

WOMEN'S PROPERTY RIGHTS IN ALBANIA

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An Analysis of Legal
Standards and their Application

Second Edition

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Women's property rights in Albania
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FOREWORD

This study presents an overview of women's property rights in Albania, identifying main barriers to enjoying these rights, ranging from legal standards to daily practice. The study identifies several important measures to ensure that women property rights are properly respected and upheld, including significant measures that aim at improving law enforcement regarding property and property availability in practice.

Women and girls are one of the fundamental elements of a healthy and productive society and economy, to which men and women alike can contribute to their fullest extent. Women's opportunity to use and control production and economic resources is a key element to ensure their empowerment allowing them to take control over their lives and to fully engage as a positive force in the family, community, and society. Valuable immovable assets, including land and property, are a reserve or lifesaving boat in difficult times for owners. For women in the family context this may imply much more. Owning land or property provides protection; it provides security for the family in difficult times, enhances the bargaining power of the household and provides an opportunity for economic independence or the potential for obtaining loans to engage in entrepreneurship.

Significant international agreements and human rights treaties, such as the Universal Declaration of Human Rights 1948, the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW), 1979, the Charter of Fundamental Rights of the European Union, 2007, set forth provisions to safeguard women's equal rights to land, property, housing, and economic resources to ensure a sustainable livelihood.

Globally, gender inequality with respect to land and production resources ownership directly correlates with women's poverty and their exclusion. Barriers that prevent women from accessing property or using and controlling land and property are correlated with inadequate legal standards and ineffective implementation of existing laws at the national level, as well as discriminatory cultural attitudes and practices in national institutions and communities, and Albania is no exception.

The European Commission Progress Report for 2015 stresses that, "The application of property rights remains an issue to be guaranteed, while property registration, restitution and compensation processes have yet to be completed. It is necessary to further develop jurisprudence on discrimination." Albania needs to make further progress towards implementation of the 2012-2020 Strategy on Property Rights and Property Registration, Restitution, and Compensation Process." Although property ownership may be a complex issue in Albania, uncertainties over property ownership require capacity strengthening within the justice system, including facilitating access to information, improving access to legal counseling and increased awareness of rights related to property titles for women and men alike.

Considering that Albania is a State Party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), its international commitments to reviewing and consolidating property rights regime need to be taken into consideration. UN Women has supported the Government of Albania in coordinating and guiding the development of various national strategies and approaches that directly support gender equality, including the 'National Strategy on Gender Equality and Elimination of Gender-Based Violence & Domestic Violence' and the 'Cross-sector Reform Strategy and Action Plan on Property Rights (2012-2020)'. UN Women continues its efforts for Gender Equality and the Economic Empowerment of Women, to ensure that gender perspectives and needs are fully taken into account and that women's property rights are properly respected and upheld.



David Saunders,

UN Women Representative

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This study builds on the contribution of many institutions and specialists, including judges, notaries, scholars, lawyers, representatives of institutions, civil society and international organizations.

UN Women would like to thank all of them for their support in bringing practices and concrete facts, which indicate that, although the law seems to be comprehensive and equal for everyone and foresees “anti-discrimination” and generally neutral provisions, their implementation brings about different results. This implies that despite its approach oriented towards equality and anti-discrimination standards, the current legislation will remain a passive tool, unless women property rights are recognized, and unless they are claimed by both individuals and institutions through adequate and effective tools.

UN Women would like to thank first and foremost the author of this study, Mrs. Arta Mandro, for her outstanding contribution and her dedication to summarizing and enriching the second edition of this paper.

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SUMMARY OF FINDINGS

This paper aims at elaborating aspects of the legal and factual status of women's property rights in Albania. The right to property has been the subject matter of many studies conducted by other countries of the region and beyond, with a focus on ownership rights to immovable property, and particularly to land as such¹. In the meantime, aspects of such rights and the status of the women are mentioned in study reports developed for Albania.

According to Article 149 of the Civil Code, "Ownership is the right to freely enjoy and dispose objects, within limitations established by law." This study particularly intends to analyze the enjoyment of such a right by women. To this end, we have attempted to provide an answer to the following questions:

- Considering the extent and limitations of the Albanian law, are women truly entitled to and enjoying their property rights?
- Considering that existing statistics do not seem to be positive, what are other factors influencing the current situation?
- Are legislation and policies in this field aligned with international standards and are they adequate for the Albanian case to allow for its diversities?

To assess the above issues, we have relied on the study findings we have taken as reference, the judicial practice and the opinion of experts of the field, who are familiar with the matters that apply to Albania's case. This report strongly focuses on judicial practices regarding not only quantity but also quality. Such focus on the judicial practice is naturally driven by the fact that although the legislation related to the property enjoyment and administration by the women is generally comprehensive and neutral, its outcomes and application lead to hardship for women.

The main aim of the study is to bring the issue of women's property rights in Albania to light from a historic and current point of view, analyzing both longstanding and new problems. In particular, the root of the problem is both in the past and present. Thus, the paper naturally presents court decisions and reports that cover different time periods, as are laws analyzed herein, etc. The reviewed and cited court decisions may seem irrelevant, but they highlight problems that are not coincidental, though they may be illustrated or found in only one decision. A cited court decision may have a certain typology, but the vulnerable subjects have not found the courage to go to the court in all cases. A cited decision, be it only one, is

important because some right has been infringed, and although it may not be a phenomenon, it needs to be noted in order to attract the attention of authorities and individuals.

There are numerous factors impacting the current situation of women's property rights. The infringement of property rights is driven by tradition, customs and dominating mentality, how the law is implemented, the awareness level of women and their efforts to obtain what belongs to them, and the awareness level and professionalism of actors in the justice and social system, in general.

Following the 1990s, a comprehensive legal reform and a series of programs were undertaken in Albania aimed at increasing access to property rights, including women's property rights, mainly to immovable property and land². However, these initiatives seem insufficient. The process is still underway. The reform outcomes are not the expected ones. According to the Amnesty International 2006 research statistics, which was referred to by the Albanian government in several documents, such as the 3rd Periodic Report [2010] under the framework of CEDAW, only 8% of women are legal owners of property. Thus, the following question arises: What is the situation in reality and how has it changed since 2010? Upon Decision No. 806/26/11/2014 of the Council of Ministers, the 4th National Periodic Report on implementing the CEDAW Convention was approved. This periodic report does again not provide official statistics regarding the status of women's property rights. This periodic report refers to the data retrieved from another report by the WB, which reads: "In the three year period (2011-2013), men have taken two-thirds of mortgage loans being disbursed, while

women have taken out only one-third of them. Women own 37.61% of properties, while men own 62.39%. The number of women inheriting property has increased from 38.71% in 2011 to 45.11% in 2012, whereas in 2013 there was an almost equal percentage for both³. In this regard, some improvement of the situation has been noted. In relation to the data about Albania, the WB report cited in the CEDAW periodic report highlights that the identification of owners is very limited, resulting in higher needs for more system identification data in the future. In addition, it points out that the data taken into consideration do not portray the actual situation in Albania due to the small sample (only one-third of all the records identified gender). As stated in the report, this has resulted in absurd percentages in all research areas for Albania⁴.

The situation appears to be critical at a global level, as well. From an international comparative perspective of the census in agriculture, women own less than 20% of the land. In the meantime, the Property Rights Index⁵ (a subcomponent of the Economic Freedom Index) for 2012 gives Albania a score of 35 out of 100 points, ranking it 102nd country among 130 countries. The Property Rights Index lists Albania in 115th place out of 129 countries in its classification for 2015. This index measures the extent to which laws protect property rights and the degree of their enforcement, as well as the independence of the judiciary, the existence of corruption therein, and the ability of the private sector to enforce contracts. The Global Property Guide considers protection of property rights as a key factor affecting the field of investments and tourism development⁶,

which are so important for Albania. This situation indicates the need for a firmer and broad-based commitment in order to achieve the objectives of equality and non-discrimination in the field of property, as well.

The right to property remains an important issue and is one of the 12 priorities for the country's

EU integration. Putting in place tangible measures to improve and protect the rights of women and drafting anti-discrimination policies remain among the key obligations in the EU integration framework and in the context of respecting CEDAW as an obligation for Albania.⁷

The study is divided into five [5] sections.

THE FIRST SECTION lists all the international instruments affecting women's property rights that have been ratified by Albania. It is apparent that the list is almost exhaustive, and it is easy to note that there is no hesitation by the side of the Albanian State to ratify the international instruments in this field, both at a global and regional level. The task at hand is to internalize them enough and implement them. The international instruments underline that property rights are not subject to any gender bias and the right of ownership on land and other movable and immovable properties, as well as the right to housing, etc. therefore, apply equally to everyone and are fundamental human rights enshrined in the international instruments and in those referring to women's rights, which aim at ensuring protection against discrimination. There is no doubt that jurists play a crucial role in this aspect, but the issue is much far reaching. The judicial practice which was observed for the purpose of this study indicates an extremely limited reference to these instruments. In the meantime, much remains to be done so that these instruments become applicable in those cases where their adequate enforcement requires making a separate law. In this respect, the "approximation task" of each legal act and bylaw with the international standards is an ongoing process and an obligation for Albanian institutions. The purpose of these instruments being described in a separate section is to highlight the international focus on property rights issues and to summarize them for interested parties.

THE SECOND SECTION elaborates the Albanian legislation from a historical and current perspective. Becoming familiar with the historical aspects of property rights goes beyond culture or curiosity. This is a necessity considering that these norms affect the current situation in the country. Regardless of our feelings and of whether it has produced positive effects, the history of the right to property has a tangential, indirect or even direct impact on the current state of women's property rights. The correlation between the historical aspect and the actual observation of women rights, made in this study, reflects the impact of this right. In the meantime, we have come across a limited number of decisions that refer to previous laws, since the current law does not have any retroactive effect and as a consequence we have observed that the application of a past vague norm in terms of gender discrimination has influenced women's property status to date. There are a few cases when the customary law tradition overshadows contemporary legal institutions, which constantly strive to align themselves with international standards. At times, such norms are deeply-rooted and zealously defended, ignoring hence, the yet fragile principles of equality. Seeking to prevail, the customary law undermines women's property rights that are as legitimate as those of the opposite gender. We also find such observation in the assessment of the gender impact on the land administration in Albania, Montenegro, Bosnia-Herzegovina, and in a series of studies conducted about Albania in this respect. People interviewed for this study, most of whom were lawyers, share the same opinion. They confirmed that during their activity they have experienced the pressure and impact of the customary law emerging in the form of deeply-rooted customs and mentalities in people's mindsets.

In Albania's case, the issues related to property rights also stem from the radical changes of shifting from one system, which is said to have eliminated the private property, to a more democratic one that in turn, recognized the right to property. Yet, it is obvious that there is still a long way to go from recognition to the true application of such a right. The legal reform on the right to property has been a dynamic process and is associated with the continuous improvements of gender equality standards. The same applies for policy papers that have been carefully drafted primarily focusing on women's rights in the frame of affirmative action. However, considering that results indicate a striking inequality, they should serve as driving force towards further legal and policy reforms that include, inter alia, legal aspects related to inheritance, land policies, women rights in rural areas, issues of agricultural families, adequate housing policies, issues of access to financing, matters of marital property during and upon dissolution of the marriage, etc. Among relevant strategic documents the Crosscutting Strategy Reform in the Field of Property Rights and the National Strategy on Gender Equality and Elimination of Gender-based Violence and Domestic Violence [2011-15] are worth mentioning. An important aspect of these two documents is gender budgeting and the focus on the impact on gender-based aspects.

THE THIRD SECTION makes a transition from a *de jure* to a *de facto* context. We have duly focused on this context since it juxtaposes the significance of the two first sections of our study. In conducting the analysis in question, we strongly relied on the judicial practice and the opinions of experts and NGOs operating in the field. Findings highlight the existence of issues relating to the legal aspect, the mentality and deprivations stemming from tradition and customs, women's poor awareness level, challenges faced by institutions and the shortcomings of systems coordinated among them, lack of professionalism by lawyers while filing a lawsuit, etc. Practice suggests that the main field in which constant infringements occur is property rights.

The focus of our analysis is set on family and marital relations, since these institutions affect the quality of life and the respect for any individual as a wife, mother, sister, daughter, etc. Rights infringements begin with the so-called administration of small items that belong to "items of individual or personal use". We opine that unless women fully enjoy rights on movable and personal items that appear to be of "lesser value" or in other words "movable", they will not be able to manage income from their work, if her contribution as unpaid work is not appreciated or respected neither by her nor by her family members, and the aspects relating to the enjoyment and administration of "large" assets will be nothing but a utopia for women and subject matter of court cases. It seems that prior to "entering into a marriage", couples have limited knowledge about marital property regimes. For this reason, we have proposed the establishment of pre-marriage counseling centers in the vicinity of civil registry offices. Property rights are subject to deprivations throughout marriage as well. There are many legal acts performed under conditions of total ignorance or in good faith by the side of the wife and in bad faith or even deceitfully by the side of the husband or other family members. We have given examples of such cases in the section about representation, sale and donation contracts, etc., which portray a typology of the male behavior. In general, these cases are "revealed" upon dissolution of the marriage or the passing of the husband, because rarely can such issues be revealed during spouses' cohabitation. Women are not very aware of the legal protection against those spouses who abuse with property and do not contribute to the family. Judicial practice indicates that there is no example of women resorting to the court to obtain authorization to perform necessary actions in the interest of the family, but which are hindered by their spouse (Article 91). Apparently both institutions and spouses have no clear understanding of Article 57 of the FC in terms of "marital residence," regardless of its status as a common or personal property. On the other hand, women have a clear understanding of the implication of "relinquishing" ownership on immovable property. Nonetheless, according to our judicial practice there is no case regarding aspects provided for under Article 61 of the FC about the "urgent measures" the court can approve upon request of the spouse, in case the other spouse clearly fails to fulfill his/her obligations and puts the interest of the family at risk. Interviews with the judges indicate that they need to be more informed on the urgent range of measures that the courts might apply to family cases.

We are equally doubtful about the right of spouses to “freely manage their income” during the marriage, for as long as the women are not aware of and have not understood it clearly. Undoubtedly, this affects women’s property status, but that remains to be reviewed in another analysis. Other articles of the Family Code that enshrine the principles of rights and obligations deriving from marriage [Articles 50-65 FC], thus ensuring adequate protection of women’s rights and, consequently of the marriage as such, are rarely applied and widely unknown in practice. These refer to cases of obtaining court authorization in the event of some legal actions in the interest of the family, or alimony obligation for the spouse, etc.

Marriage dissolution brings about different economic consequences depending on the gender. The practice of the CLCI lawyers indicates that about 70% of the marriage dissolution cases end up in severe infringements in terms of women’s property rights. There is no proportionality between on marriage dissolution and on marital property partition lawsuits. Women seem to seek escape a desperate marriage and they do not claim marital property partition, while turning to justice is viewed as a very difficult process with many obstacles, such as cost, duration, repeated conflicts, lack of safety, etc. Figures at the national level for 2010 show that the ratio of lawsuits for marriage dissolution versus property partition (not only marital) is 91% to 9% in favor of the former. This ratio was subject to change in the following years. Thus, in 2013 there were 6712 marriage dissolution lawsuits [or 86%] and 1136 martial property partition lawsuits [or 14%]. In 2014, the figures were: 7214 or 85% marriage dissolution lawsuits and 1315 or 15% martial property partition lawsuits. Generating data from the court system does not enable the classification of lawsuits, regardless of whether the parties are spouses or not. In 2015, the Tirana District Court added martial property partition to the family law decisions search menu, in the decisions repository. For this court, it results that for 2015 [up to 26 November 2015] there were a total of 655 marriage dissolution lawsuits and 13 martial property partition lawsuits and the ratio of these lawsuits is 98% to 2%. Meanwhile, a wide range of labels for property lawsuits make it difficult for us to summarize and generate the relevant statistics.

We have noticed that in the majority of the decisions the economic status of the couples requiring marriage dissolution is highly unsatisfactory. This does not imply that spouses with an average or above average economic status do not dissolve their marriages. It often occurs that women are not included in the property records and judges have come across numerous cases where husbands require that their wives not be given their property. Furthermore, cases of hidden assets are also present, and they range from legal registration under the name of parents or relatives of the husband, “disappearance” of the bank deposit accounts for the entire duration of the marriage dissolution process, ambiguities in terms of the compensating

contribution and the unpaid labor and its amount, etc. It seems that even leaving the residence to the wife after marriage dissolution fails to solve the issue, as long as she is faced with endless financial difficulties and is not capable of paying the rent determined by the court in the husband's favor. We have identified extreme cases, such as: exploitation of legal space and model water and electricity supply contracts in which the head of family/former spouse authorizes the interruption of these services for the residence where the former spouse and their children are living. We have also carried out a concise analysis of the decisions regarding alimony obligations. We have identified that although the mother is the main responsible parent following marriage dissolution, she is still the one that goes from institution door to institution door requesting that she be paid child support, often not finding a solution.

In this section we have addressed property aspects of the family based on very limited data at our disposal and we have stated the need for a specific commentary regarding this institution, and also the victimization of women with a co-habitant status for property related reasons.

This study also focuses on another aspect of family life that is the parental administration of child wealth. A novelty of this study is this perspective on women's property rights linked with aspects of child wealth administration. The monitoring of court decisions indicates that not only there is inequality regarding income, but that there is also an unequal positioning of the parents, vis-a-vis their children's wealth. However, a more detailed and comprehensive study is recommended, as it would enable us to grasp the situation and the standards applied to the special protection of children, as well as the current status of the parents and of the woman as a mother in the Albanian family. Discrimination and its patterns are acquired in the family. For this reason, we recommend special attention to this issue even through studies of this nature in order to encourage positive action.

Inheritance is an important way of acquiring property and as such, it has a particular place and role in the woman's property status. The judges and other individuals interviewed do underline that the most common way for a woman to become an owner is through marital co-ownership or inheritance from their family or spouse. Co-ownership and inheritance are considered as the only way.

Should they not benefit from this right either, then the percentage of women owning properties shall constantly decrease, or differently put, the number of women owning properties shall constantly decrease. Inheritance issues are part of the judicial practice and reflect the daily range of socio-economic problems that have a particular impact from the gender perspective and highlight the impact customs and gender stereotypes. These cases constitute an important part of the judicial activity, estimated at 28% - 31 % throughout the years.

We have focused on the impact of laws implemented in different times on inheritance-related issues and have further analyzed some of these laws, such as: the Law on Property Restitution and Compensation, the effects of the Family Code [in different time periods] with regard to the property acquired during marriage by inheritance, the identification and current interpretation of several ambiguous Civil Code provisions etc. We have carefully seen how customary law affects the right to inheritance, in particular in terms of the exemption of girls and women from such right and the phenomenon of renouncing the inheritance that is quite present in the judicial practice. In this part we have concluded that women have poor access to inheritance.

Our focus are sale contracts, the acts of representation and gift contracts from the perspective of the access to or violation of women's property rights either directly or indirectly. This section contains numerous references of court decisions and opinions of lawyers and experts who emphasize that in the contractual field women are faced with manipulations and difficulties mainly caused by their spouses or brothers-in-law and by women's poor awareness and by the institutions' irresponsible actions.

Women in rural areas and their challenges in relation to property rights are the focus of this study. In this section we have specifically dwelled on the role of the agricultural household representative, who does not hesitate to de facto exclude women from the ordinary and extraordinary property administration matters. Only a limited number of such infringements and disputes are submitted to the court. The interviewed experts emphasize the poor information and awareness level of women and the need for intervention in the Civil Code provisions in the section on the agricultural household.

The rapid process of informal building in Albania has had its impact on women's property rights. Some cases have boldly pushed their way through to the Supreme Court and have resulted in the court taking a position on highly sensitive matters both from the social and property perspectives. There are a considerable number of Albanian families who live in residences built with the common contribution of both spouses without any construction permit or property certificate. Such couples have not always had a happy marriage. Many have requested marriage dissolution and have learned that their property is de facto, but not de jure recognized as such by the Albanian law. Although the legalization process has not yet come to a conclusion, requests for marriage dissolution and property partition are present every day. The self-declaration aspect for unauthorized constructions has made husbands more actively involved, thus having their name recorded in the process and the documents. Many trials have been initiated with the purpose of recognizing the right to be included in the legalization process. The new law adopted on the registration of immovable property de jure eliminates the ambiguity and uncertainty that negatively impacts women's rights. However, it is yet unknown though, what the degree of infringement of women's property rights by the previous law has been. Moreover, not every woman has equal access to the judicial system, due to high judicial proceedings related fees.

The right to housing and to an appropriate residence is one of the fundamental rights for adequate living standards. It is more common for women to not be able to afford the rent, and water and energy bills, as well to face difficult housing conditions in inappropriate residences. Additionally, the provisions of the Family Code that stipulate the right to a residence upon marriage dissolution, which following court investigation is awarded to the wife is seemingly less than beneficial in practice, since although the woman obtains the right to live in the residence, she lacks sufficient means to pay the pay off the amount owed to the former husband, and is hence forced to sell the residence and split the proceeds.

Furthermore, following marriage dissolution and because they are not head of the household, women are at risk of facing water and electricity cuts, since the former head of the household may submit a disconnection request to the relevant entities, with the latter respecting such request and depriving the woman from enjoying the right to housing.

The report brings up issues relating to financing, bank loans, mortgage assistance and other forms of financial loans and subsequently, finds that the situation has changed only slightly if at all, compared to previous results. There is still lack of favorable policies to encourage the private entrepreneurship of girls and women. Statistics are quite limited in this area. INSTAT has no data on the economic status of women as compared to that of men. In addition, it has information on the immovable property registered according to gender or any other relevant information related to bank loans.

THE FOURTH SECTION deals with the studies related to property rights. It provides a summary of some of the studies, reports, or policy papers on women's property rights in Albania. Moreover, the reader can find several research efforts in the region and beyond to read. Some of these documents may be helpful for the researchers in their analyses and also for policy-makers in terms of the strategies to be pursued, based on similar experiences and original solutions to the property issues by adapting them to the diversities they represent in our country's context, etc. By doing so, we have identified some of the international projects and partners who have played an important role in matters relevant to property rights, in general, and those of women in particular, in the Albanian context. The list is not exhaustive; therefore, an extended bibliography shall be included in the annex to this study.

*THE SELF-DECLARATION ASPECT OF INFORMAL BUILDINGS HAS MADE HUSBANDS MORE ACTIVELY INVOLVED AND HAVE **THEIR NAME RECORDED** IN THE PROCESS AND THE DOCUMENTS.*

*THE NEW LAW ISSUED ON THE REGISTRATION OF IMMOVABLE PROPERTY DE JURE ELIMINATES THE AMBIGUITY AND UNCERTAINTY THAT NEGATIVELY AFFECTS **WOMEN'S RIGHTS**. IT IS STILL UNKNOWN HOW THE PREVIOUS LAW HAS VIOLATED **WOMEN'S PROPERTY RIGHTS**.*

THE FIFTH SECTION focuses on the role of some institutions that are instrumental to the protection of women's property rights. The State takes on special importance and serves as a safeguard in this respect. Thus, our focus is the judicial activity, the notary service, legal aid and protection, the Ombudsman, and NGOs. There are, nonetheless, many other institutions, such as the bailiff service, the police, etc., that play their role in this process.

The right to property is not isolated and its sole improvement will automatically affect woman's economic status. This right pertains to those rights that bear particular significance for women's economic empowerment and beyond. The change towards improvement relies on several other factors, such as: employment encouragement and the elimination of wage differences; family emancipation and empowering gender equality in all aspects in this small aspect of life that has a large impact on the present and future, etc. Self-respect and respect for your own rights should be the driving force underpinning women's awareness, so that they themselves promote the change, by abolishing gender-based stereotypes rooted by custom and traditions and disguised to the extent that it becomes hard to recognize.

Another very important element is educating professionals and institutions involved in policy-making and who undertake positive actions complying with the gender equality standards. The prominence of some stakeholders in this process and the role of the NGOs that present issues as they encounter them in the field, without any modification whatsoever, is quite essential.

The study comes up with a series of conclusions and recommendations that are considered relevant for the improvement of the situation and elimination of gender-based discrimination in matters pertaining to property rights.

***THE PROPERTY RIGHT IS NOT AN
ISOLATED RIGHT,***

*AND ITS SOLE IMPROVEMENT WILL AUTOMATICALLY
HAVE AN IMPACT ON WOMEN'S ECONOMIC STATUS.
THIS PERTAINS TO THOSE RIGHTS THAT BEAR
PARTICULAR SIGNIFICANCE FOR WOMEN'S ECONOMIC
EMPOWERMENT AND BEYOND.*



Methodology in brief

THE MAIN STAGES OF THIS STUDY ARE AS BELOW:

Review of the selected applicable legislation and a qualitative analysis of the impact of the legal provisions on women's property rights from a historical perspective;

Research of literature, studies, and reports concerning women's property rights at local, regional and global level, arranged according to a guide compiled for this purpose;

A study of the current state of women's property rights

Interviews with judges, notaries, lawyers, lecturers, experts, NGOs, etc.

Ongoing consultations with UN Women staff and field experts

preparation of questionnaires for judges, notaries, experts, NGOs and analysis of the information coincided by them.

Research on the judicial practice of some District Courts, taking into consideration the geographical distribution of the study and challenges due to the data system and opportunities in the court decisions;

Selection of almost all Supreme Court decisions on division of property and the identification of cases put forward in some of the unifying decisions of the Supreme Court that have had an impact on the matters related to women's property rights.

This study was conducted pairing qualitative and quantitative methods, in order to unravel the multiple and complex faces of women's property rights.

TERMS AND DEFINITIONS

The purpose of this glossary is to enable a clear understanding of the contents of property rights and the owner's entitlements, including women in this capacity over objects.

Object enjoyment:

is the right of the owner to use and benefit from the object according to its economic purpose, for personal purpose or to lend or lease it to other people in order to collect income from it and to profit from its natural or civil fruits. This includes the owner's right to use his or her own object, lend it or lease it to others and to earn income from it.

Object disposition:

is the right to determine the 'fate' of the property/object. The owner has the right to change the legal status of the object. This can be achieved by performing legal actions, such as sale, exchange, renunciation from a right on the object, mortgage, or and putting an encumbrance on it as a guarantee or collateral.

Object possession:

is the factual/physical power that a person has on the object, the effective rule of a person over a movable or immovable object that is always tangible. Possession as a right may be exercised by the owner or by a person who is not the owner, but who has been transferred the right by the owner. The concept of possession as a physical power on the object is usually put against the concept of ownership as the legal power of an owner on the object.

Property/object legal actions:

is the establishment of way and manner of use of the jointly owned object by the co-owners and is closely related to conclusion of contracts on the object, its use for purposes of mortgage and pledge, etc. This concept is usually encountered in cases of co-ownership of the common object, including marital co-ownership, and is seen in the perspective of disposition or extraordinary administration of the object, which is carried out upon consent of all owners.

Immovable property:

Immovable property as well as the accessories or components thereof which are destined to be in, including the soil, water sources and water courses, trees, buildings, and anything which is embodied permanently and continuously to the soil or buildings, and the accessories or components intended to be at the service of the immovable object, and with which are legally equal to the rights related to the immovable object and the lawsuits the subject of which is related to immovable objects⁸.

Marital property regime:

is the entirety of legal norms and rules that define the way of the enjoyment, administration and disposition of marital assets; rights, obligations and responsibilities of spouses on the personal or matrimonial properties, according to the regime.

Legal community regime:

is one of the marital regimes, which is applied automatically if the spouses have not chosen any particular marital regime and which foresees certain obligations for the spouses in relation to the objects that constitute the marital property and that are necessary for the economic functioning of family.

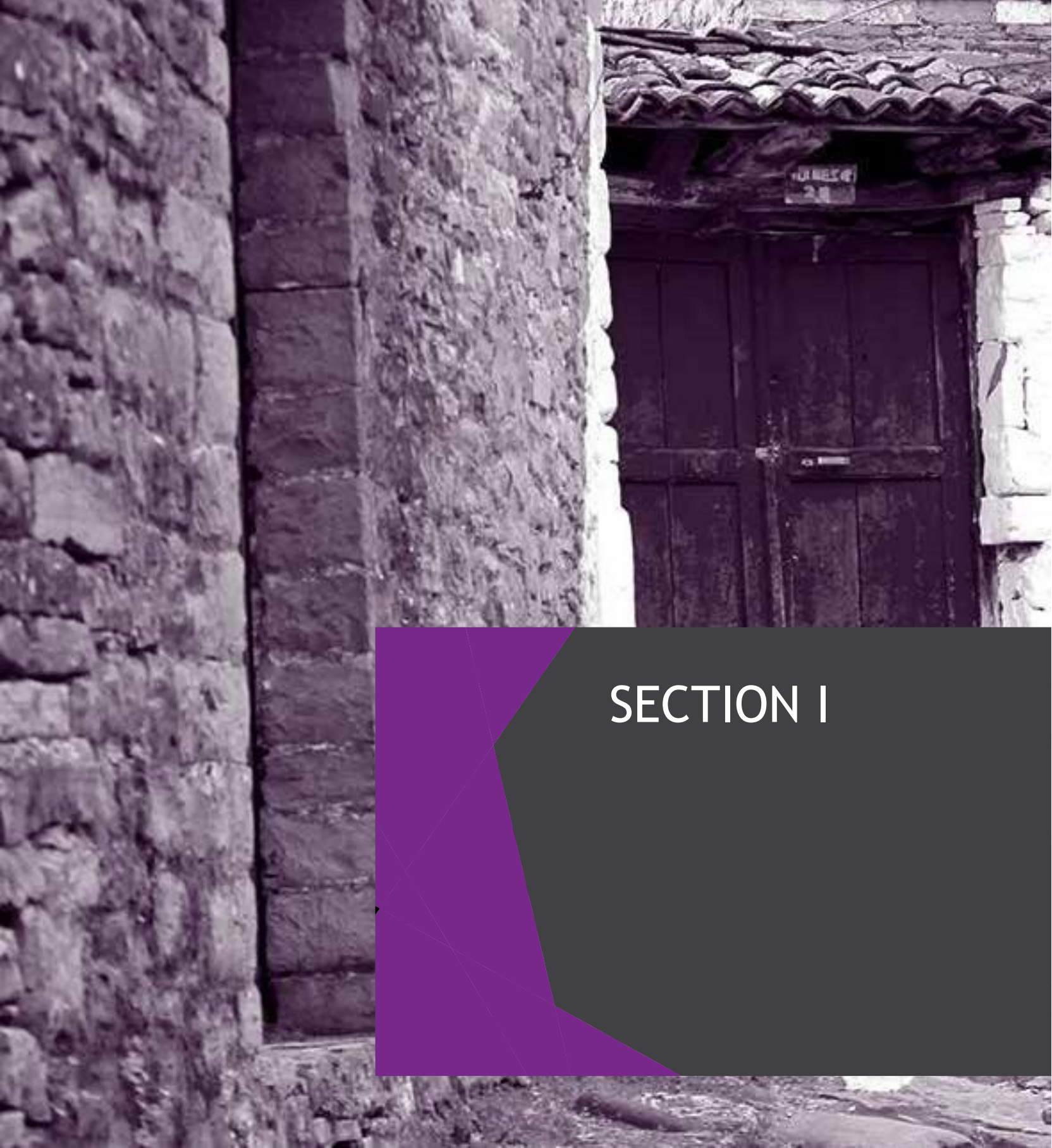
Contract community regime:

According to this regime, spouses decide in a contract signed before the notary public prior to concluding the marriage on the way how they will enjoy and administer or dispose

the objects acquired during marriage, with such the rights on the objects being equal or with one spouse having more rights than the other in line with the will of the spouses.

Separate property regime:

According to this regime, marital co-ownership is subject to the rules of separate ownership, where any property acquired by one of the spouses during marriage is his or her own exclusive property, except for the objects that are necessary to maintain the family.



SECTION I



*INTERNATIONAL
INSTRUMENTS RATIFIED BY
ALBANIA*

In this section we have enlisted the UN and Council of Europe instruments, as well as the EU standards that are legally binding for Albania, related to property rights in general, and women's property rights in particular.

As a rule, the ratified international instruments constitute the minimum standards that are mandatory for the three powers: legislative, executive and judiciary. According to Article 116 of the Constitution of the Republic of Albania, being normative acts are effective in the entire territory of the Republic of Albania, the ratified international agreements are ranked after the Constitution.

Pursuant to Article 122 the ratified international agreements:

- Become part of the internal legal system following their publication in the Official Journal;
- Have a self-executing character, apart from cases when they are not such, and their implementation requires the issuance of a law;
- Prevail over the laws of the country that are incompatible.

What follows is a display of certain international instrument aspects that highlight the substantial nature of property right and its impact on women's empowerment and other areas of the public and private life. It is worth mentioning that although there is a significant number of ratified international instruments, we have observed that the amount of information relating to them and their application in practice is inadequate.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Aware of the importance of this entire document that has inspired almost all instruments on the fundamental human rights and freedoms, we would like to single out two articles for the purpose of this study. Specifically, Article 17 which highlights that: "1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his/her property." An observation worth making in this respect is the use of the indefinite and inclusive pronouns "no one" and "everyone".¹⁰ Article 25(1) underlines that: "Everyone has the right to a standard adequate lifestyle level to cover for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to insurance in the event of unemployment, sickness, disability, widowhood, old age or loss of income in circumstances beyond his control."

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN [CEDAW], RATIFIED WITH LAW NO. 1769/1993

Article 5/a requires from the State Parties to take all the appropriate measures to change the social and cultural models of men and women's conduct, in order to achieve the elimination of prejudice and customary practices and all other

practices which are based on the idea of the inferiority or superiority of either gender or on stereotype roles of men and women.

Article 13 charges state parties to take all appropriate measures to eliminate discrimination against women in other areas of economic and social life, on an equal basis of men and women, in order to ensure equal rights, specifically the right to a loan, mortgage and other forms of financial credit [13/b].

Article 16 stipulates that state parties shall take all appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, the same rights for both spouses in respect to ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. [16(h)].

Article 14 (2/g) protects the right of rural women to have access to agriculture credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes. Letter “h” in the same article underlines the right to adequate living conditions, particularly in relation to housing,¹¹ etc.

According to Article 15, women are guaranteed to have a legal capacity identical to that of men and the same opportunities to exercise that capacity in civil matters. Furthermore, they have equal rights to

conclude contracts and to administer property and are treated equally during all the judicial procedures. Additionally, this provision sanctions that every contract or other private document with a legal affect that aims at restricting the legal capacity of women must be deem null.

1.2.1. CEDAW General Recommendation No. 21 on Equality in Marriage and in Family Relations

Under this General Recommendation, the CEDAW Committee calls on the countries undergoing a program of “land reform or land redistribution” [read property reform for purposes of this study], to guarantee the right of women, regardless of their marital status, to divide and redistribute the land equally and without discrimination¹². The Recommendation puts to light the fact that when a woman cannot conclude a contract, or have access to financial credit, she can do so only with her husband or a male relative as her guarantor, and thus is denied legal autonomy. Such restriction prevents her from being a sole owner and excludes her from the legal management of her own business or from entering into any other form of contract. These restrictions seriously limit the woman’s ability to provide for herself and her children.

The Committee has also pointed out that the right to possess, administer, be entitled to and dispose property is at the centre of the women’s right to enjoy financial independence.

The Committee has also pointed out

that every law giving men the right to a larger part of the property when dissolving marriage or cohabitation, or in case of the death of a relative, is discriminative and will have a serious impact on the practical abilities of the woman to dissolve her marriage, to support herself or her family and to live with dignity as an independent person.

As far as inheritance is concerned, the CEDAW Committee is quite clear when stating that there are many countries where the law and practice on inheritance and property may result in serious discrimination against women. As a result of such unequal treatment, women may receive a smaller share of the husband's or father's property after their death. In some cases, women are granted limited and controlled rights on inheritance. Often inheritance rights for widows do not reflect the principles of equal property ownership acquired during marriage. Such provisions contravene the Convention and should be removed.

In the General Recommendation on equality in marriage and family relations, the Committee has underlined that while most of the countries report that the constitutions and national laws comply with the Convention, customs and tradition prevent them from being effective.

1.3. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS,¹³ RATIFIED WITH LAW NO. 7511/1991

In Article 11 this instrument requires the State Parties to recognize the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and also to the continuous improvement of the living conditions.

In its General Comment on the right to adequate food,¹⁴ the Committee [of this instrument] has requested the State Parties to guarantee full and equal access to the economic resources, particularly for women, including the right to inheritance and ownership on land, etc.

Article 3 requests the State Parties to ensure men and women's equal right to enjoy all the economic, social and cultural rights set forth in the Convention.

1.4. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, RATIFIED WITH LAW NO. 7510/1991

Article 16 of this instrument¹⁵ guarantees everyone the right to recognition everywhere as person before the law. Article 23(4) urges State Parties to take the appropriate steps for ensuring the equality of spousal rights and responsibilities when entering in a marriage, during a marriage and in case of its dissolution.

In the General Comment on Gender Equality, the Human Rights Committee points out that in order to fulfill their obligations in accordance with Article 23 (4),

State Parties should ensure that the matrimonial regime contains equal rights and obligations for both spouses regarding ownership or property administration. State parties should review their legislation, when necessary, to ensure that the married women have equal rights regarding ownership and property administration.

The Commission pointed out in the same General Comment that the States must also ensure equal grounds in relation to marriage dissolution and decisions on property partition. In the General Comment on gender equality, the Human Rights Committee declares that the State Parties must ensure that the law guarantees women the rights provided under article 25 on equal terms with men and take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action [positive measures].

