

The History of Development of Land Registration and Ownership Rights in Kosovo, Legal Challenges During the Years 1912-2014

Blerta Rudi

L.L.M. Blerta RUDI

Abstract

Knowing that the registration of ownership rights is very important institute for legal and economic system of Kosovo, for its constitutive effect in gaining of ownership rights, protection of property rights of the owner and which enables effective management of the land, in order to understand its development, is necessary to turn back to history.

Regarding to this, Kosovo is not known for an early origin and consolidated system of land registration until Twentieth Century; even afterwards, its development was influenced by many socio-economic and political factors.

The review of the historical development of land records deserves a detailed study in Kosovo due to its complexity through the years, so in order to understand more accurately the footsteps of regimes, it is necessary to examine periods until 1912, 1912-1999 and 1999 till now days, because the elaboration of normative acts that arranged registration over the years, enable the readers to create a clear overview related to advances and characteristics of each stage of its development, therefore the differences and similarities can be noticed clearly through descriptive and comparison method.

Especially postwar period is characterized by major advances and essential changes as: Approval of Constitution and abrogation of old system. These changes contained fairly

challenges, but important is that the situation normalized and is moving towards positive trends of legislative development.

Actually, in Kosovo, property rights are receiving deserved attention, but it is somewhat worrying the emphasizing lack of the review of the registration, reason that encouraged me to elaborate this topic in order to gain more knowledge about the institute of registration system and complexities that accompanies it.

Keywords: Land Registration, Ownership Rights, Legislative Development, Institutional Regulation.

1. History of Land Registry and Ownership Rights in comparative plan the Republic of Kosovo with other states

As is worldwide known, land since the early stages of civilization is considered the most valuable asset for the economic and legal value, as a primary source of wealth and foundation for the development of all human activities. Through historical stages depending on state legal systems, land has morphed from a legal standpoint, but the importance of its protection always has been undisputed by becoming almost as obligation of old civilizations to take measures to protect the land by regulating the form of use, exploitation and acquisition of ownership on it.

A documentation and registration of properties was important for the the social development of a society, because such as Larsson Grant says, "Territoriality is the main expression of social power, because its changing function helps us to understand the historical relationship between state and society. This element is reflected in history as one of the strongest drivers of expansionist claims for the commercial growth" (Cadastral Systems, 2013). This desire for a commercial growth is directly linked to the land as the main source of wealth, moreover registration of land and ownership besides the purpose for protection and legal security of owner serves more about economic benefits, thus from the state was done for tax-fiscal purposes.

Historical evidences represent us the ancient Egypt as the place where were taken the first steps to register land and ownership. The obtained data were registered in the Royal Register, somewhere around the year 3000 before the birth of Christ and this recording was based on land surveying and marking of interest on the ground (Larsson, 1991). To proceed further

in history, different countries constantly tried to create land data records eg. in China around the year 700 after the birth of Christ, in Rome the old Romans established a record of all the lands controlled, base that will serve also as fiscal register (Larsson, 1991).

The obtained data from these recordings regardless the principal purpose for which they were made, contained also data that included the description and definition of the rights and guarantees for land, thus creating a framework of property registration and other rights.

However circumstances, depending on the system that states had chosen, distinguished the registration system of the legal documents and titles registration system.

In the eighteenth century, respectively in the year 1807 appeared a new type of land registration called cadastre. Cadastre meant a database of property organized systematically within a specific jurisdiction. Such information was based on a thorough study of the boundaries of a property (Larsson, 1991).

The founder of European cadastre is Napoleon who took the decision to establish the French cadastre when France changed the system moving from agrarian to industrial system.

French cadastre was based on the cadastral maps and data. The cadastral data contained parcel number, location of the parcel, the owner, the value of land. (Larsson, 1991)

During that time Kosovo regarding the historical development of the land books is not known for any old history because of being territory under occupation. Historical developments have influenced that Kosovo throughout its journey through history until the liberation in 1999, to pass through different regimes of the invaders.

Traces of historical developments that have occurred in Kosovo in the area of land records and registration of property rights can be divided into two periods:

- The period of the Ottoman Empire and
- The period of Serbian regime during 1912-1999.

This division will present a full picture of the development progress of the institution of land registration and rights in Kosovo, as well as their characteristics through the years because traces of each benchmark nowadays reflects to us inherited legal models from the past events which help us to understand more the current realities.

