

Gender Equality and Property Rights in Family Relations

Reforming the Albanian Legislation

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Abstract

This paper seeks to examine various facets of gender-related property rights in Albania. It aims to elucidate implementation of the law can be distorted by erroneous mentalities and gender stereotypes, striving to find solutions to mitigate their impact. The purpose is to bring attention to shortcomings of laws, while contributing to the enforcement of legislation with a renewed focus on gender equality and fair family relations. The objective is to highlight the importance of law reforms and positive measures in eradicating misunderstandings during implementation of the laws. The methodology is predominantly grounded in the critical examination of legislation, considering historical and comparative perspectives, analyzing case law from courts, and observing institutional practices in Albania.

Keywords: Albanian legislation; women property rights; gender stereotypes; gender property rights during emergencies; positive measures

Introductory Remarks

Overview of the legal situation

The principle of equality and prohibition of gender-based discrimination are expressly provided for in the Constitution of Albania. Article 18 of the Constitution establishes gender as the first protected ground against discrimination:

"... No one may be unfairly discriminated against on grounds of gender ...".¹

Other legal acts issued for the implementation of the Constitution provide for more details on this principle. The Law *"On Gender Equality in Society"* (2008)² has defined the different types of discrimination, as well as the forms in which it can be practiced. Furthermore, the Law *"On Protection from Discrimination"* (2010),³ establishes the Office of the Commissioner as an administrative authority for examining conflicts arising from discrimination. However, these laws do not have specific provisions for discrimination in relation to property rights. In this context, the Family Code⁴ provides

¹ Constitution of the Republic of Albania, as amended, 1998. constitution_of_albania_2090.pdf (gjk.gov.al) Accessed 13 May 2024

² Law no. 9970, dated 24.07.2008, *"On gender equality in Society"*. 36682.pdf (osce.org). Accessed 28 May 2024.

³ Law no. 10 221, dated 04.02.2010, *"On protection from discrimination"* as amended. 2.pdf (kmd.al). Accessed 13 May 2024.

⁴ Law no. 9062, datë 8.5.2003, *"Kodi i Familjes i Republikës së Shqipërisë"*. https://qbz.gov.al/share/6-zzMDAXRsSAqrhRy_pwZA. Accessed 13 May 2024.

provisions on the matrimonial property regime, whereas the Civil Code⁵ regulates property and inheritance relations, including the agricultural family regime.

In order to guarantee the implementation of the principle of gender equality, an important role is also played by the implementation of ratified international acts, especially the standards that originate from the case-law of international courts. The Constitution of Albania has provided for the direct implementation of international agreements ratified by law, and, in case of conflict, international agreements ratified by law are vested with a supralegal power in relation to the domestic law (art. 122). International mechanisms are an important tool for meeting the standards. The periodical reporting process by the Albanian State before such mechanisms, as well as the presentation of alternative reports by independent institutions and civil society organizations, have had an important role in identifying the problems of respecting gender equality and protection from discrimination in the field of ownership rights.⁶ Periodic reporting before the Committee on the Elimination of All Forms of Discrimination against Women, in the framework of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁷ has been particularly helpful. The closing remarks of the CEDAW Committee in 2010⁸ and 2016,⁹ have served as an incentive for adoption of measures and particularly positive measures by state institutions in order for gender equality not to only remain merely formal.

Another guarantee is the process of alignment of the Albanian legislation with that of the European Union, namely the *Acquis Communautaire*, thanks to the integration processes. For example, the Law “*On Gender Equality in Society*” has been partially aligned with the EU law, while the amended law “*On Protection from Discrimination*” has been fully aligned with the European Union Directive implementing the principle of equal treatment between men and women, in the access to and supply of goods and services.¹⁰

National Courts are an effective protection mechanism in cases of conflicts arising in relation to property rights. The application of international standards facilitates this

⁵ Law no. 7850, dated 29.07.1994 “*Civil Code of the Republic of Albania*”. albanian-legislation (euralius.eu). Accessed 13 May 2024.

⁶ Concluding observations of the Committee on the Elimination of Discrimination against Women Albania: Committee on the Elimination of Discrimination against Women Forty-sixth session 12–30 July 2010. Etpu (icj.org). Accessed 13 May 2024.

