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### ILLEGAL CONSTRUCTIONS IN SOCIALLY OWNED LAND IN KOSOVO - PRIZREN

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# ILLEGAL USE OF SOCIALLY OWNED LAND IN PRIZREN MUNICIPALITY

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**Abstract.** Identification as a problem and treatment of the illegal use of land of socially owned property in Kosovo, with the focal point in Prizren, is the fundamental body-content of this study paper. The illegal use and exploitation of socially owned land in Kosovo, respectively the construction of residential, commercial and public buildings on the socially owned land, is the core subject elaborated in this study. These constructions are considered illegal since they are performed on socially owned land, without any permit, previous approval, and license or similar and this topic hasn't been discussed or elaborated much in Kosovo. Land on which the houses/buildings are constructed, at the cadastral official registers in Municipal Cadastral Offices (MCO), even today are registered as social ownership; actually, they are in the name of Socially Owned Enterprises (SOE).

The violence of war caused the destruction of public records about public and private rights to land and buildings, including the cadastral and court records and the archives of the enterprises that managed the socially owned land, apartments, and other assets. Property maps, cadastral books, possession lists and transaction document archives, which comprise of the "authoritative" identification about, who has what rights to what land and buildings, have been removed to Serbia. In addition, people avoided the formal transaction recording system and carried out transactions informally for several decades due to transaction taxes and the legal prohibition of transactions between Serbs and Albanians. Therefore, in general, the study represents the research of very complex problems of two interactive systems, the land use in the specific state of social ownership and construction of individual buildings in specific illegal status and social /economic implications as consequences. Treatment of this research paper work, will be done through a short question presented as below.

**Keywords:** Illegal use of land, illegal constructions, socially owned property, treatment of the illegal use of the social property

## Introduction

Prizren Municipality lies in the south-west of Kosovo. On the West, it borders with Albania, with the FYR of Macedonia in the South - East, with Gjakova/Djakovica municipality in the North-West, with Rahovec/Orahovac in North, with Theranda/Suvareka in the North-East, Shterpcë/Strpce in East and with Dragash/Drage in North. It is of an area of 640 km<sup>2</sup> (5.94% of the territory of Kosovo) and consists of 74 Cadastral Zones. The average height above sea level is 412 to 500 meters, while in the mountainous (Sharri peak) exceeds 2,000 m. Prizren is one of the main and oldest cities in the region. One of the oldest streets "Road Egnatia" used to pass through the city of Prizren and united the East and West. Being the subject of great social movements during the certain periods of time, Prizren has had its ups and downs in its economic, social and cultural development.

What exactly means the socially owned land? - Socially-Owned enterprises (SOE), were created by the Law on Enterprises and the Law on Associated Labor of Yugoslavia. The Serbian Law on Registration of Real Properties in Social Ownership in 1971 states in Article 1. "Real property in social ownership shall be registered in the public registry which registers the right to use such property..." An important instrument is the Law on the transfer of immovable property promulgated in 1981. The first provision: "The transfer of farmland, building land, forests and forest regions, buildings, apartments, business premises, undivided parts of the immovable property and other immovable property shall be governed by this law." These laws are the result of a political philosophy. The principles of ownership in old Yugoslavia are based on the old Roman law categories. Ownership of land depends on the type of property, natural or juridical, public or private. Properties are regulated according to their nature, civil or commercial, movable or immovable. Ownership is divided as the Romans divided it, the *jus utendi*, the right to use, the *jus fruendi*, the right to enjoy its benefits and the *jus disponendi*, the right to alienate, to transfer. The property was not considered as belonging to the State. But a new concept was introduced. It was the concept of "social property" which was introduced in the early 1950s.

How was social property created? - To create social property, land and buildings had to be taken in some way from the private ownership. Five different legal institutions were created to take away property from private ownership. Expropriation, colonization, and confiscation were the main three.

- The land was expropriated against payment of compensation. Frequently the compensation was not paid. You have a decision by a Municipality to expropriate land for public purposes, but the Municipality had no funds.
- The land was confiscated from people who were declared enemies of the people by a criminal procedure.
- Under colonization rules, land in excess of 20 hectares was forfeited to the state

What are illegal constructions? - Illegal constructions on land with the unsolved ownership issue were considered those building, buildings settlements in which the user or resident, is not the title holder of the property.

