

## Chapter IV

# LEGAL FRAMEWORK

Though the development of adequate housing legislation is a very important task for transition from a centrally planned to a market economy, it presupposes the introduction of other necessary economic reforms. Such reforms include the establishment of an efficient banking system, the privatization of former State enterprises, agricultural land reform, the reform of the judicial system, a new definition for the State's social policy, etc. The key legal documents in the sphere of housing are as follows:

- (a) The basic constitutional rights of citizens to own and inherit land and buildings, freedom of contract and the right to privacy;
- (b) The division of power and competence between central, regional and local levels and an independent judiciary linked with the individual right of recourse to the courts;
- (c) Legislation on the privatization of public housing and housing restitution;
- (d) Legislation on housing subsidies;
- (e) Legislation on financing and mortgages for housing;
- (f) Legislation on urban planning, landownership and transfers;
- (g) Legislation on real estate registration.

The above list of key housing legislation reflects also the structure of this chapter. The first section discusses the basic constitutional rights relating to the housing market and the decentralization of housing policy. This will be followed by the description of privatization and restitution legislation, legislation on housing subsidies and a brief overview of the legislation on housing finance and mortgages. The final section will deal with real estate registration, urban planning legislation and legislative solutions for informal and illegal housing development in Albania.

### Figure XI. Laws and Governmental Decrees related to housing policy

#### Laws:

Constitution (1998)  
Law No. 7491/1991 on the Main Constitutional Provisions  
Civil Code Law No. 7572/1992 on the Organization and Functioning of Local Government  
Law No. 8652/2000 on the Organization and Functioning of Local Government (Basic Law)  
Law No. 7776/1993 on the Local Government Budget  
Law No. 7980/1995 on the Purchase and Sale of Land for Construction (amended by Law No. 8260/1997)  
Law No. 8651/1999 on the Expropriation and Temporary Seizure of Private Property in the Public Interest  
Law No. 7652/1992 on the Privatization of State Housing  
Law No. 7683/1993 on Condominiums  
Law No. 7698/1993 on the Restitution of Property and the Compensation for Former Property Owners (amended by Law No. 8084/1996)  
Law No. 7582/1992 on State Enterprises  
Law No. 8408/1998 on Construction Police  
Law No. 8405/1998 on Urban Planning  
Law No. 7843/1994 on the Registration of Immovable Property (amended by Law No. 8090/1996)  
Law No. 7501/1991 on Land (amended by Law No. 7983/1995)  
Law No. 8030/1995 on State Support for Homeless Families  
Law No. 8647/2000 Amending Law No. 8030/1995 on State Support for Homeless Families  
Law No. 7805/1994 on Property Tax  
Law No. 8743/2001 on State Immovable Property  
Law No. 8744/2001 on the Transfer of State Immovable Property to Local Government  
Draft housing law  
Draft law on urban planning

**Government Decrees:**

Decree No. 204/1998 on the Competencies and Financing of Local Government  
 Decree No. 431/1992 on the Establishment of the National Housing Agency  
 Decree No. 198/1993 on the Establishment of the National Housing Agency  
 Decree No. 40/2001 Amending Decree No. 198/1993  
 Decree No. 49/1993 on Establishing Criteria for Homeless Families  
 Decree No. 301/1993 on the Application of Law No. 7698/1993  
 Decree No. 138/2001 Amending Decree No. 301/1993  
 Decree No. 250/1996 on the Application of Law No. 8030/1995  
 Decree No. 153/2001 on the Application of Law No. 8030/1995 amended by Law No. 8647/2000  
 Decree No. 305/1992 on the Rent for Public Land for Construction Decree No. 46/1993 on the Completion of Unfinished Buildings

**A. Constitutional framework and proprietary rights**

The Law on the Main Constitutional Provisions, better known as the Interim Constitution, was enacted by Parliament on 29 April 1991 and amended after a referendum on 21 October 1998. It affirms that Albania, as a parliamentary republic, is a secular and democratic State based on the rule of law. Its articles stress the respect of individual human rights, equality before the law, principles of social justice and social protection. The system of government is based on the separation and balancing of legislative, executive and judicial powers. The Law also affirms political pluralism and an economic system based on private and public property as well as on a market economy and freedom of economic activity.

