

AGRARIAN REFORMS AND THEIR IMPACT ON PROPERTY RIGHTS IN THE EMERGING ECONOMY

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Abstract

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The concept of legalizing properties and constructions without permission is currently under debate in Kosovo's field of property rights. Efforts to establish an appropriate legal framework have led to the enactment of laws and by-laws aimed at addressing illegal construction. Constructions on "social" properties without permission, informal acquisition, failure of ownership transfer, and unresolved matters related to properties confiscated under the 1933 agrarian reform have not yet been dealt with, except for their inclusion on the waiting list, which denies legal certainty. The study finds that the main cause of the issues evident in the property legalization process and the exercise of development rights on these properties is Yugoslavia's agrarian reform of 1933. The research concludes that legalizing properties requires a normative approach and utilizing similar experiences from other Western Balkan contexts. Therefore, the objective of this paper is to analyze, using analytical, legal-dogmatic, chronological, and qualitative methods, the policies for property legalization and thus recognizing citizen property rights. The research is of great importance for decision-making institutions because it can be used as an impetus for finding the right approach, aside from the normative one, to address the issue of property legalization.

Keywords: Agrarian Reform, Expropriation, Illegal Construction, Acquisitions, Ownership Transfer, Legalization

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1. INTRODUCTION

The right to property, specifically the right to use, dispose of, and transfer private property, is protected by codified norms and relevant legislation. Furthermore, the Constitution, local laws, international agreements, and conventions explicitly

and unequivocally guarantee the exercise of this right without interference or encroachment by others, establishing it as an absolute right (Constitution of the Republic of Kosovo, 2008, Article 46; Council of Europe, 1950, Article 1 of Protocol 1). The lack of legal certainty regarding ownership is one of the most significant issues

concerning property rights in Kosovo. In particular, there remains a substantial number of structures that were built without permission, creating substantial uncertainty when it comes to asserting ownership rights over them.

This uncertainty has arisen due to the inability to prove ownership of the land on which these structures are built for various reasons, including informality in property sale and purchase transactions (Organization of Security and Cooperation in Europe [OSCE], 2009, p. 10); constructions on social (state) properties; failure to initiate the inheritance procedure (property registered under a deceased testator); confiscation of properties during the 1933 agrarian reform and the assumption of administration of these properties by initial owners. Consequently, property rights concerning the land where unauthorized constructions were carried out could not be registered in the cadaster due to a lack of formal (written) evidence confirming ownership of the land.

For years, governmental institutions have not adequately addressed this issue. The former law pertaining to unauthorized constructions did not anticipate a suitable solution for the present situation faced by a significant portion of citizens dealing with this problem, leading to a regrettable stagnation in the process of legalizing these properties (Assembly of the Republic of Kosovo, 2009). The Kosovo Government ratified the National Strategy for Property Rights in Kosovo in 2016, encompassing provisions related to unauthorized construction and property legalization (Ministry of Justice of the Republic of Kosovo, 2016, p. 25). Additionally, this document tackles the concerns with the Law on Dealing with Unauthorized Constructions, which contained numerous legal gaps and unfavorable provisions. The New Law on Dealing with Unauthorized Constructions was passed in 2018, addressing some of the issues of the previous law, such as allowing ownership rights acquisition over a building without a permit, limited to the right of use only (under the previous law), thus streamlining the process of legalizing these properties. However, the challenge of substantiating land ownership where the construction took place has yet to be adequately handled, leading to delays in the legalization process (Assembly of the Republic of Kosovo, 2018, Article 10).

However, creating effective public policy entails the actions and conduct of the institution that forces individuals to follow the law and so enhances their quality of life (Brovina & Arifi, 2023).

As a consequence, this article strives to analyze the predicament arising from the legalization of properties and structures without permission, shedding light on the historical events surrounding the 1933 agrarian reform, which largely contributed to the contemporary issues related to ownership rights (Obradović, 2005). Furthermore, the article offers practical recommendations based on the examined data. The issue of numerous unauthorized constructions has emerged due to the confiscation and nationalization of Kosovar Albanian lands between the two World Wars, as well as after the Second World War.

Additionally, a substantial portion of these lands and the properties of the Serbs that were placed under administration or purchased by

the Albanians were managed informally, rendering it impossible to prove ownership of the lands on which the structures were built without permission. The process of legalizing constructions without permits has also been complicated by delays in initiating inheritance proceedings, resulting in protracted and intricate, yet costly procedures.

This paper addresses the following research questions within an interdisciplinary discussion:

RQ1: How prevalent is illegal construction in Kosovo?

RQ2: Is there an adequate legal framework in place to tackle the issue of illegal construction?

RQ3: How can the issue of illegal construction be effectively addressed?

The aim of this paper is to illuminate the dimensions of the illegal construction problem, the causes of its emergence, and the approach that should be adopted to address this issue. Furthermore, the paper aims to provide practical solutions through normative approaches and practices from other contexts. Given the scarcity of comprehensive sources from preliminary research and acknowledging that the problem explored in this paper remains under-researched, statistical data and interviews with civil servants from various municipalities in Kosovo have proven invaluable for the scope of this paper. Based on the conducted research, the process of property legalization in Kosovo remains intricate due to the absence of property documents, informal sales, and unresolved issues surrounding properties confiscated during the 1933 agrarian reform. Consequently, this paper seeks to uncover the causes of the phenomenon of construction without permission, violations of property rights, and property development using analytical, qualitative, legal-dogmatic, and chronological methods. In addition to analyzing the legal foundation for the legalization of properties and property rights, this paper contributes to developing suitable solutions for the Kosovo context, drawing from the practices of other countries in South-Eastern Europe.

