

EVOLUTION OF LEGAL REGIME OF INSTITUTE OF REAL ESTATE IN CIVIL LEGISLATION

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Abstract

Property institute is an institute of the right provided for in civil legislation and that has changed with the changes in the Civil Code and the civil law. The work will be subject to property as an institution that provided the civil challenged legislation. One issue that will take place will be the historical evolution of the notion of property in the civil legislation of foreign countries. Will be treated the evolution of this institution in the Albanian civil rights, including the challenged legislation canon and civil state. Will be reviewed registration of real estate as a legal obligation, necessity of registration of real estate to get involved in civil circulation. A special place will be the review and analysis of legal liability of real estate registration in the register of real estate. The paper analyzes the registry and data modeling used to determine the legal status of real estate. Will analyze the data used to determine the legal status of real estate. In the paper will be examined by means of legal acts which changed the legal status of real estate. Will be treated entities that are entitled to draw up legal acts for alienation of immovable property and to change their legal status based on the Albanian civil law. One issue that is essential for the analysis of this problem is to examine the legal acts which have legal power to determine and change the legal status of real estate. One issue that takes place in the paper is the necessity of real estate registration to engage in civil circulation. Will analyze specific organs registration of real estate, power, rights and their legal obligations in this process defined in the law of real estate registration. The paper deals with entities that have the right to draw up legal actions for alienation of immovable property and to change their legal status based on in Albanian civil law. The paper deals with special bodies for registration of real estate powers, rights and legal obligations in the process defined in the law of real estate registration. Important in this work will be to address the body that function registration of real estate, Real Estate Registration Office.

The methodology of the paper. 1.Presents the evolution of the real estate institute. 2.Analyzed legal remedies that determine or alter the legal regime of real estate. 3.Introduction to the tools and methodologies of real estate registration in civil law at the beginning of the Albanian state, the first republic of Albania and the Albanian Kingdom. 4.Treated institute of real estate in the civil legislation of the period of the communist state. 5.The paper deals today our country's civil law, Civil Code and the laws governing the legal regime and registration of real estate. The paper, based on contemporary legal literature Albanian and foreign.

Keywords: *Property, real estate, property, property legal regime, civil legislation.*

1. Evolution of the legal regime property in the states old.

Legal institution of property is as old as the state itself. This institute is found in the old as the Old Egypt and Babylon, and continue with the ancient states of ancient Greek and Roman rule. In the Code of Hammurabi is anticipated that there are private estates that are free to civil circulation, that can be freely disposed of by the owner, be sold and at the same time can also be inherited. These assets exist besides assets which have a limited legal regime and can not be used freely.¹

Similarly, the Greek states, property divided in movable and immovable property. Until the mid-sixth century BC ownership was inalienable, that is, was designated a legal regime that impede the availability of the property. However, the V century BC, the immovable ownership became private and simultaneously defined and built a public register of ownership, a cadastre fundamental properties.² To the Greeks, property rights over land was linked to the right of citizenship. Only Greek citizen may have owned land. However, the Greek government had anticipated a number of restrictions on the right of ownership related to public interests of the state and the citizens. In Greek states, specifically in the state of Athens, was anticipated the right of the state to confiscate property, and the right of the state to expropriate for public needs. Likewise, the state of Athens, may limit the use real property for the purpose of general public utility.³

In ancient Rome the state, legal regime of property, the movable and immovable, is more complex. In the state of Rome, right was developed more, becoming more detailed, and therefore quite complicated. For consistency, in Roman law, there are more provisions that regulate the legal status of the property, and at the same time, numerous provisions that determine the disposition of property rules in the state of Rome, and limitations provided in connection with ownership. It is known that in old Rome, were both major groups that make up the population, patricians and plebs. These two groups have different legal status. Patricians are citizens who enjoy political rights, while plebs are without political rights. However, Roman law, recognizes the right of both groups to gain wealth, even recognizes plebs the right of the ownership of property immovable, to own land in their possession. At the same time, there was a favorable legal position for the population autochthonous, patricians have the right to occupy and take possession of state lands, the so-called *ager publicus* in Rome. In Rome, the main conflict that shook the the state, was the property expansion of the Romans, patricians and plebs on state lands. This was the cause of the powerful agrarian movement, which led to a reform of state lands, deliberately their redistribution.⁴

