



**THE ROLE OF LEGAL PROFESSIONS IN ADDRESSING GENDER EQUALITY,
THE CASE OF ALBANIA**

ADELA LLATJA, ELONA SALIAJ

Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Albania
Public Notary, Albania

adela.llatja@giz.de
elonasaliaj@hotmail.com

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Abstract

This article presents the role of legal professions in addressing the SDG Goal 5, target 5.a: “undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources, in accordance with national laws”.

Women and girls’ access to economic recourses such as land depends on legal frameworks and the ways in which they are implemented. This paper will show that ownership by women and girls of land depends among others and especially upon drafting of contracts by legal professionals (in this case notaries), in order to ensure that their rights as co-owners, owners or heirs (even in cases when they are presumed) do not perish and disappear. For that reason, this paper will illustrate some authentic real life cases from a notary in Albania, to demonstrate how women are excluded from the right to ownership or co-ownership of real estate.

Even when laws and regulations are in place, the case of Albania demonstrates that custom and tradition rule the life of individuals and the work of public officials. The most vulnerable group affected by different land reforms in Albania has been women. In this paper, cases from the diary of a notary where women lost property due to either lack of legislation or lack of standardized procedures by the legislative bodies will be presented.

“If I see my name in the property contract I feel safer and more confident. I have a say at home, my husband doesn’t treat me anymore as an accessory, but as a partner,”- a woman from Albania after co registering the property

Key Words: Land ownership, Inheritance, Gender and Land right, Notary



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1. Introduction

The countries of the Western Balkans have a common agenda of development involving achieving European Union legal criteria. As a result, international conventions and standards are part of legal frameworks, yet women's rights in regards to land ownership remain poor.

Albania is based upon a communist regime that has lasted for more than 50 years. In 1946 the Albanian Government, then called the "People's Republic of Albania", started a process of creating agriculture cooperatives by nationalizing¹ private property on a voluntary basis or by taking it from those considered "state enemies" (Albanian Parliament, 2010). Concession and investment contracts with foreign partners were made invalid. The process continued until 1976² (Law No.5506), when holding private property was declared unconstitutional.

The first legal acts to recognize private property after 1945 were enacted in 1991 with the constitutional amendments entering into force in 1994. However, property rights are still not fully guaranteed. The most vulnerable groups affected by land reforms have been women. Agricultural land was allocated on a *per capita* basis in 1991 based upon the law on "Land" (Law no 7501) to families working in the agriculture sector, not taking into consideration if these families were the previous owners of the land.

There are five active laws in Albania regulating acquisition, recognition and registration of real estate. Firstly, Law no. 7501/1991 "For Land", with changes. According to this law, land was divided per head and all family members considered an official part of the family benefited from the land. Transactions related to property gained under the law "on Land" are regulated by Law no. 8337, dated 30.04.1998, "*On transferring the ownership of agricultural land, forests, grassland and pastures*". Law no. 9482/2006 "*On legalization, urbanization and integration of informal settlements*", regulates the legalization of informal buildings. The institution that deals with the registration and legalization of these buildings is the Legalization Agency of Urbanization and Integration of Informal Areas (ALUIZNI). Restitution of properties confiscated or donated under the communist regime, is regulated by Law no.9235, dated 29.7.2004, "*On restitution and compensation of property*". The law on registration of real estate

¹ The process of transforming private property into state owned property

² Article 16: "In the Peoples Republic of Albania the is no exploiting social classes, private property and the use of human by humans is prohibited and does no longer exist."



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properties is Law no. 33/2012 “*For registration of real estate*”. The institution that registers property is called the Local Registration Office of Real Estate (here Registration Office).

Until 2012, women’s rights regarding access to land were vague and limited to direct real estate transactions or inheritance claims. Female spouses experienced difficulties proving rights to co-ownership of property gained during marriage. A daughter had no rights to land according to custom, and she was pressured to give up the property or inheritance. Female ownership of land was not an issue for lawyers or public administrators until the number of divorces increased, bringing with it social problems when women lost their presumed rights over property³. Men in Albania are not used to the notion that wives be registered as co-owners. The right to property is an important power asset in terms of holding power over females, as their economic dependence relies upon men.

Since 2004, with the entering into force of the Family Code the right to co-ownership afforded to both spouses exists but no implementation of the law has taken place due to conflicting acts. Only one article giving females the right to property⁴ exists, but no other related legislation has been approved.

In 2012 the law on registration made it obligatory for both spouses to be co-registered on property gained during marriage, but implementation is still lacking. Cases exist where notaries, registration officers, spouses, and parents refuse to register females as co-owners due to custom and traditions, or women resign from property ownership willingly. The presumption that wives are co-owners of matrimonial property is not applicable for properties registered before 2012. The procedures for getting these rights are long and costly, and as a consequence infringe upon women and girls’ access to property rights.