The rest of this paper is structured as follows. Section 2 presents the pertinent literature that forms the research framework and establishes the study's foundation. In Section 3, the research methods and overall approach to the subject are discussed. Section 4 delves into the results and discussion, including findings derived from processed qualitative data. Finally, Section 5 concludes the research paper, offering recommendations for further addressing the main problem identified.

2. LITERATURE REVIEW

In the contemporary context, a significant challenge arises from the scarcity of documentation related to the legalization of land and constructions on lands that were expropriated and confiscated after the First World War. During the Ottoman Empire era (before 1912), cadastral registration, known as "*mufasal defteri*" ("entry book" in Turkish), maintained meticulous records (Ahmeti & Lecaj, 2023). However, these cadastral records have been entirely disregarded since Kosovo's acquisition from Serbia in 1912, marking the beginning of a colonization process characterized by widespread violations of property rights within the Kosovo Albanian population.

The Balkan Wars and the First World War inflicted substantial devastation upon Kosovo and its neighboring regions. Serbia's dominion extended over the kingdom, encompassing territories like Croatia, Dalmatia, Vojvodina, Slovenia, Montenegro, Bosnia and Herzegovina, Kosovo, and Macedonia. Central to this dominion was the existing Serbian state, its military, and the Karadjordjevic monarchy. Notable non-Slavic minorities included Germans and Hungarians, primarily situated in Vojvodina, and Albanians, prominently residing in Kosovo. In Kosovo, colonization occurred concurrently with land reform, where land confiscated from Albanians was allocated to Serbs and Montenegrins. Although ostensibly open to all, this scheme exhibited a clear bias towards Serbs (Judah, 2008, pp. 39-45).

The colonization process in Kosovo unfolded in three distinct phases aimed at displacing Albanians from their ethnic lands. The first phase covered the period from the invasion in 1912 to the conclusion of 1915. The second phase spanned from 1921 to 1931, followed by the third phase continuing until 1941 (Buxhovi, 2012, p. 179).

Historically, the objective of the Serbian Kingdom's policy was to alter the ethnic composition of Albanian lands. Achieving this objective required a robust and formal legal framework to legitimize colonization efforts in the eyes of the international community. As a result, the Agrarian Colonization Law was enacted in September 1919 and subsequently supplemented and modified in 1931 and 1933. The establishment of the Ministry of Land Reform facilitated the execution of these policies, with various offices located in Albanian cities within Kosovo. However, these legislative endeavors disproportionately favored Serbian settlers, significantly discriminating against Kosovar Albanians (Ismajli & Kraja, 2011, p. 231).

The campaign to expropriate Kosovar Albanians commenced shortly after Kosovo's reoccupation. Initially targeting activists of the national movement, this campaign persisted by expropriating so-called abandoned lands, which included communal pastures and properties temporarily vacated by Albanian owners due to prevailing uncertainty. The scale of expropriation escalated significantly after 1923 when agricultural commissions were authorized to seize land not covered by existing laws. This effort exploited the lack of land titles for the majority of Albanian peasants, who had inherited their land from the Ottoman era. These landowners were labeled as land usurpers and subjected to expropriation. The laws of 1931 and 1933 allowed for the appropriation of land rights of Albanians up to their doorsteps. This situation often led to Serbian settlers occupying the upper floors of houses, while Kosovo Albanian landlords were confined to the ground floors of their own properties. This colonial agrarian reform, spanning from 1919 to 1941, resulted in the expropriation of approximately 218,000 hectares of land in areas inhabited by Albanian populations, with around 192,000 hectares in Kosovo alone. This event led to the settlement of around 15,000 Serbian settlers on these expropriated lands, significantly impacting arable land and the rural population of Albania. This ultimately resulted in large-scale migration of Albanians to Turkey (with 250,000 displaced individuals between the two world wars) and

consequent shifts in Kosovo's ethnic composition (Ismajli & Kraja, 2011, pp. 231-232).

The interwar Serbian governments had a clear objective of reshaping the ethnic composition in favor of Serbs. They were willing to employ all available tools of state and para-state power to achieve this aim. The integration of Albanians was not a priority, and Kosovo was seen primarily as an administrative entity (Schmitt, 2008, pp. 145-146). The colonization process unfolded between the two world wars (1919-1941), characterized by significant campaigns in 1922, 1928, 1936, and 1937. The selection of colonization regions followed strategic principles, focusing on border areas with Albania and key road networks. This strategic approach led to a proliferation of the Serbian population, effectively doubling their presence in regions like Central Kosovo, Peja, Gjilan, and Istog. However, within a decade, it became clear that settling Serbian colonists alone would not result in a Serbian majority due to the high Albanian birth rate. Consequently, reducing the Albanian population became a strategy, achieved through forced migration to Albania and Turkey (Schmitt, 2008, pp. 154-157).

Starting in 1935, a new law was used to justify a series of land confiscations targeting Albanian properties. If a farmer lacked Yugoslav documents confirming ownership, the land was considered state property. These documents were not provided to Albanians, leading to the complete confiscation of property in 23 Albanian villages with a collective population of 6,064 individuals in central Kosovo. The official policy stipulated that such individuals were entitled to only 0.4 hectares per family member, a figure below the subsistence minimum (Malcolm, 1998, p. 295).

In a region where Albanians formed the majority population in Kosovo, the Kingdom of SKS (Serbs, Croats, and Slovenes) largely denied Albanians access to agrarian reform. The agrarian authorities not only withheld land to the maximum extent allowed by law but also established colonist compounds, which deprived families of the land needed for subsistence. These discriminatory actions against Albanians received unwavering support from politicians, police, and military entities. Even ministers overseeing agrarian reform emphasized the importance of colonizing the "Southern Provinces", identifying it as a pivotal matter both nationally and economically (Obradović, 2005, p. 141).

