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# **Deficiencies Regarding Cadastre Information in Kosovo**

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## **Acknowledgement**

This thesis marks the end of my 5-year master's program in Property and Land law from the Norwegian University of Life Sciences (NMBU) in the timeframe 2012-2017.

Working on this paper has been a difficult and learning experience. I've learned a lot about Kosovo and myself while writing this thesis.

I would like to thank my family and friends both in Norway and in Kosovo for their support and kind words while writing this thesis.

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## Abstract

The main goal of this paper is to describe land administration in Kosovo and its challenges in form of deficiencies regarding the cadastre and the importance of having a trustworthy system. The lands history, culture and legal framework all work together in making the register of property that is today.

Kosovo is a part of an ongoing transformation as a country, and undergoing political, cultural and social changes. Much have been done in a short amount of time, and have had and are having struggles along the way. Building up a new state with laws, regulations and institutions that had to be rebuild after the war.

This thesis specifies to a degree on inheritance, but because Kosovo is facing several major deficiencies in the cadastre due to its history and culture, I saw it as important to illustrate these too.

Findings from my research questions briefed up:

1. What are the most significant deficiencies in the cadaster in Kosovo?

- Evidence suggest that 40 % of properties remain registered in the name of the deceased, and 30 % of applicants that try to formalize their rights are not able to do so because their families did not initiate inheritance proceedings, and the property is registered in the name of the deceased. Many families choose not to go through with inheritance proceedings because they already feel that their property rights are secure without having the formal title. They do not see or know the benefits of a having a formal title. Economy also plays a role her.

- Graphic and written cadastral documents that was registered in the period 1983 to 1999 are missing in all municipalities in Kosovo. These documents were confiscated by Serbian employees during the war in 1999. Kosovo is therefore missing a significant amount of cadastre information.

- Kosovos status as an autonomous province was lifted in 1989, and following was a 10-year period of ethnic discrimination. Property transactions between and to Kosovo Albanians was made illegal in the period between 1989 and 1999. A consequence of this was that the cadastral records remained incomplete and inaccurate because the contracts were done verbally and not registered.

- A study concerning informal buildings in Kosovo (Potsiou 2016) estimated that more than 90 % of the new buildings that are sold are based on mutual trust; without a permit and/or title. The lack of property permits and ownership titles does not affect the market value, because the buyers are used to it being like this because they do not have other available options or are not well informed of the risk.

## 2. What challenges does deficiencies in the cadastre information entail?

- The biggest challenge is the lack of a trustworthy register of property. The register should work as a guarantee of ownership, but when it is estimated that 40 % of the registered properties are not in the names of the right owners the trust to the cadastre minimizes.

- Immovable properties registered under the name of deceased persons is an issue the property tax authorities are currently facing. Property tax is important for the municipalities to increase the own-source income.

## 3. How do the municipalities deal with the deficiencies?

- The municipalities cannot do much more than guide the users. The deficiencies cannot be corrected before the correct documentation is sent in. They try to encourage people to finalize the inheritance proceedings, and inform of the importance of this.

## Sammendrag

Hovedformålet med denne oppgaven er å beskrive eiendomsregistrering i Kosovo og de utfordringer knyttet til informasjonen i matrikkelen, samt viktigheten av å ha et pålitelig system for dette. Kosovos historie, kultur og juridisk rammeverk skaper utgangspunktet for hvordan eiendomsregistreringen er i dag.

Kosovo er i kontinuerlig transformasjon som land, og gjennomgår politiske, kulturelle og sosiale endringer. Mye har blitt gjort på kort tid, og det har vært en lang kamp som enda ikke er over. Å bygge opp en ny stat med lover, forskrifter og institusjoner som måtte gjenoppbygges etter krigen er en stor oppgave.

Denne masteroppgaven spesifiserer i en grad på arv, men fordi Kosovo står overfor flere store mangler i matrikkelen på grunn av sin historie og kultur, så jeg det som viktig å illustrere disse også.

Resultater fra mine undersøkelsesspørsmål oppsummert:

### 1. Hva er de viktigste manglene i matrikkelen i Kosovo?

- Undersøkelser tyder på at 40 % av eiendommene forblir registrert i navnet til avdøde tidligere eiere. 30 % av søknader om å formalisere rettigheter knyttet til en eiendom, er ikke i stand til å gjøre det fordi deres familier ikke startet arveoppgjøret, og eiendommen er registrert i den avdødes navn. Mange familier velger å ikke fullføre arveoppgjøret fordi de allerede føler at deres eiendomsrett er trygg uten å ha den formelle tittelen. De ser ikke, eller vet ikke, hvilke fordeler de har ved å ha en formell tittel. Økonomien spiller også en rolle.

- Grafiske og skriftlige matrikkeldokumenter som ble registrert i perioden 1983 til 1999 mangler i alle kommuner i Kosovo. Disse dokumentene ble konfiskert av serbiske ansatte under krigen i 1999. Kosovo mangler derfor en betydelig mengde matrikkelinformasjon.

- Kosovos status som en autonom provins ble løftet i 1989, og følgende var det en 10-års periode i landet med etnisk diskriminering. Eiendomsoverføringer mellom, og til, Kosovo-albanere ble gjort ulovlige i perioden 1989 til 1999. En konsekvens av dette var at matrikkelregistre ble ufullstendige og unøyaktige ettersom kontraktene gjerne ble inngått muntlig og dermed ikke registrert.

- En studie om uformelle bygninger i Kosovo (Potsiou 2016) anslår at mer enn 90% av nye bygninger som selges, er basert på gjensidig tillit; uten formell tillatelse og/eller tittel. Mangelen på eiendomsrettigheter og eierskapstitler påvirker ikke markedsverdien, da kjøperne er vant til å denne formen for handler. En grunn til dette er at de ikke har andre tilgjengelige alternativer eller ikke er godt informert om risikoen ved å ikke ha fastsatt sine rettigheter.

## 2. Hvilke utfordringer innebærer mangler i matrikkelinformasjonen?

- Den største utfordringen er mangelen på et troverdig eiendomsregister. Registret skal fungere som en garanti for eierskap, men når det anslås at 40 % av de registrerte eiendommene ikke er registrert i navnene til de rette eierne, reduseres tilliten til matrikkelen.

- Fast eiendom registrert i avdøde personers navn er et problem eiendomsskattemyndighetene står overfor. Eiendomsskatt er viktig for kommunene med tanke på inntekter dette generes til kommunen.

## 3. Hvordan håndterer kommunene manglene?

- Kommunene kan ikke gjøre mye mer enn å veilede brukerne. Manglene kan ikke korrigeres før den riktige dokumentasjonen sendes inn. De forsøker å oppmuntre folk til å fullføre arveprosedyrene og informere folk om betydningen av dette.



