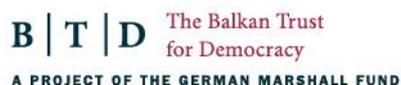




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PROPERTY RIGHTS IN KOSOVO WITHIN THE COMPREHENSIVE NORMALISATION OF RELATIONS BETWEEN BELGRADE AND PRIŠTINA



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May 2021

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INTRODUCTION

Property rights have been the subject of the dialogue between Belgrade and Priština on several occasions. However, as is the case with most challenges of normalisation of relations, the status dispute and two distinctly opposing positions in the approach and manner of resolving open issues is also reflected on the property rights. Representatives of Belgrade point out that the topic of property rights includes four dimensions: private property of Serbs, property of the Serbian Orthodox Church, property of private entities registered in the territory outside of Kosovo and property owned by Serbia in the territory of Kosovo. Belgrade points out that Serbia lays claim to ownership of large companies, mines, and factories in which it has invested for decades. On the other hand, Priština, referring to the provisions of Ahtisaari's plan, rejects Serbia's right to state and social property, emphasizing that private property of individuals, as well as the Serbian Orthodox Church, can be protected in regular proceedings before various institutions established in Kosovo after the conflict.

The intention of this analysis is to point out systemic neglect, and in certain cases obstruction of the realisation of one of the basic human rights, through the actions of the competent institutions so far, the experiences of people who have dealt with the protection of property rights, as well as the testimonies of individuals whose right to property is jeopardised. Also, the analysis offers concrete recommendations in order to solve the issue of property in the process of comprehensive normalisation, and at the same time permanently save it from the framework of institutional blockade or systemic ethnic discrimination.

DEFINING PROBLEMS AND CHALLENGES IN EXERCISING PROPERTY RIGHTS

An agreement was reached within the dialogue between Belgrade and Priština, which implies the establishment of a reliable property register in Kosovo. “Working Conclusion of the Tripartite Group for Implementation in the Field of Cadastral Data” is the official name of the agreement reached on 20 October 2011 between the two parties with the facilitation of the European Union. According to this agreement, Belgrade is obliged to return the records to Priština, however, according to the allegations of the KPCVA representatives, the cadastral data have not been returned to date.¹

According to BIRN, institutions in Priština are waiting to receive scanned cadastral documents from Serbia through the EU office in Kosovo. The agreement envisions the return of more than 4.6 million copies of cadastral documents taken by Serbian representatives from Kosovo in 1999, which could resolve the discrepancy between the original documents from the earlier period and those currently in Kosovo.²

As part of the “technical dialogue”, mechanisms for determining property ownership have been agreed. However, the former head of the negotiating team, Borko Stefanović, points out that they have never become operational, and that, on the expert level, they must continue to insist on resolving the property rights of Serb citizens in Kosovo whose property has been usurped.³

The establishment of the Kosovo Property Comparison and Verification Agency (KPCVA) is a direct result of the Agreement on the Return of Cadastral Records reached between Belgrade and Priština during the 2011 technical dialogue, but there was a delay in adopting the law on the establishment of the Agency, which only in 2016 received a normative foundation for its operation.

In a 2019 interview BIRN did with Florije Kika, deputy director of the Kosovo Property Comparison and Verification Agency, it was pointed out that thousands of property disputes are stuck in courts and that their resolution depends on the expected data. Kika stressed that the Agency requested the return of indexed copies of property registration documents, not just scanned ones, because “indexing would help us obtain information on the origin of each property,” since cadastral registration in Serbia could be subject to change, and there is a possibility of different records in the two cadastres.⁴

¹ An interview with Shkelzen Bajraktari, Acting Head of Information Unit of KPCVA

² Filip Rudić & Serbeze Haxhijaj, „Izgubljena imovina na Kosovu: nestala evidencija odlaže pravne bitke“, BIRN, 03.04.2019.

³ Ljudmila Cvetković, „Čija je imovina na Kosovu?“, Radio Slobodna Evropa 17. septembar 2020.

⁴ Filip Rudić & Serbeze Haxhijaj, „Izgubljena imovina na Kosovu: nestala evidencija odlaže pravne bitke“, BIRN, 03.04.2019.

When it comes to land plots, until 1999, according to Kosovo cadastral records, there were about 300,000 plots, of which 200,000 were privately owned. All these data require comparison due to possible mistakes and abuses in the past.