These cases are addressed as illegal constructions, because of the following:

- On the Socially-owned land the user of the property does not possess the necessary documentation of ownership;
- On the Socially-owned land, the user of the property has usurped/occupied the social property, Forest Enterprise lands, lands of agricultural cooperatives (SOEs), all these socially owned.
- On the Socially-owned land, the user of the property is a partial owner or co-owner with the Socially Owned Enterprise (SOE) property, he/she has "expanded used property" in social property - land in possession of Socially Owned Enterprises (SOEs) etc.
- The socially-owned land which was taken by the owner through the form of expropriation, but not executed, the project that has become the expropriation and the real owner has used the delay administrative procedures and, take back the land owned-use. Land appears to be registered on the name of the SOE but used by homeowners.
- Socially-owned land which was the matter of execution of 'verbal contracts' for the sale of land.

Administrator of the socially owned land/property in Kosovo - Since the year 2002, legislation is changed in Kosovo and according to the applicable law in Kosovo, the administrator of the social property in Kosovo since June 2002 is the Privatization Agency of Kosovo (PAK). In this cases, Identification of the assets/buildings build or constructed without an official permission of a respective Social Enterprise (SOE) or privatization Agency of Kosovo (PAK), by PAK are considered as illegal constructions over the property administered by PAK, and are treated as such.

Treatment of illegal constructions on socially owned land - PAK being the administrator of the socially owned property is also responsible for the treatment of the illegal constructions, as well as illegal uses of the socially owned land and entire social property. In compliance with legal qualification such constructions cases are mainly qualified as bona fide construction when the builder didn't know that he/she built a construction on somebody else's land) and/or Mala fide Construction (bad faith- builder knew that he/she built on somebody else's land). However, regardless of their legal classification and consequences in both cases, mutual agreements of the party are considered as primary solutions, be it an administrative or court proceeded.

Why did it come to illegal use? - Numerous invasions of the population, migration from rural to urban areas or to the suburbs close to urban areas, create multiple movements and changes in urban spatial structures around the periphery of the cities of Kosovo. Placement of residents in parts of suburban cities creates urban uncontrolled and illegitimate areas. In these lands construction of private houses begins. With time the number of houses built on social land increases, expand to the neighborhood, to some other neighborhoods in the naturally urbanized areas. It is a question of constructions that started in the late 50s and which still continue today. Reasons for migrations and influx are numerous. A better life, getting away from problems, vendettas, blood feuds, employment, marriage, etc. Consequently, most significantly the illegal users of the social properties, i.e. 95% of the cases (personally visited) do not have any ownership documents, any agreements, decisions, certificates or any other documents. According to the statements of family members, there is only a 'verbal/oral contract', oral agreement in good faith/trust, a sale based on good trust/ faith, or similar.

The area that is subject of the research is not a non-urbanized area or a highly poor location. The area itself is very well urbanized; an urban area that has solved the issue of infrastructure, areas with the regulative urban plan, but on the other side the property issue was not solved for 50-60 years now. Since the construction of these buildings, we can say that in general any actions have not been taken, any legal actions or any administrative actions in order to try to solve the property issues of the houses build on the socially owned property.

Who is the research addressed to? The main focus of the thesis will be legal treatment of the issue of illegal constructions on socially owned property, possible solution for the parties involved (illegal users and municipal institutions), therefore, this study may be considered as a guide for the solution of this problem to users of the social property and institutions such as state bodies within the legal framework.

