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The Right of Residence in Kosovo, Challenges of transformation to the right of permanent use

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ABSTRACT

In Kosovo, after the period of 1999, transformations were carried out in the constitutional and legal aspect, but the right to transform residence was not a priority. As a result of this, adequate policies have not been created to identify all housing issues, aimed at residential units or buildings built before 1999. There have also been no efforts to create new policies, which prioritize the issue of transformation from owner to owner of housing, as an issue with a great social and economic impact. After 1999, the transformation of the right of residence, acquired during the former Socialist period, began. This is actually the main and necessary transformation that has happened in Kosovo. Although necessary as a process, from which the citizens, who enjoy the right of permanent use, are the direct beneficiaries, it has not yet been completed. The so-called process of privatization, or the transformation of housing rights, was a process whose main obstacle was the legal constructions of the discriminatory period, that is, the oppressive measures, which had the objective of depriving them of housing rights. This process, which has started for more than a decade, in addition to enabling privatization, has also served as a process through which the legal and factual problems, created during the discriminatory years, have been inventoried. This process has been able to identify and inventory the problems, inheritance related to the right of residence, respectively related to residential buildings, which are not inventoried and registered. In this paper, we will clearly address and suggest how to create policies for property rights that will be an indicator to precede the economic and social development plans. In this paper, the problems inherited from the former Socialism and the methods for the transformation from possession to property rights will be addressed, through the process of sale and privatization.

Key words: *The right of residence, permanent use, possession, Privatization, Sale and purchase, housing without owner, Former Socialist housing system, Discriminatory period.*

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1. INTRODUCTION

The crisis of the 90s mainly meant the destruction of state authority through the revocation of autonomy in the Autonomous Socialist Province of Kosovo by the Government of Serbia, in the non-functioning of the Legislation, with emphasis on this study of the Legislation on housing issues such as the Law on Housing Relations ("Official Gazette of KSAK", No. 11/83, 29/86 and 42/86). It is also worth noting that the sale or privatization of socially and publicly owned housing, for which there is a residential right or the right of permanent use, began in 1992. The process of selling these housing units was done according to Law on Housing, announced in the "Official Gazette" of the Republic of Serbia no. 50/92, dated July 25, 1992. The law entered into force on dt. August 2, 1992, but due to political developments during this period of time, this process has not been fully completed. Therefore, this paper will examine how the destruction of authority and the various discriminatory laws affecting inter-ethnic property sales contributed to the rise in the level of unverified property sales as well as the right to use housing. ²After the end of the war in Kosovo in 1998/99, deep transfers of the country's economic, legal and political system were carried out by international and local institutions, but due to wrong concepts, or misunderstanding of the applied concepts, the right of residence it was not a political priority or objective. As a result of this, adequate policies have not been created and there has not been sufficient effort to identify all the unresolved issues that have as their object residential units or residential buildings, and there has also been no coordination between international and local institutions. at the central and local level, to create new policies that prioritize the issue of housing, as an issue with a great social and economic impact. If analyzed from a social point of view, the creation of adequate policies could solve many social problems of the country, but in addition to the social impact that the issue of housing can have, there is no doubt that the economic impact will be very large, if it is solved or if housing is addressed at this time, very critical for the country. After 1999, the transfer of the right of residence began, that is, the transfer of the right of residence acquired during the former Socialist period began. This is actually the main and necessary transfer that happened in the country, although it was necessary, necessary and from which the citizens, who enjoyed a permanent right, actually enjoyed the right to use the permanent, still not finished. The process of the so-called privatization of the right to housing was a process whose main obstacle was the legal constructions of the discriminatory period, namely the oppressive measures which, among other things, targeted the right to housing or the deprivation of the right to housing. This process, which has started for more than a decade, in addition to enabling privatization, has also served as a process through which the legal and factual problems created during the discriminatory years have been inventoried. Although this process has been able to identify and inventory problems, all heritage related to housing, respectively related to multi-residential residential buildings or other types of housing, which are not registered in the Register of Property Rights (RDPP). It should be clear that the development of future housing policies should be preceded by economic and social development plans, as well as through a genuine housing policy sustainable urban development will be addressed. So the inclusion of housing policies in the future urban plans can start a new spirit of development. But now the inherited problems

would have to be addressed and the legacy of the former Socialism would have to be finally transformed through sale and privatization.

