



The Lack of Legal Definition of Different Types of Property Rights in Kosovo

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Abstract

The legal concepts from the past of the socialists of Kosovo must be removed and their rights and responsibilities must be clearly defined by law, in order to stand on the basis of a market economy that will support law. The duration of the right is regulated with all parties, unless it is something else with special lectures, but the duration cannot exceed ninety (99) years. The methods used in these scientific works are: comparative and analytical. These methods are used to see the differences and methods used between the Republic of Kosovo and other foreign states.

Keywords: *Ownership; Legal Status; Contract; Exploitation; Law*

1. Introduction

The purpose of this scientific paper is to analyze and research the 99-year lease according to the legislation of the Republic of Kosovo, contributing to the clear definition of property rights, their holders and their content, as well as how this issue is regulated in accordance with EU standards and international ones.

Private property rights in Kosovo are well defined. However, other non-private types of rights – state property, social property, urban land for construction, 99-year lease, public and municipal property – are inconsistently used in legislation. Lack of clarity opens the way for legal uncertainty and ambiguity, thus contributing to confusion over who has legal title and what obligations to what type of property. The relevant provisions of the Constitution are vague and allow for different interpretations, thus leading to inconsistent application of the law in practice.

The purpose of this scientific paper is to analyze the different types of properties that need to be clarified in order to build a comprehensive and consistent legal framework that guarantees legal certainty and clarity.

2. Methodology

The study focused on the analysis of the meaning of legal status of the 99-year lease in the republic of Kosovo and the determination of the methods of investigation of these of legal status of the 99-year lease. This study is based on the use of multiple research methods. Special scientific (Maloku, 2021:53). The historical method will reflect the birth and spread of of legal status of the 99-year lease. The descriptive method will also describe the definitions of the nation of of legal status of the 99-year lease.

Using comparative, theoretical and meta-analysis methods, the views of several different perpetrators will be presented (Maloku, 2021:170) of legal status of the 99-year lease. The comparative method is used to compare the measures applied by the different laws of the world and Kosovo legislation for combating of legal status of the 99-year lease. While, through the statistical method, the most frequent cases of these crimes have been reflected through various applications that are usable nowadays. The research design is not experimental.

Since it is clear that this topic is inherently complicated, the paper also uses the content analysis method (Maloku, 2020:323) as a necessary method to study multidimensional research on legal status of the 99-year lease.

3. Results

According to social property practice, land within urban areas was dedicated to the construction of residential facilities and buildings, and was categorized as "construction land". Citizens acquired the right of ownership over the residential building, but they were only guaranteed the right of permanent use of the construction land on which the building was built. A significant part of the housing stock of Kosovo was built on this land, as well as a significant part of the buildings without permission today. Although it is assumed that this category of social property has been transformed into state property, the previous legislation regulating the access and use of this land is still in force.

Therefore, citizens are transferred de jure from the municipality, only the right of permanent use of the land. The right to permanent use of the land exists only as long as the residential property exists. In case the object is destroyed, the owner of the object has the right to request permission for the reconstruction of the object. If this right is not exercised, the land is returned to the municipality. The implications of this right are that the object and the land under it are not united in a single property unit and as such cannot be registered in the cadastre and subject to legal circulation of land, thus limiting the possibility of legal circulation of land. property and reducing its value. This way of organization increases the cost of the transaction because in order to comply with the law, the municipality must intervene in the transaction as a third party. Moreover, citizens are often not aware that they are trading as ownership only the rights over the object and not the ownership rights over the land. The general decrease in the value of the property is also reflected in its value as a mortgage (collateral). A more immediate concern is the impact of the designation "construction land" on the process of legalizing constructions without permission. Current laws prohibit the legalization of unauthorized construction on state or public

3.1 State and Public Property

The legal framework of Kosovo does not clearly define the rights and obligations arising from the categories of "state" and "public" property. In addition, issues such as: the mechanisms responsible for the administration of these types of properties, whether this property can be transferred to a third party or not, and if so, the procedures for transferring ownership rights have not been specified. Furthermore, the terminology used to describe these two types of properties is inconsistent throughout the framework. In

some laws these terms are used one after the other, while in others they can be interpreted as separate and distinct from each other. The existence of this inconsistency can be illustrated by an example from the Constitution. Article 121 of the Constitution refers to public property, which includes the natural resources of the Republic of Kosovo, which includes water, airspace, mineral resources and other natural resources such as land, flora and fauna, other parts of nature, immovable property and property. others of special cultural, historical, economic and ecological importance. With this, the concepts of "state" and "public" are mixed. For the term "state", the distinction could be thought of as the property that would include the property with which a state institution operates, as might be the case of a research laboratory. However, "public" property could be defined as property and resources that are for public use, such as a public park. Definitions vary from state to state, as there is no standard definition and the Constitution does not provide sufficient guidance to distinguish between these two types of property. In addition, natural resources can also be privately owned. The evidence shows that the legislator never intended for the Republic of Kosovo to be the owner of all the natural resources of the state. Another issue related to state property is the status of property owned by the Socialist Federal Republic of Yugoslavia (SFRY) and Serbia. The practice of international law supports the argument that Kosovo is the successor state of the RSFJ and Serbia and enjoys the rights over the immovable property which was acquired by these two states and is located in Kosovo. Kosovo has not adopted a law by which it would be declared as the successor with the right to take ownership of the immovable property that is in the name of these states and located in Kosovo, thus creating legal uncertainty regarding the status of these properties. Also, the status of the properties of the former Social Political Organizations of the former Autonomous Province of Kosovo has not been defined.