In the countries of the middle ages, the property was involved in legal regulation, which was determined by feudal relations. Generally, legal regime of immovable property, was determined by feudal relations. Consequently, the real estate can not be owned freely. Wealth was limited by of the feudal rights and civil circulation was off, with the exception of some private property, which are labeled *alode* that had its origin in outside the feudal relations, which were dominant relations of the medieval period. Although the disintegration of feudal relations, real estate was liberated from feudal obligation or relationship. From the end of middle ages, the real estate holders, won the right to enjoy full rights on these assets of. The right of this period

¹ Article 39 of the Code of Hammurabi "History of Institutions" A.Anastasi Tirana 2006 p.31

² A.Anastasi "History of Institutions" Tirane 2006 f. 66.

³ A.Anastasi the same publication f. 66

⁴ Grak reforms brothers (Tiberius and Guy Graku) between 134 BC and 123 BC in Rome.

predicted real property owner the right to sell the property, and the right to inherit real estate. Together with the right of inheritance, also displayed a kind of tax on inheritance, and gradually move towards full inheritance, really.⁵ Based on the evolution of the civil legislation of the old states, is to highlight the fact the forecast remedies to change the legal regime estate overall and real estate in particular. Generally, all civil laws, have foreseen provisions that regulate availability asset through sale, or even through inheritance. In this case is the word more to the real estate. However, these provisions also extend their action on real estate. But, clearly, about real estate, these provisions appear to the right of the ancient Greek states. In the state of Athens as well as it was emphasized, was well established real estate registry, as a basic document of ownership of property. So, real estate, have a special legal regime. In order to prove a property on real estate was necessary that he be documented in these particular registries. Similar provisions were met in Roman law, even in the later Middle Ages right, with the disintegration of feudalism in Europe. However, these provisions that provide legal obligation of registration of real estate in their respective register, dominate the period of capitalist development. Today, registration of real estate, has as indispensable item of the legal regime, registration in each of these assets. In civil legislation of each State provided legal obligation, to real estate, to be recognized as such, must be registered in real estate. Asset registers, usually, kept are in place is located own real estate. This is the basic legal principle that applied in civil legislation of each country. Consequently, in our country, this principle applies under the real estate registration in the register of the country where the property itself. In our country, the district has its own register of real estate.

2. The civil legislation in early state. Albanian. Civil Code of 1929.

With the creation of the new Albanian state, a major problem in the field of law, it was legal regulation of civil relations of citizens. These relations, up to this period, were regulate based on the civil law of the Ottoman Empire. Legislation Ottoman empire had influence of sharia. However, a part of the territory, which was not subject to invasion, so had a certain autonomy, regulate civil relations basing on the provisions of the canons. Mentioned in this case Kanun of Lek Dukagjin⁶ which applied in the area of northern Albania, Canon Skanderbeg who applied in Albania Middle and Canon Labëria that was implemented in the South of the country. In the canon of L.Dukagjinit determined immovable property of the house or home, including the garden courtyard, vineyards and fields, meadows and paths, borders in the mountains as in the lowlands, and on the field.⁷ Immovable property is acquired primarily through conquest and settlement in a country with which the individual, family housing and connecting the existence of his life and family.