2. OBJECTIVES

The purpose of this research is the analysis of the process and procedures of the development of housing policies as a component in the framework of the creation, development and functionalization of the housing stock in the period of self-governing socialism, which were built in different periods of time and which are evidenced, inhabited in the time period before the 1990s, which were financed, built and managed by former social enterprises. The main objective of this paper is to examine and define ownership and possession in condominium buildings and common elements. The challenges of the transformation of the right to the permanent use of this residential right in the new constitutional and democratic system in the Republic of Kosovo, which takes place in stages from 1999 to 2008, managed by UNMIK and after the declaration of Kosovo as a sovereign state and not dependent.

3. RESEARCH METHODOLOGY

The research methodology for this paper is presented using the method of comparing data based on the former administrative and legal system before the 1990s, from 1990 to 1999, as well as the period after the last war in Kosovo, comparing the period of reconstruction from 2000 until 2003, then the process of the legal system of temporary self-governing institutions, established according to Resolution 1244, under the supervision of UNMIK, until 2008 when the Constitution of the Republic of Kosovo was promulgated, and the period from 2008 until today 2023, making the comparison of property-legal legislation, the institutional mechanism for the implementation of the process and procedures, for the sale of apartments for which there is the right of residence or the right of permanent use drawn up in the new legal system and constitutional of the Republic of Kosovo.

4. CONCEPTS

4.1. The right to build and use the stock of multi-residential housing in the former system of self-governing socialism,

This right to housing has been realized through Institutions and institutional mechanisms for the development of housing created by the former Autonomous Socialist Province of Kosovo. The period of time that could be identified as the housing development in the Socialist system, was defined and planned with the General Urban Plans starting from 1953, through the Housing Fund. According to the Population Census Statistics, in 1981 Kosovo had 220,000 housing units of all types, in which about 223,000 households with about 1.6 million inhabitants lived. The Housing Company in Prishtina was founded in 1964 after the formation of the Housing Fund, which was created from the stop of 3.35% of the gross salary of employees at that time. In 1976, the Housing Company was transformed into the Self-Governing Residential and Business Interest Association (BVI Residential and Business Interest).

4.2. Legislation for the development of the process of construction, management and sale or privatization of housing units in the former Socialist Autonomous Province of Kosovo

The crisis of the 90s mainly meant the destruction of state authority through the revocation of the Autonomy in the Autonomous Socialist Province of Kosovo by the Government of Serbia, in the non-functioning of the Legislation, with emphasis on this study of the Legislation on housing issues such as the Law on Housing Relations ("Official Gazette of KSAK", No. 11/83, 29/86 and 42/86). The sale or privatization of socially and publicly owned housing, for which there is the right of residence or the right of permanent use, began in 1992. The process of selling these housing units was done according to the Law on Housing, promulgated in "Official Gazette" of the Republic of Serbia no. 50/92, dated July 25, 1992. The law entered into force on August 2, 1992, but due to political developments during this time period, this process has not been fully completed.

With the suppression of the Autonomy of Kosovo in 1989 and the destruction of the legal and institutional system by the Serbian regime, the Self-Governing Community of Interest (BVI) for Housing and Local Business was transformed by changing its name to Public Housing Enterprise. The development, construction, financing, ownership, and use of housing facilities, namely the housing fund, have been the joint contribution of social enterprises or state enterprises and the employees of these enterprises. The Housing Fund until these years (1990) was created and developed in order to provide the housing needs of employees in institutions and state-social enterprises, with the right of use during the period of employment in the respective enterprises. The owners of the residential facilities, namely the apartments, have been the companies themselves or other social-state institutions. These apartments were built from the allocation of financial resources from the income of the enterprise and the obligatory contribution from the income of the employees in the respective enterprises. The management of the maintenance of this housing fund in Kosovo, until the 1990s, was organized, led and managed by the former public housing enterprises. The users of the flats, in the name of the use of the flats, have performed payment obligations in the name of the rent and maintenance of these flats, on behalf of the municipal housing enterprises, which have done the maintenance of the same residential objects. While from year 1989 and until the post-war period, the housing sector in Kosovo was not treated institutionally due to the suppression of the Kosovo Institutions by Serbia.