The independent Constitutional Court was established to guarantee respect for the Constitution and provide its final interpretation. The President, with the consent of Parliament, appoints the members of the Court for nine years, one third of the Court being renewed every three years. According to article 81 of the Constitution, the Council of Ministers, deputies and 20,000 electors have the right to propose laws. A draft law is voted on three times: in principle, article by article, and in its entirety. The President has the right to return a law for review only once. The presidential veto on the review of a law is void when a majority of all the members of Parliament vote against it.

Private and public properties enjoy equal protection by law. The right to own property is included in the section on personal rights and freedoms, especially in article 41 of the Constitution. Expropriation or equivalent limitations on property rights are permitted only with fair compensation. The reasons for expropriation are explicitly mentioned in article 8 of the Law on Expropriation and consist of the performance of State obligations deriving from international conventions and treaties; the implementation of projects extending over national or local territory or transport, energy, telecommunications projects in the public interest; the implementation of national defence programmes; for the purpose of protecting immovable property of an archaeological, historical, cultural and scientific character when public interest, by the nature of these objects, cannot be ensured by a private owner and in cases where immovable property creates a permanent risk to public health and security.

Property rights are defined and governed by the Civil Code in accordance with article 41 of the Constitution. Property can be acquired by contract, gift, inheritance and statute of limitations (after continuous possession for 10 years in the case of immovable property). Article 153 of the Civil Code states that nobody can be deprived fully or partly of the ownership of his/her property except when it is required for legal public needs and always with full and prior compensation.

Immovable property is defined in article 142 of the Civil Code as land, water sources, trees, buildings and any object which is permanently and continuously attached to the land or buildings. According to article 83, all immovable property and real estate rights must be registered in the Immovable Property Registries and their transfer to be valid must be done by a registered notarized act. The owners must obey the rules defined in the territorial regulation plans. The buildings on or beneath the surface of the land belong to the owner of the land but when, in good faith, a building has been built on the land of

someone else and its value is higher than the value of the land, the person who has built the building can be recognized as the owner of the land by decision of the relevant court. This procedure is closely related to the first registration of immovable property and the restitution of expropriated land. In fact, the separate ownership of buildings and land is not allowed and mortgages can be used only when both are in the ownership of the same physical or legal person.

## **B. Decentralization of competence from central to local government**

Before the introduction of the Law on the Organization and Functioning of Local Government, called the Basic Law, the powers of local government especially in housing were very limited. However, the Constitution already introduced the principles of local autonomy, decentralization of power and a two-tier structure for local government (art. 108): regions and municipalities/communes. According to the Constitution, communes and municipalities are the basic units of local government and exercise all the duties of self-government through representative organs and local referendums.

The first legal documents on local government organization following the approval of the Constitution were the Law Amending the Law on the Main Constitutional Provisions (No. 7570/1992) and the Law on the Organization and Functioning of Local Government. In July 1992, the first local democratic elections took place and the first local authorities were established. However, local government competence was set very generally and there was no system of local financing. Following the promulgation of the new Constitution (1998), ratification by Parliament of the European Charter of Local Self-Government (1999) and approval of the National Decentralization Strategy by the Council of Ministers, the Law on the Organization and Functioning of Local Government (the Basic Law) was approved.

The Basic Law provided local governments with full authority to exercise exclusive functions and gave them rights of governance, fiscal autonomy, property and other rights of legal persons set forth in the Civil Code (to enter into contracts, keep accounts, etc.). Since January 2001 local government has been fully responsible (exclusive functions), among other matters, for water supply, sewerage and drainage systems, the construction and maintenance of local roads, pavements, urban planning, land management and housing as described in the Law. However, there is no further legislative specification of local government competence or responsibilities in land management or housing, and at the time of writing the role of local government was still limited to providing for households on the waiting lists established by the central Government. Building inspection was still in the hands of the central Construction Police, "social" housing construction in the hands of the central National Housing Agency, and the competence of local authorities in urban planning was limited by the Law on Urban Planning.

According to the Basic Law, local government may purchase, sell or rent its movable and immovable property, but no important public property has been transferred to their ownership so far. On 22 February 2001 Parliament passed the Law on State Immovable Property and the Law on the Transfer of State Immovable Property to Local Government according to which what used to be State property should be transferred to the ownership of local authorities in the future. An inventory of public property is under way now. Because almost all former State housing was privatized or returned to its original owners, the transfer will concern mainly property in the "public domain" (streets, public buildings, parks) and limited areas of State land that will remain after all restitution and compensation claims are settled.

