is the maintenance and use of property for public purposes. The state owns and administrates property in order to fulfill its obligations to the public and provide services ranging from national defense and essential infrastructure to education, health services and parks for public enjoyment. A property market functions best when title is clear and tenure rights are secure. It has been just over a decade since the Republic of Albania emerged from a rigid centrally planned economy. Beginning in 1945 the government, controlled by Enver Hoxha, began campaigns of nationalization and consolidation of private agricultural land into cooperatives and state farms as well as expropriation of other private property for state purposes. The state also initiated housing campaigns and collective construction of urban housing in the 1960s. These various campaigns culminated with the 1976 Constitution that declared all property under state ownership.

There are two outstanding characteristics of the development of land relations since 1991. The first is the creation of a nation of smallholders-owners of small farms held in freehold tenure brought about by Law 7501. Whatever the deficiencies of the content and implementation of this law the fundamental socio-economic revolution brought about by this law can not underestimated. The second characteristic and one that is directly related to the first is the exuberant urban development and rapid growth of land market

that has taken place. In this space of 20 years, Albania has moved from being a predominately rural society to one where the majority of populations now live in urban areas. This population movement fuelled the rapid urban development and at the same time has led to absentee landownership in rural areas. When the later is allied to inappropriate laws governing the farm family and in the north of country, the revival of tradition social norms applicable to the family absentee ownership may be seen as something of a socio-economic problem.

3. THE STRUCTURE AND OUTLINE OF THE MODERN LAND LAW IN ALBANIA

In order to do a review of the legislation in Albania, we may date the modern post-communist system of land law and natural resource management law as a commencing with Law No. 7501 On Land of 19 July 1991. Governments of Albania have since that date preferred or been persuaded by donors to develop new land laws which appear to owe nothing to the pre 1945 legal system of Albania. To assess the effectiveness of the law on rural land it is necessary to survey the whole corpus of the land law of Albania. According to that, the laws may be set out in the following six heads:

- (i) Laws dealing with land reform in the aftermath of demise of the communist system; these concentrate on the allocation of collective agricultural land, compensation for former landowners and how to determine the value of land and the amount of compensations.
- (ii) Laws dealing what might be called tenure and transaction issues; what landowners may do with the land in a market economy. These laws are both specific land and are part of the "Italianate" Civil Code; ownership, co-ownership, leases, mortgages, servitudes, etc.
- (iii) Laws dealing with urban planning and development. There is an Urban Planning Law dealing with planning at national, regional, city and district level, development control, building control and demolition of illegal structures. There is also a law dealing with areas for tourist development.
- (iv) Laws dealing with rural land use. These cover agricultural land, meadows, pastures and forests and what may be done with them. The specific laws deal both with use of the natural state of the

land and with building on the land; with use and with tenure issues.

- (v) Laws dealing with expropriation of land for public purposes and compensation therefore
- (vi) In addition, there are laws establishing land administration institutions at both central and local government level and their general functions.

4. LAND REFORM, LAND TENURE AND LAND MARKET IN ALBANIA

From the legal framework of administrative set up, it seems sensible to proceed to tenure issues: who has what land and how do or did they get to where they are. This topic covers the first two heads of land law set out above: land reform or privatization and tenure and transactions.

4.1. LAND TENURE IN ALBANIA BEFORE 1991

Land ownership is a fundamental issue for any society. The territory that currently makes up the coastal and urban regions of the Republic of Albania was once part of the Ottoman Empire. Under early Ottoman Law, most land was formally owned by the Sultan but given in use to military or civilian feudal lords who collected taxes and recruited soldiers for the Ottoman cause. Over time, land ownership was transferred to large landowners (Latifundists), religious institutions and the state. By the 19th century some private ownership of small farms had emerged. Land records from this era are located in Istanbul among the Ottoman archives. The northern mountain regions of Albania were governed by the *Kanun*, the traditional code. The *Kanun* regulates most aspects of everyday life, including land and property issues. The *Kanun* defines how boundaries are set, inheritance rights, obligations of property owners and dispute settlement mechanisms. Although the *Kanun* is not officially recognized as law, it still has an influence on local culture, especially in the northern regions.

