

## Reforms in the Legal Framework Regulating the Immovable Property Rights in the Republic of Kosovo

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### ABSTRACT:

*A quick historical overview of political changes in Kosovo is necessary in better understanding the situation of immovable property registration in Kosovo. The Ottoman Empire issued a series of laws, such as the 1858 Ramadan Code, 1860 Law on Tapis, 1864 Law on land titles that endowment funds, the 1874 Law on Freedom of the real estate ownership, and the 1877 decision to establish the Vilayet of Kosovo which organized property rights in accordance to this legal framework. In 1910, the Kingdom of Serbia gained control over the Vilajet of Kosovo and engaged in efforts to colonize the land through inclusion of south slaves and Serbs.*

*In the former Socialist Federal Republic of Yugoslavia (SFRY), Kosovo was constitution element of the Federation and an autonomous province within the Republic of Serbia. Kosovo's autonomy was ended by force in 1989. In 1998, the Serb government initiated police and military actions in Kosovo, and on 17 February 2008, Kosovo's parliament declared Kosovo's independence. Throughout this period, the registration of immovable property rights in Kosovo was done based on different laws.*

*This work aims to address the issue of reforms in the Law on the Establishment of the Immovable Property Rights Register. It*

*initially engages in a legal analysis of the applicable laws and regulation. It, then, presents a historical development of these amendments and also gives an account on their current status quo. In the end, it concludes by presenting views on the current regulation and assesses the effectiveness of such rules.*

*This analysis relies as well on comparative analysis, in order to draw similarities with other contexts and also with an aim to learn from “better practices”. This paper will be beneficial for academic understanding of the current situation of regulation of registration of property rights, but also speak to possible policy changes, which may be necessary in Kosovo for a more effective legislation.*

**KEY WORDS:** Property rights, Land management; Law on Cadastre; Cadastre, mortgage, self-financing

## **SUMMARY**

The Register of Property Rights in Kosovo is established under the Law on the Establishment of the Immovable Property Rights Register<sup>1</sup>, as a mechanism for record immovable property rights in Kosovo. As laws regulating registration in property register, mortgages, servitudes and other rules regulating the right to immovable property and registration in Kosovo have been subject to change, there is need to evaluate them. The Law on the Establishment of the Immovable Property Rights Register was amended two times in interest to follow development of the register on property rights and approximation with EU legislation.<sup>2</sup> Principles established by

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<sup>1</sup> Law no. 2002/5 on the Establishment of the Immovable Property Rights Register.

<sup>2</sup> The 2003/13 Law On Amendments And Additions To Law No. 2002/5 On The Establishment Of The Immovable Property Rights Registry; 2011/04-L-009 Law on amending and supplementing the Law no. 2002/5 on the establishment of the immovable property rights register.

the Contact Group<sup>3</sup> under the Ahtisaari Statement do not mandate that activity be managed by the Kosovo Cadastre Agency (KCA); they, rather, require that the services be provided at the local level regulated by the law. The organization of the KCA and Municipal Cadaster Offices is a better mechanism to ensure quality and efficiently services for owners of immobile property. Municipal officials are selected, funded and managed by municipalities that are by political party; which is closely related to the winner party of each election. To set up and development of independent, professional and reliable institution, the current obstacles require legislative solution.

This work consists of an in-depth analysis of the legal framework and comparative analysis, in order to draw similarities with other contexts and also with an aim to learn from “better practices”. This article will be beneficial for academic understanding of the current situation of regulation of registration of property rights, but also speak to possible policy changes which may be necessary in Kosovo for a more effective legislation.

## **INTRODUCTION**

Applicable legislation has improved the reform on the administration system of the immovable property rights. Changes in the legal framework by integrating applicable laws and by adding the element of Kosovo's statehood will enable the development of a functional, safer and easier system of immovable property registration. The Constitution of the Republic of Kosovo guarantees the right of ownership. In order to identify each unit of the estate it must be maintained, updated, and developed through reliable public inventory of immovable properties.

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<sup>3</sup><http://www.unosek.org/docref/Contact%20Group%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf> principal 4, (22.09.2015).

During the implementation of the Law on the Establishment of the Immovable Property Rights Register and other laws for the creation of property rights, part of private right are presented as a necessity for the amendment and the integration of public law provisions for registration of property rights.

