Privatisation of Landholdings in Albania: A Law and Economics Analysis

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Authorship Declaration

I hereby declare and confirm that this thesis is entirely the result of my own work except where otherwise indicated. I have acknowledged on page 2 the supervision and guidance I have received from Prof. Dr. Thomas Eger. This thesis is not used as part of any other examination and has not yet been published

Zamira Xhaferri

Hamburg, August 10th, 2009

Dedication

This master thesis is dedicated to my beloved family for their unconditional support and encouragement and especially for teaching me how to stand firmly before the challenges of life.

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Abbreviations and Acronyms

AA	Albanian Assembly
ACAP	Albanian Code of Administrative Procedure
APMO	Albanian Prime Minister Office
AITPP	Agency for Inventory and Transfer of Public Properties
ARCP	Agency for Restitution and Compensation of Properties
ARD	Associates in Rural Development
CGU	Central Government Units
CC	Collective Cooperative
DCM	Decision of Council of Ministers
GDP	Gross Domestic Product
GoA	Government of Albania
ILD	Institute for Liberty and Democracy
IPRO	Immovable Property Registration Office
IPRS	Immovable Property Registration System
MAFCP	Ministry of Agriculture, Food and Consumers Protection
MPWTT	Ministry of Public Works, Transport and Telecommunications
NHA	National Housing Agency
OSCE	Organization for Security and Cooperation in Europe
MAFCP	Ministry of Agriculture, Food and Consumers Protection
PJ	Property with Justice
PRCA	Property Restitution and Compensation Agency
RoA	Republic of Albania

SCCRP	State Committee for Compensation and Restitution of Properties
SF	State Farm

A. INTRODUCTION

After the collapse of the Albanian socialist system in 1990, some progress has been made regarding post-communist land reforms and private ownership transfer. Although recent statistics are hard to come by, half of all court disputes are related to landholdings and real property claims (Singer 2001, cited in the World Bank Report, 2006: 17). A common dispute involves competing claims on landholdings and/or real properties between former owners (i.e., pre-1945 collectivisation owners) and new owners, in urban and rural areas of the country. Most of these claims arise from the post-communist redistribution programme of agricultural landholdings to former members of Collective Cooperatives (CCs) and State Farms (SFs), with the right to natural restitution or financial entitlement going to former owners. The process started in 1991, whereas the property restitution and compensation process started two years later, in 1993. However, claims of former owners cannot be resolved until: a) the inventory and transfer of State-owned properties to central and local government units has been completed; b) State-owned properties have been duly recorded in the Immovable Property Registration System (IPRS); c) overlapping rights over real property and land holdings arising from conflicting legal norms, legal gaps and the lack of information integrated into a single, standardised system are settled by the court; d) all records of lands and real properties holdings by the Immovable Property Registration Office (IPRO) are updated to comply with the situation on the ground; e) the lack of coordination between State institutions and agencies in charge of assigning and settling

property rights, and the overlapping of their competencies, is resolved through a comprehensive governmental policy; f) a uniform valuation methodology for different typologies of immovable properties is adopted for financial compensation of former owners at reasonable State costs.

Second, implementation of post-communist landholding privatisation programmes have generated highly fragmented land parcels in both rural and urban areas. This not only impedes owners from putting their properties to the most productive, economic use and creating surplus value through trade, it also decreases the economic value of the land. In case of adjacent landholdings, this obstacle can be overcome by consolidation through binding mutual agreements. But this process bears high direct and indirect transaction costs.

Third, legal and economic implications of the post-communist landholdings' privatisation programmes together with an open-ended property restitution and compensation process (R&C) in favour of former owner have generated uncertainty over the land tenure in Albania.

I. Why the Albanian Property System Fails to Generate Wealth

Most citizens in countries that have economies in transition are "cut-off" from a formal property system that enables its titleholders to generate wealth (De Soto, 2000: 49-62). This rationale also stands for the current legal and institutional

framework in Albania, which is completely lacking some effects of a fungible property rights system involving the following:

First, lack of formal representation of assets in the land market, i.e., Albanian State has been able to issue ownership titles only for 65% of all property units, or about 5 million property-units. The remaining 35% still lack a formal title, preventing users from generating wealth from their properties (i.e., gain through trade, use as mortgage collateral, etc.). As a result of being out of the formal property system, these property units do not contribute to land-use taxes. This causes an annual burden of EUR 0.5 milliard (Total of 5 Million Property Units x Land-use Tax of EUR 100 Per Year) on the State budget.[1] The revenue from the land-use tax could serve as a source to financially compensate former owners (Aliaj, 2008: 209-210).

Second, lack of a standardised, integrated information system, i.e., Albania has made 270,000 informal settlements amounting to at least US$ 6 milliards, a figure that includes only the investment value, not the market value which is supposed to be higher (Aliaj, 2008: 197-198). Lacking formal representation in the land market, these property units cannot generate surplus value. In addition, IPRS does not possess records of these units reflecting their social and economic features as well as their coordinates on the ground.

[1]First registration process of property units in IPRS is assumed to end in 2011 under the financial and technical assistance of the World Bank Office in Tirana.

Third, open-ended process of restitution and compensation, i.e., incompletion of the R&C process in favour of former owners has generated conflicting claims over the same landholding(s) between former owners and new titleholders or between the State and former owners.

Fourth, high fragmentation of agricultural landholdings, i.e., this is a result of the programme distributing agricultural landholdings to the rural population guided only by the principle of equity in quality and hectare, forgoing its negative direct impact in the land market.

Fifth, evidence of open access for pastureland and forests, i.e., there is *de jure* evidence of this being left under State ownership and management (90%), whereas 10% restituted to former owners, but *de facto* evidence of it remaining open to over extraction beyond an optimal level of extraction (MAFCP, Annual Report, 2002: 86, cited in World Bank Report, 2001: 16; ARD BIOFOR IQC Consortium, 2003:7-13)

II. Uncertainty Effects of Land Tenure under Efficiency Approach

Competing claims between former owners (who maintain a strong sense of ownership to their ancestral land) and new titleholders will generate sub-optimal use of the asset. The reverse scenario might also occur, with new owners induced to invest beyond an optimal level on the grounds that this would, as Alston and

Mueller say, “strengthen their claim to the asset” (Alston and Mueller, 2008: 573, 580). This decreases the economic value of the asset, i.e., lowers the willingness of market participants to pay the correct price and thereby allocate the asset to the party who values it most. Under uncertainty, society will not be able to internalise all the benefits from trade. The resulting lower demand for investments will affect societal welfare and impede economic growth (Ibid.).

Properties lacking a formal legal representation or, as De Soto puts it: “dead capital”[2] generates no growth, but only uncertainty. This capital in real property holdings accounts for “approximately US$ 17.1 billion, at the current rate” (Albanian Prime Minister’s Office and Instituto Libertad y Democracia (Institute for Liberty and Democracy), final report: 2007: 284). According to Cooter and Schäfer, an effective Rule of Law would turn the “dead capital” into “liquid” promoting economic growth (Cooter and Schäfer, Draft, May 2009: chapter 4: 12-14).

Incomprehensive governmental policies, inconsistent and frequent changes to the (R&C) legal framework by policy makers pressurised by lobbying groups (former owners association, political parties) have a negative impact on land tenure patterns.

[2] De Soto, 2000, pp. 30-32.

Natural restitution of landholdings and real properties started in 1993. Yet, for the above-mentioned reasons (and others further analysed in this master thesis), the issue remains unresolved.

III. Research Questions, Methodology and Limitations

The Research Questions are: a) Which are the effects over the land tenure and establishment of a fungible land market arisen as a result of the transition from a command economy to a market economy? b) Which is the most feasible solution vis-à-vis natural restitution versus financial compensation to former owners for the present typologies of immovable properties?

The author will analyse the research questions from a legal and welfare economics standpoint, under fairness, social justice and efficiency criteria.

Research Methodology**:** The research relies on official data gathered from interviews, review literature and unpublished State reports. Interviews are conducted for the purpose of cross-checking the up-to-date relevance of data and findings found throughout this research. The basic for selection of interviewees is so that each represents the different actors participating in the landholdings privatisation process in Albania. The official data is limited due to the following: a) the Albanian State has not done any cost-benefit analysis before and after the implementation of landholding privatisation programmes and the R&C process in

favour of former owners (from 1991 to date); b) there is no standardised, integrated system available for official information on immovable properties; c) the unwillingness of the concerned agencies and State institutions to properly and efficiently use and update their databases; d) the unwillingness of such institutions to disclose available official information (manual or electronic) in order to avoid possible charges of corruption and law violations from officials.

The author of this master thesis is a former legal coordinator and head of a team for legal research in property rights at the Department of Legislation and Formalisation of Extra-Legal Economy at the Albanian Prime Minister's Office (APMO). During her tenure as a research team head, author has contributed in writing few chapters related to the issue of property rights which forms an integral part of the only government research on this topic (i.e. Government report, 2007 - Awaiting Publication) completed under the supervision of Institute for Liberty and Democracy(ILD), led by Hernando de Soto, to identify and assess from a law and economics approach all the legal, economic and institutional reasons that impede the establishment of a fungible land market in Albania. The author is fully entitled to use the relevant information and data from the above mentioned report and related unpublished state reports to support her arguments. Moreover all these reports are cited as per requirement considering the rules of citations prescribed by Hamburg University.

Research Limitations: The author sets a limitation on this thesis. Research questions are analysed with reference to three typologies of immovable properties: a) agricultural landholdings, b) State-owned housing/apartments, c) forests and pastureland.

B. EVOLUTION OF LAND OWNERSHIP PATTERNS IN ALBANIA (1912-1990)

I. Land ownership prior to 1945

Albania was a part of the Ottoman Empire for five centuries until the proclamation of Independence in 1912. During Ottoman rule, the pattern of land ownership was characterised by the "ciflig" land tenure system, i.e., tenants laboured to produce agricultural goods for the benefit of the State, for private landlords and religious institutions (Cungu and Swinnen, 1998:1).[3] The percentage of agricultural land having private ownership was small, and it varied in different parts of the country (Stanfield and others, 2002:1-2). After Independence in 1912, land was owned mostly by five Albanian families, each of whom possessed 60,000 hectares of farmland and forests. (Xhamara, 1995, cited in Cungu and Swinnen, 1998:1-2).

Between 1925 and 1939, Albania was governed by Ahmet Zogu, who was crowned King Zog I of the Constitutional Monarchy of Albania. During his reign, both State and private land ownership patterns emerged. The Civil Code adopted by the Albanian constitutional monarchy sanctioned State and private ownership rights over agricultural and urban landholdings. The State retained ownership of most

[3] "Ciflig" is a land tenure system that characterised Albanian ownership pattern under the Ottoman Empire (See Cungu and Swinnen, 1998, pp. 1).

forests and other public land; it also held the right to expropriate lands after providing a just financial compensation to private owners (Stanfield and others, 2002:1-2).[4] Private owners enjoyed "possessory rights" and "rights of transfer" over their assets.[5] As a result, the State was legally obliged to guarantee legal protection to private owners in case of any infringement of their bundle of rights. Market land transactions were legally required to be executed before a public notary. Land had to be registered with cadastral books if it was agricultural and in an urban deeds registry if it was urban. Registration of titles was mandatory in order to guarantee legal remedies to titleholders and to collect the land-use tax.[6]

In the northern areas of the country, and in some restricted southern areas, land ownership patterns were regulated by an Albanian customary law called k*anun*[7] The kanun prescribes a patriarchal definition of the family, whereby exclusive "possessory rights" and "rights of transfer" over immovable assets are given only to

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[4]There is no evidence of the methodology used at that time to set a just compensation for land expropriated from private owners for public use purposes.