According to the Kosovo Cadastral Agency, in 1999, there were about 300,000 public and private plots of land in Kosovo. All this data would have to be reviewed for possible mistakes and abuses committed in the past, which is a major task for the Cadastral Agency and the Kosovo Privatisation Agency. “About 100,000 of those are in public ownership, so we will have to review about 200,000 copies, and the public property will be reviewed by the Kosovo Privatisation Agency,” Kika explained.⁵

Despite an earlier agreement, property issues remain among the main obstacles to normalising relations between Belgrade and Priština. For that reason, the renewed dialogue, mediated by Special Representative Miroslav Lajčak, included the topic of “joint financial and property claims” discussed in September 2020. However, there were no major changes because the topic of property is placed deep in the status related discourse.

Avni Arifi, a member of the Kosovo delegation participating in the dialogue with Serbia, says that the issue of cadastral copies was not touched upon at any of the meetings held between 2017 and 2019.⁶ While Professor Sadiku from the University of Priština, in the context of property owned by Serbs, points out that “this property, even if it exists, is located on the territory of Kosovo, within the sovereign Kosovo, where all its inhabitants can exercise their property rights, therefore nobody’s property is jeopardised in Kosovo.” In fact, in Belgrade’s insisting that the property issue be on the agenda of the dialogue in Brussels, Sadiku sees Serbia’s intention to strengthen the position of “the future Union of Serb-majority Municipalities, where Serbia is obviously trying to establish a state entity within Kosovo. However, these are scenarios full of tricks that Kosovo should not allow to be realized.”⁷

⁵ Filip Rudić & Serbeze Haxhijaj, „Izgubljena imovina na Kosovu: nestala evidencija odlaže pravne bitke“, BIRN, 03.04.2019.

⁶ Filip Rudić & Serbeze Haxhijaj, „Izgubljena imovina na Kosovu: nestala evidencija odlaže pravne bitke“, BIRN, 03.04.2019.

⁷ Ljudmila Cvetković, „Čija je imovina na Kosovu?“, Radio Slobodna Evropa 17. septembar 2020.

HOW MANY UNRESOLVED CASES ARE THERE

The question of the exact number of unresolved cases before various levels of Kosovo institutions as an obligation to guarantee inviolable property rights remains open. After the war in Kosovo in 1999, the UN Mission registered 42,749 cases of confiscated property, of which “96.84 percent or 41,399 usurped properties belonged to Serbs.”⁸

The president of the women's association “Avenija”, Gordana Đorić, pointed out that in Kosovo, legally enforceable decisions on the release of usurped property are not implemented: “As an organisation, we worked on a project on usurped property and on that occasion, we discovered devastating data.” At that time, there were over 40,000 cases in Habitat, and today, to my knowledge, there are already up to 70,000 cases of our people who are seeking compensation for the used space or are asking for the usurped property to be released. In this way, we can prove that the courts still do not work for the benefit of our community, on the contrary, they do not work according to the law as they should.”⁹

KPCVA claims that out of 42,749 cases of confiscated property, 12,823 cases are currently under the management of this Agency, and that the number of unresolved cases has significantly decreased due to the sale, often under pressure, while a certain number has been returned to previous owners.¹⁰ However, the experience of the free legal aid program for displaced persons claiming their property showed an average of only 5% of successfully resolved cases.¹¹

The stated numbers of unresolved cases mostly refer to agricultural land, and then to residential buildings, while forest land is still unregistered. At the same time, in addition to KPCVA, many proceedings are being conducted before regular courts in Kosovo, and some displaced persons, as well as Serbs left to live in Kosovo, are not reporting the usurpation of their property, hoping for a compromise with the usurpers. There is also a justified fear that legal proceedings will only bring them additional problems and years of uncertainty. Lakušić reminds that not everyone was able to file a lawsuit due to damage or destruction of property, and that many who filed the lawsuit could not follow the procedure “because they changed their place of residence, and invitations were sent to the addresses from the lawsuit and the verdicts they refused because of the absence, others did not have money for lawyers, and the number of proceedings that are still ongoing requires indisputable evidence that can no longer be obtained by direct inspection, on the contrary, most of the premises where the destroyed property was located looks like nothing had ever been there.”