1.5. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2007/C 303/01)

Article 17: The right to property – Everyone has the right to own, dispose and bequeath his or her lawfully acquired property. No one may be deprived of his or her property, except for public interest and in cases provided for by law, subject to fair compensation paid in on time for their loss. The right to property

may be regulated by law in so far as is necessary for the general interest. Intellectual property shall be protected.

1.6. EUROPEAN CONVENTION ON HUMAN RIGHTS¹⁶

According to the Article 1 of Protocol 1 of ECHR:

Protection of the property: Every natural or legal person is entitled to the peaceful enjoyment of his/her property. No one shall be deprived of his/her property except for in cases of public interest and subject to the conditions provided for by law and by the general principles of the international law.

However, the preceding provisions shall not, in any way, impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol 7 of Article 5 on marital equality states: "Spouses have equal rights and responsibilities on private property rights and their relationship, with their children, their marriage, during marriage and in case of its dissolution.

This article shall not impede the States to take necessary measures for the best interest of children".

1.7. THE UN CONVENTION ON THE RIGHTS OF THE CHILD¹⁷, RATIFIED IN 1992.

According to Article 27/1, every child should be recognized the right for a living standard that is adequate for the child's physical, mental, spiritual, moral and social development. It is for this reason that Article 27/3 the Convention stipulates: "State Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and other persons responsible for the child to realize this right and in case of need, shall provide material support and support programs, particularly with regard to nutrition, clothing and housing."

1.8. UN CONVENTION ON THE RIGHTS OF PEOPLE WITH DISABILITIES, RATIFIED WITH LAW NO. 108/2012

Article 12 of this Convention on "Equal recognition before the law" highlights the obligation of the states that have ratified this convention to take the relevant and effective measures to ensure the equal right of people with disabilities to own or inherit property, to have control on their finances and to have equal opportunities for loans, mortgages and other types of financial loans and to ensure that people with disabilities are not arbitrarily deprived of their right to property.

1.9. CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, RATIFIED WITH LAW NO.7768/1993

Article 5 (e) (iii) of this instrument provides as follows: "In compliance with the fundamental obligations laid down in Article 2 of this Convention, State Parties should prohibit and eliminate racial discrimination in all its forms and guarantee the right of everyone, without distinction of any kind, such as race, color, or national or ethnic origin, to equality before the law, notably in being entitled to the following rights: ... (e) especially... (iii) the right to housing."

1.10. CEDAW CONCLUDING OBSERVATIONS ON ALBANIA, 30 JULY 2010¹⁸

Paragraph 25: ... The Committee further recommends that temporary special measures be applied in order to ensure the equality of women and men in accessing property, capital and credits, (...) particularly in regard to women belonging to disadvantaged groups, including women and girls belonging to linguistic and ethnic minorities, elderly women, women with disabilities and women living in rural and remote areas, as authorized by Article 8 of the 2008 Law on Gender Equality in Society. The Committee requests the State party to include comprehensive information on the use of such temporary and special measures

in relation to various provisions of the Convention, and on their impact on its next periodic report.

Paragraph 37: The CEDAW Committee recommends the State party to take specific corrective measures, including extending opportunities to access property, loan and credits ..., so that women, especially those belonging to ethnic minorities or who live in rural or remote areas, as well as women who are breadwinners, are able to fully and equally benefit from growth and poverty alleviation. The Committee invites the State party to provide detailed information about the enforcement of the Family Code in relation to property ownership in marriage and following its dissolution in its next periodic report.

Development held on the 25th of September 2015, global leaders approved the 2030 Agenda on Sustainable Development, which includes a collection of 17 sustainable development goals aiming at eradicating poverty, fighting against inequality and unjustness, and addressing climate changes until 2030. Otherwise known as the Global Goals and based on the Millennium Development Goals, the new SDGs aim at extending their reach beyond MDGs, in order to address the causes of poverty and the universal need for development, which is applicable to all people. As a global agreement, SDGs aim at aligning the world in an inclusive and sustainable course towards fulfilling the citizens' objectives for peace, prosperity, wellbeing and protecting the planet.

1.11. MILLENNIUM DEVELOPMENT GOALS AND SUSTAINABLE DEVELOPMENT GOALS

In September 2000, 147 heads of state and government and 191 nations in total, adopted the UN Millennium Declaration, committing themselves to a series of objectives, most of which were to be achieved by 2015¹⁹. The eight Millennium Development Goals are: to eradicate extreme poverty and hunger; to achieve universal primary education; to promote gender equality; to reduce child mortality rates; to improve maternal health; to combat HIV/AIDS, malaria, and other diseases; to ensure environmental sustainability; to develop a global partnership for development.

But what are the Sustainable Development Goals (SDGs)? In the United Nations Summit on Sustainable



SECTION II



*WOMEN'S PROPERTY
RIGHTS STATUS IN LEGAL
DOCUMENTS AND ALBANIAN
GOVERNMENT POLICIES*

This section of our study will provide a two-part chronological review of the Albanian legislation regarding women's property rights, from a historical and current perspective.

The first part addresses the historical aspects, including the Albanian customary and positive laws before the 1990s. The second part provides a picture of the current situation, including the parts of the Albanian legislation, the initiatives and policies that address property rights in general, and those of women in particular, with the intention of identifying the *de jure* standard of the right to property by focusing on women's rights.

2.1. HISTORICAL OVERVIEW

Starting the study from its historical perspective is quite of interest, because, whether we want it or not, and regardless of whether it has produced positive effects, nowadays the history of property rights has a direct and indirect effect on women's property rights status.

Based on the information we gathered and processed for this study, we found better evidence showing that it is not rare for the customary tradition to overshadow contemporary law institutions that constantly strives to be closely aligned with international standards. In a continuous effort to prevail, customary law tends to overlook women's rights as owners, which are as legitimate as those of men. This is observed also in the assessment of gender impact in the administration of land, carried out for Albania, Montenegro, Bosnia-Herzegovina, and in a series of other studies²⁰. Our respondents, who are mainly legal practitioners, share

the same opinion, affirming that they notice the pressure and impact customary law has on their activity.

In the course of history, the right to property, which is a fundamental right, has been regulated by the customary and positive law. During the Ottoman occupation, the Islamic law, Sharia, also known as the Holy Law, was also enforced. Traces of the religious Orthodox and Catholic laws are also present, though tangentially.

Canons are the main sources of customary law²¹. Regardless of the differences among them, canons share similarities and have an almost unique basis that regulates the main institutions, including customary property rights. In his book titled "Family Relations"²², Prof. Aleks Luarasi addresses aspects of the family life according to the Albanian customary law. He analyses the Albanian canons and women's status in various aspects, including the property-related one. The author comes to the conclusion that, according to customary law, women are stripped off any right on joint family property. They are entitled to personal property only. Consequently, women are excluded from property and inheritance both in her parents and husband's family²³. According to the Canon of Luma [Articles 1492-1493], unmarried daughters had the right to live in the property of their deceased father, but they were in no way to benefit from his inheritance. Only in the Canon of Luma do we find that if the testator had only daughters who were married, the latter were called in the inheritance as second-in line heirs²⁴. It was also known as "miraz" and a characteristic of this "quasi inheritance" was that daughters had only usufruct rights over this property during their lifetime.

After their death, the property was not passed on to their heirs, but to their male cousins from their father's side²⁵. They did not even have the right to enjoy the so-called "selem", which, in the Canon of Scanderbeg, was considered as the property the woman brought with her from her parents' family. This property was bequeathed exclusively to the males of the family.

The Canon of Lekë Dukagjini, a compilation of customs mainly applied in the northern part of Albania during the Medieval Period, is clearly characterized by inequality and discrimination of women.

This is typical of the other canons, as well. The woman's only right they provide is to borrow items for daily use, that is, replaceable objects²⁶. She cannot conclude any sale or exchange contract, not even for these types of items. In order to do that, permission by the household head is required²⁷.

As for the other members of the family or the so-called "people of the house" (gjindes së shtëpisë), according to §.25, they could not become "warrantors, without the permission of the household head" ('dorzânë pá lëje të zot't ë shpís') and they were not allowed to sell, buy or exchange property. In the village: 1) the household head shall be held responsible of any harm the people of the family inflict on anyone." In §.24, titled "The rights of the people of the house" ("Tagri i gjindes së shpís"), highlights that, inter alia, "The people of the family have the right ...; 2) to force the wife out of house, in the event she is seen stealing, or secretly selling anything, be it only an egg." Considering that there is not even the slightest possibility to sell anything "be it an egg", the Canon offers a clear picture in terms of the rights women had in the enjoyment and administration of property.

With regard to inheritance, the Canon of Lekë Dukagjini, in §.88, recognizes the son, not the daughter to be the heir. Furthermore, it specifies that only the son born in wedlock and his male children shall inherit. The Canon did not recognize inheritance through testament. Specific rules regarding inheritance are found in §.64-87 of the CLD.

The customary law regulates certain property relations regarding engagement. The engagement was legally considered as "concluded" only when the "the traditional coin" (groshi i zakonit) was given to the girl"²⁸. This includes a certain amount of money that the man's family gave to the woman's family, as soon as they agreed on the engagement. This amount was a symbol of the woman being bought. Hence, the woman was considered as a kind of commodity. This is recognized only by the Canon of Luma and the Canon of Lekë Dukagjini, Puka version. The other canons, such as the Canon of Lekë Dukagjini [CLD], the Canon of Scanderbeg, Canon of Labëria and Mirdita practiced the tradition of giving the "token" (sheji). The "tokens"²⁹ consisted of monetary and material gifts, such as rings, a headscarf for the bride and money. The money was considered as a down payment for the engagement guarantee. If the engagement was cut off by the man, the money was not returned, as it was deemed as material compensation for the moral damage incurred. According to the Canon of Luma, Article 617, should the engagement be broken due of the death of the man, a part of the token (shejit) and clothes given to the bride were returned. The Canon of Mirdita, on the other hand, provided that "the token" and reward for marriage were returned³⁰.

"The marriage reward"³¹ is given on the wedding eve, that is, the day both families set the wedding date, and its amount was determined by the woman's family. In the Canon of Labëria, this reward included buying clothes for the woman (bride), while no money was paid. Only a very small part of this reward was used by the woman's family for economic purposes. If the family did not make sure to use this money mainly on the daughter and on buying items for her, this would be considered as shameful. The "trousseau" (paja), was widely known in the southern part of the country as a practice and term,

and was mainly related to the application of the Orthodox religious law, rather than customary law. The “trousseau” itself represents the movable property the wife takes to the husband’s family and it mostly includes items that consist of clothes for her, gifts for her husband’s relatives (movable), and objects for daily use, like mattresses, quilts, pillows, rugs, etc. The larger the trousseau, the higher was the esteem for the bride and her family. In different regions of the country, especially in the south, the “dowry” (prikë) is mentioned, which in fact, is a kind of trousseau, but larger. In addition to the movable property, it also included immovable property (such as a shop). The Canon of Scanderbeg recognizes the institution of the “salem”, which implies the property the woman brought from her parents’ family (sheep, goats, cows, livestock in general, and any other personal property).

Since women leave their family of origin and take such property with them, the Albanian customary law excludes them from the inheritance of both their parents and husband’s family³². As regards the trousseau regime following marriage dissolution, the canons have a similar approach that may vary depending on who is considered as guilty, or on whether the couple has children or not. Thus, as a rule, the woman would leave only with the clothes she was wearing (the Canon of Mirdita, Article 314); a childless woman had the right to take the items enclosed in her dowry chest and those she herself had made, whereas, in the event she had any children, she would only take her own clothes, and the rest would stay with the children and husband (the Canon of Luma, Article 829-831). The woman was quite favored in the Canon of Labëria.

The religious law [Muslim, Catholic and Orthodox] has played an important role in the Albanian territory. During the Ottoman occupation, the right to property was regulated

through the Mexhele (the old Civil Code of Turkey), while inheritance was governed by Sharia or the Holy Law until 1929. Regarding the historical aspects of marital property and inheritance in our study, in addition to Aleks Luarasi’s book, we have referred to two other works, by Nazmi Biçoku and Dr. Ksanthipi Begeja³³. The Qur’an was the Sharia’s main source. The Holy Law sanctioned inequality in inheritance matters.

Should the testator have a daughter and a son as descendants, the property had to be divided by 1/3 and 2/3 in favor of the son. In case he was childless, the husband was entitled to ½ of the property. The wife, instead, was entitled to 1/8 of the property when called to inherit with her children or grandchildren, and to 1/4 when she was childless. When inheriting from their father, daughters were entitled to half the property bequeathed to the son (the share was two to one in favor of the son). The Holy Law did not recognize the testament, however, the latter was subject to limited application. According to the Islamic Law, the only right recognized to women was independence in the administration of her personal property. According to the Sharia: “Following the death of a person, his properties shall be inherited by the living males of the family.” According to the norms of the Sharia, the heirs were divided into heirs with fixed shares, heirs with non-fixed shares, and heirs with other shares. According to the Sharia, heirs with fixed shares included the grandfather (the father’s father, brothers and sisters from the same mother), the wife, the husband, the daughter, the son’s daughter, full sisters, agnate sisters, the mother and the grandfather (of the same father and mother). The heirs without a fixed share were the sons, and the sons of sons (grandsons), the father and, in his absence, the grandfather

or grand grandfather, the full brother, the agnate brother and their sons, as well as the uncle. The first in row to be called to inherit are the heirs with fixed shares, and the remainder is allotted to the heirs without a fixed share, an exception being the cases when one of the heirs with a non-fixed share is the son of the deceased.

Regarding the son's daughter, Sharia stipulated that "The son's daughters shall not be entitled to inheritance if there is a direct male descendant."

Albanian positive law

During the 1912-1929 period, property rights were regulated by the legislation inherited from the Ottoman Empire. The Ottoman Civil Code, known as "Mexhele", the Law on the Land [1856], and several other laws are included in this inherited legislation. Starting from April 1st 1929, these matters were regulated by the New Civil Code of 1929 and several other laws. Below you will find some of the most important laws after year 1929.

The Civil Code of 1929 addresses the legal matrimonial property regime under Title III, "Marriage contract," in Articles 1331-1389, respectively. This part of the Civil Code of 1929 regulates the regime of the 'dot' (dotë), the 'paraphernal property', and also "Joint acquisition of wealth by spouses". The Code specified that not every property acquired during marriage was considered as joint property. According to this Code provisions, each of the spouses were entitled to their own personal property, both movable and immovable, during the marriage. The dot was property that the wife or others on her behalf gave the husband in order to afford the obligations deriving from marriage (see Articles 1331-1367). The right of property administration was recognized

to the husband. Such right was valid for the entire duration of the marriage (Article 1399). Paraphernal property was not part of the dot and, as such, the husband had no right to administer unless he is required to do so by the wife. "Co-possession", which has the same legal definition with the meaning of co-ownership in the current Albanian legislation, but it is legally different from the 'joint acquisition of property'. 'Joint acquisition of property'³⁴ includes other real rights which are not part of the concept of co-ownership. According to this Code, "ownership" or "co-ownership" are related to the right to enjoyment and disposition of the object³⁵. Although this Code was drafted based on the French [1804], Swiss and Italian Civil Codes of the time, it failed to change the man's unquestionable power as husband and father over his wife and children. One of the important developments in the current Albanian judicial practice is the Unifying Decision No. 5/20.10.2009 of the JCSC which provides for the implementation of this Code provisions regarding the classification of property as co-owned or not during the marriage³⁶ and the rights related to the extraordinary administration of property. Since these norms of a historical character become subject to analysis, even in such important decisions, we deemed that addressing it from this point of view would be worthwhile.

After 1945, a series of measures have been taken in the field of property, including: the nationalization of the private property, the implementation of agrarian reform, and the development of co-operatives in agriculture and handicraft. Until 1976, different types of property were recognized, such as state, co-operative, personal and private property³⁷.

Article 17 of the Constitution of the People's Socialist Republic of Albania of 1946, stated that: "Women are equal to men in every aspect of the private, political and social life."

This principle was considered constitutional due to the issuance of the following laws. Thus, the Decree No. 601/18.05.1948, "On Marriage," revoked the previous provisions on marital property. According to this decree, the property each of the spouses been registered under their name at the time of conclusion of the marriage shall remain personal property. Property acquired during marriage was considered joint property, and it included property acquired by the spouses jointly or separately. This law established that in case of a dispute arising in relation to the shares of each spouse, consideration shall be given to the assistance spouses have given to each other, including housework and any other activity that lead to adding, administering and protecting joint property. These provisions are further enhanced by Decree No. 2083/06.07.1995, "On Property", which in Article 96 determines that, "The property acquired during the marriage by the spouses through working, shall belong entirely to both spouses. The spouses' joint property shall not include the objects that each of the spouses have acquired through inheritance or were gifted during the marriage, their individual saving deposits, items for personal use, and the work equipment necessary for carrying out their activity or craft." With reference to agricultural household matters, this decree in Articles 86-90 underlines the following: "Ownership over the property of an agricultural household is jointly owned by all members, regardless of their gender or age, who are related by kin, marriage, adoption, or acceptance as members in the agricultural household". Article 94 stipulates that in relations with third parties, the family is represented by the head chosen by family members. The Decree no. 1892/05.07.1954, "On Inheritance" was amended by Law No. 3169/26.10.1960 and by Decree No. 5106/30.10.1973, which remained in force until 31.12.1981. The order of legal heirs is defined in Article 21

of Decree No. 1892/05.07.1954, "On inheritance", which stipulates that: "The first order of people to inherit includes: children and spouse either capable or incapable to work, parents of the testator who are incapable to work, and other persons incapable to work and dependant on the testator, who had cohabited with the latter one year before his death. They all shall inherit equal parts."

The Family Code of 1965: Article 45 highlights that "Property acquired during the marriage through work by the spouses becomes joint property. Any agreement made contrary to that shall be deemed null". As regards joint property, each of the spouses may perform independent legal actions. These actions shall be deemed valid, even in the event when they were performed without the consent of the other spouse. Nonetheless, the joint property may not be conveyed unless both spouses consent to it [Article 97 of the Decree "On property" and Article 49 of FC]. In case of marital property partition, whether by agreement or in the court, it shall determine the shares for each spouse taking into account earnings, the assistance that each of the spouses has given to the other, household work, and any other activity for the administration, maintenance and increase of the common property.³⁸ The Code regulates in detail the gift contract between the spouses before and during the marriage³⁹.

Law No. 6340/26.06.1981 "On the Civil Code of the People's Socialist Republic of Albania," sets forth that everything acquired by the spouses during the marriage is joint property (under co-ownership), including the property acquired through inheritance or donation. Only the items for personal use are not considered joint property.

It is worth noting that this Code's provisions [1981] continued to be effective even after the Civil Code of 1994 was no longer in force, due to the fact that Article 231 of the Civil Code [1994] defined that co-ownership between spouses shall be regulated by the Family Code⁴¹. It took about 10 years for the old code to be abolished and for the new Family Code to enter into force [2003], which brought about radical changes to the previous regulation.

Law No. 6599/29.06.1982, "On the Family Code of People's Socialist Republic of Albania" does not include any provisions to regulate the co-ownership relations between the spouses. These were part of the Civil Code of 1981.

In this historical part, we concentrated only on some of the legislative developments that we deemed important for this study, but we did not entirely analyze them.

2.2. ALBANIAN LEGISLATION AFTER 1990s AND THE CURRENT LEGISLATION IN THE FIELD OF PROPERTY RELATIONS, AND WOMEN'S PROPERTY RIGHTS

The Albanian legislation after the 1990s has been subject to radical changes. This process included also that part of the law addressing property rights. Even more so, this might have been one of the most affected and dynamic parts. The readers interested in the legal framework of Albania will find below a summary of the answers to three questions:

- First question: Are there any provisions that forbid gender discrimination in the Albanian legislation?
- Second question: Are there any explicit provisions that uphold women's rights?
- Third question: How can one identify the provisions regarding women's property rights in the Albanian legislation, their impact on property acquisition methods, property administration and its enjoyment?

The Albanian legislation displays an apparently gender-neutral approach towards gender equality. In this sense, we may affirm that attention towards such "neutrality" has been one of the constant priorities of the national authorities, but, as long as the outcomes of implementing this legislation clearly attest that men possess and administer property to a much greater extent compared to women, there is obviously still room for undertaking improvement and positive measures, to ensure gender equality in practice. Thus, the attention of the justice system reform has been extended to the legal education process and to public education on rights and law in particular.⁴²

The Constitution of the Republic of Albania [Law No.8417/21.10.1998, as amended] foresees some safeguards against gender-based discrimination. The Constitution embodies the entire essence of the normative standards and state policies. As such, it is seen both as a normative document and a policy document. The entire Albanian legal system is based on the constitutional standards and regulations. The Constitution of the RoA guarantees equality for everyone before the law. In this respect,

both men and women enjoy the same rights and obligations. According to the Constitution, “All are equal before law and no one should be discriminated ...” (Article 18).

The basic human rights and freedoms are included in the second part of the Constitution. The Constitution enshrines the right to property and enlists the ways of acquiring property in Article 41/2, such as: by donation, inheritance, purchase, or any other typical means provided by the CC. Freedom, property, and rights recognized in the Constitution and by law shall not be infringed without a due legal process. [Article 42 of the Constitution]. Under Article 11 it is established that private property, market economy and economic activity freedom are the pillars of our economic system, and that private and public property is equally protected by law. On the other hand, Article 41 of the Constitution guarantees the right to private property. According to this article, everyone has the right to possess and use private property. This constitutional guarantee has a twofold importance, first, it allows private individuals to become owners of the properties that by law are not exclusively reserved to public property, and second, it safeguards the private owners from any arbitrary exercise of power, since private property is a right that the state has the obligation to respect and, as such, cannot use its sovereignty to intervene in the private property, except for when otherwise foreseen by the law (expropriation, requisition).

The Civil Code of the Republic of Albania (CC)⁴³ represents the entirety of the provisions that regulate the ways of property acquisition, co-ownership, and the contracts. The Civil Code of the Republic of Albania (CC) uses terms like “anyone”, “person” or “persons”, thus making no distinction between men and women. In

particular, Article 1 of this Code determines that every natural person shall enjoy full capacity to have civil rights and duties. However, the provision regarding the right to full legal capacity [Article 6 of the CC], due to under age marriage, should be amended in order to ensure equality between genders, since both, the man and woman, are able to conclude marriage before the required age, provided that the court considers that there are sufficient grounds for granting such permission. This amendment should be made with the aim of aligning the CC’s provision (Article 6) with Article 7 of the FC. However, even recent amendments made to the CC in 2013 have not included such amendment⁴⁴. The same can be stated for the amendments made to Article 373 of the FC, which provides: “Anyone who is 18 years of age can make a testament and so can a married woman of this age”.

The owner’s property rights are numerous. According to Article 149 of the CC: “Ownership is the right to enjoy and dispose objects freely, within the limits established by law”⁴⁵. Article 83 of the CC stipulates that: “The legal action to transfer ownership of the immovable property and the real rights over them shall be done by a notary act and shall be registered, otherwise it shall not be deemed valid.”

Articles 192- 197 of the CC determine that the safeguard of the right to property is the registration of the immovable properties in public registers, namely, in the immovable property records. This registration is done through a public act, court decision, or a decision of another competent public body, and in other instances provided by law. Article 196 of the CC provides that courts, notaries, court bailiffs, and other state bodies are obligated to submit for registration to the office administering the register where the immovable properties are situated, copies of the decision

or of the act that contains the acquisition, recognition, change, termination of ownership over immovable property, or a real right over it, or the declaration of invalidity of legal transactions for transferring previously registered ownership. In addition, other acts to be registered in the immovable property register include acts of renunciation of ownership rights [Article 193/c, CC], contracts producing ownership rights, court decisions and decisions of other competent public bodies producing ownership rights over property, founding acts of an association or another entity that owns immovable properties or has other real rights over those properties; lawsuits, including the lawsuit for the partition of jointly owned immovable property [see Article 197 of CC], etc.

Article 208 of the CC stipulates that: "The conveyance of the co-owned object can be carried out only upon consent of all co-owners." Article 207 of the Code provides a series of rules applicable to the partition of the co-owned property/object.

The consent of all co-owners shall be required for this. This is a general rule that makes no distinction as to whether they are husband and wife, spouses, individuals with or without kinship relations or affiliation to one another.

Should the object be immovable, the agreement shall be concluded through a notary act. This is also valid for spouses. When no agreement is achieved, the partition of the object is performed by the court, convening all of the co-owners to court. Hence, this provision implies that spouses can seek for extrajudicial settlement of their property-related dispute. However, as regards immovable property, they must do so through a notary act. Only if they fail to reach an agreement can they go to court. We are raising this issue because when talking about mediation, one of the most frequently asked questions is: Does it apply to property partition between spouses?

The answer is affirmative. Attention needs to be paid, because if the concluded agreement produces effects on the jointly owned immovable property, for example, of the legal community, a notary act should be done⁴⁶.

Addressing once again the type of mediation agreement, we emphasize that for property, commercial and contractual conflicts or property conflicts in general, the agreements should be in writing. The mediation agreement should be in writing whenever whose subject is handing over money or objects or legal actions and obligations of contractual or commercial nature. When referring to documents in writing, we also mean even letters that are signed by the parties and mediator and the notary act that is concluded and signed in the presence of the Notary Public. Should this be the case, the notary act is necessary when the subject of the agreement is the transfer of ownership of immovable property, or transfer of the right to use it or its partition, etc.

Should the case go to court, upon request of some of the co-owners, the court may order that the object be left to them, obliging them to pay the co-owner, who demands the partition, the value of his/her share, according to the way and within the terms of time defined by the court decision. Should it not be possible for the object, such as a dwelling, to be parted in nature, the court leaves it in shares, according to the above-mentioned conditions, to that co-owner who lives there or who is in need of it more than the others are. Hence, Article 207 of CC on property partition should be considered in relation to certain FC provisions, such as Article 153 on the right to use the dwelling.

This implies that when the house is part of the legal community and the spouses terminate their marriage, one of them, the one who is assigned child custody, has priority over the other, in the case when dwelling partition in nature is impossible.

Inheritance as a way of acquiring property is also regulated by the CC. The implementation of these two articles has resulted in issues that have been addressed to the court. For this reason, the interviewed experts have recommended amendments that they deem indispensable⁴⁷. As far as the impact of CC provisions on inheritance as part of women's property rights is concerned, it will be addressed in the following sections.

Although CC and the Civil Procedure Code [CPC] do recognize equal rights for both men and women, their application appears not to be producing the same results. In the course of this analysis on the current state of ownership rights over immovable property, we will focus on some other laws that are considered crucial in the process. According to the scholars' interpretations, these laws have been unfavorable to the woman's position in terms of property, by doing so silently in the course of history not only in practice, but also based on results, despite the seemingly neutral provisions contained therein⁴⁸.

Law No. 7652/23.12.1992 "On Privatization of State-owned Dwellings",⁴⁹ aimed at realizing the privatization of the state-owned dwellings

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According to tradition, it is a general rule that, once married, the wife moves to the husband's house. In the marriages concluded after 1992, when the dwelling had been privatized by the spouse's family, the wife had no ownership rights on it. Hence, even in case of marriage dissolution, she was not entitled to any share of this property. If, on the other hand, the marriage was concluded before 1992, the wife could benefit from her share as co-owner, together with her husband and other relatives of the husband (parents, brothers, sisters) who were adult members of the family⁵⁰. Should, under such situation, the marriage be dissolved, the wife would benefit the value of her share in money as co-owner together with many other members of the husband's family. However, we have come across court decisions in which, although the "son's wife" was registered as member of the husband's family before December 1st 1992, she had not been included in the privatization process.⁵¹ In the event when the dwelling was privatized by the spouses themselves, the wife was entitled to an equal share with that of her husband, since it was a marital property. In such case, should the marriage be dissolved, and as the judicial practice has shown, the marital dwelling is left to the wife, who is assigned the custody of minor children. In this case, she had to pay for her ex-husband's share. If her income was/is limited, the woman was/is put in a very difficult situation.

and enable owners to transfer, lease and mortgage their dwelling. Thus, the privatization process provided the lessees of state-owned dwellings to acquire ownership over them. In this way, this law gave rise to the free private houses market. According to Article 9 of this law, owners of the privatized houses were their lessees and the other adult family members. Should the lessees agree among them, the house may be completely transferred under the ownership to one of them. According to Article 20, in order to determine who the adult family members are, fundamental citizens' registers as of 1st December 1992 shall be used.

Law no. 7501/19.07.1991, "On the Land," as amended provides us, inter alia, with a picture of women's status in relation to property in villages, that is, in rural areas. The endless amendments made to this law are indicative of the development dynamic and the persisting problems of these 20 years. The law regulates the right of former agriculture co-operative member households to become landowners [Article 5].

The implementation of this law should be seen aligned to the provisions of the CC [part of the agricultural household]. The law appears to be neutral gender-wise, because legally, all the rights deriving from this law are enjoyed by both genders. The created co-ownership state does not, legally, favor or privilege any of the co-owners. The same applies to the individual right of each co-owner to be in favor of selling the land and require the partition and payment for the sale of their own share of land⁵²; the right to transfer ownership of the agricultural land, "in accordance with legal requirements for the transfer of immovable property..." and with the consent of all members [Article 5]; the right to transfer property through inheritance to the heirs "despite their membership in the agricultural economy" [Article 25, Law No. 7501]. ,

An Analysis of Legal Standards and their Application

The rights of family members do not legally change when they get married or leave the family. The ownership and land partition documents are issued under the name of the head of the family [the law does not specify the gender], as the legal representative of the agricultural household. The woman, as a member of the agricultural household, benefits a share of the agricultural land based on the composition per capita of the family that she is part of. In case of marriage dissolution, the woman was entitled to obtain and administer her share from the agricultural household's property partition. The Civil Code stipulates that should the woman not benefit agricultural land pursuant to the law "On the Land," she was entitled to it due to her marriage, thus was considered a co-owner of an agricultural household's property [Article 222 and following ones of the CC]. Article 223 addresses the agricultural household's composition, which consists of "persons who are related to each other by kin, marriage, adoption or acceptance as family members."

Law No. 7843/13.07.1994, "On the Registration of Immovable Property," revoked by Law No. 33/2012, "On the Registration of Immovable Property". Once based on Law No. 7834/1994⁵⁵, the immovable property registration in Albania is currently regulated by Law No. 33/2012. The latter determines the organization and functioning of the IPRO, the conditions and the procedures for the registration of immovable property, and also the administration of the public register of these properties. Article 41/2 regulates the situations of co-ownership among the spouses. Should the property, subject to the property transfer contract, which is entered into between the natural persons who are registered as married in the civil register, be property acquired during the marriage, in accordance with Article 76 of the Family Code⁵⁶, the registration in the respective section of the property file is made in co-ownership of the two spouses. According to Article 41/1, "Acts that contain records on the ownership acquisition

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The overwhelming majority of the registered heads of agricultural households in Albania are men and boys. It is the man who deals with property administration, as, generally, he has the de jure and de facto status of the head of the family, although, according to Article 224 of the CC, the head of the family is not described as belonging to only one gender. As a result, it is him who represents the family in all transactions in relation to third parties. The national Report on the Status of Women and Gender Equality in Albania [2011]⁵³ and projects on land administration and urban management, such as The Land Administration and Management Project (PAMT-LAMP), supported by the WB and Sida have identified such “centralization” of the property and related rights to the head of the family. Since the head of the family is the only legal representative of the property certificates, the new registration process highlights the result that men have a de facto advantage compared to women regarding property rights. This is a statistically supported conclusion. If we referred to judicial practice on the factual application of these rights, we realize that they exist mostly on paper. That is particularly true in the cases of the extraordinary administration [property sale], where the woman has been generally excluded from legal actions. Disregard of such rights has led a limited group of women taking legal actions to re-establish their violated rights.

As regards Law No. 7501, the study finds that in some areas of the country, the law was just a symbol, because land partition took place “according to the customs”, or “according to the canon”. This, certainly, affected the rights of women in rural areas⁵⁴.

and other real rights over the immovable property, which jointly belong to two or more people, shall be recorded in the immovable property register and shall indicate the identity and parts of each co-owner, where possible”. (applicable also to the case of cohabitation between a man and a woman, in accordance with Article 163 of FC – authors’ note). Law [Article 38] determines the obligation to register every act that brings changes to and/or benefit of ownership rights, and that ensures its alignment with the CC provisions mentioned in the study.

Courts, notaries, bailiffs and other government agencies have the duty to submit to the immovable property record administration office, a copy of the decision or an acquisition, recognition, change, termination of ownership of an immovable property, a real right over it, or an act declaring the nullity of the legal action for the transfer of previously registered ownership [within 30 days from date of issue]. Each act providing changes and/or enjoyment of property rights, shall be subject to mandatory registration. The law includes the Registration of sales contracts

[Article 42]; Unification and partition of immovable properties [Article 34], which is relevant for both spouses and cohabiting partners; Registration of the partition of a co-owned immovable property [Article 43]; Registration of new works during the pre-construction phase [Article 47]; Final registration of new constructions [Article 48]; Registration of legalized buildings⁵⁷ [Article 49]; Registration of power of attorney [Article 61]; Registration of acts issued in other countries [Article 62], etc. These aspects are quite valuable and they shall bring a qualitative change in practice with regards to the protection women's property rights.

More than one year following its entry into force, it is still important to monitor the implementation of this law, in particular when it comes to perspectives related to the property rights of spouses.

The Family Code [2003]: Underlines the moral and legal equality between man and woman as spouses and as parents [Article 1 and Article 50, etc. of the FC]. Such equality is also expressed in regards to personal and property/ownership rights. There are several rules that specifically address property relations between spouses. In addition, legally speaking, equality extends even to rights and obligations. These rules are mainly for seen for the purposes of matrimonial property regimes [see provisions of Articles 66-122 of the FC], but not only. The rights and obligations deriving from marriage exist despite the property regime [Articles 65, 67 of the FC⁵⁸]. Some articles of this Code affect the property status. One of them is Article 57, which limits the right of spouses to dispose of the marital residence and its assets without the consent of both spouses, even when this residence is a private property, and regardless of the matrimonial property regime. This part contains some articles of a

particular importance, as they include rules on obtaining approvals, actions carried out with no approval, representation and actions that can be carried out by one of the spouses with a court authorization, and other urgent measures [Articles 58-65]. We can affirm that part of these provisions have an extremely limited application, or sometimes no application at all. Their use would have a positive outcome, both for the marriage and the family, in the personal aspect or, even more so, the property-related aspect.

There are two main property regimes: the legal and the contractual. In the legal regime, such as that of the legal community, the provisions of the FC determine which property, income, etc. shall be personal or belong to the community. The contractual regime may be in the form of a contractual community, or in the form of the separate property regime. The FC provisions on regimes set out rules over the type of properties [either private or co-owned]; rules on property administration; rules on representation; property-related obligations of the spouses towards one-another and third parties; rules on property restitution and compensation; termination of a regime and property-related effects over the spouses and third parties depending on the regime and the way it was terminated, etc. In general, all these rules adopt a gender-neutral approach. It is in their practical application that issues of infringement arise.

In the legal community regime, we notice the "co-existence" of properties: a community with individual properties of the spouses. In order to understand the content of the properties under the legal community regime, we mostly address Articles 74 and 77, but also some other articles of the Family Code that should actually be considered in a holistic manner. From their content we understand

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The law on the registration of immovable property has impacted the status of women's property rights. So far, there is no integral study on the judicial practice showing the number of property conflicts brought the court only due to disagreements that have emerged from the implementation of this law. Oftentimes, the activity of the court has been exacerbated as a result of these claims and insecurities over property rights. Furthermore, there is no study of judicial practice on the gender perspective that is to identify the violations of women's rights. During the document collection phase for the purposes of this activity, we went through several adjudications that made reference precisely to the unilateral registration of property titles and titles being awarded to the spouses.⁵⁹ The interviewed judges asserted that this was an issue encountered in all courts of the country. These issues were affirmed even by the courts' decisions published online, as well as the High Court practice.

In general, in cases of dissolution of marriage, the immovable properties involved in judicial conflicts consist of a small flat. This flat in most cases is registered with the husband as sole owner. In case of dissolution of marriage, the husband makes all efforts to keep this asset, based on the "registration string" of the IPRO and deny all property rights of his wife. Following this study, court decisions related precisely to this law shall be referred to.

that some properties become immediately part of the community (Article 74/a⁶⁰ and 74/c), upon their acquisition, but on the other hand, there are properties that become part of the community only if they remain unused until its termination (Article 74/b, 74/c, and 75); and there are properties that never become part of the community, such as the personal assets of the spouses (Article 77). The structure of the community property shows that it does not include all types of property and/or income owned by the spouses. Thus, the legal community does not have a universal nature. It does not include assets gained from the spouses before marriage, or even those acquired during the marriage that maintain their personal nature. An example of this is the property acquired during marriage through a gift, inheritance or legacy, if in the gift act or the will does not clearly state that the properties were given in favor of the community, thus becoming personal property of the spouses [Article 77/b of the FC].

The income that each spouse has gained during marriage may or may not become part of the community, depending on whether it was used up by its dissolution [74/b of the FC]. It is worth reiterating that, the study on Gender Pay Gap has found that men earn more than women for the same skills and due to the professions division.⁶¹ Therefore, it may be assumed that they also have "the right to use it". The acquisition of ownership can be: accessory, acquisitive prescription, and also

reserve auction, and the latter in particular, could seemingly give rise to problems in property matters where the last installment is paid after the termination of the regime⁶².