³ Statistical data from the National Statistical office show that divorces keep growing in number per year in the time frame of 1990-2014. The Number of divorces is increased, while the number of marriage has fallen. Form 100 marriages in the 1990, results to have 9.2 divorces, meanwhile in the year 2014 from 100 marriages results to have 17.8 divorces. In divorces cases, due to violence, psychological pressure, mentality, low economic income, etc., the woman require less separation of property, even if the dissolution of the marriage was for the fault of spouse. Nowadays, women have become aware of the fact that they want their part of the property, but is not easy to search for it. The Court reviews separately the division of the property and divorce. In the case of divorce it needs two court hearing; instead for the division of the property the Court gives a decision too late, by dragging the issue until years.

⁴ Article 76 “Spouses property as joint presumed, except if the spouse proves its personal character.”



2. Understanding the culture

Ensuring property rights is one of the 12 fundamental priorities of the EU that the Albanian Government is required to fulfill. (Mandro, 2016). The legal aspect of the protection of women's rights, particularly the focus on the equal ownership is a very sensitive issue in Albania.

Private property was first mentioned in Albania in the 4th century (Paskal, 2004). During this period Albanian common law developed, which by its characteristics was a *corpus iuris civilis*⁵. Sources show that property titles in Illyrian-Albanian land were carved in copper or written on other material.

In the 15th century the *Kanun* of Lekë Dukagjin was introduced (Ballanca, 1982). Within these rules, women's rights (particularly property rights) were not only entirely absent, but these rules also legitimated harsh treatment towards women. Women were considered property, under the authority of either their father or their husband. Furthermore, in cases of blood feuds the isolation of men in the *kulla* (towers) further complicated women's lives, as they then had to take over the role of breadwinners in addition to domestic duties (Young, 2008).

After 1912 the Albanian State gradually started to replace Turkish land legislation, reaffirming the regime via legal regulation of the land and ensuring the rights of its subjects, whilst also respecting the regime under the "*Kanun*", undertaken more in the north of Albania and in some areas in the south.

Customary forms of tenure have re-emerged today, evidence demonstrating however that these customs are not as strong as they used to be. Family structures have become more flexible as they respond to and interact with changing property relations, residence patterns, mobility and migration. The household structure does not typically resemble the extended patrilocal family structure of the past; rather the contemporary household has become more nuclear. Changing economic conditions, such as higher monetary incomes and increased migration opportunities are perhaps the primary reasons for this shift in family structures (Wheeler, 1998).

⁵ First purchase as the institute was completely unknown to the ancient Roman law " ius civil" of period of the Republic. However, during the period of dominant, it founds application in Rome. Roman emperors of this period of Illyrian origin, had the tradition put on Roman law institute, introduced in Roman law the Illyrian Institute of first purchase. For this reason a later emperor of Spanish origin, Theodosius, considered the first purchase foreign to Roman law, he ordered the Praetorian Prefect of Illyria - Flavian, to erase this Illyrian tradition and not allow its implementation by Roman courts "Codex Teodesianus" book. III, tit. The law 6; see also Meksi, Vangeli "People's Justice" Nr. 3, 1965 Tirana.,



3. Women's position over land

There are many studies on gender and land rights in Albania that show that women enjoy equal rights to land as men, but statistical data shows that land ownership by women compared to men remains very low. In 2016 the Food and Agriculture Organization of the United Nations (FAO) and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH⁶ conducted the Legal Assessment Tool (LAT), a FAO methodology to screen legal obstacles that females face in land ownership and land registration (Kenney & Paola, 2016). In most cases obstacles are due to lack of clear procedures, regulations and a lack of gender sensitivity among professionals. There will be actions addressing this issue in the future. The summary of the LAT from Albania is shown in Annex 1.

The LAT shows that women and men are mostly treated equal by law, regarding enjoying the same rights to inheritance, co-ownership and access to justice and are not discriminated against by the constitution, but implementation of these laws is nonetheless still lacking. There are no special measures in place to guarantee women's' rights to land, and legal regulations do not go beyond the minimum requirements of antidiscrimination.

Women continue to experience low ownership and low administrative power over land. Data shows that registered female owners or co owners in 2014 constituted only 29% (Tonchovska et al, 2014)⁷. Whilst agricultural land is an important source of economic empowerment, participation of women in the agriculture sector is also an issue of interest that should be analysed. The percentage of women managing a farm in 2014 was just 7.4 % whilst they made up more than 54.4% of the labour force in agriculture (INSTAT, 2015). Traditionally, agricultural property is registered in the name of men. By law the agriculture family is represented by the head of the household, who is selected according to the consent of family members (Civil Code). Traditionally, the head of the household has been the oldest male of the family. The law on social assistance and services defines the head of the household in this order: father, mother, the eldest member of the family in the active age group (18-65 years), the youngest member in the age-group over 65 years, and the guardian in the case that all family members are under 18 years. These combined definitions of the head of the household entrench further the dominating role of the father or husband in the family, and diminish the role of women in managing the household (Law No. 9355).