⁸ Filip Rudić & Serbeze Haxhijaj, „Ukradeni domovi: Borba za povraćaj uzurpirane imovine na Kosovu“, BIRN, 29.05.2018.

⁹ Gračanica online, „Srbi na Kosovu teško do svoje – uzurpirane imovine“, 18.11.2020.

¹⁰ Filip Rudić & Serbeze Haxhijaj, „Ukradeni domovi: Borba za povraćaj uzurpirane imovine na Kosovu“, BIRN, 29.05.2018.

¹¹ An interview with Maja Lakušić

Justifications for the current situation, in which, with all international worldviews, the basic right of people to private property is not respected even after 20 years of conflict, are trying to minimize the responsibility of institutions in charge of protecting property rights. The first argument is that there is no insight into the original cadastral records, although the EU Delegation to Kosovo, which according to the Brussels Agreement should facilitate the process, confirmed that the process of scanning and indexing the documentation is complete.¹² Obviously, there is no political will to stand in the way of usurpation, which often ends in intentional damage and demolition of buildings, which is an activity subject to control and verification even without inspection of the original cadastral books. The second argument most often ignores the ethnic character of the problem, generalising that the absence of the rule of law is an endemic phenomenon faced by all citizens living in Kosovo, regardless of cultural identities. This claim is supported by USAID analysis, where about 60% of assets in Kosovo are not legally registered by the owners.¹³ However, the fact that 96.84% of usurpation cases since the end of the war are related to Serb property, allows for characterisation of the current situation as systemic discrimination against members of the Serb community.

Although some statistical shifts are being recorded, there are still numerous cases of people who cannot regain their illegally confiscated property. As an editor at the Radio Television of Serbia (RTS), Svetlana Vukmirović has been dealing with property rights over state, social, as well as private property for many years, to which a special series is dedicated. “The Right to Tomorrow” series states that Serbs and other non-Albanians have filed about 70,000 claims for the return of usurped property in Kosovo, while 18,000 lawsuits have been filed in Kosovo courts for damage compensation, and the real owners have been subjected to exhausting lawsuits and because of that they have huge financial losses. Until this analysis was finished, none of the presented cases of usurpation of property shown in the show “The Right to Tomorrow” during 2018 has been resolved, and some claimants died without achieving the return of their property rights.¹⁴

¹² BIRN

¹³ BIRN

¹⁴ „Pravo na sutra“, RTS, <https://www.rts.rs/page/tv/sr/story/21/rts-2/3043799/pravo-na-sutra.html>, 27.02.2018.

ORIGIN OF DIFFERENT MODALITIES OF JEOPARDISING PROPERTY RIGHTS

A particularly vulnerable group are displaced persons whose return is conditioned primarily by the right to free use of their property. Mass illegal usurped property has permanently prevented any serious progress in the policy of returning displaced Serbs to Kosovo. Also, the types of problems that displaced persons and Serbs still living in Kosovo face have changed over time. “After 1999, the most common was damage and destruction of property, which, although very intense, escalated in the 2004 pogrom. Due to objective responsibility on this basis, property owners filed lawsuits against UNMIK, KFOR and the Provisional Municipalities, which were not dealt with until 2008 on the basis of the UNMIK order, and after that the lawsuits were rejected to a great extent due to the lack of passive legitimacy of UNMIK and KFOR, i.e., the inability to be responsible. The practice of regular courts where these proceedings have been “conducted” for 16 years is that appeals against these decisions are adopted in the part of municipal responsibility, which means that the procedure can be continued only against the municipality. The first hearings were scheduled for 2018, when the court worked in all possible ways to complete the procedure as soon as possible, because the parties were inadequately summoned and were not able to attend the hearings. Many property owners have passed away, so in order to continue the procedure, it is necessary to conduct probate proceedings with a notary from Kosovo, because the courts and the cadastre do not recognize probate decisions issued by Serbian authorities. Conducting a probate proceeding on the territory of Kosovo is absolutely impossible for many, and even if it is conducted, the property cannot be registered in the cadastre without a Kosovo ID card, which means conducting two more administrative proceedings before the provisional Kosovo institutions, additional time and costs.”¹⁵

The problem is the fact that the practice of usurpation, especially of land, has been frequent in the last few years. This means that cases of confiscation of property cannot be limited to the transitory “post-conflict” period. “In recent years, usurpation has been carried out unscrupulously, by simply occupying property, setting up a fence, building a house, cultivating land with agricultural machines, and sometimes it has been accompanied by forging documents. Construction and agricultural land are being usurped equally, while forests are being cut down and resold. Proceedings due to usurpation are mostly criminal, which are conducted due to criminal offense of illegal occupation of real estate, in which the property claim is emphasized, however, in none of the completed proceedings is this claim convicted in a fair and objective manner.”¹⁶

¹⁵ An interview with Maja Lakušić

¹⁶ Ibid.