⁷ *Convention on the Elimination of All Forms of Discrimination against Women*. Adopted and opened for signature, ratification, and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1). Microsoft Word - Document1 (ohchr.org). Accessed 13 May 2024.

⁸ Concluding observations of the Committee on the Elimination of Discrimination against Women Albania: cited, no.6

⁹ Concluding observations on the 4th periodic report of Albania: Committee on the Elimination of Discrimination against Women. 2016. Concluding observations on the 4th periodic report of Albania: (un.org). Accessed 13 May 2024.

¹⁰ Document 32004L0113. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. Directive - 2004/113 - EN - EUR-Lex (europa.eu). Accessed 13 May 2024.

role of the judiciary. In practice, the Albanian judiciary has encountered new challenges on respecting the gender equality mechanisms in relation to ownership. During the adoption of new laws, some sort of skepticism is openly shown about the usefulness of new legal measures on gender equality and domestic violence. These laws were considered mostly as laws imposed on the Albanian society in the framework of the approximation of the Albanian legislation with international standards, rather than as laws that society really needed.¹¹ Consequently, there have been extensive debates not only by interest groups and representatives in politics, but also by professionals in the justice system. There were many who thought that they were laws adopted by other societies, which were difficult to implement in the Albanian context.¹² However, in the last two decades, the Courts have developed a new, quite useful judicial case-law.

The theory of law has contributed to consolidation of the opinion that gender discrimination can come not only because of issues related to legislation, but also because of what happens in the social facts of reality.¹³ Although embodying a gender-neutral language, the law cannot guarantee equality if it does not intervene to regulate the gender stereotypes created in society, which prevent its implementation. Gender discrimination is not only formal due to the inequalities provided for in the law or its shortcomings, but is also fundamental due to economic, political, social, cultural, and other developments. There are gender inequalities that stem from the failure to implement the law due to gender stereotypes and prejudices in society. In many cases, the legislation is not enough to eliminate them. As a result, the identification and analysis of gender discrimination in property relations remains crucial for its prevention and combatting, as well as for the economic empowerment of women and girls.

After the fall of the communist regime in 1991, with the development of new institutions, major changes took place because of two factors – namely, developments in the market economy and the process of privatization of state properties. Such developments had great impacts also from a gender point of view in the division of assets and property. One of the first laws that was approved was the Law “*On the Privatization of State Housing*”.¹⁴ From the perspective of this paper, this law seemed like a good start for the registration of co-ownership in the name of both spouses as it provided for the privatization of state housing for all adult family members. The registration of the state-owned housing benefited by privatization was carried out in the name of all adult family members, based on the family status certificate. In the circles of lawyers,

¹¹ Anastasi, Aurela. 2021, *Barazia dhe Drejtësia Gjimore*. Tirana: Academy of Sciences of Albania, p.14.

¹² *Ibidem*.

¹³ *Ibidem*. p.17

¹⁴ Law no.7652, dated 23.12.1992, “*Për privatizimin e banesave shtetërore*”, <https://qbz.gov.al/share/Soq78UjLTrmtcpYwgG9-Ig>. Accessed 13 May 2024.

it was also criticized for not taking into account the genuine contributors who had paid rent during the entire period of ownership. However, such a debate died out quickly and was not subjected to any institutional scrutiny. Unfortunately, the experience of this law did not serve to eliminate the role of the customary and legal institution of the head of the family, which weighs even today on property relations between spouses and between other family members. As a consequence, in many other reforms related to privatization, legalization, reconstruction and transactions with properties in civil circulation, their registration in the name of the head of the family prevailed.¹⁵

Scope and Methodology

This paper is limited to issues of gender equality in relation to property rights and economic empowerment of women and girls in the family. It focuses on the analysis of the legislation and institutions in Albania, in order to generalize useful findings and suggestions in this context. As far as possible, the analysis aims to find the impact of the text of the law and the way it is worded, in service of respecting the principle of gender equality in terms of mentality and taboos established by society. A special place is covered by the analysis of the consequences originating from a legislation that is not self-sufficient or complete to face the obstacles that come from social reality. The findings of this paper help to reach useful conclusions for drafting legislation and ensuring its implementation in accordance with the Constitutional requirements of the principle of gender equality. The analysis focuses on the case of Albania, but its findings can also be used for other countries facing similar challenges.