⁶ On behalf of the German Federal Ministry of Economic Cooperation and Development (BMZ)

⁷ This is with the limitation, as the study takes into consideration only the digitalized date, there is a general belief among practitioners that women ownership is less.



In 2011, 86 % of heads of households in Albania were registered as male. In rural areas 90% of registered heads of households were male, whilst in urban areas this percentage was slightly less at 82% (INSTAT , 2013). The data showed that women are less likely to own property in their names when they are not considered to be heads of households.

By law women are co-owners of property gained during marriage, but they are less likely to legally own properties due to the indirect representation of their ownership via the power attributed to heads of households (UN WOMEN, 2014). Moreover, during the process of privatization which took place after 1991, the vast majority of agricultural land was titled in the name of men, even when women were serving as heads of households (USAID, 2011).

To better understand the consequences of the various laws and reforms regarding the demanding of women's rights, we have analysed one year of cases when dividing of family property has been requested. Analysing the cases of one of the biggest first instance courts in Albania, the Tirana first Instance Court, in 2016 only 1% of family claims referred to dividing of matrimonial property, demonstrating scepticism on the part of owners of matrimonial property to involve the court. Out of all cases, 85% were women who claimed for property and in only 19 % of the cases the claim was accepted. In most cases the claim was renounced, the claimant relinquishing what was initially thought to be his/her right. Only 10 % of cases had their claims refused (in all cases it was a woman). Keeping in mind the very low level of finalized cases, an analysis of the length of cases was made. The procedures lasted from 240 to 801 days, with an average of 527 days taken for each claim. For male claimants, the procedure duration was shorter. Analysing the court cases, it is evident that women lack access to justice, as due to long and costly procedures they often give up their rights. This suggests that many women may renounce their claim due to the structural barrier of long and complicated procedures. (Court of Tirana, 2016).

4. Cases from the practice

Albania employs a Latin Notary system, where Notaries are lawyers who are licensed to offer a public service. The notary is a public legal person having different functions such as legal editing of the notarial deed reflecting the free will of parties. Additionally, notaries have by law the competences to forbid cases of fraud and decision making of parties under pressure, thereby holding the opportunity to be gender sensitive. Offering legal advice, the notary public plays an important role in advising parties on gender sensitive topics, explaining to women and girls their rights as well as explaining the legal consequences of



their actions. The following section will demonstrate some cases from the work of an Albanian gender sensitive notary.

It takes more than laws to protect women rights:

Case 1 - One day a lady entered my office, she approached me due to the fact I was a female and she felt that she could easily speak to me. The women asked for information on how she could register the property gained during her marriage that was registered only in her husband's name. I advised her based on the current legal framework. The property was a joint property but only registered under the name of her husband. Both of them needed to sign a "notarized statement" stating that the property was matrimonial property and that both spouses consented to co-register it⁸. She was very enthusiastic about the agreement and asked for an appointment the next day to come with her husband. She called the next morning and cancelled the meeting, explaining that her husband was doubtful as to why she wanted to be co-registered when they were not even going through a divorce. Since then he accompanies her everyday to work, as he thinks she is having an affair. I felt bad that I could not help her.

Case 2- A couple cohabitating for six years in an apartment in Tirana had made an "order contract" to buy it. At the notary office, only the male was present to sign the contract. The final payment of the apartment was made by the female partner (as she had a better income). Two years later, the male partner died. An inheritance procedure was opened, and the property was divided between the legal heirs, the mother and two brothers of the deceased. The inheritance act was registered at the registration office and the apartment was transferred into the name of the heirs. After the procedure was finalised at the registration office, the heirs asked the surviving partner to release the apartment as it was theirs however she went to the court. She presented her arguments in court but she could not give enough facts to be ruled the eligible co-owner as the apartment was only in the name of the deceased. As a result, after a three year court case the court did not accept her claim, stating instead that the property belonged to the

⁸ The legislation stipulates that in absence of a specific agreement of the spouses designating their marital property regime, the regime of community of property would apply. Based on this provision the wealth of the spouses created after the marriage is presumed joint, unless the spouse proves the personal nature of the asset. The Family Code Article 66 - The marital property regime of spouses: The marital property regime of spouses is regulated by the law, in the absence of a specific agreement by the spouses designating their own regime, which must not be contrary to the provisions of this Code and any other legislation. - Article 73 The Regime of Community of Property is applicable in case the couple did not sign a contract for another marital property regime.- Article 76 The wealth of the spouses is presumed as joint, unless one spouse proves its personal character.