In 1928, Ahmet Zog was crowned King. King Zog initiated an agrarian reform with the help of the Italians. However, only estates that were over 40 ha were really affected by the reform process. About 45% of the land that was subject to the land reform belonged to the state. Agricultural land data and ownership information were recorded in the Cadastral Offices under the direction of the Ministry of Agriculture. Urban Land documents were recorded in the Hipoteke Offices. The Hipoteke offices are basically a document depository similar to a deeds

registry. Documents were registered in chronological order and there was generally no link to cartographic information. Under communism the Hipoteke offices were closed [5]. They were re-opened in 1992 as a stopgap measure in order to register the large number of urban privatization documents until the provisions of the new *Law On Registration of Immovable Property* have been fully implemented.

After World War II the Communist Party, under the leadership of Enver Hoxha, embarked on a series of land reforms, beginning with the 1945 Agrarian Law. Within a few years, most of the property of large land owners and religious institutions had been expropriated. The initial beneficiaries were small family farmers. However, the state then began to consolidate private ownership of land. In 1946, the *Law On the Foundation of Cooperatives* began the 20-year process of eliminating private ownership of property. The consolidation process began in the coastal areas and eventually reached even the remote mountainous regions. By 1970, almost all agricultural land was either part of a cooperative or a state farm. In 1976, the Socialist Constitution declared all property under state ownership, thereby eliminating even the small amount of land under private ownership.

4.2. LAND TENURE IN ALBANIA AFTER 1991

The overthrowing of political system at beginning of 90s dictated the need to radical changes with respect to land. The transition from centralized economy toward market economy was associated with massive destruction of cooperative and state farm assets. After the death of Enver Hoxha in 1985, the strict socialist doctrine declined. By the end of the 1980s, Albanians became more vocal in denouncing the government. In an attempt to quell the ever-mounting tensions, the government declared its intention to implement democratic and market economy principles. New elections were called for in 1991 and subsequently the privatization process began.

5. CONSTITUTIONAL GUARANTEES AND PRIVATE OWNERSHIP OF PROPERTY

5.1. THE CONSTITUTION

The right to private ownership of property was one of the first policy decisions implemented by the transition government in Albania. Although a new Constitution was not adopted until 1998, Law 7512 (dated 10.08.1991), *On Sanctioning and Defending*

Private Property, Free Enterprise, Private Independent Activities, and Privatization embodied the right to private ownership of property. In addition to setting forth the new principles of private ownership, Law 7512 allowed the possibility for the privatization of many state owned enterprises and assets. In 1998, Parliament approved the current Constitution. The rights enumerated in the Constitution are fundamental to the creation and development of the property market. Private ownership of property is guaranteed and only in case of public need can those rights be taken away.

5.2. PRIVATIZATION OF RURAL LAND

The land privatization process began in 1991 with the approval of Law 7501 (dated 19.07.1991), *On Land*. The law divided agricultural land among the inhabitants of the cooperatives and workers on the state farms according to quality and productivity of the soil and the number of people in the family registered in the civil registry in August, 1991. Using a per capita basis, each family received equal amounts of arable and non-arable land, fruit trees, vineyards and olive trees [11]. The *Law On Land* gave land initially "in use" to the workers of the state farm enterprises but the government later granted ownership rights through Law 8053 (dated 21.12.1995), *For Transferring Ownership of Agricultural Land Without Compensation*. Scarce amount of agricultural land in Albania (at average 0.22 hectares per capita of population) and high proportion of rural population (64 percent) were an argument in favor of the implementation of the land law. Another argument was the long time and great changes that had occurred in Albania during 1944-1990 which complicated the task of identifying old land boundaries, documentation on previous property ownership, etc.

As a result of this process of privatization, over 90% of agricultural land is now in private ownership. On ex-co-operative land, according to Ministry of Agriculture and Food figures of June 2000, 353,718 families owned 439,139 hectares of land divided up to 1.5 million parcels with over 90% granted via a *tapi*. On ex-state farm land, the figures are 91000 families owning 123.334 hectares of land divided into 300000 parcels. On average each family owns 4 parcels of land, sometimes separated quite widely. A nation of family smallholding has been created. Initially, privately owned agricultural land could not be made the subject of dispositions but *Law 8337 (dated*

30.04.1998) *On the Transfer of Ownership of Agricultural Land, Forests and Pastures* provided that such land could be sold, leased, mortgaged ect and set out the steps that had to be taken to achieve that. The new law simplifies procedures for transactions making a market for agricultural land viable. The agricultural land market is functioning but is most active in the peri-urban areas where agricultural land is generally sold for residential, commercial or industrial uses rather than to continue agricultural production.