The methodology used for the purpose of this paper helps to assess the situation of gender equality in property relations, as well as to improve the legislation, with the aim of achieving gender equality in its core meaning. The scientific methods used by the author to study the relevant institutions dealing with social facts are briefly presented below.

Analysis of the case law

The present paper analyses judicial and quasi-judicial decisions relevant to its scope, in order to identify the role of courts and other authorities for the development of gender equality in this field. The analysis also serves to identify concerns arising from the reasoning in judicial decisions, in relation to gender discrimination. In this aspect, constitutional oversight would be very useful, but there is a lack of jurisprudence of the Constitutional Court of Albania regarding gender equality in property rights. cases dealing with this subject matter and its doctrine regarding gender equality is, in general, absent.

¹⁵ Shadow Report. 2016. Submitted to the 64th session of CEDAW. Center for Legal Civic Initiatives. shadow_report.pdf (qag-al.org). Accessed 13 May 2024.

Historical method

This method fulfils the purpose of the study to trace the evolution of the Albanian legislation on gender equality and property rights in family life, throughout the democratic transition period. A study of the historical evolution since the period of the monist regime was not found appropriate, since institutions that have a common comparative basis have been analysed for the purpose of this paper. During the communist period, private property was gradually annihilated.

Analysis of legislation in relation to social reality

The paper takes into account not only an overview of the regulatory acts of the field from a formal legal point of view, but also the social reality in which these laws are applied. This analysis is a bit reminiscent of law sociology' method.¹⁶ This type of analysis makes it possible to highlight the features of institutions *in their core and how they are manifested in reality, rather than just focusing on their technical presentation*.¹⁷

Law and Gender Equality in Property Rights

Inequalities identified from analysing the law and social facts

An institutional study method intertwined with social facts enables the identification of violations of the principle of gender equality and discrimination. On this basis, it is concluded that great inequalities have brought about the stereotypes currently existing in social reality, according to which family property is inherited by male heirs. These have become factors contributing to gender inequality, even though the law does not contain any such inequality in its wording. For example, the custom according to which the head of the family has the "power" in the family, has created a tradition considering him the owner of the family properties. This is a major reason why women are stripped of their inherited property in favor of male members of their family of origin. This is achieved through the practice of not registering wives as co-owners, as well as through the voluntary relinquishment of the right of ownership. Concern has been repeatedly raised that women and girls give up inherited property or donate it in favour of male family members.¹⁸

Although the legislation does not have provisions that express inequality, the above leads us to the conclusion that neutral legal provisions are not sufficient to prevent these phenomena. The lack of preventive provisions or positive measures in the law

¹⁶ See for more: Yang, F. (2022). Between Normativity and Social Facts: A Sociological Interpretation of Habermas's *Discourse Theory of Law and Democracy*. In: Habermas, Foucault and the Political-Legal Discussions in China. Springer, Singapore. https://doi.org/10.1007/978-981-19-0132-4_2

¹⁷ Anastasi, Aurela. (1998) 2004. *Historia e Institucioneve*. Tirana: Publishing House of the University Book. P. 10

¹⁸ *Issues of discrimination and gender-based violence in property rights relations*. Tirana: Center for Legal Civic Initiatives, 2018. Property_Rights_Info_Brochure.pdf (qag-al.org). Accessed 13 May 2024. P.10-11.

makes the law insufficient to cope with stereotypes and taboos, which have a great impact on society, and especially on family relationships. Without these measures, the neutral language of the law remains a language of “formal equality”, completely powerless to result in “real or substantial equality”. Perhaps a constitutional trial could have found a legal omission to the extent that it amounts to unconstitutionality.

Fundamental inequalities in the rights to inheritance

The phenomenon of inequality in property matters was identified in relation to the inheritance of properties acquired during marriage. The law did not provide for distinctions or privileges for men. However, since the property was usually registered in the husband’s name, the wife lost her share of the legal presumption as a co-owner. She was equal to the children as the first heir and the property was divided equally between all of them.