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heirs. Her investment in the property was not recognised. She is currently homeless⁹. A well informed notary could have saved her by properly advising her on co-ownership terms in a consensual union.

Case 3: A lady from a rural area had a conflict with her husband as he was spending most of their family income on gambling and alcohol as well as domestically abusing her. She was not able to leave her home. Together with a relative she escaped to come and see me. She shared with me that her family had gained agriculture land after 1991, based on the law 7501. On the same land they had built a house and it was legalised according to the law on legalization (Law no 9482), with everything registered under her husband's name.¹⁰ She asked for legal advice regarding the possibility of gaining any of the properties in the case that she would ask for a divorce. I advised her that she could ask for the divorce and in case she wanted part of the property she had to prove her presumed co-ownership. When she realized that she had to prove everything in court she answered that she had no income to go to court, or even to live elsewhere during the divorce. Her parents were not supporting her, as they had stated that "her husband was her fate", that men are there to hit their wives and that he will change one day (this story had gone on for 12 years). I advised her to go to one of the NGOs for counselling, but she felt ashamed that her neighbours would know about it. She kept the number of the NGO and saved it for an emergency. The only thing she wanted was not to be beaten in front of her children. She felt stronger when she knew that she had some rights over the property.

Case 4: A lady showed up in my office trying to hide dark bruises on her arms. When she realized that we were alone she shared her story. She was living with her parents in an old, remote house. The parents were disabled. Next to their house on the same family property her brother had built a luxurious villa, which was legalised under his name. Every day he was abusing his parents and his sister, in order to intimidate them into leaving the common property. The lady in my office asked me for a solution. She was ashamed of what I was listening to, and whilst crying she kept saying that property had divided her family. She had obtained a protection order from the court ensuring that her brother had to keep his distance but this did not protect them. She was convinced of her rights over the property and did not want

⁹ The legislation does not provide for a presumption of ownership in consensual unions. Based on the existing legislation, the joint ownership can only be established through a contract. The Family Code - Article 164: The cohabitating individuals can sign an agreement in the presence of a public notary, whereby they determine the consequences resulting from cohabitation in relation to children and assets acquired during the cohabitation.

¹⁰ After the '90 due to various land reforms, need of the population for leaving space, there have been many illegal buildings build, and a legalization process has started, which continues nowadays.



to give up. She showed me photos of her mother, who was also covered with black bruises due to being beaten. She asked my advice regarding what to do to stop it. I again advised her to go to an NGO specialising in helping women in need.

Case 5: A man from a rural area came to my office in order to sell an immovable property. Being a matrimonial property, I asked for the presence of his wife. They sold the immovable property and he bought a crane to construct roads (this was a big investment for the family). The crane was registered only under the name of the husband. Three years afterwards the wife came to my office to tell me what had happened after the immovable property was sold. They had been married for 25 years and he had never made any “trouble” at home. He was a hard worker and that is why she was convinced to sell the property so that they could make a better investment. She was convinced that he had savings in the bank, so she gave him all her savings. She was informed by others that the husband had sold the crane and had been borrowing money from relatives and friends. From other sources she learned that her husband was a gambler and that all of their common income was lost. She did not want to divorce him, but she was asking for advice on what to do with the property she had gained during the marriage from her father (with a fake sales contract¹¹). How could she stop him from selling the properties she had from her father? I advised her that she should not sign any sale contracts for her property, or get a loan with the house as collateral. I also advised her to convince her husband to make a fixed agreement with the bank stating that she would manage his income (when he was sober he was very nice and responsible). She went home and did this, and she was the one who had the final say at home, with her daughter’s support.

Case 6: A friend of mine came to me, very worried for her sister and asked for my assistance. She recently became aware that her sister’s husband was abusing her. They both lived in the same apartment building in the city centre. Each of them had a separate apartment, inherited from their family. The advice I was asked was on how to start the divorce procedure. As she was my friend I went to her home and her sister was there, unaware that I was going to be there. She had bruises on her face and was very ashamed of my presence. She was also shaking and trying to hide. I urgently asked my friend to call a doctor, a psychologist and then a lawyer. However this sister would not accept anyone except me (she knew me

¹¹ To avoid fiscal burns and to pay less tax, most of the donation of immovable property in Albania is made with a sale contract. The sale contracted is taxed with the amount of the real transaction, while the donation has a reference price, set by the government which is more than the declared cost of the sales transaction. At the end the parties pay less tax to the government. This is an invasion, but in the transition period through which Albania went through was unfortunately very common.