Entry into the market economy and the free private enterprise led to update of the FC provisions, with a new component of business activity. The business activity established during marriage immediately becomes part of the community (Article 74/ç). The FC does not provide any details regarding the definition, the administration and management of the business activity. For the lawmaker the time of establishment is sufficiently relevant for this asset to become part of the community. It is of no relevance whether the spouses have signed a formal agreement and have defined their duties and obligations. That is entirely at their discretion. With regards to business activities owned by only one of the spouses prior to marriage, but which during marriage it was managed by both, the profit and the increases in production are included in the community. Hence, in this case, the business activity is and remains an individual property if prior to marriage it belonged to one of the spouses. But, if (condition) this activity was run by both spouses, only the profit and the increase in production gained from the business activity shall be part of the community. If not managed by both spouses, the activity preserves its individual character and the profit gained from the business activity of one spouse shall be included in the community, only if it remains unused by its termination.

Properties that do not become immediately part of the community are (Article 74/c) profits from the properties of each spouse. These are included in the community in case they haven't been used up by the termination of joint ownership. Hence, it refers to profits from the personal property of each spouse (Article 75). Income generated from an auction or some other form, of an immovable property where one of the spouses co-owns a collectively shared property, is not included in the community.

In this case, where appropriate, the community must be compensated for the expenses of the auction (Article 80).

The provisions of the FC related to the composition of the community property indicate that there are assets that become part of the community only if they exist, that is, if they are not used up its termination. As long as the community has not been terminated, such incomes, profits, assets, etc., have an unclear status, because they are neither enlisted as individual wealth of the spouses (see Article 77), nor as part of the community property. The spouse that generates the income or its profits, has the right to dispose of, invest, or save it. If these are not used by the time the community is terminated, their destination is immediately changed by shifting them to a community property.

Thus, the income gained by a particular activity of each spouse during the marriage may be used by him/her in different ways. The law itself provides such opportunity. Yet, we must highlight that the discretion to dispose of the income that is gained through the employment or exercise of a profession and of other incomes depends on the contribution to the obligations resulting from the marriage. Only after meeting marital obligations, the income can be freely disposed of (Article 63 of the FC). This concept is reinforced by Article 54 of the FC, which stipulates that the marital contribution of the spouses deriving from the marriage obligations, if not regulated by a pre-nup, shall be specified according to the family needs in accordance with their conditions and abilities. By contributions, we also refer to the

the contribution for the care or the so-called “unpaid work”, that is an activity mainly performed by women, according to Article 23 of the Gender Equality Law.

In some cases, the profit is deposited in a bank on behalf of one or both spouses. Judicial practice has brought about cases where one of the spouses claimed to be the primary contributor to the bank account and requested the largest amount of the deposit in case this account was divided upon dissolution of marriage⁶³.

The list of personal assets in the legal community regime is set forth in Article 77 of the FC. What has been gained prior to the marriage are considered personal assets. According to Article 77/a, the list includes assets, which prior to the marriage, were jointly owned by one spouse and other person(s) or over which s/he was entitled to a real right of use. As stated in the content of this article, we understand that it does not exclude the case of assets being jointly owned by the spouses, if this co-ownership started prior to the marriage. In this case, this is a personal property of each spouse and it is not included in the community property. Not all assets gained during marriage are considered legal community property. According to Article 77/b, personal assets of the spouse acquired during marriage through gift, inheritance or legacy, unless they are specified in favor of the legal community, are also personal property of the spouse. Thus, in such cases the time the assets were acquired is not relevant, rather the way assets were generated. Personal items of strictly individual use of each spouse and assets acquired as personal property items (Article 77/c) include work equipment necessary for the job performance of the spouse, except for those that have been specified for the administration of a business activity (77/ç

of the FC); property acquired from compensation to personal damage, except for pension funds obtained as the result of a partial or full loss of work capacity; (Article 77/d of the FC) property acquired from the disposal of the above-mentioned personal assets; (Article 77/dh) property acquired through the exchange of personal assets, when this is clearly specified in the sales contract. (Articles 77/e and 79 of the FC)⁶⁴.

In the legal community regime, the properties of the spouses are presumably under jointly ownership, except when the spouse proves its personal nature. Each spouse has the right to perform regular administration of the joint property and is considered as the legal representative of the other spouse in administrative and judicial bodies for issues related to the regular administration of the legal community (Article 90 of FC).

The property aspects take particular importance in case of dissolution of marriage or termination of the matrimonial property regime. A regime may last as long as the marriage, or terminate before the dissolution of marriage [see Article 96 of the FC]. In terms of the effects generated by the dissolution of marriage on the property aspects of the spouses, we have to make the difference between two main situations: termination of marriage due to the death of one of the spouses, and its termination due to dissolution of marriage.

In the first case, that is, in case of death, the provisions on inheritance shall apply. Accordingly, if there is a will, the rules on inheritance shall apply, but if no will is made, inheritance by law shall apply. This study has a separate section that deals with the impact of the husband's death on inheritance as a way of property acquisition for the wife. According to the provisions of the FC on inheritance, the surviving spouse is the first

legal heir in line. As such, by law, the spouse is entitled to acquire movable and immovable property from the testator. Consequently, she benefits even from her husband's share in the joint property, as well as from his/her personal properties. If the couple is in the dissolution of marriage process, and one of the spouses dies before the final court decision on the dissolution of marriage, the property effects shall be governed by the provisions on inheritance [see Article 140 of FC, last paragraph], which means, that the surviving spouse inherits the property of the deceased one. If this is the case, marriage is considered to be terminated by the death of the spouse, not by its legal dissolution.

In the second case, i.e. marriage terminated by legal dissolution, property partition rules provided by the Family Code (Article 207), the Civil Code and the Code of Civil Procedure shall apply. Despite the above-mentioned principle of equal property portions, in case of dissolution of marriage, the court, pursuant to Article 103, last paragraph of the FC, based on the children needs and on which parent will have custody of the children, may decide to award to one of the spouses part of the marital estate belonging to the other spouse. The dissolution of marriage generates effects on the marital residence and other obligations, either in the form of alimony or compensating contribution. See the following sections for the impact that the dissolution of marriage has on women's property rights.

The Law on Gender Equality in Society [2008], Article 23, aims at giving a new dimension to the definition of unpaid work. Income earned from work plays an important role in property acquisition. This kind of work is considered as a contribution to the family and society.

Data shows that mostly women are the ones involved in the "sector" of unpaid work. The importance of addressing this issue lies in the fact that, while they play a distinct role in the well being of the family, the individuals who dedicate themselves to a series of jobs that fall in the category of "unpaid" work do not receive adequate appreciation from other members of their families, the state, and the society. Interviewed judges highlighted that in the cases of dissolution of marriage, women do not calculate the contribution they make through "unpaid" work. For the first time, the Law on Gender Equality (LGE) includes provisions, which are brought to the attention of every authority and the society as a whole (including family members) on the moral and material consideration and appreciation of this activity performed at the service of the family. These provisions support the court, when considering the contributions to the benefit of the family, in using the same approach for unpaid work in terms of value and contribution. They encourage the court to consider that this activity might cause inequality and bottle necks for these individuals in regard to integration in the "paid work" market, and in consequently having access to property rights⁶⁵.

In this context, it is worth mentioning a new piece of legislation, namely Law No. 38/05.04.2012 "On Agricultural cooperation associations," aimed at defining the rules, terms and criteria for the establishment and administration of agricultural cooperation associations, the rights and obligations of their founders and members, their reorganization and dissolution, as well as the regulation and establishment of the conditions for certain aspects of their activity. The law provides that the agricultural cooperation associations, established and exercising their activity in accordance with the provisions

of this law, shall be subject to fiscal facilities and support schemes, in line with the applicable legislation. Upon its establishment, the association shall be registered with the National Registration Center, according to the provisions of this law and of Law No. 9723, dated 3.5.2007, "On the National Registration Center." In terms of their standing, the provisions of this law do not seem to take into account gender and any positive action if these agricultural cooperation associations were established by women registered as natural entities. In other words, the law is neutral from the gender perspective that may lead to unbalanced outcomes in the Albanian society. It is crucial for women in rural areas to become familiar with the law and fiscal facilities.

Last, but not least, we focus on Law No. 10221, dated 04.02.2010, "On Protection from Discrimination," which is included in this study to remind the authorities of their responsibility to observe the principles of equality and non-discrimination during service delivery. Additionally, by acknowledging this law, we aim at informing every reader on such principles, in order to prevent gender discrimination that arises also due to marital status in property issues.

According to Article 7, paragraph 1 of this law, discrimination is every action or omission thereof by public authorities or by natural or legal persons who engage in the private or public sectors and life, that provides grounds to deny equality for a person or group of persons, or which exposes them to unfair, unequal treatment when they are in the same or similar circumstances with other persons or groups of persons. As far as goods and services are concerned, Article 20 of this law underlines that it shall be prohibited for any natural or legal person, who provides goods or services to the public, free of charge or against payment, to discriminate against another person who seeks to attain or use such services. This includes, but is not limited to, housing services, residence and other premises sale or rental, other banking services and possibilities to obtain grants, loans, banking deposits or funding; freelance services, etc.

2.3 STRATEGIC DOCUMENTS

The National Strategy for Gender Equality, Reduction of Gender-Based Violence and Domestic Violence 2011-2015, and its action plan [CMD No. 573/16.6.2011] is a document, which in its narrative part addresses issues of women's economic empowerment and in Appendix no.3 contains a detailed action plan for economic and social empowerment. The action plan envisages legislation review, monitoring of women's access to property rights, property issues that affect women in rural areas, etc.

The strategy on property⁶⁶ should be considered in harmony with the gender equality strategy. The strategic priorities under this document are described essentially from a gender perspective. In this regard, we can mention provisions that aim at observing and promoting gender equality in the property registration process. In accordance with Article 41, paragraph 2 of the new Law No. 33/2012 on IPRO, the document provides for the registration of property in the certificates of ownership and the respective files to be developed to include both spouses; the data entry in the IPRO electronic database to be linked with the gender of the person under whom property is registered; staff to be trained in respecting gender equality in the registration activity; awareness raising campaigns on gender equality in property rights are foreseen, especially in rural areas, on equal property rights, including registration. Also, gender equality observance is expected in the compensation process, with an equal number of women and men that will be compensated according to the mechanisms foreseen by the definitive scheme. Objective 4.1. "Strengthening the property rights' system by fighting corruption and other negative phenomena," provides for a review of the existing legislation, aiming at its harmonization and simplification, observance of gender equality and initiation of new legal initiatives in the field of property rights. In order to respect the principles of gender equality in decisions made on property issues, the strategy envisages training of judges and other stakeholders of the justice system, as well as monitoring of court decisions.



PART III



*WOMEN ACCESS TO PROPERTY RIGHTS
– ENJOYMENT AND DISPOSITION
OF PROPERTY*

3.1. SOME FACTUAL AND LEGAL ASPECTS OF WOMEN'S PROPERTY RIGHTS IN FAMILY AND MARITAL LIFE

Generally, when dealing with women's property rights, different studies have focused on immovable property and, in particular, on land. Undoubtedly, the importance and value of the immovable property is crucial, still we must emphasize that the quality of life is highly dependent on the enjoyment and daily management of goods and income, which are not necessarily "immovable". Likewise, it should be noted that, even when women own immovable property from inheritance or any other way recognized by law, violations in the administration of these properties seem to almost strip women of their ownership rights.

Studies conducted are inclined to specifically separate "land" and the respective rights from the right to extraordinary administration, whereas we believe that unless there is full enjoyment of rights on "less valuable" or even "movable" objects, if the woman cannot administer the income from her employment, and if her contribution in the form of unpaid work is not appreciated or respected either by her or the family members, the aspects relating to the enjoyment and administration of "bigger" assets shall be nothing but symbolic and subject to litigation in court. One of the studies worth mentioning in this regard is the "Albania Demographic and Health Survey, 2008-2009"⁶⁷, not updated by other studies. With a "family-tailored" questionnaire, this study focuses exactly on investigating the rights related to the enjoyment and

administration of income, property, profit, drug purchasing and medical check-ups, etc., providing us with a snapshot of the degree of the autonomy a woman has within the family. These seemingly "small aspects" are highly significant and result in the quality of family life and the equality principle or vice versa. A periodic demographic study would be quite interesting to draw comparisons, conclusions and take political action.

It appears that, before marriage, couples have limited knowledge concerning duties and responsibilities emerging from marriage, as well as on the matrimonial property regime. Consequently, it is difficult for them to choose the most appropriate regime in their case. Mimoza Sadushi, president of the National Chamber of Notaries states that: "Upon the entry into force of the FC in 2003, the first people to apply such practice were Albanian nationals who had or were about to enter into marriage with foreign citizens. This was mainly because it was a widely known and applied practice in other European countries. Also, this practice started to be applied by spouses who were lawyers, given that they could better understand and interpret legal definitions. However, citizens are inquiring to a greater extent for information on matrimonial property regime, its causes and effects and the way the regime may change. These are mainly persons who have assets, for example, cases where one spouse runs a business or works in a profession with higher income compared to the other spouse, etc. However, in the notarial practice there were some cases where the couple to be married and owning property, went to the

notary public to get information on the rules of the matrimonial property regime contract and its legal effects. In recent years, couples have requested notary offices to amend their matrimonial property regime contract before entering into marriage, or to change the community property regime. Between 2009 and 2011, 600 contracts of this nature have been amended in notary offices, excluding cohabitation agreements or contracts." Upon requesting updated information, we were informed that the National Chamber of Notaries does not have a data register where the acts are classified by type, and therefore, the suggestion is to organize training in this field on knowledge about the agreement regime.

Thus, we would recommend the establishment of pre-marital counseling centers. At first they could be structured in the form of an ad hoc consultancy provided at the civil registry offices by teams of judges trained in family and marriage law, and further on, this competence could be transferred permanently to the employees of these offices.

During marriage, although the law provides for the forms property disputes are resolved, as long as marriage is valid, it seems that violations of property rights cannot be resolved in court. The reason for this statement is that there is a series of legal actions the husband initiates without informing his wife, or in bad faith. Also, there are legal actions related to the assets created during marriage that tend

to be fraudulent on the wives. This edition contains examples of these cases. This can be mainly found in the section dealing with acts of representation, sales and gifts contracts etc. This is where we find the typology of men's behavior in such cases. Usually this type of cases is discovered after the dissolution of the marriage or the husband' death, but rarely during the cohabitation.

Pursuant Article 54 of the FC, spouses contribute to the family's needs according to their conditions and abilities, if such thing is not stipulated in the prenuptial agreement. This provision, which encourages the principles of family material life autonomy, is not always properly understood in all cases and by every family. While there are women who bear all the burden of housework and also work in formal or informal jobs, their husbands wander in search of a suitable job. Damages caused to aspects of family property due to the husbands' "gambling" [ludomania phenomenon] emerge only during the dissolution of marriage, but this affects the property status of the family, and in particular, that of the woman.

During the monitoring of court decisions, we did not come across claims for property partition for reasons provided by the FC in such abusive cases which threaten the family interest. Although certain articles therein constitute a very effective tool to protect the family.

Respondents of this study answered affirmatively to the question on whether women face difficulties in the administration and enjoyment of the property during marriage. It has been continuously emphasized that this is mainly related to the culture and patriarchal mentality

rather than with the law and its implementation. This is precisely what causes the lack of freedom in the administration of income and the process of being accountable to the man of the household. Everything starts as little girls grow up forced to ask for permission for every move in their daily life, unlike male offspring who are entitled to greater freedom because they are “boys”; and this cycle continues even in the new family. Generally, when it comes to property related infringements, judges identify as instigators husbands versus wives or brothers versus sisters in property. This is confirmed even by CCLI attorneys at law.

Normally, a property is administered by its owner. In particular cases, a property can be administered by a representative appointed through an agreement, by a legal representative or a court designated representative. Regarding the legal community, where the assets of the community property do not belong to either of the spouses, but at the same time belonging to them jointly, the FC provides special rules for its administration. In contractual regimes, the spouses decide by agreement how they are going to manage the co-owned property. According to the FC, each spouse is entitled to the ordinary administration of the community property. Each spouse is considered the legal representative of the other spouse in relation to administrative and judicial bodies on issues of ordinary administration of the community property [Article 90]. Actions that go beyond ordinary administration can be jointly performed by the spouses. If the spouses do not agree on these actions and they are important to the family's interest, a court authorization is required from the other spouse [Article 58 FC]. However, in the legal community regime, the husband may perform actions that are necessary for the family [Article 91] even without the wife's consent or court authorization.

Women face difficulties and obstacles when it comes to disposing of the marital residence and the home objects during cohabitation. In this regard, Article 57 provides that neither spouse can dispose of the marital residence and its objects without the respective approval of the other spouse, regardless of the existing matrimonial property regime.

The stipulation covers a residence which may be both community or personal property, but which has acquired the status of the marital residence. This provision protects the right to housing as an essential standard of marital and family life. It seems that this right/obligation is unclear not only to spouses, but to the institutions, as well. There are cases in which notaries and the IPRO employees are satisfied in knowing that the owner has actually disposed of his/her own immovable property, and are not interested to verify whether it is a marital residence. Additionally, women have limited knowledge in regards to Article 191 of the Civil Code on the renouncement of ownership, which stipulates that, “The renouncement of the ownership over an immovable property in favor of someone else, shall be recognized when done through a public notary registered act⁶⁸.”

We were not able to find anything in the judicial practice related to the aspects provided for by Article 61 of the FC on the “urgent measures” that the court can approve upon request of the spouse if the other one clearly failed to fulfill his/her obligations and threatens the interest of the family. The understanding of the range of urgent measures is likewise ambiguous.

The same reservation applies to the autonomy in disposing of the income from work during marriage, as long as women are not aware of and do not understand the room provided to them by law. Undoubtedly, this affects women's property status, but is to be addressed in another investigation. Even in those cases where women are the main income providers, it is the husband who decides on how it is administered.

Based on gender, economic consequences after the dissolution of marriage seem to be different. CCLI attorneys state that in dissolution of marriage judicial practice nearly 60% -70% of cases indicate infringements of women's property rights. Judicial practice mainly shows a situation in which the partition litigations are submitted apart from dissolution of marriage requests, or are separated from it.

In case of matrimonial property partition, the strict implementation of Article 207 of the Civil Code and Articles 369-370 of the Civil Procedure Code are of special importance. Property partition goes through two phases. During the first phase of the partition lawsuit, the co-ownership rights of the litigants, their respective parts and the items to be divided must be clearly specified. If we leave out or exclude some items from this process, there is risk of rights infringement and dragged out adjudications in various instances. For example, in the case of A.N against P.K and P.D, the plaintiff, who was former spouse of the P.K, requested through legal recourse in the HC, the separation of the amount of ALL 3,906,600 in addition to the flat.⁶⁹ The High Court argues that "unlike the first instance court, the appellate court, a priori, without taking into analysis and assessment the facts and circumstances regarding the claims of the parties,

based on no evidence administered during the trial, but by only making reference to its subjective conviction that the item is not present and concrete at the time of the partition, excludes from the partition the above mentioned amount'. According to the facts presented in this case, it results that the spouses, before addressing the court for dissolution of marriage, had lived for almost two years apart from one another. A question arises here: how will the assets acquired during this period be addressed? Any property gained during marriage is a common property of the spouses and, if they live separately, but without dissolving the marriage, this does not affect the exclusion of an item of the legal community. According to Article 96 of the Family Code, 'it results that the interruption of cohabitation or the factual separation between spouses cannot undermine the common character of the items that each spouse earns during the time they live apart, as the spouses are still considered married'.

In the second phase of the partition, joint items are assessed, compensation is paid to the community or the values that the community must return to the spouses or third parties are calculated, and the remaining items are materially divided.

Judge Regina Merlika, former judge of the Kruja District Court, underlines that there is a disproportion between dissolution of marriage lawsuits and partition of matrimonial property requests. The ratio for 2011 is 78:3, [in favor of dissolution of marriage]. For the same period, there is a 2 to 1 ratio in favor of men when it comes to the applicants in a lawsuit. Judge Merlika explains this with the fact that most couples do not dispose of property, be it a house or farm land. But even in those cases where such property exists de facto, there is no ownership certificate, subsequently the property is not registered with the IPRO.

The same same is true of informal buildings legalizations, where the Immovable Property Registration Office does not register the wife, but only the husband as the owner of the property. This leads to difficulties in property partition cases. Even in other cases, when flats were bought in the market based on entrepreneurial contracts, despite the fact that the spouses were in the terms of legal community regime, the wives were not registered anywhere in the ownership documentation, which results in problems in practice.

Former judge Artur Malaj of the Vlora District Court, states that: "The number of female spouses filing for dissolution of marriage has increased with the passing of years. In addition to showing that marriage foundations are seriously shaken, the increasing number of such cases also points out the enhanced awareness and efforts by women to be treated as equals in the family." Judge Malaj affirms that there have been cases where a husband abusively tried to prevent the dissolution of marriage out of refusal to accept that the wife is the applicant. Furthermore, the judge adds that: "Along with the dissolution of marriage, women have gradually grown aware of their rights in relation to matrimonial property, by not considering themselves as "common housewives", but as important contributors to the family who provide to its administration and the children wellbeing. The situation has triggered reaction from male spouses. As the judge affirmed, "We have seen many cases in which husbands asked for their wives to be discriminated in terms of their portion of the property. The practice of this court has encountered cases where husbands hid their income or registered it to the name of other family members. The same applies to immovable property that is often registered in the name of the husband's mother or father.

Houses are legalized in the name of the husband's parents, that is, the mother in law and father in law, with the excuse of preparing documents faster, given that the spouses are immigrants." All these issues emerge during court proceedings of dissolution of marriage".

The Fier District Court website indicates that 9 decisions, of which one dismissed and another one rejected, in relation to Article 207 of the Civil Code, namely, property partition, were filed in 2011. Of the 7 remaining decisions, only 4 cover partition of matrimonial property after the dissolution of marriage. Property mainly consists of an apartment of 46-56 m². Meanwhile, for this year, the court counts 37 dissolution of marriage cases, 32 of which have been accepted. Hence, property partition has a ratio of 32:4 in favor of divorce⁷⁰. According to the Ministry of Justice Statistical Yearbook, in 2014, 395 new cases have been registered with object of dissolution of marriage, while previous years only had 133 cases. Out of that total, 431 have been solved. The Ministry of Justice Statistical Yearbook does not gather data on partition lawsuits for each district court, while at the local level, partition lawsuits amount up to 1315 cases for 2014. We reiterate that this total does not represent the property partition between spouses, which requires an intervention even in data archiving.

The Korça District Court reports that out of a total of 3230 civil cases in 2011, 96 are cases adjudicated for property rights (revendication action, possessory action, inheritance claim, etc.). Thus, these lawsuits constitute 2.97% of the total number of the cases adjudicated in this court for the reporting period.⁷¹

The comparison between consecutive years in this table [2011-2014] indicates that the number of these suits, at the local level,

continues to increase. This table allows the opportunity to conduct a 5-year analysis, between 2005-2011, or a 10-year one between 2005-2014.

Judges maintain a single approach when it comes to the verdict given by the court on the marital residence after the dissolution of marriage⁷². In cases of dissolution of marriage of couples with children, the house is given to the parent that enjoys custody of the child/children. These are generally women. The problem that arises in these cases is that the wife will have to pay cash for value of the residence that belonged to the husband. Judges emphasize that in most cases women are unemployed and with no income and cannot consequently afford the amount, thus the conflict is not concluded at this point, but continues further up to the request to sell the house in order to pay for this obligation. Thus, with the dissolution of marriage, despite needing a house, women are not able to afford paying for half of it, and in many cases they prefer to take half of the payment from the husband.

Legal changes and the partition of matrimonial property

In most cases, the property that is subject to partition consists of assets gained after the entry into force of the FC of 2003. As a result, we have a combined implementation of the FC of 2003 and the previous legislation, respectively Article 87§3 of the FC from 1981. In some cases, the judicial practice has encountered difficulties and ambiguity. The previous legislation takes into account the effective contribution of each spouse for the determination of the ideal part of common assets. But, the current legislation provides that "After deducting

community obligations towards the spouses and third parties, the remaining property is divided in equal parts between the spouses (Article 103/2). According to this legal presumption, the common property is divided into two equal parts, despite the effective contribution in acquiring them, with the sole exception being the requirements of Article 108/c⁷³. Therefore, there are some difficulties related to the extension of property rights in time⁷⁴.

Alimony

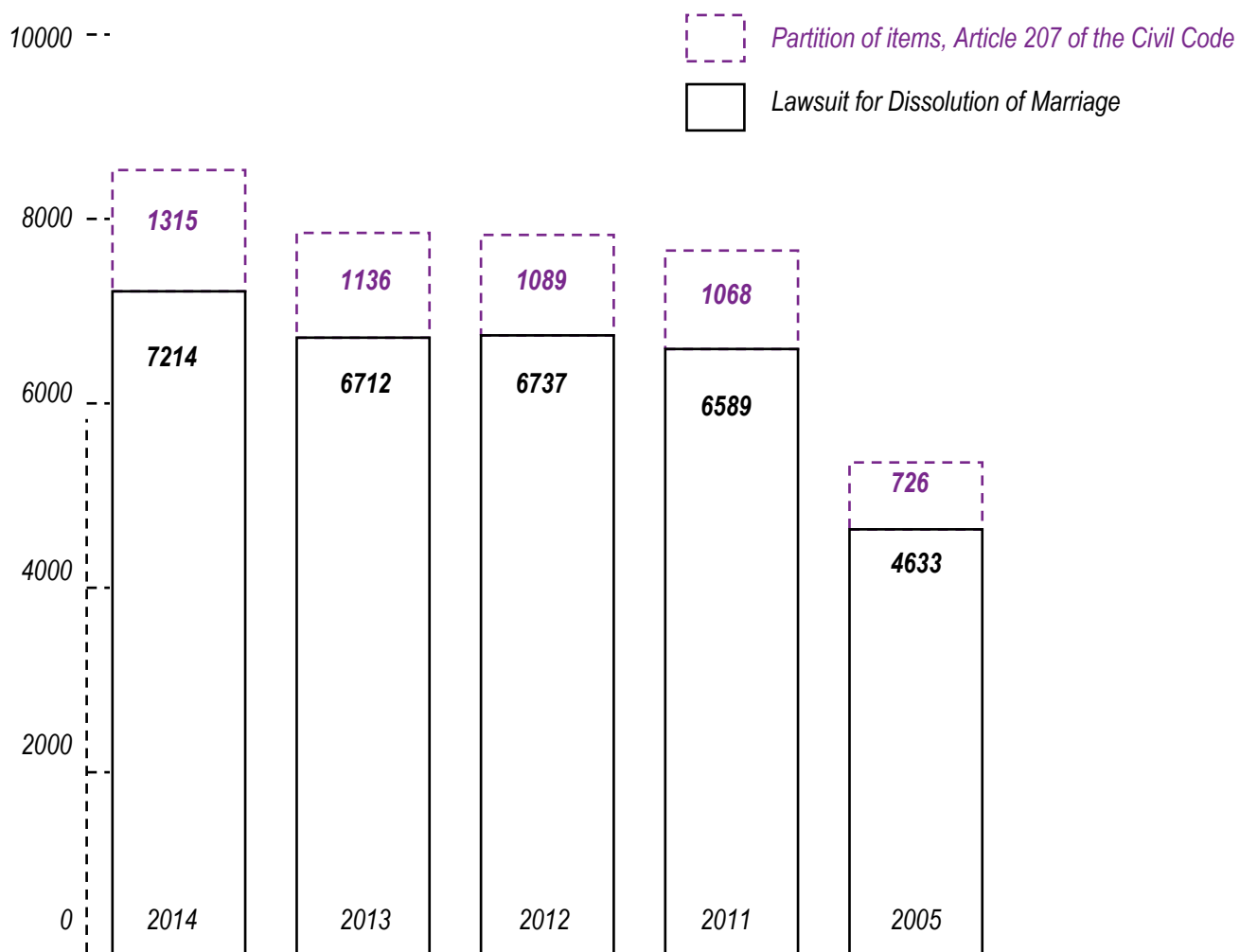
Economic issues arise even due to the spouses' non-compliance with the obligations they have.

Such is the case of non-execution of the alimony verdict. Oftentimes, court decisions are not executed. At first, it might seem as a minor issue to this study, but we stress it as we believe it impacts the status of women's rights. Given that these mothers are the main responsible person for the rearing and education of children, they have more expenses, might potentially work less or with limited hours or in a part-time job, which impacts their income. Undoubtedly, this impacts their property rights limiting them more. The Center for Legal and Civic Initiatives⁷⁵, closely investigated the role of the justice system in the empowerment of economic rights of children and women responsible for their rearing and education, and identified a series of problems and difficulties for this group. The resulting report is based on the main findings from the monitoring of the Tirana District Court decisions with the object of "dissolution of marriage" and the remedy of its consequences for the one-year period between January and December 2014.

The increased number of dissolution of marriage

Chart 1

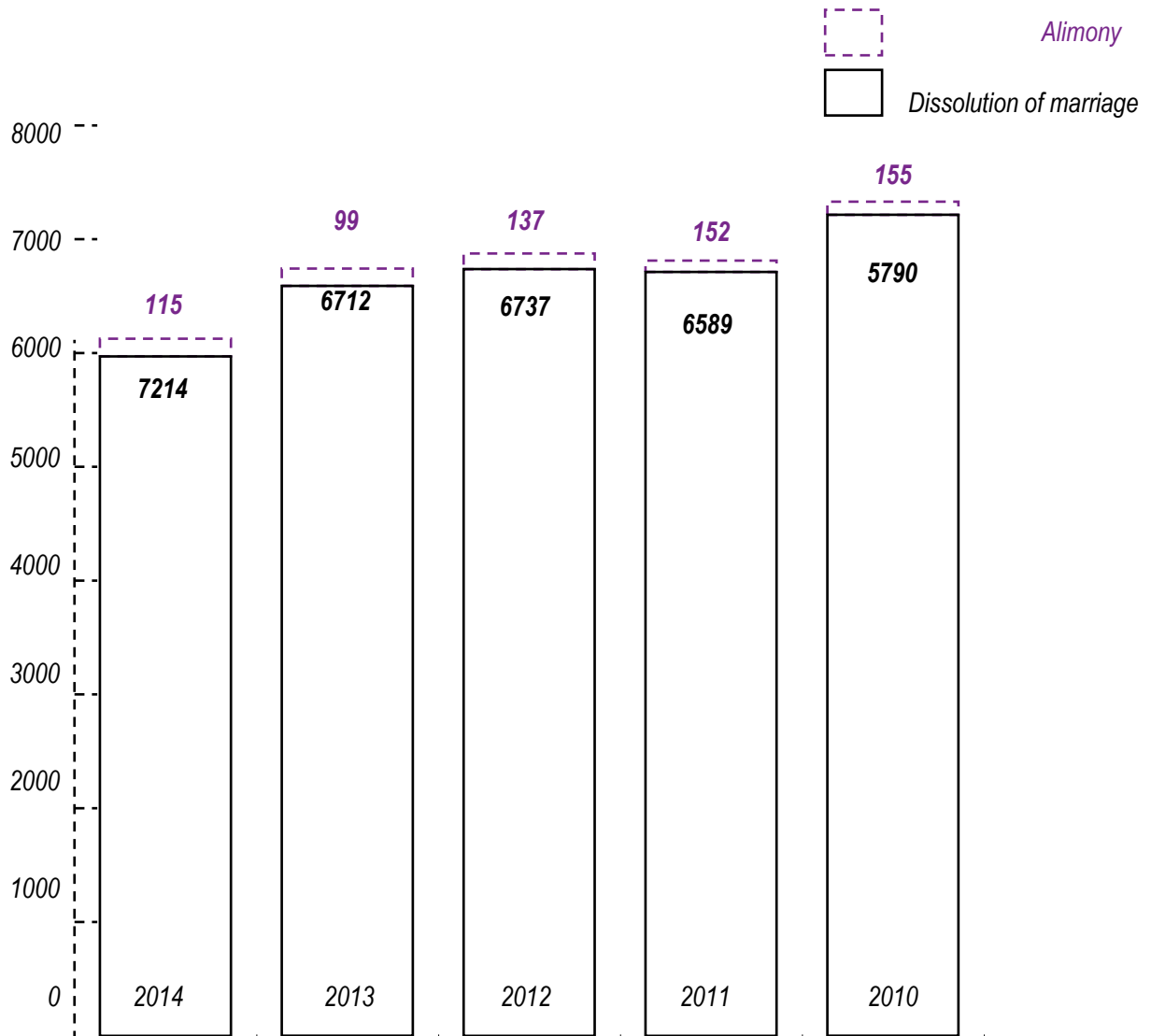
This chart shows the ratio between lawsuits for dissolution of marriage versus property partition ones, according to Article 207 of the Family Code. These data have been collected at a national level for the 2005-2014 period using the Statistical Yearbook published by the Ministry of Justice.



Source: Ministry of Justice Statistical Yearbook

Chart 2

Comparative chart of district court decisions on dissolution of marriage against alimony



of spouses with children, results in an even ratio with alimony obligation and many additional procedures to allow the collection of these obligations. Besides the court, even the Bailiff's office is engaged in the role. The alimony amount in favor of the child, on average ranges from the minimum amount [ALL 800 -1500] up to the maximum amount of [ALL 15000- or more], depending on the court's discretion⁷⁶. In recent years, the Constitutional Court has pointed out for several cases that the failure to enforce the final court decisions within reasonable time has violated the right to due process of law. Bailiffs point out the difficulty in the enforcement of the alimony, which does not depend only on the bailiff's work, when the bank account of the paying party, which can be blocked in favor of alimony have no available funds. When faced with alimony and other obligations, and also due to the informal economy, men work under the table and the assets they obtain are registered under their family relatives. In other, cases they are emigrants in different countries and it is impossible to verify their income⁷⁷.

According to the Ministry of Justice Statistical Yearbook, the number of alimony claims versus the ones registered for dissolution of marriage from 2010 to 2014, is as shown in the following table:

As noted, there is a disproportion between the high number of lawsuits for dissolution of marriage and those for alimony. This happens because the court has a legal obligation to specify the alimony in cases of dissolution of marriage with children.

Alimony is regulated within the consequences deriving from the dissolution of marriage.

Thus, when making references to alimony claims separately, they mainly related to changes of the first decision. The provision of Article 161 of the FC stipulates that "In the decision of dissolution of marriage, alimony for the child shall be specified...", which implies that regardless of the request of the parties in process, alimony shall be reviewed by the court.

The district courts mostly ruled in favor of the mother in cases of custody and parental responsibilities⁷⁸. It is up to the wife to periodically file request for the execution of alimony. The mother in distress knocks on bailiffs' doors asking them to do something that might allow her to receive alimony. Practice has shown that private bailiffs mainly are not 'willing' to take on cases related to the execution of alimony, thus refusing such cases⁷⁹. In case of non-compliance with the alimony obligation, the creditor should address the court and file a claim of failure to provide living means. In many cases, the court has acted by imposing fines, but in a few cases, it has also decided to imprison violators. In many cases the debtor leaves the country, leaving the mother in difficulty of rearing and providing for the children.

Taking into account the difficulties and the postponed alimony execution, the Parliament of Albania has undertaken a legal initiative which aims at addressing this problem, stipulating in Article 317 of the CPC that 'the court decision in each case shall be given with a temporary execution, when alimony has been specified'⁸⁰.

It would be appropriate for these interventions to be reflected

in the Family Code, which contains material and procedural provisions. Article 139 of the FC on taking temporary action, provides for “the Court, upon request of the interested party, to take temporary action on alimony,.... The decision on taking a temporary action is valid until the final decision is made, but it may be changed or abrogated by the court, if deemed that the circumstances have changed or the decision has been taken based on inaccurate information”.

In many cases, the dissolution of marriage becomes a burden with severe socio-economic consequences threatening the stability of providing minimum living standards for the mother and children. The provisions of the CPC on this case were not compared to the obligation defined in the UN Convention on the Rights of the Child, in which the best interest of the child should prevail as well as with the principle of the joint obligation that both parents have for the rearing and education of the children. The proposed changes aim to address the issue of alimony, which should be automatic upon starting the dissolution of marriage process, thus not leaving this up to the perception of the judge or parties.

In some cases, a given action should not depend on a request to be filed. The legislation should anticipate this possibility and the court cannot be strict in expressing its passive role, but rather act. Children enjoy special protection by the state, and in this case the court is ‘the state’. This is a constitutional principle that trumps any code or law. It would be more efficient for this provision related to immediate action to provide for more freedom for the court to act, which would lead to this emergency being properly addressed⁸¹.

Principle 3 of Recommendation no. R (91) 9 “On emergency measures in family matters” of the Council of Europe Committee of Ministers points out the importance of a simple and speedy procedure, which is necessary to ensure that decisions are reached very quickly in order to prevent improper negative and irreversible consequences. To this end, the following measures could be used:

- lodging a request through a simple application;
- foreseeing cases where the court is allowed to act on its own initiative and alimony should be one such case;
- provisional measures taken without a hearing;
- using all modern communication technology to facilitate any notification procedure, the correspondence of requests and information exchange between the courts, other competent authorities and the various parties in process;
- allowing the court to play an active role in managing the case and collecting evidence;
- preventing any party from improperly using emergency measures and dragging the process out through delays/ postponements etc.

The above-mentioned recommendation highlights that ‘Courts and other competent authorities should have the power to make decisions

which are immediately enforceable. Court decisions must be rapidly enforced, should provide clear sanctions in case of failure to enforce. Spouses have equal rights to appeal in court for violation of marital obligations⁸².