Since January 2002 local governments have been authorized to borrow funds for investment as well as receive unconditional and conditional financial transfers from the State budget, but these transfers do not include funding for "social" housing construction (these are allocated exclusively to the National Housing Agency, controlled by the central Government). Funds have been redistributed among local governments ad hoc according to a formula accepted by the Council of Ministers and no special legislation on local fiscal revenues (or amendments of current tax laws defining the legal right to a certain portion of the central tax collection) has been passed to stabilize the financial transfers to local government budgets in the future. So fixing a proportion of income from central tax collection for

redistribution to local public budgets as well as the system for such redistribution are still wholly in the hands of the central Government.

Local authorities have the right to establish and collect a whole range of local taxes and fees (property tax, land tax, tax on tourist hotels, tax on advertising, cleaning tax, etc.), but collection rates are not very high. In some cases (land tax) the municipalities add the taxes to the electricity or water bills to increase the rate of tax collection and service providers transfer the taxes to the municipalities later on. This has proved a very good practice because landowners do not want to risk losing power or water services. Though local authorities have the right to collect property taxes (often the main source of income of local government in many developed countries), they apply the property tax only to commercial buildings and only exceptionally to residential buildings. Many residential properties have not yet been registered and the taxes can hardly be introduced before registration is complete (the introduction of property taxation on housing could also lead to a further postponement of registration due to the lower motivation of owner). Neither the Basic Law nor other legislation regulates the ways and limits of local authority borrowing to prevent the incorrect economic behaviour of local government representatives.

The Basic Law and subsequent acts transferred the housing policy initiative to the local level and opened the possibilities of establishing both municipal and/or public-private housing for lower-income households (social housing) in the future. However, the decentralization of appropriate legislation is currently only half way to the stated goals.

### **C. Legislation on privatization of public housing and housing restitution**

Until the introduction of the Basic Law, housing policy in Albania was centrally controlled with the Government responsible for the restitution of expropriated housing, the privatization of former State rental housing into the ownership of the occupants and limited housing construction and subsidy programmes.

The Law on the Privatization of State Housing introduced housing privatization and Albania became the most rapid privatizer of all Central and East European countries with 98% of public housing being privatized within one year. Though privatization was based on a voluntary "right-to-buy" policy, various incentives were used to promote the transfer of ownership such as very low purchase prices, future unconditional proprietary rights of house owners (including exemption from rent control if renting out a flat) and the deadline of occupants' right to buy set at 31 December 1993. The immediate cash payment of dwelling prices was promoted by a discount of 20% of their initial value (the immediate payment of 50% of the price with a 10% reduction) and some public dwellings (dwellings built before 1965 and small dwellings built before 1970) were transferred free of charge. Families of former political prisoners, victims of political persecution and disabled veterans of the Second World War had the right to the free transfer of their dwellings too (see chap. I). The prices of other dwellings were set by By-law No. 1 on State Housing Privatization; the prices varied in relation to the size, age, location and quality of the dwelling and family structure. For example, within category I (best quality and location), the price of a dwelling in a 40-year-old building ranged from 2,000 to 10,000 leks (US\$ 14 – 70 according to the current exchange rate); in a 5-year-old building the range was 16,000 to 40,000 leks (US\$ 114 – 285)<sup>1</sup>; the prices were thus very low. The income from privatization was used for further housing construction by the National Housing Agency.

If a family occupied a flat with more than one extra room according to the valid norms it was excluded from the right to privatize the flat it occupied but articles 12 and 13 of the Law provided the motivation and support for it to move into an appropriate dwelling. Furthermore, people who started to build their own private housing after January 1990, emigrants (Amendment No. 7672/1993) and villagers benefiting from the Law on Land were also excluded from the right to buy. The land occupied by a privatized dwelling including a one-metre-wide strip of land around it was also transferred to the co-ownership of new owners on the privatization of residential buildings. The prices for different categories

<sup>1</sup> Staff Appraisal Report, World Bank, June 9, 1993.

of urban land were fixed, averaging about 100 leks/m<sup>2</sup> (\$0.7 /m<sup>2</sup>); about 20 leks/m<sup>2</sup> (\$0.14 /m<sup>2</sup>) of floor space. The subsequent Government Decree No. 46/1993 dealt with the completion and privatization of dwellings started under the former regime but never completed. Only dwellings that were very nearly complete were completed using funds from the State budget or the National Housing Agency and privatized at a 20% premium on the privatization price.