The fundamental goal of Kosovo's agrarian reform was to break up the concentration of the Albanian population, which constituted nearly 70% of the total. This was pursued under the pretext of establishing order and peace through the establishment of colonies along the Albanian border and strategic communication routes. These "national" objectives were realized in 1942 through pressure and terror inflicted upon Albanian peasants, leading to the forced abandonment of their land to make way for the "national element", referring to the colonists. To achieve this, a convention was signed to relocate Albanians to Turkey, enabling the settlement of colonists in their place. Through this strategy, the national goals of agrarian reform were achieved, albeit at the cost of exacerbating tensions between Albanians and colonists (Obradović, 2005, p. 142).

Confiscation acts as a legal mechanism by which the state can seize private property without providing compensation. The initial federal asset forfeiture law was enacted on June 9, 1945, and later amended on July 27, 1946 (Law on Agrarian Reform and Colonization, 1965). Under this legal framework, condemnation was established as a financial penalty, involving the seizure of property from convicted individuals without providing compensation. This confiscation acted as an additional punishment for specified criminal offenses. The communist government effectively used this principle to label individuals with significant capital as “enemies of the people”, leading to prolonged imprisonment and complete asset confiscation through orchestrated court proceedings. The concept of sequestration, as defined by this law, involves temporarily transferring the administration of an individual’s property or parts thereof. This is applicable when there is a reasonable expectation of eventual confiscation. Administration is taken over by the state body responsible for managing public property, aimed at safeguarding the state’s property interests. A substantial amount of private property became state-owned under this law. Driven by economic growth objectives, this measure had a more extensive quantitative impact compared to subsequent nationalization efforts (Marinković, 2012).

This law extended beyond the economic realm and applied to agriculture as well. Farmers, who failed to meet obligations regarding the acquisition of agricultural products, as established by specialized regulations, faced severe consequences including the confiscation of cultivated land. Such measures often incited dissatisfaction and resistance among farmers. This was compounded by unrealistic valuations of material potential and notably low purchase prices. The implementation of property confiscation penalties varied across different parts of Yugoslavia, resulting in differing sentences for the same offense. For instance, Serbia imposed strict penalties such as complete confiscation for major landowners, while Croatia enacted partial confiscation of real estate. Slovenia and Bosnia and Herzegovina experienced minimal instances of foreclosure. On July 2, 1947, the Decree on the Registration of Ownership of State-owned Real Estate was introduced. This aimed to register ownership under the prior law in the Register of Ownership of Confiscated Property and facilitate ownership acquisition. This involved conclusive documentation for clear determination of property ownership. Administrative authorities could demand ownership registration without formal proof if the property was state-owned before April 6, 1941 (Marinković, 2012).

After the Second World War, the property confiscation law allowed expropriated lands from the agrarian reform in Kosovo to be effectively legalized in the name of settlers, thus stripping Albanians of their ownership. Furthermore, Article 3, paragraph h, enabled the confiscation of properties abandoned during the war without owners or legal heirs. According to this provision, the properties of Kosovo Albanians who opposed the political system at the time were confiscated. An example is the Balaj family in the village of Kernina, whose significant forest and working land were seized, justified by their lack of valid documents from the 1933

agrarian reform era and their political opposition to the government (F. Alidemaj, personal communication, November 7, 2022). These properties were subsequently distributed to 15 Serbian families. Similar instances occurred in Mitrovica, where over a hectare of central city land was taken from the Bejtullahu family, paving the way for the construction of the former Hotel Adriatic and City Museum (B. Bejtullahu, personal communication, November 3, 2022).

Between 1919 and 1946, approximately 9,635 hectares of land within the municipality of Istog were confiscated, facilitating the settlement of 1,079 Serbian families on these lands. The average allocation per family was around 8.47 hectares. However, the allocation in Mitrovica was comparatively lower, at about 4.86 hectares per family (Obradović, 2005, p. 284).

During the latter half of the twentieth century, Kosovar Albanians managed to repurchase certain confiscated properties from Serb settlers. However, due to legal prohibitions on sales between Albanians and Serbs at the time, a significant portion of structures erected on these lands remained unlicensed. Cadaster records still attribute ownership to Serb settlers, despite the significant changes that have occurred. Following the Kosovo conflict (1998-1999), many Albanian lands confiscated post-Second World War were returned to Albanian ownership, leading to the utilization of development rights on these properties. Consequently, unauthorized constructions such as residential and commercial buildings emerged.

In the context of Kosovo, ownership signifies a fundamental right over a specific entity, entailing the authority to use and dispose of it. Ownership can be acquired through proprietary possession, where a possessor gains ownership of an immovable property after uninterrupted possession for at least twenty years, coupled with the intention of ownership for their own benefit. As per Law No. 03/L-154 on Property and other Property Rights (Assembly of the Republic of Kosovo, 2009), ownership can be transferred over time if the rightful owner fails to assert their rights against a non-owner possessor, potentially leading to a new owner through prescription.

However, the Supreme Court of Kosovo’s practice prohibits the acquisition of ownership over state-owned real estate following the principle of proprietary possession. Since there is no statute of limitations for acquiring ownership of state properties, this Court has rejected all potential cases of property acquisition through the basic court and the appellate court as being groundless. On the other hand, a large part of the lands confiscated and nationalized by the agrarian reform of 1933 have remained in state ownership, in which case a part of these properties for 24 years have been used by the descendants of the owners damaged by the confiscation of the properties (Supreme Court of Kosovo, 2019, pp. 25-73).

Some people may be entitled to property restitution or material compensation if they previously owned property that was illegally expropriated by the state for social purposes and now belongs to a socially owned enterprise. After the 1999 conflict, socialist Yugoslav legislation caused many problems for Kosovo’s legal system.