Spousal bank deposits

Another issue identified during the work by attorneys who represent women in these processes is the bank deposits registered in the husband's name, on which no security measure is placed during the dissolution of marriage, and are no longer active when the marriage is terminated by a final decision. Judicial processes often tend to favor the husband as the main contributor in bank deposits asset partition. In a case submitted at the Korça District Court, the bank deposit was opened during marriage. This contract was signed by the husband, although the wife results as a client, and her ID number has been registered in this regard. During court proceedings, the plaintiff [the husband] did not claim the deposited amount as generated prior to or after the marriage being instituted as personal asset or monetary value, but claimed the amount was generated by a personal property transaction. However, he still requested an 80% to 20% partition in his favor, because this income was generated from his work in emigration while married. According to the decision: "The plaintiff claimed a higher share due to the contribution made for the acquisition of the bank deposit matrimonial property. According to him, "he is the only one who was legally employed during the entire marriage duration, and is able to verify his income source, while the defendant was sick and therefore has not worked".

During the judicial process, they weren't able to prove that the defendant was sick and that the sickness barred her from getting employment. In this case, the court ruled for an equal partition of the deposit amount [principal and interest accrued], pursuant to family law and the standards of equity and non-discrimination.

In terms of compensating contributions provided for in Articles 147-150 of the FC aiming to compensate as much as possible any inequalities in lifestyle created by the property partition as part of the dissolution of marriage, we didn't find any decision during the judicial practice monitoring that included such obligation, besides alimony. In training activities with attorneys and assistant attorneys of the Regional Chamber of Durrës and Vlora, the Centre for Legal Research and Training found that they were not clear about the role of this institution and did not apply it in dissolution of marriage cases, even when these asset differences were obvious⁸³. Judges also admitted that there were no registered cases of wives claiming alimony for themselves, as this is an obligation that's hardly fulfilled even for children and this type of request from the wife would not be enforceable. In this context, since among the indicators that determine this contribution [Article 149 FC] include time spent and the time necessary to educate children, their professional qualifications, their ability to get a new job, etc., it is very important that effective checklists be prepared for the court and attorneys to measure and request the enforcement of such a right. This request has been raised simultaneously by judges and attorneys.

In layman's terms, when seeking to sell the property of the minor, the action must be carried out only if it is in the interest of the minor and based on an authorization from the local district court, which must investigate this interest and issue the authorization accordingly for the situation at hand and based on its judgment.”



Additionally, judges consider and recommend that it is adequate to prepare a checklist that would be used to determine the value of unpaid labor. Others suggest the legal provision of a certain amount or a specific mechanism or formula to calculate the contribution of women in maintaining the house, rearing children, in an amount that is equivalent to a property value, because it frequently occurs that even with an invaluable contribution, they are left with nothing from the partition of matrimonial property with the argument that their contribution was not in cash value⁸⁴.

The same attention should be paid to cases of dissolution of marriage by mutual consent. It is the obligation of the court to examine the draft agreement between the spouses, filed as voluntary compromise among them, to determine whether it provides adequately for the needs of the couple's child/children, and to check for any potential hidden discrimination or unequal treatment of spouses in terms of property and other aspects. If any such elements are proven, it would constitute grounds for the court to dismiss the request for mutual consent dissolution of marriage⁸⁵.

The de facto family is already a reality in Albania. From what we have seen, violation of women's property rights under the conditions of cohabitation has not been tackled by any study. The FC has only two provisions, namely Articles 163 and 164, related to the meaning of cohabitation and the opportunity to enter into an agreement in the presence of a notary, where the consequences resulting from cohabitation in relation to children and assets acquired during cohabitation shall be defined. The National Chamber of Notaries has no statistics on these agreements, although they admit such cases are limited. However, the matter of children care is not subject to self-settlement,

because children born in and out of marriage, are equal for a legal point of view. Cohabitation recognizes principles of monogamy and heterosexuality. Property consequences are not regulated by the FC, but in accordance with the CC provisions on co-ownership.

On the other hand, there is no regulation to protect the principles of gender equality in terms of rights and obligations in cohabiting couples. Meanwhile, in an interview with expert on family matters Ms. Vjollca Meçaj, we found that in recent years there has been an increasing number of cases of marriages/cohabitations violating the principle of monogamy, which affects the woman's property status as spouse or partner. Since cohabitation is a social reality, the development of special legal regulations on this institution, including aspects of property for cohabiting couples is recommended.

In a few cases, economic causes and property-related conflicts become motive for violence between cohabitants, as well as spouses. This study cannot draw conclusions in this respect, also due to these cases being subject to very long legal processes. In almost all cases of conflicts encountered, the residence is rented, unregistered or undergoing the legalization process. When interviewed about cases where women are victims of domestic violence because of property disputes, Alma Gjurgji and Ilirjan Mandro from the General Directorate of State Police shed light on a painful case with many consequences they were dealing with.

3.1.1 The woman's right as mother of a child in relation to: the administration of the child's property, the use of income from the property and other decision-making related to the property

In this part of the study, we will analyze the administration of the child property by his/her parents. This brief analysis tackles another aspect of family life. It has to do with the opportunities the woman has, in her capacity as the mother of the child, to manage and complete transactions with her child's property. We must point out that the law provides with the parents the same rights and responsibilities towards their children, both in terms of personal and property rights. But, is such equality actually applied?

Article 234 of the Family Code lists a series of legal actions regarding the immovable property of minors⁸⁷ and other actions, which may be carried out when required in the interest of the minor and through an authorization of the local district court. Such actions include: transactions with immovable property, mortgaging, putting a lien on the property, taking a loan on behalf of the minor, withdrawal from inheritance or legacy, not accepting a gift, and any action beyond the simple administration of the wealth of the minor.

If performed without court authorization, these actions can be declared null. The prosecutor, parent, or guardian of the child, according can by law address the court with a request to declare the performed legal action null. If the parties concerned over an unauthorized legal action address the court, and if the latter gives its approval regarding the legal action carried out, then it is no longer considered null. In reviewing court decisions, we have come across such cases and the court approved all of them. There have been cases where a father

has addressed the court 10 years "post factum". The property was sold long ago, but the father was forced to take action because of the registration of the property by the buyer in the Immovable Property Registration Office [?!]. The Tirana District Court through Decision No. 3320/26.04.2011 states that the child's father seemed to have addressed the court ten years after the real sale of the property belonging to his three children. In the meantime, the buyer had built a house and wanted to register his property. The Court decided to dismiss the request citing as grounds, among others, the fact that such requests should be made by both parents⁸⁸.

In layman's terms, when selling the minor's property, the action shall be taken only if required for the child's interest and solely upon the authorization of the court, with the latter examining such interest and granting authorization on a case by case basis, in accordance with its judgment. Judicial practice clearly shows that the overwhelming majority of requests for such authorization have been filed by the father of the child.

Thus, out of a total 95 requests for authorization in the Tirana District Court in 2011, 31 were filed by both parents, 17 by the mother only and 47 by the father. Most of the applications for this year [2011] seek authorization to transfer the farming household property, where children are co-owners or owners of the agricultural land. There is only one case where authorization was sought to sell a vehicle obtained in inheritance by the children after their father's death and the request was filed by the mother. In 2011, there are two other cases where the property is not agricultural land, with one applicant being the widowed mother and the other the aunt as the guardian of the orphan children. In both cases authorization to dispose of

the bank deposit obtained by the child/children in inheritance is sought.

Usually, the applicant is the woman in her capacity as the mother of the child. That happens either because she is a widow, has divorced and acquired guardianship of the children, or she is the head of the farming household [the latter is rarely the case]. Consequently, we conclude that mainly it is the father who files for authorization to sell a child's property. Legally speaking, it is clear that both parents have parental responsibilities and the right to manage the child's property, in line with the court authorization. Upon review of court decisions, we found that the court decision is issued on behalf of the applicant and fails to specify that it applies to both parents.

Summarizing the findings of judge Rezarta Mataj in the Tirana District Court practice in relation to granting authorization to sell a minor's property, for the purposes of this study, the following was found:

- Firstly, while a minor should be legally represented by both parents, when it comes to filing a case, such as seeking authorization for transactions with a child's property, many judicial decisions indicate the father as the main and only applicant. The absence of the mother leads us to deduce that the [actual] perception is still that of the father being the only legal representative of the child as the head of the family⁸⁹.
- Secondly, with regard to selling properties co-owned by minors, we find that the requests for authorization to sell and transfer the minors' property have failed to take into account a series of pieces of evidence, such as the parents' economic status, or questioning the children separately.

Generally, it has been sufficient for the courts to know that children attend school. Parents have not been asked about their plans for the revenue obtained from the sale. Neither are they asked about how this revenue will be managed: whether it will be deposited in a separate bank account under the name of the minor, or used to meet their economic needs? Additionally, the law provides that the court should ensure that the property is sold under the best conditions possible. In the meantime, the court decision does not establish any reference price or minimum price under which the property cannot be sold, as said price would contradict the principle of the best interest of the child⁹⁰.

- There is no study or any index to show the role and the control of the mother in managing this property for the child's benefit.
- There is a high probability that the woman has a limited or irrelevant participation in such decision-making.

When interviewed with regard to the applications for authorization to Undertake transactions with minor's properties, Rexhina Merlika, former chief judge of the Kruja District Court, confirmed that the highest number of requests with this object for 2011-2012 was filed by the father of the child. Judge Merlika explained that in the cases where the application is filed by a woman, she either was a widow, had divorced, or it was impossible for the fathers to be present because they have emigrated. In other cases, only men had filed for an authorization⁹¹. It is clear that there is no unified approach

in the judicial practice in relation to such cases. Some courts require the presence of both parents as they consider granting such authorization as an action that goes beyond ordinary administration and consequently both parents must be present, regardless of whether they are in the condition of a normal cohabitation. Other courts believe that the presence of one of the parents suffices.

The same observation was made by the Korça District Court Chief Judge, Mr. Admir Belishta and judge Sonjela Voskopi. Thus, they confirmed that in the majority of the cases, it is the father who files the request for authorization to undertake transactions with the child's share of property. The mother initiates such action only if her husband is deceased, is in emigration or cannot go to court due to disease, inability or disability.

It is seemingly true that this aspect of child's rights and interests, which reflects the principle of equality between parents and regarding their children, or lack thereof, has not been subject of any study conducted on the rights of children in Albania⁹². A detailed and comprehensive study would be recommended. That would enable an understanding of the situation and standards of the special protection for children, as well as of the status of parents and of the woman in her capacity as a mother in the Albanian family. Discrimination and discriminatory behavior stem from the family and that is why it should be in the focus of similar studies that are intended to stimulate positive action.

3.2 INHERITANCE AS A WAY OF ACQUIRING PROPERTY

Inheritance is a derivative way of acquiring property, generally regulated by the provisions of the Civil Code [Article 165]. "Inheritance shall be the transfer by law or by will of the property of a deceased person to one or more persons (heirs) according to the rules set forth in this Code." [Article 316 of the Civil Code⁹³].

Inheritance plays a special role in women's property status. Interviewed judges and other individuals agree that the most common case of a woman becoming an owner is mainly through matrimonial co-ownership, inheritance from the maiden family or from the husband. They even consider these as the only options. If they cannot enjoy this right, the percentage of property owned by women or the share of property under the control of women⁹⁴. The issues related to inheritance are part of the judicial practice and reflect the everyday life socio-economic problems that have a particular gender specific impact and highlight the influence of custom and gender stereotypes.

These cases constitute an important part of the judicial practice, accounting for 28% - 31 % over the years. In 2011, out of a total of 10,079 judgments, 3,174 (or 31%) address inheritance certificates.

In 2010, 3,050 out of 10,259 (or 28%) court decisions were related to property inheritance. Out of a total of 12,966 civil cases in 2012, around 3,604 or 28%, dealt with inheritance certificates.

This situation has changed drastically due to the legal changes and involvement of the notary in the process, thus relieving the court from such procedures. No such decision was made in 2015, and only 8 cases were filed in 2014 in the Tirana District Court of Tirana, of which 4 were accepted and 4 were dismissed, while these figures were 2,131 for 2013, out of which 1,782 cases were accepted and 310 were dismissed. This two year illustration chart, clarifies the work load transferred to the notaries, and the problems emerging from this institution. Below, we will discuss aspects of inheritance by law and by will. Through these means, a woman in her qualities as heir, might acquire all the testator property, part of it, one single item or another property right. Property/objects subject to inheritance include movable and immovable assets, and rights.

Because of the centralization of property during the past regime, inheritance had 'almost' no affect on the individual property status. That led the new post- 1990s legal regulations on property to cover inheritance as an important institution for obtaining ownership. A particular aspect to acquiring this type of property is that the estate is executed only upon death of the testator. Consequently, the applicable law on inheritance is the law that was into force at the time of the testators' passing. That means that different laws in different time periods stipulate [or may stipulate] different regulations on the estate acquired in inheritance. This means that if a testator passed in 1970, but his/her heirs had their right to ownership over certain properties re-established by Law No.7698/15.04.1993, "On Restitution and Compensation of Property to Former Owners," the heirs shall be determined according to the law that was into force in 1970.

If any of them has married and acquires the property by inheritance during marriage, it would be necessary to address the legislation in force at the time, in order to determine whether this is an individual or community property. It is worth emphasizing that the Property Restitution and Compensation Law is not a way of acquiring new property. According to Unifying Decision No. 24/13.3.2002: "This law does not create a new situation, but re-establishes lawfulness and justice." This law recognizes the right of ownership for former owners and their heirs.

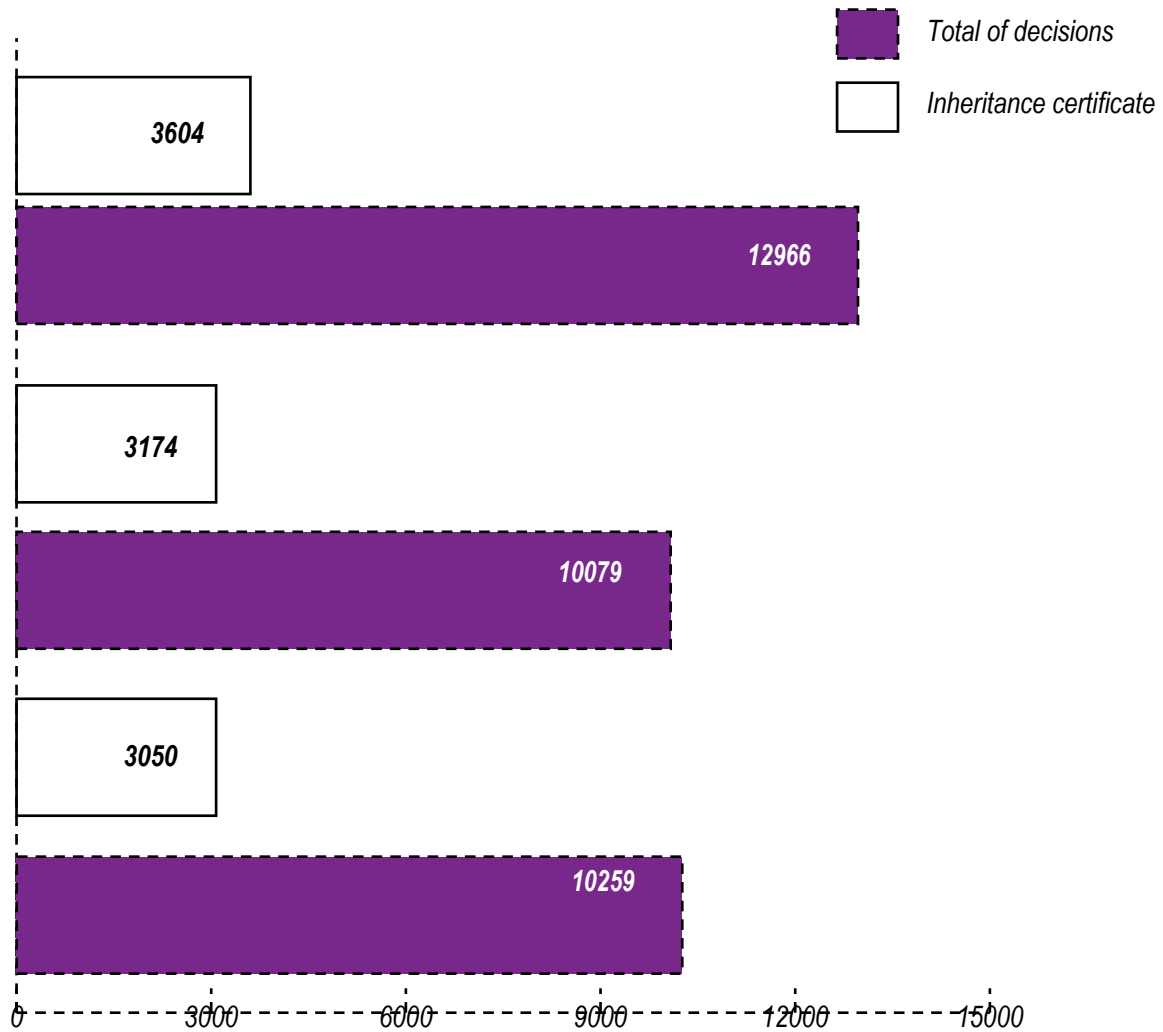
They may belong to both sexes. It is important to focus on this law and its effects, as male heirs have in practice, made attempts to exclude women and girls from their right to benefit from the restitution or compensation of property as heirs to former owners.

Inheritance and its effects on matrimonial property regimes

Legal regulations on the property acquired in inheritance during marriage have changed over time depending on the frequent changes to the legal framework. Thus, according to the laws into force, the property acquired by inheritance is ranked sometimes as an individual or as co-owned matrimonial property. Prior to the entry into force of the Civil Code of 1981⁹⁵, legislation did not consider the property gained in inheritance or by donation as part of the common matrimonial property. In addition, Article 86 of the Civil Code 1981 considers such property as property acquired during marriage, i.e. belonging to both spouses. Currently, the 2003 Family Code considers such property as individual property, when their disposal is not made in favor of the legal community.

Chart 3

Inheritance certificates versus other civic decisions at the Tirana District Court during the 2010-2012 period



In the case of premarital contracts [including the universal contract], the rule may be applied differently, depending on the spouses' decision. These legal changes, together with the lack of knowledge on the law and failure to implement it, have caused confusion both in life and judicial practice. Therefore, unifying decisions, such as Decision No. 24/ 13.03.2002 of the JCSP aim at unifying the practical aspects and principles that govern the institute of inheritance, as a way of acquiring property, should one of the spouses be the beneficiary. It is very important that such legal standards be taken into consideration by the judicial system, and other actors, such as the notaries, who draft notary acts, lawyers that guide the parties, etc⁹⁶.

One of the problems that is identified, and that affects inheritance and marital property is the fact that the Immovable Property Registration and Notary Public Offices do not always consider reflecting women's rights as co-owners of property acquired during marriage. This has subsequently led to an unfair division of property among other heirs, thus infringing the wife's rights. From the legal viewpoint, an apartment bought during marriage and registered at IPRO only under the husband's name ⁹⁷ despite it not being individual property [according to Article 77 of the FC], belongs to the legal community [according to Article 74/a], and thus co-owned by the wife. Therefore, according to the Family Code, the wife is entitled to co-ownership of this apartment as property acquired during marriage. Should the husband die and not leave a testament, his wife is recognized as the legal heir, along with other individuals in row of inheritance, as determined by the Civil Code. In practice, the transcription of the inheritance certificate at IPRO was performed according to the certificate issued by the court, but now it is done according to the inheritance certificate issued by the notary, thus transferring the property to all the heirs in equal shares, without taking into consideration the fact that

the property belonged to both spouses, while the certificate of inheritance disposes only of the part belonging to the deceased spouse. It occurs that such property is divided among the heirs without first deducting the ½ that belongs to the surviving spouse.⁹⁹ It is clear that in cases of such conflicts among heirs, the situation is settled at court. However, this fuels social tensions and incurs economic costs. Should the spouse not have information on this, it may lead to them losing their right or enjoyment of their property. Based on these cases, some legal professionals recommend clarification of the situation in specific provisions of the Civil Code, the law on the Notary, the law on Immovable Property Registration and its bylaws that are being developed, under the framework of the law on immovable property registration.

Experts of the civil field¹⁰⁰ recommend that it is necessary to clarify Articles 358 and 361 of the Civil Code by adding a paragraph which will set forth that the certificate of inheritance be issued after property partition, according to the matrimonial property regime. According to them, this allows the surviving spouse to receive half of the property acquired during marriage, and only after this part is deducted from the property, can the rest be considered as inheritance property, with the spouse being one of the heirs. The group suggesting these clarifications made the analysis prior to the amendments made to the CC provisions in 2013 and to the legislation on Notary, according to Law 131/2013. They base their suggestion on the fact that inheritance certificates and ideal partition of property are almost never appealed, and become final upon the decision of first instance courts¹⁰¹.

Law researchers and enforcers seem to have different opinions regarding the clarity of these provisions. A part of them think that the provisions are already clear. The death of one of the spouses, as a legal fact, results in marriage dissolution and the termination of the marital property regime, and the opening of inheritance. Unlike inter vivos partition which applies

to other cases of marital property regime termination, in the case of death of one of the spouses, the partition is done following the rules of inheritance mortis causa. As far as partition of inheritance is concerned, this should only apply to the objects/assets that belong to the testator, without including the property of the respective surviving spouse [Article 353 KC]. This is the only inheritance the heirs should claim to be parted, since only this is considered as the inheritance property. This is the case where the provisions of both the Family Code on the expiry of the regime, and of the Civil Code on inheritance apply to the same process. The inheritance division process is characterized by two phases, since it follows the provisions of CC Article 207. The first phase of the division of property coming from inheritance is of particular importance, as the heirs [including the surviving spouse of the testator] are entitled to presenting the subjects who will take part in this division, and the list of objects that are subject to division. Such 'objects' are known as inheritance property. They do not include the surviving spouse's personal property, nor his/her share in the community. This is the case when the implementation of Article 358 of the Civil Code on the contribution given during marriage in combination with Article 74 of the Family Code is considered as appropriate. Practice has shown that this provision is not properly implemented. From the legal viewpoint, protection of the spouse during division of inheritance is guaranteed, and according to the lecturer of the Magistrate School, Lawyer, Artan Hajdari, this should not be confused with what Article 361 of the Civil Code foresees in terms of the inheritance row103. Unlike the partition of marital property upon marriage termination¹⁰⁴, the division of inheritance involves entirely different subjects, heirs or co-heirs who may request the division of the inherited property at any time, but only if an important condition is met, i.e. proof of the time of death, which is also the time when inheritance is opened (Article 318 of the Civil Code)¹⁰⁵. Following the 2013 amendments to this article ¹⁰⁶, it reads as follows:

The testament is opened when the testator dies.

Should the person be declared as deceased, by court decision, the inheritance is opened on the day when the person is considered dead ⁰⁷.

Thus, the lawmaker based on law clarified a series of ambiguities encountered in practice or confusion related to the opening of the inheritance and the inheritance certificate. Further, the latest 2013 CC amendments added Article 318/2 providing that: 'Inheritance is governed by the law in force at the time of its opening, meaning the time of death of the testator.'

The effects of customary law on inheritance, exclusion of women and girls from inheritance, and renunciation of inheritance

Relying on the judicial practice and information obtained by the NGOs operating in the field indicate that when the couple lives with the husband's parents, which is a predominant custom in certain parts of the country, the property acquired during marriage is usually registered under the name of the husband's parents. In case of death of the husband, it is difficult for the wife to prove her contribution to the acquisition of property. That becomes even harder by the dominant mentality. Judge, Fjoralba Qjani, states, "This way of gaining ownership is often strongly affected by the customary law. In certain areas, a combination of the old norms, which do not correspond with the positive law, is observed." Referring to some cases from the judicial practice of Lezha District Court, she highlights that it frequently occurs that when the husband of a childless couple dies, the widow renounces its lawful inheritance rights, 'due to' customary law. Certainly, this happens because of the inferior position of women in the society, and because of the influence of the customary law¹⁰⁸.

Courts have also reviewed cases of dispute involving the wife and her children on one party, and members of the dead husband's family on the other party¹⁰⁹. Other cases we may mention include civil actions on the validity of wills, disputes,

among brothers and sisters over residences left in inheritance by their parents, but that are held by one of the brothers, usually the 'youngest', or the 'oldest'¹¹⁰, etc. Judges adjudicating inheritance cases note that women's property rights are in most cases denied by the former spouses, and other members of their family of origin, mainly by brothers¹¹¹. On the contrary, women's legitimate claims are subject to prejudice and seen with contempt and dismay. According to judges, such behaviors are not only typical of the men of the family, but also for the 'female members'.

Pursuant to Article 361/3 of the Civil Code, when a married couple has no children and one of the spouses dies, apart from the surviving spouse, the heirs of the second level are called to inherit. Practically, such regulation has led to problems with regard to the right to housing. If the property of the deceased spouse includes a residence, the latter would normally be divided among several heirs. Hence, in order to "protect" the residence from such division, it has been suggested that such residence be subject to similar provisions as those set out in the Family Code on family residence. Therefore, the surviving spouse should have in hand some safeguards to avoid claims by second order heirs, when the couple had no children.

Law practitioners affirm that inheritance rights are, seemingly, respected in general, and that women are able to obtain the right of inheritance on property in cases of legal inheritance.

According to judicial practice on inheritance by will, in the majority of the cases, when the testator has left inheritance by will, he has favored his sons. Daughters are either excluded from inheritance or determined as testamentary heirs over smaller shares of the inherited property.

It is true that taboos, which guide that parent's property belongs only to male rather than female offsprings, are nowadays not as dominant as they used to be. Therefore, there is a significant increase in the number of women who claim their right in court to benefit from the inherited property owned and administered so far only by their brothers¹¹². What captures the attention of judges is that fact that in most of the cases regarding issue of legal inheritance certificate, such proceedings are opened predominantly by one of sons of the testator, and rarely by their daughters.

Sometimes, the daughters of the testator are excluded from the inheritance and that has driven them to claim the re-establishment of their right as co-heirs¹¹³. In case of an heirs representative requesting the issue of a certificate of inheritance, the judges find it difficult to explain the claimant that his sister(s) is (are) equally entitled to inheritance like the male heirs and they are subject to equal shares. The judges have heard statements like: "But, my sister is now married, she has a husband", or "My sister(s) has/have nothing to do with the house my father built", "My sister has received a dowry, so she has got her own share, etc."¹¹⁴. The everyday life is in a way reflected on the way parties address their disputes to court (which may be even ordinary ones), and judges have thus noticed that in both inheritance certificate issue and substantial cases of inheritance for disputes over property inheritance, brothers and fathers did not want their sisters and/or daughters to be recognized as heirs because they were women, or married. Judge Enerjeta Deraj, notes, "When you tell them they are equally entitled to inheritance they openly disagree in my presence,

in the middle of the courtroom, indicating the existence of an even harsher conflict outside the court room. The judges adds, "In cases of property partition, it is even harder for men to accept their sisters or daughters as co-heirs, and to 'give' them physical shares of 'their' property or that of 'their fathers', as they put it.

Interviews with judges and judicial practice until 2013 monitoring show that judges find themselves in difficult situations when the claimant, who is usually the son of the testator, is often accompanied by the sister(s), in the trial for the inheritance certificate. They are forced by their brother to tell the court that they renounce their parents' property, in favor of the brother.

There are cases when silence only is considered as an expression of such will, while the brother declares that, "my sister leaves the property to me".

When asked by the judges of their decision, they [the daughters of the testator(s)] declare that such stand is normal and fits with the morale, since the brother(s) are the ones who have taken care of the parents. In these cases, it is understood that female heirs are not aware of the fact that such expression of will brings no legal consequences¹¹⁵.

In the course of this study, we also came across another particular situation that, although rudimentary, requires, in our view, the attention of lawmakers and judges, in order to initiate an incidental inspection by the Constitutional Court. This is a case of provisions related to inheritance matters that were applicable at the time of death of the testator, but whose current implementation is contrary to constitutional principles. Hence, the law in force at the time of death, and, consequently, regarding the opening of the inheritance is completely incompatible with the standards and context of the principle that we are trying to promote and defend. 116

Concerning inheritance by will, the judicial practice indicates that, in the majority of the cases, when the testator has disposed inheritance by will, he/she has disposed in favor of husbands and sons. Wives and daughters are either excluded from inheritance, or designated as testamentary heiresses over smaller parts of the inherited property¹¹⁸. The judicial practice of Vlora District Court illustrates this with a considerable number of cases related to testaments made by inhabitants of Himara, where, traditionally, the property is mostly left in inheritance only to sons. Artur Malaj, former chair of this Court, emphasizes that: "These testaments have had problems not only with the infringement of the legal reserve, but other problems, as well. We have often had cases in court of fictitious donations, where, in order to avoid infringement of the legal reserve, parents make a fictitious donation in favor of the son.

Most of such wills date before 1990, when the only assets owned by parents were houses, gardens, and limited house furniture. These testaments served to divide the property among male offsprings, excluding daughters. Problems regarding division are related to properties obtained after 1990, pursuant to the property restitution and compensation law and other laws..... Women, however, know little about their rights in this area.....". Almost all the interviewed judges emphasized that customary law and practice play an instrumental role in inheritance-related cases in Albania.

Such cases are reported by the Judicial District Court of Korça

In the civil case, by I. J. as the plaintiff [daughter of the testator] and G.J and P.J as defendants [the testator's sons], with the subject matter: "Recognition by the defendants as a legitimate heir and restitution of 1/5 of the existing inherited property, or of the property that may be given in the future by the Property Restitution and Compensation Agency, as a direct heiress or heiress by representation of the testator S.J... (her father). Absolute nullity of the notary testament No. 37/05.05.1995, opened on 22.02.2000, issued by the deceased father...." Her lawsuit was dismissed by the court upon Decision No. 41-2012-611 (375)/08.02.2012, on grounds of inappropriate litigation, where, although the plaintiff requests the nullity of a testament involving five persons, as testamentary heirs, only two of them have been summoned in court as defendants. The court cannot create a different litigation from the one started by the plaintiff and charge with responsibility individuals, who are not included as defendants. What we notice in this case is that of the five testator's children, only one is a girl who has been excluded from inheritance.

In the context of inheritance, it is worth focusing on Article 377 of the Civil Code, which "seems" to set some restrictions for the

from the circle of heirs who are entitled to benefit from the testator's inheritance, when the testator leaves other heirs from those stipulated by Article 377. We think that the wording of Article 377, which excludes the wife from the heirs, is not fair, and falls against two important principles: the principle of autonomy of property disposition by will of the testator while he is alive, and the historical principle of our civil law, that of compatibility of the subjects who benefit by law, and by will. The latter gives the testator an opportunity to dispose of his property to people within the circle of legal heirs (Article 360 of CC), if he/she disagrees with the way the law regulates his post mortum rights and obligations. When there are no such legal beneficiaries, the testator may dispose of his/her property in favor of any legal or natural person. We reached this conclusion through a logical and historical interpretation of this provision. We analyzed it in relation to Articles 360, 372, and 374 of the Civil Code. Based on this conclusion, this provision could be worded as follows: "The testator who has no legal heirs (Article 360) has the right to dispose of his property by will in favor of any legal or natural person." We believe that this

t would be the way how the provision would serve to the purpose of protecting women's rights, who, being legal heirs, cannot be excluded from testamentary inheritance¹¹⁹.

As per the above, women's access to inheritance seems to be poor. Negated inheritance rights are claimed through action in court, or in the ways described above. However, lack of information leads to such lawsuits being formulated with procedural mistakes and dismissal by the court on procedural grounds, without the latter having the opportunity to state the judgment on merits. Generally speaking, women do not seem to be well informed on the substantive rights they are entitled to by law to inherit property. Not only do women have little knowledge of their rights, but also some lawyers hesitate to bother proving the existence of the property of husband, and not of his parents¹²⁰. Access in court seems to be more difficult for them even due to financial hardships.

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EA died on 14.05.2000. The latter was married to the defendant DA and they had two children. Evidence indicates that the late wife and the defendant used to have significant disputes, which often made their cohabitation impossible. As a consequence, on 16.10.1998, the late wife filed a claim with Tirana District Court for marriage dissolution. The case was suspended. Disputes between the couple persisted during the period between 1999 and 2000. This was proven by the written evidence included in the court file, among which the e-mails the late wife sent to her sister affirming that the defendant had continuously maltreated and exercised psychological violence on her. On 30.03.2000, the late wife was declared missing, to be found dead later on. The Prosecutor's Office suspended proceedings against DA after concluding that the defendant did not commit the criminal offence. The father of the late wife filed a claim for the inheritance certificate, since the late daughter had not disposed of a will and, further, he addressed the court with a lawsuit on: declaring the unworthiness of the surviving spouse DA to inherit my deceased daughter, EA". The plaintiff submitted a series of evidence to support his claim, including: (i) e-mail correspondence in which EA described the difficult situation between the spouses; (ii) the letter addressed to the defendant by the deceased wife; (iii) a document from the Women and Girls Counseling Centre; (iv) the letter sent to the Minister of Public Order by the father of the deceased, whereby he explained that his son-in-law (the defendant) maltreats and threatens his daughter; (v) notary statements of the relatives of the deceased, whereby they testify of the maltreatments the deceased has been subjected to by the defendant and the fact that the defendant and his family failed to honor the deceased wife or organize a funeral for her, etc.

from the circle of heirs who are entitled to benefit from the testator's inheritance, when the testator leaves other heirs from those stipulated by Article 377. We think that the wording of Article 377, which excludes the wife from the heirs, is not fair, and falls against two important principles: the principle of autonomy of property disposition by will of the testator while he is alive, and the historical principle of our civil law, that of compatibility of the subjects who benefit by law, and by will. The latter gives the testator an opportunity to dispose of his property to people within the circle of legal heirs (Article 360 of CC), if he/she disagrees with the way the law regulates his post mortem rights and obligations. When there are no such legal beneficiaries, the testator may dispose of his/her property in favor of any legal or natural person. We reached this conclusion through a logical and historical interpretation of this provision. We analyzed it in relation to Articles 360, 372, and 374 of the Civil Code. Based on this conclusion, this provision could be worded as follows: "The testator who has no legal heirs (Article 360) has the right to dispose of his property by will in favor of any legal or natural person." We believe that this As per the above, women's access to inheritance seems to be poor. Negated inheritance rights are claimed through action in court, or in the ways described above. However, lack of information leads to such lawsuits being formulated with procedural mistakes and dismissal by the court on procedural grounds, without the latter having the opportunity to state the judgment on merits. Generally speaking, women do not seem to be well informed on the substantive rights they are entitled to by law to inherit property. Not only do women have little knowledge of their rights, but also some lawyers hesitate to bother proving the existence of the property of husband, and not of his parents¹²⁰. Access in court seems to be more difficult for them even due to financial hardships.

Unworthiness of the husband, who exercised violence and has failed to honor the memory, funeral, etc., of the wife, to inherit the property of the deceased wife¹²¹. In this study, we could not disregard such a negative and painful side of family life, such as domestic violence. Several studies, reports, monitoring and statistics indicate that the most common victims of domestic violence are wives. Following the claim of E.A's parents on the unworthiness of the widower to inherit the property of their deceased daughter, upon Decision No. 92/05.02.2013 of CCSC (Civil College of the Supreme Court), the court upheld Decision

No. 5070/04.10.2006 of Tirana District Court, deeming their claim as valid, compliant with the law and evidence-based as well.

The rationale of the Supreme Court on the unworthiness to inherit is as follows: In absence of a clear definition of "humiliating ways or maltreatment of the testator", the Civil College of the Supreme Court shall provide its own interpretation. The definition should take into account the basic rules underlying the functioning and cohabitation in the society and in the family, such as respect, love, mutual support, etc. It is neither fair nor moral for a person, who has treated the testator in a way that contradicts obligations set out by the law and moral rules, to be able to benefit from the latter's inheritance.

In stipulating such provision, the legislator has taken into consideration the fact that a legal heir could be excluded from the will on grounds of unworthiness, in cases when the testator himself/herself did not exclude them when alive (exclusion may be done in the will as well). As a result of such exclusion, the unworthy heir's property rights shall be transferred to the other legal heirs, in line with the provisions of Article 360 and following ones of the Civil Code. Contemporary literature considers humiliation and maltreatment of the testator the cases when the heir has subjected the testator to physical violence (battering, mild injuries), as well as psychological abuse consisting of insults, slander, threatening, ill-speaking or any other action that results in the maltreatment of the testator. Unworthiness as an institute of inheritance law is based on the social morality, as it would be immoral to bestow the capacity of the legal heir to a person, who has attempted to murder or has murdered the testator, who has not respected and has maltreated him/her, and has humiliated the testator by insulting and undermining the dignity of the deceased. The legislator has considered such legal category as a civil sanction against the individual who has behaved unworthily. Such sanction is both morally and legally regulated. Unworthiness is a type of civil penalty of the heir, who has committed acts against the interest and dignity of the testator. Unworthiness to inherit between spouses (like in the subject matter at issue) is inherently linked with their rights and obligations deriving from marriage. Such actions also include failure of the defendant to observe the social morality rules to pay the final tribute to the late wife. The funeral and the final tribute to the deceased are acts, which comply with the highest human morality, and failure to observe them inflicts suffering to the relatives of the deceased and his/her successors, such as minors. The actions of the surviving spouse, who evidently fails to pay the final tribute to the other deceased spouse, are a clear indication of disrespect and violation of the human dignity of the latter at such

moments. The obligation of the widow/er to bury the deceased spouse and to honor his/her memory to children, the surviving relatives and society is not only a principle of social morality, but also one of the marriage obligations, whose failure to be observed, indicates the unworthiness of the surviving spouse towards the deceased.

3.3 FEW CONTRACTS AND THEIR EFFECTS ON THE PROPERTY RIGHTS ACQUISITION OR INFRINGEMENT OF

This section is not going to dwell upon the full range of contracts comprising the Civil Code or other laws. Our focus is sales contracts, the acts of representation and gift contracts viewed in terms of access to or either direct or indirect violation of women's property rights.