The law of cadastre proposes how to organize and secure revenues from the sale of products provided in the market. With these provisions Kosovo may proceed into the implementation of the conclusions of the World Congresses of the International Federation of Survey (IFS) applied by the majority of the present representatives of the UN member states.

One of the objectives in the coming five years is the ability to register property without paper. Current laws do not provide guarantees to facilitate the realization of objectives arising from international institutions in the field of national information and the connection with the global level of data. Laws which shall be integrated will exceed repetition, legal gaps and misunderstandings between the laws involved.

In order to increase modern system of public inventory of immovable property in Kosovo, proposes to amend the legal provisions and to issue the new Law on the Establishment of the Immovable Property Rights Register.

During the preparation of this paper were consulted relevant local and international institutions, therefore their reasonable proposals were taken into consideration.

## **DESCRIPTION AND DEFINITION**

Majority of the applicable laws are issued at the time when Kosovo was under the supervision of the United Nations, therefore the security element of rights on immovable property is very porous and occasionally dysfunctional. Difficulties in management, unique activities at the country level, document security, and non-uniform increase of the Municipal Cadastral

Offices cause gaps and barriers to the estate management system.

## **LAW ON THE ESTABLISHMENT OF THE IMMOVABLE PROPERTY RIGHTS REGISTER**

### **Law on the establishment of the immovable property rights register**

Law on the establishment of the immovable property rights register contains provisions on: Immovable Property Rights Register (IPRR); Immovable Property Rights; Registration of Immovable Property Rights; Reconsideration; Correction of the Register; Review of the Decisions by MCO; Entry into Force of registration and implementation.

IPRR is established as a mechanism that enables the identification and implementation of the availability on validity of the immovable property rights. Register is maintained by the KCA. MCOs will record the immovable property rights under the authority of KCA and in compliance with the provisions and guidelines issued by the KCA. For the services provided KCA and the MCO accomplish payment for provided services (fee) in the amount set by the KCA.

### **The content of the Law**

The Immovable Property Rights Register is established as a mechanism to implement and validate immovable property rights in Kosovo under the Applicable Law.<sup>4</sup>

It is as follows:

- a. ownership;
- b. mortgages;
- c. servitudes; and

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<sup>4</sup> Law no. 2002/05 on the Establishment of an Immovable Property Rights Register, (UNMIK Regulation no.2002/22 on the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register).

- d. the rights of use of municipal, public, social and state property; and
- e. property burdens and charges.<sup>5</sup>

Requests for the registration of immovable property rights shall be made in writing to the MCO where the concerned immovable property is located. The MCO shall confirm the time and date of receipt of the request for registration. The Applicant requesting the registration of an immovable property right shall attach to the request one of this documentation:

- a). omnipotent court decision;
  - b). the decision of state administrative body;
  - c). contract for transfer of immovable property rights certified by the competent body;
  - d). decision or contract for the privatization issued by the Kosovo Privatization Agency;
  - e). the Commission's decision for the Reconstruction of Cadastre;
  - f). the Commission's decision for the regulation of lands;
- and
- g). other document that by special Laws there is foreseen the property rights registration.

### **Activity of the KCA and MCO**

The MCO shall review the submitted documentation, and if the documentation submitted is not sufficient according to the Applicable Law the MCO may set a deadline for the Applicant to submit the complete documentation, according to this KCA remains as the second instance body for action on appeals of the parties dissatisfied with the decisions of the MCOs.

In Law on the Establishment of the Immovable Property Rights Register are not regulated the registration issues of new

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<sup>5</sup> Law No.04/L –009 on amending and supplementing the Law no. 2002/5 on the Establishment of the Immovable Property Rights Register, 2011.

construction, the possibility to culture change, the change of the property type.

### **Law on cadastre**

This Law shall regulate the Cadastre of immovable property, national and cadastral surveys, geodesic and cadastral works as well as acquisition, registration, keeping, maintenance and use of cadastral data Kosovo Cadastral Agency (KCA) under the provisions of the law on cadastre spreads its scope, on:

- The Cadastre shall serve as basis for the registration of real rights by the creation of cadastral units for parcels, buildings, part of buildings and utilities as well as for reconstruction of cadastral information;
- Supports activities of natural and legal persons for administrative, legal, economic and scientific purposes.
- All Kosovo local and central institutions dealing with land, buildings, parts of buildings and utilities, shall use the data and cadastral units, which are defined in Cadastre.