from before). The entire time she was in shock. I did not mention anything the first meeting about her situation, I wanted first to have her trust. I went one week in a row to see them, talking about all different issues but not her situation. On the last day I asked my friend to leave me alone with her sister. When we were alone, I approached her and told her that she is well educated, and that she has enough knowledge to protect herself. I asked her why she tolerated and accepted the violence. She cried and said that one of her kidneys was not working any more due to violence, and also her arm was broken. I convinced her to go with me to a centre for women in her situation. Initially she accepted, saying that she would go with me after her face was healed. She did not want anyone to know her story. She did not want to go to court, as none of her family had ever been in a court room, and she did not want to make them feel ashamed. I told her that she should know her rights so that she would not accept the violence, after we talked for three hours she agreed to come to the centre but when we arrived she went back and asked only for the number of the centre, so that she could call them when she felt abused. She did not tell me yet the story behind the violence. After two weeks of countless meetings, she told me that she was beaten due to the fact she gained a property as inheritance from her father, and the certificate of ownership was under only her name. Her husband wanted to be a co-owner. He had been abusing her for three years, because he wanted to put the inherited property in both names, claiming that they were married and everything belonged to both of them. I advised her that in case he ever touched her again, she should tell him that she would call the police and ask for a protection order. She did so, and to my knowledge he stopped.

Case 7: The husband registered a limited liability company in the construction sector. The company was registered under the husband's name, but both spouses contributed financially. With the company investments they built five buildings. Everything belonged to the company, and purposefully he did not put any of the apartments in his name, as it would then be considered matrimonial property. Everything was under the name of the company and the approval of the spouse was not requested for any transaction. The company owned 20 apartments, 4 shops and several basements whilst he and his wife were living in a rented apartment. After 7 years he asked for a divorce and as there was no matrimonial property, the wife had nothing to ask for in court. He bankrupted the company after the divorce and kept all the properties under his name, whilst the wife received no compensation from the divorce. He now has a new company¹².

Inheritance cases

¹² Under Albanian family code all wealth accumulated in marriage is presumed joint. **Article 76** The wealth of the spouses is presumed as joint, unless one spouse proves its personal character.



The two cases below explain two of the most common problems regarding inheritance in Albania.

Case 8: The spouse made a will stating that his wife will inherit his part of the property in the case of his death. When he died, the wife asked to meet the notary in order to open the inheritance act. The notary refused to give her the deceased's part of the property as according to his opinion (based upon the Civil Code), the wife did not constitute an heir of the will. In this case, even if she had contributed more than 20 years to the matrimonial property, the wife could not receive her fair share. Article 377 of the Civil Code states that: "An estate-leaver without surviving descendants, predecessors, or siblings has the right to dispose of his estate by will in favour of any natural or legal person". In this article the spouse is not mentioned, thus even if the notary opens the will in the name of the wife the court might consider this not legally binding. Within the Civil Code, the surviving spouse has no right over property if there is a family member still alive. This article is the same as the one in Albania in 1929. In the literature it is classified as an error of the legislator or an exception (Tusha & Saraci). When comparing the legislation regulating testaments and legislation regulating inheritance which refers generally to the same objective, the absence of the spouse in the testament legislation is obviously a mistake of the legislator. In the legal act related to inheritance, the spouse is a legitimate heir. Practitioners have considered this article legal omission and in cases where the spouse is mentioned in the testament, in many cases they have considered that as valid. The only solution to unify the practice is to change the article of the Civil Code.

Case 9: The husband died and the certificate of inheritance was opened. The certificate of inheritance, which was opened for all the assets of the testator, was registered at the registration office of real estate. The registration office of real estate divided and registered the property into equal shares among the heirs. By doing so the registration office excluded the wife from her presumed half share of the property gained during the matrimonial contract¹³.

¹⁴Problems with the law no 33/2012 article 41/2 "On the registration of the immovable property"

¹³ Most of the properties are registered in the name of only one of the spouses and that is the male of the family even if this is a matrimonial property, and by law both spouses have equal rights over it. On the other hand there is no procedural law to regulate this and no internal regulation of the registration office. As a consequence, the surviving spouse loses the right to property co-ownership. In this case the wife asked for her rights in court, but the process was very costly and time consuming.

¹⁴ The presumption as co-owners of the spouse property is not practicable for assets registered before 2012. The procedural way for implementing the exercise of the right for the recognition of joint ownership, has monetary costs and aggravate the position of the wife as presumed co-owner. The procedure followed in these cases, it is not in



Case 10 The wife (A), requested at the registration office to be registered as co-owner of the matrimonial property. The officer at the registration office said that the only way she could get co-registered for her half share of the matrimonial property was by a sales transaction or donation from the husband¹⁵. The wife was shocked that she could not be co-registered even if she was “de jure” the presumed co-owner of the property, but “de facto” not registered in the property certificate. In this case as A had no financial means to pay for the transaction (she had to pay income tax and other notary costs), she did not finalise the transaction and did not successfully co register the property. She also wanted co-ownership for a bank loan, which she did not receive.

