

INTRODUCTION TO ALBANIAN PROPERTY LAW

Similarities and differences
between the Albanian and Italian Legal Systems

edited by

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Introduction

CARLO VENDITTI

Albania is one of the Balkans' countries that aims to join the European Union. Albania became an independent nation on November 28th, 1912.

In 1928, the Albanian Parliament proclaimed Ahmet Zogu as the first Albanian King. Immediately, different parliamentary commissions began with the preparation of various codes; among them, the most important code was the one codifying the rules of different legal transactions between private entities. The first Albanian Civil Code entered into force on April 1st, 1929. This is the first Albanian secular Civil Code.¹ The need for the secularization of the civil legislation was seen as so important that the Civil Code was voted *en bloc* by almost all the Albanian deputies.² The code underlined the social changes³ since the Ottoman rules were considered obsolete and inconsistent.⁴ Indeed, the Special Commission which was composed of five members recognized that legal transactions between private citizens could

¹ Olldashi, Enkeleda. "Codification and Legal Sources in the Albanian Legal System: Comparative Approach to Legal Systems". *Academicus International Scientific Journal* 9.17 (2018): 36-45.

² The only two deputies that did not approve the Albanian Civil Code of 1928 were: Kole Mjeda and Zef Gera.

³ Sinanaj, Danja. "Eurocodification of the Legal Framework in Albania during King's Zog Monarchy (With a Special Attention to the Civil Code)". *ANGLISTICUM. Journal of the Association-Institute for English Language and American Studies* 4.6 (2015): 71-77.

⁴ Boglia, Cristina. "The New Albanian Act on Business Associations: Ongoing Legal Reforms in Commercial and Private Law". *Review of Central and East European Law* 20 (1994): 657.

not be ruled by the current legal framework based on Ottoman rules.⁵

The parliamentary commission had the obligation to draft the first secular Albanian Civil Code. In 1928, the members of the Special Commission had to choose between the Civil Codes in the German-speaking countries – the *Bürgerliches Gesetzbuch* (BGB) of 1900 in Germany or the *Schweizerisches Zivilgesetzbuch* (ZGB) of 1907 in Switzerland – or the Romance-speaking countries as the Napoleonic *Code Civil* of 1804 in France or the *Codice Civile* (*Codice Pisanelli*) of 1865 in Italy.

The commission decided to draft the Albanian Civil Code of 1929 based on the Napoleonic *Code Civil* of 1804; from now on, the Civil Code Zogu I.

The authors propose several reasons regarding this decision. First, and most importantly, the rules of the *Code Civil* of 1804 are easier to understand compared to the BGB,⁶ without leaving excessive space for legal interpretation. Second, the administrative division of Germany or Switzerland into States (*Bundesländer* or *Kantone*) was considered inappropriate compared to the unified centralized country as Albania.⁷ On the contrary, the French revolution established the principle of equality, which could be better achieved through a centralized country.⁸ This principle was also considered important in the 1920s when Albania was a new State aiming to achieve equal treatment of all citizens. Third, the *Code Civil* of 1804 had a judicial tradition of more than a century and was a reference model in other countries as well, such as Italy, Spain, Portugal, and Romania.⁹ Fourth, the Commission

⁵ AQSH, F. 146, V. 1928, D. 87, fl. 76.

⁶ Vranken, Martin. *Fundamentals of European civil law*. Vol. 41. Federation Press, 2010.

⁷ Olldashi, E., note 1.

⁸ Heringa, Aalt Willem, and Philipp Kiiver. "Constitutions compared. An introduction to comparative constitutional law". *Ius Commune Europaeum* 104 (2012).

⁹ Blanc-Jouvan, Xavier. "Worldwide influence of the French Civil Code of 1804, on the occasion of its bicentennial celebration". (2004).

considered the provisions on the interpretation and application of the laws based on the Italian *Codice Pisanelli* of 1865,¹⁰ which was modeled after the Napoleonian *Code Civil*. Fifth, Albania had close political and economic relations with the Kingdom of Italy, where the Napoleonian *Code Civil* was also the model of the *Codice Civile* (Codice Pisanelli) implemented in 1865.¹¹

The Albanian Civil Code of 1929 was based on the French Civil Code of 1804. Although this is the first secular Albanian piece of legislation ruling legal transactions between private entities, it should be stated that the code was born "old",¹² since the social conditions after WWI were different from the ending of the eighteenth century. This code did not significantly affect the land ownership system dominated by the "çiflig" land tenure system, which was typical of the Ottoman empire. After independence, ownership of the majority of the land in Albania was mainly controlled by five important families.¹³ This meant that 3% of the population owned 27% of the land.¹⁴

During the Second World War, the Albanian Communist Party played an important role. In January 1946, this party then took control of the country and its leadership continued until the end of the 1980s. Curiously though, the law called Civil Code was not published until 1982. This code was based on USSR Fundamentals of Civil Legislation of 1961 which was inspired by the *Bürgerliches Gesetzbuch* (BGB) of 1900. As a result, the code in 1929 was based upon the French Civil Code, while in 1982, Albanian legislators were inspired by the German approach.¹⁵ During the Communist period, the concept of private property, as

¹⁰ Oldashi, E., note 1.

¹¹ Boglia, C., note 4.

¹² Stolker, C.J.J.M. "Drafting a new Civil Code for Albania-Some personal experiences contrasted with the World Bank's Initial lessons". (1997).

¹³ Xhamara, Idriz. "Land Reform in Albania and Its Macroeconomic and Social Impacts". *Unpublished Report, Ministry of Agriculture and Food, Tirana, Albania* (1995).