The management of the cadastral sector shall be done by the Executive Agency within the Government of Kosovo, respectively the Ministry of Environment and Spatial Planning in Pristina, led by Chief Executive Officer with status for senior civil servants, who responds to the Minister.

KCA is an agency that maintains the cadastral public inventory, and has the authority to issue sub-legal acts in the field that covers the administration of the national computerized system that acquires processes and distributes cadastral data. It is responsible for the certification of persons in MCO that can execute cadastral surveys and persons that can approve the registration.

KCA is responsible for the supervision of all activities executed under the provisions of this Law for the cadastre by the MCO, the surveying companies and licensed surveyors.

Based on supervision, KCA can:

Issue an order for elimination of irregularities found in the inspection;

Issue an order for banning activities that do not meet the required obligation according to this Law;

Cancel the license for a surveying company or a licensed surveyor;

Cancel certification for cadastral activities and property register of the MCO.

KCA's organizational structure and responsibilities shall be stipulated by a sub-legal act proposed by the Ministry and approved by the Government.

MCO is a municipal body and is responsible for the operation of Property register.

MCO shall perform all activities in compliance with the competences delegated by central level, the provisions of this Law and administrative instructions issued by KCA and the Ministry of Environment and Spatial Planning (MESP).

The employee of the MCO that is executing a cadastral survey must be certificated by KCA<sup>6</sup>. All activities of MCO shall be carried out and shown at central base of the data of KCA.

Law No. 2003/25 on Cadastre was issued on 03 December 2003, has been amended by Law No. 02 / L-96 to amend and complement the law no. 2003/25 on Cadastre on 26 January 2007, whereas due to the interference of other laws it was necessary to be amended. Due to this was issued Law no.04/l-013 for cadastre that is promulgated by Decree No.DL-019-2011, dated 12.08.2011.

Law on Cadastre should be a law which in itself includes provisions of Cadastre, mortgage and immovable property right register. Most European Union countries and the countries of the region in the cadastral law include all legislation related to public inventory of estate items that are recorded in the immovable property register.

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<sup>6</sup> Law no.04/l-013 on Cadaster (Article 5).



## **Law on mortgages**

As all other immovable property rights, in the Law on the Establishment of the Immovable Property Rights Register, will regulated and rights related to the mortgage. Law on Mortgages No. 2002/4<sup>7</sup>, establishes the means for the creation of mortgages, their effects on the parties to such agreements, their effects on third persons, and the means by which certain mortgages by business organizations may be enforced through non judicial foreclosure in cases of default under the terms of the mortgage document, but shall not apply to mortgages created by law.

With this law the subject to mortgage is immovable property or one of its right through which the owner can possess, the mortgage of land plot -will be implemented throughout the plot. A building or apartment or other parts of the building or similar structure can be mortgaged apart from the remained part of the estate structure or parcel of land on mortgage. All buildings or structures built on a plot of land will now be subject to any mortgage on it if they have the same owner or user.

Under this law the mortgage document is valid when it is written and verified in the same way as other transactions and will include: name, address and details of the pledger and the pledgee; description of the obligations secured by the mortgage, or, if the obligation is set forth in a main separate agreement, main referral of the main agreement; sufficient description that reasonably identifies the collateral of the mortgage, including the cadastral number of immovable property and the name of the municipality where the real property is located; respective ownership certificate, or equivalent; proper permit for construction, if any; proper permit for use, if any; the maximum amount of the financial liability or possible future financial liabilities secured by the mortgage;

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<sup>7</sup> UNMIK Regulation no. 2002/21 on the promulgation of the Law adopted by the Assembly of Kosovo on Mortgages

statement with bold black letters indicating that the execution of the mortgage procedure can lead to seizures of property and expulsion of the pledger from the property; means for sending documents to the pledger in case of default or enforcement proceedings of the mortgaged property; the date it was signed mortgage document; authorized signatures by or on behalf of the pledger and the pledgee; other rules that will be required by other laws.

The provisions of this law must be met to ensure the possibility for registration for updated property, joint property and the cases of joint ownership that as problems are more highlighted, which make its implementation impossible.