[5]"Possessory rights" enable their holders to own immovable assets and to prevent others from making use of them. "Rights of transfer" involve the exclusive right of the owner to transfer a possessory right (Shavell, 2004, pp. 9-10).

[6]Titles over agricultural landholdings were registered and administered by rural land administration offices (rural cadastres), whereas titles for urban land, housing and commercial properties were registered and administered by urban deeds offices. Records of immovable properties were administered by different offices with no reference to their geographical location. See World Bank Final Report 2006, pp. 48.

[7]In the 20th century, Albanian customary law was collected through the voices of the people by Padre Shtjefen Gjecov and codified into the well-known kanun of Lek Dukagjini applied mostly in the north of Albania. See Gjecov, Stefano Cost 1941: 9-16. Other kanuns were influential in other areas of the country, such as the kanun of Mountains (north) the kanun of Laberia (south) and the kanun of Arberia of Scanderbeg (centre).

the head of the household. The relevance of Albanian customary law in this master thesis is confined to an analysis of its influence on the post-communist privatisation laws of 1991. In the northern and southern areas of the country, customary law had a direct impact on the regulation of post-communist land patterns, especially with respect to pasture landholdings and forests left *de jure* under State ownership. From the perspective of Albanian legal doctrine, kanun rules do not constitute a source of law. According to Article 116 of the Albanian Constitution, *only* the following acts have legal effects within the territory of the Republic of Albania: a) the constitution, b) ratified international agreements, c) laws, d) by-laws. [8]

II. From Collectivisation to Nationalisation of Landholdings (1945-1989)

From 1946 to 1991, the Albanian State was ruled by the Communist Party. Though it claimed to have eradicated feudalism, the reforms it initiated only resulted in the implementation of the Soviet model of collectivism in the agricultural sector (Stanfield and others, 2002:1, 8). On 6 September 1945, the first communist agrarian legislation came into force. Under this, land was expropriated, without compensation, from landowners who had other sources of income, and distributed among landless peasant families or those owning small plots. Large landowners

[8]Albanian Constitution <http://www.qpz.gov.al>. This site is available only in the Albanian language.

were entitled to retain 5 hectares of arable land per family unit (Cungu and Swinnen, 1998:1-2). The main objective of this agrarian reform was to weaken the economic position of large landowners, who constituted a small percentage of the population, and strengthen the position of the new communist "nomenklatura"[99] by acquiring the support of the peasantry, which made up a larger percentage of the population (Stanfield and others, 2002:1, 4).

After the implementation of the 1946 agrarian reforms, the State forced peasant families and large landowners to combine all their land and cattle in Collective Cooperatives (CC) and State Farms (SF) (Cungu and Swinnen, 1998: 1, 2). CCs were legally provided to be community properties under the use of members, but the peasants had *de facto* restricted rights over their asset, whereas SFs were under State ownership. The 1976 Constitution removed any pattern of private ownership by sanctioning the State's exclusive right of ownership over immovable properties. By 1989, 23% of agricultural land was being cultivated by CCs and 54% by SFs; only 3% was owned by peasant families.[10] While the 1976 Constitution eliminated all pattern of private landholdings and real properties, the industrial sector already belonged to the State (Stanfield and others 2002:1, 9). This Communist State was oriented towards self-sufficiency, disregarding its inefficiency and the wealth distribution effects of reform. The result was food

[9] Cungu and Swinnen use the term "nomenklatura" to refer to the elite of Albanian communist party(1946-1990) running the collective cooperatives and state farms (Cungu and Swinnen, 1998, pp. 1-4).

[10] The portion of private land comprised only_the courtyards/gardens located inside the farm houses (Stanfield and others, 2002, pp. 1, 9).

shortages, and a sharp decline in the living standards and welfare of the entire population (Deininger and others, 2007:1, 3; Cungu and Swinnen, 1998: 1-2). As a result, the Albanian command economy, on the threshold of transition, suffered from misallocation of resources and economic inefficiency (Deininger and others 2007: 1, 3).

C. CHALLENGES OF TRANSITION TO A MARKET ECONOMY

I. Privatisation of State-Owned Agricultural Landholdings

Privatisation in Albania was concentrated in five areas: privatisation of agriculture landholdings, privatisation of state-owned housing/apartments, privatisation of small and medium-sized enterprises, and mass privatisation. The privatisation of agricultural land and housing were the crucial components of this privatisation policy, directly impacting the economic growth of the country (Hashi and Xhillari, 1999:100).

Under the socialist system (1945-1990), industrial output had touched 45%, yet agriculture remained the predominant sector. Between 1990 and 1992, the economy went into a steep decline, accompanied by social disorder, political instability, civil unrest and mistrust of citizens towards the establishment of an Albanian Rule of Law. The inefficiency of State institutions with regard to law enforcement was emphasised by Aslund and Sjoberg in the following words: "One of the few incentives to go to work was to get the opportunity to steal State property" (Aslund and Sjoberg, 1992: 139, cited in Hashi and Xhillari, 1999:100, 119). In 1992, the first post-communist Albanian government committed itself to the establishment of the Rule of Law and a market economy.

A consensus was reached among the six political parties that there was an urgent need for political and economic reforms in the country. In 1991, the Albanian Assembly (AA) adopted "On Main Constitutional Provisions", a law sanctioning exclusive ownership rights of the State, of private individuals and private legal entities over landholdings and real properties.[11]

The privatisation of agricultural land was initiated on the basis of the newly adopted privatisation legal framework that sought to redistribute land and the means of production by transferring ownership rights from CCs and SFs to the rural population (Stanfield and others, 2002:1, 10).[12] Equal parcels of agricultural landholdings (in quantitative and qualitative terms) were distributed to private owners who were former members of CCs and SFs. (The distribution was on a per capita basis and free of charge.). In CCs, land was under State ownership, but the means of production were collectively owned by rural households. Agricultural produce was shared equally among CC members though a portion was reserved for the benefit of the State. In SFs, both means of production and land were under State ownership, and farmers received in recompense a salary higher than that

[11]On Main Constitutional Provisions 1991/7491 Available in the Albanian language at <www.qpz.gov.al>. This source of the law served as an interim fundamental law till the approval of the current or 1998 Constitution. The 1991/7491 law repealed the principles of the 1976 Constitution enacted by the socialist system. The 1998 Constitution sanctioned the establishment of the Parliamentary Republic of Albania as well the fundamental principles of the Albanian market-oriented economy; the principal privatisation laws and by-laws transferring ownership rights from the State to natural and legal persons were enacted between 1991 and 1994.

[12]The process of privatising agricultural land started with the approval of the law On Land 1991/ 7501.

paid to CCs members. Former workers of SFs also received *ownership rights* distributed *on an egalitarian basis (*Cungu and Swinnen, 2001: 379, 385).[13] It involved the following: dismantling of CCs and SFs in rural areas, disruption of State-owned enterprises as a result of the collapse of the industrial sector, low level of income and law labor opportunity costs, etc. Claims of the 1945 pre-collectivisation landowners would be addressed by a special law subject to approval by the Albanian Assembly. The agricultural land distribution programme was conceived with the intention of being carried out on a per capita basis, free of charge and, as Lemel puts it, with no reference to "old boundaries**"** of former owners (Lemel, 2000: 27, 29).

1. State's Rationale for Redistributing Agricultural Landholdings

The post-communist agrarian reform policy adopted by the government of Albania (GoA) consisted in the choice between the following: First, "Social equity Option" comprising the free and equal redistribution of landholdings from CCs and SFs to an estimated 65% of the rural population; Second, "Minimal Reform Option"

[13]The law, On Land 1991/7501 prescribed that beneficiaries of agricultural land had to be residents of the village on 31 July 1989. Those eligible for agricultural land in compliance with the land distribution reform had to be native farming families and "newcomers" residing in the villages. The term "newcomer" implies the internal migration of Albanian population moving from the poorest mountainous districts of north and south areas to the major rural and urban areas of the country. In the 1990s, the internal mobility occurred due to the collapse of the socialist system and the severe decline in living standards of the population (Carletto and others, 2004: 4-10).

comprising the restricted restructuring and privatisation of State-owned assets.[14] This was supported by the former communist "nomenklatura" (members of Albanian communist party running CCs and SFs) in order to retain its privileged political and economic status; Third, "Historical Justice Option" comprising the natural restitution of landholdings to pre-collectivisation landowners.[15] This reform policy was supported by former landowners representing approximately 3% of the population (Cungu and Swinnen, 1998: 1, 6).

The adoption of the "Social Equity Option" reform policy by the State consisted in the application of the principle of equity to the distribution of agricultural land (equity in terms of productivity of soil, land use, surface in square meters and number of members per rural family) and to income, reflecting the paternalistic ideology of the post-communist government (Sallaku, 2005: 1, 8; Pashko, 1993: 907, 917). The share of the population that benefited from the land distribution programme was much higher (50% of the labour force and 65% of the Albanian population) than the share of the pre-1945 decollectivisation landowners (only 3% of population). Accordingly, the decision-maker was able to gain a higher level of political support from the electorate. This principle considered the parcel of land only as a productivity source, forgoing its economic value in the land market. For example, a 10-hectare parcel was sub-divided into 50 plots to be equally

[14]State-owned assets imply State-owned agricultural and urban landholdings as well real property holdings.

[15]Ibid.

distributed to former members of CCs and SFs (Stanfield and others, 2002: 1., 30). The decollectivisation process of CCs was implemented within a short time span, unlike SFs, which proceeded slowly. According to Cungu and Swinnen (2001: 379, 385), the reasons for this lie in the following: a) Due to the added value of SFs arising from State investments during the socialist era, the privatisation procedure of SFs was more complex than that of CCs; b) Potential benefits from labour intensive farming of SFs were higher than that expected from land restitution. Since SFs were established over extensive land, the GoA aimed at preserving these in order to induce potential foreign investments. "Social Equity Option" did not recognize the 1945 pre-collectivisation ownership rights of owners, hereafter referred to as "former owners" but only their right to financial compensation, State voucher or compensation in kind (Cungu and Swinnen, 1998: 1, 4).[16]

Though they represented only about 3% of the population, former owners organised themselves into the Property with Justice (PJ) group, which enabled them to exert pressure on the GoA and bargain. The outcome of this bargaining was reached two years later, with sanctioning of the right to financial compensation, to compensation in kind for seaside and tourist lands, and to natural restitution of past properties illegally seized after the adoption of the 1976 Constitution.[17] However, the PJ has always remained opposed to the option of

[16]Rights of former owners would be addressed by the law, For Compensation in Value for the Former Owners of Agricultural Land 1993/7699. Available in the Albanian language at <http://www.qpz.gov.al>.

financial compensation and claimed natural restitution of their past properties. Unlike the reform policies implemented by other post-communist countries, in Albania agricultural landholding was exempt from natural restitution. The State assumed that the restitution claims of former owners would be addressed by providing them with financial entitlement or compensation in kind.[18] The rationale behind this exemption is defended by the GoA on the grounds that: a) agricultural landholding on a per capita basis is limited (estimated at 22 hectares per person) compared with the share of rural population living in villages, which was 64%; b) it is difficult to ascertain boundaries of properties and the ownership rights of former owners, or their legitimate heirs, over past properties since the cadastral offices lacked the technical, human and institutional ability to handle the changeover of property rights patterns from a centrally planned to a market economy (World Bank Report, 2006: 44 and Stanfield and others, 2002: 1, 30).