*“In practice, the transcription of the inheritance certificate ...was performed according to the certificate issued by the court ... by transferring the property in the name of all the heirs, in equal parts, without taking into consideration the fact that the property was co-owned by both spouses ...”*¹⁹

Because of the stereotypes created, this practice seemed natural and remained a dormant problem until the Court conflicts started to increase. They became more frequent in periods of family crisis. There were also cases when the children sought to alienate the inherited property, even endangering their mother’s accommodation. Under these conditions, the first calls of lawyers to civil society organizations were aimed at building the legal awareness of citizens, in order for women to recognize their property rights and in any case request the registration of the co-ownership title:

“It is important to take into account the legal presumption of co-ownership of the two spouses, for the property established during the marriage, in matters of inheritance. For this reason, it is necessary for women to insist on the registration of assets acquired during marriage in the name of both spouses, since, in practice, it often happens that they are registered only in the name of the husband”.²⁰

In concluding observations of the Committee on the Elimination of Discrimination against Women Albania (2010),

“The Committee invites the State party to provide, in its next periodic report, detailed information about the enforcement of the Family Code in relation to property ownership in marriage and following its dissolution”.²¹

¹⁹ Mandro-Balili Arta, “Women’s property rights in Albania”: 2016_ALB_Women Property Rights Albania.pdf (unwomen.org). 2016. Accessed 11 June 2024.

²⁰ Anastasi, Aurela. 2010. *Të drejtat e gruas në legjislacionin shqiptar*. Tirana: OSCE presence in Albania. Të drejtat e gruas në legjislacionin Shqiptar | OSCE. Accessed 11 June 2024.

²¹ Concluding observations of the Committee on the Elimination of Discrimination against Women Albania: cited, no.6.

The legal awareness of citizens is quite important, but such a measure would have rather slow results. Meanwhile, economic developments proved that the property situation for women was deteriorating, therefore more effective measures with faster results were needed. Attention was addressed to improving the practices of registration offices for the transcription of evidence of legal inheritance and the transfer of inherited property. However, this suggestion ran into objections, as the registration institutions required that everything be done through the Notary Offices. The latter claimed that there were no legal provisions on which to base the relevant actions. The law was formulated in neutral language and did not at all prevent the registration of real estate ownership in the name of both spouses. However, due to the privilege practices for the head of the family, intervention in the real estate registration law would be the fastest and most effective measure. This debate led to the conclusion that the law should be amended. The obligation to register both spouses as owners of the property acquired during marriage would also improve the situation.

Insufficiencies deriving from the legal presumption of co-ownership between spouses

The provision of the Family Code according to which, *“The property of the spouses is presumed to be conjugal, except when the spouse proves his or her individual character”*,²² has been consistently understood as a guarantee serving only to resolve judicial conflicts between the spouses, especially for division of matrimonial property in the case of divorce. The lack of a legal provision for the registration of property established during marriage in the name of both spouses, due to the legal matrimonial regime, resulted in the concentration of property in the hands of the head of the family. In the vast majority in practice, the heads of the family are the men of the family (mainly, the husband, father/father-in-law, brother), who had the opportunity to act as the sole owner in carrying out transactions with the conjugal property. Consequently, wives did not have a property title. This fact has deprived them of rights related to the disposition of the property and the status of co-owner, according to the Commissioner for Protection from Discrimination in its repeated stance in 2013,²³ 2018²⁴ and 2022.²⁵ The denials even reached elementary rights, such as the lack of access to be provided with proof of ownership for judicial purposes, with the justification that the certificate of ownership was available only in the name of the spouse.

²² Law no. 9062, datë 8.5.2003, *“Kodi i Familjes i Republikës së Shqipërisë”*, art. 76. Cited, no.4.

²³ Decision of the Commissioner for Protection from Discrimination, No. 93, dated 30.09.2013. 1503001608-vendim-93-30.09.2013. pdf (kmd.al). Accessed 13 May 2024.

²⁴ Recommendation of the Commissioner for Protection from Discrimination, No. 1627/1, dated 17.12.2018, *“It is recommended to take measures regarding the issue of registration of the legalization permit and the issuance of the ownership certificate in the name of both spouses or ex-spouses”*. KM_454e-20181218093239 (kmd.al). Accessed 13 May 2024.