### ***The condominium legislation***

The 1993 Law on Condominiums (prepared with the technical assistance of the United States Agency for International Development) provided the legal base for the full ownership of individual dwellings and the co-ownership of common areas and land. It also declared the main principles of condominium management and the collection of owners' maintenance contributions; the subsequent Government Decree introduced the obligation to register a foundation deed for each condominium at the real property registration office (*Ipoteka*). According to this Law, the amended Charter of the National Housing Agency and several government decrees, the NHA district branches were responsible for the registration of condominiums as well as for the registration of individual units in all privatized buildings. However, due to the objections of the Ministry of Justice and the poor track record of NHA in this field, no condominiums have been established or registered so far. The failure in the establishment of condominiums was caused also by the fact that dwellings were privatized before condominium legislation was approved.

A reduced version of the Law on Condominiums was later included in the Civil Code and the obligations and rights of residential building co-owners are now regulated by articles 209 to 221 of the Civil Code. Article 201 of the Code, which deals with co-ownership issues in general, had already set the duty of each co-owner to pay maintenance costs for the protection and enjoyment of the co-owned object at a rate reflecting his/her ownership share. This is further confirmed by article 217 including additional obligations for co-owners (prohibition of construction changes that could endanger the stability of the co-owned building or affect the outside view of the building). The Law explicitly states the obligatory subjects of co-ownership when there is separate ownership of housing units in one building: these are land, common areas, stairs, foundations, roof, hall, etc. The competencies and procedural rules of the assembly of co-owners are set out in articles 212 to 216. The assembly must meet at least once a year and can make decisions only if the owners of at least two thirds of the total property shares are present. The Assembly decides by a simple majority of votes on the calculation of maintenance and repair expenses and by a majority of co-owners possessing at least 75% of the shares on major improvements or renovations. The decision taken by the assembly is binding on all co-owners if no appeal to a court is lodged within 30 days from the date of decision. However, in practice few of these rules are applied and the co-owners often fail to pay any maintenance contributions for common building areas. The result is that residential buildings are deteriorating very quickly.

### ***Restitution of property***

Unoccupied land (with restrictions concerning size) and unaltered buildings that had been nationalized, expropriated or confiscated by legal or sub-legal acts and court decisions after 1945 were directly returned to their former owners or their descendants by the Law on the Restitution of Property and the Compensation for Former Property Owners. If between the date of expropriation and the date that the Law came into force the value of buildings had appreciated by further developments by more than 50% of the original value, only co-ownership was allowed. As for permanent buildings on land that should have been returned, the former owners have the right to compensation in the form of either State bonds or an equivalent unoccupied plot near urban areas or tourist zones.

The deadline for submitting restitution claims was set at 31 August 1994 but it was further postponed by additional restitution of property expropriated before 1945; the claims have not yet been reviewed, though the final deadline of November 2001 has already passed. The Property Restitution and Compensation for Former Owners Committee (Restitution Committee) was created to consider other restitution claims. The competence of the Restitution Committee was set in Decree No. 301/1993, according to which its main responsibilities include controlling the activity of the Property Restitution and Compensation to Former Owners Commissions established at district/municipal levels (Restitution Commissions) and improving legislation in this domain of State activity. The Committee is answerable to the Council of Ministers.

In 1993, 37 Restitution Commissions were set up at district level and 64 at municipal level. These Commissions had the main executive power in the confirmation of property rights, the examination of necessary documentation or the approval of the list of experts evaluating the potential changes made during the previous regime to returned objects. Decree No. 301/1993 explicitly stated the number and functions of commission members: the secretary of the district/municipal council was appointed as the chairman by the Law. The Commissions processed 75% of claims to property in rural and urban areas.

The Restitution Commissions were not allowed to compensate former owners with other plots before the methodology for compensation was created and approved at the central level. However, the Commissions started the process of compensation illegally and due to their very independent status, no authority could prevent them from doing so (with the exception of the court). The last Decree (No. 138/2001) strengthened the power of the central Government and reorganized the Restitution Commissions into 12 Commissions operating in each region in the country. Each Restitution Commission is composed of five members (chairman, vice-chairman, two experts and an assistant). The chairman and the vice-chairman are nominated by the prefect and approved by the central Restitution Committee. Other members are appointed by the chairman of the Restitution Commission with the approval of the prefect in each region. According to the Restitution Committee, 2,147 objects had been returned by 2002.

As a result of the restitution of urban land, the illegal compensation of former owners and the distribution of State agricultural land among former agricultural cooperative members and other villagers (based on the Law on Land), public land now constitutes only an estimated 10% of total land in Albania.