Former owners were incentivised to oppose the "Social Equity Option" because the expected marginal benefits from the received land exceeded the marginal costs of political lobbying through PJ and the legal costs of land restitution claims

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[17] Former owners' legal regime is prescribed in the law, For the Restitution and Compensation of Former Owners 1993/7698, amendments included. Available in the Albanian language at <http://www.qpz.gov.al>.

[18]"Compensation in kind" implies land of the same economic value. In 1991, there was no legal basis to address the restitution or compensation claims of former owners. The first law, On Restitution and Compensation of Former Owners, was enacted by the Albanian Assembly in 1993 (two years after the implementation of the "Social Equity Option").

(Cungu and Swinnen, 2001: 379, 383) A combination of the economic, political and historical all influenced the GoA's decision to choose the "Social Equity Option".

2. Efficiency Assessment

In a cost-benefit analysis, the "Social Equity Option" reform policy was, as Cungu and Swinnen put it, embedded with "efficiency and wealth distribution implications"(Cungu and Swinnen, 1998: 1, 6). First, the adoption of this reform policy was justified by the low income level and low labour opportunity costs of former members of CCs and SFs (estimated at 50% of the labour force and 65% of the Albanian population: pre-1945 landowners accounted for only 3% of the population). The production system of CCs and their subsequent collapse reflect the low expected benefits as well as the low cost of shifting rural households from collective to individual land tenure (Ibid.);[19] Second, the implementation costs of the agricultural land redistribution programme were lower than the lobbying and legal costs of land restitution claims. These costs included the cost of identifying the 1945 pre-collectivisation legitimate landowners, their associated bundle of rights, and the old land boundaries (Cungu and Swinnen, 1998: 1, 8). Third, the cost of collecting legal documentation and mapping information (kept by separate

[19] Inefficiency of agricultural production structures implies low income and low labour intensity of the agricultural production system. (Cungu and Swinnen, *op. cit.*).

State institutions before the adoption of the 1976 Constitution) as a result of inaccurate land records and maps inherited from the past and legal loopholes (Laha, 1999:1-4, Mimeograph). [20]

3. Impact of the Agricultural Land Reform on Property Rights

Fragmentation of landholdings: In rural areas, the shift from collective and State land tenure to individual farming resulted in fragmentation of landholdings. The disruption of CCs and SFs allowed 480,000 households to receive 1.8 million plots, amounting to 0.25 hectare per household. Land fragmentation produced a large number of tiny plots that were widely scattered (Wheeler and Waite, 2003: 1, 7). High transaction costs were positively correlated to the restricted access offered to fragmented landholdings, and generated the following negative effects: hindrance to economic agricultural productivity, idleness of plots abandoned by farmers, decrease in the economic value of landholdings, and the individual's inability to increase property rights through mutual agreements at net gain (Allen, 1999: 893, 898).

[20] After the enactment of the 1976 Constitution sanctioning the exclusive ownership right of the State over immovable properties, no land market transactions were done. The same year, the rural and urban offices for registration of title deeds were closed. Inherited land records and maps are dated from 1912 to 1976.

4. Feasible Solutions to Fragmentation of Landholdings

The economic solution to land fragmentation consists in the implementation of land consolidation programmes conceived by GoA**.** But this process bears direct and indirect transaction costs. Most often, economic scholars of property rights use the term, transaction costs, without giving a precise definition of it. For a clear understanding, the author of this thesis uses the term to refer to the direct or indirect obstacles that rural inhabitants face in bargaining at a net gain; these include all kinds of impediments to the production of surplus value by them (Cooter and Ulen, 2008: 89; Heyne and others, 2010: 47). The scope of agricultural landholdings consolidation programme can be achieved through various methods involving direct costs in moving land fences and concluding voluntary beneficial exchange agreements among titleholders. This method is not largely embraced by peasants due to the difficulty of identifying land parcels of similar fertility. Indirect costs involve organising the titleholders into local farming groups for planting the adjacent tiny plots with the same quality of crop and at the same time. This technique allows them to acquire better results at lower costs than was possible before (Lusho and Papa, 1998: 1, 29).

No cost-benefit study/analysis has been done by competent State institutions (Ministry of Agriculture, Food and Consumer Protection (MAFCP) and local government units) regarding adoption of the agricultural land consolidation

programme. This is recommended to assess its feasibility in practice and in order to achieve the following: a) to improve the economic productivity of agricultural landholdings of various degree of fertility at reasonable costs (Lusho and Papa, 1998: 1, 27); b) to increase its economic value in the land market and, accordingly, incentivise titleholders to maximise their gain through trade; c) to contribute to the establishment of a fungible land market involving not only clear and well-delineated property rights but also the increased willingness of market participants to pay to enter into exchange agreements at net gain.

In order to implement an agricultural landholding consolidation programme, the GoA must: a) enact the supporting legislation for its consolidation at reasonable costs; b) incentivise the peasants to embrace these programmes by negotiating with banks to grant them long-term loans at low interest rates (Lusho and Papa, 1998: 1, 28); c) review and amend the legal norms for property rights which encourage fragmentation of landholdings.

II. Privatisation of Urban State-Owned Housing/Apartments

This typology comprises urban State-owned housing (i.e., apartments in dwelling units as well as individual houses) within construction line boundaries ("yellow line") of settlements (World Bank Report, 2006:112).[21] Ownership rights were

[21] Commercial, industrial State-owned enterprises and public land situated within the yellow line constitute a separate typology of urban properties that is not the subject of this research.

transferred from the State to urban families who had rental contracts for State-owned apartments and houses, and to occupants who had resided there since the rule of the Albanian Communist party and who enjoyed the pre-emption right.[22] By the end of 1993, the privatisation of State-owned urban housing/apartments not subject to claims by former owners (approximately 230,000) were privatised and only 10% were left under State ownership. This proceeded at a rapid pace (Stanfield and others, 2004: 1, 4).[23]

The privatisation of urban State-owned apartments and individual houses suffered from the following fundamental shortcomings: First, there were cases where the National Housing Agency (NHA), the authority in charge, did not follow all the legal requirements for assigning fungible property rights to the new titleholders. Although the NHA (representing the State in the sale contract) and the occupant (the purchaser) would sign a contract, the NHA often did not take the final step of registering it with the Immovable Property Registration Office (IPRO) (APMO and

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[22]The law On Privatisation of State-Owned Housing 1992/7652 allowed these urban families having rental contracts with the State, as of 1 December 1992, to become their legitimate owners <http://www.qpz.gov.al)>; the law On Sanctioning Private Property, Independent Initiative and Privatisation 1991/7512 <www.qpz.gov.al>. There are no statistics available with respect to the market value of urban land and housing when this privatisation process started.

[23]Up-to-date statistics are hard to be identified f for privatized state urban housing/apartments and the homeless share of the population due to lack of up-to-date electronic data of the NHA/LGUs accompanied by their with their unwillingness to disclsose them. NHA and most of LGUs are not provided with a webpage to properly inform the public even they are legally obliged under Article 13&16 of Albanian Code of Administrative Procedure (1999/8485). Available in the Albanian language at <http:www.qpz.gov.al>.

ILD, final report, 2007:40).[24]. Thus, these titleholders still do not enjoy exclusive property rights over their immovable assets, but only the legitimate right of making use of them. Moreover, the statistics regarding the percentage of such titleholders are not available with the NHA.

Second, land surrounding the house or buildings was left under State ownership and used for the community needs of dwelling units: as yards or parking lots (Ibid. 2007:40). Because the urban housing owned by them was not *de jure* represented by an ownership title, this category of immovable property cannot generate incremental wealth to society (De Soto, 2000:16). As Cooter and Schäfer put it, they are "illiquid assets."[25] Accordingly, they lack the economic features necessary to produce liquidity for their holders. For example, for the purpose of receiving a mortgage bank loan secured by an immovable property. Therefore, these titleholders are excluded from the Albanian market economy only as a result of governmental policy.

Third, family members under the age of 18 were not entitled to co-ownership rights over State-owned apartments/housing at the date of their privatisation by the NHA. Only those who were 18 or older enjoyed a pre-emption right over such

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[24] The law, On Registration of Immovable Properties 1884/7843, as amended. <www.qpz.gov.al> According to Albanian law, the transfer of the bundle of rights over an immovable asset is effective from the date of its registration with the IPRO.

25 Cooter and Schäfer, Draft 2009, chapter 4, pp. 12.

properties. In addition the law "On Privatisation of State-Owned Housing, 1992/7652" does not provide a family member younger than 18 years of age the right of legal representation by another adult in this privatisation procedure. There are also no statistics from the NHA regarding the number of family members within the Republic of Albania (RoA) who are exempted from their legal right of co-ownership over privatised State-owned housing/apartments due to this legal shortcoming. Often, this imprecision was corrected by the new legitimate owners who transferred the ownership right, by voluntary agreement, to the excluded family members once they became adults. But this legal solution bears costs (Stanfield and others, 2004: 1, 6).[26]

Fourth, technical errors or imprecision in giving specifics of surfaces, boundaries and identities of owners also occurred during the privatisation process, generating competing claims among different titleholders for the same piece of land. Conflicts arose between occupants and former owners claiming ancestral properties. Former owners were legally entitled to natural restitution of houses illegally nationalised during the communist rule, and were provided with ownership titles by the NHA. The conflicts arose because the "Law On Restitution and Compensation of Former Property Owners" was first prescribed in 1993, one year after the process of privatisation of State-owned urban housing started, and after the occupants of

[26] The costs comprise the mandatory payments of the official fees and the related tax: a) notary fee; b) registration fee with IPRO, c) appraiser fee; d) income tax (Stanfield and others, 2004, pp. 1, 6).

these houses had made investments in these properties before they were *de jure* restituted to former owners. This occurred as a result of the fact that the principle of natural restitution was first prescribed in 1993 by the Law On Restitution and Compensation of Former Property Owners 1993/7698, i.e. one year later that the process of privatisation of State-owned urban housing started. IPRO was not able to preserve maps and legal records of privatisation titles over urban housing/apartments. These problems were caused by the speed of the privatisation process and also by the poor technical knowledge and lack of training of IPRO staff that have had to deal with the new concepts and practices of urban housing privatisation in a market-oriented economy (Stanfield and others, 2004: 1, 8; Stanfield and others, 2002: 1, 15).

Most cases have ended before national courts, where they take, on an average, 36 months to resolve.[27] All the above-mentioned shortcomings represent a source of uncertainty over property rights, impeding an owner's (or presumed owner's) ability to improve or increase the economic value of his properties and freely exchange them in the land market at a net gain.[28]

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[27] The statistic is stated by one of my interviewees, Aida Hajnaj, in-house counsellor, Legal Department, Property Restitution and Compensation Agency (PRCA), on 20 July 2009. The outcome has been cross-checked and confirmed by Agim Toro, Head of PJ, interviewed on 27 July 2009, and Edmond Lekaj, Albanian Expert in Property Rights and GIS Technology, External Advisor to IPRO, interviewed on 22 July 2009. The other interviewees were not knowledgeable with respect to the question addressed. Note that since its inception in 1993, ARCP has not published statistics with reference to court disputes between new titleholders and former owners where ARCP is involved in its capacity as "direct interested party" based on the provisions of Albanian Civil Code Procedure 1996/8116. , <http://www.qpz.gov.al)>.

