



**PILLAR II
PRACTICAL AND ADMINISTRATIVE CASES**

The effect of registration of immovable property and the need for legal changes

By Etien Isak

MSC student of Civil Law, at the Faculty of Law, University of Tirana

I. ABSTRACT

Ownership as a fundamental human right and its proper administration have encountered many difficulties in these twenty-five years of market economy. This is also a result of most citizens not being familiar with the law and the lack of the culture of consulting lawyers or law professionals in general. On the other hand, the law itself and the judicial practice have brought an unsatisfactory experience related to conflicts over ownership in Albania creating confusion. This article will cover a specific legal matter encountered and known for many years now that has not yet been corrected by the legislator. More specifically the article will deal with the issues of registration of immovable properties and its effects, as well as the incompatibility between legal provisions on the one hand and the unifying practice of the High Court and the Constitutional Court on the other hand. Even though the unifying decisions in our legal system have unquestionable supremacy, and assuming that the legislator must pay attention to and follow them, this article will bring into focus the incompatibility between the unifying practice and the law and the need to amendments of the latter, by putting on the table concrete amendment proposals.

KEYWORDS: *The right to ownership, methods of acquiring ownership, realty, conveyance, registration of realties.*

ABBREVIATION:

Constitution	Law No. 8417 of 21st October 1998 “ <i>The Constitution of the Republic of Albania</i> ”
Civil Code	Law No. 7850 of 29th July 1994 “ <i>On the Civil Code of the Republic of Albania</i> ”
Constitutional Court	The Constitutional Court of the Republic of Albania
SRPP	Registration System of Immovable Properties
ZRPP	Office of Registration of Immovable Properties
ZVRPP	Local Office of Registration of Immovable Properties

II. THE RIGHT TO OWNERSHIP AND ACQUISITION METHODS



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL ♦ Issue 4 November 2017

In the current system of the market economy sanctioned by the Constitution of the Republic of Albania¹, the right to ownership constitutes the key legal instrument that makes possible the circulation of goods, commodities and rights in the free market society. From this point of view the free market can be perceived as a *nexus of contracts* (network) that puts in motion the legal-civil relations between people as well as trade.

Exactly because of what is mentioned in the first paragraph above, the right to ownership, being of primary importance, is one of the fundamental human rights prescribed by Article 41 of our Constitution² and clearly regulated by our codified civil legislation in its Articles 149-181 (the Civil Code of the Republic of Albania of 1994, which is still in force after several additions and amendments). In these provisions, the Civil Code defines and regulates the concept of the right to ownership, and its Article 149 expressly defines that: "*Ownership is the right to freely enjoy and use assets within the boundaries established by law.*" Pursuant to the broad interpretation³ of the above provision, ownership constitutes an absolute and extended power of the owner (natural or legal person, owner of a commodity or of a right), a power which is different not only from disposal (*jus disponendi*), use (*jus utendi*), economic use (*jus fruendi*) but also from destruction of the asset (*jus abutendi*). Disposal (*jus disponendi*) gives the owner of the property the right, within the legal boundaries, to freely decide the destiny of the asset, so it can be said that this right includes extensive powers of the owner. Having the right of disposal, the owner can convey the property to third parties, can economically use it by renting it, or can even destroy⁴ it. But, if through an agreement the owner gives a usufructuary⁵ the right to use the property and economically exploit the property, the user cannot convey the property to a third party, and cannot destroy it.

¹ Article 11 of the Constitution:

"1. *The economic system of the Republic of Albania is based on the private and public property, and on the market economy and freedom of economic activity.*

2. *Private and public property are equally protected by law.*

3. *Freedom of economic activity can only be restricted by law and only for important public reasons."*

² Article 41 of the Constitution

"1. *The right to private property is guaranteed.*

2. *Property is acquired by donation, inheritance, purchase, and any other classic method prescribed by the Civil Code.*

3. *The Law can prescribe expropriation or restriction of the right to property only for public interests.*

4. *Expropriation or restrictions of the right to property that equal expropriation, can only be allowed to happen with the appropriate compensation.*

5. *Disputes related to the amount of compensation can be referred to the Court."*

³ From the first edition of "*The Roman Law*", Dr. Enkeleda Olldashi, page 90.