Many residential buildings with tenants were also returned to their former owners and rents applicable to these dwellings had already been set in the Law on the Privatization of State Housing. Rents should have been fixed by the Government every six months or one year and should have been completely liberalized in December 1995 (art. 19). This article was amended by the Law on State Support for Homeless Families, which in its article 10 sets the rents for returned houses at 5% of average construction costs calculated by the National Housing Agency. Under the pressure of the Private Housing Tenants' Association, which appealed to the Constitutional Court about this Law, the Government prepared more advantageous conditions for these tenants involving the distribution of State housing subsidies (Decree No. 250/1996) and the Constitutional Court annulled articles 10 and 11 of the Law dealing with rents.

Due to these developments in rent deregulation, the rents for tenants of returned private dwellings have not changed since 1993 and are almost on the same level as they were during the former communist regime. The rents for current dwelling leases (mostly in returned dwellings) remain controlled by the State at a level that is not high enough to cover even basic maintenance costs and private landlords must wait for a rent increase until their tenants receive a dwelling from the NHA and/or get a State grant combined with a qualified loan for the purchase of their own dwellings (as promised by the Government).

The rights and obligations of the new rental contract are set only very generally in the Civil Code in articles 801 to 825. According to article 801, the subject of a lease for a given period of time at a fixed rent can be both movable and immovable objects. The lessor shall maintain the object in good condition, make all necessary repairs during the lease (with the exception of minor maintenance) and assure the peaceful enjoyment of the object during the period of lease. The lessee is responsible for ensuring that the object is used for the purpose specified in the contract and for paying the rent at an agreed time. Article 803 states that the housing lease cannot be concluded for a period exceeding five years. Rents are completely liberalized for new dwelling leases.

It is however striking that the Civil Code does not regulate the conditions of premature termination of rental contract, the rights of tenants in particular situations (pressure of landlords, right to adequate housing in the case of premature termination of contract), the rights of landlords in the case of a housing shortage, sanctions for the non-payment of rent and many other issues connected with the protection of both tenants' and landlords' rights.

The World Bank argued that the privatization of the public housing stock should have brought an improvement in housing maintenance, the transfer of this responsibility to private hands, a higher use of

the housing stock through an easier movement of owners and lessees, and the creation of an open real-estate market. However, the transfer of responsibility and the improvement of housing maintenance were not fully achieved. This is mainly because the new homeowners cannot afford to pay for the upkeep of their homes.

#### **D. Legislation on housing subsidies**

##### ***The National Housing Agency***

Based on Decree No. 431/1992 as amended by Decree No. 198/1993, NHA was founded as a legal person and a State enterprise, in accordance with the Law on State Enterprises (No. 7582/1992).

NHA played an active role in the privatization of public housing. The Agency was responsible for the pre-calculations of privatization prices, the preparation of transfer agreements, the actual transfers, the collection of the income from the privatization and the establishment of condominiums in former State-owned residential houses. The activity of the Agency has, however, been important mainly in the completion of unfinished flats and new "social" housing construction. Based on Decree No. 198/1993, NHA carries out feasibility studies, prepares housing construction plans, purchases land for construction (only public land), tenders the housing construction projects, supervises their implementation and finally sells the dwellings at cost price, while offering loans at below-market interest rates to future homeowners. Since 2001 NHA has obtained the right to purchase dwellings on the open market (Decree No. 153/2001) as well as to purchase land for housing construction for private ownership (Decree No. 40/2001).

Some dwellings constructed by NHA were forcefully occupied by households that had not been selected and NHA did not succeed in preventing this. Moreover, NHA, though not obliged to do so by law, has not taken any efficient action against speculation with allocated dwellings when beneficiary households sold their dwellings at market prices even before the preferential loan was repaid. The system, which is based on mortgage and not on leasing financing, does not allow for proper management control, and has led to illegal transactions with NHA flats. Moreover, very few condominiums (homeowners' associations) were established in new residential buildings and this resulted in a quick physical deterioration of the houses. Decree No. 40/2001 therefore imposed the duty on the NHA to establish condominiums in constructed residential buildings and gave full property rights to the NHA till all financial obligations (loans) are settled by the beneficiary household.

The particular status of the Agency, being partially private and public, and acting as both a financial and a developer enterprise, has not proved to be the best solution. Giving it the status of an independent intermediary between banks and private developers with clearly defined rules of activity when using public funds may be one way of making the Agency more efficient and effective in the future.