[28] The terms "presumed owner" refers to the case of point (first) of (sub) heading.

1. Efficiency Assessment

From the efficiency standpoint, the privatisation policy generated the following positive effects: a) the State budget was relieved of having to maintain and administer these urban properties (Aleksi, 2004: no page numbering); b) new owners acquiring fungible properties had an incentive to invest in improving them, thereby increasing the economic value of their assets; c) there was a possibility of new market participants making mutual gains through trade.

But this reform also produced several counter effects. In the world of Coase Theorem, if property rights are clearly specified and well-delineated, and if the transaction costs are insignificant and therefore assumed to be zero, their allocation by the market participants will be Pareto-efficient irrespective of their initial allocation (Schäfer and Ott, 2004: 87). Instead, as a result of careless governmental policy, technical errors and legal imprecision generating, as Cooter and Schäfer term them, "illiquid assets"[29] , uncertainty over property rights and high transaction costs have been the outcome of the privatisation of urban State-owned housing/apartments, which is not Pareto-efficient. This privatisation programme, apart from generating uncertainty over property rights by making

[29] Cooter and Schäfer, Draft, May 2009: chapter 4, pp. 14.

some assets not fungible in the land market at net gain, has also created a category of homeless citizens. In short, this reform produced some winners and some losers. The winners are those who benefited from the pre-emption right of State-owned apartments/housing (social houses) with social prices, i.e., prices below the market value even though their willingness to pay was higher due to the "subjective value"[30] they attached to these houses/apartments. The losers comprised: a) The homeless, i.e., internal migrants from the remote northern and southern areas of the country who moved to major districts with a willingness to pay for housing at the market value. Between 1990 and 1995, their numbers comprised 2,10,000 out of the total population of 31,82,400 (in 1990) and 32,48,836 citizens (in 1995). It was this category of the population that lived in sub-optimal conditions, though some lived in overpopulated flats (Starova, 1997: unnumbered report); b) Family members under 18 years of age, who were exempted from this privatisation process of State-owned apartments/individual houses as well as from the right to legal representation in this regard; c) Occupants of apartments/individual houses belonging to former owners.

2. Feasible Solutions

The National Housing Agency and local government units (LGUs) must do the following: a) set ranking priorities among the identified target group of losers in

[30] Posner, 2003, pp. 56 cited in Miceli, 2007, pp. 1-20.

need of social housing; b) update and use their manual/electronic databases to identify each sub-category among losers of this privatisation for state-owned housing/apartments; c) define estimated costs of providing social housing to the present target group. Before defining a social housing programme, a cost-benefit analysis must be undertaken to assess its feasibility and ensure that potential benefits outweigh all identified costs. Two feasible solutions could be the following:

a)Public-Private Partnerships

According to Aliaj, former advisor to Albanian Prime Minister, the GoA should be able to identify and grant parcels of available State-owned land to the NHA, which can then enter into public-private partnerships with developers/investors in the construction sector. The available State-owned land can also be privatised through a bidding procedure open to national and foreign developers/investors (at least three applicants must compete in the bidding).[31] In this second scenario, once the winner is identified, the contracting parties can set out terms and conditions of the partnership, each providing the other with a share of profits in the form of apartments or cash. If the profit share is assumed to be in apartments, they can be distributed according to a defined ranking priority to the above-mentioned target groups in need of social housing. If the profit share is in cash, then it can be used to

[31] The present bidding procedure must comply with all the requirements set forth in the Albanian legislation with reference to the sale of State-owned properties through a competitive bidding procedure.

build social housing for the same target group. The implementation of this option would require legislation to support it and the provision of tax incentives in favour of private investors and developers. The administrative procedure that private developers/investors must follow to get planning/construction permits from LGUs must also be facilitated. Such a scheme would, in addition, help to decrease high costs in the construction sector through government finance mechanisms (Aliaj, 2008, 177-178; MPWTT and others, 1-6).

b)Construction of Low-Cost Social Dwelling Units

Aliaj argues that the GoA can enter into agreements with second-tier banks to provide long-term mortgage or to pledge banking loans to the target group of losers in need of social housing. There can be a competing procedure among second-tier banks offering long-term bank loans at affordable interest rates. Interests' rates can be fully or partially paid by the GoA. This option is estimated to cost to the State budget EUR 5 million or EUR 10 million in four years. The money to finance this scheme can come from revenue collected during the on-going formalisation process of informal settlements throughout the country. The revenue is estimated to be EUR 6 milliards, all of which goes directly to the State budget (Aliaj, 2008: 179-180, 212)

Both schemes would be a win-win situation for all concerned participants, i.e. for investors/developers subject to business facilitations (i.e. through application of

tax incentives; reduction of excessive lengthy administrative procedures for issuance of planning/construction permits); the target group of losers that will benefit social housing at reasonable costs and the society as a whole, as will benefit from lower costs of construction and consequently, lower prices for housing effected by government finance mechanisms in the construction sector.

III. Legal Regime for Pasture Holdings and Forests[32]

An estimated 10% of all forests and pasture landholdings, constituting a category of scarce natural resources, were transferred to former owners through natural restitution, while 90% remained under the State.[33] This category of property holding is managed by central government units (CGUs) and local government units (LGUs) which allocate *usufruct rights* to individuals, farming families and private entities for the purpose of cutting timber and grazing for a period of 10 years. In areas under national protection, forests and pasture lands were subject to a special legal regime aimed at preserving these as part of the national heritage (World Bank Report, 2006: 16).[34] Law, On Pastures and Grazing Lands (1995/717)

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[32]The legal regime for pastures and meadow holdings is regulated by the laws, On Pasture and Grazing Lands 1995/7917; On the Transfer of Ownership of Agricultural, Pasture and Meadow Lands 1998/8337; and On the Creation and Functioning of Agencies for Land Administration and Protection.

[33]Annual Report of the Ministry of Agriculture and Food, cited in the World Bank Report, Tirana, 2006, p. 16. Since 2001, the Agency for Inventory and Transfer of Public Land (AITPL) has been in the process of identifying and transferring ownership and subordinate rights over subdivided categories of pasture and forests to local government units (i.e., communes, municipalities and counties) < http:www.qpz.gov.al>.

provides for the common right of village peasants to use the pasture lands left under state ownership; But this provision did not take into account the disproportionate ratio between the huge demand for cattle grazing and limited fund of pasture lands (Ibid. 73)

In countries undergoing an economy in transition and also in developed countries the Commons regime persists when the costs of defining clear boundaries around the scarce natural resource are too high, when transaction costs of reaching an agreement for users to access and make use of the natural scarce resource exceed the anticipated gains, and when users have information constraints regarding the costs and benefits on the entry and use of the natural scarce resource. In such cases no agreement can be reached regarding a social-optimal use of the scarce resource (Coase, 1960: 39, cited in Libecap, 2008: 545-547). This, however, is not the reason why the Albanian Assembly (AA) adopted the legal policy of the commons (pasture lands left under state ownership but under the common use of the village peasants) with respect to pasture land and forests to village peasants. Their rationale is that only the State can guarantee efficient use of scarce natural resources (i.e., forests and pastures) and also environmental protection (World

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[34]This specific category consisting of forest and pasture holdings, is regulated by Decision of Council of Ministers, On Approval of Strategy of Biodiversity 2000/532 <http://www.qpz.gov.al>. Decision of Council of Ministers (DCM), On Approval of the Strategy of Biodiversity 2000/532; <http://www.qpz.gov.al>.

Bank Report, 2006: 16).[35] But the 2006 Report of the World Bank Office in Tirana indicates the involvement of the MAFCP (in charge of administering natural scarce resources together with LGUs) regarding the evidence of open access resulting from overgrazing of pasture land by making a reference to the 2003 Biodiversity Assessment in Albania carried out by the Associates in Rural Development (ARD). In this assessment, ARD pointed to the evidence of deterioration of natural resources as a result of what they termed: "overgrazing, wildfire, vegetation fires and deforestation"(ARD - BIOFOR IQC Consortium, 2003:7-13).

1. Reasons for Open-Access

The reasons offered for open access of pastures and forests reflect the "free rider" approach of those using these scarce natural resources. Such users attempt to maximise their payoffs from the extraction of the common resource beyond the optimal level of use at the expense of others (Ostrom, 1990: 6). Such maximisation in the short run is guided by a strong measure of rationality. In the long run, it leads to destruction of the natural scarce resource by each user thinking of his own interest of maximising inputs use of the scarce natural resource at the expense of others (Hardin, 1968: 1, 244, cited in Ostrom, 1990: 2). Other local factors have also negatively impacted the open access regime with respect to forests and pasture landholdings in Albania. To gain a clear understanding of all these

[35]The successors of the royal family of King Zog I (Ahmet Zogolli) were exempted from the natural restitution of their ancestral properties through the law On the Status of the Successor of the Former Royal Family 2003/9063. <www.qpz.gov.al> Accessed on 27 July 2009.

reasons, it is relevant to point out the particularities of the post-communist land tenure status. As indicated in this thesis, Albanian customary law (kanun) continued to affect the post-communist land tenure status in Albania due to weak law enforcement by institutions and the uncertainty over land tenure perceived by the community. Former owners had a strong sense of ownership towards their ancestral land, and there was evidence that in some areas of the country, forests and pasture land that were *de jure* under State ownership and management by CGUs and LGUs were in reality under the control and use of former owners. These former owners gained access over their past properties guided by legal norms of the Albanian customary law called kanun. As a result of the deterioration in quality of this typology of landholding and the poverty of most of the rural population, they did not exclude village residents from using the land for grazing (Welsh, 2001: Ph.D thesis, chapter 9: 1, 9). In some areas this resulted in over extraction of the scarce resource.

The State failed to efficiently manage scarce natural resources for the following reasons: a) lack of a well-trained staff and financial resources; b) inefficient management of natural resources by CGUs and LGUs; c) weak institutional enforcement mechanisms. Furthermore, due to economic poverty, the rural population had no choice but to disregard laws protecting the natural resource from over extraction. Overgrazing is also due to an increase in the number of cattle belonging to village communities. (ARD-BIOFOR IQC Consortium 2003: 16-18; Welsh, 2001: Ph.D thesis, chapter 5: 1, 191). Therefore, there is a disproportionate

ratio between the high demand for cattle grazing by the village peasants and the limited available fund of pastureland. Village residents are allowed to organise themselves into user groups to make use of natural resources for harvesting and grazing, but their rights and duties with respect to the use of the resource are not clearly specified (World Bank Report, 2006: 17).

2. Feasible Solutions to Open Access Regime

An analysis of available reports and assessments suggests that the following solutions might be considered optimal in reducing the overexploitation of the natural resources under the Commons regime. Economics of property rights teaches us that a shift to private property patterns leads to full internalisation of social costs and benefits by private owners, guaranteeing a social-optimal use of the scarce resource. Private owners would not be incentivised to overexploit the natural scarce resource in the short run, since it would result in destroying the community resource in the long run (Libecap, 2008: 545, 548-549). In the Albanian context, privatising of pastureland and forests that would be claimed by former owners as natural restitution would lead to high fragmentation, producing all the associated negative implications that have been discussed in this master thesis for agricultural landholdings. Instead a model of local participation, involving LGUs and the village community, can be designed by policy makers in order to motivate the community to not exploit the natural resource beyond an optimal level. CGUs and LGUs can retain ownership rights over forests and

pastureland, but long-term usufruct rights can be transferred to private entities, including individuals or/and local groups of village peasants. The range of resource extraction should, however, be controlled at reasonable State's costs through State regulations and taxes. Returns from the sale of firewood harvested from forests should also be taxed (Ibid.: 545-548). The higher the level of firewood harvesting, the greater the level of tax level in order to induce the users to refrain from harvesting. Both typologies, i.e., pasture lands and forests, are cost-efficient provided that they are implemented at reasonable monitoring costs (lower than the expected benefits).