⁴ "*Destruction of property in the legal sense refers to physical actions of the owner that change the legal state of the property and can lead to its total loss*", from the edition "*Civil Law II (Ownership)*", Prof. Dr. Ardian Nuni, Luan Hasneziri, pg.68.

⁵ The institution of usufructuary is treated by provisions 232-258 of the Civil Code.



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL ♦ Issue 4 November 2017

In the following provisions the Civil Code describes the rights and obligations of the owner of the property, elaborates on property acquisition methods, through which a property is conveyed from one subject to another⁶. As for the property acquisition methods, the Civil Code remains faithful to the widely accepted classic doctrine of the continental civil law. The continental doctrine of civil law sanctions that the methods through which property is acquired fall into two categories: (i) derivative (inter vivos, mortis causa) and (ii) original/classic (compliance with criteria established by law).

The first group of derivative acquisition methods, with derivative ownership title, includes acquisition of ownership *through a contract* (such as sale, exchange, loan, life-rent related to the conveyance of the property from the lender to the renter etc.), in which the transfer of ownership occurs due to the mutual will of the parties. The second group of derivative acquisition methods includes the legal-civil institution of inheritance which is divided into legal inheritance (in accordance with well-defined legal provisions), or testamentary inheritance in which the conveyance is done in accordance with the unilateral will of the decedent, also known as *de cuius*, through the unilateral legal action of testament. In both cases the death of the owner of the property/decedent is the *conditio sine qua non* for the realization of the transfer of ownership.

With regards to the original/classic methods of acquisition of property, our Civil Code prescribes some well-known institutions in the continental jurisprudence and beyond, such as: acquisition of property by usucaption with or without the title, acquisition by merger and amalgamation, acquisition in good faith of movable assets etc.. Unlike the above mentioned derivative methods of property acquisition, some original/classic methods require the intervention of the Court⁷ for the party claiming ownership to acquire it. In these cases, the final Court decision constitutes the property deed to be registered in the public registers (in cases of immovable property).

III. REGISTRATION SYSTEM OF IMMOVABLE PROPERTIES

The Civil Code in Articles 192-198 provides for the specific registration of immovable properties in public registers. In this section the Civil Code provides administrative provisions by setting the basic rules based on which the Office of Registration of Immovable Properties will function. In compliance with the latter dispositions the legislator has further improved the legislation by passing in 2012 the Law No. 33/2012 "*On the Registration of Immovable Properties*" which replaced the old Law on the registration of realties of 1994, Law No. 7843/1994 "*On the Registration of Immovable Properties*".

In conformity of the specific law mentioned above was established the Office of Registration of Immovable Properties (ZRPP), which manages the Registration System of Immovable Properties

⁶ Article 162 of the Civil Code: "*The right to ownership and the right to other items are transferable, save cases when the law prohibits it or the very nature of the right does not allow it.*"

⁷ Articles 168, 169 and 170 on usucaption with or without title, Article 175/4 on the acquisition of ownership of land by a person who in good faith has built a building on someone else's land.