- What is the role of free will and consent principles and how are they applied in cases of such an extraordinary disposition, as is the case of the immovable property sale agreement?

- How are the rights imposed by marital co-ownership over properties acquired during the marriage observed?

Aiming at tackling this matter from a realistic and practical perspective, we will analyze several court decisions. Our selection is the result of the direct contribution of judges, who provided us with a certain typology of the emerged issues. One of their observations was that women have scarce knowledge of the contractual field. They have poor understanding of the details and meaning of the gift contract¹²² and of other agreements as well, and they generally do not cautiously read the text of the agreement, which helps in understanding the effects of a contract. There are often grounds for these legal actions to be challenged in court for nullity, but such lack of information makes women hesitant to take such step.

Gift contract during marriage

This is one of the agreements whereby the property rights of women are directly infringed¹²³. Even the Albanian legislation, respectively Provision of CC [1982] and FC [2003] with respect to the way of profit via property donation during marriage, whether or not included in the marital co-ownership, has held various stances in different periods of time. The Family Code 2003 has a transitional provision, namely Article 315,

which in the second paragraph envisages the following regulation: “Property obtained by spouses following the entry into force of this Code, shall be regulated by this Code, including spouses who were married prior to the entry into force of this Code¹²⁴”. Thus, the legislator has obeyed the timely law implementation rule. By using a *contrario* argument, the interpretation of Article 315 indicates that the acquired properties prior to the entry into force of FC 2003 are subject to the regime into force at the time of the acquisition.

Let us have a look at its application. One of the problems encountered in the judicial practice is related to the gifts that one of the spouses makes in favor of third party/ies affecting the marital property, that is, legal community property. Monitoring of decisions indicates that it is generally men, as husbands, who perform such acts, which lead to economic hardships for their wives and minor children. Experts of the field find that, in the case of sale, it is the pre-acquisition institute that prevents the spouse from performing such an action, and similarly in the case of a will, the legal reserve defends and prevents the violation of minors’ interests. We lack a tool for safeguarding the interests of child/ren and wives in relation to the donation.

Hence, experts of the field recommend that gift contract provisions specifically stipulate that the donation of any share of the undivided marital property shall be legally null and void [or be declared as such upon request of the parties concerned] when done to the detriment of the interests of a minor or an individual [spouse] who is unable to work¹²⁵.

The judicial practice indicates that there have been cases claiming to reverse the actions of one of the spouses in the unilateral donation of immovable property, because it had not been clearly determined whether the property was personal or community property.

Such complications also arise due to the legal amendments on the status of property acquired by donation in different periods of time.

Upon Decision No. 2476 / 27.04.2005, Tirana District Court adjudicated the case of an apartment donation by a husband to his parents, without informing his wife. S. F. and S. C. used to be married and their marriage was concluded in 1997 and dissolved in 2003. Pursuant to Law No. 7652/23.12.1992, "On Privatization of State-owned Property", the parents and their son [in our case S. F., the husband] privatized an apartment/ residence located in Tirana. The gift contract No. 3862/495 of 13.11.1998 establishes that parents have donated their part of the above residence to their son S. F., with the latter becoming the sole owner of the immovable property, which is the apartment consisting of two rooms and a kitchen with annexes. We should emphasize that the gift contract establishing S. F. as the sole owner of the immovable property was signed on 13.11.1998, while the marriage was concluded in 1997, which means that at the time of the parents' part donation, i. e. 2/3 of the immovable property/ apartment, the couple was married.

Unlike the current Family Code [2003], the rules provided for by CC [1982] on marital property stipulate that the gift is part of the community property. Thus, under Article 86 of the Civil Code: "The items, saving deposits in banks, and everything earned by the spouses during the marriage are co-owned by both spouses.

Marital co-ownership shall not include objects of "personal use". Subsequently, the Civil Code 1982 establishes that herein included are properties acquired through inheritance or donation. In 2003, S. F. donated to his parents his share of the apartment offered to him as a gift in 1998, without the consent of the former spouse as a co-owner.

In court, his parents attempted to prove that the gift

contract was made to support their son for an application procedure to immigrate to Canada, being thus "a fictitious donation and not a real one". The Court found such arguments unfair and ungrounded and finally decided to declare the 2003 unilateral gift contract in favor of the husband's parents null and void and cancel registration of the property under the parents' name in the immovable property office. Likewise, in another case of Korça District Court¹²⁶, plaintiff E.B concluded a legal marriage with the defendant T.B on 20.01.1986. The latter, on 03.04.1991 received a ground-floor house through a gift contract, which on 27.03.1998 he sold to the defendant D.B. In 2008, plaintiff E.B claimed that this contract was absolutely null and void because it contradicted a mandatory provision of the law. She claimed that since the dwelling, object of the contract, was a property received during the marriage, she was the co-owner, therefore she should have expressed her consent on its sale, which she actually did not. In respect to the claim of the plaintiff, her husband T.B. responds: "I was not informed on the law, and I did not know that my wife was a co-owner" (according to the minutes of the court hearing – page 5). As you can see, it took 10 years for the wife to understand and claim her right. In such case, the Court concluded the absolute nullity of the gift contract.

However, these contracts are necessarily mediated by the notary, whose duty is to protect the parties' interests, as well as know and implement the laws in force. We should admit that not everyone can avail the opportunity to turn to the court like E.B. Many violations of property rights remain unidentified. Under such conditions, it is very important for these issues not to go to the court, but to be prevented in the notary public office, where they draft contracts of such type and are responsible for verifying properties, time of the property receipt, object of the contract, and following rules according to the current legislation. Following amendments in the Albanian legislation, it is observed that the notary public plays a special role in preventing such abusive actions.

Tirana District Court declared a gift contract invalid upon Decision No. 4416/08.06.2007. We understand from the content of the decision that it is a case where all members of the family and the husband have donated the co-owned property to another member of the family without the consent of the wife. This is the case of an extended family. Decision No. 5777/13.10.2005 of Tirana District Court indicates that the husband has forged a gift contract to the detriment of his wife and their daughter. Plaintiff F. is the former wife of the defendant L., while plaintiff A. is his daughter. They co-own an apartment of 68.44 m². The property is registered with IPRO, Tirana office, under the name of three purchasers. The plaintiffs temporarily left to Greece due to disagreements with the defendant. They were informed that the defendant had dissolved the marriage with F. and had submitted a gift contract that had been edited by the notary N.K to IPRO. The contract allegedly proves that the plaintiffs have offered their shares of the apartment as a gift to defendant L.

Furthermore, based on the said contract, IPRO, Tirana office registered the residence under the name of the defendant L. The plaintiffs proved in court that they had not signed such a contract and, therefore, they had not offered this apartment as a gift. On the other hand, the notary declared that his/her office had never edited such a contract.

The Court held that the gift contract was forged. Registration in IPRO had been done on the basis of fictitious acts. Existence of a referral system among such institutions, as well as coordination and control on the authenticity of the acts would curtail costs, as well as stabilize and minimize uncertainties in property matters. In the course of their work with their service beneficiaries, CLCI lawyers have found that property is registered at the IPRO under the name of the household head/ husband, complicating the lives of such women who do not even have basic information on their rights.

Likewise, there are also other decisions of such nature. For instance, Decision No. 1747/2015 of the Tirana District Court brings about a situation where the plaintiff required the nullity of the gift contract signed by her husband without her consent, and the obligation to acknowledge her as co-owner having $\frac{1}{2}$ of the property, object of the gift contract (a building consisting of 4 rooms, 2 corridors, porch, kitchen with an annex and 2 toilets) as a result of the absolute or relative nullity of the contract, the case was eventually concluded in favor of the party's claim.

Decision No. 5392/13.10. 2006 of Tirana District Court presents other violations. A sister donated a part of her property acquired in inheritance to her brother, but the latter made a forged gift contract, in an effort to benefit an even greater share of the property. The plaintiff, A. Z., and the defendant, S. L. are siblings and have been co-owners of an ideal $\frac{1}{2}$ share of the residence.

On 04.04.1992, a legal act of gift was performed between the litigants, under which the plaintiff offered her integral ideal part to the defendant, who accepted it. This contract was not registered at IPRO, Tirana office. After several years, the plaintiff comes to know of the existence of a contract with the same Repertoire and Collocation number that involved the same parties and had her signature and the seal of the same notary, but with a modified content. This last contract that was not actually signed by the plaintiff had been registered at IPRO on 06.05.1992. It was clear that the content of the contract had been forged, by adding words to it. In this sense, this contract was not signed on plaintiff's will, as one of the essential elements of a legal action's validity. These are neither isolated nor past situations. Upon Decision No. 11689/2014 of Tirana District Court, we are informed that the plaintiffs are the defendant's sisters, who forged a gift contract. They were interested in receiving a certificate of title on the property that they inherited from their father and they applied to IPRO, Tirana office, which informed them that they were no longer co-owners of the said plot, because their parts of the plot were given to their brother upon a gift contract. Under such conditions, the plaintiffs were appalled because they claimed that they had not given their part of the property to the defendant and they had never been to the notary public for such an action. This claim was accepted by the court.

A matter of particular interest in the judicial practice is that of gifts made between spouses. Given its importance, upon Decision No. 3/03.02.2006 the Joint Colleges of the Supreme Court unified the judicial practice on the value of the gift contract between spouses in relation to its effects on community property¹²⁷. Although it specifically addresses a matter governed by the previous legislation, the decision and its interpretation offers a full and comprehensive solution to the gifts made by the current Family Code (2003).

For purposes of this study on women's property

rights, it is recommended to also have a grasp of the mentality of a husband who makes a gift to his wife and claims that despite the nature of the gift contract, he will continue to be the "owner" of the property and every action of the wife should have his consent¹²⁸. According to the Unifying Decision, in the case of donation between spouses of either personal or jointly owned items (the ideal share of each in the community), the item obtained by donation will become part of the personal property of the benefiting spouse.

In this way, the donated items are not included in the marital community (co-ownership).

If the subject matter of the gift contract is the transfer of ownership of an item, the other spouse becomes the beneficiary of the object that is transferred under his/her personal ownership. Moreover, in the cases where objects of the marital community property are subject of the gift contract, the gift is to be considered as the ideal share over the co-owned items, which, after the contract, is joined with the existing share of the object owned by the benefiting spouse, becoming an exclusive property of the latter. The sole owner of the item obtained by donation shall be the spouse benefiting from the donation. The object obtained by donation is not part of the marital co-ownership (community property) and, as such, the owner spouse can sell it to any party, without having to receive the consent of the donor spouse¹²⁹.

In such case, attention should be paid to the marital residence, which, as already mentioned, gains special status and, as such, even if it is personal property and is offered as a gift by one spouse to the other, without prejudice to its destination, cannot be equally donated to other parties.

Overstepping representation rights in family relations – Sales contract

There is a series of legal decisions by means of which the court determines the absolute nullity of the immovable property sales contract resulting from the marriage that has been drafted by a notary. Given that the property is registered under the name of the husband and there is no prior check on the status of property [whether it is personal or co-owned], many cases end up in the court. In 2002, K. K. [seller] and K. D. [purchaser] signed an immovable property sales contract No. 6695/384. The object of the contract has been clearly established: transfer of ownership of an immovable property, with a surface area of 280 m². The certificate of ownership No.17/27.01.2001 proves that the property is in the name of the defendant K. K., who is the spouse of the plaintiff Xh. K. The contract determines that the property does not bear any liability to third parties and it has all documents referred to by a notary act attached therewith. Acting in accordance with the relevant law, K. D., as the purchaser, has registered the immovable property sale agreement at the IPRO, Tirana office, with register No.06, on 18.03.2003, fulfilling all the legal requirements for its validity. XH.K. [K. K.'s wife], the plaintiff, turned to the court to claim absolute nullity of the contract, as an invalid legal action which is contrary to the mandatory provisions of the Albanian legislation regarding the sale of immovable property co-owned by spouses, and as an action that can only be performed upon consent.

Once the proceedings were underway, K. D. [now former purchaser and current owner of the land], fully aware that the court trial was taking place between the spouses, sold the property to A.R., drafting the contract with the same notary. This unlawful action on the transfer of ownership led to the registration of property at IPRO, Tirana office, under register No.122/28.12.2006, on behalf of A. R. [defendant in the process]. Hence, there was a “domino effect” of invalid actions that fuel social and economic tensions and undermine the legitimate owner’s rights¹³⁰. There is a significant number of such cases dismissed by the court. More often than not, women, in their capacity as spouses, have withdrawn the lawsuit [a right recognized by the Albanian legislation].

We cannot identify the grounds leading to case dismissals, but judges mention the influence of the mentality that undermines the efforts to establish the right¹³¹. Referring to past problematic judicial practices, this study aims at drawing the attention of the authorities, mainly that of the notary public, with the purpose of verifying the property status as it affects property rights.

In researching the judicial practice, we have found cases of legal actions overstepping the representation rights.

Mimoza Sadushi, president of NCA, says that, “when it comes to the implementation of the relevant FC provisions the notaries come across numerous objections and rejections by husbands when they explain that is a legal obligation to have the signature of the wives, as well.

Decision No. 9259/10.11.2009 of Tirana District Court deals with the nullity of the immovable property sales contract drafted by the notary. Two sisters, who are co-owners of equal shares of a property obtained through inheritance, are facing the sale of property by their brother. The plaintiffs requested that the court restored the situation between parties to the previous state by canceling registrations of property performed under sale contracts signed with third parties. The plaintiffs and the defendant are co-owners with equal shares of the property acquired by their father [after death] with a decision of PRCC. The acquired property consists of a piece of land. The sisters authorized their brother to administer the inherited property by issuing a power of attorney. It turns out that the defendant had performed legal actions that overstep representation rights.

Specifically, the defendant had disposed the co-owned land by transferring ownership to third parties through sales contracts. Upon its Decision No. 6438/21.06.2012, Tirana District Court has determined the absolute nullity of the sales contract of the land with a surface area of 8,851 m² in Tirana, entered since 2001 by means of forged documents between the purchaser, M. S. and heiresses [all daughters of the deceased M.V] in the presence of the notary.

This relies on the fact that when the property was purchased, it was only the husband who had presented himself as a purchaser and had signed in the notary public office. As a result, the property was registered at the IPRO as an "I" property - individual. This encouraged the claim that the property was his/ the husband's, since that was indicated in the Certificate of Ownership, as well, which read only his name, and thus [according to the husband], there was no reason for the property to be subjected to the matrimonial property regime, as [according to him] it was his individual contribution. More often than not, in their activity, notaries have had to explain and provide legal consultancy to numerous citizens on the rules of matrimonial property regimes. According to the chief-notary Mimoza Sadushi, these rules are very difficult to be accepted by husbands, who do so after numerous objections and debates."

Forged documents and property right infringements

Both sisters in the abovementioned case claim that the power of attorney used by the defendant, who is their brother, to draft the sale contract, is different from the power of attorney that the plaintiffs initially issued him. They claim that, at the end of the representation document there is a phrase, "we also give him the right to sell the property when he deems it convenient," that does not appear in the power of attorney issued by them. According to the plaintiffs, this is proved by the act of expertise No.1351/09.03.2007, which concluded that there is incompatibility between the text in the power of attorney registered at the notary office

and the one used for the sale of property to third parties, having added the above phrase. Moreover, the plaintiffs claimed that the stamps at the bottom of the power of attorney are not the same as the wet stamps of the notary who drafted the act. We are facing a case of absolute nullity of the sales contracts signed by the defendant, since changes in the power of attorney have been made without the presence of the sisters and the latter had never given their consent on the changes made. Since the co-owned object has been disposed without the consent of all co-owners, these legal actions violate Article 208 of the Civil Code and the court was right to declare

them invalid.

Seemingly, the rights set out in the special power of attorney have been exceeded by the brother, turning this into a general power of attorney.

Thus, the brother has signed five property sales contracts by means of this misrepresentation¹³².

In order for a legal action performed by overstepping rights of representation to be recognized as valid, knowledge and subsequent approval in line with Article 78 of the Civil Code is needed.

Likewise, Decision No. 4103/18.05.2011 of Tirana District Court addresses the claims of the sister who has taken legal action against her three brothers on grounds of selling the property of which she is a co-owner through inheritance. The plaintiff N. B. is the co-owner of a land with a surface area of 4,112 m² registered at the immovable property office with No. 1652/13.03.1996. Such registration is based on a PRCC Decision, which establishes that it is an estate left in inheritance by her father A. B. to her and her 3 brothers. The plaintiff claimed that her brothers have sold the land by forging the power of attorney. It says: "H. B., R. B. and N. B. designate as their representative Isuf Bali (their brother) and give him the right, inter alia, to sell the land in their name and on their behalf." The plaintiff declares that her signature is not authentic. At the period in question, she was abroad and proved this by providing a copy of her passport indicating the years when she had crossed the border. The Institute of Forensic Police conducted an expertise of the signature and concluded that it was not authentic.

The Court decided to declare the sale contracts null and void and restore the parties to their previous state.

Upon Decision No. 6049/12.06.2012, Tirana District Court has found the absolute nullity of the sale contract signed deceitfully by the mother as the seller [plaintiff] and son and his wife as purchasers [defendants]. Taking advantage of the close family relations and on grounds of preparing the required documentation for a building addition, the defendant had asked the plaintiff to sign a notary act, which, as they explained in court, was presented to the plaintiff as a document needed to apply for an extension of the apartment where they lived together.

Fully ignoring the effects of the document presented for signature, the plaintiff signed the sale contract at the price of 200,000 (two hundred thousand) ALL for the transfer of ownership, respectively 6/30 of the apartment as integral part of property, fictitiously transferring her rights to her son and his wife. The plaintiff claimed that the content of the notary act was different from what she had been told at the time of signing, and that she had never had any intention to sell this property, as long as she had no other residence. The plaintiff argues that the nullity and fictitiousness of the contract is linked with her old age and poor education level, which made her sign the contract, as well as the deceptive reasons provided by the defendants to encourage such act.

As highlighted above, the risks arising during the marriage dissolution in relation to spouses' property rights.

As noted by the monitored cases, unauthorized amendments made to the powers of attorney paper or their forgery brings about a range of property issues and violation of the women's rights. Since notaries public are professionals who prepare notary acts for the sale of immovable property, power of attorney authenticity verification is recommended in such cases, by receiving information from the notary public, whose seal and stamp are found in the representation document. The same would apply to property registration at IPRO, in order to ensure rigorous implementation of the effects that the law brings about in this regard and changes that are under process, aiming at the reduction and elimination of the property sale more than once, or

during the construction process by raising legal warranty over civil rights transfer.

The truth is that in the current law, Article 46 provides a stipulation for this case, i.e for the registration of construction authorization. This is the main topic of this draft-law. However, depending on the way it is understood, implemented or not, it is necessary to give clarifications, making some aspects legally binding. The solution of electronic registration and access provided to notaries and IPRO workers would eliminate many legal proceedings.

Thus, upon Decision No. 20-2015-634/395, the Gjirokastra Court of Appeal upheld the decision of Gjirokastra District Court regarding the absolute nullity of the sales contract with the former husband as the Seller and the sister and her husband [brother-in-law] as Purchasers. During the marriage dissolution procedures [defendant under process] he sold several immovable properties, presenting himself as the sole owner, to his sister and her husband, without his wife's consent. The marriage was concluded in 1994 and dissolved in 2014, and the plaintiff [wife] claims that these properties were acquired during the marriage. The defendant claims that he sold the properties in compliance with the legislation and that the plaintiff had failed to prove her contribution to acquiring the properties. As it can be observed, there are different ways to deprive women of property rights, such as that with the help of other relatives.

3.4 WOMEN IN RURAL AREAS AND THEIR CHALLENGES IN PROPERTY RIGHTS ISSUES

In this section we will briefly address certain legal and current issues relating to women's property rights in rural areas, the agricultural household, land tenure, etc.

Although according to 2011 data, about 70% of women living in rural areas work in agriculture, only 6% of the farms are owned or managed by them¹³³.

Moreover, considering that in rural areas it is usually the man/husband who represents the agricultural household, the wife is de facto excluded from the day-to-day administration. The situation/disposal deteriorates when it comes to extraordinary administration. These are issues that are not only evident in their daily life, but also in court proceedings.¹³⁴

Attorneys of the CLCI believe that women are not fully aware and informed about the ownership rights on agricultural land. In addition to awareness, judges speak of the need to include certain specifications and definitions in the part of the CC provisions on ownership/co-ownership, in particular in the section of agricultural household, as it happens that such gap makes it legally and practically confusing to determine the respective property shares of women. The most sensitive case is the one related to agricultural land division pursuant to Law No. 7501, according to which if a girl who has benefited land, gets married, she ceases to own it after going to her husband's family and leaves it to her family of origin. What happens in reality is that the land is owned, enjoyed and often disposed by the parents and their other male offsprings, that is, the brothers of this woman. Although it may not seem sensible, this is a real situation in Albania¹³⁵.

Prof. Dr. Mariana Semini shares the same opinion, stating: “Articles 222-230 of the Civil Code deal with the equal status of agricultural household members, without gender distinction of head of the household. Article 223 of the CC stipulates that the agricultural household is composed of persons related by kin, marriage, adoption or acceptance as family members. In principle, this Article on this type of co-ownership has a just stand in terms of observing legal equality, but, in practice, there are interpretations that often raise certain dilemmas, due to a legal vacuum that gives rise to a series of questions.” Prof. Semini adds: “More specifically, the question arises in the case when a member of an agricultural household (son/daughter) is married and leaves the family of origin for the new agricultural household of the spouse. In this case, the son/daughter has the right to request his/her share of property from the family of origin in cash. When it comes to the spouse family, he/she is entitled to co-ownership, conferred by Article 223. If the girl does not claim her share of the co-owned property from the family of origin prior to joining the husband’s family after marriage, she is not entitled to her share in the family of origin any more, since she cannot be a member of two or more agricultural households at the same time”. Further, the question that arises is that if the son/daughter dissolves the marriage and returns to the family of the origin, does he/she lose the co-ownership right to the property of the spouse agricultural household, and, on the other hand, does he/ she regain such right in the family of the origin? Although the same logic may apply in analogy, in order to avoid a similar dilemma, Article 223 might include a second paragraph providing for that a member of a agricultural household shall preserve his/her co-ownership on the property for one year after leaving the family or being accepted as its member because of marriage. Hence, the act of leaving can be subject to condition and time,

in order to regulate any situation and apply equally to both genders.

Fjoralba Qinami, former judge at Lezha District Court, being familiar with range of the typical family and property cases under the jurisdiction of this court, states: “Women’s property rights are scarcely observed in everyday practice. That stems from a situation where men are the main economic providers in the Albanian society and the majority of women, mainly in rural areas, take care of children upbringing and administration of daily activities.”

In the meantime, a specific study needs to be conducted to analyze the impact made on women’s property rights mainly in rural areas by the application of a series of legal acts, such as: Law No. 58/2012, “On few Amendments and Addenda to Law No. 9948/7.7.2008, “On the Examination of Legal Validity of Ownership Titles on the Agricultural Land,” as amended; Law No. 57/2012, “On Completing the Ownership Transfer Process for Beneficiaries of Agricultural Land from Former-agricultural Enterprises “; Law No. 56/2012, “On Additions to Law No. 8053/21.12.1995, “On Free Transfer of Ownership on Farm Land,” as amended”; Law No. 55/2012, “On few Amendments and Addenda to Law No. 9235/ 29.7.2004, “On Property Restitution and Compensation,” as amended.”

3.5 THE INFORMAL BUILDINGS PROCESS AND ITS IMPACT ON WOMEN’S PROPERTY RIGHTS

In this context, it is of interest to see the contents of the Unifying Decision No. 22/13.03.2002 of the Joint Colleges of the Supreme court¹⁴⁰. The litigants, who are former spouses, are co-owners of a residential apartment consisting of 3 rooms + 1 kitchen that is registered at the immovable property office. During the marriage, the parties built another adjacent three-floor building with common contribution, which is unauthorized and, as a result, has not been registered at IPRO. The defendant has requested the partition of the 3+1 apartment, of the movable properties (TV, washing machine, refrigerator, bedroom, and other items), as well as of the unauthorized building. At the first stage of partition, the district court rejected the partition of this property, since it was built without authorization and it had violated legal provisions.

The Court of Appeal overturned the decision of the first instance court and allowed the partition of the unauthorized building. The Unifying Decision No. 22/2002 of the Joint Colleges of the Supreme Court deals with the partition of the marital property, including the unauthorized building. According to the Unifying Decision, none of the spouses “can be legally allowed to file a lawsuit on property partition in this case”.

Consequently, the Joint Colleges argue that “the addition or building that has been constructed in violation of the applicable norms and has not been registered at the immovable property office cannot be subject to judicial partition and the claimant concerned fails to represent a legitimate interest thereto.”

The rapid process of unauthorized constructions in Albania has had an impact on women’s property rights. Some cases have boldly pushed their way through to the Supreme Court and have triggered the deliberation of the court on matters of high sensitivity both in social and property terms. There is a considerable number of Albanian families who live in residences built with the common contribution of both spouses without any construction permit or property certificate¹³⁷.

Nevertheless, these couples have not always had a happy marriage. Many of them have requested marriage dissolution and it is at that point when they find out that their property exists de facto, but is not legally recognized as such by the Albanian law. Whereas the legalization has not yet come to an end, requests for marriage dissolution and property partition are being filed every day. The self-declaration aspect of the legalization process for unauthorized constructions has seen husbands

being more actively involved and having their name in the related documents¹³⁸. Many trials have been initiated with the purpose of recognizing the right to be included in the legalization process¹³⁹. Further, the immovable property is registered at IPRO under the name of the person for whom the legalization authorization has been issued. The new Law on the registration of immovable property eliminates on a de jure basis this ambiguity and uncertainty that weighs on women’s rights. Yet, we do not know what damage has been caused to women’s property rights by the previous law, even more so, being aware that not all courts are equally accessible.

On the other hand, we come across the opinion of a smaller number of judges providing different for the reasoning of

the case. They consider that the addition or construction built without the respective administrative permit, in violation of the law, and not been registered at the immovable property office

cannot be subject to judicial partition as such, but the person concerned is legally entitled to require the partition of the materials that have been used to build the addition or the building. Considering that both arguments have legal grounds, if the legal analysis conducted by the court were combined with an analysis of the social dimension of this case, then other arguments could be taken in consideration.

Hence, a gender analysis could have highlighted a number of issues and could have given a social character of the decision. For example, although the decision is seemingly neutral, enforcement thereof hinders women's access to property partition and efforts to avoid domestic violence. Moreover, this unified decision has been considered as a reference by lower instance courts even for those cases when spouses or former spouses seek the restoration of their rights to possession of a residence that had been built without a permit, from which they were either forcibly evicted or forced to leave temporarily due to violence. This means that if we were to conduct a statistical testing of the consequences of the enforcement of such decision, there is a great likelihood for it to indicate that women face a more critical lack of access and enjoyment of common property as compared to men. That may lead us to conclude that the enforcement of this decision would result into indirect gender discrimination¹⁴¹.

Apartments under construction or already built apartments not been registered at IPRO and consequences of marital property partition during the marriage dissolution process.

This is another subject matter of judicial processes. In the case No. 1529/2014 of L.D [XH] against Z.Xh, with the subject matter of marital property partition, the Supreme Court denied the claim of the former spouses to partition of the unregistered apartment and upheld the decision of the Durrës Court of Appeal,¹⁴² but also that of the Kavaja District Court¹⁴³. The Supreme Court emphasizes that “considering the unifying decision No. 22/13.03.2002, both courts concluded that since the immovable property has not been registered at IPRO, it cannot be an object of partition.” During the proceedings it was proved that on 02.03.2005 (at the time the litigants were married) the defendant Z.Xh, in the capacity of the purchaser, and X Company, in the capacity of the entrepreneur, signed the entrepreneurship contract for building an apartment. Both former spouses signed the commissioning contract in 2007 and provided the full value of the commissioned apartment. Since the constructor did not register the properties that he constructed, including the construction, which, due to the lack of full documentation, is subject to partition at IPRO Kavaja, the contractual parties could not implement the sales contract pursuant to the stipulated conditions in the contract, according to which the purchaser and the seller shall sign the sale contract before the notary after the mortgage. Therefore, according to this decision's data, we may draw another conclusion, which indicates that access to property rights is limited. Over 6 years were spent in courts for a

residence that although the constructor received the payment, but he could not register, thus causing chaos in the relationship of the two former spouses. Not having found any solution to this situation, the Supreme Court stated, “The future submission of the same lawsuit in other circumstances after the receipt of the title certificate, legitimates the plaintiff to file the partition lawsuit and does not comprise res judicata pursuant to Article 451/a of CPC’.

3.5.1. Women and the right to housing

The right to housing and to a suitable residence is one of the fundamental rights for an adequate and human living standard¹⁴⁴. For many women, their house is where they spend most of the day and, more than anyone, they feel safe and protected, as well as children do. It is the duty of the state authorities to take appropriate measures in this regard and provide information on the legal tools and assistance that the government can provide in such social housing cases.

The Albanian legislation focusing on social housing programs [Law 54/2012] has established a series of criteria for the low-income families and individuals [18 years old] who need treatment by means of social housing programs.

These criteria consist of housing conditions, family and social conditions, as well as the economic situation. In terms of housing conditions, they include cases when the individual of the family does not own a residence; possession of a residential surface is under the housing norms specified for the social and economic category of these families; residences that do not meet the applicable standard, or those left homeless as a result of natural disasters.

The law prioritizes the cases of single parent families having children under their responsibility, elderly people who have reached retirement age and are not eligible to be housed in public social care institutions; families with more than four children; new couples with a total age of 60 years old. The Law also provides for advantages in cases of social conditions, such as in cases of persons with disabilities; persons with the status of orphans, from the moment of leaving social care institution until the age of 30; returned emigrants; emigrant workers; families of policemen killed in the line of duty; domestic violence victims.

Obviously, adequate housing remains a problem for women who are unemployed and lack economic resources, those who are divorced and victims of violence, as well as other vulnerable categories, such as orphans, etc¹⁴⁵.

More often than not, boarding schools and university dormitories are transformed into residences for families or individuals/women who are unable to find shelter. Chances of women affording to pay the rent are much lower and it is the state's responsibility to provide alternative support to cover expenses for adequate housing.

Adequate housing implies the supply of electricity and potable water. If the wife and children are recognized the right to residence following marriage dissolution, this is automatically accompanied with the right to potable water and electricity, regardless of the person who signed the contract with ČEZ or the water supply company. On the other hand, if the right to residence is accompanied with water and electricity outage by the former spouse in the capacity of the household head, as a sign of revenge, and favored by template contracts, then we are undoubtedly dealing with discrimination against women¹⁴⁶.

We can say that such services are incomplete and women are the ones who suffer due to such shortcomings by carrying water and traditionally conducting other services¹⁴⁷.

Under Article 139, the Family Code provides for the opportunity for the court to undertake temporary measures, in the process of marriage dissolution, upon the request of the parties concerned, until the time when the final decision is issued. These measures include residence insurance, as well as administration and use of property acquired during the marriage.

This decision can be changed or overturned by the court when deemed that the circumstances have changed or the decision was based on inaccurate data.

As mentioned above, the special status of the family residence leads to restrictions of extraordinary administration for the owner as well. Additionally, we refer to the effects of Article 153 of the FC on the right to use marital residence, regardless of which spouse owns it. Reality and legal stipulations, however, do not always go hand in hand. There are many cases of couples who while dissolving their

marriage have no adequate residence and are likely to become beneficiaries of the policies and laws promoting adequate housing. Considering the frequent amendments to the law, it is important provide in such cases transparency and information on the legal criteria and the assistance to apply.

Law No. 9669/2006, “On Measures against Violence in Family Relations,” as amended, among other measures, Article 10 includes the expulsion of the perpetrator from the house and measures to ensure safety of the victim. Difficulties regarding housing and the right to adequate housing make these significant provisions in both laws to encounter difficulties in application, unless distribution of the available houses takes place and possible facilities and subsidies are offered to women in need.

3.6 ACCESS TO BANK CREDITS, LOANS, MORTGAGES AND OTHER FORMS OF FINANCIAL CREDIT

An assessment of the CEDAW implementation in 2005 in Albania emphasizes that women find it difficult to apply for a loan, because they usually own few properties and minor collateral. Furthermore, Albania does not have specific loan programs or training assistance for women in order to encourage their business initiatives¹⁴⁸.

Almost 10 years have passed since the time of this integral report on CEDAW implementation, and we still observe that even the third periodic report compiled by the Albanian government, DCM No.1082/23.7.2008, to report to the CEDAW Committee, mentions that it is rare for women to apply for loans [see Paragraph no. 350 of the report]. They are still perceived to have a support role in business activities. Further, in many banks, the loan policy requires the applicant to have a capital, but in reality few women can practically meet such requirement. Women are not supported by men in their business initiatives, or in several cases they do not have the courage to undertake such initiatives. Lack of information is also attributed to the inability to effectively use banks. The third periodical report underlines that women have poor access to property (only 8 % of the women own properties legally). The report finds that there is a lack of favorable policies promoting girls and women's private undertakings, leading to a low number of those who run small, medium or large businesses [p. 351 of the report].

Statistics obtained by INSTAT are indicative of a low number of registered businesses run by women [p. 352]¹⁴⁹.

Other previous studies have concluded¹⁵⁰ that men are those who typically apply for a loan or credit. They are the ones who act in the capacity of the head of the household. In general, women borrow from relatives and face a series of difficulties in accessing loans. A study conducted in 2006 by the Association of Professional and Business Women found that 72.2% of the women who have applied for bank crediting faced difficulties in completing the documents required by the bank, whereas 76.6% of them have problems with developing a business plan. In respect to the main forms of business, the law recognizes the "natural person" or the "limited liability company."¹⁵¹

Considering that the situation has undergone few or no changes, the concluding observations about Albania [July 2010]¹⁵², of the Committee on the Elimination of Discrimination Against Women, Paragraphs 23 and 37, calls on the State Party to strengthen the use of temporary special measures, in accordance with Article 4, Paragraph 1 of the Convention. The Committee further recommends that temporary special measures be applied in order to ensure the equality of women and men in accessing property, capital and loans, etc., particularly in regard to women belonging to disadvantaged groups, including women and girls belonging to linguistic and ethnic group minorities, elderly women, women with disabilities and women living in rural and remote areas. The Committee requests the State Party to include comprehensive information on the use of such temporary special measures in its next periodic report. In Paragraph 37 of this document, the Committee recommends that the State Party take targeted corrective measures, including expanding opportunities to access property, loan and credits, so that women, especially those who are members of ethnic group minorities or who live in rural or remote areas, as well as women who are heads of households, will be able to fully and equally benefit from poverty alleviation.

This issue has been addressed by the respective strategies on gender equality, in 2007-2010, and 2011-2015¹⁵³. In this respect, trainings and workshops about "Woman in business" have been organized, to ensure the progress of women in the economic area, including elements of formal and informal education with commercial enterprise issues, etc.¹⁵⁴. The 2014-2020 Business and Investments Strategy sets out a number of objectives for the improvement of the business climate in general and women entrepreneurship, in particular. We are waiting for results to be seen.

Moving on to a more current situation, we will be based on the data set forth in the fourth periodical report for CEDAW, Paragraph 167 seq., which states that 27,4% of active businesses (out of 104,275) during 2012 were owned or administered by women, noting an increase of 1,5% compared to 2011. Women mainly own small enterprises with 1-4 employees, and the majority of them are self-employed/owners of small businesses that have the highest percentage of increase (3%) from 2007 to 2011. Although the increase is positive, in the long run, limitation to self-employment or small businesses may face women with the risk of business failure or impediment. During 2011, the percentage of large enterprises with 5-9, 10-49 and over 50 employees owned by women was 14-15%. A positive development is noticed in enterprises owned by women with more than 50 employees, which have increased by 2% from 2007 to 2011. The upward trend of new enterprises owned/managed by women (by 6% during 2007-2011 period), while the overall number of new enterprises has indicated a downward trend, shows the capability of women to find new directions in order to develop current businesses or start new ones, to be protected from the financial crisis and business fluctuations. Paragraph 169 of this Report states that according to the Bank of Albania, 31,4% of the total of loans given for 2011 was obtained by businesses owned/administered by women (with a value of solely 11,5%). In conclusion, this report highlights that, "The Albanian legislation is seemingly impartial as regards gender aspects, but the results coming from its implementation apparently show that men own and administer properties more than women. Restricted access to loan and lack of collateral, as in the case of women either being or not registered as co-owners or have common collateral with men, deprives them of the right

to start businesses. Thus, there is still room to improve and undertake positive measures with the purpose of the achieving de facto equality. The Civil Code and Civil Procedure Code set forth equal rights for men and women, but it seems that their implementation does not produce the same results. According to the fourth periodical report, Paragraph 171 underlines that the implementation of the reform planned during 2012 on property rights has had a little progress in some components and it is necessary to review the action plans, and to have stable financial resources, as well. The government has established three consultation and monitoring structures for the reform implementation, but the cooperation among institutions should be strengthened and it is necessary to coordinate the digitalized information of IPROs with other institutions' systems.

The banking legislation, including the regulatory acts of the Bank of Albania, or the manuals and regulations on crediting of second-tier banks contains no specific provision favoring women and girls. In the meantime, it should be underlined that there is no legal, regulatory or technical clause that poses obstacles to women. It seems that to the bank the client is "genderless".

Under the type of license granted by the Bank of Albania, the main services provided by banks include the following:

- Collection deposits;
- Lending (business/individual/credit cards/ overdrafts, etc.);
- Transfers;
- Exchange;
- Wage bank accounts; etc.¹⁵⁵.