Case 11- In September 2016 citizen B signed a sales contract. Together with the general information, I noted in the documentation the civil status of “married”. When this contract was registered at the immovable registration office, it was registered only under the name of the husband and there was no evidence of the wife as co-owner. After being sent a supplementary letter where I recalled the legal provision cited above, they answered that the spouse had not signed the purchase contract therefore she did not have ownership rights over the property¹⁶.

Case 12- Representatives of the Notary Chamber and employees of the Registration Office of Immovable Properties attended a common training. One of the employees of the Registration office argued not to apply the part of the law on registration of immovable property relating to co-ownership, as this law gives the wife rights over land. He argued that: "It is my personal opinion that the wife, who may not have worked a day in her life or may be abroad wants to make use of a property bought with the money of her husband. Whenever I am registering a property the wife is not going to be part of it”.

Civil registration office cases

Case 13- In 2015 a couple came to my office. The female was a Greek citizen, and the male was an Albanian. They asked in front of me “the Notary” to make a cohabitation contract with the specifications

harmony with the general law and International laws, which emphasize and require from the state to take concrete measures for the exercise of the right of ownership of both spouses, who belong to the regime of marital property in community. Even if awareness of women is higher in certain areas (mainly urban areas and especially women with the average level of educational), the opportunity to dispose the immovable property requires a lot of bureaucratic procedures, financial cost and long time.

¹⁵ In the list of services offered by the registration office of the immovable properties there is service adding a co-owner to the property certificate.

¹⁶ In the law on Registration of Immovable Properties under article 41/2 is stated that when registering a property gained during marriage the property shall be registered as co-owned by both spouse. (The Assembly of the Republic of Albania, 2012)



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which they set in their free and complete will. Once the contract is signed, a copy of the contract is required to be registered at the Civil Registration Office where the husband was registered. The employee of the Civil Registration Office refused to register this contract, arguing that he had no authority to deposit such a contract. When I asked for more details regarding why they would not register the contract the civil servant replied that it was the first time that she had seen such a contract, because the only contract that they knew was “marriage”. She proposed that it is better they sign the marriage act because in the proposed condition they would not have legal status. She did not consider the act legal and did not know on what basis it was compiled. I explained to the employee that this act was based upon the Family Code which allows this notarial act, but she again refused to register it.

Case 14 - Citizen E went to the Registration office of immovable property to enquire about the status of real estate which was registered in her husband's possession but was obtained during marriage. Her request was rejected by the Registration Office, which argued that the property registered was within the individual ownership of her husband and they couldn't provide information on it without the consent of the owner. During a training session I asked the employee why they refused to provide information on an asset where the spouse was presumed co-owner. She replied: “we feared that they are in a conflict with each other and she needed a court decision to get the information”. They don't provide much information because they could be threatened by her husband who could claim that it is his individual property. In the case of the contrary, if the husband would be the presumed owner and would require information on real estate gained during the marriage and registered only in the name of his wife, then they would give him this information. The spouse, in order to prove her rights addressed the court requesting to be registered as the co-owner of the property. a Due to monetary difficulties, judicial proceedings were postponed for 6 months. Due to the threats of her husband, after 8 months she gave up the request regarding recognition of her rights.

Case 15- Citizen B came to my office and asked to sign a sale contract where he appeared as a purchasing party. He required the editing of a clause in the contract, where his wife declared that the money that the property was being purchased with was money made and saved only by her husband, and that she agreed that the property would be registered only in the name of her husband. I refused to include such a statement and explained that even though the monetary incomes were only that of the husband, any property acquired during marriage is jointly owned by the two spouses. I explained to the parties that such a statement is against the law. It violates the right of the wife to enjoy the advantages afforded to her by



the property. Frustrated, the husband refused to recognize this fact and argued that his wife had nothing to do with the property. He did not finalise the contract in my office.

Knowing your rights

Case 16- D came to sign a mortgage contract of an apartment, because the husband wanted to get a bank loan. The apartment that the parties wanted to deposit as a mortgage was their only matrimonial property. This apartment was acquired during the marriage and was registered only in the name of the husband. I asked the husband to leave the room and had a talk with the wife separately. I realized that she was not willing to leave this property as a mortgage, because that was their only asset. According to her, she had to sign the contract as she had no part in it as the certificate of ownership was registered only in her husband's name. After I heard this, I understood that she was not aware of the law and that she was not obliged to sign the contract against her free will. I explained to her that she was the owner of that property the same as her husband, because that was a property acquired during marriage. Even if her name was not listed in the certificate of ownership, she is presumed co-owner on that property. In this situation if she wanted, she had the right to not sign the contract. Without her signature, the apartment would not be imposed in the mortgage because this would require the joint consent of the owners. The wife subsequently refused to sign the relevant contract and the property was not set as mortgage.