There is need for up-to-date empirical data and in-depth analysis regarding the nation-wide evidence that has recently emerged about open access regime and their environmental and socio-economic implications. In its 2006 report, World Bank Office in Tirana indicates the involvement of MAFCP in connection with such evidence, but no up-to-date study has been conducted by CGUs and LGUs in this connection, though they are the only public authorities responsible for the management of natural scarce resources. Once an empirical study is done, a cost-benefit analysis of the most efficient legal policy to be implemented, which would guarantee social-optimal use of a natural resource under the Commons regime, is recommended to effect a change.

D. RESTITUTION AND COMPENSATION PROCESS

I. Legal Regime for Restitution and Compensation

In 1991, Republic of Albania (RoA) recognised the legitimacy of restitution claims by original landowners or their legitimate heirs in order to correct and indemnify past injustices perpetrated by the Albanian Communist regime. Since 1993, the associated legal and institutional framework on restitution and compensation (R&C) to former owners has been subsequently replaced and amended. This has resulted in the following negative effects: a) it has hindered an active land market; b) postponed national and foreign investments; c) affected the banking credit system, i.e., landholdings and real properties subject to ownership claims cannot be offered as mortgage collateral for the repayment of bank loans. As a result, these assets cannot be put to their most efficient economic use until a final decision is made by the court. This decision takes on an average three years. Until then, there can be no gain through trade among market participants and, accordingly, no further increase in social welfare occurs.

The principle of R&C was introduced in the Albanian legal framework in 1993. Natural restitution applied to urban land and housing nationalised after 29 November 1944, provided no *fundamental changes* had occurred to the economic value of the house as of its nationalisation date, and that an alternative house or

lease had been offered to the occupant (World Bank Report, 2006: 44).[36] The rationale of this date (i.e., 29 November 1994) represents the political will of the first post-communist government to restore properties that were illegally seized between 1946 and 1991, i.e., during the rule of the Communist party. As a result, land belonging to the former Albanian royal family and religious institutions, as well as agricultural land, pastureland and forests, were all exempt from natural restitution.[37] Complete compensation in kind was confined to 15 hectares; partial compensation was granted for land ranging from 15 to 1,100 hectares. No compensation in kind was granted for land beyond 4,305 hectares (European Parliament, 2008: 1-4).[38] Exempting agricultural land from natural restitution was a populist approach taken by the first post-communist government to protect the interests of rural households, which represented 64% of the population (Ibid.: 44). If State buildings had been erected on urban land, former owners were entitled to a

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[36]This principle was introduced two years after the landholdings and real properties privatisation programmes were initiated by the GoA, in 1991. The principle was prescribed in various legal acts: On Restitution and Compensation of Former Property Owners 1993/7698, amendments included; On Compensating Former Owners for the Value of Agricultural Land 1991/7501), amendments included; and On Land 1991/7501, amendments included. These laws provide the legal basis for the restitution and compensation process of three typologies of landholdings and real properties subject to analysis in this master thesis. <http://www.qpz.gov.al>.Accessed on 20 July 2009.

[37]The successors of the royal family of King Zog I (Ahmet Zogolli) were exempted from the natural restitution of their ancestral properties through the law On the Status of the Successor of the Former Royal Family 2003/9063. <http://www.qpz.gov.al>.Accessed on 27 July 2009.

[38]For this category of land, a mathematical formula was provided. Since the compensation in kind has not been granted by PRCA as a result of an incomplete inventory of State-owned properties, this provision remained unenforced.

pre-emption right over them.[39] The first law "On Restitution and Compensation of Former Property Owners" (1998/ 7698) failed to restore the rights of former owners due to the following reasons: a) subsequent postponements of the initial deadline of nine months for submission of claims as of 1998; b) inability of GoA to grant compensation in kind for State-owned properties;[40] c) failure of GoA to enact the valuation methodology that had to prescribe the mode and amount of financial compensation;[41] d) out-dated maps; e) lack of coordination and cooperation between State institutions and agencies dealing with property rights; f) lack of clear administrative procedures for implementing policies; g) legal loopholes and the institutional incapacity of the State Committee for Compensation and Restitution of Properties (SCCRP) to efficiently resolve conflicts arising among former owners or between former owners and new titleholders.[42]

[39]In 1993, when the first law On Restitution and Compensation of Former Property Owners 1993/7658 was enacted by the AA, this rationale was not supported by data with respect to the available fund of agricultural and urban land and the number of former owners claiming natural land restitution or compensation in kind.

[40]Failure of the GoA to grant compensation in kind stands as well for the current law On Restitution and Compensation to Former Property Owners 2004/9235, as amended.

[41]Valuation methodology was approved in 2005 only for the capital of the country by the State Commission for Restitution and Compensation of Property to Former Owners 2005/16. This legal loophole was completed by the year 2008.

[42] State Committee for Compensation and Restitution of Properties (SCCRP) was authorized by the previous law On Restitution and Compensation of Former Property Owners 1993/7658, as amended, to be the State authority in charge of carrying out the restitution and compensation process.

Since the R&C process was the main obstacle to establish a fungible land market, GoA invited the OSCE in Albania to draw on its international expertise and draft a new law.[43] Under pressure from the Property with Justice (PJ) group and others, including some political parties, the AA adopted a new law (no. 9235, dated 29.07.2004), "On Restitution and Compensation of Properties", which gave priority to natural restitution over compensation.[44] The new law no longer exempts from natural restitution the properties of the former royal family or of religious institutions, land in tourist areas or land that does not serve any public interest; the limit of 10,000 square metres for urban land to be restituted has also been removed. Up to 60 hectares of agricultural land was subject to natural restitution, provided that the claimant had not acquired this typology of land under the land redistribution programme (World Bank Report, 2006: 91; European Parliament, 2008: 1-5). Only Albanian nationals, both natural and legal, are entitled to R&C. The new law, giving preference to restitution over compensation, was not supported by statistics indicating the amount of land or real properties available for R&C, the number of claimants, transaction costs of ascertaining the right of former owner and forgone opportunity costs.

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[43]On Restitution and Compensation of Immovable Properties 2004/9235, as amended. OSCE presence in Albania provides legal and technical expertise to the GoA through its Property Reform Unit for registration of immovable properties as well as property restitution and compensation. For further information, please refer to <http://www.osce.org/albania/18643.html>.

[44]Article 1 of the current law gives priority to natural restitution over compensation. When restitution is not feasible, the claimant is entitled to switch to financial compensation or compensation in kind.

II. Shortcomings of Restitution and Compensation Process

Though the law was broadly reviewed by international experts, major political parties and relevant State institutions, its enactment does not per se represent a solution. The R&C still bears legal, economic and institutional shortcomings that generate insecurity over land tenure, impeding the establishment of a fungible land market. The Property Restitution and Compensation Agency (PRCA) did not inherit statistical data from the former SCCRP regarding R&C claims resolved under previous legislation, the financial compensation allocated to former owners or the number of restored properties (APMO and ILD, final report, 2007: 48). The author of this master thesis points out the major shortcomings of the R&C process impacting its completion negatively as from the year 1993.

1. Lack of Transparency and Access to Information

The PRCA is as yet nowhere close to delivering up-to-date statistics, based upon which the GoA could draw up a comprehensive strategy to provide reliable estimates of the total cost of R&C and to identify the resources to finance forgone opportunity costs at the expense of society as a whole (APMO and ILD, 2007: 51). In 2006, PRCA received financial and technical assistance from the OSCE presence in Albania to design and maintain an electronic database. However, PRCA's administration is still reluctant to make use of this database to issue reliable data.

Jack Keefe, the international advisor of OSCE in Albania, and external advisor to PRCA and IPRO, gives the rationale behind this:

> . . . their files have been digitalised and they have a database. . . . It does not appear that they have used this tool to assist them to decide claims more quickly and transparently. . .The reasons for this are probably a lack of capacity on the part of staff, a lack of resources (personnel and equipment), lack of procedures and, especially*, a lack of commitment and political will on the part of the Government* [emphasis added] *(*Interview by the author of this master thesis on 18 July 2009).

This rationale was cross-checked with the approach of other interviewees and confirmed by them. In this regard, Aida Hajnaj[45], in-house counsellor of the PRCA, argued that the lack of incentives of the PRCA's administration to efficiently deal with restitution and compensation claims is related to the lack of political will of the central government, to corruption and the direct interests of lobbying groups.

The PRCA lacks the incentive to maintain a proper database and share official information, as also the ability to efficiently handle R&C claims. The PRCA's website shows clearly that the information provided is insufficient to properly inform the public.[46] This lack of transparency violates Article 13 and 16 of the

[45]Interview with Aida Hajnaj on 25 July 2009.

[46]No information is provided on the website about its last update. All that is written is "Copyright 2009", without a specific date.

ACAP as well as the current law on R&C prescribing the obligation of the PRCA to correctly and dedicatedly inform the public.[47]

State institutions and political organisations have also approved an estimate not exceeding EUR 4 milliards for financial compensation to former owners (Aliaj, 2008: 209). Assuming that GoA will be able to allocate only 500,000,000 Albanian Lek(ALL) (or approximately EUR 387,386,6894) @ EUR 1: 129.07 ALL, as it has been done in the last two years, to financially compensate former owners, it will take the State approximately 1,032 years.[48] There is also no constitutional or legal binding on subsequent governments to comply with this policy. Therefore, the titleholders enjoying ownership rights over the properties of former owners will not be induced to improve the value of their property as long as the R&C process remains open-ended, generating uncertainty over their land tenure and impeding gain through trade in the land market. The lack of transparency and lack of an integrated information database have caused PRCA's staff to behave opportunistically with respect to the enforcement of the current amended current law on R&C (2004/9235). Even the process of inventory and registration of State-owned properties has not been completed, though the PRCA has approved four

[47]The right to information is a constitutional principle introduced in the Albanian Code of Administrative Procedure (ACAP). Article 23 of this Code sets forth the legal obligation of the public authorities to closely cooperate with and assist the interested persons in an administrative procedure.