3.2. Property Rights of Municipalities

The Law on Local Self-Government confirms and re-enforces previous UNMIK legislation which gives municipalities the right to own and manage real estate. In practice, these assets should have been registered in the cadastre under the name of the municipality. Due to outdated cadastral documents, the inventory and registration of immovable property owned by the municipalities has not yet been completed – thus creating confusion. This law foresees the possibility that the municipalities have the right to ask the KPAr to return their social property. As discussed above, it is assumed that all social property has been transformed into state property. If this is so, then KPAr has no authorization to transfer social property to municipalities. If this assumption is not correct, then it seems that the transfer of NSH-ve property to the municipality without compensation to those who have rights over that property could be considered as expropriation without compensation. The Law on the Leasing and Exchange of Municipal Immovable Property also gives the municipality the right to ask the KPAr to return the rights to the social property. As such, KPAr. will not have the authority to transfer social property to the municipality. If the assumption that the social properties have been transformed into state property is not correct, it would seem that the transfer of the assets of the SE to the municipality, without compensating those who have rights to the assets of the SE, can be considered as expropriation without payment of compensation.

3.3 Status of 99-Year Leases

Constitutional Court of the Republic of Kosovo, judgment in the case KI 08/09. December 17, 2010. p. 65. The land owned by former social enterprises (SE) was usually the most valuable asset of the enterprise. Often during the privatization of NSHs established for the production of agricultural products, the Kosovo Privatization Agency (KPAr.) separated the land from the enterprise and privatized it through leasing for a period of 99 years, as provided by the UNMIK regulation- ut which is still in force. UNMIK was determined for this form of private property in land as a way of transformation because it lacked the authorization to alienate the land through the sale of the right of ownership (with full disposal, use and sale) due to its unsettled status. politician of Kosovo. Although the 99-year lease is recognized in Western

Europe and the US as a secure form of land ownership that encourages agricultural investment, this concept is not known in the Balkan region. Among investors from the region there are concerns that this is seen as a temporary rental contract and as a disincentive to investment. As mentioned below, it is recommended to adopt legislation that would enable the de facto transformation of the right of use over the construction land and the 99-year lease into a permanent private property right (with full availability, use and sales).

According to the Law on Construction Land, construction land is defined as land where it has already been built or is planned for construction, land within the limits of the general urban plan determined for the expansion of the city, and land in other areas destined for the construction of residential complexes and other complexes. The municipal assembly is authorized to issue decisions on defining the boundaries of what would be considered urban construction land.

As a result, the land defined as construction land is registered in the cadastral registers with the title "user of social property" and with the abbreviation "P.SH.SH." placed before the name of the holder of this right of use. In practice, this has not happened in all cases, but there are cases where, due to technical errors, it was registered as a property right in the possession sheet.

The right to use socially owned construction land can be transferred to a third party only together with the right of private ownership over the building. The right of use exists as long as the building exists on the urban construction land. In case the building is destroyed or depreciated, the owner of the building has the right of priority to rebuild the building. If the right of way is not used, the land is returned to the administrative authority of the municipality, which can then grant the right of use to another person.

4. Discussion

Based on many researches that have been done in the context of identifying the impact of the lack of accurate definition of legal property rights, results have been reached that support the necessary importance of regulation to ensure the basis for a land market that will support economic growth.

In the following, we will take some examples of how some EU countries treat the 99-year lease:

CROATIA - This provision has resulted in the transformation of social construction land into private property, provided that the holder of the right of use is a private person. It also returned the communes and cantons to the owners of the former social real estate, in which they had the right of use. Specifically, in the case of construction land and the division between private ownership of an object built in social real estate, Croatian law combined the ownership of the object and the land. The default rule in this regard is that the owner of the object has acquired ownership of the land (formerly social).

MONTENEGRO - The property rights reform of 2009 transformed the right to use former social property, now state property, into private property. Unless otherwise provided by law, the registered usufructuary has the right to be registered as the owner of the relevant real estate. This applies equally to private persons and to legal entities, such as municipalities. The correction in the cadastral books is made at the request of the interested party.

GERMANY - The owner of the building will have the right to use the immovable property for up to 90 years and pay a fee between 2% and 3.5% of the market value of the property to the then owner of the immovable property.

Conclusion

Legislation defining property rights should be accessible, precise and predictable in application in order to avoid any risk of arbitrariness.

Following the establishment of the United Nations Interim Mission in Kosovo (UNMIK) in 1999, UNMIK decided that laws applicable in Kosovo prior to March 24, 1999 would continue to apply in Kosovo unless such laws were discriminatory, contrary to Resolution 1244 or subsequent regulations issued by UNMIK. The same regulation provided that UNMIK shall administer movable or immovable property, including money, bank accounts and other property registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia or any of its bodies, which was in the territory of Kosovo. Social property was not originally included here and therefore has not been under the administrative authority of UNMIK. Only at the end of 2000, UNMIK amended this regulation, including social property in the list of properties to be administered by UNMIK

Proper regulation also contributes to better land use and respect for property rights. This will affect the achievement of the goals of alignment with EU policies and legislation, the strengthening and protection of human rights and the strengthening of the market economy.

Not transforming the 99-year lease into ownership would have the consequence of continuing to maintain social ownership despite the intentions to remove this type of ownership, as well as continuing the current practice of different interpretations and obstacles in legal circulation and the use of this property;

1 The judicial practice of the European Court for Human Rights; *Novik v. Ukraine*, No. 48068/06

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