²⁵ Recommendation of the Commissioner for Protection from Discrimination, no. 939/1, dated 29.7.2022, *“Suggestions ... regarding the process of drawing up contracts for the donation of housing benefited from reconstruction grants as a result of the damage caused by the 2019 earthquake”*.

To remedy this situation, the first legal measure was provided by the Law “*On the Registration of Real Estate*”,²⁶ which repealed the previous law that had been in force since 1994. This law expressly sanctioned that:

*“If the property, subject of the contract of the transfer of ownership, carried out in favour of natural persons, who in the Register of Civil Status have the status of married persons, is property acquired during marriage, in accordance with Article 76 of the Family Code, in the relevant section of the property it is noted that such property is owned by both spouses”.*²⁷

The law clearly defined the obligation of the employees of the property registration bodies to automatically register in the property register not only the individual title of the owner’s spouse, but also the name of the spouse, based on the Certificate of the Marital Status. The notary had the obligation to attach the marriage certificate to the property transaction documents. However, the hope that the situation would change radically with this forecast was not given life to. The situation featured a lack of unified practices and there was a lot of opposition between registrars and notaries about the respective legal obligations. Pursuant to this law, wives began to be called to sing alongside their husbands before the notaries. All actions were performed by the owner of the property registered in the mortgage, while the wife declared before the notary that she consented to the action performed by her husband. This practice was somewhat reminiscent of *alieni juris* in ancient Rome.

In the field of bank loans and credits, initially, only the owners of the property appeared for these actions, but after 2012, thanks to the new law mentioned above, the spouses expressed their consent to the bailment contracts. There were deficiencies in informing them about the consequences in cases where the borrower did not regularly pay the loan obligation. In fact, conflicts between spouses in this context have ended up before Courts for resolution, especially during and after the divorce proceedings.²⁸

Property-related relations during co-habitation

The ownership situation between partners in cohabitation is more difficult. In Albania, cohabitation is legally recognized by the Family Code, which defines it as: “... *a de facto union between a man and a woman living as a couple, characterized by a common life, featuring stability and continuity in character*”.²⁹ Previously, it constituted a punishable administrative offence. However, even to this day, cohabitation does not have a legal regulation and ownership relations are protected as for all co-owners.

²⁶ Law no. 33/2012, “*Për regjistrimin e pasurive të paluajtshme*”. https://qbz.gov.al/share/fQMwmQxES6m2__a5SISJkw Accessed 13 May 2024.

²⁷ *Ibidem*. Art. 41/2.

²⁸ Shadow Report. 2016. Cited, no.15.

²⁹ Law no. 9062, datë 8.5.2003, “*Kodi i Familjes i Republikës së Shqipërisë*”. Cited, no.4, Art. 163.

In other words, there is no protection from the legal presumption of co-ownership of spouses. Furthermore, the Family Code provides for the possibility for cohabiting partners of their own free will to enter into an agreement before the notary regarding property (art. 164).

Inequalities established in the agricultural family

The law in force regulating property relations between members of the agricultural family, the Civil Code,³⁰ has not been amended since 1994. The agricultural family consists of persons related to each other due to gender, marriage, adoption, or acceptance as its member (art. 223). The property belongs to its members as a whole, but it is represented in property relations with third parties by the head of the family, who, although he must be chosen by the family members, is usually the father, grandfather, husband or brother.³¹ This is due to tradition, which in no case has been replaced by democratic choice within family members. At least, no such case has been recorded.

For the implementation of the Civil Code and other acts related to the functioning of the agricultural family, different practices have been established for the identification of co-owners of this family, as well as transactions with its ownership.³² The implementation of various non-unified practices has deepened gender inequalities in the agricultural family. Moreover, due to the inadequacy of the provisions of the law, the girl members of the family marry and leave their home without any part of the property, while in the new family they go to, they do not benefit from the joint property of the agricultural family. This fact has often deepened the gender gap in land ownership rights within the farming family.