International actors helped build a new Kosovo state and legislation free of Yugoslav socialist laws, but they tried to impose their tradition and legal elements on it, especially on property rights, which caused legal confusion and contradictions (Ibraimi, 2022, pp. 114-118).

3. RESEARCH METHODOLOGY

The investigation into the topic of this paper is based on a comprehensive methodology. In addition to reviewing existing literature, including works by authors from the former Yugoslav Republics (Obradović, 2005; Marinković, 2012; Buxhovi, 2012), insights from prominent scholars who have addressed related subjects (Malcolm, 1998; Schmitt, 2008; Ibraimi, 2022) have been pivotal.

However, the paper does not solely rely on theoretical studies. It integrates statistical data from both municipal and central government institutions. Notably, data from the 1990s (during the Milosevic regime) was conspicuously absent in Kosovo's state institutions due to Serbian officials taking reports and cadastral data just before the war and transporting them to Serbia. Alongside this, qualitative data collected across diverse municipalities in Kosovo, as well as archival data accessible to Kosovar institutions, forms a supportive foundation. This qualitative data was gathered through semi-structured interviews with personnel from property legalization and unauthorized construction offices, as well as experts well-versed in the subject matter within Kosovo. By juxtaposing qualitative data with state institution statistical data, a more comprehensive understanding of the issue emerged.

A substantial part of the research delves into Kosovo's ownership law, examined chronologically from the early 20th century to the present day. Notably, tracing the legal framework between the world wars and the initial decades post-Second World War presented challenges during chronological analysis. Comparisons with Western Balkan contexts were drawn to gain insights from the legal frameworks used to legalize illegal construction in other countries.

As a result, the analysis in this paper utilizes analytical, chronological, legal-dogmatic, and qualitative methods. Moreover, it examines the legal foundation of property rights in Kosovo, spanning from the Ottoman Empire's retreat to contemporary times. The analysis further draws on statistical data from urban planning departments across different Kosovo municipalities, supplemented by expert interviews familiar with property rights within Kosovo.

In reality, the research should use more case studies and include Ottoman Empire Kosovo property statistics. However, research ethics and citizens' privacy during the legalization process have prevented the utilization of more case studies. Accessing Ottoman-era Kosovo ownership statistics was difficult due to financial and logistical issues.

4. RESULTS

Communities governed by customary law act according to principles that they hold to be true, embodying a culture that has been passed down

from one generation to the next and serves as a social control mechanism that directs human behavior. In social life, customary provisions are seen as extremely valuable and offer advantages of their own based on the circumstances, capabilities, values, and way of life of the given society. Stated differently, their way of life incorporates local practices to solve life's challenges. The peoples of the Balkans, particularly the Albanians of Kosovo, heavily rely on these customary legal practices.

Cultural and traditional norms have historically endorsed verbal contracts for real estate transactions in rural Kosovo. A significant portion of these agreements occurred between Serbian sellers and Albanian buyers. However, due to discriminatory laws, these transactions could not be registered in the cadaster after 1991, regardless of the existence of contract documents detailing cross-ethnic property transactions. Interestingly, in most cases, cadaster records lack evidence, continuing to identify the seller as the property owner. As a result, informal de facto owners currently exercise property rights due to a lack of documentation (Ministry of Justice of the Republic of Kosovo, 2016).

The applicability of Section 73 of the former Yugoslavia's Compulsory Relationships Act to immovable property sales remains a point of contention and cannot be used as a legal basis for contract formation (OSCE, 2009).

While some courts assert that parties fulfill the prerequisites for complete contract execution by completing the purchase price payment and taking ownership, other perspectives stress the need to obtain rights "with legal force" or to register the contract in the cadaster for legal validity (Law No. 6/1980 on Property Relations, 1980, Article 33). Acquisition of real estate rights can stem from good faith, the passage of time, lawful ownership, and established legal norms, signifying the rightful ownership of a property by another (Law No. 6/1980 on Property Relations, 1980, Article 28). Owners must validate their property ownership over 20 consecutive years or 10 years if registered in the cadaster, with no objections raised within this period (Assembly of the Republic of Kosovo, 2009, Article 40). The practical application of this doctrine by courts and legal practitioners varies, leading to judgments favoring plaintiffs even when some conditions are not fully met, potentially bypassing rightful property owners' rights (OSCE, 2009, p. 20).

The adoption of temporary representation also raises human rights concerns, particularly in post-conflict scenarios, as property might be involuntarily sold or later occupied. While this might not be prevalent in most cases, it could contribute to market uncertainty and cast doubt on informal transactions (Ministry of Justice of the Republic of Kosovo, 2016, p. 27).

Furthermore, after the Kosovo conflict, citizens constructed residential and commercial structures on state lands listed in the land register as municipal or public enterprise properties. Many of these lands had been confiscated and converted into state-owned properties during the 1933 Agrarian Reform. Presently, the process of legalizing construction on these lands is notably challenging for numerous Kosovar citizens (B. Shala, personal communication, November 7, 2022). This situation is observed across all municipalities in Kosovo.

4.1. The lack of ownership documents and its consequences

The remnants of socialist property concepts inherited from the legal framework of the Socialist Federal Republic of Yugoslavia persist in Kosovo's current property rights legal structure. However, these concepts are no longer applicable and hinder the development of a robust land market that could drive economic growth. A significant number of residential structures in Kosovo were built on socially-owned land designated as "construction land". Under the previous legal regime, private rights could only be transferred to the built structures, while the land itself remained socially owned. Until the legal framework changes to allow for the acquisition of private property rights encompassing both the land, the structures on it, and the ground beneath, these rights will not be able to merge into a cohesive property unit, eligible for cadaster registration and engagement in the legal land market. The separate rights concerning the structures and the land hinder the seamless legal exchange of land and diminish its value. Therefore, efforts to legitimize unauthorized construction face limitations until the land rights underlying these structures are clarified (Ministry of Justice of the Republic of Kosovo, 2016, p. 5).