The Assembly of the RSFJ, on February 14, 1990, approved the Law and the Program for the provision of housing (in the period 1989-1993) for the needs of personnel and for the return to Kosovo of displaced persons in implementation of the Yugoslav Program for housing. With that program, it was foreseen that by the end of 1993, 2000 apartments and 711 plots of land would be provided with regulated infrastructure and loans for individual housing construction, supposedly for professional staff who would come to work and live in Kosovo. The program was so detailed that it provided for the total area (115,273m²), and the structure of the apartments: 234 three-room apartments, 1345 two-room apartments, 314 one-room apartments and 107 studios. The construction of housing and the allocation of land had to be done in suitable locations for living, in the centers or near the centers of the cities.

The Commissariat for Refugees (for refugees who fled from Bosnia-Herzegovina and from Croatia), began to build many residential buildings for refugees as well as for Serbian and Montenegrin citizens on behalf of the deficit cadres who wanted to come to Kosovo to live and work, where can be employed and live in this time period. The construction of settlements and multi-residential buildings for settlers was planned to be done in all municipalities, all over Kosovo; in some of them they had been built, in some the construction had just begun, in some the infrastructure had been designed and arranged, and in most of them the locations, plots and surfaces of the plots and lands that would be given to the colonists had already been determined. In the first year of the implementation of the program (1991), 196 flats were built and 22 flats were bought, in Fushë Kosovë, Obiliq, Pejë, Deçan, Klinë, Lipjan, Viti, Zubin Potok, Skenderaj, Gjilan, and the construction of 122 flats began in Pristina. , 9 in Peja and 12 in Istog. In the meantime, they were built as much as the state had financial opportunities under the conditions of the general crisis and the war it was waging in Bosnia and Croatia. For each year, the federal budget allocated funds for the implementation of the program, and this lasted until the outbreak of the war in Kosovo. The Assembly of the FRY (Serbia-Montenegro), also on December 3, 1998, approved the Law on the provision and distribution of housing and loans for personnel and the return to Kosovo of displaced persons ("GZ of the FRY", no. 59, dated December 4 1998), according to which, in the federal budget for 1999, 40 million dinars were allocated for the completion of the construction of 412 apartments and the adjustment of 200 plots of land. With the means provided by the YU-program, until 1997, 972 flats were built and 30 loans were allocated for individual house construction. Those apartments and loans were more dedicated to professional staff that would come to Kosovo. For the progress and realization of this program, there was a federal commission and a regulation on the conditions, criteria and priorities of who will be given the apartments and loans.

5. LOCAL AND INTERNATIONAL POLICIES FOR HOUSING IN KOSOVO AFTER 1999

5.1. Institutions and institutional mechanisms for the sale or privatization of housing in Kosovo after 1999

Kosovo, on the basis of Resolution 1244, was under the Protectorate of the Security Council of the United Nations Organization, which meant the temporary Administration of Kosovo by this organization which did this with its Mission in Kosovo known by the abbreviation UNMIK. The mission of the United Nations Organization in Kosovo. UNMIK was led by the Authority of the Special Representative of the UN Secretary General. According to Resolution 1244, UNMIK had the task of helping the locals in the creation of the Provisional Self-Governing Institutions of Kosovo (PIVG), first the Provisional Administrative Council (KPA) was formed, in which all political groups were represented and ethnic communities living in Kosovo at that time.

UNMIK - United Nation Mission in Kosovo / UNMIK Coordination Center, Pristina. UN mission, located in Kosovo. based on resolution 1244, UNMIK is to:

- support basic administrative functioning
- establish substantial autonomy and self-government in Kosovo
- enable and facilitate the process of establishing the Kosovo statute

- coordinate the work of international emergency and humanitarian organizations
- help renovate key infrastructure
- maintain order and security of the law
- raise human rights
- takes care of the return of all persons to their homes in Kosovo

The work of UNMIK has been divided into four "pillars":

- Pillar I: Police and Justice (led by the UN)
- Pillar II: Civil administration (led by the UN)
- Pillar III: Democratization and institution-building (led by the OSCE)
- Pillar IV: Restoration and economic development (led by the EU)