Division of matrimonial property and gender inequalities

The lack of ownership title leads women to face difficulties when they seek the division of conjugal property. In fact, there have been cases filed with the Court by married women requesting the Court to recognize them as co-owners of the property established during marriage. The case-law clearly shows that there are more women than men interested in seeking the division of conjugal property after divorce. For example, a monitoring exercise on the judgements of the Court of First Instance of Tirana, for the period of 2011-2012, focusing on “the division of conjugal property”, found that most of the applications are presented by former spouses. More specifically, it found that, out of 54 judgments, 37 of the claims that set the Court in motion or 69% of them were filed by the former wives, while the rest of the claims were filed by the

³⁰ Law no. 7850, dated 29.07.1994 “Civil Code of the Republic of Albania”. Cited, no.5.

³¹ Studim. Përmirësimi i Legjislacionit Shqiptar në Fushën e Barazisë Gjinore. 2023. Tirana: Center for Legal Civic Initiatives. https://www.qag-al.org/publikime/legal_review_report.pdf. Accessed 13 May 2024. P.8.

³² Ibidem.

former husbands.³³ This tendency can also prove the fact that women must face long procedures for the division of conjugal property first and foremost due to the lack of ownership titles. Unfortunately, these trials take a long time, as they take place in two instances and need the presence of field experts and entail significant expenses.

In addition to the above, the monitoring exercise shows that over 60% of the applications submitted for the division of property, end with the suspension of trial due to the non-appearance of the applicant. This may be due to different reasons, but one of them is related to the long and expensive procedures of such trials. However, there is little data on these issues. The data of civil society organizations are the only source available since official data on this subject matter is missing. The statistical yearbook of the Ministry of Justice contains no data on this matter.³⁴ This practice is very wrong, as the statistical study on these issues would be quite useful to arrive at valid conclusions to address the problems arising due to the lack of property titles for women.

Inequalities related to the rights to social insurance

Gender stereotypes and the inability of institutions to pay attention to issues of gender equality in the implementation of the law, have also caused problems in obtaining of old-age pension for women. This issue is one of the major denials of gender equality among agricultural family members. The administrative and civil Courts in Tirana have reviewed issues related to the invalidity of administrative acts for the termination of the old-age pension of women who are members of the agricultural family, due to the lack of ownership title. For example, in one of the cases, the Court states that:

*“ ... in the Ownership Certificate, the name of I.A. does not appear as a co-owner of agricultural land and there is no information in it if the beneficiary was a member of the family tree with owned land according to Law No. 7983 of 27 July 1995 On the Sale and Purchase of Agricultural Land, Meadows and Pastures”.*³⁵

Pursuant to Article 224 of the Civil Code, the agricultural family in property relations is represented to third parties by the head of the family. In practice, the land ownership document is registered in the name of the husband, due to stereotypes and wrong practices, which are not in accordance with the principle of gender equality. Moreover, no other public institution undertakes to correct this created deficit, therefore all cases end up before the Court. In this case, the competent social security authorities did not take into consideration the woman's work, which she performed in agriculture as a private farmer, depriving her of the right to old age pension. Gender stereotypes

³³ Report on knowledge and implementation of gender equality standards in court decisions. Center for Legal Civic Initiatives, 2013. DOI: 10.13140/RG.2.2.34384.28167

³⁴ Statistical Yearbook of the Ministry of Justice: Vjetari-Statistikor-2022.pdf (drejtesia.gov.al). Accessed 13 May 2024.

³⁵ Shadow Report. 2016. Cited no. 15.

of the male line in the enjoyment of ownership have resulted in major denials of ownership for women who are members of the agricultural family. The agricultural sector, which accounts for more than 40 per cent of employment but less than one-quarter of the GDP, is limited to small family operations and subsistence farming due to a lack of modern equipment, unclear property rights and the prevalence of small, inefficient plots of land.³⁶

As a result, a law that does not take into account the social facts and has no provision to regulate the deficits that are created by the social reality, is unable to prevent these deprivations.