1.1 Registration of ownership rights in Kosovo during the Ottoman period - with TAPU

Kosovo under Ottoman rule was otherwise known as the Vilayet of Kosovo, hence had a determined type of legal and economic framework according Ottoman system. Therefore simultaneously, as a consequence any legislation reform made at that time had a direct influence in Kosovo, as a territory under occupation.

In the nineteenth century, the Ottoman Empire in a series of legislative reforms approved many laws to regulate land ownership and their registration. The Ottoman Empire started with revision of civil registers called "Defters" along with greatly enriching the legislation with new regulations as:

1. Law of Ramadan, also known as the Land Law of 1858;
2. Turkish Civil Code in 1867-1877;
3. Land Tapu Law; etc. (Instituti i Kosovës për integritet Euro Atlantike, 2004).

According to these laws, then started the initial registration of land into the register named "Atik Defter", which since then took the character of a civil registers covering of "ground instrument", base for the certification of the right on land. The system of registration of immovability and rights thereon was known as tapu system. Tapu was a public document that proved the right of ownership over a real asset. Tapu identified the owner and featured a land parcel by defining boundaries and names of the owners of neighboring parcels (Tawil, 2009).

The tapu system enabled the transfer of ownership by contract facilitating the movement of real estate. In this way, the ownership legally transferred to the new owner at the time of delivery of Tapu to him/her. Any subject that owned tapu, was considered as the owner of certain real estate because possessed the "official proof of their right to land" (Statovci, 2009), with legitimacy of possession and heritage as defined by applicable laws. The procedure for obtaining a tapu was very difficult and expensive because it was in Istanbul and for this reason a large number of owners did not record their property rights (Aliu, 2004).

The importance of the registration of property rights and obtaining of Tapu consisted in the clarification of legal titles that would enable the owner to confirm and expand the rights of ownership, possession and usage of certain property, except individual interest, land registration

considered important from the state administration also as fiscal institution that would enable the identification of taxpayers.

Tapu had undeniable significance as a public proof. Therefore, in Kosovo as long as there were no land books, the importance of registration of property rights was uncontested, because in this way commenced the creation of first bases of a kind of cadastre.

The earliest document discovered so far, proving that the property has been registered before the tapu system is a cadastral register of the year 835 h. (1431-1432), named as "Albanian Register of Sandzak" (Deftera-of-the Arvanid SANCAK) (Akademia e Shkencave e Republikës së Shqipërisë, 2002). Likewise, some cadastral registrations of years 1455, 1485 and 1530/1531 have been found, belonging to Kosovo land including Skopje, Hodeden up to Sarajevo, the Vukut province registered in timar defter and recordings of imperial haseve of Zveçan and Niksic. There is evidence that around the year 1910-1911 were made immovable recordings in Gjakova and Peja, where as a proof is a Tapu of the 10 May 1911 in which are included villages: Gramoqel, Marmull, Beleg, etc.

All these proves are documented in various studies and archival documents findings demonstrating that the Ottoman Empire had many cadastral registers, who improved often with the intention that each occupied land must be registered immediately, and lawfully to enter into the timar system of Ottoman Empire.

Over time, from gradual development of capitalist relations and the permanent weakening of central power, restrictive property frameworks fell, and as a result the institution of property under Timar system ceased to operate and generally land passed on full private ownership (Akademia e Shkencave e Republikës së Shqipërisë, 2002), and as such began to register with the approval of the Land code (1858) which directly affected in Kosovo.

It is worth noting that although property-legal relations were more or less the same in the countries under the Ottoman Empire including Kosovo; always there were specifications and changes which characterized the different territories. In Kosovo, these specifications were as a result of the interconnectedness of Shariah law, the national law of the Ottoman Empire with the customary law of the country, in our case the Albanian customary law (Statovci, 2009).

1.2 Registration of land and ownership right during the years 1912-1999 in Kosovo

After the World War I and World War II, Kosovo changed invaders and introduced under the Socialist Federal Republic of Yugoslavia (SFRY). These developments implied social and legal changes in the country, but the Tapu Sytem remained the same as an inherited system.

At the time of the Serbian state, Tapu was issued to subjects by the municipal competent authority and then endorsed by the municipal court in the place in which the immovable property is located (Instituti i Kosovës për integritime Euro-Atlantike, 2004).

Tapu had constitutive character at the time of issuance, and the relative accuracy of its certification for a period of 10 years. After that time, no one disputed the right of a property owner (Aliu, 2004).