5.3. LAND CONSOLIDATION

Land fragmentation has been identified as one of the main obstacles to the development of the agricultural sector in Albania. Law 7501 was drafted in order to ensure a fair division of land amongst agricultural families. However, one of the ramifications of this policy is highly fragmented land plots. Families own several non-contiguous parcels spread over a wide territory which makes farming at an economic scale next to impossible. Although some argue that the market will eventually sort out the issue because agricultural families will begin to consolidate themselves in to more economical units, agricultural specialists have noted the need to expedite the process. Since the government identified consolidation as one of the priorities, a legislative base and institutional competencies can be defined [10]. The legislative base can be done in one of two forms; amendments to existing relevant legislation or by creating a working group and drafting a special law. In reviewing existing legislation, there appears to be an existing base from which land consolidation can be regulated.

Land consolidation is closely associated with the newly delegated responsibilities of the land management and protection sections and could be integrated into the existing structures and administrative oversight. It is therefore recommended that amendments are drafted to include consolidation as part of the Land Administration Law, sub-legal acts are drafted to define the methodology, institutional linkages and fees structures for land consolidation are included in the organization structure of the land administration and protection offices.

5.4. LAND VALUATION

Albania is struggling to address valuation in various areas such as leasing of state land, for taxation purposes and for urban development. Council of Ministers Decision 138 (23.03.2000) sets out the

technical criteria for valuation of property that is to be expropriated. The value of a property is determined by calculating the average of purchases and sales registered in the IPRS. However, due to the transfer tax that must be paid at the IPRS office, most people under report the actual sales price, resulting in an inaccurate assessment of the market value.

In the case of agricultural land, the current method of valuation defined in Decision 138 comes into conflict with Law 8752. It will be the responsibility of the new Land Management and Protection offices to determine valuation of agricultural land for future expropriations. It is not clear who is responsible for houses or other buildings located on agricultural land nor is it clear in the newly settled sub-urban zones whether the land should be valued under agricultural land classifications or whether and at what point the land becomes part of the municipal structure. Thus, the new Land Administration offices will have to be included in the future valuation process. However, the new law has yet to be implemented to any significant degree, including defining funding sources and technical criteria for fulfilling their duties.

6. PROBLEMS IN THE OPERATION OF THE LAND LAWS

6.1. COMPENSATION

Unlike many other countries in Eastern and Central Europe, in the post-communist era, Albania did not make provision for the return of agricultural land taken from former landowners by the communist regimes in the mid and late 1940s. Law 7501 provided that existing occupiers and users of land under collectivized agriculture would become the new landowners. Nor did that law make any provision for compensation for the former landowners. With respect to urban land, however, the more standard approach was adopted. Law 7698/93 *On Restitution and Compensation of properties to Ex-owners* applies to urban land or land within municipal boundaries and provides for a rather complex system of restitution of such land or compensation to former landowners.

The government in office in 1993 also decided that compensation should be paid to former landowners of agricultural land. This was provided for by *Law 7699/93 On Compensation in Value for the Former Owners of Agricultural Land*. This law has never been implemented. Thus the issue of

compensation and restitution of lands expropriated by the communist regime nearly 60 years ago is still an open wound in land relations in Albania 12 years on from the decision to revert to private land ownership and establish a land market. It is no exaggeration to say that this issue affects all aspects of land management and land use.

6.2. DIFFICULTIES IN IMPLEMENTING LAWS 7501 AND 8053

Probably most important, some families refused to accept their allocation of land or the allocation of land was disputed. In the case of refusal of an allocation, this might be because the land the family had been allocated did not correspond to the land the family claimed that they or their forebears had occupied and used in the pre-communist period. In the case of a disputed allocation, a family of former owners would dispute that “their” land could be allocated to some other family. In these circumstances, three possibilities arose. *First*, there could be negotiations between different families over who was to get what land and some compromise could be arrived at. Tapis could then be issued in respect of the agreed land allocations. *Second*, the new owners sold or gave the land to the former owners and finished up landless or left the commune. The subsidiary problem here is that until 1998, sales of land allocated under Law 7501 were not permitted so, as a matter of strict law, the “new” old owners have no formal legal title to the land. *Third*, there could be a stand-off between the new landowners; no willingness to exchange or give land or compromise. In these circumstances, which have not been infrequent, a continuing land dispute festers.