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## **List of Abbreviations**

EU – European Union

EULEX – European Union Rule of Law Mission in Kosovo

KCA – Kosovo Cadastral Agency

KLA - Kosovos Liberation Army

KPA – Kosovo Property Agency

MCO – Municipal Cadastral Offices

MoJ – Ministry of Justice

NSD - Norwegian Centre for Research Data

NSPR – The National Strategy on Property Rights

OSCE – Organization for Security and Co-operation in Europe

USAID – U.S. Agency for International Development

UMNIK – United Nations Mission in Kosovo

UN – United Nations

UN-HABITAT – United Nations Human Settlements Programme

## **1.0 Introduction**

### **1.1 Theme**

The theme of this thesis is deficiencies regarding cadastre information in Kosovo.

Before choosing this theme, my initial thought was to write about informal buildings in Kosovo. The reason for wanting to write about this was that this is a big issue in Kosovo today, and something I've seen municipalities in Kosovo struggle with. Having parents from Kosovo has also given me a strive to learn more about this new country and its new systems. After talking with Helge Onsrud from Kartverket he told me that Kartverket has paid a Greek professor; Dr. Chrysi Potsiou, to make a study of informal or illegal buildings in Kosovo. This made me realize that I should write about something else, but still wanted to focus on Kosovo. I had a meeting with Sonila Jazo and Murat Meha from Kosovo Cadastral Agency (KCA) 12. October 2016 about possible master thesis topics, and I was here informed that there are a lot of deficiencies in the cadastral in Kosovo. Knowing there are struggles in this field in Norway too, I wanted to see the range of the deficiencies and see if there are any comparisons. After learning more about the system in Kosovo I chose not to compare, because the struggles in Kosovo and Norway are too different and the circumstances are not the same.

I especially wanted to look more into the struggles inheritance is causing, especially for the municipality. Approximately 30 % of applicants that have tried to formalize and register rights have been prevented from doing so because inheritance procedures had not been initiated (USAID & Ministry of Justice 2016). The cadastral information is therefor in many cases not sufficient, because many do not initiate inheritance proceedings. This with other struggles that will be mentioned later on is causing big deficiencies in the cadastre information in Kosovo.

## **1.2 Research questions**

The main goal of this paper is to describe land administration in Kosovo and its challenges in form of deficiencies regarding the cadastre and the importance of having a trustworthy system. The lands history, culture and legal framework all work together in making the register of property that is today. Kosovo being one of Europe's newest countries that has had a turbulent history have resulted in having to make a new system that works in today's society, while ensuring the rights of property. The consequence of this are all the deficiencies in today's cadastre register. After a meeting at the KCA in October 2016 I was informed that inheritance was a big issue for the cadastre in Kosovo. Because of this I wanted to investigate further what this entails and what municipalities do to deal with this issue.

My research questions this study seek to find the answers to are:

1. What are the most significant deficiencies in the cadaster in Kosovo?
2. What challenges does deficiencies in the cadastre information entail?
3. How do the municipalities deal with the deficiencies?

## **1.3 Appraisal**

Initially this paper wanted to focus only on inheritance, but to get a better understanding one must see the whole in context. This is a very broad topic, and one cannot mention everything. This paper focuses on inheritance, but also the biggest issues' regarding deficiencies in the cadastre. It is not a complete list, and it is important to have in mind that here are other issues that is not focused or mentioned in this thesis.

This thesis does not focus on minorities and their experiences regarding this theme. This may be a weakness to the paper, but Albanians are a majority in the country, and focusing on all the minorities' cultures and histories would have been too broad of a topic for this thesis.

## **1.4 Structure further**

Chapter 2 discusses the methodology used to answer the research questions.

Chapter 3 presents the research area with a country profile. To get a better understanding of the situation in Kosovo it is important to know the characteristics and the most relevant issues on this topic.

Chapter 4 presents the theoretical and legal framework relevant to this topic. This will help give a better understanding of the research phenomenon.

Chapter 5 will present my findings combined with analysis.

Chapter 6 will recap the essentials in this paper and conclude what have been discussed. Own reflections on this topic will also be mentioned.





## **2.0 Methodology**

### **2.1 Introduction**

Methodology describes how data have been collected. Choice of method is based on the subject and theme. We distinguish between quantitative and qualitative method. A quantitative method has the benefit to provide data that is measurable, for example with surveys. Qualitative method goes more deeply into the research and captures meanings and experiences that cannot be measured or quantified (Dalland 2012).

I want to go more in depth to what are the deficiencies regarding cadastre data, what this entails and what municipalities are doing about this. A quantitative survey will not provide thorough enough transparency to this topic. Because of this I have chosen qualitative method in form of interviews and documentary analysis to answer my research questions.

### **2.2. The Conduction of Research**

#### **2.2.1 Start-up**

In the start-up phase my main goal was to read up on Kosovos laws and legislations. Since this was something completely different from what I have conducted in my years at NMBU and being used to read Norwegian laws and legislations. Entering a new regulatory framework has been a challenge.

Since I already knew the topic I wanted to write about before January, the conduction of research questions came easy. And it was clear that interviews were the way to tackle these questions. At this point I did not know that there has been conducted a lot of research on property rights in Kosovo, but later on during my research I found a lot of research done on this topic. A documentary analysis has also been important to highlight the issues.

In view of the privacy of the interviewers and that I used computer-based equipment for processing the data this thesis was mandatory to notify to the NSD - Norwegian Centre for Research Data. Attachment 1 shows approved form from the NSD.

Before going to a field trip to Kosovo I tried reading up on already written reports and document, to have a better understanding of the situation there. Having parents and family originally from Kosovo I already had knowledge of Kosovo as a country, history, culture and general societal attitudes. This has been a strength in form of that I wasn't surprised of for example attitudes towards finalizing inheritance proceedings or informal building. Having family and friends in different parts of Kosovo, and talking about this thesis has also shown that the attitude towards inheritance proceedings are in general quite similar for many Albanians and it did support the research I had already found.

### **2.2.2 Field work and interviews**

I bought a one-way ticket to Kosovo and arrived 11.02.2017. I bought a one-way ticket because I did not know how long I wanted and needed to stay to conduct the interviews and get an overview of the situation. I had the opportunity to live with family for free, and because of this a one-way ticket was possible without having to think about expenses. Living expenses in general are quite low in Kosovo.

I had a meeting with Muzafer Qaka and Murat Meha on 13.02.17 from Kosovo Cadastral Agency. This was very informative in form of knowing more about the Kosovar cadastral system and helping me with who I should choose as respondents. They informed me that the systems in the different municipalities are quite the same, and it should be quite similar what municipalities I chose. I chose to contact the Municipal Cadastral Offices (MCO) in Shtime and Ferizaj. I had my base in Ferizaj, and that is why I chose Ferizaj. I was told from Meha and Qaka that the workers at the MCO in Shtime are very good in this field. Ferizaj being the third largest city in Kosovo, and Shtime being a smaller municipality was also a factor that played a part in the decision. This way I had a municipality in a more rural and one in a more urban area, and I could see if there are any big differences in the process. My

initial thought here was that if there are big differences from the answers from the interviews conducted I would contact other municipalities and conduct more interviews.