## **CURRENT SITUATION AND POLICIES**

KCA with its organizational structure accomplishes legal obligations set out under Article 1 paragraph 2 of the Law on the Establishment of the Immovable Property Rights Register and other legislation applicable in Kosovo for the management of geo-spatial information related to parcels, buildings, parts of buildings and utilities.

The transfer of some competencies from KCA to the MCO was done by the decentralization process that deals with certain rights and duties in the field of immovable property registration and geodesy.

Currently it is noticed that there is a barrier in implementation of legal provisions, and is contradiction to the best practices of other countries in the EU and the world, especially with member countries of FIG (Fédération Internationale des Géomètres).

Relying on decentralization process with the provisions of Article 18 of Law No. 03 / L-040 on local self-government, deals with competencies delegated by central government, which under a) cadastral records.

Municipal Cadastre Offices (MCO) including the employees, they are part of local government organograms. Organization of MCOs depending on the form of organization and size of the municipality are not organized in a form. MCOs are part of the various departments that comes as an obstacle in professional management and organization according to the contemporary criteria's.

Development of MCO is not uniform, there are major differences in provision of services and it is presented as impossible to overcome the gap created by changes in professional level of giving professional cadastral services.

This organising is not set up illegally, it has been respected the right of self-determination of local government organizational chart. But the same one, unable the implementation of the KCA instructions, amalgams information unreasonable, confuses data control process at the country level, prevents cadastral information processing and timely implementation of the KCA obligations, reduces the registration performance on the change of owners on the immovable property, and simultaneously reduces the level of performance on the security of data on immovable property.

It is not possible for the current system of public finances to track financial transactions, accurate estimates of operating costs for the collection of revenues on behalf of Tariffs for the provision of cadastral products, necessary for the market of immovable properties and security of owners too.

Although, a special code is generated for Cadastre and Geodesy (650), the majority of revenues on behalf of the Cadastral Tariffs are recorded in different codes. The collection and recording of revenues is made at the level of Departments, including other areas that appear as policy enforcement priority of the Municipal assemblies and Mayors of Municipalities. Often municipal plans are not in line and not approximate to KCA plans. Lack of knowledge and lack of the unique priority of municipal policies and KCA policies creates discrepancy on the

development of the level on cadastral services in municipalities among themselves and the discrepancy of unique development at the country level on the cadastral service. This change may be surpassed and may be ensured to provide unique products at the country level, only if all cadastral service is controlled and financed by implementing proven system of sub-ordination of the service in the country level.

Dependence on municipal leadership of cadastral services brings a change of investment for the development of cadastral service, creates changes in the allocation of funds for technical and technological achievements, very important for the cadaster and the safety of owners for immovable property in the country.

The current situation creates difficulties in terms of information standardization, their update and the situation tracking of the immovable property. Municipal Finance Unit cannot generate reports for this sector since it is part of two or more other sectors within the same department. It will remain our duty that with the new integrated law on cadaster KCA and MESP arrange with the Ministry of Finance to establish legal order, sustainable financial safety and security that fees that will be collected from the sale of products, to be sustainable entry and the safety for operation of the safe service to the citizens and sustainable for the country.

Another issue that currently is of concern and burden of the services within the departments where cadastral service functions in the MCO, as is the case with small municipalities with less than 10,000 inhabitants. These municipalities are in lack of professional staff, location and other necessary tools. In case the MCO cadastral service will be in the hierarchy of the management by the KCA, it will necessarily be coordinated and organized equally at the country level.

Currently, the municipalities are facing lack of working spaces and some of them are located in the temporarily rented premises. The help of international donors (and hopefully local

ones after the economy gets stronger) is coordinated harmoniously in case the system is organized by a joint body, which is also good practice in other countries.

To carry out the management duties, creation, processing and reconstruction of cadastral information and surveying activities at the country level are employed 389 workers (managers and officials at the central level are 51 employees).

If we compare the number of employees (from 338) and the number of requests for cadastral products (186.619) will see that productivity is not provided in all municipalities equally. Municipalities that have realized the request for cadastral products over the average for workers are: Pristina 85.79%, Peja 60.91%, Prizren 57.93%, Ferizaj 49.97% Gracanica 45.95%, Lipjan 44.79%, etc. These ten MCO carry 66% of sales of products carried at the country level. The average of products for workers is 552 realized requests.