EXAMPLES OF DIFFICULTIES IN EXERCISING PROPERTY RIGHTS

The following actions and processes have been identified in the threats to property rights so far, that systematically prevent members of the Serb community from enjoying their private property:

- Forgery of documents
- Non-compliance with court decisions
- Intentional damage or complete destruction of property
- Usurpation followed by threats and blackmail
- Cadastral forgery

Although the records available to Kosovo institutions are unreliable due to the lack of original cadastral documentation, the method of property registration after the first satellite survey was questioned in a way that it was sufficient for the “owner” to come to the cadastre office with two witnesses to confirm ownership of the property. This method of recording has been used in other countries as well, when the goal is simple and efficient recording of the factual situation, which certainly cannot be applicable in post-war circumstances in which different types of abuse are possible due to thousands of displaced persons. “Serbs were neither informed about this recording, nor did they have the freedom of movement to be able to register as owners in this way. Thanks to the fact that the cadastral records were moved to the territory of Serbia, they were later able to obtain evidence of the right of ownership over the property and point out the earlier real situation.”¹⁷

Maja Lakušić, who worked in the free legal aid program for three years, points out one of the most vivid examples of property rights violations: “A lady from Prizren gave her house, which she inherited from her mother, and which is located near the church of St. George in Prizren, for administration by the Kosovo Property Agency. In 2011, she was informed by this agency that the house was damaged and that it was no longer suitable for rent. The client filed criminal charges with the Prosecutor’s Office in Prizren and requested photographs and other evidence from the Kosovo Property Agency, but there was no progress in the proceedings before the Prosecutor’s Office. Several requests were submitted to deliver any notification to which she never received a response. In 2018, she found out that she “sold” the house to a local Albanian who is known for his criminal activities. After that, she found out that the house had been demolished and that the plot had been turned into a parking lot for that Albanian’s house. We found out that, on the basis of a false power of attorney by which she “authorized” that Albanian to sell her property, he made a contract of sale with his own wife to whom he paid about 30,000 euros and based on such a contract he registered as the owner in the cadastre in Prizren. The false power of attorney was allegedly made in Austria, although the lady did not leave the country during that period. The notary from Austria was

¹⁷ An interview with Maja Lakušić

officially contacted immediately, who confirmed that it had never certified this power of attorney, so after obtaining other evidence, criminal charges and litigation were initiated, as well as proceedings against the notary who made such a sales contract before the Notary Chamber of Kosovo. The Notary Chamber of Kosovo rejected the request to initiate proceedings, even though it is a blatant violation of the regulations and rules of the notary profession, while other proceedings are still ongoing.”¹⁸

Members of other non-Albanian communities also face problems, and the fact that a significant number of people whose human rights were endangered involuntarily resorted to the sale of real estate, where offered “compensation”, although lower than market value, meant avoiding the uncertain process of proving and recovering confiscated property. This problem is also stated in the National Strategy on Property Rights, which Kosovo adopted in 2016.