Additionally, agricultural land previously held by social enterprises has been transformed into 99-year leases, lacking ownership rights (full possession, use, and sale). These leases are perceived as insecure in terms of land ownership, impeding investments in agricultural production. Currently, the Ministry of Justice is in the process of drafting a comprehensive civil code that will cover specialized laws governing all private property rights. Other property rights over state, public, or municipal properties, as well as the property ownership rights of foreign citizens in Kosovo, remain inadequately defined in the existing legal framework.

To uphold fundamental standards of legal certainty and prevent arbitrary applications, property rights legislation must be accessible, accurate, and consistently applicable. Informal arrangements arise when formal rights to properties (those registered in the cadaster) have not been transferred by the formal right-holder through the legally stipulated process. While these informal rights are de facto exercised by the informal holder and respected by the community, they cannot be formally registered in the cadaster. Consequently, these rights remain registered under the formal holder's name, even though they are being exercised by another individual. This scenario, contributing to Kosovo's current informality, emerged during consultations while formulating the national strategy. Families not initiating inheritance procedures prevent cadastral data from being corrected after the demise of the property rights holder (Ministry of Justice of the Republic of Kosovo, 2016, p. 6).

The systematic registrations by the Kosovo cadastral authority and the reconstructed cadastral data reveal that approximately 30% of applicants seeking property rights legalization and registration abstain due to the failure to initiate inheritance procedures, which leaves their property rights registered under the name of the deceased.

Unofficial data suggests that over 50% of applicants seeking the legalization of more than 350000 unlicensed buildings through the Kosovar government's legalization program fail to establish their land rights as the land is currently registered under the names of deceased individuals. Transparent and public access to cadastral and estate register data is of paramount importance. Transparent, information-sharing mechanisms are essential for functional and efficient democratic societies and market economies, especially in terms of economic growth and development. This holds particularly true for property rights and land matters. Unrestricted access to cadastral data enhances administrative transparency, furnishes legal and economic information pivotal to society, fosters domestic and foreign investments, and facilitates the dynamic evolution of the land market.

Cultural traditions have historically upheld the validity of verbal agreements in land transactions as legally binding. These practices persisted even in the presence of discriminatory laws that prohibited real estate sales between the Kosovar Albanian and Serb communities. In response to these laws, informal sales contracts were formulated, but they could not be registered in the cadaster. The historical cultural norms and rural traditions in Kosovo recognized verbal agreements as sufficient for land and real estate transactions. Many of these agreements involved Serb sellers and Albanian buyers. Even when contracts for cross-ethnic real estate transactions existed after 1991, the prevailing discriminatory laws prevented their registration in the cadaster (Ministry of Justice of the Republic of Kosovo, 2016, p. 7).

In cases of informality, the typical solution involves the Albanian buyer initiating a legal action to secure a court ruling confirming the existence of the contract and the transfer of property rights. However, complications arise when conflicts or displacement render the seller absent from Kosovo. The absence of the seller poses challenges in terms of presenting evidence. Courts and informal buyers often resort to invoking doctrines such as substantive performance and the applicable statute of limitations to demonstrate contract fulfillment. Nevertheless, these doctrines usually require the physical presence of the seller in court. When the seller cannot be located, courts might appoint temporary representatives to act on the seller's behalf. This, however, should be a last resort, pursued after all efforts to notify the absent party have been exhausted. The use of temporary proxies also raises human rights concerns, especially in post-conflict situations where involuntary property transactions due to displacement could occur. Although this might not be widespread, the potential for it contributes to market uncertainty. The removal of cadastral documents to Serbia resulted in outdated and incomplete cadastral data, confusing evidence of property rights in Kosovo. The practice of conducting transactions outside of Kosovo's cadastral system intensified when the documents were moved to Serbia during the conflict. The Kosovo Agency for Property Comparison and Verification has been tasked with reviewing and comparing all cadastral documents returned from Serbia with Kosovo's cadastral documents. This agency then makes decisions (subject to judicial appeal) about which rights will

ultimately be registered in Kosovo's cadaster (Ministry of Justice of the Republic of Kosovo, 2016, pp. 7-8).

Regarding unauthorized structures built on social properties or informally, the law stipulates that this category will be considered for legalization but will be placed on a "waiting list". Given the historical use of oral contracts for political and social reasons, the failure to initiate inheritance procedures for property transfer, and other factors, a substantial number of unregistered plot owners could exist. The Draft Law addresses this group by placing them on a waiting list. Article 4, paragraph 1.7 of the Law No. 08/L-184 on Amending and Supplementing Law No. 06/L-024 (Assembly of the Republic of Kosovo, 2023) states that the government, upon the Ministry of Environment and Spatial Planning (MESP) proposal, approves a program within three years of the Draft Law's enactment to address cases placed on the waiting list as defined in Article 10, paragraph 1, excluding cases defined in paragraph 2, which also includes unregistered parcels. Furthermore, Article 10, paragraph 2 of the Draft Law states that all applications placed on the waiting list can be reconsidered if property users provide the required documentation for registration within the Register of Real Property Rights (RRPR).

However, the Law No. 04/L-009 on Amending and Supplementing Law No. 2002/5 on the Establishment of the Real Property Rights Register (Assembly of the Republic of Kosovo, 2011) sets requirements for property registration, including the need for authoritative court decisions for documentation submission for registration within the RRPR (Institute for Development Policy [INDEP], 2018).