[48]EUR1@129.07ALL. As per the official exchange rate of Central Bank of Albania, available at <http://www.bankofalbania.org/web/Exchange_Rates_2014_2.php?kc=0,2,3,1,0>. Accessed on 21 July 2009.

arbitrary decisions for compensation in kind (Celo, 2009: 1-7).[49] In this connection, European Parliament notes the following:

> . . .the lack of sub-legal acts led to the implementation of the compensation process only in exceptional cases, connected with personal interests of certain "vip" individuals, *members of Restitution and Compensation Commissions etc.* In this case, compensation took place in kind (land*)*...[emphasis added] (European Parliament, 2008: 1-10)

2. High Transaction Costs

When applied in the context of private law, the Normative Coase Theorem guides the lawmaker to draft legal rules in a way that encourages market participants to mutually trade at a joint net gain (Cooter and Ulen, 2008: 96-97). The same approach can be applied in the case of public law; the law can then achieve its scope by lowering high transaction costs that impede legitimate persons from exercising their legitimate rights. In a multidisciplinary research conducted by APMO and ILD in 2007, a survey was done in two major cities of the country to assess transaction costs in an administrative procedure for claiming natural restitution or financial compensation before the PRCA.[49] Each procedure was divided into several stages, covering all the steps that an applicant must follow regardless of what the legal rules state. An estimation of transaction costs involved

[49]The administrative procedure followed by each applicant claiming natural restitution or financial compensation is summarised in Appendixes 3 and 4 of this master thesis.

both effective costs (legal fees, bribes, transportation costs) and opportunity costs. The latter is the sum of the mathematical costs resulting from the time spent by each applicant to follow the complete procedure (APMO and ILD, 2007: 269-271). The results show that an applicant needs approximately two years to prepare and submit the requested documentation to the PRCA towards an expensive fee ranging (approximately between EUR 137 and EUR 161) per application filed.[50] Forgone opportunity costs also accrue from the ambiguity and overlapping of legal rules, restricted access to information, and lack of institutional transparency, all of which oblige citizens to visit local and central offices of the PRCA several times. These costs would be eliminated if there was clarity on legal rules, if information could be properly accessed from the website, and if PRCA's employees were incentivised to assist the former owners.

3. Absence of a Cost-Benefit Analysis

Lack of recent empirical data and up-to-date statistics makes it difficult to accurately assess expected costs and benefits of addressing the R&C claims of former owners. It also leaves room for the process to be manipulated and politicised by political parties and lobbying groups. A cost-benefit analysis has never been done by the GoA to develop a long-term strategy for providing sustainable and definite remedies to the claims of former owners. Such a strategy

[50] The administrative procedure is expensive taking into account that the minimum salary in Albania is 14,000ALL or approximately equal to EUR 108@EUR 1:130(as regulated by DC M 7703/1993).

would have to anticipate or at least go along with the drafting of the R&C legal package. As a consequence of being under pressure from lobbying groups, such as political parties, PJ and high public officials, the solutions provided by the GoA have been sporadic, careless and incomprehensive. Those heading the PRCA have been replaced every year by the GoA; most of them under prosecution or court proceedings for corruption. There are also statements from former owners declaring they have been obliged to pay bribes to their public officials (APMO and ILD, 2007: 54).

Financial compensation is estimated to be between EUR 10 milliards and EUR 30 milliards. Because there has been no cost-benefit analysis for implementing the whole R&C process by the legal deadline of 2015, the GoA has not been guided by a comprehensive governmental strategy setting forth the funding criteria for each budgetary year. This rationale stands behind the arbitrary policy of the financial compensation fund allocated each budgetary year by the GoA (Aliaj 2008: 209; APMO and ILD, 2007: 48-50).[51] In 2005, GoA allocated a financial compensation fund of only 200,000,000 ALL (or EUR 1,631,454.44 @ EUR 1: 122.59 ALL) for the capital of the country; in 2006 the fund amounted to 300,000,000 ALL (EUR 2,415,458.94 @ EUR 1: 124.20 ALL); between 2007 and 2008, it was 500,000,000 ALL (or EUR 4,046,289.55 in 2007 @ EUR 1: 123.57 ALL, and EUR 4,074,979.62 @ EUR 1: 122.7 ALL in 2008). No decision has still been taken for the year 2009

[51]Besnik Aliaj served as advisor to the Albanian prime minister for property and territory issues during the years 2005-2007. This estimation is also mentioned by interviewees in all interviews.

(Celo, 2009:1-8,). [52] Assuming that GoA will allocate 500,000,000 ALL (or EUR 3, 873,866.89 @ EUR 1: 129.07 ALL) per budgetary year, and taking into account the stagnation policy of last year's allocated financial compensation fund, this process will take 7,744 years for a cost estimation of EUR 30 milliards; or 2581 years for a second cost estimation of EUR 10 milliards. On the other hand, the State institutions concerned claim that the cost estimation does not exceed EUR 4 milliards (Aliaj, 2008: 209). If this is the case, and the money for cash compensation is allocated, the process will take 1,032 years. [53]

However, the current law "On Property Restitution and Compensation" (2004/9235), as amended, states that the financial compensation process must be completed by the year 2015. Based on the above, the current legal deadline appears to be far from realistic.

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[52] In 2005, GoA allocated two hundred million ALL; in 2006, the progressive amount of 300,000.000 ALL. This data belongs to a report prepared in February 2009, by. Genc Celo, deputy general director of Immovable Properties Compensation Department, PRCA. In 2007, Albania had a budget deficit of 46.848.000.000 ALL; in 2008 its deficit increased to 85.348.000000 ALL; whereas in 2009, it decreased to 50.011.000.000 ALL. <http://www.minfin.gov.al> Accessed on 22 July 2009.

[53] These results involve the following calculations: the cost estimations are divided by the amount of EUR 3,873866894 budgeted during the last years (2007-2009). Furthermore, an additional result is given based on the cost estimation of the GoA, consisting of 4 millards EUR. The conversion from ALL into EUR is done based on the official exchange rates of the Central Bank of Albania.<http://www.bankofalbania.org>.

4. Unrealistic Cash Compensation Methodology

The current legal framework provides for property to be subject to financial compensation *at the full market value at the moment of its valuation*. This rationale is in line with the Albanian Constitutional Court (ACC) Judgment (2000/12)[54] aiming to protect the interests of former owners on grounds of fairness and social justice by rectifying past injustices (OSCE, 2003:1-6). This Judgment lacks an economic rationale, which should have been critically considered with reference to expected costs to the State in implementing the R&C process. Based on this Judgment, this estimate was confined *only to agricultural land typology* amounting to approximately 327,407 ALL or approximately EUR 646, 000, 000(OSCE, 2003:1-28).[55] The compensation had to be fully financed by the State budget, which in 2000 was characterised by a deficit of 49,174,000 ALL or approximately EUR 362, 586.[56] Furthermore, the Judgment does not guide the GoA on how to clearly define market value under fairness and social justice considerations. Applying this Judgment the year of its issuance on 2000, for the financial compensation of former owners at full market value at the moment of *its valuation* only for agricultural land typology, the OSCE presence in Albania stated

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[54] Judgement of Albanian Constitutional Court No. 12 dated 21 March 2000. Available in the Albanian language at <http:// www.qpz.gov.al>. Accessed on 22 July 2009.

[55] As per official exchange rate of effective date of the budget law(i.e., 26 December 1999) Eur 1@135, 62 ALL.<http//www.bankoflbania.org>

[56] Budget estimations are provided in Budget Law, 2000. no. 8554, dated 10 December <http://www.qpz.gov.al> Accessed on 23 July 2009.

that the price per hectare would range between US$26,000 and US$103,000.[57] Following this rationale of the ACC Judgment, the market price of agricultural land in Albania would have to be much higher than it was in developed countries. Today, the negative outcome arising from the payment of financial compensation according to the above-mentioned criteria derives from this 2000 ACC Judgment, which the GoA is constitutionally obligated to enforce. Accordingly, social opportunity costs are forgone each budgetary year in financing education, basic public services, infrastructure, etc (APMO and ILD, 2007: 51). This valuation methodology proved to be socially inefficient. The experience indicated that Albanian state does not have the financial resources to compensate at the full market value at the moment of the valuation of the past property. Furthermore, the state is still unknowledgeable of the budget fiscal implications to grant financial compensation to former owners. Besides that, there is evidence of political influence in defining this methodology representing the interests of specific target group (Tomson, mimeograph to be published in late 2009). Albanian taxpayers and their successors, strictly complying with the criteria set forth by the ACC, are destined to finance per each budgetary year for a specific officially unknown percentage of the population for past injustices which they or their predecessors suffered 33 years before.[58]

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[57] OSCE, 2003: 1-22. In contrast, in Vienna of 2000, the price of agricultural land per hectare was approximately US$ 10,000, whereas in the United States, it ranged between US$ 6,000-10,000 per hectare (Ibid.)

[58] There are no statistics from PRCA regarding the share of the population represented by former owners.

5. Unenforced Option of Compensation In Kind

Former owners can switch to or choose the option of compensation in kind to receive State-owned properties. They are entitled to an alternative property unit that is similar to their previously held property in terms of surface area and economic value. The Agency for Inventory and Transfer to Public Properties (AITPP) is the State authority in charge of the inventory and registration of public-owned properties with the IPRO. However, statistics with respect to the progress of such activity are hard to come by; neither does the AITPP have a website to inform the public or interested parties about the process. Aida Hajnaj, in-house counsellor at PRCA, states: "AITPP is reluctant to share its data with PRCA even though it is legally required to comply with such an obligation" (this author's interview with Aida Hajnaj on 27 July 2009).

In an official report submitted to the Albanian Ministry of Interiors, the head of the AITPP admitted that as of 2001, the Agency had concluded the complete inventory of properties, but only their partial transfer under the administration of local government units (Cupi, 2009: 1-4)[59]. The AITPP expects the final step regarding registration under State ownership with IPRO to be concluded in the

[59]Typologies of State-owned properties involve both agricultural and urban land, buildings irrespective of their use, as well as pastureland and forests.

next four years. This report has a *confusing* and *descriptive* nature, lacking statistics, lacking legal and economic analysis with reference to the up-dated status of this process, lacking a methodology for the undisclosed data it has and, especially, lacking estimated costs for the completion of the process.

In brief, the Albanian State does not know what land typology, where and how much owns. These facts, it seems, will be disclosed only in 2013. The reason this process has been delayed is because the systematic initial registration of property units with the IPRO has not been completed since 1994. In fact, Jack Keefe highlights the incapacity of the AITPP to properly deal with data management and by-law procedures for better implementation of the process, saying:

> ...AITPP suffers from a lack of institutional capacity, i.e., data management and decision-making capacity along with a lack of clear implementing procedures...(This author's interview with Jack Keefe, OSCE presence in Albania, Expert in Property Rights, External Advisor to IPRO and PRCA, on 18 July 2009).

As long as this process remains open-ended, the legal alternative of compensation in kind to former owners will remain unenforced for the next four years.[60]

[60]The alternative, compensation in kind, to former owners is set forth by Article 28 of the current law On Properties Restitution and Compensation 2004/9235, as amended.

6. Poor Coordination with other Institutions

Lack of efficient coordination in handling the R&C process occurs for legal and institutional reasons. For example, two State institutions/agencies might grant ownership of one property to two different natural or legal persons; Or properties might be granted with overlapping boundaries because of the PRCA's out-dated, inaccurate maps, its lack of incentive to use the current database, and its resistance to cooperation. IPRO is legally required to submit to the PRCA up-to-date legal and technical information on each property claimed by a former owner (i.e., up-to-date maps offering clear and accurate boundaries for each property, accurate location of each property as well as adjacent properties on the map, and proof of ownership for each registered property) in order to avoid the error of compensating a legitimate claimant twice, yet it is reluctant to do so (APMO and ILD, 2007: 55-56).