The Serbian state in the 1913-1914 lay out decrees such as "Decree on the colonization of the newly liberated and united areas in the Kingdom of Serbia" which later was supplemented. By this law district courts were forced not to resolve ownership disputes, transfer of ownership disputes or other real rights over immovable, while in annexed areas land registration is not over and is not determined the manner proof of ownership by law. However, there were envisaged the exceptions in relation to the transfer of property, it was allowed when the owner had regular tapu and confirmed its right to the property. (Statovci, 2009).

Although the Serbian state allegedly justified the issuance of these laws for a more detailed regulation of property issues, colonial intentions towards the Albanian people of Kosovo were obviously seen, because Serbian intentions were to bring into play all these procedures of verifying the ownership of the land, in order to finally deny Albanians the right of ownership over their land.

These kinds of aspirations also proved with the promulgation of subsequent laws in Kingdom Serbo-Croatian-Slovenian (SKS), respectively Yugoslavia, such as "Decree on the colonization of new south lands" of 1920, which in 1922 approved as "Law on the colonization of new territories" and also other laws.

The first land registration was made through years 1932-1934 of approximately 250.00 hectares in the territory of Djakovica, Pec, Decani, Istok, Mitrovica, etc., by covering 280 municipal cadastral areas, thus got established register in which the names of the owners were written with

the Cyrillic alphabet and added suffixes "Viç" (that is characteristic for Slavic names) (Fig XXII, International Congress, 2002).

From a legal perspective the land and ownership registration was based on the "Law on granting of Tapu" in 1931, which stipulated certain conditions for the issuance of Tapu, a costly procedure that was nearly unbearable for the Kosovo Albanian owners. In this way from year 1952 until 1989, was registered systematically every 2-3 years all the territory of Kosovo, thus creating the basis of a proper cadastral (Fig XXII, International Congress, 2002).

Registration and measurement of land had become more intense since 1952 due to the issuance of the decision to establish agricultural income tax based on Cadastre, so that registration was necessary to identify taxpayers.

In support of legal regulation of Cadastre and of establishing a basic for the establishment of terrestrial books who unfortunately never constituted in Kosovo, in 1953 passed the Decree on Land Cadastre, which was amended and was completed in 1956, then in 1965 was approved "The basic law on measuring and Land Cadastre", and in 1973 Kosovo adopted the "Law on Measurement and Land Cadastre" which prescribed that land cadastre serves for economic, administrative and statistical purposes, for drafting of land books, keeping evidence of real estate on the ownership property of citizens and social ownership also for needs of other organizations (Statovci, 2009). Deadline for the constitution of the land books in which will be registered property rights under the law of 1973 was 10 years, but this term was never observed.

The Albanian people of Kosovo in the wake of resistance against Serbs refused the registration of their lands under Serbian legislation. They respected the Albanian customary law which did not regarded as necessary written documents as a basis for the acquisition of a property right, but relied on giving possession of the item with the permission of authoritative elders (Statovci, 2009), practice that was very damaging in legal terms, because of the lack of proving evidence of the land ownership which was inherited without accurately knowing the volume of that right, considering that inherited land was divide between generations.

Until the year 1989 in the purpose of protection and guaranteeing of social property were issued a series of laws which were arranged with almost any property relation. Among the most important laws were:

- The law on Basic Legal Relationships - Property (1980);
- The law on Circulation of Real Property (1981-86-88);

- The law on Registration of Real Estate Owned (1971);
- The law on Expropriation (1978-1886);
- The law on Construction Land (1980-1986);
- The law on Forests (1987);
- The law of Measurement and Cadastre of Land (1980), etc. (Berisha, 2007)

The situation complicated with the removal by force of Kosovo's autonomy that influenced the approved laws to become Serbian discriminatory policy tool. Therefore, as a result all cadastral offices began implementing the Serbian discriminatory policy by changing the holder under social ownership land, stopped buying and selling properties between Albanians and Serbs, was prohibited usage of the Albanian language, urban plans were destroyed, the property of socially owned enterprises were granted illegally to Serbs and all cadastral documentation moved to Serbia (Fig XXII, International Congress, 2002).

During 1991-1996 were also approved several new laws as:

"The law on public survey and registration of immovable property rights" (Rep. Newspaper. SFRY) No 83/92, 53/93, 48 / 94.12 / 96.15 / 96) which presented radical change transforming of the land cadastre to real estate cadastre (Fig XXII, International Congress, 2002), and the "Law on amendments and Additions to the limitation of real property transactions" (Official Gazette on Serbia, 22/91 on 8 April 1991) which resulted with many property transactions, conducted secretly and with no registration of those transfers in cadastre thereby creating a large number of informal transactions, which would later become the subject of many property disputes as provided opportunities for manipulating the properties that were sold without the necessary documentation and verified prior to court.