An example can be drawn from Montenegro, where cases involving unauthorized constructions without the required plot documentation mandate proof of initiation of relevant court proceedings to ascertain ownership authenticity. However, for the finalization of the legalization process, a definitive decision on ownership authenticity by the competent body is required (Article 16 of the Law on Regularization of Informal Facilities, 2016).

4.2. The current situation in selected municipalities of Kosovo

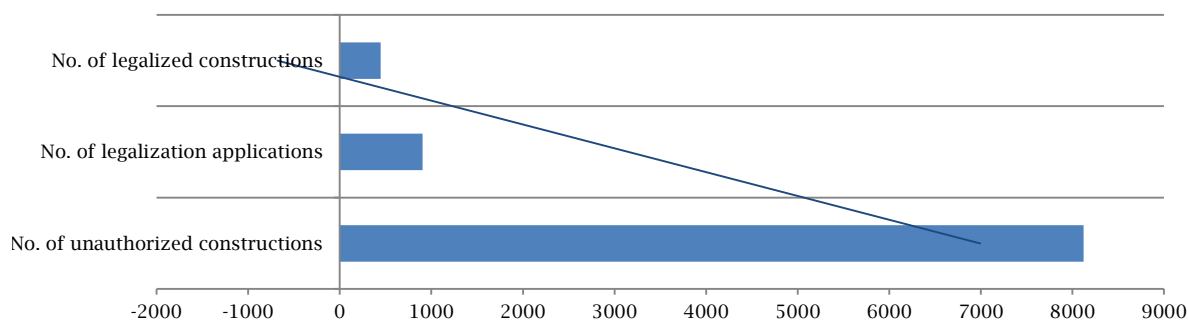
As emphasized in the introductory sections of the paper, the exploration of the topic was undertaken not only with a descriptive approach, but also with hypotheses that were substantiated by

empirical research conducted in five municipalities of Kosovo: Mitrovica, Vushtrri, Obiliq, Fushe Kosova, and Istog. To grasp the depth and breadth of the problem, qualitative methods were employed, involving interviews with top experts on the subject of unauthorized construction legalization in Kosovo. The interviews were predominantly carried out using semi-structured questionnaires, while two out of the 10 interviews were conducted in an unstructured manner to gather insights into the current challenges of legalizing illicit constructions in Kosovo. Owing to the sensitivity of the data, particularly data related to the number of unauthorized facilities in the respective municipalities, the empirical phase of the research encountered significant limitations in accessing and engaging with experts in this field.

Nevertheless, due to the selection of interviewees through a stratified research sample, by comparing the derived data with that from civil society, the potential for errors or the emergence of opinions not grounded in reality was minimized. As a result, the adopted approach has yielded genuine and objective viewpoints and data that can be readily corroborated by research conducted by institutions and international organizations that have partially addressed this issue.

To comprehend the extent of the unauthorized construction issue in the Municipality of Mitrovica, an interview was conducted with the Head of the Unpermitted Objects Legalization Division (B. Shala, personal communication, November 7, 2022). Additionally, a civil society activist was interviewed for the same purpose (F. Ademi, personal communication, November 7, 2022). According to data from their 2016 records, the number of unauthorized constructions in the Municipality of Mitrovica stands at 8120. This registration initiative was instigated by the Ministry of Environment and Spatial Planning in collaboration with Kosovo's municipalities and was backed by international organizations. However, both the municipal official and the civil society representative concurred that the actual number of unauthorized constructions is at least twice the officially registered figure. Up to now, 905 citizens in the Municipality of Mitrovica have applied for unauthorized construction legalization, with only 447 approvals granted. The primary reasons for the impasse in the legalization of unpermitted structures are the absence of inheritance documentation, long-standing inter-ethnic property sales bans, and construction on state-owned properties.

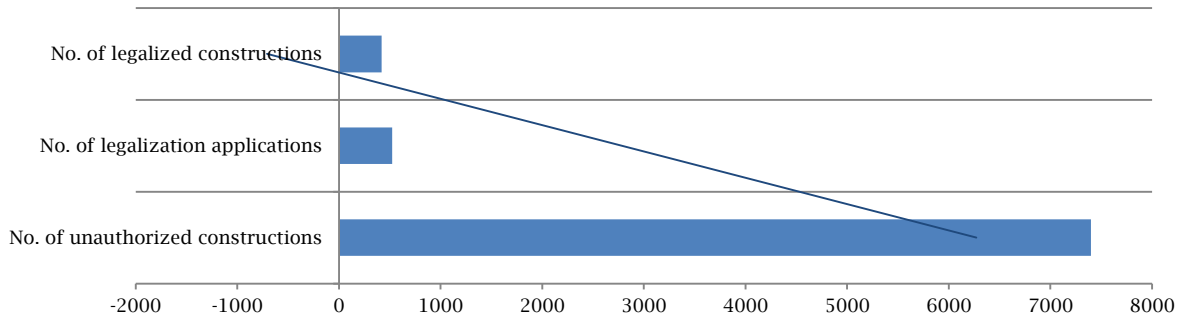
Figure 1. Unauthorized constructions in the municipality of Mitrovica



According to a senior municipal official from the Directorate of Urbanism in Fushe Kosova, approximately 7400 illegal constructions have been recorded in this municipality, but the true number is much higher (M. Shala, personal communication, November 11, 2022). Until now, 522 citizens have

applied for construction legalization, 421 of which have been granted. The main issues revealed in the process of legalizing unpermitted constructions in the Municipality of Fushe Kosova are related to the preliminary procedures required to prove ownership of cadastral plots.