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL ♦ Issue 4 November 2017

(SRPP). The established system, which functions based on the Civil Code, the above mentioned law and the sub-legal acts created in accordance with the Civil Code and the special law, aims at the registration in the registers of ZRPP of all immovable properties in the territory of the Republic of Albania. This is achieved by creating the basic document of each immovable property –which is the the immovable property folder serving as the "passport" of the immovable property indicating its main data. More specifically, the the immovable property folder is divided in five sections (A, B, C, D and E). Section A contains the identification of the immovable property within the internal system (the register), by indicating the volume and the page under which the immovable property has been registered in the public register, the index of the digital map photographed via satellite, and the address of the property. Section B provides the physical description of the property, its type, surface, and it contains a section designated to eventual notes. In the practice of registration of immovable properties, the notes of section B are used to enter the value of the property after a reassessment is carried out (based on the law), or in case of noticing overlapping of properties' maps, the numbers of the properties and the relevant volumes and pages are entered into the register, and together with the protocol number and the date of the restriction order⁸ on the properties are linked to each-other. Section C describes the legal situation of the property/status of the property. Legal transactions regarding the property and relative owners are entered chronologically into this section, thus creating the history of the property. Section D of the immovable property folder is contains the section where are entered data on different restrictive agreements, such as servitudes, or rent contracts. While the last section, Section E, contains seizure orders, mortgage contracts, notarial acts of their deletion, and the relevant Court⁹ decisions.

The second most important document is the Property Deed. The Property Deed is issued by the Registrar of the ZVRPP upon application for the registration of the ownership title in the property folder. The owner of the property, in possession of the Property Deed, can unrestrictedly convey the property to third parties and can also mortgage it, through notarial acts required for the transactions. Based on the above, the registration system of immovable properties has undoubtedly an important advertising/declarative role on the property title of every immovable property situated in the territory of the Republic of Albania. What constitutes a clash of opposite approaches is the effect that the registration of the ownership title has on the validity of this title. Currently, although there is a unifying decision of the United Colleges of the

⁸ Based on Articles 59 and 60 of Law No. 33/2012 "On the Registration of Realities", the Registrars have the right, upon request or on their own initiative, to place restrictions on certain properties in order to prevent illegal transactions with them. One of the cases when this kind of restrictions order applies is when two or more properties are found to overlap.

⁹ Article 584 of the Civil Code sanctions: "Registration of a mortgage is deleted:

a) with the consent of the creditor, expressed with a notarial act;

b) by a final and absolute Court Decision that orders the deletion.

The deletion of the registration wipes off the mortgage. When the reason for which the registration of the mortgage is deleted is found to be null, the mortgage is reinstated and the registration takes a new number.



High Court¹⁰ on this matter, there are still discussions in the academic level on two opposite approaches. This is the result of the failure to act of the legislator, from eight years now, in relation to provisions of the Civil Code that regulate the ownership transfer of immovable properties. The following parts of this article will try to reflect the opposite points of view on this matter, the logic of the unifying and constitutional jurisprudence, and the parts where the legislator can eventually intervene in order to improve the law and stop further abuse that is the result of the contradictions between the provisions and the related unifying decision.

IV. THE EFFECT OF REGISTRATION ON THE TRANSFER OF THE OWNERSHIP TITLE, DIFFERENT APPROACHES, UNIFYING AND CONSTITUTIONAL JURISPRUDENCE.

Article 83 of the Civil Code sanctions: *“The legal action for the transfer of ownership of immovable properties and the real property rights on them, **must be carried out with a notarial act and must be registered, otherwise it is null and void.** A legal action carried out in a form other than the one required by law, is null and void...”*

Pursuant to literal interpretation¹¹, which is based on its faithfulness towards the syntax used by the legislator, many jurists conclude that the ownership title transfer of an immovable property takes effect only after the notarial act (the relevant contract) is registered in the relevant immovable property folder of the . Such an interpretation gives *creative* attributes to the registration. According to this approach, the seller loses ownership and the other party acquires ownership at the moment that the legal transaction is registered at the ZRPP. This approach toward the effects of the registration of the legal transaction vests with importance an administrative procedure of publication of the ownership title, by attributing to it civil legal consequences, because lacking of registration impedes to the acquiring subject to exercise the ownership rights .¹²

¹⁰ Decision No. 1 of 06th January 2009 of the High Court, number in the Main Register 6/4.