Although banks have data regarding the gender of their customers, we realize that this index has nothing to do with any gender-based preferences towards customers, or any limitations for that matter, but simply for identification purposes. There is gender disaggregated data on services such as credit, bail, mortgage, holder of bank account, or holders (owners/ co-owners) of bank deposits, but that is simply for identification purposes.

Some bank employees interviewed for purposes of this study stated that there are also cases that the bank applies aspects of an outstanding social/supporting policy towards the community. Thus, banks have sponsored or supported different activities (not in the form of lending). The interviewed bank personnel explains that applications for support by the bank are not always complete and accurate, therefore, only a limited number of them may be taken under consideration. Sometimes, even the justification for sponsorships is not as expected¹⁵⁶. It is also observed that the requirements lack the expenses paperwork (plan) and the activity in a certain area or community is not clear.

It has also been admitted that difficulties in accessing lending are mostly a result of the mentality of the family where the woman is part of, rather than of the bank that grants the loan. Interviewees affirm that, quite often women are viewed by the bank as more reliable than men and as more cautious in paying the loan. Nevertheless, there are cases when members of a family (the husband or the sons) run non-legalized activities and ask their mother or wife to be the formal loan applicant, or, otherwise, they register their business under the name of the wife or their mother.

The difficulties in lending or granting of the so-called “soft loans” might constitute a major obstacle for women to exercise their property rights. Often times, women borrow from their relatives, but even that is not possible in every case, even less so. This is less possible for women in rural areas, who have an even lower and less effective access to loans.

Under such circumstances, based also on the recommendation of the CEDAW Committee on positive measures, they may include special microloans or small loan programs, or they may include partnership with financial institutions which can grant loans to women.

It is very important that bankers and/or other creditors be trained about women’s rights. They should acquire skills that allow them manage financial aspects in terms of effective positive measures to support women.

On the other hand, in cases when women are willing to apply for loans, it is important for them to obtain specific advice or training in order to benefit and prevent risks. Such measures are very important, especially for women in rural areas so that they are able to have access to agricultural loans, objects of marketing, appropriate technology and land, equal treatment with land and other immovable property. It is very important that, in order to make equality in the marriage and family relations a reality, spouses should be educated with aspects of financial and contractual autonomy. Lack of this autonomy has become an obstacle and seriously limits women’s ability to ensure economic independence for themselves and their children.



SECTION IV

A photograph of a hillside town with stone buildings and a white house in the foreground. The image is overlaid with a dark purple geometric shape on the right side.

*PORTRAYAL OF
WOMEN'S PROPERTY
RIGHTS IN DIFFERENT
STUDIES*

4.1 STUDIES ABOUT ALBANIA

In this section we will briefly dwell on several studies, reports, or “policy papers” related to women’s property rights in Albania.

Moreover, we will present some regional studies, which readers may find useful. Some of them may come in handy to the researchers for analyses and also to law-makers for drafting their strategies, which need to build on similar experiences, etc.

From the historic perspective, the property right has mainly been part of the state and law history textbooks in Albania, where, within the limits of a school text, women’s legal status is reflected chronologically in relation to the norms of the Canon, the positive and religious laws, without any analysis of the factual situation. In this context, in her textbooks of the Family Law, Doc. Ksanthipi Begeja, addresses women’s rights in the Albanian family, by referring to the Albanian legislation, including the 2003 Family Code. A group of authors of the university book titled “The National and Legal History in Albania” has briefly addressed these aspects according to different stages of the Albanian state and law. Aleks Luarasi in his edition “Family Relations” emphasizes women’s property rights in accordance with the Albanian canons.

The new standards established by the post-1990 legislation and onwards have required a series of legal and practical analyses, studies, interpretations and commentaries. Many awareness-raising articles have been published for both women and the community, as well as for the institutions involved in the access provision to property rights. Multiple articles have been published in legal and non-legal journals. It is obvious that their main focus has not been on “women’s property right”, but in general, on the property rights and related issues identified in Albania.

Focus on gender equality standards encouraged

the inclusion of gender aspects in these property-related studies and projects. Following analyzes of the de jure status, and comparison of the findings, we need to look at how the law is implemented, and make further analyses.

From a broader perspective, the property right is addressed in the constitutional, civil and criminal aspect and in the light of the effects produced by a series of new laws that brought a radical change to the right to property. Additionally, although not under a gender perspective, the right to property has been addressed in the context of the ECHR (European Convention of Human Rights) and ECtHR judicial practice (European Court of Human Rights), etc. Aurela Anastasi, Luan Omari, etc., have focused on understanding property right from the constitutional perspective. Arta Mandro and Sonila Omari have focused their research in the light of the property matrimonial regime and family relations. Avni Shehu, Mariana Semini, Ardian Nuni, Besnik Maho, and other authors have addressed the right to property and ways of acquiring ownership in the light of the civil law. Nazmi Biçoku, etc., have addressed women’s rights from a historical viewpoint within the context of inheritance. The list is not exhaustive.

Studies with specific focus on women’s property rights result to be limited. Some of them include the issue as an annex or a section, without thoroughly elaborating it.

Security of property is fundamental to meeting Albania’s obligation deriving from the SAA.

Ownership certificates issued by IPRO are expected to boost transactions number with property and establish a robust land market.

Based on different studies and reports, there seem to exist issues that deserve to be quickly addressed and resolved, such as prevalence of customary practices; women considering renunciation of the right to inherit their parents' property after marriage as a fair practice and in several cases they try to pass it on to other generations as a just practice; some of them consider it normal for the man to be the head of the household and every family property be registered under his name. It is evident that women have limited or no knowledge of their rights in different matrimonial property regimes, both during the marriage and after its dissolution. This indicates that aspects of inheritance rights are affected by customary practices that have been rooted among the youth as well. Further information on the rights of women and their discrimination and inequality in the family can be found in the study titled "Gender Discrimination in Family and Marital Matters. The Role of the Court", published in 2014¹⁵⁷. In the framework of the study titled "Legal Conflicts in Employment Relationships viewed from the Gender Equality Perspective", published in 2014, the author Mariana Semini-Tutulani among other things focuses on aspects such as women's contribution and their properties in the family in the view of the Civil Code, when they are employed or do housework¹⁵⁸ and she also underlines the mutual connection between employment relations and access to property rights by means of income.

In support of UN Women, in 2014 CLCI published the informational booklet "Property Rights and Women"¹⁵⁹. Another guideline that is under publication process relates to the role of institutions in protection of women's property rights.

The National Report on Women Status and Gender Equality in Albania¹⁶⁰ 2011, prepared by the Ministry of Labor, Social Affairs and Equal Opportunities and supported by UN Women addresses the aspects of women's property rights in all its dimensions. There is data indicating that 92% of the registered businesses are predominated by small, very small and micro enterprises having a staff of 1-4 people; women's considerably limited access to loans and properties, and lack of supporting policies that can promote women entrepreneurship. According to the data of Ministry of Economy for 2010, the research underlines that women own 25.7% of 106,477 business companies in the country and only 31% of the total value of business loans represents businesses managed by women. According to the data of the Ministry of Agriculture for 2010, although more than 50% of women in rural areas work in agriculture, they only own and manage 6% of the farms. The report makes a brief, but relevant analysis of the more important normative aspects of women's property rights and the impact of these regulations, such as Law No. 7501, as well as of aspects related to legalization problems.

The report seems to clarify what the reasons of the systematic decrease in the number of women entrepreneurs in Albania are, a fact that has been made clear by land administration and urban management projects, such as the Land Administration and Management Project (LAMP), supported by World Bank and SIDA. The report underlines the immediate need for a revision of the legal framework and an in-depth analysis of the practice and actual procedures of land/property registration and legalization.

The 2006 AI Report on Albania "Violence against Women in the Family: It's not her shame" focuses on different aspects of domestic violence, and presents data related to women's economic and property rights.

According to this study, women are paid 20 % to 50 % less than men; men own 92 % of the properties [hence, 8% of the property is owned by women], and about 84 % of the GDP. Many reports and strategic documents of the Albanian Government still use the AI data regarding property ownership by women [the periodic CEDAW reports, Gender Equality, Gender-based Violence, Domestic Violence Strategy, etc.]

The report highlights women's economic rights during the transition period and under high unemployment rate, with only few women working out of their homes outside urban areas, who mainly work in the formal economy.

SIDA has also given its contribution in this respect. In 2009, Albania was chosen as a pilot country for the integration of women's economic empowerment¹⁶¹. In 2010, one of SIDA experts on issues of women economic empowerment analyzed the Land Administration and Management Project (LAMP), and also other programs, and prepared a report, which is not broad (because it is mainly targeted SIDA and its partners), however it is quite clear in showing that the situation is particularly troublesome and neglected¹⁶². Other minor programs were also noted such as NRDP/ forestry, support for INSTAT, SNV/forestry, etc. World Bank (WB)¹⁶³ has undertaken a regional survey to have a more in-depth picture of property rights, mainly for the matters that are relevant to the support property registration offices. The purpose of the report, as indicated by its title, is "Assessing Land Administration Project's Gender Impacts in the Western Balkans"¹⁶⁴ country case studies of Albania, Bosnia and Herzegovina and Montenegro. A part of the report analyzes Albania.

In this context, it is worth mentioning another informational document of the World Bank on "Governance in protection of immovable property rights in Albania: A continuous challenge" [April, 2012]¹⁶⁵. The document addresses issues based on the land registration process through LAMP. One of the conclusions of the document is that "The insecurity of real estate property rights affects a

large share of Albanian citizens, particularly vulnerable groups." This category includes mainly women in villages, children, people with disabilities, and Roma community members. The report underlines that "thus far, the Government has prioritized the promotion of equality of immovable property ownership." Women living in rural areas are often pressured to give up their property right, or the right to inheritance in favor of the male members of the family¹⁶⁶. These groups lack the information and awareness to help them to effectively claim their rights. In a concise and laconic manner, in about 30 pages, this document gives us an overview of the property rights reform in the 1990s; on the most important aspects of the process of legalization; issues of property restitution after 2004; the incomplete registration of property titles; the impact of insecurity of property rights in the real estate market and in the environment of business, political initiatives and reforms for the rights on the immovable properties in the country. It also comes up with suggestions as to how progress could be made¹⁶⁷.

In October 2009, Tony Lamb prepared a study/summary as an annex to an extensive document that deals with the matters of property in Albania in the framework of World Bank [WB].

This study/summary focuses on social issues related to the real rights in Albania and analyses blood feud impact on property matters and the rights of women, children, and Roma community members in this respect.

The paper analyses the attitudes towards the property right from a historical background and the impact of the Lekë Dukagjini Canon and communist legislation on the current situation, as well as the revival of customary norms in terms of infringing women's property rights mainly through inheritance, as a way to obtain the property and effects of Law No. 7501

[according to the author, this Law did not help in this respect]. The author points out how women are encouraged to give up their inheritance and property rights, and the difficulties they face as a result of marriage dissolution, because their property rights are stripped away both in their origin and marital family. The author identifies various factors that have affected the current status of women's property rights, including their poor knowledge of such matters. Interviews with practitioners indicate that at times laws are copies of other documents and fail to reflect what women need in Albania.

The paper refers to facts retrieved from the Strategy on Gender Equality, 2007-2010, and uses an extended bibliography on gender aspects of property right, which may be used by researchers to analyze different authors' views.

In December 2007, EURALIUS published a report assessing processes that affect the property right, in a way to better target EC assistance.

The 2007 report was the first cornerstone for EURALIUS II to begin interventions in the property component as part of the project. This 2007 document comprises a description and assessment of the developments until early 2008 and provides a brief overview of the EURALIUS interventions, as well as a list of recommendations. In June 2010, EURALIUS II published "Final Assessment Report on the Situation of Property Rights in Albania." The report does not make an analysis of the property rights from a gender perspective, but it lists issues related to property registration, restitution and compensation, and legalization both in the context of the legal framework and practical issues, as well as future challenges. The report presents the focus of the EURALIUS assistance to ECtHR and comes up with practical conclusions and recommendations for Albania. These conclusions and recommendations that identify the needs for intervention, aim to achieve necessary improvements and, and although they are gender-neutral, they affect the quality of property rights observance.

"Gender, ethnicity and landed property in Albania" is the title of the working paper no. 81 [1998] by Lastarria-Cornhiel, Susana; Sabates-Wheeler, Rachel, published by the University of Wisconsin—Madison and Land Tenure Centre¹⁶⁸. This paper focuses on the social aspects of the rights to property; content of the customary law, social aspects of land tenure; the legal status of women and legislation; issues of the property right of ethnic groups; the rights of female farmers; social conditions. The paper addresses two social issues, such as gender and ethnic origin, which affect property aspects and the development of a democratic society. Property right and tenure are fundamental to establishing a democratic market economy, and if such right is denied to a considerable part of population on grounds of gender or ethnicity, this may undermine Albania's efforts to build a democratic society and a dynamic market economy on an equal basis.

“Past and present land tenure systems in Albania: patrilineal, patriarchal, family-centered...” by Rachel Wheeler [1998], is another working paper, no. 13 [1998], published by the University of Wisconsin - Madison and Land Tenure Center¹⁶⁹. The paper touches upon matters of land tenure; the right to property, inheritance, succession and social conditions. The actual importance of family property, the role of the patriarch or that of the “head of the household”, the contemporary inheritance procedures, vulnerability of the special groups of women and the structure of the Albanian family are five main issues addressed in this paper.

The Albanian Centre for Economic Research (ACER) has conducted two research studies that identify the difficulties and lack of knowledge of women to access loans. According to the report, 78 % of the loan applicants are men in their capacity as heads of the household, while 5% - 7% of female farmers borrow from their relatives.

4.2 OTHER INTERESTING STUDIES [REGIONAL AND GLOBAL ONES]

There is a series of studies on women’s property rights at a global and regional level. It is both impossible and irrational to list everything that has been accomplished in this respect.

We have listed some of them for purposes of future studies. When informed on the content of these documents, one can easily understand that, although a study refers to a country in Asia, Africa, or Europe, etc., the effects of the customary norms, discriminatory laws, poor awareness raising, lack of professionalism of the institutions and actors involved in the process, etc., have

the same impact on the infringement of women’s property rights wherever they are. Thus, infringement of certain rights is of global nature and it almost appears to have a similar typology.

This is the reason why global policies are as important as those individually customized for a particular country. In the meantime, the positive experience of one country may be applied to others, not identically, but after analyzing the principles of unity and diversity from one country to another, with the sole purpose of achieving the gender equality objective.

“Land in the Right Hands”, is a booklet presenting the experience of UN Women in the implementation of projects aimed at defending and enhancing women’s rights during the agrarian reform in Kyrgyzstan and Tajikistan.

This edition of 2012 dwells upon the application of the internal mechanisms of UN Women, including strategies, approaches and methodologies.

It also provides specific examples of their application. The document includes a list of international commitment of the respective countries in regard to women’s rights to land as immovable property; it makes an evaluation of the challenges faced by women living in rural areas in terms of the rights to land; it makes a summary of the rights vis-a-vis their application in reality; it provides an overview of the basic rights and their discriminatory aspects according to the national legislation, as well as of the efforts to make legal amendments and pursue positive policies. The document also focuses on the importance of awareness and information, as well as familiarity with the rights, recognizing that owning a property is not sufficient, etc.

This booklet was presented during the 56th session of the Commission on the Status of Women, in New York and was positively received by the participants¹⁷⁰.

Fatma Gul Unal, Mirjana Dokmanovic and Rafis Abazov have designed a policy paper on the Economic and Financial Crisis in Central and Eastern Europe (CEE) and in the Commonwealth of Independent States (CIS) – Gender Perspective and Policy Choices, which dates back to October 2009. This paper has been considered as a contribution to the Beijing +15 which revises and focuses on the impact of economic and financial crisis on women's rights. The paper ranks Albania among countries with a poverty rate of 40-60 percent, that is, in the high poverty group (along with Turkey, Kazakhstan, Romania, Russian Federation, Ukraine, Montenegro, Serbia, Bulgaria)¹⁷¹.

“Using Human Rights Treaties to Protect Rural Women's Right on Land in Tajikistan”, prepared by UNIFEM [nowadays UN Women], focuses on the women's rights in rural areas in the following aspects: women's rights to land in the reform process on land as immovable property; women's rights to land versus the family and its status therein; women's access to loans; the impact of the stereotypes, customs, and discriminatory laws, as well as religious norms on women's approach to the property and land. A 22-page document provides an analysis in the form of national normative aspects and factual situation vis-a-vis international standards in the abovementioned areas. We believe that this is a valuable document for researchers not only in the comparative sense, but also to observe ways through which similar issues are addressed and solved¹⁷².

“Women's Rights to Land and Property” is a 7-page synthetic document, in which the author, Marjolein Benschop¹⁷³, highlights issues of adequate housing, in

general, the difficulties and added risks in this respect¹⁷⁴. Women have been deprived of their human rights to acquire, enjoy and administer property on a regular basis. Most women cannot afford to buy land or secure adequate housing premises. Multiple actions of such character are performed by men of their family, which conditions their right to property to “good” marital and family relations.

The document mentions an alarming figure: at the global level, about 41% of women, who are heads of households, live under the local poverty level and almost one third of women around the world, are homeless, or have access to inadequate housing. The author refers to the eviction or exclusion of the widow from the house and the property of the husband after his death. The phenomenon of “returning to the parents” is found in certain areas of our country, as well. While the international law recognizes gender equality in property rights, there are many elements that produce an imbalanced result. They include the influences of property rights and customary practice; the practice of land and immovable property registration under the name of the husband or head of the household; the role of discriminatory laws and policies; non-enforcement of non-discriminatory laws and policies; the limited role of women in decision-making; the limited awareness, etc.¹⁷⁵

A USAID-supported study [2008], authored by Fiona Flintan, Solomon Demlie, Mohammed Awol, Zahra Humed, Yemane Belete and Honey Lemma, on “Women's property rights in Afar, Region of Oromija, Ethiopia,” aims at identifying types of limitations women are subjected to in terms of economic and property and domestic laws, as well local policies versus the international standards [like CEDAW, etc.]. It further seeks to identify factors affecting the status/level of such rights, issues to be advocated in order to promote property rights and women's economic empowerment, etc.¹⁷⁶

In 2010, the Department of the United Nations Economic and Social Affairs Secretariat, published a paper on “Achieving Gender Equality, Women’s Empowerment and Strengthening Development Cooperation”.¹⁷⁷ This paper provides an overview of the proceedings of the High-level Segment of the UN Economic and Social Council (ECOSOC) in 2010. It contains introductory speeches, dwelt issues, wrap-ups of roundtables, national presentations, transcripts of the talks and discussions, as well as global facts and statistics regarding women’s status. These documents may serve as reference tools for the implementation of the Council’s recommendation. The summary highlights rights’ infringement during periods of crises and transition, mentioning women as the most affected category. The difference between the law and the actual state derives from gender-neutral laws, which do not always succeed in becoming aware of women’s specific conditions and circumstances.

The issues of inheritance and women’s property rights compared to the efforts to eliminate discrimination in these areas are the focus of the “Progress Report on the Elimination of Discrimination against Women in Respect to Property and Inheritance Rights”.

This report is based on the global overview of women’s land and property rights carried out by the Land and Tenure Section of the Shelter Branch, UN-HABITAT, incorporating latest studies by other stakeholders.

The objective of this report is to provide a brief overview of the progress of selected countries in achieving gender equality with regard to inheritance rights”. This progress report aims at providing systematic information on an easily accessible format to a wide range of stakeholders with a view to

monitoring progress as required by the MDG [Millennium Development Goals].

Although the list of countries is not exhaustive, the aim of the document is to show the trend for the countries to be added to the list over different times.

The document enlists some factors that hamper women’s equality to obtaining property through inheritance, such as discriminatory provisions in several constitutions of the countries under consideration; other discriminatory laws and policies; impact of customary laws and practices; registration of land under the name of the husband. Only 1-2 % of the land in the entire world is owned by women, which indicates the poor property inheritance rate. The inheritance is one of the possible ways for women to gain property rights, and land as such. The report emphasizes this conclusion for the importance of inheritance as a way to acquire property, because in general, women cannot buy properties and acquire them by land reforms. Hence, women can gain land through inheritance by their husbands or their family of origin¹⁷⁸.

We cannot forget to mention the value of the “Toolkit for Integrating Gender-related Issues in Land Titling Projects,” which contains a series of activities and policies that are valuable for Albania, as well, considering the conservative climate and current state of women’s property rights¹⁷⁹.

The aim of this tool was to serve as a guideline for practitioners and technical staff in addressing gender issues and mainstreaming gender responsive actions in the preparation and implementation of agriculture-related projects and programs. The tool is neither related to gender specialists nor to the ways they can improve their skills, but it deals with technical experts in order to guide them to figure out how to mainstream gender dimensions in their actions. This publication aims at providing practical advice, guidelines, principles, descriptions and illustrations of the effective gender mainstreaming in agricultural work.

In many parts of the world, women are the main farmers or producers, but their roles principally remain unknown. "World Development Report: Agriculture for Development" in 2008 emphasizes the major role of agriculture in sustainable development and its significance in achieving the millennial objectives.

We may mention halving the number of people suffering from extreme poverty and hunger among such objectives.

As we mentioned above, the list is not exhaustive.



SECTION V

A photograph of a hillside village. In the foreground, there is a single-story white house with four windows. Behind it, several multi-story stone buildings are built on a steep slope. Some buildings have balconies and arched doorways. The overall scene is a traditional hillside settlement.

*WOMEN'S PROPERTY RIGHTS
PROTECTION MECHANISMS
AND THEIR ACCESS*

Protection of fundamental rights and freedoms of citizens, women access to justice and the judiciary, as well as to other institutions are the basic elements and qualitative indicators of the rule of law. While the legal framework is increasingly closer to international standards and has a tendency to be aligned consistently with them, we cannot say that we have achieved everything we aimed.

There is still room for efforts to improve and there are still difficulties to protect human rights and fundamental freedoms, and access institutions.

5.1. JUSTICE SYSTEM AND JUDICIAL PRACTICE IN ALBANIA FOR WOMEN'S PROPERTY RIGHTS CASES

The judicial system in Albania is founded on three levels: district courts, which are first instance courts, the courts of appeal and the Supreme Court. The court remains a very important institution in the protection of property rights. A significant part of disputes that go to court are related to property, involving violation of such right of women.

Dissolution of marriage versus judicial partition of the matrimonial property cases are significantly disproportionate, with marriage dissolution cases outnumbering. This was illustrated in study by means of statistics gathered at a national level. One of the reasons is related to limited property status of the couples who dissolve the marriage. However, this is affected by the non-recognition of rights and means to implement them on the part of wives. Other causes stem from the length of the judicial proceedings, lack of trust in the courts and difficulties in access, including the expenses, etc. Judge Brunilda Kadi states: "It is noted that women often take it for granted that they cannot claim

"certain things", because they belong to the man, or that fighting for "that thing" (property) is useless. Judge Kadi further continues: "Perhaps women find it difficult to deal with the court battles, as compared to men and they are not presented as claimants or withdraw their lawsuit and the case is dismissed. In other words, they think they are not "strong enough" to face the court."

The reasonable deadline of adjudications for marital property partition:

The duration of property partition processes is an issue that cannot be avoided, it takes up a lot of court hearings, including their postponement. Women need to be very patient and make time for following different instances of adjudication.

In this respect, we refer to some decisions selected from the judicial practices of the Supreme Court. This way, we will have the chance to understand better how many years are needed to really acquire a right.

It would be better if adjudication delays or duration to be the focus of a one or two-year analysis. Thus, we would have a clearer picture of cases that have this subject matter in the SC, not only to measure the duration of processes, but also to identify the stance of the SC towards decision-making at district court or court of appeal level.

In 2015, the duration of court proceedings is problematic for all types of cases (civil, criminal, administrative cases), which leads to legal proceedings continuing from 2012.

Under such circumstances, it was difficult to come to a clear conclusion about the duration of process in the three adjudication instances.

Aiming at providing valuable information in this study, we encountered difficulties because the SC data system in its current status could not generate such statistics.

Such matter is considered a problem for SC itself.

In one of the analyzed cases, we noted that, although ten years had passed from the marriage dissolution in 2004 [Decision No. 1405/30.03.2004 of Tirana District Court] it seems that the long process of property partition has not finished yet. The claim to the partition was made at the same time with marriage dissolution. On this matter, upon a decision on 23.01.2014¹⁸⁰, CCSC overturned Decision No. 284/06.11.2008, of the Tirana Court of Appeal, on the subject matter of marital property partition and decided to return the case for review by the same court, yet by a different panel of judges. Meanwhile, the background of this case consists of: [1] a decision of the Tirana District Court in 2005 [Decision No. 738/20.09.2005] which was overturned by [2] Tirana Court of Appeal in 2006 [Decision No. 1001/26.09.2006 Tirana Court of Appeal], which returned the case to the District Court, but with another panel of judges; further there is another decision of [3] Tirana District Court in 2007 [Decision No. 1666/14.11.2007]; followed by the decision of Tirana Court of Appeal in 2008 [Decision No. 284/06.11.2008], which was overturned by CCSC and returned to the Court of Appeal. To CCSC, First Instance Courts have given the right decision for the co-owners.

In relation to the objects that will undergo the legal partition and those that belong to the co-owners/litigants, courts have determined such matters without conducting a complete and comprehensive investigation, in compliance with Article 14 of the CPC. None of the Courts has not attempted to clearly define the object (i.e. those that existed after terminating the legal community), which will undergo property partition. None of the courts has conducted an investigation based on the claims of the parties, whether one of the properties is the personal property of one of the spouses, pursuant to Article 77 of the Family Code". Thus, after ten years' the former spouses have started their new lives, but they have not solved property issues. Mediated solutions are little or not familiar or used at all.

In this study, we focused on the courts that have data on their official webpages. It is clear that Tirana District Court is the one that has the largest volume and variety of cases, but also it is the most easily accessible owing to ArkIT data system [<http://www.arkit.info/>]. This software <http://www.arkit.info/> helps users to research court decisions and manage information in an optimal manner by using proper filters. The following table presents all decisions made placed under the "Property Lawsuits" section in the portal of Tirana District Court, and reviewed by this court over the years. It refers to lawsuits that have a legal basis of a relatively great number of Civil Code articles, respectively Article 149- 231. At least, this is how it results from the legal basis mentioned in these decisions. As a matter of fact, depending on how they are found in the court's portal, working with court decisions requires an individual and qualitative analysis in order to see problems raised in the court and how they affect women's property rights.

Lack of opportunities to conduct this analysis is one of the study limitations.

In the following table, you can find the status of the decisions retrieved from the portal of Tirana District Court for a period of 13 years. It is worthwhile to have a ratio of cases presented and those accepted in the court. For instance, in 2006, only 90 cases were accepted out of 420.

“PROPERTY LAWSUITS” IN TIRANA DISTRICT COURT”, 2003-2012

Year	Total	Dismissed	Accepted	Reconciled	Overtured
2003	246	86	108	2	21
2004	540	174	288	5	18
2005	603	223	280	5	33
2006	420	220	90	1	39
2007	475	242	105	4	35
2008	293	171	46	0	33
2009	165	91	21	2	23
2010	135	67	26	2	22
2011	120	47	32	3	22
2012	145	66	31	2	21
2013	113	54	25	0	18
2014	164	57	29	1	31
2015	185	83	41	2	34

Meanwhile, the portal includes a sub-section of the index of Tirana District Court decisions, titled "Property transfer lawsuit". The section contains a minimum number of decisions, indicating that there has been a decrease, leading to zero decisions. Thus, from 2008 to 2012, there is no registered decision on such legal grounds; in 2007, there is only 1 decision, referring Article 207 of the Civil Code in its legal basis; in 2006, there are 11 decisions [legal basis include mainly provisions on issuing authorization for the sale of a minor's property]; in 2005, there are 21 decisions [varied subject matters, including the certificate of inheritance]; in 2004, there are 21 decisions with different legal basis; in 2003, we count 39 decisions].

Tirana District Court portal also has another index of decisions under the Article 207 of the Civil Code, "Object Partition Lawsuits, Article 207".

Until 2014, under the legal basis of Article 207 of the Civil Code, apart from other property partition lawsuits, marital property partition lawsuits have been included as well. According to the table above, until 2014, as regards property partition lawsuits over the years, we observe that property partition claims are very limited in comparison to marriage dissolution cases¹⁸¹.

In 2015, with respect to the reflection of archived family cases, the portal of Tirana District Court has improved by providing a separate reflection of marital property partition. This way, it is much easier to find decisions on marital partition, but also to analyze according to the typology of these matters.

Thus in 2015, 12 cases with the subject matter of marital property partition have been adjudicated until November. In 9 of the 12 cases, the plaintiff is the wife, whereas in 3 of them the plaintiff is the husband. Out of 12 cases, only 3 have been accepted. The rest has been dismissed [6]; one was settled by

reconciliation; in one of the incompetency was decided and in another returning the acts.

Property partition lawsuits, whether having spouses as litigants or not, in 2015 and solely for Tirana District Court were as follows: 117 property partition lawsuits versus 12 marital property partition lawsuits [91% to 9%] and 48 other property partition lawsuits and 3 marital property partition lawsuits were accepted [94% to 6%]. Most of them have been dismissed.

According to statistical data received from Lezha District Court for 2011, we note that the number of cases undergoing adjudication on the subject matter of property partition is about 25.

Out of these 25 cases, 10 were dismissed and 1 was settled by reconciliation. Legal statistics provide data on property partition lawsuits in general, pursuant to Article 207 of the Civil Code, and do not indicate how many lawsuits have been submitted on the subject matter of marital property partition. Thus, for more detailed information, it would be necessary to review all court decisions, which was impossible.

Based on legal proceedings, the conclusion of the judges was that women do not have information, or in the majority of the cases, they have little information on property rights¹⁸³. This is drawn from the low number of lawsuits or claims submitted

**“PROPERTY PARTITION, ARTICLE 207 OF THE CIVIL CODE”
TIRANA DISTRICT COURT 2003-2012**

Year	Total	Dismissed	Accepted	Reconciled	Overtured
2003	92	38	40	6	2
2004	95	49	34	7	0
2005	88	33	38	7	6
2006	75	38	27	3	2
2007	95	42	33	3	4
2008	123	76	29	3	0
2009	110	57	25	2	5
2010	101	57	27	2	0
2011	103	49	42	1	3
2012	111	51	39	4	1
2013	93	42	39	1	1
2014	165	70	60	5	10
2015	128	56	45	1	8

in the court as initiators of a process. Even during a process initiated by others, a judge can easily discern such lack of awareness, which is not rare. This situation indicates that the lack of information of their rights restricts women, or let us say that it facilitates other members of the family with property administration without the will or consent of the woman. Since according to them, financial income is provided

mainly by men, underlining that women in rural areas raise children and administer daily house or agricultural work, they do not have the courage to decide themselves on the administration and enjoyment of the property. Every expense, be it for minor purchases, undergoes an accountability process.

**“PROPERTY PARTITION LAWSUITS,
ARTICLE 207 OF THE CIVIL CODE,
VERSUS LAWSUITS FOR MARRIAGE
DISSOLUTION, TIRANA DISTRICT
COURT, 2003-2012**

Year lawsuits	Total Article 207	Total MD	Accepted pursuant to Art. 207	Accepted lawsuits of MD	Year
2003	92	1400	40	1010	2003
2004	95	1071	34	869	2004
2005	88	1381	38	1047	2005
2006	75	1332	27	944	2006
2007	95	1727	33	1160	2007
2008	123	2347	29	1196	2008
2009	110	2062	25	984	2009
2010	101	1884	27	961	2010
2011	103	1053	42	606	2011
2012	111	1223	39	806	2012
2013	93	1225	39	891	2013
2014	165	1376	60	959	2014
2015	128	656	45	457	2015

Chart 4.

“Property Partition Lawsuits, Article 207 of the Civil Code, versus Lawsuits for Marriage Dissolution, Tirana District Court.”

The chart clearly and visually shows the ratio between marriage dissolution lawsuits and property partition lawsuits accordance with years for Tirana District Court. It is worth emphasizing that the number of marriage dissolution cases has increased, from 9.6 divorce cases out of 100 marriages in 2008.

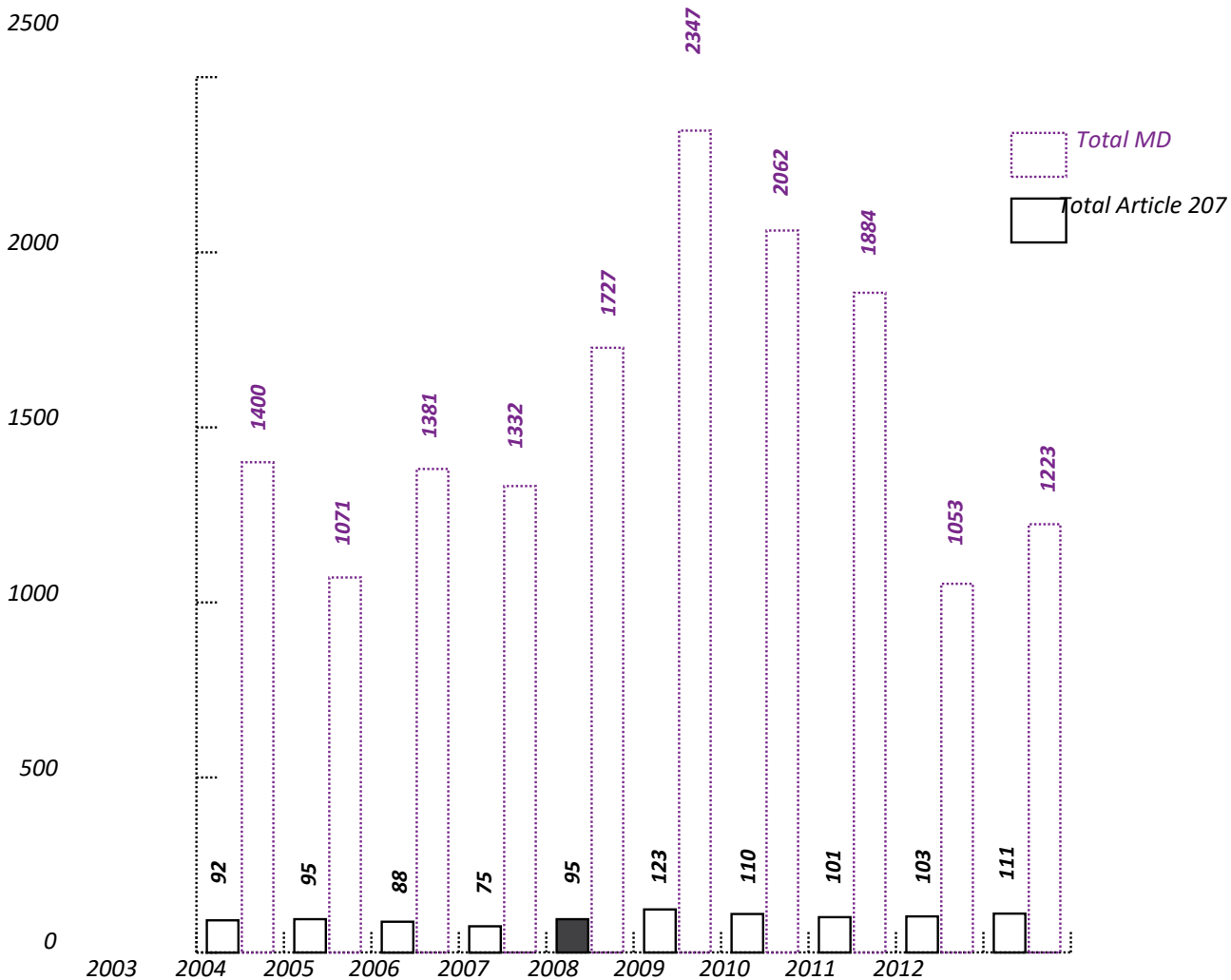


Chart 5.

Property partition lawsuits pursuant to Article 207 of the CC versus marriage dissolution lawsuits at the Tirana District Court during the 2003-2012 period, in percentage for 10 years.

For a 10-year period (2003-2012), when comparing lawsuits for marriage dissolution and those for property partition, without specifying whether it is marital property or not, the results are given according to the previous chart, with 94% being marriage dissolution lawsuits, whereas 6% being property partition.