Below average of the country are these municipalities: Novo Brdo with 0.12%, Klina 3.13%, Malisheva with 29.9%, Suhareka 16%, Vushtrri 20%, whereas Junik 80.7% below the average for Kosovo, Partes 76% below average, Deçan 76%, Rahovec 62 % below the average for services provided to an employee during the year. Below is presented the report of the requirements according to MCO.

### **Requirements accomplished through MCO**

Some municipalities have greater number of employees that would have set a norm or standard for the number of employees in the MCO.

The average salary of employees in the Cadastre in the level of the municipalities in Kosovo is 322 euros. If from this average we eliminate directors of the departments who work within the MCO, then the monthly wage average is 299 euros. Wage that is considered as too low, for the level of professionalism, responsibility and self-national importance

(compared with the countries in the region) that deals with the land cadastre management system, national infrastructure of geo-spatial data, inventory maintenance of the immovable property. Wages of 13:59 euros per day for a 4 member's family is undignified for cadastre officers and below the average salary in the country (in 2012 in the Republic of Kosovo the average salary in the budget sector was 372 euros).

Surveys are made and evaluated with the MCO managers, directors of relevant departments, financial and administrative managers and other staff to manage information about cadastral working activities in the KCA. The observation of concrete activities on the ground, the collection and processing of direct information in the KCA and in 34 MCO for evaluation of the groups, the development of quantitative and qualitative indicators collected from the field were done.

Information were collected, not only from financial aspect, from the systems for recording and storing information on immovable property, the functioning of these systems, the quantity of products, cadastral services, professional human capacity, equipment and working conditions, market of real estate, elements on which is build the sustainability of the action but on a legal basis and creating individual rights in the field of real estate. The current status of these institutions, organizational level, questionnaires, materials and documents are collected.

### **Register of the Immovable Property Rights**

According to Statute of municipalities, Organization of Municipal Cadastral Offices and lack of liaison with the Kosovo Cadastral Agency, Municipal Cadastral Offices and their officials are in complete authority of departments where the property rights sector operates.

Infrastructure and logistics activity, working space, equipment, organization and approach of the parties to the cadastral products and services, human resources (Charts),

professional potential, payments and work motivations are under the authority of the municipal government.

According to the Directors statements of the relevant departments within the Municipal Cadastral Offices and the chiefs of the sector, reports with MCO and KCA, the sector is part of the civil municipal staff.

Working space where cadastral services and products are offered, in which case were addressed the office issues where such products and services are created, officers work load of this sector, offices to receive the parties, the lack of well-trained staff, financial bottle neck and the need for renewal of working equipment's is an urgent need for investment.

Financial matters, financial records system and their interconnection in the function of reporting and presentation of the situation in order to facilitate decision-making, budget structure, financial statements, costs, effects and the improvement of the performance.

The creation of questionnaire in collecting the data from the KCA and MCO. The objective were the Directors of Departments where MCO act within their departments, the relevant sectors Managers and the Head of finance and other officials responsible for the development of the projects and processing of cadastral information should be set in the same line of the responsibility from KCA to the MCO.

KCA will have the possibility to evaluate the property market and make their liaison within the services and cadastral products, the evaluation of estate, the training, the certification of the real estate, analyses of cadastral products, bids for the cadastral products and services, the level of requests for cadastral products as well as proposes the fees for cadastral products.

Using research methods for research on incomes from existing tariffs:

- Analysis of self-incomes for the cadastral products offered by MCO,
- The analysis of self-incomes from the products and services that KCA offers and the tendency of the requests from various institutions (Companies, Agencies, Banks and other institutions); and
- The use of the statistical data and of the relevant information for analyse from the Ministry of Finance of the republic of Kosovo (MF), Kosovo Statistics Agency (KSA).

### **Management institutions of the Property rights system**

Management institutions for property rights system according to the legislation in power of the Republic of Kosovo and the EU standards.

The system for the administration of the cadastral services includes:

- The Assembly of the Republic of Kosovo – the highest legislative body;
- The Government of the Republic of Kosovo
- Ministry of Environment and Spatial Planning (the Ministry) – high executive body in the territory of Kosovo that creates and implements national environmental policy and coordination with other countries and international environmental organizations;
- Kosovo Cadastral Agency; and
- Municipal Cadastral Offices.