¹¹ In the chapter *“Forms of donation contracts of immovable properties”* of her dissertation *“The Donation Contract in the Albanian legislation”*, the candidate Anjeza Liçenji, whose mentor is Prof. Dr. Mariana Semini, says the following: *“The parties have the legal obligation to register the legal transaction at the Immovable Properties Registration Office in order to complete the transfer of the ownership right. Just like any buyer, the buyer of an immovable property has the right, by registering the immovable property in the public registers, to notify third parties on the rights acquired on the immovable property. If the transaction is not registered, the buyer risks losing the rights on the immovable property if someone else has previously registered their rights on the same object, paragraphs three and four, page 89. Ibid: *“What to do if the same immovable property is donated to two persons at the same time? In this case the general principle of the first registration will apply, i.e. the final beneficiary is the buyer who was the first to register the transaction although they may have not been the first to acquire the rights. The buyer who acquired the property first but was the second to register it is entitled to ask the donor for damages, who is faced with an obligation based on the general principle that one cannot transfer rights they don't have.”*, next paragraph in page 89 of the dissertation.*

¹² This point of view is also based on the opinion of the minority in the Unifying Decision No. 1 of 2009 from Judge Shpresa Beçaj who says: *“One cannot file a lawsuit to claim legal ownership on an immovable property if they have*



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL ♦ Issue 4 November 2017

The opposite approach derives from the harmonic and systemic interpretation of the norms of the Civil Code, leading to the conclusion that the registration of the legal transaction does not impinge its validity, but it just has publicity effects on third parties¹³. This is backed by various provisions of the Civil Code referring to legal transactions and acquisition of ownership by means of a contract. Some of these provisions are Articles 79, 164 and 659 of the Civil Code¹⁴, which provide the definition of the legal action, the method of acquisition of ownership by means of a contract and its content. Also, the party that has acquired ownership by means of a legal transaction on the transfer of the ownership title of immovable properties, may exercise all ownership rights, may defend the property against third parties, but may not convey it without first registering the legal transaction in the public registers.

By Decision No.1/2009¹⁵, the United Colleges of the High Court decided, although by a small margin of majority of votes, in favour of the second approach. The unifying conclusions established the following: *"The legal action of transferring ownership of immovable property is valid when it meets all the conditions of Articles 79, 663 and 659 of the Civil Code. Ownership of immovable property is transferred at the moment the parties enter into the contract for the transfer of ownership of the property. The buyer or the beneficiary becomes its legal owner the moment the contract is signed, acquiring all related rights and obligations of the owner of the property. Registration or the transcript of a legal transaction is not an element of its validity (the contract's validity). Not registering the contract of ownership transfer of immovable property in the immovable property register does not render it null and void, but prevents the buyer from transferring the property to third parties. A contract that has not been registered is quite perfect and valid, and has fundamental effects. Upon signing of the contract of ownership transfer of immovable property, the beneficiary of the rights becomes the owner of the property and can legally exercise their rights towards third parties, apart from transferring the immovable property in ownership to third parties. The Plaintiff can legally file a revindication lawsuit if he*

not registered it at the Immovable Property Registration Office", specifically referring to the lawsuit claiming the property, page 16 of the Decision.

¹³ This approach is backed by various authors, such as Prof. Dr. Adrian Nuni and Luan Hasneziri who in page 102 of "Civil Law II (Ownership)" holds about acquisition of ownership of immovable properties: *"The legally required form in this case is a contract through a notarial act, otherwise the contract is null and void."*

Also, the author Besnik Maho in his work "Acquisition of ownership of immovable properties" holds: *"I personally share the same opinion with the second group of jurists who do not connect the validity of a legal transaction for the conveyance of an immovable property to its registration at the ZRPP, but only to the compatibility with the will of the parties."*, page 190.

¹⁴ Article 79 of the Civil Code sanctions: *"A legal transaction is the legal exercise of will by a natural or legal person with the purpose to create, amend, or terminate civil rights or obligations. A legal transaction can be unilateral or bilateral. Article 164 of the Civil Code sanctions: "Ownership is acquired by means of a contract, without the need for the property to be handed over. Items that can be counted or weighed must be handed over."*

Article 659 of the Civil Code sanctions: *"A contract is a legal transaction through which one or more parties create, amend, or terminate a legal relation"*.