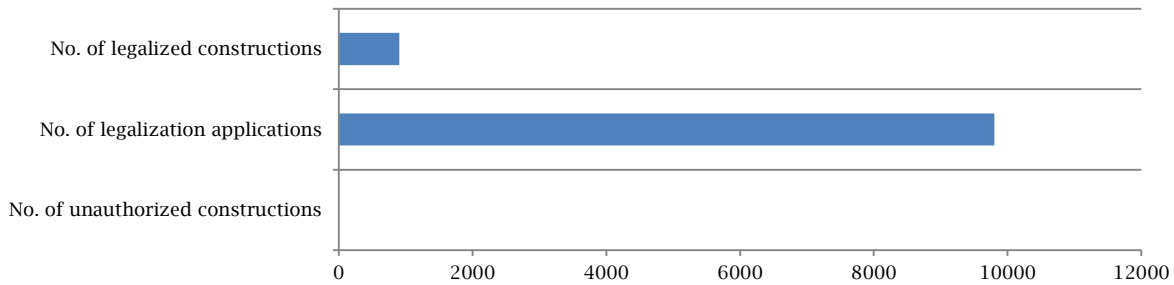
Figure 2. Unauthorized constructions in the municipality of Fushe Kosova



While the exact count of unauthorized constructions remains unknown in the Municipality of Vushtrri, a total of 9804 citizens have submitted applications for legalization, with 903 constructions having been successfully legalized (I. Azemi, personal communication, November 8, 2022). The process of legalizing constructions without permits presents certain challenges, such as

unresolved property matters, construction on agricultural land, and deficiencies in preventative actions by the inspectorate. Similarities exist between the two municipalities grappling with a substantial number of unauthorized constructions. Both are situated close to the capital city of Pristina and enjoy proximity to main roads and railway connections.

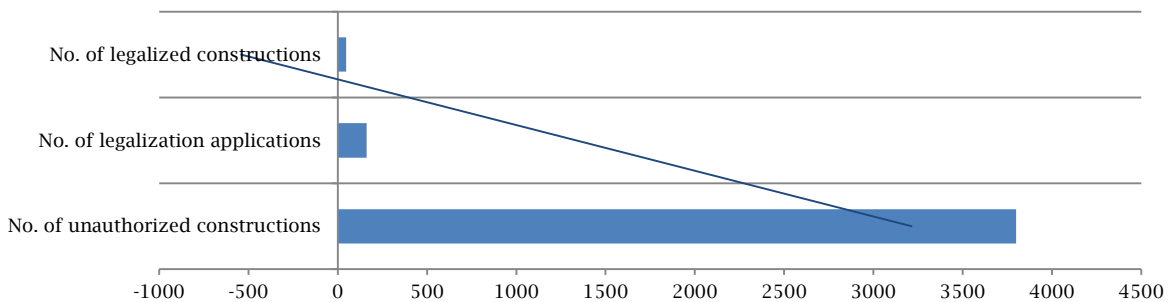
Figure 3. Unauthorized constructions in the municipality of Vushtrri



The phenomenon of unpermitted construction is also prevalent in smaller municipalities like Istog, where roughly 3800 unauthorized buildings have been registered, and merely 161 citizens have

applied for legalization. Of this total, only 46 constructions have successfully undergone the legalization process (A. Berisha, personal communication, November 14, 2022).

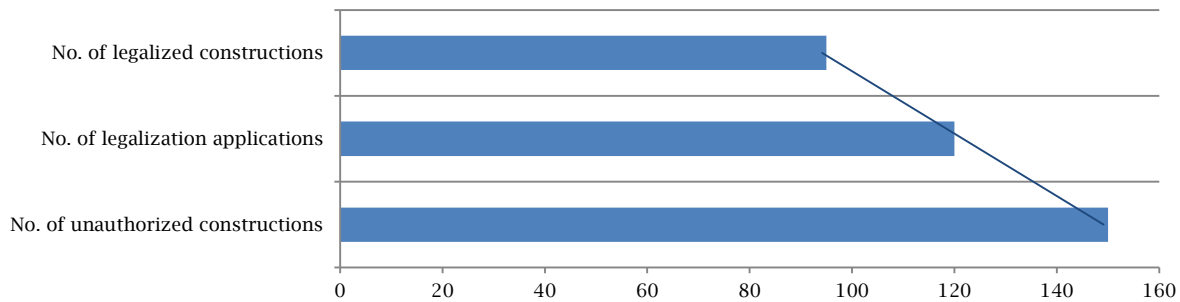
Figure 4. Unauthorized constructions in the municipality of Istog



Nonetheless, smaller communities also encounter a shortage of competent municipal officials to address unauthorized development. Further challenges in this procedure are linked to the lack of applications from citizens who lack ownership of the land on which residential and commercial buildings are planned. Consequently, the failure to verify land inheritance based on historical land transfers or previous acquisitions, and the omission

of updating this information in the land register, are the primary reasons for the dearth of applications seeking the legalization of constructions without permits in the Municipality of Istog. In the case of Obiliq, records indicate 150 unpermitted constructions, of which 120 citizens have sought legalization. Among these, 95 constructions have been successfully legalized (I. Mirena, personal communication, November 16, 2022).

Figure 5. Unauthorized constructions in the municipality of Obiliq



Nevertheless, local officials hold the belief that the count of unpermitted constructions might be higher, particularly in rural areas where residents have acquired real estate from members of the Serbian community without registering it in cadastral records. Residential and commercial structures have been erected on these plots. Notably from the data of various municipalities, a compelling observation emerges: larger municipalities and those with extensive agricultural zones tend to face

a higher incidence of unpermitted construction. These structures constructed without proper permits are often of older origin, not necessarily within the last two decades. This can be attributed to the historical prohibition on transactions between Albanian and Serbian citizens, which was in effect during certain periods. Consequently, these properties were not transferred to current owners and will continue to pose significant challenges in the endeavor to legalize illegal constructions.