Law on Cadastre, Law on mortgages and Law on immovable property rights register, sustainable development strategy for the KCA 2012 - 2017 are aligned with ministerial Council decisions on land management.



## **Las and sub-legal acts**

### **Applicable laws**

Law on Amendments and additions to Law on IPRR 2003-13

Law on Establishment of the Immovable Property Right Register No.2002-5

Law No 04\_L-009 on amendments and additions to Law 2002 5 on the establishment of the immovable property right register

Law on mortgages No.2002-4

### **Administrative Instruction**

Administrative Instruction No.14/2012 on the establishment and administration of the alphabetical list on names, reserve list and their assignment by the municipal register on the addresses.

Administrative Instruction No.13/2012 on installation of physical address signs in public circulation, areas, building, houses, objects and free cadastral parcels.

Administrative Instruction No.12/2012 on assigning the naming and numbering of addresses for public circulation areas, buildings, parcels and free cadastral parcels.

Administrative Instruction No.11/2012 on the sequences of address elements and assigning the format of letters numbers and address signs.

Administrative Instruction No.03/2012 for the work of the Commission for Cadastral Reconstruction on the Immovable Property Right Register

Administrative Instruction No.02/2012 for the Cadastral Reconstruction and the Immovable property right Register

Administrative Instruction No.01/2013 for Licensing of Surveying Companies and Surveyors Administrative Instruction MESP No. 24/2013 for the procedures on creation and administration of addresses and state register of addresses

Administrative Instruction MESP No. 08/2014 on Fees for Registration on Immovable Property Rights Registers Services by Municipal Cadastral Offices

Administrative Instruction MESP No. 25 2013 on Fees of products and services of Kosovo Cadastral Agency

Administrative Instruction AKK 2006 01 on Implementation of Law on Establishing Immovable Property Rights Register

Administrative Instruction No. 052012 on Fees for Services and products provided by Municipal Cadastral Offices and Licensed Surveying Companies

Administrative Instruction No. 042012 for Public Awareness Campaign during the Cadastral Reconstruction and Immovable Property Right Register

Administrative Instruction for Cadastral Surveying including GNSS-Technologies

### **Working frameworks**

Working guidelines No. AKK 2013/02 on standardization of cadastral measurements – completed.

Working guidelines No. AKK 2013/01 for correction of surfaces.

Data delivery model for cadastral registration of the immovable property rights.

### **Manuals**

Catalogue for Measuring and Creating Cadastral Units

Manual Procedures for Registration of Property on Cadastre

Manual for the creation of building cadastre

Manual for the address system

Manual for KCLIS

### **Current program**

KCA and the MCO are based in developing documents of the Agency; Development Strategy 2009 - 2011, Business Plan 2009 - 2014, the Government Program 2011 - 2014, Medium Term Expenditure Framework 2012-2014, the Budget of the Republic of Kosovo in 2011, Budget of the Republic of Kosovo in 2012, the budget of the Republic of Kosovo 2013 Budget of the Republic of Kosovo for 2014, the Law on Public Financial Management and Accountability, No. 03-L-048, Law No. 03-L-49 on Local Government Financing<sup>8</sup>, Law 03 / L-040 on Local Self-Government , Law 2003/25 on Cadastre, Administrative Instructions nr.01-2009; Administrative instruction No.05-2012 on Cadastral services and Cadastral products offered by the MCO, Administrative Instruction nr.25-2013 for products and Cadastral services offered by the KCA, the EU and EP Directive as well as EC INSPIRE on the creation of infrastructure for geo-spatial information integrated in the EU.

### **Additional evaluation of the current policy**

The fact known worldwide that Kosovo seeks a uniformed development, controlled and economically fast, it may be assisted by guarantees on accuracy of documents on immovable property, as well as the guarantee for mortgage loans the realization.

The main challenge will be vertical organizing and the sustainable self-financing of the KCA at the country level. To reduce costs will be respected all government`s decision and policies. Safety in the documentation for immovable property is a factor that guarantees the foreign investor too for the capital commitment and business opening in Kosovo.

Current policy is encouraging foreign investment, open for investment from abroad and guaranteeing their capital. Cadastre has the opportunity to raise this safety with

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<sup>8</sup> Law No. 03-L-49 on Local Government Financing, issued by Assembly of Kosovo, 2010, Prishtina

seriousness at work and the provision of the safety of the rights that are registered in the Cadastre.