¹⁵ Unifying Civil Decision No. 1 of 06th January 2009 of the United Colleges of the High Court, number in the Main Register 6/4.



can prove to have acquired ownership of the immovable property by means of contract, inheritance, etc.”¹⁶

The above conclusion seems to be well-founded, because it comes as the result of a complex analysis of provisions that regulate ownership acquisition, contracts, and the law on the registration of immovable properties. The United Colleges support their approach mainly by referring to provisions that clearly define property acquisition, citing that ownership is acquired by means of a contract, inheritance, and the classic forms. As an example they mention the contract on the conditional sale of the property, through which ownership is acquired when the buyer pays the last instalment. As a result, although this legal transaction may be registered at the ZRPP, the seller remains the owner of the property until the last instalment is paid. Consequently, the ownership transfer of the property depends on the conditions that parties have set in the contract through their free will, leaving aside the registration issue. In a similar case, although the contract might have been registered, the buyer cannot eventually file a lawsuit to claim the property because it is not yet in possession of the ownership title which is the condition for the active legitimacy in the lawsuit.

Other provisions not mentioned in the unifying decision that can lead to the same conclusion are Articles 297 and 298 of the Civil Code that define the responsibilities of the illegal possessor in the lawsuit filed to claim the property. Article 297 of the Civil Code sanctions: “The possessor in good faith is entitled to the separated natural revenues and the collected civil revenues that can be claimed until the day he is made aware that he is an illegal possessor or is notified about the lawsuit of the owner claiming the property. He is not under the obligation to compensate the owner for loss, damage or impossibility of restitution of the property for any other cause, but after this day he is liable for collected revenues or revenues which should have collected, acting with care until restitution of the property, for remuneration for the use of the property as well as for loss, damage or impossibility of restitution of the property due to his fault.” Further on, Article 298 of the Civil Code provides that: “The possessor in bad faith throughout the possession period, has the obligation to return to the owner along with the property, also the separated natural revenues and the collected civil revenues or the civil revenues made collectable, and the other revenues he should have collected, as well as to compensate the owner for use of the property, loss, damage or impossibility of restitution of the property even if it has occurred not because of his fault.”

These two provisions may be considered as strictly related with the effects of the registration of legal transactions of immovable properties in the public registers. Because the registration has a publicity effect and is informative toward third parties, an illegal possessor of a property which is registered and contains the complete cronology of its legal transactions will be assumed to have had knowledge that the property belonged to someone else and will be considered as a possessor

¹⁶ Paragraphs 9, 10, and 12 of this unifying decision.



in bad faith. As a result, the liability towards the non-possessing owner for the collected fruits, revenues and the compensation for damages would increase. At this point the civil Code provides the definition which draws the line between the illegal possession in good faith and illegal possession in bad faith. More specifically Article 306 of the Civil Code sanctions: *“Illegal possession can be in good faith or in bad faith. Possession is in good faith when the possessor did not know or did not have the obligation to know that the possession is illegal. Good faith is presumed¹⁷ and it suffices if it existed at the time of acquisition of possession.”* Based on the above mentioned provision, we may conclude that it is a possessor in bad faith the one who at the moment of acquisition of possession knew or had the obligation to know that possession was illegal. So it is the subjective element of knowledge that makes the difference between possession in good faith and possession in bad faith. In the case of immovable properties registered at the ZRPP, it can be said that it becomes easier for the opposing to prove possession in bad faith, because the possessor had as a minimum the obligation to know that his possession was illegal. This conclusion is a logical result of the fact that in accordance to Law No. 33/2012 *“On the registration of realties, amended”* immovable properties are registered along with their legal status..