With the creation of the new Albanian state, after the declaration of independence was adopted and entered into force the fundamental laws of the state: the 1914 statute, the statute of Lushnja of 1920, the statute of the Republic of 1925 and the Statute of the Kingdom of 1928. Based on these laws, was prepared legislation to regulate relations in the field of civil relations among them the relations of ownership, which makes a new regulation of the legal regime of property. Efforts to develop civil legislation will be crowned with the approval in 1929 of the Civil Code. Civil Code of 1929, known as the Zogu Civil Code, made full regulation of the legal

⁵ A.Anastasi "History of Institutions" Tiranë 2006 f. 198

⁶ "The Albanian customary law" .. Kanun of Lek Dukagjin. Economic Order "properties and boundary". bot 1989

⁷ "The Albanian customary law" .. Kanun of Lek Dukagjin Article 240 pg 1.Bot 1989

regime of property and stabilized the civil legal relations in general.⁸ Civil Code of 1929 classifies property into two groups: the movable and immovable property. "All the things that could form the subject of ownership public or private, are movable or immovable (the property)."⁹ Code regulates the relations of persons owning property with these assets, whether of movable or immovable property. According to the code, property are public and private. "Things are either state or private persons or legal entities"¹⁰ Civil Code of 1929, makes the determination of acts, which regulate the status change, status or the legal regime real. Holders of property, movable or immovable, have the right of free disposition of of these assets. The main means of crossing the legal ownership of assets are: inheritance, purchase, donation and invasion. The legislation of the first period of the Albanian state, from 1914 to 1924, and in civil law state Zog, from 1925 until 1939, were provided special laws that regulate, in detail, the state registration of real estate law. In this period, of the evolution of the Albanian state, except legal acts laws or by-laws are defined state organs that have jurisdiction function and corresponding registration in real estate, cadastral offices as agricultural land and mortgage offices for other immovable property, which were organized at prefecture level.

3. Institute of estate immovable in the civil legislation of the period of communist rule.

With the change of regime in 1944, and the entry into force of the Constitution of 1946, in our country, it became necessary changes in civil law, the legal regime governing property in general and the real immovable. The new constitution, adopted in January 1946, determined the dominant position of property of state. For consistency, based on the new Constitution was adopted some laws and other acts, which will regulate, in accordance with the constitution, the legal regime of the property, especially of the main immovable property that was land.¹¹ Of special importance was the 1955 decree on "Ownership", which recognizes three types of the ownership, and therefore, the three groups of subjects, who can own real estates. Specifically, in section three of the decree stipulated that "Riches may be owned by the state and organizations (socialist property) ... and of the persons (personal and private property)"¹² Importantly, in this period, is the adoption and entry into force of the other acts which regulate the legal regime of the ownership of agricultural land, allowing the division of the land, and their registration. In this decree stipulated that the division of agricultural land carried out with a public or private document, and recorded in the cadastral registry. The law established a legal obligation that all categories of lands, wherever located, should be registered in the cadastre registry. Obligation of record in asset registers, subjected buildings in the countryside and in the city.¹³ Property relations in general, and particularly land ownership relations were changed, fundamentally, with the entry into force of the 1976 Constitution. All new legislation will fit the spirit of the new constitution, which nationalized all property. In Article 18 of the Constitution was determined that they "are the sole property of the state, land and underground property, mines, forests, pastures, waters, natural energy sources, factories, stations and car tractors, banks, roads, traffic and transportation rail, water, air, post, telegraph, telephone, etc."¹⁴ In compliance with the

⁸ Civil Code of 1929, the Third Book.

⁹ Civil Code of 1929, article 774

¹⁰ Civil Code of 1929, article 788

¹¹ Law no. Dt.17.05.1945 61, Law No. 108 dated 29.08.1945 "On agrarian reform."

¹² Nr.2083 decree dated 07.06.1955 "On property".

¹³ Nr.1239 decree dt .09.03.1951 "On allowing the division of the agricultural lands", decree dt. 08.11.1955 nr.2151

¹⁴ RPSSH Constitution of 1976. Article 18.

constitutional provisions on ownership and constitutional provisions the property regime land, in 1978, adopted the Law "On protection of land", which remained in force until 1991. The law stipulated that "The earth is the sole property of the state".¹⁵ The 1976 Constitution and the law "On the protection of the earth" were abolished in 1991. Law "On basic constitutional provisions" and Law no. 7501 "On Land" allowed private ownership of land.