Waiver of the right of inheritance

Case 17 – In 90% of cases when the testator dies, in my notarial office his heirs appear and the men require that women (e.g. mothers, sisters, wives) that have benefited from legal inheritance declare before a notary that they waive their right to inheritance and the benefits. Four sisters and their mother were required in my office to sign a declaration waiving their right to benefits in favour of the male successors in their family. I explained to the parties that such a declaration would remove them from any rights over the property and its benefits, that the males of the family could sell the property and they would not have a place to live. They did not have any idea that such a declaration would remove all their rights over real estate that would be derived from a certificate of inheritance.

Case 18- After the testator died, B and C opened a certificate of inheritance, both female legal heirs of the deceased. Wife and daughter were immediately required to make a statement waiving their rights to their inheritance benefits in favour of the male heir. I explained that if they waive their inheritance rights, they lose any opportunity to benefit from the estate of the decedent. However they said that they were



confident that the property of the deceased belonged to the male of the family, and they were aware that they could not profit from the property of the deceased because the property does not belong to woman, as only men should inherit it. With full and free will they wanted to make such a statement.

Case 19- A couple agreed to draw up a draft agreement for the termination of marriage, division of property and parental responsibility. The wife explained that her husband had previously exercised violence against her for 5 consecutive years and that she had requested 3 protection orders. After discussions with the help of protection centres of women against violence, the husband agreed to sign the agreement for the settlement of marriage and all related legal consequences. The act-agreement was edited in my office with the free will of both subjects, where they determined that the wife would exercise parental responsibility over the daughter and will receive a house, a cash value and a monthly payment out of obligation to provide food for the daughter. This act-agreement was deposited to the Court, and the Judge, after having seen the agreement expressed her suspicion as to why the act-agreement contained rights for the wife. The client came into my office and said: “I feel discriminated against even in court, the judge despises me, discusses and alludes as to what I should profit from. I feel very insulted and hurt”. Eight months after the court granted the divorce, the division of the property was still not finalized.

Legal problem of Law on “The legalization, urbanization and integration of illegal constructions”

Case 20- A widow showed that together with her husband they contributed all their lives to build the second floor of a real estate property, which was introduced in the procedure of legalization. As the land was owned by the father of her husband, the ownership certificate was in his name. The family of her husband want her to leave the house because she cannot prove her ownership rights. Although the income they used to build the property was combined, she could not prove this in court. Due to this, the father-in-law forced her of the house that she had built with her own income, and now she has no place to live. She had asked for her rights in court, but the court rejected her request.¹⁷

¹⁷ Clarification: The legalization procedures accept self- statement from the person which is appeared to make the legalization. In this case, as the spouses were in Greece and they were unable to show and the self-statement was made by the father in law, which appears today the owner of the apartment built and furnished by the testator (her husband) and from herself.



5. Role of Notaries in addressing gender issue

As seen from the practical cases, notaries in many cases provide legal and social advice. In situations when notaries are more sensitized on gender issues, they can provide better advice regarding legal action and whether individuals may be discriminated against in the future. In order to achieve this, gender trainings for notaries and registration officials would be imperative, ideally conducted together.

In some cases there is a general lack of awareness of right and obligations regarding joint property, in this regard the role of the notary in informing clients is crucial. Notaries shall advice parties on rights and obligations over properties bought during marriage, specifying that both spouses are co-owner of the property in equal shares, no matter whose name is in the ownership certificate. The notary code of ethic shall reflect that.

The notary has to include both spouses in the contract of transferring ownership, even in cases when one of the spouses is not present at the notaries office. Amendments to the notary law, to make it obligatory for notaries to co-register the spouses, would assist the achievement of this goal.

Awareness need to be increased among the general public via developing effective campaigns (such as TV information broadcasts during the most watched segments, articles in the media, posters in the notary offices etc.).

There is a distance in time from the moment when the contract for ordering a real state is made, together with the payment, until the moment when the property is registered at the registration office. During that time the civil status of the buyer might change. To avoid any problem with the registration of the property at the final stages, the civil status and a family certificate must be part of the contract. For that the notary chamber can issue an internal regulation, and also offer some model clauses in the contract.

Property is lost due to lack of procedures such as in cases of inheritance. Drafting of clear procedures and manuals by registration offices and chamber of notaries would be necessary in order to ensure that spousal ownership rights are given clear recognition. Standard templates and guidelines for inheritance cases can be developed. In those templates the share of presumed property by the surviving spouse shall be clearly separated by the other part of the property, subject to division. This could be done by using simple programming/ calculation software.