“Nusret Ajdezi was woken up by strong knocking on the door at midnight on June 19, 1999. Four armed men entered his home in a settlement in the centre of Priština and told him that his family had to flee by morning, or they would all be killed. “They were armed civilians. They said they were commanders (of the Kosovo Liberation Army). That night neither my wife, nor the children, nor I slept at all. We didn’t know where to go,” said Ajdezi. The next morning, Ajdezi talked to his Roma neighbours and learned that the same thing had happened to them. In three days, most of the Roma population living in Priština fled to Serbia. At the end of 2001, Ajdezi returned home and discovered that his house had been turned into a brothel. He was told that the house had been bought and was driven away with the blows of a metal bar. For almost two decades, Ajdezi has been living in a refugee camp in Novi Sad, fighting poverty and deteriorated health. “I built that house by working for 27 years in an Albanian-owned butcher’s shop, and they only grabbed it because I am Roma,” he says. The legal battle of Ajdezi to return his property was long and complicated. “The usurper Isa Hamiti says that he bought the house from another person. But the documents are fake,” says Ajdezi. According to court documents, the person who occupied Ajdezi’s house stated that he bought it from Bekim Ramadani, who does not appear as the owner, but as a person authorized by Sanija Deri, whose name is not registered as the name of the owner in the Kosovo cadastral register. At the time the purchase agreement was signed, in 2000, which says that Deri gave a power of attorney to another person to sell the house, she had been, according to the data from the registry book, dead for 30 years. Meanwhile, the seller Bekim Ramadani, from Medvedja, a town in southern Serbia, found himself in prison in Serbia for other crimes. The court has not yet decided on the Ajdezi case, but his house now exists only in photographs and in the memories of those who lived in it. A huge residential building was built in its place today, in which the seller of the house received two apartments from the investor.”¹⁹

¹⁸ Ibid.

¹⁹ Filip Rudić & Serbeze Haxhijaj, „Ukradeni domovi: Borba za povraćaj uzurpirane imovine na Kosovu“, BIRN, 29.05.2018.

“Forgery of documents is the most common form of “legal” usurpation, and here is how it is carried out. Powers of attorney by which Serbs authorize an Albanian to sell their property are being forged, and previously the alleged offices of notaries were in Macedonia, Montenegro, non-existent courts in central Serbia, for example, Municipal court in Rakovica, and not only the signatures of the clients are forged, but also the stamps of institutions. Based on such powers of attorney, purchase and sale agreements are made, which later become the basis for entry in the cadastral records. Another way is the court procedure for determining the right of ownership, during which the property that is owned by a Serb, when it is presumed that he/she passed away, becomes a subject of interest, and then lawyers enter the scene. The lawyer files a lawsuit against the property owner and seeks a determination of ownership, given that the defendant has either passed away or is unable to receive a summons because the address at the prosecutor’s disposal is simply not valid, temporary defendants are appointed who acknowledge the claim, and in a very short period of time, verdicts are passed, which quickly become final and serve as the basis for changes in the cadastre. The heirs of the rightful owners find out about the court proceedings only when they request ownership certificates from the cadastres and then their requests are rejected because they have no rights to be issued ownership certificates. Only when they obtain certain evidence that the property was once registered as owned by their ancestor, most often old ownership records, new ownership records are issued to them and the painful agony of proving ownership begins, which lasts for an average of 10 years.”²⁰

“Radoslav Zdravković from Čaglavica is one of many who have been trying to reclaim 14 acres of land since 2004 in one of the best locations in Priština, where Albanians whose names he knows, by forging documents, built a residential building. He points out that he discovered the fraud in 2000 and that they even deleted his plot from the cadastre in Priština, and the documents for his plot were forged in the court in Lipljan. He proved these allegations in court: “When I managed to return the plot to the cadastre, I filed a lawsuit with a request to stop the construction of the solitaire on my land, but the court asked me for 25,000 euros to ban the construction.” I did not have that money and now there is an apartment building there. I have been waiting for a hearing to be scheduled since 2004.” Zdravković is still waiting for the trial to begin.”²¹

Persons who are allowed access to cadastral records are also directly involved in the abuses. “As a legal advisor of the free legal aid project, I conducted the procedure of registration of property rights in the cadastre in Vučitrn for a client whose request for registration of property rights was twice rejected before contacting our office. The property that the client was trying to register was bought by the client’s father in 1925, as evidenced by the deed, when the right of ownership was registered in the land register. After 1999, the client did not visit the property for security reasons. He dares to visit the property only in 2004, because he heard that many Albanians are engaged in forging documents on the basis of which they are

²⁰ An interview with Maja Lakušić

²¹ Gračanica online, „Srbi na Kosovu teško do svoje – uzurpirane imovine“, 18.11.2020.