United Nations (UN) Resolution 1244 – Adopted by the United Nations Security Council, at its 4011th meeting, on June 10, 1999, bearing in mind the purposes and principles of the United Nations Charter, as well as the primary responsibility of the Security Council for maintaining international peace and security:

- **Decides** that the political solution to the Kosovo crisis is based on the general principles in annex 1 and as further elaborated on the principles and other elements required in annex 2;
- **Demands** in particular that the FRY immediately and verifiably end the violence and repression in Kosovo, and begin the full and verifiable phased withdrawal of military, police and paramilitary forces based on a specific timetable, with which the establishment of the international security presence in Kosovo will be synchronized;
- **Decides** to send to Kosovo, under the supervision of the UN, an international civilian and security presence, with the relevant equipment and the required personnel, and welcomes the agreement of the FRY for such a presence....

According to Resolution 1244, it authorizes UNMIK to review the legal process and procedures for the legislation of the former system, which may be discriminatory or non-discriminatory, through the Regulations.

- International standards for human rights;
- European Convention on Human Rights and Fundamental Freedoms (ECHR)
- Laws in force
- UNMIK Regulation 2000/59, on the amendment of UNMIK Regulation No. 1999/24 on the law in force in Kosovo
- UNMIK regulations on the establishment of DPÇBP and KPPC
- Other relevant regulations of UNMIK regarding property rights
- The problems stemming from the current legal framework in Kosovo
- Validity of legal acts performed between March 22, 1999 and June 12, 1999
- Availability of the law in force in Kosovo

5.2. Directorate for Housing and Property Affairs (DPÇBP) and Commission for Property and Housing Claims (KKPB)

UNMIK with Regulation no. 1999/23 of November 1999 established:

The Directorate for Housing and Property Affairs (DPÇBP) and the Commission for Property and Housing Claims (KKPB). The DPÇBP has been given the exclusive mandate to resolve the most controversial housing-property lawsuits, including also:

- claims for the return of property lost as a result of discrimination;
- requirements for registration of informal sales and purchases of property; AND
- requests from refugees and displaced persons who have lost possession of their homes and who wish to return or sell their property.

The mandate of the DPÇBP and the KPPC is to resolve property-legal disputes, which are the result of the discriminatory legislation that was implemented in Kosovo from 1988 until the end of the armed conflict in June 1999; administer abandoned properties and provide guidance on relevant issues to UNMIK and other international actors.

In accordance with UNMIK Regulation 2000/59, for the amendment of UNMIK Regulation No. 1999/24, the local law in force on March 22, 1989 in Kosovo, is a secondary source of law during the drafting of the UNMIK Regulation.

Local law which was in force after March 22, 1989 is applicable only in those cases where the law rests on new grounds and is not "discriminatory". Some of the local laws which were in force in Kosovo on March 22, 1989, which are relevant in terms of property rights, are presented below:

Law on Basic Legal-Property Relations (Official Gazette of the RSFJ, No. 6/80);

- Law on the circulation of immovable property (Official Gazette of KSA of Kosovo, No. 45/81, 29/86 and 28/88);
- Law on expropriation (Official Gazette of KSA of Kosovo, No. 37 /71);
- Law on Building Land (Official Gazette of KSA of Kosovo, No. 14/80 and 42/86);
- Law on Residential Relations (Official Gazette of KSA of Kosovo, No. 11/83, 29/86 and 42/86);
- Law on Co-Ownership (Official Gazette of KSA of Kosovo, No. 43/80 and 22/87);

5.3. Kosovo Agency for Comparison and Verification of Property (AKKVP)

It was established with the approval by the Assembly of the Republic of Kosovo on June 9, 2016 of Law 05/L-010 on the Kosovo Agency for Property Comparison and Verification, which entered into force in November 2016, amended and supplemented by Law 08/ L-052, which entered into force on January 26, 2023. According to Law 05/L-010, AKKP will also inherit the mandate of the Kosovo Property Agency (AKP). AKKVP is an independent Agency established according to Article 142 of the Constitution of the Republic of Kosovo, which has the mandate to accept, compare and through the Property Verification and Settlement Commission (KVVP) resolve the gaps and inconsistencies between the original cadastral documents of received in Kosovo by the Serbian authorities before June 1999 and current cadastral documents in the Republic of Kosovo, for private immovable property, including agricultural property and private commercial property, as well as the acceptance of submitted claims of undisputed property rights and legitimate informally transferred between the parties before March 24, 1999, whose formal transfer is prohibited by discriminatory legislation or for which the documents required for registration in the Kosovo cadastral system do not exist.