What are illegal constructions? - Illegal constructions are defined as settlements that do not allow its residents to enjoy their rights to a standard of living, particularly housing. As such, they are distinguished by the following characteristics:

- An informal or insecure ownership;
- Inadequate or deprivation of basic services;
- Inadequate or non-participation in governance;
- A risk up to discrimination;

What do we mean with illegal use of socially owned land/property? The land of social ownership that today in the cadastral registry of the Municipal Cadastral Offices are registered as e.g. 'Social property – SOE PIK Progres Eksport – Prizren' or any other Socially Owned Enterprise (SOE), but the factual situation does not appear to be as such. In fact, the property is in use by private persons, which do not possess any single document proving their ownership over the property that they are using. The number of cadastral parcels is huge and the number of houses constructed on socially owned land is also huge. There are entire neighborhoods covering a lot of hectares. Until the year 2017, in Prizren Region there are identified:

- 1708 cadastral parcels in the name of SOE
- 1528 cadastral parcels with constructions/buildings on it
- 167 without any construction, only used as agriculture land

- 1929 different type of buildings (private and commercial)

In total there are 1,442,007 m<sup>2</sup> of land social ownership, are in use without permissions by SOE. These cases appear in several forms as follows:

- The socially-owned land where the user of the property does not possess the necessary documentation of ownership;
- The socially-owned land where the user of the property has usurped/occupied the social property, Forest Enterprise lands, lands of agricultural cooperatives (SOEs), all these socially owned.
- The socially-owned land where the user of the property is a partial owner or a co-owner with the Socially Owned Enterprise (SOE) property, has "expanded used property" in social property - land in possession of Socially Owned Enterprises (SOEs) etc.
- Socially-owned land which was taken by the homeowner through the form of expropriation, but not executed the project that has become the expropriation and the real owner has used the delay of administrative procedures and took back the land owned-use. Land appears to be registered on the name of the SOE but used by homeowners.
- Socially-owned land which was the matter of execution of 'verbal contracts' for the sale of land.

Part of the research was a questionnaire distributed to 441 houses/families. During the research, 441 houses were visited and all of the families were asked to fill out the offered questionnaire. Out of 441 families visited, we have received 150 outcomes on questions related to (see table 1 below).

Note: 1 ARES = 100 m<sup>2</sup>

Table 1- Outcomes of the questionnaire

Nr.	Question	ANSWERS			
		Textual answer	YES (%)	NO (%)	OTHER
1	Are you the owner of the property you are using?		84	15.5	
2	Do you possess any cadastral documents for the property you are using?		2.7	93	
3	What property documents do you possess for the property you are using?	95.3 % Verbal contract 2.7 % Agreement; 0.7 % Ownership Cert.			
4	For how long a period you have used the property/land you have constructed your houses on?	93.3 % > 50 Years 4.7 % > 30 Years 2.7 % > 20 Years			
5	How many houses have you built on the land you are using?	48% 2 Houses 47.3 % > 2 Houses 4.7 % 1 House			
6	What is the size of the area you are using?	7.3 % 1 – 5 ARES – 69.3 % 5-10 ARES 23.3 % More			

7	If you are not the owner of the property you are using, did you ever file a claim in any court to certify the property?		1.3	94.7	
8	If you filed a claim, at which court is your case?	68 % Municipal Court 28% No Info 1.3 % SCSC			
9	Did you ever apply to the Municipal Cadastral office to register your property?		4.7	92.7	1.3
10	Are your houses legalized by Prizren Municipality?		91.3	7.3	0.7
11	Do you pay property on the property you use?		99.3	0.7	
12	Have you been contacted by the institutions below while using the property/land?		6.7	93.3	
13	For the period while you used the property, did you requested any of ownership- cadastral documents to be issued to you by respective municipal Directorates?		89.3%	10.7	
14	If yes and you possess property documents for the land you use, do you know in whose name the land is registered?	96 % SOE, 2.7% Private, 2% Don't know			
15	If the land you are using results to be social property, are you interested to enter a contractual relationship with the administrator of the social property, in this case PAK?		92	6	2
16	If the property you are using is social property, would you interested in buying it if the same would be on sale?		90	8	2
17	If the property you use is social ownership and you are interested in buying it, in what form of privatization you think it should offer for sale?	97% Sale through negotiation 2.9% Other			
18	If the is of social ownership and you are interested in buying it, do you think that previously the property needs to be evaluated? If yes, who do you think should do the evaluation?	87.3 % By PAK, 3% Independent body 9 % Other			