Inequalities in provision of services

Gender stereotypes as well as the practices of institutions regarding property rights, even during the provision of services, have resulted in discrimination against women. The husband, being the head of the family, is the one who signs the electricity supply contracts as well as the water supply contracts. Moreover, there have also been cases of denial of access to the wife to conclude such a contract on her behalf, only with the argument that she is not the owner of the ownership or is not in possession of the house.³⁷ These issues have increased, especially during periods of family crisis. More serious are the cases when the institutions have denied energy or water supply to the wife and other family members, due to the termination of the contract with these institutions by the head of the family. Examining such a case, the Commissioner for Protection Against Discrimination found denial of access to services for women. In this case, the institution responsible for electricity supply did not accept the wife's application to continue the supply, even though the latter had the ability to pay. The argument for this refusal was based on the fact "... *that the sole owner of the house appears to be the husband*".³⁸ The Commissioner has considered this behavior of the public entity "... *as discrimination in the provision of services, due to gender*".³⁹ In this context, the correction was also requested in the "SAMPLE Contract" of the Public Energy Entity (ERE), which provided for all the rights and obligations related to the will of the Head of the Household.

Gender equality and property rights in times of crises and emergencies

In periods of crises and emergencies, due to increased risk, gender inequalities in property rights may increase or deepen. This was found in Albania during the urban

³⁶ Danaj, Ermira. 2022. Albanian Context. In: Women, Migration and Gendered Experiences. IMISCOE Research Series. Springer, Cham. https://doi.org/10.1007/978-3-030-92092-0_3

³⁷ Shadow Report. 2016. Cited. No.15

³⁸ Decision of the Commissioner for Protection from Discrimination, No. 93, dated 30.09.2013. 1503001608-vendim-93-30.09.2013. pdf (kmd.al). Accessed 13 May 2024.

³⁹ Ibidem.

crisis created due to the massive and uncontrolled increase of constructions without permission, as well as during the consequences of the earthquake that occurred before the Covid-19 pandemic, in November 2019.

Both periods are different from each other. While the continued increase of illegal constructions brought anarchy in construction and, consequently, an urban crisis, the earthquake caused the destruction of property. In the second case, a state of natural disaster was declared in Albania pursuant to the provisions of the Constitution (art. 170).⁴⁰ However, both situations have a common basis because the process for acquiring ownership is based on the self-declaration of the person, which in both cases is carried out by the head of the family in his name. The process of ownership transfer is quite intense and fast, factors that increase the impact of gender stereotypes and male mentality. Therefore, there is an increased risk that gender stereotypes and taboos cause diversion of attention from observance of gender equality.

In order to manage the urban crisis created as a result of the construction anarchy, special legal interventions aimed to regulate the situation through the legalization, urbanization and integration of illegal constructions. Special central and local mechanisms for managing the situation were established, performing large volumes of work for the legalization of housing. However, during this process, significant problems appeared regarding the registration of legalized properties in the name of the co-owners.⁴¹ Also, during the state of natural disaster due to the consequences of the 2019 earthquake, gender inequality in property matters deepened even more in the course of the donation of grants for the reconstruction of ruined houses, since the donations were made only in the name of the head of the family.

Reforming the Legislation.

A brief analysis of the legislative reforms in this area proves the improvement of the gender dimension in the law. But further, more in-depth analysis of their usefulness should be developed.

The first legal reflections date back to 2012, with the new Law "On Real Estate Registration",⁴² which aimed precisely at strengthening the mechanisms for respecting gender equality in property matters. For the first time, it provided for the registration of matrimonial property in the name of both spouses. We still do not have official data on the effect of the implementation of this law.

⁴⁰ Anastasi, Aurela. Rule of Law in Times of Emergency. 2023. In: Cremades, J., Hermida, C. (eds) *Encyclopedia of Contemporary Constitutionalism*. Springer, Cham. https://doi.org/10.1007/978-3-319-31739-7_223-1

⁴¹ Recommendation of the Commissioner for Protection from Discrimination, No. 1627/1, dated 17.12.2018, "It is recommended to take measures regarding the issue of registration of the legalization permit and the issuance of the ownership certificate in the name of both spouses or ex-spouses". KM_454e-20181218093239 (kmd.al). Accessed 13 May 2024.