I initially contacted the municipalities Ferizaj and Shtime by e-mail to get the correct contact info to the MCO in Ferizaj and Shtime. After getting the correct e-mail address and sending an e-mail to get an interview it showed that after 5 days of waiting it was something wrong with the rks-gov.net e-mails. The e-mails sent were not delivered. The communication further went on by telephone because of this e-mail issue. After finally having a dialog both Ferizaj and Shtime had time to see me straight away. I did meet both the directors from the MCO in Ferizaj and Shtime, but my semi-structured interview was conducted with an employee from Ferizaj and an employee from Shtime. The reason for this is because they work with this more first-hand than the directors. This thesis is not mentioning names, because I do not see it relevant. I have chosen not to distinguish what the employee in Ferizaj or in Shtime said, because the differences were not significant. As earlier mentioned I did get the information that the systems are not that different, and after conducting the interviews this showed the same. The interviewed parties also mentioned this, and this strengthened the claim. The interview in Ferizaj was conducted 2. Mars 2017 and in Shtime 7. Mars 2017.

Before the interviews, an interview guide was conducted, see attachment 2. This is a semi-structured interview. By having a semi-structured interview, it worked more as guide to what questions I wanted to highlight, with some points that would work as follow-up questions. This way the interviews became more like a conversation about the theme. The interviews were conducted in Albanian. The interview in Shtime was sound recorded, but the one in Ferizaj was not. This was because the interviewed employee in Ferizaj did not want to be recorded, while the interviewed employee in Shtime did not mind.

I also had a meeting with Kosovo Property Agency (KPA) 20. February 2017 to see if they have had any complains due to inheritance, as I wanted to see if organizations that need the cadastre data deal with the deficiencies. KPA is an administrative agency and their responsibilities are to receive, register and assist the courts in resolving ownership claims and claims involving property use rights due to the conflict between 27. February 1998 and

20. June 1999 cf. UMNİK regulation No. 1006/10 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property. They did not have any complains due to inheritance specifically, but different cases may have inheritance issues that has to be solved. They have own guidelines for solving these cases, and they do not use cadastre data because they do not exist. I did not go any further with this information as they have own regulative for solving cases and went beyond the issues I wanted to investigate for this thesis.

### **2.2.3 Documentary analysis**

I have relied on documents, publications and books for relevant information. These secondary sources have been helpful for background information and analysis of the research. I have especially used publications and documents created by authorities in this field. USAID's work have also been studied. I have also studied Kosovos legal framework. Curriculum I have had under my 5 years at NMBU have also been used.

Kosovo National Strategy for Property Rights (USAID & Ministry of Justice 2016) was adopted by the Government of the Republic of Kosovo on 18. January 2017. The Kosovo National Strategy for Property Rights (NSPRs) is developed by the Ministry of Justice (MoJ) with support of U.S. Agency for International Development's (USAID & Ministry of Justice) Property Rights Program. This report addresses the biggest challenges Kosovo is having when it comes to property rights, and the government-led strategy was a 18-month long process. This report has been a great source to get a better understanding of the situation in Kosovo.

## 2.3 Research Challenges

Having parents originally from Kosovo may have affected my mindset. Having heard my own family's history, talking to family and friends in Kosovo about this topic beforehand did give me an impression on how and why things are as they are, and may to some extent made me prejudices. I have tried to keep this thesis as neutral as possible, and have had in mind that this could weakened my credibility.

I did not conduct interviews from Serb-majority municipalities. After conversation with Murat Meha and Muzafer Qaka from the KCA and the interview parties from the municipality in Ferizaj and Shtime, they all said that the system is the same throughout Kosovo, and it would not have made any difference if a municipality in north of Kosovo would have been chosen. In retrospect, a Serb-majority municipality as for example Leposavić, Zvečan, Ranilug etc. should have been visited and interviewed as well. This would have strengthened this paper even though I'm not sure if it would have given a different result.

For my analysis and theory I have among others used USAID's work. USAID is a U.S. Government Agency. In the Kosovo-Serbia conflict it has been clear that the U.S have been on Kosovos side of the conflict. I have chosen to believe that the comprehensive research is neutral, but it is important to have this in mind.

It is important to remember that there is more than one side to every story, and even though this have been back in my mind the whole time while writing this thesis, being Albanian may weaken my credibility to this topic.

A methodological challenge when conducting interviews are that you never know how honest the respondents are. Their background and history may also have reflected the answers that was given. I did get the impression that they were relaxed and honest while being interviewed, and in one municipality I did get "not include that" as a joke, under the conversation/interview. This showed that the respondent was relaxed and honest.



### 3.0 Country Profile

#### 3.1 Introduction

The following part will be a country profile of Kosovo. This is meant to serve as a background to give a better understanding of the findings and analysis. The country's historical development is a big factor to give a better understanding of the conditions in Kosovo today.

Municipalities in Kosovo have two official names – one in Serbian and one in Albanian. This thesis is using the official name of where the majority of the population are ethnically from. If it is a majority Serb population in one municipality, the official Serbian name will be referred to in this thesis.

#### 3.2 Geopolitical profile

The Republic of Kosovo is located in south-eastern Europe, bordering Montenegro, Serbia, the former Yugoslav Republic of Macedonia and Albania as shown in figure 1. Its climate consists of hot and dry summers, and cold winters with heavy snowfall (CIA 2017). Kosovo has an area of 10,887 km<sup>2</sup> (CIA 2017), the main land use distributions are 44,7 % forest, 28,7 % agricultural land and 15 % grassland (Ministry of Agriculture 2013). With a



Figure 1 Map of Kosovo (CIA 2017)

population of approximately 1,8 million (Kosovo Agency of Statistics 2017), the population is one of the youngest in Europe, with a median age of 28,7 years old. To compare Norway has a median age of 39,86 years old (Kommuneprofilen 2017). 91 % of the population are Albanian, 3,4 % Serb and 5,6 % other ethnic groups such as Turk, Bosnian, Roma, Goran, Ashkali and Egyptian (Statistics 2011).

The official languages are Albanian and Serbian, but Turkish, Bosnian and Roma languages have the status of official language at municipal level cf. Article 5 point 2 in the Constitution of the Republic of Kosovo.

### **3.3 Economy and land market**

Kosovo is considered the third-poorest country in Europe, with one third of its population considered poor (Kosovo Agency of Statistics et al. 2013). Living below the International Poverty Line is defined as poor. As of October 2015 The World Bank set this at \$ 1.90 USD per day (The World Bank 2015a) or 16.33 NOK (DNB Markets 2017). GDP per capita was in 2015 \$ 3559 USD (The World Bank 2015a). To compare Norway had in 2015 a GDP per capita of \$ 74,400 USD (The World Bank 2015b). The unemployment rate is 25,2 % (Kosovo Agency of Statistics et al. 2016), and is especially high among youth (15 to 24 years old), where 57,7 % were unemployed. Among young women this number is 67, 2 %, and young men 54, 2 % (Kosovo Agency of Statistics et al. 2016). In the labor market, there are large gender differences, among women that are in working age (aged 15 to 64) only 11,5 % are employed. The main reason women are inactive in the labor market are because of family responsibilities (Kosovo Agency of Statistics et al. 2016).