A current problem is that the Law on State Support for Homeless Families is very politicized in terms of who is going to benefit from the subsidies. It does not take into consideration the financial status of the families. Without a points system, it is difficult to set priorities within one selected category (an example of a transparent point system can be found in Romania). Also, the Law does not advocate decentralization. Affordability for the middle and lower classes, not to mention the really homeless, has been avoided so far, particularly in the cities.

#### **E. Legislation on financing and mortgages for housing**

The legislation on mortgages is included in the Civil Code and further developed by the Law on Collateral. The mortgage is defined as in other countries as a conditional right for the transfer of the property of a debtor or a third party to the benefit of the creditor to secure the fulfilment of an obligation. The Civil Code distinguishes three types of mortgages: contract, legal and judicial. The judicial form is based on the registration of a mortgage on the property of the debtor made by a court decision (registration is valid for 20 years). Article 567 of the Code allows for mortgages on future property to be concluded only when the property comes into existence. All mortgages on immovable property must be

registered. Though the basic legislation on mortgages seems sufficient, there is no supplementary legislation on State support (interest subsidies, tax relief for interest payments) and on tradable mortgage bonds. For further details on mortgaging, see chapter V.

The lack of long-term mortgage financing has surely contributed to the high level of informal and illegal housing construction. On the other hand, no commercial bank would be willing to issue long-term credit without the guarantee of police and judicial powers to ensure the effective repayment of loans (including enforcing foreclosure and eviction orders against mortgage defaulters) even in cases where mortgage legislation is very carefully prepared and implemented.

#### **F. Legislation on urban planning, landownership and transfers and real estate registration**

Landownership rights are included in the Interim Constitution and specified in the Civil Code (mainly concerning agricultural land). The Law on the Purchase and Sale of Land for Construction specifies the conditions for the purchase of land inside and outside the boundaries of cities/municipalities which, at the time of the transaction, is or will be used for construction and does not have the status of agricultural land. According to the Law, Albanian natural persons and legal entities are entitled to buy and sell land for construction from and to each other without any limitations, while foreign legal entities and natural persons are entitled to purchase State-owned or privately owned land for construction only in connection with foreign investments (Law on Foreign Investments No. 7764/1993) and in places where investments are being or have been made. Moreover, foreign investors can purchase land for construction only if they have made investments of no less than three times the value of land (they need to pay rent for the until they do). In addition, if a foreign person buys a building which is worth at least three times more than the occupied land, he obtains the right to purchase the land. Foreign persons are not allowed to buy land of archaeological value or in national parks, and sites that are of special environmental or military importance.

The sales price for State-owned land is set by the Government, while the sales price for privately owned land should be agreed freely by the contracting parties. By Decree No. 305/1992, the Government specifies the rents for State-owned land. The rent level depends on the land's fertility, its location, the purpose of use and the renting period. The State can sell/transfer unoccupied land to private owners according to Law No. 7980/1995 only for the construction of housing by the National Housing Agency or by others if the housing is intended for "homeless" households and households living in houses that have been returned to their former owners, or for very important national investments following a government decision.

The Law on Land, passed at the beginning of the transition and updated in 1995, distributed agricultural land among the members of former agricultural cooperatives according to the size and location defined by the Land Commission in every community (their rights and duties were defined by the Council of Ministers) in line with the shares they owned in the cooperatives. Cadastral offices should have been created for the registration of agricultural land distribution. Further housing subsidy legislation excluded households benefiting from the Law on Land from later housing subsidy programmes. Agricultural land was transferred to private ownership without charge, while land for construction was transferred with or without charge according to the criteria set by the government. The distributed land had to be used only for the purposes stated in the Law. The Law provided a basic list of penalties for inappropriate use of land and confirmed the State's obligation to compensate any expropriation of land with another plot of land or payment of an appropriate sum. The Restitution Law approved later did not include the land covered by the Law on Land, but only land for construction located within the boundaries of urban areas.

#### ***Registration of immovable properties***

While land for agricultural purposes had to be registered in the Cadastral Offices, urban land and other immovable property had to be registered in *Ipoteka* Offices, which were reopened in 1993 after being abolished at the beginning of the 1980s (the result of the constitutional provision passed in 1976). Since 1995 all immovable properties in both agricultural and urban areas have to be registered in the Immoveable Property Registries (IPR) created by the Law on the Registration of Immoveable Property.