### **Experiences in other countries**

Countries in the region have gone through transitional phases the same as it goes Kosovo. Best experiences of these countries, as in the drafting the development of legislation. The level of economic development, international support for approximation of the economic development with the EU countries, as well as the education level of the labor force, do not differ so much Kosovo from other countries.

### **Goals and Objectives**

The strategy for the service quality, updating and maintaining data, cadastre without paper, and security created for the immovable property owners are the main objectives of KCA. The aim is to fulfill the requirements of the platform issued by the XX Congress of FIG Cadastre 2014, commission 7 property rights and property register.

All of these goals are attainable by enabling the realization of the development strategy of KCA until 2017. By these is guaranteed equal development with other regional countries and requested guarantee for the membership in the European Union.

### **Goals**

Defining and setting goals for the quality of cadastral services;

Self-evaluation and quality control of services and evaluation of products offered by KCA; Evaluating the quality of service on the basis of the methods and criteria set out in the EU; Creation of integrated geo-information system at the country level and global level interconnections;

To ensure the availability of this information to the public; and

Harmonization of current law Directives and Regulations of the Parliament and the European Council.

### **Objectives**

- Implementation of EU directives, and implementation of Kosovo legislation;
- Providing a framework for protecting the quality of services;
- Promote the importance of the immovable property inventory, security services, and air quality as determinants of health and welfare of the population.

Preparation of Draft Law on Cadastre shall be made for easier implementation by citizens, officials, and results in meeting the country's priority to strengthen the rule of law

### **Options**

Draft law on cadastre sets out targets for cadastral services and all rights in public Inventory of the real estate as well as the alternative policies for further improvements of the recording, updating and registration of the real estate. As direct beneficiaries are the owners of the immovable properties, especially.

### **Proposal for options**

To provide significant benefits to real estate inventory with self-financing, in order to have a sustainable development and in the interest of the public, are these options;

- First option – Non amending the Law on cadastre, Law on mortgages and the Law on the Immovable property right register;
- Second option – Amendments and additions of three laws in particular; and

- Third option – issuance of integrated legal act such as:  
Law on cadastre

## **Benefits**

### **First option:**

By not changing the Law on the immovable property rights register, it will not be able to include all the obligations arising from EU legislation; the process of registration will stagnate, update and inventory of the immovable property rights, impossibility of the application of technical and technological changes to data processing, as well as the need for rapid action for registration and the cadastre system implementation without paper, will not be fulfilled. It is assumed that this option will result in stagnation of the cadastral system.

### **Second option:**

Partial Amendment of the Law on the immovable property rights register, it has a necessary volume legal provisions and the opportunity to misrepresentation, conflict of laws between them creates difficulties in application and their implementation of the obligations arising from EU legislation. Partial Fulfillment of Laws in question has three procedures that should also apply for amendment. Requires special consultation for each law and each one must go through the same path. Since, the Government Institutions and the European Commission will offer continued support for each law, the second option costs three times more and provides product with three time greater volume. It is assumed that this option will result in the improvement of real estate inventory and can be applied as such, but it is in excessive volume, but provides a lower level than the third option.

### **Third option:**

The Republic of Kosovo is strongly committed to achieving the conditions for the process of negotiations for accession and full membership in the EU, whereas the particular challenge is the harmonization with the *aquis communautaire*, and its application to the field on guaranteeing the property rights and providing property inventory by public authority. This requires systematic institutional changes, organizational and investment in the best techniques available, in order to meet the targets set in relation to safety, maintaining accuracy, fast and under the terms of the level of other European Union countries for cadastre and registration of other property rights related to immovable property.

Since the existing laws are not in line with each other, the law on mortgage and the law on the immovable property rights register is issued before the declaration of independence, issuance of Kosovo constitution, and are not in line with the basic principles of contact group and Ahtisaari Pact, it is necessary to make changes and additions. It is considered as economically reasonable and in the functional aspect more appropriate to draft a law that is comprehensive and that regulates the matter of public register, as part of public right for inventory for the immovable property rights at the country level.

Drafting, review and approval of draft Law on Cadastre will adjust which area is likely to be regulated by Administrative Instruction and their changes are easier when dealing with the application of technical and technological advances.

### **Analysis of options**

This legislative action would be fully in line with the Government's commitment to establish legality and rules for the cadastre services and the registration of the immovable

property, which would be in accordance with the EU legislation and the countries of the region.