Data regarding land market in Kosovo is limited. The market is dysfunctional and not efficient, some of the reasons for this are that there are a lot of land registration difficulties – some of which I'll address in 5.2. Other reasons are that Kosovo struggles with a high level of land abandonment, high unemployment rate, formal and informal land co-ownership, transaction costs are high and the land mobility is low. This is not unique for Kosovo, and other countries in the region struggle with these issues as well (USAID 2016).

Some real estate agents try to keep their own records. The market faces a problematic issue regarding real estate, sale is often sold based on trust - more than 90 % of new buildings sold are based on trust, and are without a permit and/or title. Sale of new apartments is based on mutual trust or at "internal contracts" or "pre-agreements". These documents are kept at the private office of the notary. Original copies are also kept by the buyer, but are not registered in the cadastre. The market is not affected by the lack of permits and lack of



ownerships titles. Local buyers are used to the informalities, because they don't have other options available or/and they are not well informed and don't realize the increased risk by buying these kinds of properties. Because of trust, the market has not collapsed, and is very active, because of the increased demand in the urban areas. Albanian families have started to prefer living in individual units, and not the whole family all together as was usual before the war (Potsiou 2016).

### **3.4 Historical background**

#### **3.4.1 Introduction**

To get a better understanding of Kosovos development it is important to look back to what have contributed to todays' situation. How a society works and how it was shaped tell us a lot of how a country is evolving. Firstly, a summary of Kosovos history from the Ottoman Empire to Kosovos independence will be told. The reason for this is to get a better understanding of each aspect of the history of the cadastral survey and Kosovos urbanization. Traditional Albanian laws will be explained in 3.3.5, it is here important to mention that these are not official laws, but laws in a more cultural manner for Albanians. This is an important aspect of the Albanian history, traditions, laws and customs and will get the reader to understand situations and actions more.

#### **3.4.2 Brief on Kosovos history**

Within 70 years after the battle of Kosovo in 1389, all of Kosovo was under the Ottoman empires' rule. This lasted until the outbreak of the first Balkan war in 1912. Serbian forces took control over Kosovo, and at that time 30-40 % of the population were Serbs. Belgrade saw Kosovo as their property, while Albanians saw it as an occupation. From 1912 to 1918, Kosovo was occupied by various governing powers and Kosovo as a country was divided between Montenegro and Serbia, and then later Bulgaria and Austria. The Serbian army occupied Kosovo again in 1918 and Kosovo became part of Yugoslavia. Albanians constituted the largest non-Slavic minority in the country, but was not recognized at that time as a

national minority. Albanians were reluctant to be incorporated into a Slavic and Serb-dominated state, and there was armed resistance against Yugoslavia continuing well into the 1920s (Endresen 2016).

In 1946 the province of Kosovo was created in view of the Albanian minority. In 1974 Kosovo became an autonomous province in Serbia. In the beginning of the 1980s there were extensive demonstrations among Albanians in Kosovo, with a demand for full Republic status. Slobodan Milošević became President of Serbia in 1989, and Serb nationalism increased. After extensive demonstrations Kosovo's parliament was surrounded by tanks and the assembly was forced to accept changes to the constitution as required by Serbia. Kosovo was from 1990 fully subject to Serbian rule (Endresen 2016). Late 1990s and in 1991 Albanian teachers, professors, doctors, police and civil servants were terminated from their positions. Judges were removed from their tasks and the local courts were terminated. Police violence against Kosovo Albanians increased in this period (Krieger 2001). 1990-1997 Kosovo Albanians developed own parallel institutions within governance and education systems. The inhabitants boycotted all Serbian elections and held their own. In 1991 Kosovo declared itself sovereign and formed a provisional government, and in 1992 they held both a parliamentary and a presidential election. Ibrahim Rugova received over 99 % of the votes in the presidential election. Serbian police forces tried to control Kosovo, and abuse of civilians were reported. In 1998 the conflict rose, power against Albanian opposition was used and Serbian police were in combat with Kosovo's Liberation Army (KLA). Serbian police and military were accused of ethnic cleansing and massacres. In March 1999 NATO launched air strikes against several targets in Yugoslavia, and Serbian forces responded to intensify attacks against civilian Kosovo Albanians. Over a million Kosovo Albanians fled the country to the neighboring countries Macedonia, Albania and Montenegro for temporary protection. June 1999 Yugoslavia signed an agreement on Serbian withdrawal from Kosovo. The war was over, and the UN took over the administration in the area. Many refugees chose to come back to Kosovo after the war (Endresen 2016).

The UN has had a big impact on the development of Kosovo. In the period of 2002 to 2004 Kosovos political status was set on hold, and focused on achieving certain international standards. For example, building effective democratic institutions, improving the public sector, establishing a rule of law and ensuring freedom for all citizens. 17. February 2008 the province declared itself independent. Serbia believed the declaration of independence was illegal, and it broke out struggles between Serbs and UN forces in Mitrovica. The new constitution transferred the UN's power to the country's government, after nine years of UN government. Since December 2008 EULEX monitors the development of state institutions in the country. Kosovo is recognized by 113 member states in the UN, and 23 of 28 EU countries. Serbia, Russia and a number of other countries do not recognize its independence and is preventing membership of the UN (Endresen 2016).

### **3.4.3 Short history of Cadastral Survey in Kosovo**

Before 1912 Kosovo was under Ottoman Turk rule, the data from this time are property documents called *tapija*. The *tapija* consist of data about the owner, approximate area and a description of the parcel (Tallumi 2002). The tapi system was incorporated into laws and regulations by Montenegro and the Kingdom of Serbia after the Balkan wars (USAID 2004). 1912-1941 was the period of the Balkan wars and the First World War. The Albanian population did not consider it important to have ownership documents (tapi) for their immovable property, they marginalized in social and economic aspects. High property tax was another reason they did not want to request ownership documents. Generation after generation inherited land without valid documentation, and it ended up being registered as state land for agricultural purposes, and was made available for different ministries. Many Albanians were deprived of ownership and possession rights because of this. This led to an increase in poverty for Albanians and migration to mostly Turkey did occur between 1927 and 1941 (USAID 2004). Allegedly the government did ethnic cleansing by sending Albanians to Turkey by force (Tallumi 2002).

During this period, 1912-1941 there had been measured about 250.000 ha, covering 280 municipal cadastral zones. For the villages, a classical tachometric method was used, and for the towns an orthogonal method. The measurements had a high technical level, but the discrimination and assimilation against ethnic Albanians were obvious in the surveys by having the inhabited places' name changed and adding the suffix "viç" to Albanian names. The suffix "viç" is characteristic for Slavic surnames. 1952 was an intensive year for measuring territories that had not earlier been measured or the documentation was destroyed during the war. The reason for it being an intensive year was due to the decision to impose agricultural income tax based on cadastre. Because the deadline to finish the measurement was 2-3 years it was established a Descriptive Cadastre temporary as provisional measure. Until 1987 all territory of Kosovo had been measured, and later the zones that had Descriptive Cadastre was replaced by Land Cadastre. The Land Cadastre is created according to the stereo photogrammetric measurement (Tallumi 2002).