All the documentation from the Cadastral and *Ipoteka* Offices was transferred to these new registries. This Law was the outcome of the Government's Action Plan for Immovable Property Registration and Other Land Market Activities adopted in 1993. Shortly after the adoption of the Law on Registration, Parliament passed the new Civil Code containing provisions for the transfer of rights to immovable property, including the obligation to register every subsequent transaction involving property rights at the Immovable Property Registries.

The Registries were established in the administrative centre of each zone set up by the Council of Ministers. The Chief Registrar is appointed by the Government and controls the registration process throughout the country. For each registration zone he appoints a registrar, who issues certificates of ownership or lease, manages the register and has the right to fine any person for submitting incorrect information. According to article 11 of the Law, any document affecting rights to immovable properties shall be presented for registration within 30 days from the time that it came into force. The registrar is also responsible for maintaining the registry index map showing the boundaries and geographic locations of immovable property. On first registration, the ownership and boundaries shall be considered in accordance with Law No. 7501/1991, sales contracts concluded under Law No. 7652/1992 and decisions of the Restitution Commissions under Law No. 7698/1993.

For those who possess property in conformity with the law but do not possess an ownership document, application for registration should contain a notarized personal declaration of ownership and a notarized declaration by neighbours on the accuracy of the stated boundaries. Publication of the first provisional registration should be made at the relevant place for public examination for a period of 90 days. Registrars are obliged to correct any errors and resolve any disputes arising from conflicting claims at first registration.

The first registration is free of charge, but any further registration (transfer of ownership) requires payment of a fee representing 0.5% of the property's value (agreed price) for values up to 200,000 leks and 1% of the property's value when it is higher than 200,000 leks. Due to this progressive rating of registration fees, sales agreements often stipulate prices below the ones really paid. Certificates of ownership, lease, mortgage, etc. can be issued by the Immovable Property Register only at the request of the owner or his/her proxy.

According to the Civil Code, immovable property lease contracts for a period longer than five years must also be registered at the Immovable Property Registry, but Law No. 7843/1994 shortened this period to one year. However, information from the Registry in Tirana indicates that only about 2% of long-lease contracts are registered despite the legal obligation to do so. The unclear decisions of Restitution Commissions, the rapid privatization process and the lack of necessary documents, often lost during the former regime, mean that first property registration can take years and only about half of all immovable property had been registered at the time of writing. The reliability of registrations is questioned by some foreign investors. The trade in unregistered immovable properties (including NHA dwellings with non-repaid loans) is very probably quite common due to a lack of trust in the Registries, the high registration fees and the fear that local authorities may start to collect a property tax on housing.

In 1994 Parliament also approved a law on the establishment of private, State-chartered notaries (Law on Notaries) to prepare contracts relating to immovable properties. As mentioned earlier, notaries are responsible for the full validity of any contract which they prepare and the Chamber of Notaries appears to be an active association supervising and regulating the activities of its members. The selection of notaries is made by the Ministry of Justice in collaboration with the Chamber of Notaries, and the Ministry can revoke the licences of notaries in cases of misconduct. The notarization of contract documents and the creation of the Immovable Property Registries are important legislative steps towards the efficient functioning of a real estate market in Albania. However, other incentives for registration, such as better and quicker action by the courts, more reliable Registries as well as an increase in fees, are needed to finalize the first registration process and to stabilize current property relations. Building savings schemes or more affordable mortgage schemes conditioned by registration could also help.

### ***Urban planning***

Albania is currently facing a high level of informal and illegal housing development due to the large flow of rural inhabitants to urban areas (see also chapters I and II). Local authorities and several NGOs are currently trying to regularize a chaotic urbanization process and legalize selected informal settlements. The Law on Urban Planning defining the competencies of State and local governments in urban planning set up Albania's Council for Territorial Development as the top decision-making organ run by the Council of Ministers (the prime minister heads the Council). This organ approves regional planning studies, the master plans for areas larger than 10 hectares or for tourist zone development, the general urban plans of cities with a population of over 10,000 inhabitants, urban studies on city centres for cities with a population of over 50,000 inhabitants and building permits for important buildings in city centres.