In practice, IPRO and PRCA are legally required to share and cross-check information before the latter arrives at a decision for each case. Once PRCA officially requests IPRO to submit the above-mentioned data, lengthy administrative delays occur. In the meantime, and as a result of not sharing official information and not coordinating with the competent national court, this authority assigns the ownership to another claimant. Taking into account that court proceedings on R&C claims take on an average three years, it is possible that in the meantime the IPRO has officially transmitted to PRCA information that does not

reflect the fact that the same property-unit is subject to a court proceeding by (an)other claimant(s). The lack of coordination and sharing among institutional actors (IPRO, PRCA and National Courts) could mean that PRCA assigns ownership of a property unit quite different to that assigned by the competent national court. The negative outcome results in overlapping of rights between different titleholders over of the same property. In such cases, only national courts are entitled to resolve the new-born conflict.[61] As long as a decision is not made by the competent national court, the claimed property is unable to produce surplus value in the land market.

The GoA is aware of the negative outcome generated by each institutional actor's lack of incentive to cooperate and share official data efficiently, as stated by the following finding of the 2007 research conducted by APMO and ILD:

> ...there is no sharing of information, statistics, or ideas; no synergies; no economies of scale; one agency has little idea what the others are doing, and even if they do, sharing of information is not a priority. The current property system is much like an office full of computers that have been not networked: every machine is an island of its own information (APMO and ILD, 2007: 32).[62]

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[61]This outcome has been cross-checked and confirmed by Aida Hajnaj, in-house counselor at PRCA, interviewed on 20 July 2009; by Edmond Lekaj, national advisor in property rights; GIS expert Edmond. Lekaj has been providing expertise to the IPRS since 1994 and to the PRCA since 2004. Edmod Lekaj was interviewed on 22 July 2009.

[62]The same finding is cross-checked and confirmed by the interviewees : Agim Toro, head of Former Owners Association; Edmond Lekaj, national expert in property rights and GIS system; and Jack Keefe, international expert of OSCE presence in Albania and external advisor to IPRS and PRCA.

Other reasons are based on loopholes in legal rules. According to the current legislation, former owners enjoy a pre-emptive right over buildings erected on their land during the rule of the Communist party (1946-1990). In 2002, another law was enacted by the AA, enabling LGUs to acquire ownership of State-owned buildings transferred under their administrative jurisdiction. These conflicting rules generate uncertainty over land tenure and leave properties that are not fungible in the land market until conflicts are definitely resolved by the court. Taking into account the average of three years taken by court proceedings for restitution or compensation claims, forgone opportunity costs will, in the interim period, be generated.[63] Albanian courts do not possess statistics for the time taken by court proceedings in restitution and/or compensation claims. Cases of lengthy proceedings by the Albanian national courts are often mentioned in judgments of the European Court of Human Rights where, till the year 2007, 120 former owners brought their lawsuits.(APMO and ILD, 2007: 44). There is also no economic study related to transaction costs borne by the applicants due to lengthy procedures by national courts.

E. CONCLUSIONS

I. Most Feasible Policy: Restitution versus Compensation

The current legal framework has failed to efficiently and properly address the R&C claims of former owners. The PRCA once again missed the second legal deadline of 30 June 2009 to definitely address these claims as a result of the major obstacles identified in this thesis.[64] This failure has created forgone opportunity costs by leaving the claimed properties (for natural restitution or in-kind compensation) out of the land market, and generating uncertainty over land tenure. The process diverts the time and effort of former owners, or their heirs, in reclaiming their properties other than through mutually beneficial exchange agreements producing joint surplus value (Batt 1991: 78, cited in Bönker and Offe, 1993: 1-36). Incompletion of the process for natural restitution and compensation in kind creates uncertainty, which in turn impedes national and foreign investments that would generate an increase in societal welfare. In September 2009, the AA must amend the current law "On Restitution and Compensation" (9235/2004), as amended, to enable PRCA to carry out this process. Once again the GoA failed to comply with the deadline provided in the Article 24 of current law to definitely address the claims of former owners for natural natural restitution and compensation in-kind within 30 June 2009. In this context, it would be

[64] Article 2 of the law On some Amendments and Additions to the law On Restitution and Compensation of Properties(2008/9898).

worthwhile for GoA to work on feasible solutions that definitely resolve the claims of former owners under efficiency and social justice considerations. Achieving this requires a comprehensive strategy based on the following: a) accurate statistics on R&C claims of former owners for each typology of immovable property and the number of claimants; b) a cost-benefit analysis; c) a complete inventory and registration of State-owned properties so that the Albanian State, knows as APMO and ILD put it: "who owns what",[65] how much and where; d) clear and well-defined property rights with no overlapping of rights and boundaries; and e) an integrated information sharing system for all pertinent institutions, which is not yet available.

To identify the most feasible solution to efficiently address the past wrongdoings to former owners, the theoretical debate among the law and economics scholars with respect to the division between property rule and liability rule has relevenace to this research .

According to Schäfer and Ott, under the assumptions of the Coase theorem, the resource allocation is efficient from a welfare economics viewpoint, and the protection aligns with the principle of private autonomy. Applying the property rule to allocate and to enforce the entitlement enables the market participants to enter into voluntary agreements at net gain and the seller to transfer possessory

[65] APMO and ILD, 2007, pp. 34, 244.

rights at the price that is subjectively worth to him/her(Schäfer and Ott, 2008: 42-52).

Under high direct and indirect transaction costs, the property rule no longer aligns with the welfarist criterion and there will be a shift to the liability rule. Under this rule, a third party (the court or an arbitration authority) will assess the economic of value of the entitlement that no longer aligns with autonomist principle of private law(Calabresi and Melamed, 2007: 15-24). Therefore, the seller is exposed to the risk of being granting a financial compensation that does not comply with the value he/she attaches to the entitlement; But as Miceli puts it, this solution is "a practical compromise"[66] in order to be affordable at reasonable costs to the society. Voluntary transactions are preferred by the market participants because they are free to determine the economic value of the entitlements; But under high transaction costs, there is shift to the liability rule to achieve efficiency and redistricbution, under a win-win situation(Ibid.: 15, 26).

But each rule bears its pros and cons. Property rule is applied to restore the rights of former owners through natural restitution, whereas the liability rule implies the financial compensation. Therefore, the assessment between liablity rule vis-à-vis property rule will be guided by the welfarist criterion and the interests of social justice.

....[66] Miceli, 2007, pp. 1, 48.

Based on the best available official data and information this author could gather from interviews conducted with national and international experts representing various actors in the current R&C process, and from review literature and official reports of Albanian State institutions, this author reached the following conclusions:

1. Conclusions on Fairness versus Social Welfare

When dealing with R&C policy, the main task of the Albanian lawmaker is to balance fairness with social welfare. In this context, *fairness* corresponds to the notion of corrective justice with respect to the backward-looking approach of natural restitution. Fairness and morality do not rely on the utility levels of individuals in a given society, but on the *social welfare* function of that society, independent of individual morality (Shavell 2004: 599-611). Promoting the notion of fairness will conflict with the Pareto principle when it makes all individuals worse-off (Kaplow and Shavell, 2003: 1-4). In order for the A A to adopt a Pareto-efficient legal policy with respect to the restoration of former owners' rights, the unanimous consent of all individuals in a given society is required. This outcome is difficult to achieve because each economic reform generates winners and losers by creating a loss that is borne by some individuals in a given society (Hicks, 2008: 43-57). The best possible solution would be to adopt a legal policy that is both socially just and Pareto-efficient. This state of affairs can be achieved through wealth redistributive goals requiring winners *in principle* to compensate losers by

transfer of direct payments and yet remain better off. When an economic reform is being implemented, transfer of direct payments can *in theory* be done by legal rules dealing with wealth redistributive goals to achieve a net gain in a given situation. This is a Kaldor-Hicks solution to an economic reform that is oriented towards wealth maximisation of all individuals in a given society (Schäfer and Ott, 2004: 28-34). In the Albanian context, application of a Kaldor-Hicks principle to restore the rights of former owners could be the most feasible solution, complying with the interests of social justice and the efficiency criterion. This author makes use of this principle to identify the most feasible solutions to indemnify former owners for past wrongdoings.

According to the official data gathered by this author, the most reliable estimated cost for financial compensation amounting to EUR 4 milliards (the figure agreed upon by the State institutions concerned) would enable the State to complete compensation in 1,032 years.

2. Conclusions on Financial Compensation

The definition of the full market value of the property at the moment of its valuation corresponds to the objective value of the immovable property as opposed to what Posner calls its "subjective value"[67] or Miceli calls it 'true reservation

[67] Posner, 2003, pp. 56 cited in Miceli, 2007, pp. 1-20.

price'[68], which represents a higher price than that given by former owners to a comparable property in a mutually beneficial exchange agreement This approach considers only the justness criteria, forgoing the efficiency criteria that also takes into account the social and macroeconomic implications borne by the State (Schwartz and Tyson, 1992: 15-19).

Failure to grant financial compensation to former owners based on the above criteria indicates that the Albanian State does not have the financial resources. Before adopting the new rates for financial compensation, the GoA should assess the ability of the State to manage its costs. In this regard, GoA can adjust prices by assessing the social and economic consequences of a new financial compensation scheme as follows:

a)Calculating the economic value of property at the moment of nationalisation (OSCE 2003: 1-22);

b) Setting forth a financial compensation limit for each typology of landholding and real property. In case of co-ownership, this can be defined on basis of the percentage of property per owner (Kecskés , 1992: 42-45)[69];

[68] Miceli, 2007, pp.2.

[69]This criterion was adopted by Hungary, which opted for a financial compensation policy instead of natural restitution. The only exception was the property of the church, which was subject to restitution with some limitations (Blacksell and Born, 2002: 180-182).

c) Defining a valuation methodology complying with the justness and efficiency criteria, i.e., finding a balance between the economic interests of former owners and the whole community that must bear the costs of compensation, including forgone opportunity costs. In this regard, a scientific-based methodology to assess market value, independent of the direct influence of lobbying groups (such as PJ, some political parties and high public officials), has to be defined.

d) Defining a uniform market value for each typology of landholding to avoid the unjust approach of granting disproportionate financial compensation to former owners (Tomson, mimeograph to be published in late 2009)

3. Conclusions on Natural Restitution

This is a cost-efficient solution in terms of budget and time provided that: a) the administrative procedure for ascertaining ownership over a former landholding is speeded up by PRCA;[70] b) PRCA, IPRO and the national courts efficiently coordinate and share official information. This information has to be integrated into a single standardised system to prevent overlapping of rights and/or

[70]Based on the detailed administrative procedures included in Appendixes 3 and 4 of this master thesis, the current administrative procedure for property R&C takes on an average two years.

boundaries of adjacent plots and issuance of titles to different claimants over the same piece of landholding; c) the GoA is certain that the restituted property cannot be allocated to the most efficient use in the public interest and that there is no possibility of foreign or national investment that could benefit the community.

d) the owner of the restituted landholding is subject to a real property-use tax at the moment of acquiring an ownership title and that he complies with land use regulations. In reality, private owners do not pay the real property-use tax, even though they are legally required to do so. Lack of enforcement mechanisms from the LGUs in charge of collecting this tax has resulted in an annual loss of EUR 0. 5 milliard to the State budget (Aliaj, 2008: 210). This money could instead be used as a resource to financially compensate former owners.