In addition, the publicity effect of the registration of legal transactions applies also to legal transactions that do not aim at the conveyance of property, but can indirectly affect certain dispositions on acquisitions of property with original title, such as the case of the lease contract. Articles 168, 169 and 197 of the Civil Code can be used for illustration¹⁸. Because the lease is a legal action that does not have as a validity requirement the notarial form, but only the written form as a proof for contracts longer than one year, the obligatory registration of lease contracts of nine years or of longer terms in Section D of the property folder indirectly constitutes an additional guarantee to prevent the lessee from abusing with the dispositions of usucaption with or without a title. Because these dispositions do not require the existence of good faith after ten years, the registration of the lease contract constitutes an advantage for the lessee owner to easily dismiss claims of the elapse of the usucaption time frames. On the other hand, registration of

¹⁷ This legal provision places the burden of proof on the non-possessing owner. As a result, it can be said that in the case of immovable properties the Court can declare a possessor in badfaith only if the non-possessing owner claims it and proves it through registration documents from the ZRPP.

¹⁸ Article 168 of the Civil Code: *“A person that acquires a property in good faith by means of a legal transaction for transfer of ownership that is legally permissible, becomes the owner of the property after uninterrupted possession of five years in the case of movable properties and after possession of ten years in the case of immovable properties. When possession is not in good faith, time periods of uninterrupted possession double. Possession is considered uninterrupted even when the beneficiary of the property passes the possession to another person.”*

Article 169 of the Civil Code: *“A person who has openly and without interruption possessed an immovable property, behaving as if they were its owner for twenty years, becomes its owner.”*

Article 197 of the Civil Code: *“The following must also be registered:*

a) immovable properties lease contracts longer than nine years;

b) lawsuits for acquisition, acknowledgement, amendment or termination of rights to ownership or other real rights on immovable properties;

c) petitions for division of co-owned immovable properties.



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL ♦ Issue 4 November 2017

lawsuits aiming at recognition, amendment or termination of ownership rights, affects directly the implementation of the above dispositions (Articles 297 and 298) related to the degree of the liability of the illegal possessors. Also, in cases of conditional legal transactions the transfer of ownership depends on the happening of the event prescribed as a condition by the parties in the contract, and registration of the contract at the ZRPP would not affect the transfer of the ownership title to the buyer before the condition, parties have determined in the contract is verified.

Another case that indicates the legal nature of the system of registration of immovable properties and their relation to the validity of ownership titles is Decision No. 17/2010¹⁹ of the Constitutional Court of the Republic of Albania. The case refers to an action on the anti-constitutionality of the amendments to the Law on Registration of Immovable Properties and of the sub-legal acts issued for its implementation submitted by the People's Advocate. More specifically, the provision amended by the Parliament²⁰ sanctioned: *"When for the same property there are several registrations, which do not derive from each-other, pursuant to provisions of this Law, the Registrar, through an sound decision, asks the Head Registrar to annul registrations carried out after the first registration, when the latter has been carried out in compliance with Articles 192-197 of the Civil Code, by recording this in the specific column of the property folder. Until issuance of the decision of the Head Registrar approving or rejecting this request, the Registrar suspends the registration and as a result no transactions can be carried out with the property, and notifies the interested party/ies within 10 days. Confirmation of receipt of notification is entered in the relevant folder. The Head Registrar makes a decision within 30 days of the request. When there is no decision by the Head Registrar, Article 328 of the Code of the Civil Procedure will apply. The decision of the Head Registrar is delivered to the interested party/ies within 10 days, and confirmation of receipt of notification is entered in the relevant file.*

In relation to the above, the Constitutional Court decided to repeal the above provision as anti-constitutional. As basis of its reasoning the Constitutional Court argues: *"From this analysis of the constitutional and the legal provisions, the Court is of the opinion that the registration is an act of specific importance in the civil circulation of goods. In fact, the legal amendments opposed by the petitioner do not directly affect the ownership title (whether it is a "public act", "a Court decision", "a decision of another competent state body"). The Court is of the opinion that the legal amendments under consideration, by restricting temporarily (up to 30 days) the rights of the holder of the ownership title that made the first registration and for an undefined period of time the rights of the persons who registered later, and by deleting of those registrations, negatively affect one of the main components of the right to property, the right to*

¹⁹ Decision No. 17 of 23rd April 2010 of the Constitutional Court.