registered as owners in the cadastre. He goes to the cadastre when he learns that he is not registered as the owner of the land, submits the application for registration and all the documentation he fortunately kept, the decision on inheritance from 1996 and the decision of the cadastre on registration from 1997 and then the cadastre which was under UNMIK supervision registers him as the owner and issues an excerpt from the list of real estate. However, after 2008 he went to the cadastre in Vučitrn again and found out that he was still not registered as the owner and then he starts submitting indisputable evidence again, and the administrative proceedings ended with a negative decision twice, after which the proceedings were initiated before the Basic Court in Pristina, to the department in charge of administrative disputes. As a reason for rejecting the request, it is stated that there are discrepancies with the cadastral study, as well as that the agricultural cooperative is the owner of the property in question, and that the property is under the exclusive jurisdiction of the Privatization Agency of Kosovo, i.e., that the change cannot be made because “according to the property history, we did not find that the property in question was registered in the name of other owners, except for the agricultural cooperative.” It is especially interesting that his right of ownership over this property was determined by the decisions of the Kosovo Property Agency KPA (now KPCVA), which in these proceedings did not declare itself incompetent, but decided on in favour of the plaintiff. It is unbelievable that his property right has already been registered in the cadastre and that the re-exercise of this right has been going on for more than 7 years.”²²

²² An interview with Maja Lakušić

KPCVA – KOSOVO PROPERTY COMPARISON AND VERIFICATION AGENCY

Kosovo Property Comparison and Verification Agency was established under the Law 05/L-010, by which it inherits the mandate of the Kosovo Property Agency (KPA). The mandate of the Agency is to receive, compare and, through the Property Verification and Adjudication Commission (PVAC), to decide on specific cases based on the comparison of cadastral documents from before June 1999 held by Serbian institutions and current cadastral records in Kosovo which include private, private commercial and private property of religious communities.²³ Due to numerous differences and discrepancies in the cadastral records, the basis of the work of this agency is the comparison of documents, as well as the determination of ownership, which includes executive competencies.

KPCVA has a mandate to decide through the Property Claims Commission (PCC) on property claims and claims related to the right of use (with the right to appeal to the Supreme Court of Kosovo) regarding private immovable property, including agricultural and commercial property, which were previously filed with the KPA. This type of determination of property rights dates to UNMIK Regulation 1999/23 which established the Housing and Property Directorate, which ceased to exist with the establishment of the Kosovo Property Agency. Therefore, the current mandate of KPCVA is to implement the final decisions of PVAC, KPCC, Housing and Property Claims Commission (HPCC), as well as the judgments of the Appeals Chamber of the Supreme Court. This agency normatively has a wide range of competencies: registration of PVAC decisions in cadastral records, placing property under the Agency's management, evictions, confiscations and demolition of illegal buildings, auctions, and lease agreements, as well as mediation mechanisms in implementing decisions on confiscation and demolition of illegally constructed buildings.²⁴

KPCVA is composed of four main bodies, the Executive Secretariat, PVAC, PCC and the Supervisory Board, and it has five regional offices. The Supervisory Board is mandated to oversee the KPCVA's work and to formulate the main direction of the work. It is composed of five members, three of them being international representatives. The Supervisory Board was in the public spotlight during 2019, when representatives of the United Kingdom and the United States withdrew from the Kosovo Property Comparison and Verification Agency. First, the British ambassador Rory O'Connell resigned as the chairman of the supervisory board of this agency, due to the decision of the Kosovo Assembly to appoint Naser Shala, who was a former KLA commander and who is considered an unqualified candidate, as the president of the secretariat. The British Embassy stated that by appointing a candidate who does not meet the criteria for this position, the Kosovo Assembly violated the memorandum of cooperation with this embassy. In August of the same year, US representatives withdrew

²³ Zakon o Kosovskoj agenciji za upoređivanje i verifikaciju imovine 05/L-010

²⁴ KAUVI Radni plan 2018, p. 3

from the board, and Ambassador Philip Cosnet stated that **“the United States left the board of the Kosovo Property Comparison and Verification Agency because it is used by the Kosovo leadership for personal and political interests.”** Also, before the final decision on withdrawal, he stated that “an unqualified representative of the board of the Kosovo Property Comparison and Verification Agency remains in that position, undermining the faith of citizens in merit-based choices... It is time for parties to propose solutions to end corruption and cronyism.”²⁵

The Executive Secretariat has a major operational role in the process of resolving differences and disputes between the original cadastral documentation held by Serbia and the current cadastral records in Kosovo. The main tasks of the Executive Secretariat are as follows:

- Receiving and registering cases based on the original version of scanned cadastral documents before June 1999, taken from Kosovo by Serbian authorities and received from/through the EU Special Representative, comparing them with cadastral documents in Kosovo to identify gaps or discrepancies between these two groups of documents.
- Following up original case files, including decisions of the Secretariat, to the Kosovo Cadastral Agency (KCA) when no differences or discrepancies are found,
- Notification of the parties in whose names the properties are evidenced, when gaps or discrepancies are found,
- Verification of documents,
- Processing and preparing cases to be reviewed by KPCVA,
- Receiving and sending appeals to the Supreme Court, and
- Implementing the KPCVA and Supreme Court decisions and sending final decisions to the Kosovo Cadastral Agency.²⁶

Despite the complex system that the Agency should manage, it is evident that there is a significant gap between the authority to be the final body in determining property rights and the capacity to implement various assigned competencies from eviction to compensation. First, the key condition for the success of the Agency’s work is the missing scanned cadastral documents, which are estimated at more than four million.²⁷ Second, the work plan from 2018 states that the non-functional supervisory board and the non-appointment of the director, as well as the deputy director, enable a greater indirect and direct influence on the work of the Agency.²⁸ Also, the fundamental problem is the lack of qualified staff, as well as the departure of experts for property issues related to legal expertise and technical expertise of geodesy.²⁹

²⁵ Kossev, SAD se povukle iz borda Kosovske agencije za upoređivanje i verifikaciju imovine 16. avgust 2019.

²⁶ KAUVI Radni plan 2018, str. 5

²⁷ KAUVI Radni plan 2018, str. 6

²⁸ Ibid, 7.

²⁹ Ibid, 9.

Recommendations of the Kosovo Ombudsman pointed out the need to change the adopted legal solutions related to eviction and the lease program. Namely, according to the current legal solution, the Agency has the authority to evict twice, which was assessed by the Ombudsman as a potential violation of the rights of property owners, since usurpation must be sanctioned by the competent authorities, regardless of the number of evictions.³⁰ Also, the adopted law limited the application of the lease system to 18 months from the date of entry into force. This posed a systemic problem, as 4,112 properties were included in the voluntary lease program.³¹ The Kosovo Ombudsman recommended that this program be continued as a sudden cessation after the 18-month deadline would lead to serious financial consequences for property owners from Serb and other non-majority communities, as well as for displaced owners who rely on the lease program.³² These recommendations initiated the process of amending the law, which would include the right to multiple evictions, not just two, as well as the continuation of the asset management program for an indefinite period. However, these amendments have not been adopted to date.

KPCVA's particularly sensitive jurisdiction is eviction. The total number of illegally occupied property subject to eviction is 46 cases. The largest number is in the northern part of Kosovska Mitrovica, where 22 properties belonging to Kosovo Albanians have been illegally occupied by Kosovo Serbs, while two properties belonging to Serbs have been usurped in the southern part by Albanians. In Priština, there are ten usurped real estate belonging to Serbs, in Peć nine, of which seven belong to Serbs, one to a Bosniak and one to a private company, and finally, in the Prizren region, out of three real estate, two evictions are carried out over Serb property and one over Roma property.³³

Another complex competence of this Agency is related to decisions on demolition of illegally built real estate on the property of displaced persons. In 2019 alone, KPCVA issued 55 demolition decisions (Peć (20), Priština (18), Gnjilane (12) and Prizren (5)), but only two demolition procedures were carried out.³⁴ The reason stated is the lack of financial resources for the implementation of the adopted decisions, since the amount for the obligation to implement the compensation alone reaches 3.2 million euros.³⁵ Insufficient budget makes the normatively defined broad competencies of the Agency meaningless and prevents the protection of fundamental rights, primarily for the Serb community, including displaced persons. Especially if we take into account the obligation to apply the Pinheiro principle, which was not taken into account when writing the current law, and which implies releasing the applicant from the obligation to pay for eviction or demolition, because it can be an insurmountable financial obstacle to exercising property rights, especially for displaced persons. Without an adequate budget, KPCVA is not able to apply the Pinheiro principle.

³⁰ An interview with Marija Radulović, Ombudsman Kosovo

³¹ OEBS, *Mehanizam za rešavanje masovnih imovinsko-pravnih zahteva: iskustvo sa Kosova*, jun 2020, str. 22.