In 1999 with the intervention of international NATO troops ended the phase of the Serb occupation, and began the phase of establishing a legal system based on international standards which resulted in the repeal of discriminatory Serbian property laws and the adoption of new adequate laws.

2. The land and ownership right registration in the postwar period

Ownership as an absolute right on real property, as well as the oldest institute in civil law is regulated and protected by legal and constitutional provisions in all over states of Europe and wider.

In this case regarding the property rights protection, Kosovo as a post war country was an exception because of the absence of an applicable law other than "Law on Basic Legal Relations - Property", also due to discriminatory laws adopted by the Serbian State, the field of property rights was considered one of the most problematic and as a major challenge of legislation. The main reason for this was because of a chaos of laws inherited from the different periods and which were greatly hindered the situation. For the improvement of situation as soon as possible, it was necessary to adopt new laws of the Republic of Kosovo, and to repeal some of the Serbian discriminatory laws.

According to the laws passed in the 1989-1999 all transactions conducted at that time were not a gaining ownership base for the owners, but only base for gaining the possession right, therefore was a possibility to sold property in order chain, and that land later to be the base of proprietary conflicts about the true owner of the land, as how it resulted to be after war. The situation furthermore was complicated by the lack of property documents that citizens had lost during the war, and there was no possibility of verification based on the official cadastral documentation, since all the data were displaced in Serbia.

With ongoing efforts to improve that situation of postwar, the first results were observed with the issuance of the Administrative Order no. 2000/14 on the Establishment of the Kosovo Cadastral Agency (KCA), through which began the institutional setup of system of land registration in Kosovo. Very special merits in this direction have donor countries like Norway, Sweden and Switzerland, which helped financially the recovery of the cadastral system in Kosovo. On the other side legislation promulgated slightly delayed about two years later, ie in 2002 adopted "The Law on the establishment of rights over immovable property" no. 2002/5, which was deemed as the law that marks the end of implementation of the tapu system in Kosovo and the beginning of a new era for the Kosovo cadastral system. The same law was amandamented in 2003 to "Law on amendments and supplements of law on the establishment

of the Register of Immovable Property Rights", in order of adapting to the needs of citizens to have more detailed regulation of this area.

Despite all these efforts in arranging the legislature, the lack of adoption of the Constitution of the Republic of Kosovo enormously influenced the course of events. The legal framework had necessary to had the fundamental act of the State, in order that, laws legislated could have a long-term influence and not to be subjected to frequent changes according to Kosovo's status quo.

Therefore, the most significant event in legislation was the approval of Kosovo Constitution in 2007, which specifically in Article 46 defines that the right on property is guaranteed and protected by the state. Also in Kosovo Constitution are included all European Convention for the Protection of Human Rights and Fundamental Freedoms and the Universal Declaration of Human Rights 1948.

However, even with the approval of Constitution, there were still gaps in legislation about the property rights and the registration of them, Constituion was just the base.

In the improvement of the situation and clarifying the concretization and registration of property rights and other real rights, also contributed the adoption of the Law on Cadastre No. 2003/5, while the legal framework was completed in its entirety by the adoption of the "Law on Property and other Real Rights" no.03 / L -154 which defines in Articles 115-124 registration as a notion and its effects.

Whereas, the final movement that completed the legislation regarding the property rights was the adoption of the Law on Ownership and other real rights" no. 03/L -154 in the year 2009.

This law is fundamental because regulates the creation, content, transfer, protection, and termination of real rights. This law regulates ownership and as limited real rights, possession, real security rights and real rights of use. (Article 1 of Law on property and other real rights).

Ownership right is a transferable right, and as such requires special regulation regarding the volume of the right that is transferred and whose title is transferred. Therefore, its registration in the register of immovable property rights is necessary and intended for the protection of the rights of the owner and providing legal certainty

Registration as any juridical act legal creates consequences in the creation, modification or termination of the legal relationship, ie of the right of ownership. Accordance with the Law of Ownership the main conditions

of gaining ownership rights are legal work and the delivery of the item (*modus aquirendi*), this more precisely is quoted in its fifth section, respectively Articles 115 to 124, which stipulates that registration is required for the acquisition, termination, changing the content or the transfer of ownership ", but it is not given any explicit explanation about what is the registration, but are more focused on the legal consequences that brings the act of registration. Having into consideration again the Article 124 of this law, is clearly defined legal presumption that a real property right belongs only to him who is registered landowner of real rights in the Register of real rights.