²⁰ Second and third paragraph of Article 10 of Law No.7843 of 13th July 1994 "On the registration of realties", added by Law No. 9701 of 2nd July 2007 "For some additions and amendments to Law No.7843 of 13th July 1994 "On the registration of realties".



enjoy it within legal boundaries. The right to dispose is the right to sell or not sell the property, donate it, leave it as inheritance by means of a testament, pledge it to guarantee obligation of third parties, etc.. Because it is a sine qua non requirement of the civil legislation that "immovable properties and facts related to their legal status are registered in the register of immovable properties" (Article 192 of the Civil Code) because otherwise they "cannot be conveyed" or "pledged" (Article 195 of the Civil Code), deletion of registration of the ownership title directly affects the ownership rights. From this point of view, the Court points out that deletion of registration even though does not completely strip the owner from the right of ownership, in its formal-legal meaning, it does in fact restrict his right to ownership, making its disposition impossible."²¹

In relation to the above the Constitutional Court confirms that the existence of the ownership title does not depend on whether it has been registered or not in the public registers administered by the ZRPP, but it can only restrict its extraordinary administration (disposal) by its legal owner. Also, the competence of the Registrar to suspend the registration and the competence of the Head Registrar to decide whether to delete or not the ownership title from the ZRPP registers, constitutes an open violation and an unjustified restriction of the right to ownership. All of the above favours the approach that ownership titles are created as a result of legal actions and the encounter of the wills of the subjects in the civil circulation of goods, and that the registration does not affect their validity. This approach of the Constitutional Court following the above mentioned unifying decision, naturally alters the meaning of Article 83 of the Civil Code and makes it a problematic one, because it creates open inconsistency with the harmony of legal norms and the unifying and constitutional jurisprudence. As a result, the following section will cover certain legal norms that are thought to need amending, and their natural relation to the dispositions of the Law "On the Notary"²².

V. THE NEED FOR LEGAL CHANGES

Conveyance of immovable properties and its legally required form constitute, even to this day, an issue open to discussion between the two opposite approaches described above. Also, the terminology used for the registration of properties in Court sessions where they are referred to as "ownership titles", and the effects of registration of legal transactions at the ZRPP, affect the way how Court sessions are conducted because they are used as different tactics by the lawyers of each party in Court. This causes poor effects on the way how Court cases are handled and their quality.

Articles 83 and 195²³ of the Civil Code must be seen as inseparably connected to the Law "On the Notary". More specifically, Article 54 of the Law "On the Notary", under the title

²¹ Paragraph No. 15 in pages 7 and 8 of DecisionNo. 17 of 2010 of the Constitutional Court.

²² No. 7829 of 01st June 1994 "On the Notary".

²³ Article 195 of the Civil Code: "Immovable properties and rights on them that have been acquired or acknowledged in accordance with provisions of this Code cannot be alienated or pledged/mortgaged if they have not been registered in the public registers".



"Procedures for the conveyance of immovable properties" sanctions: *"The notarial act through which immovable properties are conveyed and ownership or real rights on them is acknowledged, is prepared by the Notary Public after he/she has verified the ownership of the party on the property. For this purpose the party presents the ownership documents to the Notary Public who with the consent of the party verifies the legal status of the ownership from the electronic register of immovable properties. In the notarial act for the conveyance of the immovable property the Notary Public will make a note of the performed verification, and will attach the result of the verification".*

If we perform a logical comparison between Article 195 of the Civil Code and the procedure followed by the Notary Public as per the specific law that regulates their profession, it can be noted that the Notary Public, as a public official, cannot give the legally required form to a contract that both parties want, unless the selling party or the electronic register of the ZRPP confirms publication of the ownership title and the method through which it was acquired by the selling party. The correct implementation of these two legal norms by the Notary Public would considerably reduce the number of absolutely null and void legal transactions, due to the fact that the selling party is not in possession of the ownership title. However, the Albanian legal practice of over twenty years has seen a very high number of civil cases with this object, thus creating a negative perception of the citizens about the safety of public registers and about respect for the right to ownership. Nevertheless, based on the above legal norms, preparation of notarial acts for conveyance of immovable properties when the seller does not possess the certificate of ownership puts the Notary Public at fault, while by rigorously applying the law they would not cause such situations.