In the period 1989 to 1999 Kosovos' autonomy was revoked from Serbia. The Directorate of Geodesy of Kosovo were moved from Prishtina in Kosovo to Belgrade in Serbia, and almost all Albanian survey employees were expelled. Ongoing work were stopped. Albanians and Serbs were not allowed by law to sell or buy properties between these two ethnic groups. This has led to informal transactions and many property disputes in this time of age. Big amount of cadastral documentation, plans and equipment were confiscated from Kosovo in the end of 1998 and the beginning of 1999 (Tallumi 2002).

#### **3.4.4 Short history of Kosovos' urbanization**

The first era is the Spatial Plan of Kosovo that was approved in 1978, and it covered the period 1975-2000. There was a need of a spatial plan, the absence of this led to stagnation in the investment initiative. Since the 1970s there were a growing globalization. Migration to urban areas led to territorial and cultural changes, this had a negative impact on the environment (Ministry of Enviroment and Spatial Planning 2002 p. 4-6). It is important to mention that this period of time was a turbulent period with people fighting for their rights and life, and many fleeing the country.

After the war in 1999 it was time for rebuilding the new country and many decided to move back. It was time for new administration and state-functions. This is the second era of Kosovos' urbanization process. Today's planning has to account for the priorities and decisions from the long-lasting conflict that began at the end of the 1980s, with the economic downturn and destruction of Yugoslavia. A consequence from the conflict was the loss in economy and struggle in the labor market. Trade, transport and tourism were limited under this period, and this affected the economic development. Foreign investors were also more hesitant to invest in this period (Kuvendi Komunal Fushë Kosovë & Urban+ 2004 p. 9). A common denominator for countries from the former Yugoslavia, Slovenia, Croatia, the former Yugoslav Republic of Macedonia, Bosnia and Hercegovina, Montenegro, Serbia and Kosovo, is that they all have land management issues in form of informal development, illegal buildings and in general having property problems. Informal development will be mentioned more in chapter 5.

The impact of human activity has increased causing environmental and socioeconomic changes. Urban areas are more efficient in the delivery of water, electricity, roads, waste services etc. The negative impacts in urban areas compared to rural are overpopulation, constructions without permits, lack of infrastructure, housing difficulties, waste from households and construction are a problem, wastewater ending up in the natural environment. The socioeconomic issues are the increasing unemployment rate, sanitation, health care services lack quality, the schools in towns are overcrowded while they are being

abandoned in villages especially in the mountainous areas of Kosovo (Ministry of Environment and Spatial Planning & Kosovo Environmental Protection Agency 2015).

Spatial planning in Kosovo today is regulated by Law No. 04/L-174. There are two levels of spatial planning; central level with spatial plan, zoning map and spatial plans for special zones and local level planning with municipal development plan, municipal zoning map and detailed regulatory plans cf. article 5 in the law on Spatial Planning.

Even though there are laws regulating land management, it is important to have in mind that the traditions and culture influences their behavior and actions. The skepticism towards the leaders and national laws are reflected in their actions and their understanding of spatial planning is low.

### **3.4.5 Traditional Albanian laws**

To get a better understanding of Albanian culture a set of traditional Albanian rules, laws and customs must be mentioned; the Kanun of Lekë Dukagjini (The code of Lekë Dukagjini) (Gjeçov 1989). It is important to mention that there are more than one Kanun that was evolved, but it is the most known, and the only one referred to in this thesis. These laws are not state regulated laws, but serve more as social norms and a self-governing system. It has played an important role in preserving Albanian cultural identity.

The Kanun of Lekë Dukagjini developed in the fifteenth century by Lekë Dukagjini (Cook 2001) were an unwritten collection of rules, laws and customs which were used by Albanians mostly in Northern Albania and Kosovo. It has been brought forward from generation to generation, and was for the first time written down in the 19<sup>th</sup> century by Shtjefën Gjeçovi, and it was published after his death in 1933 (Elsie 2001).

The Kanun is important for the Albanian people, and its rules impact every Albanian family the day today to some extent, even though the laws are not official laws in Kosovo. The Kanun consist of 12 chapters; 1. Church, 2. Family, 3. Marriage, 4. House, Livestock and Property, 5. Work, 6. Transfer of property, 7. Spoken word, 8. Honor, 9. Damages, 10. Law

Regarding Crimes, 11. The Kanun of the elderly, 12. Exemptions and Exceptions. There are 1.262 articles (Gjeçov 1989).

Albanians in Yugoslavia continued using the Kanun, even though there was a state legal system, but this system was not always equally fair to Albanians. When there were situations when the court dealt with a case, Albanians often used to solve the same case with the Kanun. It is especially traditional families in villages who practiced the Kanun, but Albanians living in the cities were also more or less affected by it.

### **Property**

Property can be private and common, movable and immovable. Immovable property includes the house, the garden, courtyard, land parcels, meadows, roads, surrounding within the properties boundaries. Boundaries are constructed with large peaking stones that are thrust into the ground and exposed above the ground. Old trees can also serve as boundaries. The boundaries must go in a straight line to avoid misunderstandings. It is unacceptable to move boundary stones; it is compared as moving the bones of the dead per the Kanun (Gjeçov 1989).

Every family has a share in the common property. Common property is an area belonging to the village or is used by the villagers for pasture, timber, firewood, hunting etc. Without the approval of the entire village selling the common property or its products is not permitted (Gjeçov 1989).

**Inheritance**

Inheritance according to the Kanun goes by the family tree on the father's side. The male sons of the family have equal inheritance rights, the daughters do not have inheritance rights. Sons of daughters are not in the tree of blood. Married women do not inherit from her parents or her husband's family. The reason for this being that the clans (Albanian: *fis*) do not mix with another clan this way. The dividing of the inheritance is done by the head of the family in the presence of the males who will inherit. It is not allowed to make a will that does not have consent of his relatives. The will has to be documented and should have relatives, witnesses and the elders of the clan present as witnesses. If someone who lives alone do not have a will, the property is divided between relatives and a part is given away (Gjeçov 1989).



## 4.0 Theoretical and Legal Framework

### 4.1 Introduction

This chapter will define terms and concepts used throughout this thesis. This will help give a better understanding of the research phenomenon. Relevant theoretical and legal framework will be explained here, with a special interest in how it is in Kosovo. This will give a better foundation for further reading about this topic.

### 4.2 Property rights and property institution

The words “*property*” and “*property rights*” often have different definitions depending on the context. The term “*property*” can be used for a variety of different purposes, for example something belonging to someone or as the law definition of the word in Cambridge dictionary says

*“the legal right to own and use something”* (Cambridge Dictionary).