19	If you are against privatization, please offer your proposals for the solutions?	Transfer of the property to the users, since these properties are already bought. Agreement with the reasonable price Negotiation State has to transfer property to users without payment Process through PAK Process through Courts Property is already bought, just needs to be transferred and registered to users			
20	If you do not agree with the PAK privatization process for the property you are using, who do you think you should contact to solve your property matter?	71.4% Prizren Municipality, 28.6 % Other			

Analysis of the questionnaire outcomes with the Statistical Program on Social Sciences - SPSS – Crosstabs – Cross tables with the SPSS system

Ownership and use of land, possession of any cadastral or property documents, the period of use of land, how many houses were built, area of land used as an owner and user, have they applied to any court, which court have they applied to, have they applied at the municipal cadaster, have they applied at the municipality for the legalization of the building, have they paid the property pay tax, have they visited any State institutions. In the period of use, have they asked for the cadastral documents in MCO, if they were interested to enter into contractual agreement with PAK if they were interested in buying the land they were using, was the evaluation of property needed, any possible solution for the privatization, etc.?

From the outcomes, attitudes, behavior, mimics, body language of the interviewed people, it could be seen that in most cases, they were not willing to talk about this painful issue, or didn't want to answer at all.

## Hypotheses

An operational definition of hypothesis is a definition that is stated in terms that can be observed and measured. The way that I used to construct hypothesis in my research paper is to turn my research question into a hypothesis. In this respect I need to operationally define all the terms in my research question. Hypothesis on this study paper are confirmed by 'Chi-Square' analyses, through cross tables using Statistical Program on Social Sciences - SPSS system. Hypotheses are presented as follows:

1. The users of the land/property consider themselves as the Owner eventhough they do not have related documents of the property.
2. The users of the land/property are aware that the ownership of the land/property belongs to SOE and are intrested to negotiate with PAK for gaining the legal ownership, since PAK is considering a trustee agency.
3. The users of the land/property do not take legale action (Municipality Cadastar or Court) for Ownership as long as they do not contact first from the legal institution/agencies.

It is applied 'Chi/Square' analysis, through cross tables using SPSS system related to 4 for interrelations.

Conclusion is as follows - All present Hypothesis in the study, are confirmed by 'Shi-Square' analysis through cross tables.

## Conclusions

In order to conclude we have gathered the legal technical and primary data from the field to clarify the socially owned land in Kosovo and Urban Develeopent in Municipality of Prizeren :

### **H1 The users of the land/property consider themselves as the Owner eventhough they do not have related documents of the property.**

Based on the results of the Pearson-Chi-Square statistical test and the cross-tabulation analysis, the first hypothesis was verified. Its confirmation indicates that the users of the land/property which consider themselves as the Owner whereas they do not have related documents of the property.

The users of the land/property are willing to gain the ownership throught the negotiation process since seem to be aware that their development on current land/property without the legal ownership withhold them to develop further, therefore consequence the second hypothesis was introduced:

### **H2 The users of the land/property are aware that the ownership of the land/property belongs to SOE and are intrested to negotiate with PAK for gaining the legal ownership, since PAK is considering a trustee agency.**

Based on the results of the Pearson-Chi-Square statistical test and the cross-tabulation analysis, the second hypothesis was verified. Its confirmation indicates that the users of the land/property which consider themselves as the Owner their awareness regarding the missing legale owership and are intrested to negotiate with PAK as trustee agency for gainin the ownership. The users of the land/property are withholding to gain the ownership only after they get contacted, in mean time they hold to not take an action for legalisation the ownership, therefore consequence the third hypothesis was introduced:

### **H3 The users of the land/property do not take legale action (Municipality Cadastar or Court) for Ownership as long as they do not contact first from the legal institution/agencies.**

Based on the results of the Pearson-Chi-Square statistical test and the cross-tabulation analysis, the third hypothesis was verified. Its confirmation indicates that the users of the land/property which consider themselves as the Owner withhold by not taking any action at first to legalize the used land/property.