³² An interview with Marija Radulović, Ombudsman Kosovo

³³ OEBS, *Mehanizam za rešavanje masovnih imovinsko-pravnih zahteva: iskustvo sa Kosova*, jun 2020, str. 16.

³⁴ OEBS, *Mehanizam za rešavanje masovnih imovinsko-pravnih zahteva: iskustvo sa Kosova*, jun 2020, str. 25.

³⁵ KAUVI Radni plan 2018, str. 10

Also, the continuation of the authority to manage the lease program over 4,396 real estates, which includes the imposition of monthly rent payments, requires additional financial resources.³⁶ Finally, the exercise of the right to compensation is impossible without adequate budget support. Therefore, “the current state of affairs regarding the implementation of the compensation program can be understood not only as a lack of self-awareness of the KPA and KPCVA as the main competent bodies to provide fair and effective remedies to applicants, but also as insufficient focus of the Government on these issues in order to realise its obligations related to human rights arising from international law and in accordance with the *Stabilization and Association Agreement (SAA)* with the European Union (EU).”³⁷

³⁶ Ibid, p. 13

³⁷ OEBS, Mehanizam za rešavanje masovnih imovinsko-pravnih zahteva: iskustvo sa Kosova, jun 2020, p. 29.

KPCVA'S JURISDICTION AND COURT DECISIONS

A particular problem in exercising basic property rights in Kosovo is the lack of coordination, as well as legal harmonisation between different institutions, especially the competences of KPCVA with the actions of regular courts. Based on previous normative acts, the mandates of HPD, KPA and KPCVA are given exclusive jurisdiction over unresolved property claims related to the conflict and appeals against their decisions can be submitted only to the Supreme Court of Kosovo. According to lawyer Jovana Filipović, the fact is that the courts have initiated proceedings for the same requests that fell under the exclusive jurisdiction of KPCVA, as well as previous agencies. Also, due to the inadequate actions of the agencies, the injured parties, mostly of Serb nationality, are initiating proceedings before the regular courts, hoping that in that way they will solve the problem of unhindered exercise of property rights. However, “the practice so far has shown an even bigger problem in the proceedings of courts where hearings are not held for several years, and when they are scheduled, the court, although obliged to provide an interpreter, does not do so, and the proceedings are postponed indefinitely.”³⁸ During that time, the usurpation is carried out without problems, it receives its cadastral verification, and some buildings are completely demolished and new ones are built in their place without any action by the competent authorities. What is particularly worrying is that even the already established decisions of KPCVA and previous agencies are annulled in regular court proceedings, despite the decision of the Constitutional Court in the case of Draža Arsić that the decisions of agencies are *res judicata*, and regular courts have no jurisdiction over these cases.³⁹ This is not an isolated case of non-compliance with the decisions of the Constitutional Court in the case of endangering or usurping Serb property, since on several occasions KPCVA did not execute the judgments of the Constitutional Court, which is justified by ambiguities or lack of funds.⁴⁰

³⁸ An interview with lawyer Jovan Filipović

³⁹ Ibid.

⁴⁰ OEBS, Mehanizam za rešavanje masovnih imovinsko-pravnih zahteva: iskustvo sa Kosova, jun 2020, str. 26.

RECOMMENDATIONS

It is necessary to provide scanned and indexed data from cadastral records in the possession of Serbian institutions to Kosovo institutions through the EU Delegation.

It is necessary to determine the exact number of cases of violation of property rights, as well as the modalities of their permanent solution, especially in the context of compensation.

It is necessary to conduct efficient and impartial verification and comparison of the current situation with the cadastral records kept before the 1999 conflict.

Effective legal mechanisms need to be established to smoothly exercise the competences of KPCVA, including exclusive jurisdiction over the usurped property, in order to avoid duplication of processes and decisions with regular courts.

It is necessary to provide regular and stable financial resources that would enable the smooth operation of KPCVA in the processes of eviction, demolition of illegal buildings, compensation, etc.

Institutional obstacles to the implementation of adopted decisions concerning usurped property need to be removed, in particular with regard to the implementation of judgments of the Constitutional Court in Kosovo.

The topic of exercising property rights should be part of the dialogue between Belgrade and Priština, and in that context the possibility of establishing an effective international mechanism that would monitor the entire process of resolving most cases of endangerment, usurpation, demolition, or illegal construction, especially of property of non-majority communities.

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