Table 1. Unauthorized constructions and their legalization in the municipalities of Kosovo

Municipality	No. unauthorized constructions	No. of legalization applications	No. of legalized constructions
Mitrovica	8120	905	447
Vushtrri	Unknown	9804	903
Obiliq	150	120	95
Fushe Kosova	7400	552	421
Istog	3800	161	46

From a legal standpoint, the new legislation addressing unlicensed buildings has introduced numerous changes compared to the repeal of the previous law. The prior legislation imposed notably high taxes for the process of legalization, presented significant implementation challenges, and had a notably limited scope of action (Assembly of the Republic of Kosovo, 2009). Moreover, this legislation did not offer the possibility of complete legalization of construction even if the owner obtained full rights; it only granted permission for the use of the construction. Constructions on state-owned property were exempt from the provisions of this law. However, with the enactment of the new Law, a substantial portion of these deficiencies has been addressed (Assembly of the Republic of Kosovo, 2018).

The new law has broadened its applicability in various aspects, encouraging multiple agencies to engage in its enforcement. Despite these enhancements, the challenge of legalization remains unresolved due to the absence of regulation addressing the root causes of the issues that gave rise to a majority of these structures. Constructions on state-owned land are merely placed on a "waiting

list", with the matter of state-owned land remaining unresolved until the introduction of potential future legislation. Likewise, the legislation does not present a remedy for properties confiscated during the agrarian reforms of the previous century. Legislative gaps have also come to light in instances of informal property transactions between members of the Albanian and Serb communities in the past century, with potential solutions to these cases being disregarded. Presently, courts in Kosovo, particularly, disregard any prior written sales agreements between Albanians and Serbs in Kosovo, even if these agreements were witnessed but not notarized by the courts of that era. Conversely, the sales procedure must be repeated under existing legal provisions.

5. CONCLUSION

Based on the data examined in this paper, the predicament of unauthorized construction remains a paramount challenge facing Kosovar society. The procedure for legalizing constructions lacking permits has undergone significant

enhancement by addressing issues that the previous legislation inadequately or inadequately tackled. The previous Law No. 06/L-024 on Treatment of Constructions without Permit (Assembly of the Republic of Kosovo, 2018) did not offer a solution for structures on state-owned property or for properties lacking documented proof of ownership. With the introduction of the New Law, owners of such properties can now seek legalization by being included on a “waiting list”. This stands as a distinct measure compared to the final option, which is the demolition of these constructions. Despite notable improvements in the legal framework, the “waiting list” merely avoids the problem rather than providing a resolution. The prevailing law explicitly stipulates that the legalization of these structures is contingent upon the owners furnishing documents substantiating their ownership of the lands on which the constructions were erected. Due to historical circumstances, informality in contracts, constructions on state lands during the past century, and the failure to initiate inheritance procedures, acquiring ownership documents for these properties is now unfeasible. Amendments to the legal foundation are imperative to recognize various forms of ownership transfer, encompassing prescription.

The matter of lands confiscated and nationalized during the reign of the Kingdom of Yugoslavia still awaits attention following efforts to confront and mitigate illegal construction. A considerable portion of these lands has fallen under the de facto administration of previous Albanian owners, although they are technically owned by the state or even descendants of Serbian settlers. Given its political implications, this remains an extremely sensitive issue, and any legislative endeavors to address it would necessitate a dual majority in Kosovo’s Parliament. Achieving such a majority is nearly unattainable due to the obstructive mechanisms in Kosovo’s legislative process, which strongly favors Serbian stakeholders. Nevertheless, embracing audacious measures to resolve this issue through combined methods (repossession or compensation) akin to Albania’s approach could surmount political complexities, notwithstanding the substantial financial repercussions for Kosovo. The analysis and findings of the paper indicate that the suggested concrete measures could ameliorate the adverse effects of unauthorized

construction by permitting legalization and development rights during construction, thereby potentially fortifying the economic prospects of affected citizens. The legalization of these properties would yield substantial revenue for Kosovo’s budget, and over several decades, it could fully offset the financial ramifications of compensating confiscated properties that cannot be restored to their owners or those who used them during the 1933 Agrarian Reform.

Consequently, it is advisable to formulate appropriate legislation that offers solutions for unauthorized constructions on state-owned lands, potentially converting such properties into private ownership. Moreover, simplification of inheritance procedures is crucial to facilitating the commencement of inheritance proceedings, which serve to legally validate land ownership where constructions have arisen without permits. Similarly, the establishment of precedents should be considered to aid judges in efficiently adjudicating claims for property rights recognition based on prescription and legal validation of verbal contracts. Addressing the principal issue, which revolves around the appropriation of land from Kosovar Albanians through the agrarian reform of the past century, necessitates drawing on insights from other contexts (such as the acknowledgment of property rights or even compensation for property value). This issue lies at the heart of numerous illegal constructions and has been persistently overlooked due to political intricacies.

The study possesses certain limitations due to its focus on legal analysis, historical context, and real estate development rights. Given its profound political implications for Kosovo and Serbia, investigating this matter from the perspectives of political science and international relations could aid in determining the most effective ways to implement the recommendations of this study without exacerbating the security situation in the Balkans.

This study thoroughly explores the sensitive topic of illegal constructions and property confiscation during the 1933 Agrarian Reform in the Western Balkans. Therefore, the government has neglected to solve this problem. This research can serve as a foundation for further study and as a support for lawmakers in addressing this issue. The paper can be a starting point for broader discussions on property confiscation in Kosovo.

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