Notaries need to be sensitized about the cohabitation as a growing phenomenon. In case they are aware the property is gained during a cohabitation period, the other co-habitant needs to be part of the contract



as co-owner. A manual or guideline can be developed by the National Chamber of Notaries on how to deal with cohabitation cases, action to take and consequences.

In some cases the role of the notary as a social adviser was also pointed out, for that a memorandum of understanding or stronger cooperation between local Notary Chambers with organizations offering specialized advice would present a long term solution to address this issue.

As not all notaries are sensitive to gender issues and there are also those considered “easy ones”, better supervisory and control mechanisms with regards to gender sensitive issues need to be implemented (such as links between notary registries and civil registries). The connection between different registries can create and alert system when discrepancies occur. The alert system can be connected also with the supervisory body (National Chambers, or Ministry in changer), so in the next inspection process the case can be check and if needed investigated.

6. Way forward

Notaries and registration officers in the civil law system play an important role in addressing and ensuring gender and land rights. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH commissioned by the Federal Ministry for Economic Cooperation and Development (BMZ), within the framework of the project Open Regional Fund for South East Europe – Legal Reform (ORF LR) and in cooperation with the FAO have coordinated their actions in the Western Balkans to promote progress on Target 5a of the Sustainable Development Goals (SDGs) and to facilitate the monitoring of this target [Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws]. The Open Regional Fund for South East Europe – Legal Reform (ORF LR) is implementing the regional project “Gender and Land Rights”. This project will run from January 2017 for 18 months. The main objective of the project will be to improve regional exchanges of gender sensitive enforcement of property rights in South East Europe, focusing on legal professionals and registration offices. Regionally, countries sharing similar history and challenges will work together to develop manuals and regulations to better address the issue of gender and land rights from the perspectives of legal professionals.



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7. Annex 1

Table 1 Legal Assessment Tool in Albania

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified.	Yes
<i>The constitution prohibits gender-based discrimination</i>	3
<i>Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations</i>	3
<i>Men and women are able to apply for identity documents under the same conditions.</i>	3
<i>A female national can confer citizenship to her non-national spouse under the same conditions as a male national.</i>	3
<i>Women can confer citizenship to their children under the same conditions as men.</i>	3
<i>The law recognises gender-equality in the right to own or control property regardless of the type of marriage.</i>	4
<i>The law recognises full or partial community of property as the default marital property regime.</i>	3
<i>Spousal consent is mandatory for any transaction involving matrimonial property.</i>	3
<i>The law establishes a presumption of joint ownership of property in consensual unions</i>	0
<i>The legal framework contains special measures to guarantee women's equal rights to land ownership and/or control.</i>	0
<i>The surviving spouse is granted user rights to the matrimonial house for life.</i>	0
<i>Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.</i>	3
<i>The law allows partners living in consensual unions to inherit from each other.</i>	0
<i>Brothers and sisters have an equal right to inherit.</i>	3
<i>Brothers and sisters receive an equal share of inheritance.</i>	3
<i>A right to compensation of other siblings giving up their claims on the family property exists.</i>	0
<i>Decentralisation of land administration services is effected through recognised customary land institutions.</i>	N/A
<i>Decentralisation of land administration services is effected through formal land institutions.</i>	4
<i>The law guarantees equality before the law</i>	4
<i>The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.</i>	4
<i>The law makes provision for legal support in civil procedures.</i>	3
<i>A human rights commission or gender-specific institution is in place</i>	4
<i>The law sets quotas for the appointment of women in land management and administration committees.</i>	0
<i>The law sets quotas for the appointment of women in land dispute resolution committees.</i>	0
<i>The registration system organises the recording, updating and publication of tenure rights and duties of the holder, including his or her family status and associated spousal rights.</i>	3



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<i>The law provides for minimum requirements to ensure that the personnel have the appropriate knowledge to deliver information on the tenure rights of men and women, including spousal rights.</i>	0
<i>The law ensures that men and women are able to record their tenure rights and obtain information without discrimination on any basis.</i>	4
<i>The law makes provision for implementing agencies, such as land registries, to establish service centres or mobile offices, having regard to accessibility by women, the poor and vulnerable groups.</i>	0
<i>The law requires implementing agencies to link information on the rights, the holders of those rights (including the spouse and the heirs), and the spatial units related to those rights in order to facilitate the use of records of tenure rights.</i>	4
<i>To support public information sharing, the law requires records of tenure rights to be made available to State agencies and local governments.</i>	0
<i>Provision is made for the collection of disaggregated data on tenure rights.</i>	0