4. The current civil legislation, which regulates legal regime and registration of estate immovable.

In 1990, in our country, changed the political system. Consequence of the change of the political system were all changes in legislation. In our country it was decided a new legal order, based on freedom and the rule of law. One of the most important changes it's civil legislation of ownership. Act first, important legal, who laid the foundation of this change in legislation in our country, and that set the basis for the adoption of new legislation with the political system and the new legal order, was the Law "On Constitutional Provisions" of 1991. After the adoption and entry into force of the Interim Constitution went into effect a number of laws, which would sanction the new order. On the issue under review, with more importance will be the adoption of laws that regulate the legal regime of property.¹⁶ To implement these new laws are adopted and entered into force and a number of normative legal acts, which constitute the legal basis, the determination of the legal regime of property and wealth. Regulation of the legal regime of real estate includes the procedure, data recording, and recording rights to such property, in the special registers of immovable property. The system of registration of these properties is old and has functioned for land. This system included in its evolution registration and other real estate. There are two main systems of registration of real estate used: cadastre system and the system of property transfer.¹⁷

With the changes made to the civil law in our country, not used most these two systems. Today, in our country, database for land registration, registration and real estate offices are management and land protection,¹⁸ also offices of real estate registration. After 1990, it was necessary a new system of land registration, which would include land registration and recording of other real estate.¹⁹ In applying the provisions of this law created offices of real estate registration: central office and local offices of real estate registration. Offices of real estate registration have to function and also have the competence registration of real estate and changes in their condition. Registration of real estate property brings legal effect. On real estate transactions or immovable property rights are valid only when these transactions and these rights are registered in the register of immovable property, records kept at the registry office. Registration of real estate and recording of transactions and rights to such property allows the individual to freely possess immovable property in accordance with law.

¹⁵ Law nr.5686 dated 02.21.1978 "On protection of the earth".

¹⁶ 7501 Law "On Land" 7698 Law "On the Restitution of Property", Law 7850 Civil Code 1994, Dt.21.12.1995 8053 law "On transferring the ownership of agricultural land without compensation", Law and Law 7843 07/13/94 33/2012 for the registration of real estate.

¹⁷ 1929 Civil Code articles 1864-1879. Transcription system was regulated by the Civil Code of vitit1929. While cadastre system that works in the fourteenth century, the Ottoman records.

¹⁸ Law 8752 dated 26.03.2001 "On establishment and operation of structures for the management and protection of the land"

¹⁹ Law 7843 7/13/94 and Law 33/2012 for the registration of real estate.

Conclusions

From the research, it became the preparation of the paper, we conclude that the issue of the legal regime of real estate is very important, and is related to the stability of legal relations, in a state organization. Being associated with the stability of legal relations, property registration, is an issue that has taken place in state legislation, ranging from the old countries. After the creation of the Albanian state legislation that has regulated the juridical regime of real estate has undergone a constant evolution. It should be noted that the full legal regulation, the legal regime of property and property, was conducted by the Civil Code of 1929. New features, particular, there was civil legislation of period of the socialist state. This is the period when state property gains superiority. After the overthrow of the socialist system, and the introduced new state - political, became necessary changes in the challenged legislation of the country in general, but in particular changes in civil law. Consistency is the adoption of new laws relating to the legal regime of property. On this legal basis was possible to create bodies that have the function and competence property registration and registration changes of their legal ownership. The functioning of the registration offices regulated by law, guidelines and relevant regulations. So, it should be underlined that, in our country, is fully approved legislation for the registration of real estate, which allows the operation of the new political system, which is based on free enterprise and the free circulation of civil assets.

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