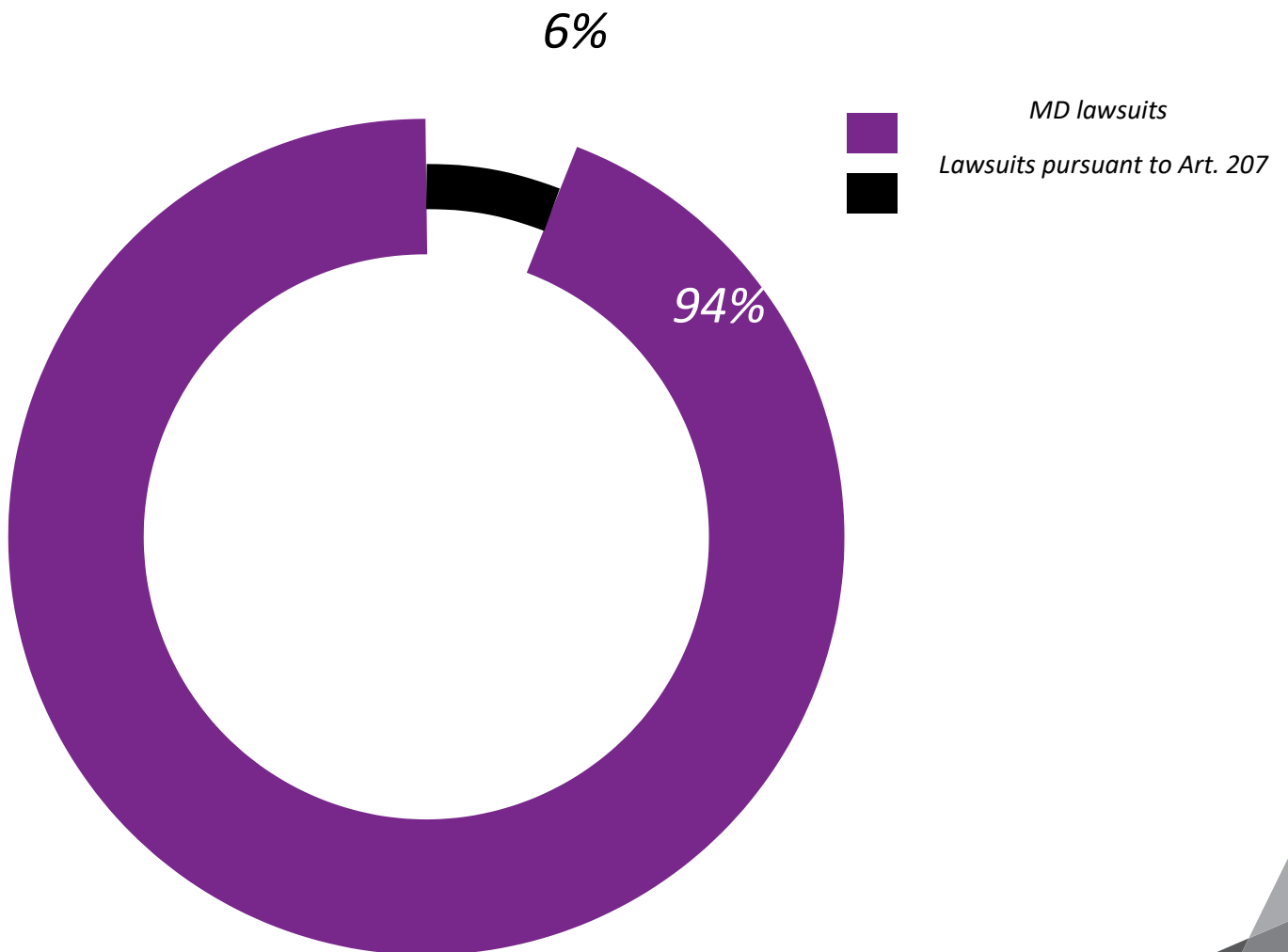


Chart 6

Marriage dissolution lawsuits versus property partition lawsuits filed to Tirana District Court for the 2006-2015 period.

The chart clearly presents the ratio between marriage dissolution and property partition lawsuits pursuant to Article 207 of the CC throughout the years, solely for Tirana District Court. However, emphasis needs to be put on the fact that the number of marriage dissolutions has noted an increase from 9,6 divorces per 100 marriages in 2001 to 17 divorces per 100 marriages in 2008.

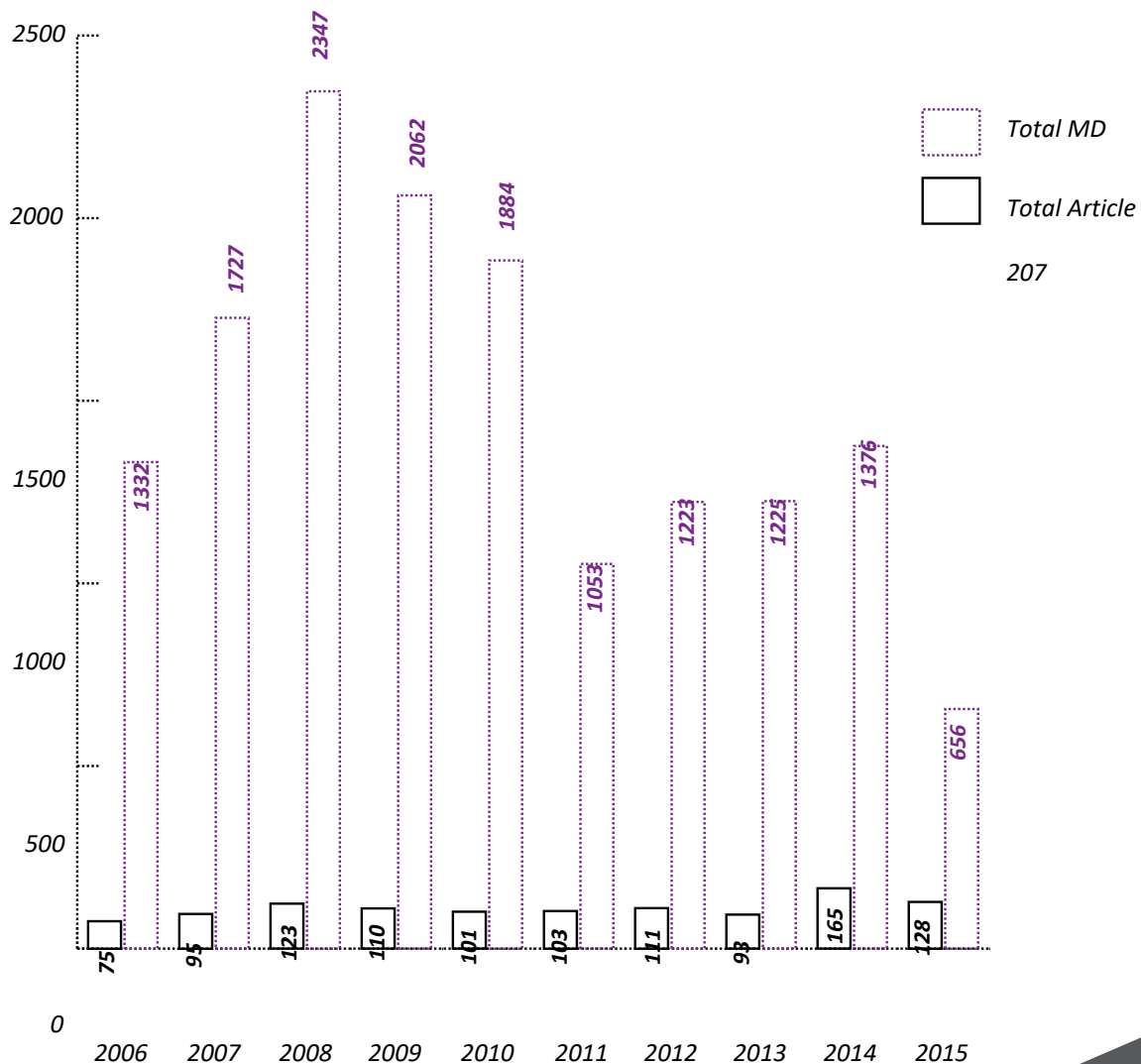
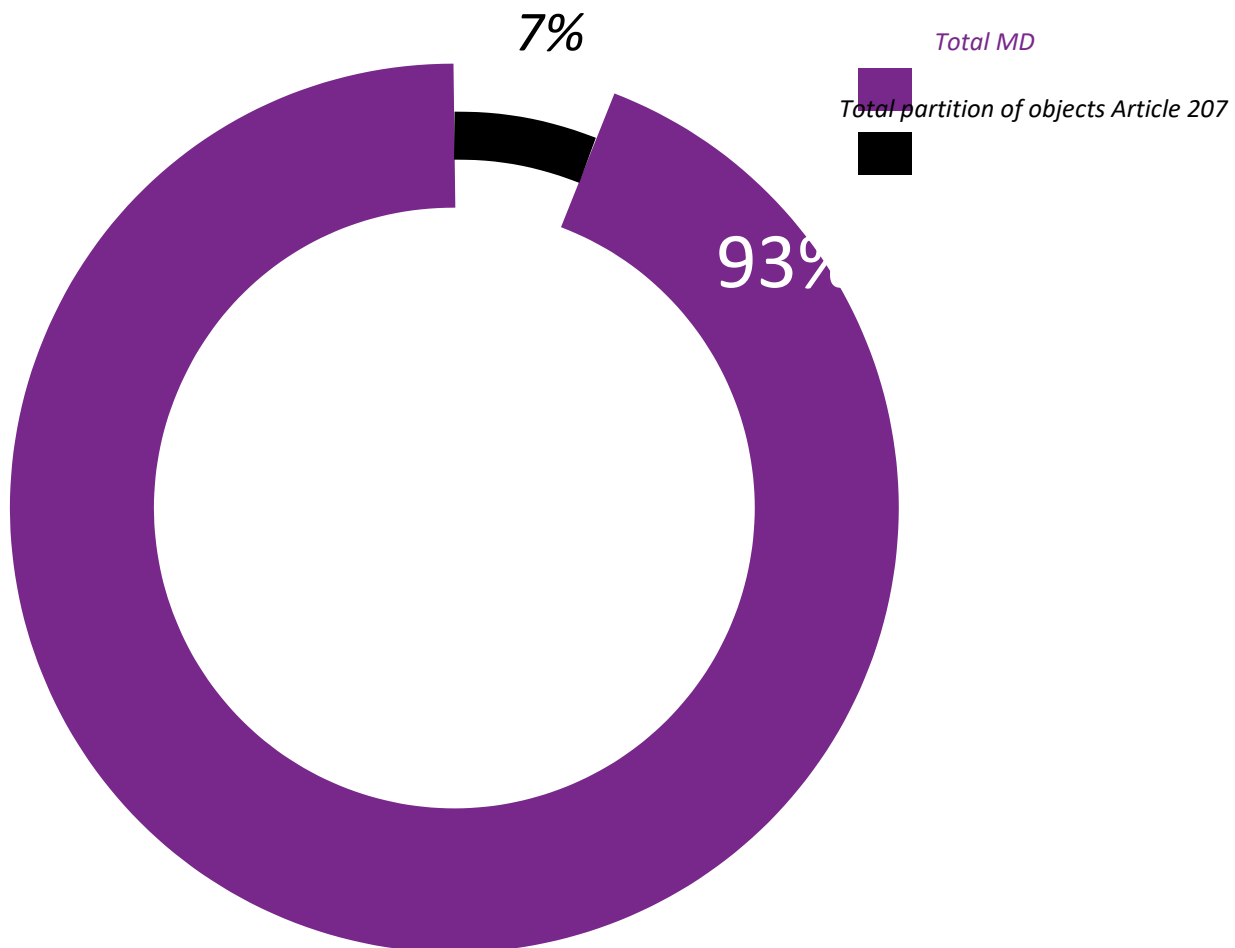


Chart 7

Marriage dissolution versus property partition lawsuits filed to Tirana District Court for the 2006-2015 period.

From 2006 to 2015, 93% of cases filed to the court were marriage dissolution lawsuits [total 14885 lawsuits], while 7% were property partition lawsuits [total of 1104 lawsuits] pursuant to Article 207 of the CC. Compared to the 2003-2012 period, there is only a 1% change in favor of property partition lawsuits. Emphasis needs to be put on the fact that the comparison does not address marital property partition lawsuits, which have a smaller percentage.



It is not considered it as a contribution to the family, if it does not include money.

5.2 THE CONSTITUTIONAL COURT AND ITS JUDICIAL PRACTICE AS SAFEGUARD OF CONSTITUTIONAL RIGHTS, INCLUDING THE RIGHT TO PROPERTY

Part of this court's judicial practice was the protection of special groups. It would suffice to recall the Decision of 1992 on the right to housing, the year of the Constitutional Court's establishment. This court has found a first instance court decision as nondiscriminatory, which legitimated the fact that a woman (a former "Heroine of Socialist Labor") was given additional housing space as a reward for special merits for the country¹⁸⁴. The Constitutional Court stated that in cases when the housing funds are owned and administered by the state, the right to use excessive residential space is a special honor that the government and state reserve to certain persons or individual categories that have provided special services to the people and homeland.

In 1993, this Court drew the conclusion that discrimination may be exercised directly and not only formally, but also essentially, or substantially. The court states that, "Equality under and before the law does not imply the application of the same solutions for individuals or categories of persons who are objectively in different

conditions. Equality under and before the law implies the equality of individuals in equal conditions ... Different treatments of certain categories that benefit from this right shall be justified only in exceptional cases and on reasonable and objective grounds."¹⁸⁵

Although it has not directly addressed any case from the perspective of the gender equality and non-discrimination principle in property matters, the Constitutional Court has issued a number of decisions that are important for the implementation of the gender equality principle, as well¹⁸⁶.

5.3 NOTARY PUBLIC

In the case of the notary public, the private character of the service and the public interest realized through different actions and acts go together.

The following actions fall within the scope of the activities of the notary public: pre-marital contracts, change of the marital property regime, property transfers, partition or division of property, establishment and transformation of commercial companies for purposes of capital and goods' movement, actions related to ensuring the welfare of marriage or family, actions dealing with succession of property from one generation to the surviving generation through inheritance, etc.

The legal basis consists of Law No. 7829/1.6.1994, "On notary public," which has undergone a series of amendments [respectively in 1995, 2001, 2004, 2008, 2013]¹⁸⁷ as well as other laws that determine specific tasks of the notary public [as is FC, CC, etc.].

Through its activity, the notary public can have an impact on both the protection and observance of women's property rights, or on their infringement or violation, thus leading to an unequal and discriminating position. A two-year monitoring study¹⁸⁸ on the judicial practice of Tirana District Court for the 2006-2008 period, shows that there are numerous court cases addressing the voidance of the notary acts. Thus, in a sample including the analysis of 230 court decisions, about 25% of them are directly related to the voidance of notary acts, 30% are judgments on the voidance of sale contracts, 13% focus on voidance of gift contracts, and 13% on the voidance of lease and enterprise contracts. Some of the reasons why interested parties decide to submit notary acts voidance lawsuits are related either to the notaries failing to understand and implement the law effectively, or for reasons that have to do with irregularities and dishonest actions carried out by the notaries themselves.

According to the judges, it often occurs that notaries do not inform spouses on the property rights and, besides, there are cases when they neglect women's rights regarding property acquired during the marriage. Quite often, despite the fact that a property has been acquired during the marriage, notary and registration offices have contracts with the husband as the sole purchaser and owner. The property is registered only in the name of the husband, while the wife, although being a lawful owner,¹⁸⁹ has no registered co-ownership rights. In case of an eventual conflict, this enables the husband to act quickly by selling the property to third parties¹⁹⁰.

The notary public shall not be biased while exercising his/her activity; shall maintain a balance between the rights and obligations and inform the parties on the inequality and discrimination risks in specific situations. Should the favored and damaged party by a clause in the contract, insists on signing it, it is recommended that the notary public prevent the conclusion of the contract under those conditions by stating in the contract that: "The party, which has more obligations, is given an explanation of the judicial consequences of this contract's conclusion, and despite obtaining such information, the party accepts to sign the contract."

As an issue identified during notary public training sessions carried out in 2014-2015 by CLCI in different districts, with the support of UN Women, it was accepted that only a small number of men named their spouses as co-owners of property acquired during the marriage in the contract. Although Law 33/2012 states that it is LIPRO's duty and legal obligation to require a family certificate in transaction cases, the notary public, as the editor of the contract and referring to other legislations, including Law 33/2012, shall be detailed similarly to the previous example. This avoids misinterpretation and the "negligence" of LIPRO employees not to register the wife as co-owner of the property acquired during the marriage¹⁹¹.

The amendments made to the law on the notary public in 2013 have given a new dimension to the role of the notary public in several aspects, mostly in relation to inheritance. The NNC administers the National Register of Testaments, which registers the testaments signed by the notaries and the National Register of Inheritance Certificates, which registers the legal inheritance and testamentary certificates.

The notary public edits the testaments. According to the law, he/she shall refuse drafting such an act, if the testator's dispositions fail to respect the elements of testament validity, as stipulated by the CC. The notary public shall issue the certificate of inheritance. In addition to other elements, the certificate of inheritance¹⁹² should contain data on the marital property regime of the testator, data on the unworthiness or renunciation of inheritance, if any, the respective shares of each of the heirs, etc.

Mainly or upon request of any individual with a lawful interest, the notary public may correct at any times errors in writing related to property shares or any evident inaccuracy in the certificate of inheritance. The certificate of inheritance shall change in case the notary registers a renunciation of inheritance and, mainly, issues a new certificate, immediately notifying all the individuals who have been issued an authentic copy of the initial certificate of inheritance.

Transfer of such competences to the notaries requires them to undergo an advanced training on the aspects of formal and substantial conditions of such dispositions and on gender equality and non-discrimination standards.

Furthermore, the notary's role is extended to the online application system for the services provided by IPRO. The application that was once made only at IPRO, can now be filed at the notary office, who then submits it to IPRO. The responsible person at the Immovable Property Registration Office immediately verifies the documents and replies online to the notary office. Thus, it is important that notaries understand their role in protecting the legal interests

of women and in rigorously implementing the legal obligations deriving from the law for drafting marital co-ownership notary acts and registering them as such at IPRO.

An important aspect of women's legal interests protection in property rights is raising the awareness of notaries on this issue.

5.4. LEGAL PROTECTION

Legal protection, which includes legal counseling and legal aid services, is based on the legal framework in force and on Law No. 9109/17.7.2003 "On the Legal Profession", as amended and Law No. 10039/2008 "On Legal aid", as amended.

The Ombudsman's Annual Report for 2010¹⁹⁴ notes that: "During the practical implementation of the law "On Legal Aid", various problems emerged in terms of the quality of this protection provided by the lawyers, as well as failure by the state to pay such service due to various and unjustified reasons. This in fact, constitutes an effective violation of such right. Referring to the Ombudsman's Annual Report for 2014, the recent amendments made to Law No.143/2013, as amended, have provided more possibilities to economically disadvantaged individuals to realize their rights in the courts, including here the provision of legal aid by legal clinics in the country. This report states that this law and its mechanisms are yet to be recognized. For some citizens it is easier to simply address the Ombudsman. During

2014, the report emphasizes the improved cooperation between the Ombudsman and the State Commission for Legal Aid and considered it as “good”, adding that “regardless of the interest shown by the Ombudsman Institution, the free of charge legal aid required by various individuals, who submitted the issue to the Commission, was provided to a very small number of individuals.”

The NSGE-DV notes the quality difficulties in this service, but the issue of improving legal aid is not properly addressed.

According to Article 11 of the Law on Legal Aid: “... The state legal aid is provided by authorized lawyers in the form of primary and secondary legal aid. Secondary legal aid consists of counseling, representation or defense services provision in criminal, civil and administrative court cases, and before state administrative bodies.”

A challenge remains to be NNC's cooperation with the State Committee for Legal Aid and NGOs experienced in providing legal services in specific areas, including women's property rights.

One of the issues identified by various experts is choosing the proper lawsuits, which is considered as the most delicate part of the lawyer's entire strategic planning defense chart. This concern is also mentioned in the publication “Vademecum for lawyers”¹⁹⁵. Lawyers seem to make generating adequate statistics on property lawsuits even harder, because in their defenses they create new lawsuits and use different denominations from what the legislation stipulates. Hence,

they make innovations, although they are not supposed to, by using lawsuit denominations that do not make it clear what right the plaintiff and his/her lawyers want to defend. By using the classification provided by the previously mentioned “Vademecum for lawyers”, property rights related cases can be defended by the following lawsuits:

- Property protection lawsuits, which include: replevin lawsuit, actio negatoria lawsuit, possessory lawsuit, property or co-ownership recognition lawsuit, recognition of a real right lawsuit, partition of joint object lawsuit, etc.;
- Nullity of judicial actions (absolute or relative) lawsuits: testament contest lawsuit, contract nullity of lawsuit, power of attorney nullity lawsuit, and compensation lawsuit due to nullity consequences, etc.;
- Contract lawsuits: fulfillment of contractual obligations in kind lawsuit, contract settlement lawsuit and contractual damage compensation lawsuit;
- Extracontractual damage compensation lawsuit: defamation lawsuit; personal injury lawsuit; quality of life damage compensation lawsuit; damage caused from domestic animals compensation lawsuit; damage caused by minors compensation lawsuit;

- Unjust enrichment lawsuit, which can be filed only in cases when there are no other defense means and no other lawsuit can be filed.

In the framework of the justice reform process, shortcomings and problems in the functioning of legal protection¹⁹⁶, including the above mentioned, were mentioned in the relevant analytical document. In both the strategic document and this reform's action plan, it is stipulated that these two laws be amended aiming at providing the necessary financial and justice system infrastructure support with the purpose of enhancing independence, efficiency and professionalism.¹⁹⁷

5.5. THE ROLE OF THE OMBUDSMAN, THE COMMISSIONER FOR PROTECTION AGAINST DISCRIMINATION AND NGOs

The Ombudsman and the Commissioner for Protection against Discrimination occupy a special spot in the scheme of human rights protection institutions. The civil society and NGOs play an instrumental role in the efforts to ensure the observance of women's rights. According to the Constitution of the Republic of Albania [Articles 60-63; 134 respectively]¹⁹⁸ and the Law "On the Ombudsman,"¹⁹⁹ this independent institution is important for the protection of rights, freedoms and interests of individuals from the irregular and unlawful acts or omissions by public administration bodies.

In this way, this institution is charged to monitor and keep

"under control," and to enhance the performance of the vision and mission of public administration, which tends to occasionally "give in" or abuse its discretion, leading to infringement of the rights and freedoms guaranteed by law for citizens and women. The Ombudsman has drafted a special report "On the problems related to Property Rights", wherein providing a series of important recommendations.

On the other hand, NGOs pursue objectives for the public benefit and interest²⁰⁰. Considerations that the "behavior" of public administration is not always positive are not the result of any prejudice, but rather of a series of its activity analyses and monitoring. Thus, for example, although the Judicial Reform Index²⁰¹, makes an analysis of the judiciary's activity, it does not consider it in isolation from other segments of the system of the bodies of the rule of law. Among others, this document underlines that in matters related to property, "government" participation is slow and obstructive.

When observing cases of infringement of rights and freedoms by the public administration, the Ombudsman is entitled to issue recommendations and propose actions and special reports for specific cases and issues addressed during its activity. Issuing recommendations and preparing special reports is the main power of the Ombudsman²⁰².

Public administration is a very broad notion, and it undoubtedly includes IPRO, PRCC, the bailiff service, etc. Pursuant to Article 12, the right to file a complaint to the Ombudsman is of any individual, group of individuals or non-governmental organizations. Ways in which NGOs set in motion the Ombudsman include:

filing a complaint, a request, a notice. Legislation issues regarding the judiciary, and good governance issues, with focus on women's rights should be at the center of their attention.

The Commissioner for Protection against Discrimination can receive complaints from (natural and legal) persons or groups who claim to be subject to discrimination, as well as any other organization with lawful interests and discrimination claims on behalf of an individual or group of individuals. Parties concerned may find the template form on the institution's website. The Commissioner counts 15 decisions in 2013, of which 2 are of interest, as the Commissioner has established that CEZ Distribution and the Water Regulatory Entity have engaged in discriminatory behavior. These entities have cut water and energy on the request of the ex-head of the household, who is the former husband of the complainant. She was pregnant and lived together with her daughters from the first marriage. The commissioner has observed indirect discrimination by ERE and the Water Regulatory Entity, since the contracts approved by these institutions do not provide equal access of spouses or former spouses and contain no special provision for the preferential treatment of pregnant women and children in benefiting these services.



Conclusions and Recommendations

Previous studies have produced a set of valuable recommendations regarding access to property rights. These are both gender-affecting and neutral recommendations.

One of the suggestions of this study is to summarize and place them into a list of priority recommendations to be fulfilled.

The following recommendations aim at increasing women's access to property rights and enhance observance of women's rights by individuals and institutions. The recommendations are related both to taking legislative (law amendment/improvement/implementation) and administrative measures.

In particular:

1. LEGISLATIVE MEASURES

1.1. Legal Framework:

The study identified that the legal reform in the property rights aspects has been a dynamic process associated with continuous improvement of gender equality standards. The same applies to policy documents aspects. These have been carefully drafted, giving priority to women's rights in the context of the 'mini' affirmative actions.

However, as long as the results indicate a high level of inequality, that should serve as a drive towards future legal and policy reforms. Neutral laws often seem to hide gender-wise discriminatory consequences.

In this regard, we may mention legal aspects related to: institute of inheritance, in order to eliminate customary influences and effects of discriminatory legislation; policies on the land and rights of women in rural areas; CC provisions related to agricultural households; adequate housing policies, issues of access to credit; problems regarding matrimonial property during marriage and upon dissolution; aspects related to administration of minors' property; more comprehensive regulation on the assessment of unpaid work and other issues identified in this study.

Legal regulations covering the institution of couple cohabitation and property access of cohabiting couples is a must.

Legal interventions should take into consideration the effects of customary law in order to eliminate them.

The ratification of a considerable number of conventions does not fully address the problem, since there is not yet a proper level of implementation, partly due to limited knowledge on them and to the fact that they cannot be self-applicable and require issuance of a special law.

Internal harmonization of the legal framework remains important.

1.2 Improved law enforcement

To ensure this, preparation of a series of checklists for professionals is required, in order to pay attention to the observance of property rights.

This is important for assessing the contribution given during the marriage through unpaid work, as well as in the case of authorizations issued for selling a minor's property.

2. ADMINISTRATIVE MEASURES

2.1. Awareness-raising of society, women and men on equality rights and principles.

As long as the rights are written on paper, but women are not able to exercise them, it is the same as if the laws did not exist.

Work to inform women on their rights should be ongoing, and not only through NGO activities, but also through counseling provided by institutions such as notaries, lawyers, IPRO officials, etc. Since NGOs interact and have direct knowledge of the various local problems, they should disseminate information on women's rights on the land and other movable and immovable property and on their effective ownership, focusing on women of rural areas and minorities, etc.

At the same time, raising men's awareness on the principles of equality and non-discrimination in property matters should not be neglected.

Using the media and other means of information, and preparing TV programs would be effective.

2.2. Cooperation protocols among institutions

This study found that many of the problems and infringement of rights stem from institutions that authorize one after the other, though unintentionally, women's discrimination and accentuate stereotypes.

Interaction protocols between IPRO and the Notary Public, among notaries, between the latter and courts, etc. would avoid many disputes over property rights. Proper coordination is needed among different segments of the system, in order to avoid addressing the court, since it incurs costs that are not only material. Some other issues include the increase of transparency and severe punishment of offenders who misuse their official position.

2.3. Access to information and services, including legal aid and counseling

Everyone lives in a family. Becoming aware of the rights and responsibilities within the family structure, including marital property relations is of crucial importance.

Establishment of pre-marital counseling centers as ad hoc consultants attached to civil registry offices will help the young generation in selecting an appropriate regime and understanding their rights and obligations.

2.4. Professional education and training

Lack of safety in property rights and the shortcomings in law implementation remain important issues that cause social and economic instability.

Raising awareness on women's rights and property rights remains a challenge of the professionals any time they draft, approve, and issue decisions and when they protect women's property rights.

It is important that training is built by combining standards with actual problems women face in Albania, in order to resolve issues that arise in the field.

Attention should be paid in order for training programs to include all categories, like those who draft laws and gender policies, judges, lawyers, notaries, bailiff officers, IPRO clerks, NGOs etc.

This will lead to a better implementation of the law and the identification of the needs for legal changes.

2.5. *Statistics and database*

Referring to old data and failure to take measures to monitor the change produced by every positive legal and policy action is intolerable. We faced such challenge also during the preparation of this study, which required updated data. The data must be official and updated.

INSTAT, IPRO, the Ministry of Justice, courts, notaries, etc., and the institutions dealing with property issues must cooperate in this direction and generate statistics that are not isolated, but comprehensive and integrated with gender aspects.

2.6. *Studies and Monitoring*

2.6.1. In order to conduct the studies, the analysis of the following is recommended:

- Legal, policy and factual matters related to women's housing.
- Impact of new legal and sub-legal standards on immovable property registration.
- Development of a commentary for civil registry employees, aimed at providing premarital counseling on the property rights of the spouses and the marital property regime.
- Development of a guideline for notaries on matters of marital property regimes and the attention they should pay to gender equality standards in case of contractual regimes.
- Study on the impact of authorizations for selling children's property on the property status of the male or female child. Possibility to guide university students or the students of the School of Magistrates in this direction.
- Development of a guide containing various indicators to help with the estimation of unpaid work as a contribution to the family.
- Study on property issues and their impact on the elderly from a gender perspective.
- Preparation of a map with all the recommendations issued by previous studies and national and international stakeholders and their state of application

- Study on the impact of the current legislation on the rights of minority women.
- The study on measuring the duration of judicial processes adjudicating marital property or property partition.

2.6.2. Judicial practice monitoring in relation to:

- The effect of various seemingly neutral laws on the violation of women's property rights. Such is the law on the IPRO. Monitoring and integral studies of the judicial practice on showing how many property conflicts have reached the court only because of the Law on IPRO [unilateral registration of ownership titles and only husbands receiving such titles] burdening its activity with such issues.
- Monitoring the duration of trials adjudicating marital property or property partition.
- Monitoring of court decisions in order to identify notary acts and actions that have led to violations of property rights and accordingly the development of training programs in collaboration with NNC.
- Property Strategy monitoring by NGOs and transparency of the process and its gender impact.

2.7. Recognition and promotion of good practice

Elimination of discriminatory and patriarchal customs is a world-wide problem. The above-mentioned studies have identified positive patterns that yield results adoptable in a country like Albania.

2.8. In the field of education

Evaluate the possibility of including property rights knowledge in 9-year schools and high schools' curricula, by age group.

FOOTNOTES

1. *See the materials of the first expert meeting on the positive practice and lessons learned on the realization of women's rights towards income sources with a focus on land as such. This meeting was held in Switzerland from the 25th to 27th of June 2012 <http://www.unwomen.org/events/54/expert-group-meeting-good-practices-in-realizing-womens-rights-to-productive-resources-with-a-focus-on-land/>*
2. *Assessing Land Administration Project's Gender Impacts in the Western Balkans: Country Case Studies: Albania, Bosnia-Herzegovina and Montenegro. The World Bank. June 2011. <http://siteresources.worldbank.org/INTECA/Resources/landgenderassessment.pdf>*
3. *Retrieved from Gender disaggregated data - Western Balkans, Statistical Reports 2005-2013, published at the WB Conference on Land and Poverty (Washington 2014) at: http://www.fao.org/fileadmin/user_upload/nr/land_tenure/Genders_Report_WB.pdf*
4. *ibid, see pg. 13, 59 seq.*
5. *Property rights Index, as a sub-part of Economic Freedom Index <http://www.international-propertyrightsindex.org/ranking>*
6. *See: <http://www.globalpropertyguide.com/Europe/Albania/property-rights-index>*
7. *See the European Commission Progress Report for 2012, 2013, 2014 and 2015. Ministry of Integration: <http://www.integrimi.gov.al/al/dokumenta/progres-raporte>*
8. *Pursuant to Law 33/2012 "On registering immovable property", and according to the Civil Code, "Immovable property" includes land, water sources, buildings, objects and every other immovable property.*
9. *During the study, we concluded that judicial decisions refer to the international standards only in few cases.*
10. *See the full text: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/*

aln.pdf [available in January 2016]. Published in the Official Journal with an additional publication on the 15.10.2008.

11. For further information on women's rights regarding housing, see the report of the Special Rapporteur Ms. Raquel Rolnik [26 December 2011] of the UN Assembly on adequate housing as an adequate living standard component and the right to not be discriminated on this aspect, in:
<http://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>. This report focuses on women's right to adequate housing, including inheritance, property rights issues, etc. The report provides a gender perspective analysis, placing an emphasis on specific recommendations for UN member countries and human rights mechanisms. In the framework of the Albanian legislation, it is worth mentioning the caution given to the FC and to the Law "On measures taken against domestic violence", regarding the right to housing and adequate housing, and not only.
12. See the full Recommendations at: <http://www.refworld.org/docid/48abd52c0.html> [available in January 2016]
13. Approved by the UN General Assembly on the 16th of December 1996 and entered into force on the 3rd of January 1976. Law No. 7511/8.8.1991 "On the accession of RoA to the International Covenant on Economic, Social and Cultural Rights".
14. See: General Comment No.4 (1991) The right to adequate housing (pursuant to Article 11 (1) of the Convention) approved by the UN Committee on Economic, Social and Cultural Rights on December 12th 1991. In addition, see Comments 15, 12 and 7 <http://www2.ohchr.org/english/bodies/cescr/comments.htm>
15. Furthermore, see Law No. 9726/7.5.2007 "On the Accession of the Republic of Albania to the Second Optional Protocol to the International Covenant on Civil and Political Rights."
16. <http://www.echr.coe.int/NR/rdonlyres/9D74A089-C364-456A-A23B-2C1B0725F73C/0/AlbanianAlbanais.pdf> [available on 28th of February 2012]
17. Convention on the Rights of the Child, New York 20.11.1989.
18. See [http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/485/20/PDF/N1048520.pdf](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/485/20/PDF/N1048520.pdf/OpenElement) for the full document.
19. For further information related to Albania, see the 2010 special edition at: <http://www.un.org.al/subindex.php?faqe=details&id=13&mnu=14>. Regarding SDGs see <http://www.undp.org/content/undp/en/home/sdgoverview.html>.