As the result of the research conducted on this matter and subject, the following statements will be presented:



- Houses/ the entire neighborhood constructed illegally on socially owned land are part of the general mentality in rural areas.
- Thousands of houses have been built, entire neighborhoods without any documents, contract or anything else proving ownership over the land on which the houses are constructed.
- Through the discussions with the representatives of the families, in each and every house I have been told that the land is bought, or exchanged with some other land. 'But we do not have any contract; we do not have any single paper that can prove the ownership.
- The land is bought based on 'BESA' ('the given word' in Albanian) meaning the real estate is bought in trust – good will', or as people used to say 'verbal contract'. In the past, the method of 'verbal contract' for the sale of real estate has been an accepted way of trading property rights due to cultural and traditional norms applied in parts of rural areas. This is not a legal base for any legal transfer of the property in the name of the buyer.
- The cadastral office cannot change the name of a legal holder of the property. Legal property documentation remains the same.
- This concerns the urban area having an urban regulatory plan and a solved infrastructure issue but still unsolved property issue for 50-60 years. Since the construction of the buildings, not any action, any legal or administrative action for treatment and solving the property issues for the houses built in the socially owned property has not been undertaken.
- Being part of the social property, and PAK being the administrator of the social property, the matter of illegal constructions on the social property is treated only by PAK, and not by any other state or governmental institutions.
- All the facilities built without permission on the social property are exempt from an institutional review of the legislation in force in Kosovo and as such are not considered at all by the state institutions and official documents.
- The Municipal Development Plan and Urban Regulatory plans in Municipalities so far did not cover and treated issues of socially owned property.
- Considering the factual situation in the field, the nature of cases, and complexity of work and comparing them with explicit authorization of the Agency, the phenomenon of illegal constructions in SOE properties and/or other specific cases overcome the rules of ownership transformations through public bidding.
- Legislation in force, Law on Construction, Law on the treatment of illegal constructions, did not include the issue of social ownership.

In general, we can see more dimensions of the problem of illegal constructions in Kosovo and Dusanovo, not only administrative, nor social and economic but also cultural, technical and political at least, as the complex of sustainable habitat in present time, but started seven decades ago. So, Dusanovo is a specific case and of historic importance in general.

## **Recommendations/solutions**

1. Illegal constructions in social land cannot be treated the same way in the 20th and 21st centuries, due to the different conditions, statehood and nationality. Illegal construction has become actual and acute across Yugoslavia, Serbia, Montenegro, and Kosovo, only in 70s, and this issue is quite different in the 21st century. Therefore, based on the

research done, analysis, outcomes of the questionnaire and discussions with the users of the property there are two possible recommendations:

2. Land has to be offered for sale only to the user and no open sale, for users of SOE land. Negotiation between PAK and the user of the occupied property/land or-and building. PAK will sale/privatize as a special sale the land as a social property, land on which are build houses. This means that the users of the property/land have to buy the land used from PAK, being the administrator of the social property.
3. Each land/social property, because of negotiations with the users, previously it should be evaluated before offering for sale.
4. PAK LAW in force needs to be changed – amended in relation to two issues:
  - i) For the part of illegal constructions on social land. In this respect, PAK and Ministry of Environment and Spatial Planning need to sign a Memorandum of Understanding for the legalization process. Since PAK will offer for sale land on which houses are build, than Ministry in cooperation with the respective Municipalities in parallel has to continue with the legalization of the houses identified in social ownership and property issue to be solved completely by registering in official cadastral registries of the respective Municipality. Municipal Cadastral offices in cooperation with the Directorate of Urbanism through the legalization of the building, in the same time will complete the process by covering the issue of land and building as well. Therefore, respective families will solve their issue of property by legalization of entire property with the two cultures – land and building.
  - ii) Establishment of Sustainable Development Agency of Kosovo for Habitat, Environment and cultural heritage
5. Task force comprised of PAK officials, municipality and officials from Ministry have to work on identification of the cases on the Kosovo level. After preparing the list and verifying the cases, for each case being in use of the property for more than 35 years, the commission should issue a decision for use of the property, for having the right to transfer the property in the name of the user, so that families would able to apply for the registration of the property in cadastral registries. Properties that are in use for less than 35 years need to go through the process of sale.
6. The recommendation is to revise the existing urban regulatory plan in order to include and treat the property of social ownership. The Area needs to be treated as an informal settlement.

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