Amendment and additions to these laws will reduce and save the time for registration of immovable property and for the safety of cadastral data, which will be reflected in the welfare of the population, respectively, by the increase of foreign investments.

### **Benefits of activities**

With the amendment and addition to this law shall be created mechanisms and instruments that will facilitate its implementation and shall contribute in the improvement of the registration of the immovable property services in the Republic of Kosovo.

The implementation of these actions will contribute in:

Reducing the time limit for realization of rights in obtaining the registration of the immovable property documentation and acceleration of the registration deadline;

Active promotion for the registration of the immovable property rights; and

Ensuring coordination of all communities to understand the importance and contribution for securing their rights and encourage them to maintain the quality of cadastral data and other rights related to immovable property for growth and progress of the business in a safe area with cadastral documentation.

### **Cost analyses**

The approval of the draft law on cadastre does not have an additional cost and may be concluded. Therefore the field of cadastre and the registration of the property rights will be self-funded.

The table below contains the annual cost of services, of the enforcement of the law



## **Impact**

### **Economic and social impact**

In the development of the Republic of Kosovo, the long-term success in economic and social development will depend on the sustainability of certain policies, in the field of real estate circulation as well as the safety of documentation issued by the KCA.

Achieving the desired balance between economic activity and the use of immovable property assets for the guarantee or as safe goods in the circulation of goods, requires to share the responsibilities, one of which is the security, speed and guarantees to immovable property estate data.

The development of the cadastral services and the assurance with the immovable property is one of the guaranteed motivators for the development of the economy.

### **Consultation**

On Amending the Law 2002 5 for establishing the immovable property right register, and the Law on Mortgages No. 2002-4, were consulted the departments within the Ministry of Environment and Planning Spatial and KCA when it came into conclusion that a new law on registration of the immovable property should be issued, which will mainly regulate vertical organizing and registration of the immovable property of the registration of the immovable property system as well as self-funding matters of the KCA with its services.

Moreover, the need for amendment of these laws aroused during the consultations with municipalities and other parties, during the consultation of the EU relevant legislation. The consultation process was initiated and developed this year including the organization of public debate in the municipalities. The document has been completed, after reviewing the comments provided by interested parties.

## **RECOMMENDATIONS**

The activity of a public authority for keeping real estate inventory at the country level is essential.

According to the analysis done, the third option is the recommended option, the approval of the Law on Cadastre. This option will improve the situation of authority for cadastre and the registration of the immovable property.

Measures and obligations determined in the Law on Cadastre represent an obligation for all other sectors related to immovable property rights in the country.

Based on this concept paper, after the approval, by the Government's decision, MESP-KCA will chair the working group in which working group will participate the representatives of other relevant Ministries, according to the Government's work regulation.

It is planned that the final draft of the draft law on cadastre to be completed in the fourth quarter of 2015.

This law will have no financial implications to the budget of the Republic of Kosovo and the entire KCA activity to be initially covered by donors and sales of KCA products and later on only from the sale the KCA products.

## **BIOGRAPHICAL NOTES**

1. Law no. 2002/5 on the Establishment of the Immovable Property Rights Register; 2003/13 On Amendments And Additions To Law No.2002/5 On The Establishment Of The Immovable Property Rights Registry; 2011/04-L-009 Law on amending and supplementing the Law no. 2002/5 on the establishment of the immovable property rights register.

2. <http://www.unosek.org/docref/Contact%20Group%20-%20Ten%20Guiding%20principles%20for%20Ahtisaari.pdf> principal 4, (22.09.2015)
3. Law no. 2002/05 on the Establishment of an Immovable Property Rights Register, (UNMIK Regulation no.2002/22 on the Promulgation of the Law Adopted by the Assembly of Kosovo on the Establishment of an Immovable Property Rights Register)
4. Law No.04/L –009 on amending and supplementing the Law no. 2002/5 on the Establishment of the Immovable Property Rights Register, 2011
5. Law no.04/l-013 on Cadaster (Article 5)
6. UNMIK Regulation no. 2002/21 on the promulgation of the Law adopted by the Assembly of Kosovo on Mortgages
7. Law No. 03-L-49 on Local Government Financing, issued by assembly of Kosovo, 2010, Prishtina