The rights may vary in purpose, therefore it is common to say that property rights are a “bundle of rights”. It represents various of rights one can have to a property. For example, a legal right to or in a particular property in form of physical access, the right to use it for a specific purpose, for example hunting or fishing or the right so use and sell as one pleases (Ostrom 2005). You can have a right to property without being the official owner of the property, by for example leasing.

The term “property rights” can also have different definitions depending on the situation, for example legal, economic, social, political etc. The legal perspective of this term refers to a specific object and the subjects (individuals or organizations) has a right over this object. The rights are accepted by the members of society and guaranteed through a social organ, usually the state (Sevatdal & Sky 2003 p. 21).

Douglas Norths' economic definition of this term is

*"Property rights are the rights individuals appropriate over their own labor and the goods and services they possess. [...] Because with any property rights structure transaction costs are positive, rights are never perfectly specified and enforced; some valued attributes are in the public domain and it pays individuals to devote resources to their capture. "* (North 1990 p. 33)

These two perspectives are the most relevant here, and the common denominator is that the subject in form of an individual or organization has a right to property. The type of right to the property may vary depending on the terms of the rights one has.

Douglas North (1990 p. 3) defined institutions as:

*"Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction".*

Institutions can be understood as rules and norms that form the framework and form the margin for human actions. It may be legal rules, formal laws, regulations, but it can also be culturally or religiously based norms of behavior, morality, ethics etc. Institutions provide stability, but they do constantly change. Formal laws change, norms of behavior changes with time, contracts, codes of conducts etc.

Organizations are the players that follow the rules of the game (North 1990).

## 4.2 Land tenure and tenure security

*“Eiendomsforhold”* is a Norwegian term that directly translated means *“property relations”* or *“tenure”* (Korsvolla et al. 2004). This term includes three elements; characteristics of the property and the property structure, characteristics of the owners and the ownership structure and the characteristics regarding the rights (Korsvolla et al. 2004 page. 3).

Government regulations of various kinds may also give rights to land and restriction of rights.

Secure land tenure contributes to reduce unproductive spending on protection of land rights (De Soto 2000). By securing land rights it encourages investment. Property owners are able to use their land as collateral in order to get credit. Having a reliable land registration system reduces the risk of lending (Hong & Ingram 2009).

A land administration system should provide security for landowners, investors and for the government.

## 4.3 Land Administration

The human needs are the basic reason for a society to manage land – to have the basic needs of shelter or a secure place to work (Williamson 2010). The Universal Declaration of Human rights conducted by the United Nation (1948) article 25 says that

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] housing [...]”.*

In an ideal world, this would be provided, but limitations like time, money, resources etc. gives a difference between people and different countries.

Land management is a tool for a country to help get a sustainable development. The concept of *“land administration”* is normally referred to as land boundaries, registration and record keeping, conflict resolution and adjudication of rights (ECE 1996). Land administration is in other words a key factor in a countries development. A formal system of registration for land

and property rights should be in place in order for a country to provide secure ownership of land, investments and to secure the ownership for private and public interests regarding real estate. By having a formal system of registration a state contributes to facilitate good governance (Dale et al. 2005). There is no concrete definition of this term “*good governance*” and it is used with some flexibility depending on the context. We can say that the term refers to the role of the state in a development process, the aspects covered here are politics, administration, law and state-society relations (Otto & Hoekema 2012). Land and spatial information is an asset and can be used to improve the opportunities of citizens and businesses. Availability of information plays an important role. Especially the credibility for a nation is important, and the ability to monitor changes in landownerships and transactions (Williamson 2010).

Building an effective and good land administration system brings many benefits. Some of the downsides are that land records are expensive to produce and maintain.

The benefits contemplate the disadvantages. Some benefits are;

- The register should work as a guarantee of ownership and security of tenure.
- Land and property taxes are often used to finance local government, and is therefore an important source for the public.
- It provides security for credit. Tenure security gives confidence to banks and financial organizations to provide funds for landowners. They can mortgage land.
- Develops and monitors the land market. It provides security and speed when transferring property rights.
- Reduction of land disputes. Through access to land information many land disputes can be resolved, and time spent in resolving these matters through courts and advisors minimizes.
- More efficient work when detailed records that present ownership and use of land are available, for example for land consolidation and redistribution of land.
- An up-to-date cadastral plan provide a basic and secure framework that can help improve urban planning and infrastructure development (ECE 2005).

Land administration is an important aspect for a secure economy. As mentioned earlier about secure land tenure. By having secure land rights it encourages investment. Being able to use land as collateral in order to get credit is a contributor for a better and more secure economy.

It is important for the transaction costs to be as low as possible to have a system that encourages registering property. This allows the poorer to use the service and the value-support needed in development of land.

Information about land is the most important aspect of land administration. Land administration can differ from land to land, and there is not a universal system. They are free to develop their own system. Still it is common for countries to look at other countries to get the best practice that fits their countries system, this results in similarities between the systems used.

#### **4.3.1 Cadastre**

Cadastre is the most common form of land administration tool used. It is a system based on immovable land. The cadastre have a multi-purpose, and the main goals with having such a system is land tenure, land markets and land use. Purposes of a cadastre is improving the security of land, better regulation of land markets, better development of the use of urban and rural land and better taxation of land (Otto & Hoekema 2012).

Cadastre is a set of records that consists of two parts: maps showing the location and size of all the parcels with text records describing the attributes. The function is to gather and make available graphic and textual information in support of title registration, property valuation and land resource management. Cadastral authorities should provide public access to their records, and made information about land available, within a legal framework (ECE 2005).

#### 4.4 Land Administration in Kosovo

The situation postwar was complicated. Property documents that citizens had were lost during the war, and as mentioned earlier cadastral documents were confiscated. Kosovar institutions started to be established after the establishment of the UN mission in 1999. UMNİK Administrative Direction no. 2000/14 established the Kosovo Cadastral Agency as cadastre authority in Kosovo. Legal regulations for the cadastre is the Law for Cadastre No. 04/L013

KCA is responsible for land management in Kosovo. It is also competent for preparing laws and issuing guidelines for cadastral activities. It is set under the Ministry of Environment and Spatial Planning. KCA is responsible for administering the state computerized cadastre system. The MCO-s are responsible for maintaining the records and registering immovable property, with monitoring from the KCA. There are 38 MCO-s, one in every municipality (Kosovo Cadastral Agency).

The basic provisions in the cadastre is set by law:

*“6.1.Land Cadastre shall include the textual and graphical data on cadastral parcels and land square , culture and scale of their utility as well as the buildings , parts of buildings and conductors of underneath buildings in Kosovo.*

*6.2. Graphical data are geometric descriptions of parcel lands and buildings which includes the number of land parcels and buildings as well as the geometric description of the over square defined objects.” Cf. section 6 in Law on Cadastre.*

The rights that shall be recorded in the textual part of the cadastre is: ownership, mortgage, servitude, leaseholds and the rights of use, encumbrances, and restraints and various encumbrances (Kosovo Cadastral Agency p. 10).