The Law also establishes territorial development councils and urban planning sections in city councils in the biggest cities, and urban planning offices in other municipalities/communes. The Law lists explicitly and in detail the members of territorial development councils, their voting procedures and powers including the approval of master plans and general urban plans for cities and communes. The urban planning office of each municipality prepares the terms of reference for city urban planning and the urban plans that need to be approved by the authorised territorial development councils. Regional and master plans should be prepared, and approved, for a period of over 20 years, general development plans and partial urban planning studies cover a period of 10 to 15 years. The approval of construction projects by territorial development councils is obligatory for all natural persons and legal entities that wish to construct a structure above or below ground level regardless of landownership. Before a permit is issued, the project is examined by the urban planning offices of municipalities/communes, the urban planning section of the district council and the respective territorial development council, which must make a decision within two months of the date of the submission for approval being sent to it. Before submitting the application, the applicant must pay a fee of 1% of the investment value deposited on behalf of the urban planning studies and another fee for the use of the existing service installations (e.g. 5% of the investment value if the building is to be built within the city borders).

Due to the wide competence of Albania's Council for Territorial Development and the intermediary position of the local territorial development councils, the urban and regional planning system does not comply with the Basic Law, which places urban planning competence among the exclusive functions of local government. Amendment of the Law is currently being discussed. According to the draft proposal of PADCO Co., the role of the national Council should be limited to the approval of interregional urban plans, regional urban plans and urban plans for zones of national importance (tourist zones, strategic zones, airports). All local authorities (municipalities/communes) should have the exclusive right to prepare general urban plans and master plans and to issue building permits. Master plans should be approved by the regions. Though this is common in other developed countries it is very important to provide local authorities with the necessary financial sources and computer equipment and to organize regular training for local authority urban officers.

### ***Informal/illegal housing construction and the Construction Police***

In Tirana a special office based on articles 75-80 of the Law on Urban Planning was created to deal with the problem of illegal settlements. Article 75 states that arbitrary land occupation for every type of building has to be solved by the immediate demolition of the building at the expense of the violator. Fining, demolition and the restoration of land to its previous state should be ordered by the head of the Construction Police branch for the district and the Construction Police are authorized to carry out the order.

The Construction Police's competence was settled in the Law on the Construction Police (No. 7752/1993) as amended by Law No. 8408/1998. According to the latest legislative provisions, it is a centrally organized inspectorate focusing on: the inspection of building work; penalizing the violation of building norms, laws or rules accepted in urban plans; ordering and ensuring the direct demolition of housing constructed illegally. The General Director of the Construction Police is appointed by the Prime Minister and the Deputy Director by the Minister of Territorial Development and Tourism. The Construction Police has branches in all the districts of the country and can directly take action in

accordance with the Law on Urban Planning and Law on the Construction Police. Though the Construction Police must carry out all the orders of the territorial development council, due to its high level of independence, it has the right to send a decision of the council for review to the national Council and/or prefect, both having the right to annul it. Moreover, the Construction Police can take action on its own without any order from the local territorial development council or the national Council.

The decision procedure is relatively quick. The person or household affected has the right to appeal to the court, but the execution of a decision by the Construction Police cannot be suspended by the appeal (see also chap. III). Compensation must be paid by the Construction Police only when its decision is disallowed by the court. As the breaching of building and urban norms is quite common in Albania, the Construction Police can solve only a small number of illegal cases -- which ones can be influenced by the interests of particular persons or corruption.

The central organization and high level of independence of the Construction Police are not in accordance with the decentralization legislation and need to be amended by further laws. It is proposed to transfer its responsibilities to the local authorities or the municipal police and local urban inspectorates. Any major decision (demolition) should be discussed at local level in legally constituted commissions of several senior representatives of the local authority in order to reduce the danger of corruption.

The registration in the Immovable Property Registries of buildings without a permit is prohibited. Possible action is outlined in the Law on Urban Planning, which deals with the issue of illegal construction but concerns only those objects that were constructed illegally before the Law came into effect. Its article 77 states that illegal constructions in areas for which there were technical studies and/or urban plans in force should be demolished in stages. Illegal constructions which pose risks to the environment or occupy public land should be demolished immediately. And, finally, illegal constructions on the builders' own land which do not meet the first two conditions may be legalized. In cases of legalisation, the owners must pay a fine of 10% of the investment value, or 4% of this value in the case of residential buildings.

The Tirana municipality is afraid, however, of the strict application of this Law due to the possible social revolt of the inhabitants of illegal settlements. The clear preference of the Law for the demolition solution of this problem is criticized by NGOs that are trying to find different ways of dealing with the unrestrained flow of rural inhabitants to urban areas (see also chap. II). Moreover, the Law deals only with illegal constructions built before it came into force but since 1998 many new illegal settlements and constructions have sprung up in Albania's cities. This contradiction should be solved by a new amendment of the Law.