6.3. FRAGMENTATION OF LANDHOLDINGS

From the point of view of land use management and regulation, it is clearly much more difficult to ensure sustainable land use and preservation of land when dealing with over 450,000 landowning families and 1.8 million parcels of land than when dealing with a small number of large farms, all under the same landowner. This point is so whether the large landowner (s) or private or public. In recognition of the problems of fragmentation, the World Bank is funding a project to consolidate parcels of land but this effort is limited to assisting owners to exchange parcels of land so that owners have all their land in one parcel and assisting families to do likewise so that different branches of a family can co-operate together

in managing a larger farm unit. Consolidation in the sense of creating fewer and larger landholdings out of the many smallholdings is not being attempted; presumably because it would be strongly resisted by smallholders, although the same effect could be achieved by smallholders combining together in a company or partnership to farm their land as a large unit.

6.4. LAND REGISTRATION AND LAND TRANSACTION

The introduction of the Immovable Property System (IPRS) via Law 7843/94, *On Registration of Immovable Property* may be seen as one of the major innovations of post-communist land law. According to a commentary of the Law, the law is, using English terminology, a title and not a deeds registry and “combines property mapping with the recording of legal rights into a single administrative system. Once a title is registered, every subsequent transaction involving rights in it shall be registered in conformity with the provisions of this Act. In the nine years of Law has been effect, great strides have been made in registered titles to land.

Subsequent registration or the registration of dispositions-sales, leases, mortgages, servitudes, subdivisions, partitions of co-owned property, change of ownership on inheritance-is undertaken by act of the parties. It may be required by the Law but the actions to register dispositions have to be taken by the parties to the disposition or their notaries and it is here that problems are likely to arise. Citizens have to be convinced that it is worth their while to use the registry-they will gain some benefit from doing so and suffer some disbenefit from not doing so. The record here in many countries around the world which have introduced, at considerable public expense, a system of title registration is not good: subsequent registration is not widely used and within a short time, the register becomes an inaccurate and therefore misleading record of who owns what land. This affects efficient land administration. *What is the position in Albania?*

No land market works perfectly and the trend in well developed national land markets is for statutory regulation to increase as more people enter the market both as consumers and suppliers of services and it becomes less possible for local and informal controls to be effective. There is no doubt that the introduction and operation of the land market in Albania since 1991 is one of the major success stories of the country but there is equally little doubt that the various

problems highlighted in this part of the report-most of them explained in more detailed- are affecting the efficient operation of market for land and efficient land use. Whatever regulation of land use exists or may be introduced in the future will itself be ineffective if the operational defects of the land market are not addressed. The time to do this is now before vested interests which benefit from the existing imperfect system become strong enough to block reform.

7. CONCLUSIONS

In comparison with other countries land restitution, land distribution in Albania creates more favorable conditions for collective action that supports the production of non-commodity outputs of local public good nature.

There are differences between Albania and other eastern countries in relation to the land reform approach. The land reforms in Albania put land titles into the hands of those who have worked the land over the past decades. Land distribution in Albania therefore preserves existing social networks, while land restitution in other eastern countries radically changes the social composition of land holders. In addition, land distribution embodies a less exclusive notion of land rights, while restitution emphasizes on full ownership rights. Differences in social networks and notions of land rights thus lead to different levels of collective action for the provision of local public goods.

The case studies suggest that land reforms have led to a 'tragedy of the privates', i.e. that the focus on granting private ownership rights has led to a neglect of public interests in land use. The neglect of public interests differs between and within countries, however. These differences are due to differences in government capacity and local social relations.

Weak local state structures lead to a phenomenon of 'extreme privatization', as landowners and land users extend their control over land use through extra-legal practices. The weak local state authorities cannot enforce legal prescriptions of sound land management and the practices for public interests. Landowners and land users ignore duties associated with land rights and seize control over assets such as irrigation infrastructure in extra-legal ways. 'Extreme privatization' leads to land use oriented toward the production of commodity outputs.

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