Because article 83 of the Civil Code has remained unaltered, we are of the opinion that it indispensably needs to be amended in order to eliminate the open contradiction between legal norms. The contradiction between the norms appears when the will of the parties is given priority over the formality of the registration of the realty. In the present legal situation, Article 83 of the Civil Code expressly requires the registration of the legal transaction in order for it to have the legal effect wanted by the parties, while the unifying practice of the High Court and the jurisprudence of the Constitutional Court consider important the will of the parties, verified by the Notary Public, thus making a legal transaction valid whether it has been registered at the ZRPP or not.

VI. CONCLUSIONS AND RECOMMENDATIONS

As a conclusion to this article, it can be held that the above legal provisions of the Civil Code need to be amended in order to eliminate the uncertainties related to the legal-civil effects of the registration in the public registers of the notarial acts prepared for the purpose of conveyance of immovable properties. The amendment of dispositions of the Civil Code would bring total harmony among its norms, giving them a clearer meaning and eliminating doubts or the need for systematic interpretation of the norms so that their real meaning is obtained.



Similarly to the continental doctrine and especially the Italian one, our Civil Code is based on the dominance of the will of parties in creating legal consequences. From this point of view, an administrative procedure such as the registration of an ownership title cannot have an effect on the creation of subjective rights between the parties in a pure legal-civil relation. Furthermore, the author is of the opinion that the approach of the High Court in its unifying decision is correct and must be reflected by amending Articles 83 and 195 of the Civil Code. Article 83 of the Civil Code must sanction that the legal transaction for the conveyance of realties is null and void unless it is done through a notarial act. The acknowledging/publicity role of the registration of the legal transaction must also be clarified. Considering Article 195 of the Civil Code a provision of an administrative nature, it is suggested to further clarify it by adding a second sentence that would prevent the Notary Public from preparing notarial acts for the purpose of conveyance of immovable properties unless the selling party has registered the ownership title at the ZRPP. The recommended amendments aim to clarify, in accordance with the unifying Court practice, the difference between the validity of the legal action and its registration. Although the impression might be created that the registration of the ownership title would still have an effect on the conveyance of immovable properties, the prevailing element that creates the legal effects is the will of the parties and not the registration. Registration of the ownership title is only a condition of an administrative nature which aims to prevent fraud or illogical actions of the parties when they enter into a contract of conveyance of immovable properties.

As a result, the following amendments to Articles 83 and 195 of the Civil Code are recommended:

- i. **Amendment of Article 83 of the Civil Code:** The legal action for the conveyance of immovable properties and related real rights on them must be carried out with a notarial act, otherwise it is null and void. It has also to be registered in the immovable properties register in accordance with Article 192 of this Code. Registration of the legal transaction only has acknowledgement effects and does not affect the validity of the legal transaction. A legal action is null and void if not carried out in the form expressly required by the law. In other cases the legal action is valid, but it cannot be testified by witnesses.
- ii. **Amendment of Article 195 of the Civil Code:** Immovable properties and rights on them that have been acquired or acknowledged in accordance with provisions of this Code cannot be alienated and if the case pledged/mortgaged if they have not been registered in the public registers of immovable properties. The Notary Public, based on the Law "On the Notary", will refuse to prepare notarial acts for the purpose of conveyance or mortgaging of immovable properties if the sellers have not previously registered *their* ownership title in the public registers of immovable properties ."