In our system under the applicable laws, registration is constitutive act of gaining the right of ownership, without which a landowner is not entitled to the property.

Whereas regarding the manner of registration and further procedures, later was adopted Law No. 2002/5 "For the establishment of the Register of Immovable Property Rights" which defines in detail the whole procedure to be followed for registration of rights in Register on immovables.

This law brought many changes in terms of enrollment and strengthening legal security of the owner of property rights, because the establishment of the Register of Immovable Property Rights (IPRR), has public character and citizens will have easier access to the recognition and verification of property rights, which means the possibility for the realization of the principle of publicity and at the same time more efficient and secure circulation of rights over immovable.

Regarding the institutional regulation of registration of the ownership right, Kosovo is characterized with institutional arrangement in which the official register of real property rights and Cadastre although operate separately, but both are under the authority of the KCA as the sole authority responsible. KCA has shown good results in the development of cadastre and creating cadastral information system by providing efficient and transparent services for security of property rights, its registration and land administration.

Even that the passed laws and especially the "Law on Amendments and Supplements of Law on the Establishment of the Register of Immovable Property Rights" has gaps and needs to amendment, the situation regarding the property rights is improving with very positive trends.

I hope that with the work and commitment of the relevant authorities all necessary supplements will be adopted by time, because Kosovo should

improve her legal image, and this should be done by continuing the work and its commitment maintaining and constant increasing in positive terms". (Baliqi, et. al. 2013)

In addition, as a recommendation, because of the tremendous importance of this legal institute, the Republic of Kosovo should prepare several development strategies and policies aimed at improving the system of registration of land and rights over it, to create an environment conducive to sustainable economic development.

3. Conclusions

The development of land registration and ownership through years reveals valuable lessons and experiences about the impact and importance of having a land registration and ownership.

If we turn back to the history, Kosovo's land registration institute proves us that its characteristics have evolved through the years as a result of the efforts to adapt time circumstances and invaders state systems. In the comparative plan of the history of development of land registration, Kosovo vs World, can be noticed from the Egypt as the place of origin of the institute of registration, up to the establishment of European cadastre of Napoleon in France, to applicable Tapu system in Kosovo, that excluding differences of the type of registration it's obvious that the purpose was the same: to regulate the form of use and gaining of ownership on land, also in promoting the registration as an important legal and fiscal institution.

Registration of land and ownership is qualified as an important institution, because of legal importance consisting in creating legal consequences in gaining of ownership right with the registration of it in register, also its fiscal purpose meant that by registration was made the identification of the properties and then can be started tax collection, as a great importance tool for the economy, for a secure immovable property market and efficient management of the land.

But prior the year 2000, the registration of land didn't play fully this role in Kosovo as a territory under the Serbian regime, under its applicable legislation, therefore as a result affected in the raising of the informality in the real estate market and in a numerous disputes in the postwar years.

During the period of years, 1912-1999 in Kosovo despite numerous attempts land books were never constitute. Tapu system existed as the main probationary base of ownership, but the lack of land books made the

registration of property rights not to have any constitutive effect, or of legal certainty that the registered owner was the legitimate owner of that land.

Therefore, very serious situation was created in property right field because all property transactions committed during the period 1989-1999 were not registered and verified in the court under certain procedures, since the laws in force were discriminatory, and did not allow the sale or other movements of property rights between Albanian and Serb ethnic groups.

Therefore, after war period in Kosovo was very difficult, in one side because of a chaos of laws inherited from the different periods and in another side: loss of cadastral documents because of the war. However, gradually things started to move on in the right direction: the property right on land is guaranteed and protected by the approval of the Constitution of Republic of Kosovo, "Law on property and other real rights" "Law for the establishment of the Register of Immovable Property Rights", and "Law on Cadastre" and in the meantime were laid the foundations for the development of cadastral system, of its legal and institutional arrangements where the KCA (Kosovo Cadastral Agency) is as the sole authority responsible for maintaining and developing of land registration and ownership rights.

As a result, it should be noted that Kosovo actually continues with positive trends in the implementation of the legislation relating to the registration of property rights and other property rights, always ready for the improvement of the present system and advancing it towards an efficient system of land registration.

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