Kosovo's first geoportal was launched June 2013, see figure 2. The geoportal provides access to addresses, administrative boundaries, cadastral zones, orthophoto (2012), topographic map (2015), utilities like water and electricity and roads and highways (Meha et al. 2015).

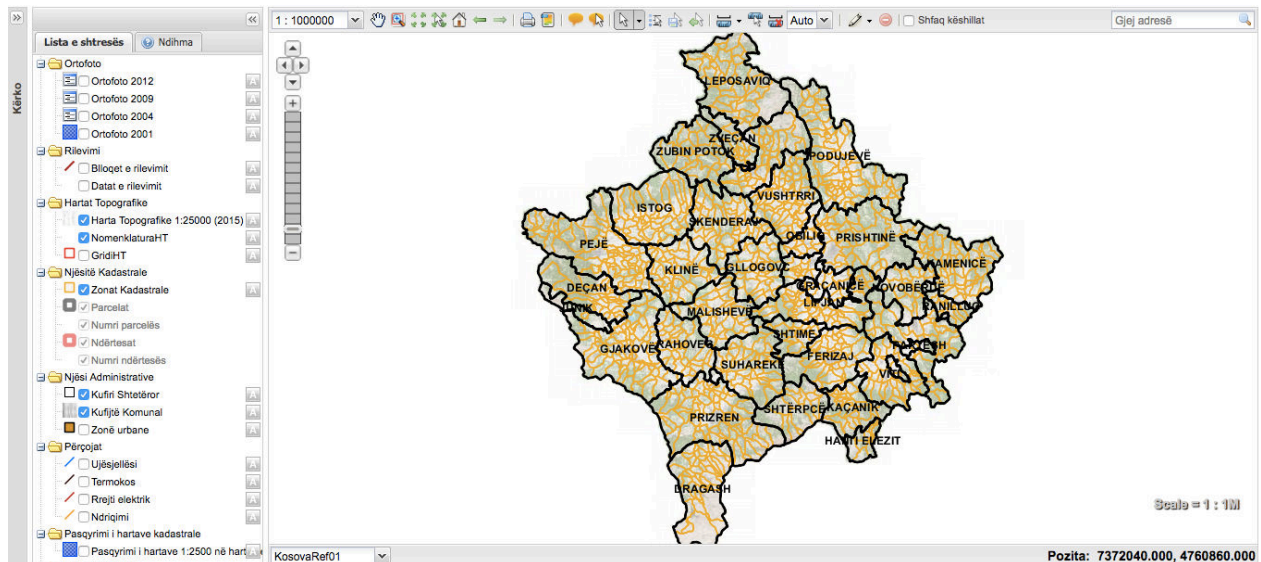


Figure 2 Screenshot of Kosovo's National Geoportal (Kosovo Cadastral Agency)

Per 12.05.2017 Kosovo had 2,102,543 parcels, 19,274 buildings divided between 513,805 people. Ownership interest divided by gender are: 75,8 % men, 15,1 % women, 9,1 % unknown (Ministry of Environment and Spatial Planning 2017). These statistics show us that women in general has a low ownership interest in Kosovo. As mentioned earlier the Kanun did not see women as heirs. It is a familiar attitude among Albanians that women are not entitled to inheritance. This is shown clear in this statistics in terms of ownership interests.

#### 4.5 Property rights – legal framework in Kosovo

A report by the Organization for Security and Co-operation in Europe (UMNIK & OSCE) described property rights in Kosovo in 2006 like this:

*“[...] the legal framework regulating property rights is so confusing and disperse, that it creates an extra difficulty for the courts in applying the law. The property laws currently in force 94 are numerous and scattered through several legal texts, regulating all different aspects of property rights and often making reference to institutions which no longer exist. To complicate the situation further, since 1999 several UNMIK Regulations have consecutively been adopted on property matters that were previously regulated by the Yugoslav laws, resulting in tremendous legislative confusion, with no clarity as to the interaction between the many pre-UNMIK laws on property rights and the successive amendments to the system by new UNMIK Regulations. This prolific and unsystematic legislative production has created an extremely complicated legal framework difficult to understand and to apply by the courts dealing with property transactions (let alone by the individuals who are supposed to follow the legal requirements in property contracts), thus affecting the resolution of property disputes.” (UMNIK & OSCE 2006 p. 30-31)*

Since then the legal situation has changes in form of an added layer; the Constitution of the Republic of Kosovo. There are in other words three legislations that regulate property rights: pre-1989 laws, UNMIK legislation and the legislation by the Republic of Kosovo (USAID & Ministry of Justice 2016).

Article 7 in the Constitution is about Kosovos values

*“The constitutional order of the Republic of Kosovo is based on the principles of [...] the right to property [...]”.*

The Constitution is set to follow the European Convention on Human Rights and Fundamental Freedoms and its protocols. This principle requires a law definition on property rights. This is an important aspect to help determine who is entitled to which property rights, and what under the circumstances. Private property rights are defined in the law on Property and other Real Rights no.3/L-154. It is also addressed in related laws such as the Law on Inheritance and the Law on Establishing the Immovable Property Rights Register. The



fundamental foundation with creation, content, transfer, protection and termination of real rights are protected in Article 1 in the law on Property and other Real Rights.

The protection of property is given in article 46 in the Constitution. The right to own property is guaranteed by this law, and no one shall be arbitrarily deprived of property cf. article 46 point 1. and 3. The Republic of Kosovo may expropriate property for the achievement of public purpose or public interest if authorized by the law and given the adequate compensation to the person/persons whose property has been expropriated cf. article 46 point 3.

Non-private property rights are not as clearly defines by law as private property rights are. "There is uncertainty as to which types of property rights actually exist in Kosovo's property rights system as set out in the Constitution. The legal terminology in laws is not consistent and that leads to confusion about the meaning of terms being used, such as state property, public property, socially owned property, municipal property, private property, and property of public interest." (USAID & Ministry of Justice 2016 Pillar #1 p. 16)  
(USAID & Ministry of Justice 2016)

The important factor is that property rights are guaranteed. The constitution protects the right of property ownership.

#### 4.6 Inheritance – legal framework in Kosovo

Inheritance is by law defines as

*“Inheritance is a transfer of a person’s property based on the law or based on a will (inheritance) from a dead person (decedent) to one person or several persons (heirs or legatees)”* Law no. 2004/26 – Law on Inheritance in Kosovo Article 1 point 1.2.

It is not very common practice to write a will in Kosovo (Joireman 2015), making the content of the law very important, especially for women’s property rights. Because of the Albanian culture many women choose to declare their property rights. Article 12 in the Law on Inheritance says that the decedent shall be inherited by his children and spouse prior to all others, and the shares shall be equal. Inheritance claims without a will and the descendants are all in agreement about the claims and do not have any objections, these claims are treated as uncontested claims.