¹⁴ Civici, A. "La Question Foncière Dans La Restructuration De L'Economie Agricole En Albanie", Université de l'Agriculture, Tirana, Albania (1994).

¹⁵ Stolker, C., note 12.

it is known today, was used only in the case of international commerce or in the case of consumable goods.

In 1991, with the collapse of the Communist regime, Albania changed its own constitution by recognizing private property. While the constitution of 1976 recognizes only "personal property" (Article 23),¹⁶ the constitution of 1991 underlined the importance of private property. The current constitution of 1998 also guarantees the right to private property (Article 41).¹⁷

After the collapse of Communism and the promulgation of the first democratic constitution in 1991, a Task Force in 1993 comprised of Albanian and foreign experts was formed. The group was coordinated by Mr. Markus Jaeger.¹⁸ However, important members of this Committee included the Italian professor Gianmaria Ajani and the French professor Georges Wiederkehr. The team could consider different documents and codes from other countries: such as the Italian Civil Code, the Swiss Civil Code in an Italian translation, the French Civil Code, the new Dutch Civil Code in French and English translations, the Communist Civil Code of 1982, and the IMF draft prepared by the Italian professor Ajani.¹⁹

Surprisingly, in less than a year of intensive work, the Committee was able to present a draft of the Civil Code of 1994,²⁰ which reflected the new democratic principles established after the communist collapse. Nevertheless, due to the rush of its completion, in addition to several internal or external problems regarding the Task Force, the code contains internal contradictions.

¹⁶ Personal properties are: income from work and other lawful sources, dwelling houses and other objects which serve to meet personal and family material and cultural needs. (Article 23, Section 2)

¹⁷ The right of private property is guaranteed (Article 41, Section 1)

¹⁸ Currently, Mr. Markus Jaeger Head of Independent Human Rights Bodies Division chez Council of Europe. He joined the Council of Europe in 1989.

¹⁹ Ajani G., Codification of civil law Albania, speech held in Leiden August 1993; *Id.*, *Il diritto italiano in Albania. Annuario di diritto comparato e di studi legislativi*, vol. 5, Edizioni Scientifiche Italiane, Napoli (2014).

²⁰ Feldbrugge, Ferdinand Joseph Maria, ed. *Review of Central and East European Law*. Martinus Nijhoff Publishers, 1992.

In the current Albanian, Italian, or English literature there is no scientific contribution that examines the development of the Albanian law of property by offering a historical overview as well as by studying the similarities and differences between Roman times and the current Albanian legislation as well as between the Albanian and the Italian civil codes of 1942. However, in 2020, an academic paper published by some of the authors of this monograph scientifically proved the impact of the Italian civil code of 1942 on the modes of property acquisition.²¹ This monograph is based on that, and it attempts to address the gap in the national and international literature by offering some aspects for a general critical analysis of the various components of Albanian property law.

Differently from previous contributions, this is the first monograph exploring Albanian property law in English. In addition, its novelty rests on the fact that it identifies the rules of the Albanian Civil Codes of 1929 and of 1982 that regulate the various legal institutional parts of the property law.

Thus, this research aspires to demonstrate the similarities between the Albanian Civil Codes of 1929 and 1994. Moreover, an original part of this study is the identification of the Italian rules of 1942 that are incorporated, sometimes word by word, in the current Albanian civil code of 1994. In other words, it suggests that the law of property could be a “neutral” or “natural” law, better to say a fundamental right, that can be as well based on foreign law.

Indeed, this monograph will show that the various components of the property law are similar to the principles already established in Roman times. These principles, therefore, are confirmed as a unifying factor of European law.

²¹ Venditti C., et al., The Transformation of Right to Property in the Post-Communist Period in Albania: The Impact of the Italian Civil Code in the Ways of Acquisition of Ownership in the Albanian Civil Code of 1994. *Osservatorio del Diritto Civile e Commerciale*, 1/2020, 391-414.

Many of these principles were also codified in the Albanian Civil Codes of 1929 and 1994.

In this monograph, the comparison with the Italian Civil Code of 1942 has arose from five particular reasons. First, the Task Force had five different Codes (Italian, Swiss, French, Dutch, and German) as a model of reference. Within them, two were also written in Italian (Italian Civil Code, of course, and Swiss Civil Code). Second, Italy is significant part of the Romance tradition and the first Albanian secular code, like the Italian Civil Code of 1865, was based on the Napoleonic Civil Code. Third, Italy and Albania have had a common and long socio-cultural tradition that today is going on. Fourth, in 2020, an academic research paper scientifically illustrated that the Italian Civil Code of 1942 had an heavy impact on big part of Book II of the Albanian law of property.²² Fifth, the team of this project is comprised of Italian and Albanian scholars experts in the respective legal systems.

This monograph is divided into eight main parts. Each chapter focuses on a particular topic by exploring the similarities and differences between the current code and the Roman principles as well as the rules established in the Civil Codes of 1929 and 1982.

In addition, this monograph draws parallels with the Italian rules since Book II of the Albanian Civil Code of 1994 is substantially based on Book III of the Italian Civil Code of 1942.

Furthermore, the conclusions summarize the similarities between them by examining the concrete Albanian and Italian rules.

For convenience, in the Annex 3, the Book II of the Albanian Civil Code of 1994 is made available through unofficial English transcript checked by the Albanian part of the team for the compliance with Albanian official law text.

The concise writing style is mainly conceived for the University law students which are interested in legal text analysis and in understanding of fundamentals principles included in the current legal rules.

²² *Ibid.*