5.2. Establishment of temporary Self-Governing Institutions of Kosovo

- The Special Representative of the Secretary General, Based on the powers granted to him by Resolution 1244 (1999) of the United Nations Security Council of June 10, 1999, has drafted and approved "Regulation No. 2001/9 on the constitutional

framework of temporary self-government in Kosovo". Considering Regulation no. 1999/1 of the United Nations Interim Administration Mission in Kosovo (UNMIK) dated 25 June 1999, as amended, on the Authority of the Interim Administration in Kosovo, with the aim of establishing meaningful self-government in Kosovo until the final settlement and the creation of temporary institutions of self-government in the legislative, executive and judicial fields through the participation of the people of Kosovo in free and fair elections, hereby announces the "Constitutional Framework for Temporary Self-Government" which is attached to this regulation.

- Based on this Constitutional Framework, the temporary self-governing institutions were established - the Ministry of Environment and Spatial Planning (MESP). In the organizational chart of this Ministry, the Department of Housing and Construction (DBN) was established and functionalized, which in the organizational chart has 3 Divisions: Housing Division (DB); the Construction Division (DN) and the Development Policy Division for Housing and Construction (DPZH). The Department has started to deal with issues of housing rights, through Standard 6 - Property Rights (standards before the status) and the beginning of the first Legislation for the sale of housing for which there is a housing right.

5.3. Proclamation of Independence of Kosovo

It was made on February 17, 2008 in the Assembly of the Republic of Kosovo in Pristina. In an extraordinary meeting attended by 109 out of a total of 120 deputies, the Assembly of Kosovo unanimously declared Kosovo an independent, sovereign and democratic state.

- The legality of Kosovo's Declaration of Independence has been a controversial topic for some time. Serbia opposing the Declaration of Independence of Kosovo sought evaluation of the international validity and support for its position, allegedly that the Declaration of Independence of Kosovo was illegal. Following this development, in October 2008, Serbia requested an advisory opinion from the International Court of Justice.
- On July 22, 2010, the International Court of Justice through an Advisory Decision re-confirmed that Kosovo's Declaration of Independence did not violate any article of International Law.
- The declaration of Kosovo's independence was the crowning of a long and difficult journey for the citizens of Kosovo. For years, the citizens of Kosovo suffered the consequences of ethnic cleansing by the Serbian regime of Slobodan Milosevic, which resulted in a Liberation War (1997-99). After the end of the Kosovo Liberation War, international peacekeeping troops were deployed in Kosovo.
- Since June 13, 1999, when the Serbian forces were forced to leave Kosovo, this country was administered by the United Nations Organization Mission - UNMIK and the Self-Governing Institutions of Kosovo: the Assembly, the President and the Government.
- Based on the Constitution of the Republic of Kosovo, Institutions have been transferred from temporary self-governing Institutions, Government Institutions of the Republic of Kosovo - Ministry of Environment and Spatial Planning (MESP) have been established. In the organizational chart of this Ministry, the

Department of Spatial Planning, Construction and Housing (DPHNB) has been established and operationalized, which in the organogram has 3 Divisions: Spatial Planning Division (DPH), Construction Division (DN) and Housing Division (DB). The Department has continued to address issues of housing rights, through Strategies and Legislation for Property Rights

6. RESULT AND DISCUSSION

6.1. Main issue addressed

With the change of the Constitutional System of Kosovo, as well as the change in the political, economic and social circumstances, this issue has been regulated by Law No. 04/L-061, for the sale of apartments for which there is a residential right or the right of permanent use. The purpose of this law was that all those who could not buy or who were prevented from buying the apartment in which they legally acquired the residential right, to be able to buy the apartment with approximately similar conditions as it is privatized housing in the period 1992-99. This law regulates the conditions and manner of sale of socially and publicly owned housing in which there is the right of occupancy or the right of use for rent for an indefinite period, together with the common parts and equipment of the building, as well as the manner determining the selling price of the apartment and extinguishing the residential right.