4. Conclusions on Compensation in Kind

Based on the 2009 official data of the AITPP, compensation in kind does not seem to be a feasible policy for indemnifying past wrongs to former owners. The Albanian State will be able to initiate in-kind compensation only in 2013, provided full registration of these properties is completed. Such properties, meanwhile, will not be able to generate wealth. Former owners are inclined to attach of what Posner terms "a subjective value"[71] to their past properties that is much higher than the value they attach to an alternative comparable land. Therefore, the utility

[71] Posner 2003: 56 cited in Miceli, 2007: 1, 19.

level from natural restitution of a restored past property is higher than the utility level from compensation with a similar one. Accordingly, they may not be willing to accept an alternative piece of land. In addition, granting similar parcels of landholdings in terms of size and quality can lead to high land fragmentation(small-scale landholdings), the same outcome that occurred with the redistribution programme of agricultural land to rural households. This would prevent these properties from being put to the most effective use by reducing their economic value in the market. In-kind compensation can be cost-efficient to the State budget, but problematic to estimate the accurate economic value of past landholding(s) and accordingly, to offer a comparable piece of property. This author believes it is problematic because it might be difficult to find alternative landholdings that bear, in objective terms, comparable social and economic features. This holds especially true for agricultural landholdings confined to 700,000 hectares , given that the rural population accounted for 55% of the total population in 2006 (Celkcenter 2004: 3, cited in Tomson, mimeograph to be published in late 2009). Greater efficiency would be achieved if the State, after registration of State-owned properties, were to enact land use regulations and allocate land to the highest bidder(s). The number of bidders must not be less than three and bidding for this typology of land must be open only to nationals (natural and legal). This would be in line with GoA's legal policy for protecting limited available agricultural land. The rationale of this restriction lies in the fact that Albania is an agriculture-oriented country. It would be more efficient for the whole community if large-scale landholdings were developed, complying with land use

regulations and these were privatised by the highest valuing bidder, rather than if three hectares were subdivided into small parcels and offered as compensation in kind to 30 former owners(s) or their legitimate heirs(being even more numerous).

Jack Keefe, OSCE expert of property rights in Albania, external advisor to PRCA and to IPRO, states: "...PRCA does not have the technical capacity to identify and distribute alternative parcels of land to former owners in a fair and transparent process that would be completed in a reasonable time frame" (this author's interview with Jack Keefe on 18 July 2009). In this case, their economic value would be much higher than that of small fragmented landholdings allocated as in-kind compensation.

II. Conclusions for the Most Feasible Policy

Based on the best possible disclosed official data and on information gathered for this master thesis, the author could conclude the following:

Natural restitution as a cost-efficient solution can be enforced *provided that all the above-mentioned criteria are met*. Restitution attempts best to serve the interests of both social justice and the economic efficiency criterion of the community as a whole. The enforcement of natural restitution can be justified by the GoA (government of a country with a transition economy) as a signal to the Albanian population of its commitment to address past wrongs and its ability to stick to

what Bonker and Offe term 'the sacredness of property titles,'[72] thereby enhancing its reputation as a defender of populist causes but *at a reasonable social cost*. The revenue gathered from the property-use tax of restituted properties can be directly distributed to former owners as financial compensation. When this legal policy option cannot be enforced because all above-mentioned criteria (aimed at balancing morality and economic efficiency) are not met, GoA must switch to the financial compensation option, provided that all the above-mentioned criteria are met. Financial compensation complying with the above-mentioned criteria will allow the State to indemnify past injustices at reasonable State costs, i.e., it would be cost-efficient and simultaneously fair to society as a whole. Taking into account the shortcomings stated in this thesis regarding implementation of in-kind compensation, this is not an economically efficient solution. The most efficient as well as socially just solution would be to privatise the State-owned landholdings through a competitive bidding process. Landholding in this way would be allocated to the most valuing users and put to the most efficient economic use. The revenue gathered can be distributed to former owners for the purpose of granting financial compensation.

This approach of addressing the most feasible solution to the R&C claims embraces the Kaldor-Hicks principle to serve the interests of both social justice and economic efficiency.

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[72] Bönker and Offe, 1993, pp. 1-16.

II. Final Conclusions

The goal of this research was to analyze from a legal and welfare economics standpoint, under fairness and social justice considerations, the effects of the land post-communist reforms.

The initial research questions of this master thesis were: a)Which are the effects over the land tenure and establishment of a fungible land market arisen as a result of the transition from a command economy to a market economy? b)Which is the most feasible solution vis-à-vis natural restitution versus financial compensation to former owners for the present typologies of property holdings?

1.Conclusions Related to Research Question (a)

The privatization process for the abovementioned typologies bore legal, economic and institutional shortcomings by creating some loosers and some winners, uncertainty over the land tenure and not a fungible market for immovable properties. The uncertainty over land tenure, leads to a sub-optimal use of the asset by the titleholder and an increase in defence costs of the asset by claimants (Alston and Mueller, 2008: 579-580). This has been the scenario in most areas of the country after the implementation of post-communist landholding reforms. Accordingly, the following main implications have arisen: a) high fragmentation of agricultural landholdings b) a target group of loosers from the post-communist

economic reform in need for social housing that is still not clearly and accurately identified by the NHA c) evidence of open acess for state-owned pasture holdings and forests due to some persistence of albanian customary rules, weak law enforcement of legal rules and poor management and maintenance of the these natural scarce resources by the CGUs and LGUs. To correct the losses created by the shortcomings of the post-communist privatization process, it is highly recommended to reinforce the Rule of Law by providing clear, well-delineated property rights and strong law enforcement by the respective state agencies and institutions. There is a logical relevance between the Rule of Law and the development of countries in transition economy. Clear and well-delineated property rights prescribed by unambiguous and consistent legal rules for efficient voluntary market transactions are not, as Epsetin puts is, "self-sustaining". They must enjoy legal remedy by the State, i.e., government officials in case of violations of entitlements. Then, the Rule of Law defines the required rules for for investment in a market economy generating societal wealth (Epstein, 2004: 1, 4). In this regard, a comprehensive governmental policy guided by the interests of social justice, efficiency criterion and a cost-benefit analysis has to be designed by the GoA in order to balance the societal losses through redistribution. This would be a Pareto optimal outcome, i.e., the subsequent change could not improve the conditions of some winners in the society that they can compensate some losers and still remain at a net gain (Calabresi and Melamed, 2007: 15, 18).

2. Conclusions Related to Research Question (b)

The property R&C process has failed to properly address to address the claims of former owner for natural restitution, in-kind compensation and financial compensation. Due to subsequent replacement and amendments of the legal framework, sporadic and highly politicized governmental policies, it is uneasy to identify the target group of winners and losers in the whole process. In this research, the author has pointed out the reasons that have held up its completion. The author also suggests the most feasible solutions vis-à-vis natural restitution versus financial compensation to restore the property rights of former owners within a reasonable time frame. Both solutions bear pros and cons. Restitution can be granted by the PRCA provided that all the above-mentioned conditions are met; otherwise GoA must shift to the financial compensation complying with all the criteria mentioned above. In this regard, there is an urgent need to adjust the valuation methodology for financial compensation in order for the state to grant financial compensation at reasonable costs. To properly and efficiently address this issue, the GoA should conceive a comprehensive governmental policy guided by the welfarist criterion and the interests of social justice among the respective state institutions and agencies to properly coordinate and cooperate to complete this process at reasonable costs.

APPENDIX 1

I. Questionnaire for email interviews by this author

1. Has the incompletion of inventory and registration of State-owned properties affected the process of natural and in-kind restitution in favour of former owners? Which are the factors that still hinder the completion of this process?

2.Does the Property Restitution and Compensation Agency (PRCA) possess statistics from the Agency for Inventory and Transfer of Public Properties (AITPP) regarding the inventory and registration of the following State-owned typologies: a) agricultural land b) urban land and buildings; c) forests and pastures holdings?

3. Is there a lack of coordination and sharing of official information among IPRO, PRCA, AITPP and national courts? What are the implications and outcomes?

4. Are you for or against the financial compensation of former owners based on market value (objective price) as against subjective price?

5. Throughout your work experience, have you identified an overlapping of competencies among involved State institutions and agencies assigning property rights over immovable properties? If yes, can you assess the implications?

6. Why has the PRCA failed to maintain its electronic database to produce statistics with reference to the restitution and compensation process?

7. Has the Government of Albania (GoA), since 1993, done any cost-benefit analysis with respect to the most feasible solution, i.e., natural restitution or financial compensation?

8. What would you identify as benefits and costs for each solution and how would you assess them? In this regard, which would you consider the most feasible policy, natural restitution or compensation, to be implemented by GoA? What is the rationale for your choice?

APPENDIX 2

List of Interviewees

1. Jack Keefe, OSCE presence in Albania, Expert in Property Rights, External Advisor to IPRO and PRCA. Interview by email on 8 of July 2009.

2. Aida Hajnaj, In-House Counsellor, PRCA. Interview by email on 20 July 2009.

3. Edmond Lekaj, Albanian Expert in property rights and GIS technology, External Advisor to IPRO. Interview by email on 22 July 2009.

4. Victor Endo, Vice President of ILD, Former International Advisor to Albanian Prime Minister (2005-2007). Interview by email on 25 July 2009.

5. Agim Toro, Head PJ. Interview by email on 27 July 2009.

APPENDIX 3

1. Procedure to Claim Financial Compensation at the PRCA of Tirana

Stages		Steps
Stage 1	Drafting & Filing of Legal Documentation	2
Stage 2	Drafting of Specific Requests to the Central PRCA	3
Stage 3	Preparation of Maps on Previous & Present Coordinates	8

Summary	
Steps: 13	Time(Days) 675
Stages: 3	Cost: 204,683ALL[73]

Source: (APMO and ILD, 2007: 548)

2. Procedure to Claim Financial Compensation at the PRCA of Kavaja

Stages		Steps
Stage 1	Drafting and Filing of Legal Documentation	2
Stage 2	Drafting of Specific Requests to the Central PRCA	3
Stage 3	Preparation of Maps on Previous & Present Coordinates	8

Summary	
Steps: 13	Time (Days): 590
Stages: 3	Cost: 177, 730ALL [74]

Source: (APMO and ILD, 2007: 552)

73 Approximately EUR158(EUR1@129,52ALL). Last updated: 23 July, 2009. <http://www.bankofalbania.org/web/Exchange_Rates_2014_2.php?kc=0,2,3,1,0?.> Accessed on 23 July 2009. 1

74 Ibid. Approximately EUR137(EUR1@129,52ALL)

APPENDIX 4

1.Procedure to Claim Natural Restitution at the PRCA of Tirana

Stages		Steps
Stage 1	Drafting & Filing of Legal Documentation	3
Stage 2	Drafting of Specific Applications to the Central PRCA	7
Stage 3	Appeal at the Central PRCA	14

Source: (APMO and ILD, 2007: 556)

Summary	
Steps: 11	Time (Days): 681
Stages: 3	Cost:209,506ALL [75]

2.Procedure to Claim Natural Restitution at the PRCA of Kavaja

Stages		Steps
Stage 1	Drafting and Filing of Legal Documentation	3
Stage 2	Preparation of Maps on Previous and Present Coordinates	7
Stage 3	Appeal at the Central PRCA	4

Source: (APMO and ID, 2007: 560)

Summary	
Steps: 14	Time (Days): 681
Stages: 3	Cost: 208,656ALL[76]

[75]Approximately EUR162(EUR1@129,52ALL). Last updated: 23 July.2009. <http://www.bankofalbania.org/web/Exchange_Rates_2014_2.php?kc=0,2,3,1,0?.>.Accessed on 23 July 2009. 1

[76]Ibid. Approximately EUR161(EUR 1@129,52ALL).

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