20. See: “Assessing Land Administration Project’s Gender Impacts in the Western Balkans”, Country Case Studies: Albania, Bosnia-Herzegovina and Montenegro, June 2011, p.9 at <http://siteresources.worldbank.org/INTECA/Resources/landgenderassessment.pdf>; see the part in this report which lists some studies on Albania.
21. The customary law sources are: Canon of Lekë Dukagjini (CLD), Canon of Scanderbeg, Canon of Puka, Canon of Luma and Shartet e Idriz Sullit or better known as Canon of Labëria. Shtjefen Gjecovi is the author of the CLD's summary, which was done during the second half of the 19th century and was published for the first time in 1913. Dom Frano Ilia is the author of the summary of the Canon of Scanderbeg. On the role of customary law, see the essay by Prof. Dr. Fatos Tarifa with the title: “Of Time, Honor, and Memory: Oral Law in Albania”, at: http://www.google.com/url?sa=t&rc=tj&q=&esrc=s&source=web&cd=1&sqi=2&ved=0CEsQFjAA&url=http%3A%2F%2Fjournal.oraltradition.org%2Farticles%2Fdownload%2F23i%3Farticle%3Dtarefa&ei=c0AOUI6LEsTCtAbV6oGëDg&usg=AFQjCNFv4ExFluwoJNAyIXYvSX7JOGQ&sig2=a-OhSjof-6P_1SZPQwiNVVë [available in January 2016].
22. Aleks Luarasi “Family Relationships” Publication of PH Luarasi, Tirana 2001, pg 145-176 and 199-200.
23. Aleks Luarasi, *ibid*, p. 146.
24. Aleks Luarasi, *ibid*, p. 179.
25. Canon of Luma, Article 1529.
26. §.22 of the CLD, “Tagri i së zojës së shpis” (The rights of the lady of the house), amongst others states: ‘E zoja e shpis ká tager (The lady of the house has the right): 1) Mbi të gjitha sendet, qi bâhen në shpi (on everything that is done at home); 2) Me dhânë a me lypë uha miell, bukë, krypë, djathë a tlyen” (to give and to ask for flour, bread, salt, cheese and butter).
27. *Ibid* §. 23: “Perlimi i së zojës së shpis” ‘ (The duties of the lady of the house) The lady of the house... 3)Mos me shitë, as me blé a me ndrrue gjâ pá lëje të zot't të shpis. (She cannot sell, buy or exchange anything without the permission of the head of family). ...’. Thus, women have the right to take and to give only food articles.
28. See: Aleks Luarasi “Studies on the Albanian customary law. 1. Family relationships”, PH Luarasi, Tirana 2001, pg 76; 132-134; See Canon of Luma, Article 551; 533-534; CLD, “Canon of Puka” version, Articles 48-50.
29. Nowadays, these customs are used symbolically, but they are not obligatory.
30. Aleks Luarasi “Family Relationships”, pg. 103-104, p 114

31. *Different regions used different names for it, such as: “mërqiri”, “forca”, “këpucët”.*
32. *See Canon of Scanderbeg, Article 1287.*
33. *Nazmi Biçoku, “Inheritance right”, p. 16. Ksanthipi Begeja “The right to family in PSRA”, Tirana 1984, UT, Faculty of Political and Judicial Sciences. p.37.*
34. *Pursuant to Article 1378 of CC 1929: “Nor the short-term or the long-term asset of spouses is included in co-ownership, and nor can inherited or gifted property, but only present and future marital property.”*
35. *Pursuant to Article 794 CC 1929: “Zotnimi është e drejta me gëzue dhe disponue sendet pa asnjë kufizim tjetër, jashtë atyre që caktohen me ligj ose rregullore (Ownership is the right to enjoy and have access to objects without any limitations apart from those set forth by law or regulations.)”*
36. *At: <http://www.gjykataelarte.gov.al/>. Decision No. 5/20.01.2009 of the JCSC is related to whether the gifting contract made by one of the spouses in favor of their daughter is null or not and the property acquired during the marriage [as a personal or joint property] is analyzed in accordance with the 1929 CC provisions in the cases when this registration is carried out only for one spouse. See also the minority’s opinion on this decision.*
37. *See also: de Waal C. Post-socialist Property Rights and Wrongs in Albania: An Ethnography of Agrarian Change. Conservat Soc 2004; 2:19-50 at: <http://www.conservation-andsociety.org/text.asp?2004/2/1/19/49340>*
38. *Pursuant to Article 99 of the Decree “On ownership” and Article 48 of FC 1965. For further information, see: Andrea Nathanaili “Property rights in the PSRA”, lecture session. Tirana 1974 UT, Faculty of Political and Judicial Sciences.*
39. *See Ksanthipi Begeja “The right to family life in the PSRA” Tirana 1984, p. 63.*
40. *See Articles 86 and 87 of Law No. 6340/26.06.1981 ‘On the Civil Code of the People’s Socialist Republic of Albania’.*
41. *Avni Shehu, “Ownership”, Tirana, Albin 2000, pg.42-44.*
42. *See the analytic document, strategy and action plan on the justice reform, at: <http://reformanedrejttesi.al/>*
43. *Approved by Law No. 7850, dated 29.7.1994, as amended by Laws No. 8536, dated 18.10.1999; No. 8781, dated 3.5.2001; No. 2012, dated 16.02 2012 and No. 2013, dated 20.05.2013*

44. *Notice how Article 6 of the CC stipulates the capacity to act [underage marriage rudiment only for women] of women married underage, by discriminating the husband, who is allowed to wed underage, who unlike the wife, does not have full capacity to act. Article 6: When an individual reaches 18 year of age, he/she has the full capacity to acquire rights and civil duties. This full capacity is also acquired through marriage by a woman who has not become of age. She does not lose this capacity in case the marriage is declared void, or it is dissolved before she comes of age.*
45. *Ardian Nuni, Luan Hazneziri, "Civil Right II (Ownership)", Tirana 2010, pg 67-68.*
46. *Law No. 10835/24.02.2011 "On providing mediation for conflict resolution", Article 2 on law implementation fields. See law commentary at: http://www.unicef.org/albania/komentari_për_ligjin_për_ndermjetesimin.pdf.*
47. *Interview with Prof.Dr. Mariana Semini.*
48. *Opinion by Besnik Maho, lawyer, lecturer and author on property rights. Opinion by Afërdita Lika, judge.*
49. *This law had been in force until 31 December 1995. See Law No. 7909, dated 5.4.1995 "On an amendment of Law No. 7652/23.12.1992 "On the privatization of state buildings". See also Law No. 9321/25.11.2004 "On the privatization of buildings and objects transformed into dwellings, built with state company and enterprise funds" and Law No. 9416/20.5.2005 "On the privatization procedures of buildings constructed or purchased by the National Housing Authority with state funds."*
50. *A comment is required for the term "adult". In accordance with the Albanian legislation, a person is considered an adult when they become 18 years old. Pursuant to the CC provisions in force, if a woman married before 18 years old, she was thought to have full capacity to act, thus making her an adult. The FC of the time allowed marriage at the age of 16 for girls and 18 for boys.*
51. *Decision No. 6946/ 14.09.2011 of Tirana District Court.*
52. *An agricultural household can sell the plot of land given by Law 7501/19.7.1991 "On land", in compliance with the provisions of Law No. 8337 "On transfer of ownership of agricultural, forest, meadow and pasture lands".*
53. *See pages 80 seq. of the National report on the Status of Women and Gender Equality in Albania, UN Women, Tirana 2011. <http://www.un.org.al/editor-files/file/news/Nation->*

54. See some of the studies listed in the section that address women's rights in rural areas.
55. Pursuant to this law, the registration is carried out by the registration office based on a denomination in accordance with the CC provisions (Articles 193 and following). IPRO must and can issue a building ownership certificate, noting the property status, surface, type of property, owner's name, physical location, through two legal documents for each property: 1. Registry Index Map (RIM) and 2. Legal register cartella
56. Pursuant to Article 74/a, co-ownership includes the property acquired by both spouses, personally or jointly, during the marriage; Article 76 of the FC stipulates that: It is presumably jointly owned by the spouses, except when the husband proves it is his personal property.
57. Pursuant to Article 42/2, it is highlighted that the registration is done in favor of the subject for whom the legalization permit has been issued. In practice, it is known that legalization requests are mainly submitted by husbands or "heads of family", hence the permits are issued under their name. The same applies to cases of building additions. It is required that this provision be carefully elaborated in bylaws on its implementation method and in the bylaws of Law No. 9482, dated 3.4.2006 "On the legalization, urbanization and integration of informal buildings", as amended.
58. Decision No. 9644/25.11.2011 of Tirana District Court, B.M, the former wife of Sh.M requests to be recognized as co-owner of 1/2 of the property registered in the name of the defendant at IPRO. The property is an apartment with 46,3 m² surface area. IPRO is given directives to carry out the relevant registration actions. This claim is accepted by the court; Decision No. 130/27.1.2011 at Fier District Court states that the apartment with surface area of 56 m² acquired through a transaction contract during the marriage is registered at IPRO Fier under the name of the defendant A.Z, who has appealed it at the Vlora Administrative Court, with the aim of not including the property in the marital property.
59. Based on the relevant legislation for these two articles, we reached the conclusion that marriage obligations are given priority and marriage rights are inalienable. Thus, no effort made by spouses or only of them cannot make possible aversions or deviations from the content of these two articles. Any type of agreement would be completely void. Notaries should pay attention to the subject matter of contracts and the content of rules on matrimonial regimes. The court on the other hand should issue decisions on the absolute voidance of these agreements.

60. Co-ownership includes the property acquired by both spouses, personally or jointly, during the marriage; [Article 74/a of the FC]. Diligence needs to be given to the cases of personal property acquisition as a result of property exchange [Article 77 FC]. Every kind of property, such as movable, immovable [apartment, land, vehicle, home appliances etc.] is included here. Even if the property is acquired by only one spouse, be this without the knowledge of the other, this does not affect the listing of co-owned property and it does not require a rights transfer act because the law itself underlines the automatic transfer to spouses that have not contributed to the acquisition of property.
61. See the study on gender pay gap, UN Women, 2011. <http://www.un.org.al/editor-files/file/news/Gender%20Wage%20Gap%20Report%20in%20Albania%20-%20ALB.pdf>. See also: *Opportunities for Men and Women: Emerging Europe and Central Asia* by Sarosh Sattar, p 50. http://siteresources.worldbank.org/ECAEXT/Resourc-es/258598-1322580725430/WB_gender_report_EXE_SUM_11_21_11.pdf
62. See, Arta Mandro “The right to family life” PH Emal, Tirana 2009, section on matrimonial regimes. Regarding sale with reserve, see Articles 746-749/a of FC. See also the interpretation of the SC in unifying decision No. 84/3.07.2001. Pursuant to Article 746 of the Civil Code: When the price of the sale is paid on an installment basis, the purchaser acquires ownership over the object upon payment of the last installment, assuming the risk from the time of delivery. Transfer of ownership with a reserve with the above conditions must be reflected in the contract.
63. See Decision No. 5777/13.10.2005 of Korça District Court, which requires the partition of marital property, composed of an 80% bank deposit for the plaintiff and 20% for the defendant.
64. For further information on the marital property regimes see: Arta Mandro, “The right to family life, family, children, marriage, spouses”, PH, Emal, Tirana 2009.
65. Pursuant to Article 23 of the Law on Gender Equality: 1. 1. The outstanding work of women and men considered as a contribution to the development of family and society, in the case when he/she takes care of: a) the welfare of the family; b) children; c) other family members; d) works in agriculture and family economy. 2. The subjects defined in paragraph 1 of this article benefit from community services, employment policies and employment, as well as vocational training under the legislation in force.
66. For further information, see “Cross-sectoral strategy for the property rights system reform” and its impact in cases of gender equality for protecting and guaranteeing property rights, at: http://www.justice.gov.al/spaw2/uploads/files/File/Legjislacioni_Brendshem_Web/Strategjia_Reforma_ne_fushe_e-te-drejtave_te_pro-nesise.pdf and Action Plan http://www.justice.gov.al/spaw2/uploads/files/File/Legjislacioni_Brendshem_Web/Plani_i_veprimit_i_strategjise_se_prones.pdf
1. At: http://www.instat.gov.al/media/169821/adhs_al.pdf [available in January 2016].
 2. Opinion from Admir Belishta, Chief Judge of the Korca District Court, and all interviewed judges.
 3. See decision no. 1761/2013 of the CCSC.
 4. See the website of the Fier District Court at <http://www.gjykatafier.gov.al/>

5. *Interview with Sonjela Voskopi, Judge of the Korca District Court.*
6. *FC Article 153: The right to use the residence: "Should the family estate be under the ownership of one of the former spouses and should the other spouse be not in possession of any other suitable residence, the court may allow the use of the residence by the former non-owner spouse, when: a) the children are assigned in custody and rearing to the latter, until they reach the age of majority; b) dissolution of marriage has been requested by the former spouse, who has ceased cohabitating. In this case, the right to use the property shall be for up to 7 years, but if the former non-owner spouse remarries, he/she shall forfeit this right; c) when the former non-owner spouse has installed in the residence of the former spouse a professional high-value cabinet, the transfer of which would be very expensive. In these cases, the right of use shall be for up to 3 years. In this case, the court shall specify the use period and the rent amount that the former non-owner spouse must pay pursuant to his/her income. In any case, the court may interrupt the lease contract, if justified under new circumstances.*
7. *Article 108 of the FC: "The spouses may, in the marriage contract, change the legal community by agreement, which must comply with Articles 66 and 67 of this Code. Spouses may agree: a)...; b)...; c) have equal shares; ç)...; The rules of the legal community shall remain enforceable for all paragraphs that are not subject to the marriage contract between the parties".*
8. *For clarifications, please see Decision No. 1762/2013 of the CCSC.*
9. *The project "Strategic issues in the protection of economic rights of children and women in cases of marriage dissolution", Tirana 2015.*
10. *The FC does not foresee the obligation for alimony. The High Court has assessed that the first instance courts, referring to the legal criteria foreseen in Articles 158 and 201§2 of the FC, have taken into consideration the ratio of the parents' income sources with the needs of the child/children and the economic opportunities of the parents. See: the 2012 annual report of the HC, which mentions 5 cases with alimony obligation, for which legal recourse has been filed in this court: <http://www.gjykataelarte.gov.al>*

11. *Judges Artur Malaj, Rexhina Merlika, Admir Belishta, etc., share the same opinion.*
12. *'Mostly, after the dissolution of marriage, the mother is granted custody of the children. As such, she is the primary person exercising parental responsibility. For the District Court of Tirana, we see that this is the case in almost 87-88% of the monitored decisions for 2011-2012; in the Durres District Court in 90% of the cases for 2011 and 82% of the cases for 2012. The same applies to the courts of Shkodra and Vlora. This is the conclusion of the report prepared by the CCSC in "Recognition and implementation of gender equality standards in legal proceedings". The Report on the main findings from the monitoring of the District Court decisions of the courts of Tirana, Durres, Shkodra and Vlora. January 1st, 2011 -June 1st 2012. http://www.qag-al.org/WEB/publikime/raporti_shqip.pdf*
13. *See 'Assessment of the Justice System. The Contribution of the National Chamber of Private Bailiffs at <http://www.nchb.al/wp-content/uploads/2015/06/Vler%C3%ABsimi-i-sistemit-%C3%AB-Drejt%C3%AB-sis%C3%AB.pdf>*
14. *According to Art. 317 of the CPC in force, "The court decision may be made for temporary execution, when a) alimony is specified". As seen in the proposed wording, the part 'may' is removed and it is replaced by 'in any case'. http://www.parlament.al/web/pub/kodi_procedures_civile_copy_1_21279_1.pdf*
15. *For more information, please refer to Arta Mandro-Balili, 'Gender discrimination in family and marital cases. The role of the Albanian judiciary in its elimination' Tirana, April 2014, pp 41-42.*
82. *ibid, pp.40-43*
83. *Interview with Arban Tutulani, Executive Director of the QTSJ.*
84. *Interview with Judge Brunilda Kadi.*
85. *Article 128 of the FC.*
86. *Decision No. 6318/13.07.2009 of the Tirana District Court amended with Decision no. 332/07.10.2009 of the Tirana AC, which has ruled for the change of the above mentioned decision, by confirming, among other things, that the defendant (S.G) must not enter either floor of the building for a one-year period (13.07.2009-13.07.2010). The defendant has not obeyed this decision, therefore he was sentenced to two months imprisonment for the criminal offense of "Obstruction of judicial decisions execution", foreseen by Article 320 of the CC. With the verdict dated 26.02.2009, the Tirana District Court found S.G guilty for "Non-serious intentional injury" [Article 89 of the CC] against R.SH (father of the defendant E.SH).*
87. *Here we refer to children younger than 18 years old.*

88. *According to the Court: "Given that the notion of parental responsibility includes, inter alia, the legal representation and the administration of the child's asset, in the procedural perspective of active legitimation, this claim should have been filed not only by the applicant, but also by his spouse R.D, since if the request is to be approved for authorization granting, it will be given in favor of both parents and not just one of them." See Decision No. 3320/26.04.2011 of the Tirana District Court.*
89. *In considering the current trend, we included in this study the monitoring of the 2012 decisions of the Tirana District Court. 90 decisions with this object were handed down for the period. It results that in 43% of the cases, the mother is the petitioner and in 57% of them the father. In 2015, the number of decisions related to the authorization of transferring minor's assets has gone up to 93 cases, out of which 44 were accepted, 30 were dismissed, 14 were rejected. For more information, visit: <http://www.gjykatatirana.gov.al/>*
90. *See Decision No. 3086/19.04.2011 of the Tirana District Court, in which the request was filed by the father of the child and the court has ruled to grant an authorization for some assets, in which the child is a co-owner; Decision No. 3166/21.04.2011 of the Tirana District Court, etc.*
91. *Interview with Rexhina Merlika, chief judge of the Kruja District Court, dated 28.2.2012.*
92. *Altin Azizaj, Executive Director of the Center for Protection of Children's Rights.*
93. *Judge Rexhina Merlika claims that in the practice of the Kruja District Court there have been no cases related to the violation of the hereditary rights of women. Furthermore, in some cases Article 361/3 has been interpreted in favor of the woman by not summoning for inheritance the successors, and leaving consequently the inheritance to the surviving spouse.*
94. *Judge Brunilda Kadi, Tirana District Court.*
95. *Decree No. 1892/05.07.1954 "On inheritance", FC of 1965; Decree no. 2083/06.07.1955 "On ownership". According to Article 96 of the Decree "On Property", it is provided that: The assets acquired by the work of both spouses belong to them both. In the joint properties of the spouses, the items that each has acquired during the marriage by gift or by inheritance, the savings deposits accounts each has, items of personal use as well as the objects and tools of exercise of the activity or their mastery are not included."*
96. *Unifying decision no. 24/13.3.2002 clarifies the uncertainties regarding the type of property acquired by the spouse during the marriage, that is, property acquired in 1993 with inheritance pursuant to law on the CCP. She gifts the asset to third parties. The former husband claims that the contracts are invalid because the property is co-owned. Spouses married in 1966 and divorced in 1997. Gift contracts are respectively of 1994 and 1996.*

97. See recent adjustments made by the new law no. 33/2012 "On the registration of immovable properties". According to Article 41/2 "Registration of Co-owned Immovable Property": *If the property, object of the ownership transfer contract, given in favor of natural persons who result to be married in the civil status register, is gained during marriage, pursuant to Article 76 of the FC, in the respective section of the property card spouses are registered as co-owners".*
98. *With the amendments to the CC, as amended by Law No. 121/2013, dated 18.4.2013, the competence to issue the certificate of inheritance is assigned to a notary public.*
99. *Fjoralba Qinami, chief judge of the Lezha District Court.*
100. *Interview with Mariana Semini, lecturer at the School of Magistrates.*
101. *Regarding the inheritance cases, this study does not reflect any changes done respectively to Law No.131/2013 "On some additions and amendments to Law No.7829, dated 1.6.1994 "On Notary Public", as amended, and the respective provisions of the CC [Law No. 121/2013] and CPC [Law no. 122/2013]. As confirmed by the content of these laws, the notary public represents an institution that has a special role. Thus, it is important to address these legal innovations regarding the notary's due care in the standards of gender equality in conformity with the law.*
102. *Article 358 of the CC: The testator's spouse is entitled to claim his/her share of the joint asset earned by the spouses during marriage.*
103. *Article 361 of the CC: First and foremost, the children and the spouse, who is able or unable to work, are entitled to inheritance in equal shares. When, except for the spouse, there is no other heir in line, the successive line is called for inheritance according to Article 363 of the CC and when there is no one, the successive next in line heirs are called in according to Article 364 of this CC. In any case, the spouse receives 1/2 of the inheritance. When there are no heirs as per the lines above, the inheritance is given to the surviving spouse.*
104. *Article 96 of the FC: "Termination of the community". The community ends with: a) the passing of one of the spouses, when one of them is declared deceased or missing, the invalidation and dissolution of the marriage; b) partition of property; c) changing the matrimonial property regime when it causes the termination of the community.*

105. *Interview with Mr. Artan Hajdari, attorney at law and lecturer at the School of Magistrates, expert on the institution of inheritance.*
- 106.
107. *Amended by Law No. 121/18.4.2013.*
- 108.
109. *Article 318/1 Place where estate is executed (Added with Law No. 121/18.4.2013): The estate is executed in the last residence of the testator. When the last residence of the testator is unknown, the estate is executed where all his wealth or the majority of it is located. Article 318/2 Applicable law (Added with Law No. 121 / 18.4.2013) Inheritance is governed by the law in force at the time of the execution.*
- 110.
111. *Interview with Fioralba Qinami, former chief judge of the Lezha District Court.*
- 112.
113. *Decision No. 4849/27.05.2008 of the Tirana District Court; see also the unifying decision of the JCHC No. 14/16.02.2001 which, although it covers legal issues related to the recourse, also presents the long proceedings the plaintiff and her two daughters went through, as the only next in line legal successors of the late F.M., respectively their spouse and father. The business developed during marriage and the vehicle of F.M were claimed as the property of his father and brothers.*
- 114.
115. *Artur Malaj, former chief judge of the Vlora District Court.*
- 116.
117. *Admir Belishta and Sonjela Voskopi, Korca District Court.*
- 118.
119. *Interview with Artur Malaj, chief judge of the Vlora District Court [April 4th, 2012].*
- 120.
121. *See Decision No. 3688/30.11.2011 of the Tirana District Court. "From the evidence in trial, it resulted that the Tirana District Court with decision no. 1340/18.02.2008, based on the request filed by the defendant M.K, has designated as legal successors of N.K. the defendants M.K. (spouse of the testator from the second marriage) and Th.K. (mother of the testator), excluding his daughters, Xh.K and E.K. In decision no. 4849/27.05.2008 of the Tirana District Court, we have a case in which the minor girls, whose father passed, were not included in the heirs' successors substituting their fathers upon their grandmother's death. One problem with this judgment is that when their father's will was executed, he resulted to be single and with no children, and they were excluded from the circle of the heirs. Here we might recommend an analysis of the status of children born out of wedlock and the impact of the inheritance and ownership right in these cases.*
- 122.
123. *Sonjela Voskopi, Judge in the Korça District Court.*
124. *According According to Article 333 of the Civil Code: [As amended by Law No. 121/18.4.2013): Renunciation from inheritance must be in a written form or with a notary declaration edited by the notary public, which is registered at the respective notary public where the testament was opened. The renunciation can be made through a representative with a special power of attorney. Following the registration of the renunciation from inheritance, the notary public generally issues a new testimony of inheritance, which reflects the change of heirs and their respective shares, which is sent to the person who has requested the initial inheritance evidence.*

125. *The reflection of sharia provisions in Decision No. 1892/01.03.2012 of the Tirana District Court.*
126. *Referring to the decision: Inheritance relationships according to the ottoman law were regulated pursuant to sharia norms, which had the Quran as the main source. Based on the acts administered under trial, the legal fact that, at the death of the deceased I. Xh on the 26.07.1958, the son, H. Xh was alive, for whom the testimony of inheritance was issued by Court Decision No. 2552/05.05.2006, making him capable of inheriting the deceased's testament, is verified. This based on the sharia, which stipulates that: "Every property left behind by a person who dies shall be inherited by the males of the family, who are alive."*
127. *Interview with Admir Belishta and Sonjela Voskopi from the Korça District Court.*
128. *Interview with Artan Hajdari, lecturer at the School of Magistrates and expert of inheritance legal issues. Interview with Kostika Cobanaqi, judge.*
129. *Intending to clarify this issue and based on the problems we faced during the study, we asked for the opinion of Mr. Artan Hajdari, lecturer at the School of Magistrates and expert on inheritance issues, who stated: "Regarding inheritance lawsuits, the stance applied for these lawsuits is the literal, but also doctrinal interpretation of Article 411 of the CC. The doctrine and the judicial practice maintain the same treatment criteria with those that stipulate the voidance of the judicial action by considering the testament as a unilateral judicial action. Thus, when referring to lawsuits as a judicial action on testament voidance, we are aware only of lawsuits on relative nullity. On the other hand, when referring to the nature of the absolute nullity, the lawsuits defending these violated judicial civil relationships, specifically the request of inheritance lawsuit, pursuant to Article 349 conditions, will be protecting the inheritance. The majority of judges confuse these concepts."*
130. *See Decision No. 11117-01201-00-2008 of the Fundamental Register No.00-2013-931 of Decision (92) of the JCSC.*
131. *Admir Belishta, Chief Judge of Korça District Court.*

132. *Rezarta Mataj, Admir Belishta, etc.*
133. *The Family Code is approved by Law No. 9062, dated 8.5.2003 and this provision extends its effect on property acquired by spouses in cases when they have concluded marriage before its approval.*
134. *Interview with Prof. Dr. Mariana Semini.*
135. *Decision No. 444/15/02.2008 of Korça District Court*
136. *See also Decision No. 213/08.02.2005 of JCSC on gifted objects by the parent (father) to the son, without the spouse's consent (mother of the child), as the co-owner of the gifted object, due to it being property acquired during the marriage;*
137. *See Unifying Decision No.213/08.02.2006 of Tirana District Court. The spouse (wife) has sold immovable property to a third party. She has acquired this property through a gift contract. The contract is valid, and the donor is her husband. The husband requires the transaction contract to be stated as void, due to the fact that the sale of the object was carried out without his consent. <http://www.gjykataelarte.gov.al/>*
138. *The Joint Colleges have given the following reasoning to achieve the unification of the judicial practice; firstly, the gift contract is considered as a judicial action without a counter-reward and aims at transferring an asset without any other equivalent. The gift contract has a legal intention, animus donandi, which gives the other party an economic benefit without requiring a reward in return. In case the return of a part of the gifted object was to be accepted following the gift made by R.S to his spouse, D.N, the intention of the gift contract would change and the donor's would be questioned. Secondly, contract purpose elements include: the subject (two), object, agreement and form. The donor's obligation to transfer ownership of the object corresponds with the donor's right to acquire ownership on the respective object. In such a case, if it is accepted that the donor transfers full ownership on the gifted object and acquires a part of it, it should also be accepted that the donor has the status as both debtor and creditor on the same aspect, that of transfer of ownership on an immovable object. Differently put, it means giving a subject the possibility to conclude a contract with itself, which is simply a legal nonsense.*
139. *See Decision No. 3689/5.06.2011 of Tirana District Court.*
140. *Decision No. 5722/26.09.2011; Decision No. 55/17.01.2011 of the Tirana District Court under which the case was rest following 21 hearings, which lasted 465 days.*

141. Pursuant to the power of attorney content cited in Decision No. 9259/10.11.2009, Tirana District Court “This power of attorney is issued by us on our full and free will. We deem any judicial action carried out by our brother, such as rent collection, as would legally be performed by us. This power of attorney is drafted for legal reasons and is signed by us in the presence of the notary public. In addition, we bestow our brother the right to sell them when he deems it as profitable [the added question to the power of attorney is with bold font]”.
142. Retrieved from the narrative part of DCM No.573/16.6.2011 “On the approval of the national strategy on gender equality, reduction of gender-based and domestic violence, 2011- 2015, and of the Action Plan for its implementation”.
143. Enerjeta Deraj, Judge.
144. Brunilda Kadi, Judge.
145. Unifying Decision of JCSC No.22/13.03.2002.
146. Based on statistics obtained from ALUIZNI, the National Report on the Status of Women and Gender Equality on Albania, 2011, in page 80, brings into attention the fact that through the self-declaration process, 500,000 immovable property units, such as houses, stores, etc., were formalized.
147. See Law No. 9482/3.4.2006 “On the legalization, urbanization and integration of informal buildings”, as amended, specifically Article 7, etc. The self-declaration forms do not require data on the persons civil status, but pursuant to Article 27, requires family certificates as part of the documents needed to legalize the object. Meanwhile, the legislation effects need to be amended due to the fact that according to the Albanian tradition and the data gathered from the civil register in Albania, in the majority of cases (90%), the head of family is a male.
148. See Decision No. 8134/20.10.2011 through which the former spouse requires that her right to be included in the legalization process is recognized. This right is not accepted by her former spouse, who has self-declared a building constructed during the marriage; See Decision No.3760/9.05.2011 of the Tirana District Court under which the former spouse, the plaintiff, requires that her right to 1/6 of the shares of a two-floor dwelling with a surface area of 175 m², which is under legalization process, in accordance with the self-declaration for legalization “Appendix A” with No.746, dated 10.03.2005, which is in the name of the defendants.
149. See the decision content at <http://www.gjykataelarte.gov.al/>
150. A.Mandro, A.Anastasi, E.Shkurti, A.Bozo “Gender equality and non-discrimination”. See decision

- No. 2323/20.04.2005 of Tirana District Court as a model indicating how lower courts refer to the Supreme Court judicial practice.
142. See Decision No. 10-2009-796 (389)/06.10.2009 of Durrës Administrative Court
 143. Decision No. 170/21.02.2008 of Kavaja District Court
 144. Law No. 9232/13/5/2004 “On social housing programs of urban area citizens”, as amended recently with Law No.54/2012 and which refers not only to urban areas, but to the entire Albanian territory, aims at creating adequate and affordable housing opportunities, based on the capacity of the family, which needs housing and government aid, to pay.
 145. See the case of M.XH, 22 years old, married with one child, who is evicted from the Hospitality and Tourism technological school dormitory, where she had been housed, and the AI report 2012, the section regarding the right to housing in Albania[pg. 60 of the report] <http://www.amnesty.org/en/region/albania/report-2012#section-2-10>
 146. See ‘The opinion of the CPD Board of Experts on addressing the complaint filed by the citizen, A.Ç., against CEZ Shpërndarjesh.a., which claims discrimination on grounds of gender, pregnancy, marital status and civil status’ at: <http://kmd.al/ske-daret/1442831986-KMD%20mars.pdf>
 147. Regarding the right to adequate housing and being at UN level, see: UN SPECIAL RAPPORTEUR HOUSING REPORT 2012 - WOMEN & ADEQUATE HOUSING at
 148. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-53_en.pdf
 149. The Report “On assessing the implementation of CEDAW in Albania”. United States Agency for International Development, Chemonics International Inc. December 2005 at http://pdf.usaid.gov/pdf_docs/Pnadg312.pdf [made possible in January 2016].
 150. Referring to the Enterprise Census 2010, INSTAT in reply to our request for information, the reply given on the 5th of April 2012 highlights that 26% of businesses are registered in the name of and managed by women.
 151. See the studies conducted by the Albanian Center for Economic Studies and by the Women Entrepreneurs and Professionals Association in 2006. According to WEPA’s study, it results that women who have taken a loan have faced challenges. The challenges were related to the business they were trying to establish [81,3%]; with the development of a business plan [76,7 %], with the development of bank documents [72.7%] and with the collateral terms [70%].

152. According to the 2006 study carried out by SHGAP, 51,3% are natural persons, while 41,3% are limited liability companies.
153. See: <http://www.un.org/Docs/journal/asp/ws.asp?m=CEDAW/C/ALB/CO/3> final observations text July 2010. [Available in January 2016].
154. See DCM No. 573/16.06.2011 “On the Approval of 2011-2015 National Strategy on Gender Equality, Gender-based Violence and Domestic Violence Reduction, and the Action Plan for its Implementation”. Official Journal No. 127/2011. The narrative part of this strategy indicated the following: “Women have established their businesses mainly in economic activities, such as trade, wholesale, stores, dentistry, notary public, law, hairdressing, agribusiness, industry, dairy products production, apparel, book publication, tailoring and crafts production. According to INSTAT statistics, 18% of private business owners are women. The highest number of registered businesses that are owned by women is located in Tirana (31%), and Elbasan (30%). Support has been provided to initiatives for establishing loan programs aiming at encouraging women business by means of implementation of programs, such as Export Credit Guarantee Fund. Although about 70% of women living in rural areas work in agriculture sector, but only 6% of farms are owned or managed by women. Women in rural areas encounter many difficulties in finding job opportunities, thus the majority of them mainly deal with agriculture. Farms do not have production or sale opportunities and are provided with little care and support by the government”.
155. the government”.
156. For more comparative information see the 3rd periodical report of Albania to CEDAW Committee, respectively Paragraphs 356-357-358, etc.
157. For more information see the NCB webpage: <http://www.bkt.com.al/bktMain.aspx>; BA webpage: <http://www.bankofalbania.org/> .
158. According to the respondents, the main requirements seem to focus on financing trips abroad and not on supporting domestic tourism promotion or support activities, or vocational training and courses, etc.
159. Arta Mandro - Balili. “Gender Discrimination in Family and Marital Matters. The Role of the Court”. 2014 <http://www.undp.org/content/dam/albania/docs/misc/Diskriminimi%20gjinator%20ne%20ceshtjet%20familjare%20A.%20Mandro.pdf>
160. This study can be viewed on: <http://www.undp.org/content/dam/albania/docs/misc/Konfliktet%20gjyqesore%20te%20marredhenieve%20te%20punes%20onen%20kendvesh-trimin%20gjinator.pdf>
161. CCLI and UN Women. Property Rights and Women, 2014: <http://www.un.org/>

editor-files/file/BIPshqip.pdf

162. The report can be downloaded on: [http://www.un.org.al/editor-files/file/news/National%20 Report-Status%20of%20Women%20and%20Gender%20Equality%20ALB.pdf](http://www.un.org.al/editor-files/file/news/National%20Report-Status%20of%20Women%20and%20Gender%20Equality%20ALB.pdf)
163. This was not a priority issue on the Swedish Strategy for Albania during 2009-2012. For more information, see Strategy for Swedish Development Cooperation with Albania, 2009-2012 on: <http://www.sweden.gov.se/content/1/c6/09/39/76/e52667c2.pdf>. 'Sida' has attempted to increase the support to women's economic empowerment by cooperating with partners. For the purpose of providing such support, on 30 December 2009 Sida published a working paper outlining the conceptual and operational dimension of "women's economic empowerment", including property rights as a key aspect. This paper is suggested to researchers as a working means to analyze all aspects of women's property rights in a comprehensive manner. [http://www.sida.se/Global/Sida52479en_Women's%20Economic%20Empowerment%20 Scope%20for%20Sida's%20Engagement_webb.pdf](http://www.sida.se/Global/Sida52479en_Women's%20Economic%20Empowerment%20Scope%20for%20Sida's%20Engagement_webb.pdf)
164. Schmitz, Catharina; "Lessons from the Work on Economic Empowerment of Women on Land Ownership and Property by Women in Kosovo/ Albania", June 2010. In October 2010, 'Sida' consulted and financially supported 'Indevelop', which on the account of Sida, with the help of the expert Catharina Schmitz, advised Sida in Kosovo and Albania as regards women's economic empowerment. The consultancy was especially related to land administration programs, conducted in cooperation with the World Bank. The support was provided with the aim of strengthening women's property rights with the programs in process. In Albania this advice was provided in the framework of the new National Strategy on Gender Equality preparation. See: <http://www.indevelop.se/news/womens-eco-nomic-empowerment-in-albania-and-kosovo/>
165. Those concerned can go to the WB webpage on gender: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTGENDER/0,,menuPK:336874~pagePK:149018~piPK:149093~theSitePK:336868,00.html>
166. For more information see the report on June 2011: <http://siteresources.worldbank.org/INTE-CA/Resources/landgenderassessment.pdf>
167. See the second edition of this document dating from April 2012 prepared by the Poverty Reduction and Economic Management Unit, Europe and Central Asia regions. Clelia Ron- toyanni and Tony Lamb. on : http://siteresources.worldbank.org/INTALBANIA/Resources/Revised_Version_Property_Rights_Paper_Edited.pdf
168. *Ibid* you can find the following conclusion: Lack of registered title provides a less favorable position to the rights of minors and persons with disabilities, who are not able

to demand their property rights. Roma community members often face with difficulties in protecting their property rights, not only due to prejudices by the part of local power (for instance, in the approval of residence registration), but also due to the fact that many Roma community members have limited education or are illiterate and as a result it is difficult for them to follow official procedures.

169. See: World Bank report on “Status of land reform and real property markets in Albania [2006] prepared by William Valletta, which focuses on the main components of the Land property reform, the status of this reform during work preparation and recommendations to continuity. We should underline that the report does not analyze aspects related to women’s property rights. http://siteresources.worldbank.org/INTALBANIA/Resources/Statusi_i_Reformes_se_Tokes_dhe_i_Tregut_te_Pronave_te_Pa-tund.pdf
170. <http://minds.wisconsin.edu/handle/1793/21961>
171. <http://minds.wisconsin.edu/handle/1793/22001>
172. The English and Russian version of this booklet can be found on: <http://www.unwom-en-eeca.org/module/project/img/194.pdf> [accessed on January 2016].
173. See on: http://www.levyinstitute.org/pubs/wp_598a.pdf [accessed on January 2016].
174. Link of the publication: http://books.google.com/books?id=UkWeHwAACAAJ&source=gbs_navlinks_s
175. Legal Officer, Land & Tenure Section, UN-HABITAT, prill 2004.
176. The document can be downloaded on: http://www.unhabitat.org/downloads/docs/10788_1_594343.pdf
177. For more information see: <http://www.unhabitat.org/tenure>;
<http://www.unhabitat.org/gender>;
<http://www.unhabitat.org/campaigns>
178. The document can be downloaded on: <http://www.elmt-relpa.org/FCKeditor/UserFiles/File/elmt/201002/Final%20Report%20Womens%20Property%20Rights.pdf>
179. The document can be downloaded on: [http://www.un.org/en/ecosoc/docs/pdfs/10-50143_\(e\)_desa/dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf](http://www.un.org/en/ecosoc/docs/pdfs/10-50143_(e)_desa/dialogues_ecosoc_achieving_gender_equality_women_empowerment.pdf) [accessed on January 2016]
180. See: <http://www.unhabitat.org/content.asp?cid=3983&catid=463&typeid=3&Content->

ByTheme=277

181. See: www.worldbank.org/genderinag.
182. *Civil College of the Supreme Court: No. 233/2014.*
183. *Rexhina Merlika presents the situation related to marriage termination lawsuits in 2011: there is a total of 72 claims. Out of them, there were 42 cases with the wife as the plaintiff and 30 cases with the husband as a plaintiff. Only 6 cases were claimed by both spouses. According to Judge Merlika “these statistical data show the evolution of women and their awareness on law warranties”. However, a different situation applies to marital property division.*
184. *According to the data found on DCM No. 573/16.6.2011 “On the Approval of the 2011-2015 National Strategy on Gender Equality, Gender-based Violence and Domestic Violence Reduction, and the Action Plan for its Implementation” referring to INSTAT data.*
185. *Fjoralba Qjnami, chairperson of Lezha District Court; Brunilda Kadi, Judge from the Fier District Court.*
186. *Decision of the Supreme Court No. 9/92, 2 November 1992.*
187. *Constitutional Court Decision No. 11, dated 27.08.1993. Summary of decisions during 1992-1997, pg. 91; No. 171, dated 30.07.2002. Summary of decisions during 2002, pg. 184; No. 71, dated 02.12.1998. Summary of decisions during 1997-1999, pg. 206; No. 16, dated 17.04.2000. Summary of decisions during 2000, pg. 20; No.34, dated 20.12.2005. Summary of decisions during 2005, pg. 289.*
188. *See Decision of the Supreme Court 17/23.04.2010.*
189. *This Law was amended twice in 2013. See Law No. 131/2013: “On some Additions and Amendments to Law No. 7829, dated 1.6.1994 “On the Notary Public”, as amended”.*
190. *The study conducted by the Legal Study and Training Center in cooperation with “Friedrich Ebert” Foundation, during 2007-2008.*
191. *The Family Code provisions stipulate that every property acquired by one or both spouses during the marriage is part of the legal community and we generally refer to interpretations on this regime as the most frequently used one.*
192. *Opinion of Fjoralba Qjnami, chairperson of Lezha District Court.*
193. *Interview with Aurela Anastasi, CEO of CCLI and Elona Saliaj, notary and trainer in such activities.*

194. *Inheritance certificate, Article 348, (Amended by Law No. 121/2013, dated 18.4.2013)*
195. *Page 15 of the report, accessible on:
http://www.avokatipopullit.gov.al/Raporte/Raportiti_2010.pdf*
196. *See Ombudsman Report for 2014 on:
<http://www.avokatipopullit.gov.al/sites/default/files/ctools/RAPORTI%202014.pdf>*
197. *See: ‘The Vademecum for Lawyers’, pg. 110 -116.*
198. *For more information see Analytical Document of the Justice Reform: <http://reformedrejtesi.al/dokumenti-analitik>*
199. *For more information see: Justice Reform:
<http://reformedrejtesi.al/dokumenti-strategjik-dhe-plani-i-veprimit>*
200. *See Law No. 8417/28.10.1998 “Constitution of the Republic of Albania” (as amended).*
201. *See Law No. 8454/4.2.1999 “On the Ombudsman” (as amended).*
202. *See Articles 1, 2 & 6, 5, etc. of Law No. 8788/07.05.2001 “On Non-Profit Organizations” (amended by Law No. 92/2013).*
203. *See Index of the Justice Reform, Albania Vol. IV. pg 24.*
204. *See recommendation made by the Ombudsman, as well as the reports of this institutions with the three branches of government and the Constitutional Court:
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ANNEXES

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