6.2. We complete the process of amending the Legislation for the sale of flats for which there is a residential right:

- Law No. 04/L-061 for the sale of apartments for which there is a residential right, (it was published in the Official Gazette on 12.01.2012).
- Law No. 04/L-247 on the amendment and completion of Law No. 04/L-061 on the sale of dwellings for which the right of residence exists. On 27.04.2014, the addition/change was announced in the Official Gazette
- Law No. 08/L-011 for the amendment and completion of Law no. 04/L-061 for the sale of apartments for which there is a residential right, amended and supplemented by Law No. 04/L-247 (published in the Official Gazette of the Republic of Kosovo No. 10 / March 22, 2022).
- Decision of the Minister No. 3234/22 dated 03.06.2022, for the extension of the deadline for the submission of requests for the purchase of apartments from the holders of the housing right, namely the users of socially or publicly owned housing for which the right of residence exists, as provided in Article 2 of Law No. 08/L-011 on Amending and Supplementing Law No. 04/L-061 on the Sale of Flats for which the Housing Right exists, amended and supplemented by Law No. 04/L-247.

6.3. The process of examining requests for the sale - purchase of apartments for which there is a right of residence or the right of permanent use

Each organization, through the commissions established within the organization for the evaluation and sale of housing, has the duty to accept, verify, examine and make a decision on the requests of the applicants who have the right to housing.

In order to make an assessment of the current state of the process of selling apartments for which there is a residential right, we have created a tabular register with data on the number of requests submitted in the time period. For this issue, from 2012 to 2023, there are handled 3438 requests and it was possible to privatize the apartments for which the housing right exists in over 70% of the cases.

The Ministry of Environment, Spatial Planning and Infrastructure in cooperation with the Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo has organized:

"The workshop on changes to the Law on the sale of housing for which it exists housing right" in June 2023 as well as

"The workshop for reviewing the process for the implementation of Law No. 08/L-011 for the amendment and completion of Law No. 04/L-061 for the sale of apartments for which there is a residential right, amended and supplemented by Law no. 04/L-247" in September 2023.

7. CONCLUSIONS AND RECOMMENDATIONS

7.1. Challenges in not completing the process:

- Issues elaborated during the discussion - Negative conflict of competence and sending cases to court.
- Non-specification by Law of the necessary documents for the final realization of requests;
- Problems with meeting deadlines during the process;
- Creation of a data base / Inventory of dwellings with right of occupancy;
- Lack of knowledge about the process on the part of citizens;
- The ambiguity of the law to indicate which is the competent body for the formulation of sales contracts
- The role of the Cadastral Agency of Kosovo in the process;
- Redistribution after the war of the apartments divided before 1989/99;
- Lack of direct successor institutions to the institutions that once existed;
- Different data about the same residential object;

7.2. Conclusions and Suggestions

- MMPHI, to draw up the Terms of Reference and start as soon as possible the implementation of the Project "Inventory of the housing stock in the buildings that were built by public and social institutions until the period 1998/99" by making the description of exactly of the right of use or the right of possession of the apartment with accompanying parts.
- In the 2024 Legislative Program, start with the process of supplementing and amending the legislation in force, including all the suggestions of the institutional commissions that they have identified during the process of carrying out the review of requests for the sale and purchase of housing for which there is the right of residence or the right of permanent use;
- MMPHI to begin the drafting of a practical Guide (Manual) on the duties and responsibilities of all parties in the process for application, examination and registration of the change of residential property right from user or possessor to

owner of residential units for which there is a residential right or the right of permanent use

- To cooperate with the central responsible institutions for the notification and awareness of the parties in the process for the sale of the apartments for which the right of residence exists;
- To establish a Commission at the central government level, not from the ministries, which will examine all requests for the sale of apartments that have been separated from the former public institutions at the central level;
- To cooperate with AKVP and MESPI for the review of the transformation of competences for the management of housing units to the responsible institutions that are currently managed by AKVP;

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