⁴² Law no. 33/2012, "Për regjistrimin e pasurive të paluajtshme". https://qbz.gov.al/share/fQMwmQxES6m2__a5SISJkw Accessed 13 May 2024

In 2018, Law No. 111/2018 "*On the Cadaster*"⁴³ was approved and entered into force. This law brought about a reformation of the real estate registration institutions. In addition to the provisions for the registration of matrimonial property in the name of both spouses, this Law also provides retroactive provisions that enable the correction of the registration of real estate in the name of both spouses (art. 45). The retroactive power applies to contracts of transfer of ownership, as well as to the registration of assets that are acquired by legalization during marriage. Also, retroactive action is expressly provided for the registration of the business contract, the order and the promise to sell, when the latter aims at the transfer of ownership of the building under construction in the future. The retroactive power of the law, as an exceptional case from the general principle that the law has no retroactive power, among other things, was seen as a corrective tool for reducing inequalities and gender discrimination, created over the years.

Another appropriate measure was taken by the law to facilitate the process of property registration for women. Based on this law, the process for registering the property by the spouse is an automatic process. Therefore, only the application certified with the relevant documents is sufficient and the consent of the other spouse is not required. The law sanctions the obligation of the local Cadaster Directorate to correct or update the cadastral data for real estate jointly owned by both spouses, at any time they were acquired.

This retroactive correction or update procedure is not subject to tax. Even this measure represents an important positive measure to remedy the discriminatory situation with property titles.

It is important to see the impact of positive measures in the years since the entry into force of the law. The procedure for correcting real estate cards, which are conjugal property, was regulated by the State Cadaster Agency.⁴⁴ For this we turned to the official data of Albanian Institute of Statistics (INSTAT), but this institution has never published gender data on real estate ownership. Even the Central Cadaster Office does not publish gender-related data related to property registration. However, some data related to the registration of ownership deeds for objects subject to mandatory co-ownership, including data in the case of the application of the retroactive clause (art. 45/4), can be recorded, and are related to the relevant entries in the property file based on the application.

More specifically, these data provided by the Cadaster system show that in implementation of the Law "*On the Cadaster*", during the year 2020, 235 acts for

⁴³ Law no. 111/2018 "*Për Kadastrën*": Ligj Nr. 111/2018 për kadastrën – ASHK. Accessed 13 May 2024.

⁴⁴ Order, no. 1150, dated 03.06.2019 "*Për procedurën e korrigjimit të kartelave të pasurive të paluajtshme, që janë prona bashkëshortore*". State Agency of Cadaster.

mandatory co-ownership were registered remedying the previous acts, based on the application of the unregistered spouse. However, in the years 2021 and 2022, only 6 and 19 acts of mandatory co-ownership were registered, respectively, because of the decrease of the number of applications. There is a slight increase in 2023 with 63 applications.

First, this situation shows that identifying the gender status of real estate registration needs reliable data. These data are not yet available in Albania. Second, there is a need for studies on the database to reach conclusions on the efficiency of the positive measures that have been taken over the years by the law in Albania. Comparative studies on the state policies and positive measures are needed. There are different experiences in other countries, especially in distribution of property at the termination of *de facto* unions,⁴⁵ which could indicate more effective measures.

Conclusion

By providing an analysis of the legislation related to the issues of property rights in the Albanian family life, the paper highlights the importance of the reforming of the legislation and its implementation, to respect the gender equality. The paper reaches the conclusion that simply the statement of gender equality or the neutral language of the law are not sufficient to guarantee such equality. Therefore, in addition to the fact that the law must be correct, clearly providing for rights and obligations from a gender point of view, it also needs to provide clauses capable of preventing inequalities arising due to gender mentality and stereotypes. The paper concludes that legal reforms regarding gender equality and property rights between spouses or other family members are necessary. Also, through positive measures, the law must be able to correct the inequalities created in social reality. Important lessons are addressed to the authorities for the interpretation and implementation of the law, bearing in mind the standards of the principle of gender equality. On the other hand, a lesson deriving from this paper is the need to increase their role in preventing and eliminating discriminations present in real life. The entire paper is based on Albania's experience, but the conclusions it draws may be useful in other countries and cases.

⁴⁵ See for example: J. Ddmulira Mujuzi, 'Distribution of property at the termination of de facto unions (marriages by cohabitation/repute) in some African countries' (2023) 37 (1) *International Journal of Law, Policy and the Family*, ebad015, <https://doi.org/10.1093/lawfam/ebad015>.

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