Uncontested claims can be treated both in courts cf. Law on Contested Procedures Article 54 and by notaries cf. Law on Notary Article 29. The notary’s functions are shown in Article 29, point 1.4, and says that one of these functions are to deal with all non-contentious inheritance proceedings. Point 1.7.1 says that one of the duties are signing and sealing of assets to be divided in the context of inheritance.

Many non-contentious cases are handled by notaries rather than courts, because it is more efficient. The court fees are cheaper, and for people in “poor economic situations”, they have the possibility to get the fee waived (Joireman 2015).

The Law on Property and Other Real Rights Article 36 point 2 says

*“The contract for the transfer of ownership of an immovable property must be concluded in written in the presence of both parties before a competent court or a notary public.”.*

This allows for choice, either a competent court or a notary. Joireman (2015) refers to an examination of court processes in three courts (Dean 2014) where it showed that some courts (like Ferizaj and Gjakova) did not consider uncontested inheritance cases, and they

insisted that these cases will be taken to notaries. The fact that some courts will consider uncontested inheritance cases, while others will not make confusion for the citizens and for the current law that allows choice. The fact that some citizens in some municipalities have to go to a notary may be an expense some families cannot afford. Cause as said earlier the courts can wave the fee for people in “poor economic situations”. The inconsistency of where one may claim between the different municipalities does not strengthen the trust to institutions.

Attachment 2 show the requires steps in the process of transferring inherited property using a notary. Using a court for this process takes longer time, because of postponements and scheduling issues, and the fact that it is not allowed in all municipalities. In contested procedures the need for hearings regarding temporary security measures and possible expert testimony that can value the properties and verify documents (Joireman 2015).

Potential heirs are required to declare if they want a share of the estate or not. An issue is that the Central Civil Status Register, Municipal Civil Status Offices do not in all cases know how many family members there are (EULEX 2016 p. 5). The responsibility lays on the potential heir that they inform the notary or court about all heirs. The court or notary do not check with the Civil Status Register to see if all the heirs are listed, even though their register is not complete either. The reason for this is because the offices do not have capacity to check both digital and paper copies for all municipalities. It is common that especially women do not get listed in the pursue of a Declaration of Inheritance (Joireman 2015).

Article 40 point 1 on Acquisition by Prescription in the Law on Property and Other Real Rights says:

“A proprietary possessor acquires ownership of an immovable property, or a part thereof, after twenty (20) years of uninterrupted possession.”

It is possible to acquire ownership not on the status of heirs, but on the basis of uninterrupted possession. This requires a claim with the court.



## **5.0 Findings and analysis**

### **5.1 Introduction**

To present my findings I have decided to use the research from my fields trip to Kosovo, and among others the Kosovo National Strategy for Property Rights (USAID & Ministry of Justice 2016) with annexes that was adopted by the Government of the Republic of Kosovo on 18. January 2017. The Kosovo National Strategy for Property Rights (NSPRs) is developed by the Ministry of Justice (MoJ) with support of U.S. Agency for International Development's Property Rights Program. This report addresses the biggest challenges Kosovo is having when it comes to property rights, and the government-led strategy was a 18-month long process.

Further the research questions are divided in to own subchapters to present my findings and analysis.

Even though this paper is focusing on inheritance when coming to cadaster information, the deficiencies cannot be seen on their own. They all make a basis for the current cadastre situation and is important to address.

### **5.2 What are the most significant deficiencies in the cadastre in Kosovo?**

#### **5.2.1 Introduction**

This paper was initially meant to focus on inheritance problems in Kosovo regarding the deficiencies in the cadaster. The more I read about this issue, the more deficiencies came up. To understand the current cadastre situation and the issues' with the cadaster in Kosovo the most significant issues should be addressed. This subchapter will describe the deficiencies based on lack of inheritance proceedings, missing cadaster documents, discrimination and oral contracts and illegal and informal buildings.

It is important to mention that there are other deficiencies regarding the cadaster in Kosovo, especially juridical issues in other aspects of property rights in Kosovo – for example the issue with socially owner properties, but for limitation purposes this paper will not focus on these.

### **5.2.2 Inheritance proceedings**

Families not initiating inheritance proceedings is a big issue in Kosovo. Formal inheritance procedures are ignored by a large number of the population in Kosovo. As a consequence, the properties are registered in the name of the deceased. Evidence suggest that 40 % of properties remain registered in the name of the deceased. The courts in Kosovo do not consider non-contested inheritance claims as a priority, and these cases are therefore treated last (USAID & Ministry of Justice 2016). This is discouraging, especially when they are not legally obligated to complete inheritance proceedings. This is only an issue for private citizens when wanting to transfer the rights formally to someone else.

30 % of applicants that has tried to formalize their rights are not able to do so, because their families did not initiate inheritance proceedings and the property is registered in the name of the deceased. It is the heirs' responsibility to contact any potential heirs and obtain all the documents and death certificate, and to appear before a notary or a court. It is before the notary or court the heirs accept or decline their shares. This is especially time consuming and troublesome when potential heirs don't live in Kosovo, or for heirs that do not have contact with their family. This is a time-consuming process, the requirements are seen as cumbersome, and for many the process itself throw them off, and do not continue with the claim (USAID & Ministry of Justice 2016).

The fees for registering rights are set on the Administrative Instruction No. 08/2014 on Fees on Product for Registering the Immovable Property Rights from Municipal Cadastral Offices. The fees are tied to the administrative instructions, and include fees on transaction, gifts, decision of an administrative or juridical body, division of co-owned property and joint property, inheritance, change of immovable property, registration of mortgages, registration of servitudes, tenancy, correction of data in the register and registration of other data that

are not provided in the Administration Instruction. These fees are tied to the legal grounds. The fee for registration of ownership, possession on the basis of inheritance is 10 euros for each inheritor cf. Article 6 point 1.

Table 1 shows the fees for civil proceedings.

*Table 1 Fees for civil proceedings (in Euros) (Joireman 2015 p. 6)*

Value of Property	Court Fee	Notary Fee
0-1,000	15	20
1001-2500	20	20
2501-5000	25	30
5001-10000	50	50
10,001-20000	50 + .05% of value over 10,000 to a maximum of 500	50
20001-60000		60
60001-100000		120
100,000 +		20 additional Euro for every 20,000 to a maximum of 1000

Notary fees from Ministry of Justice Administrative Instruction No. 02/2012 On Provisional Notary Fees.  
Court fees from Administrative Direction No. 2008/02 on the Unification of the Court Fees. Amended and Supplemented by KJC Decisions: KJC no.20/2012 dated 09 March 2012 and KJC no. 37/2012 dated 23 March 2012

In practice municipalities have added a requirement that back taxes owed on the property must be paid before the MCO will issue the certificate of ownership required to initiate inheritance proceedings (Kosovo Cadastral Agency). This, including the fees for civil proceedings as shown in table 1, and the fee for registration of ownership to the MCO may be a reason for people not going through with the process. As said earlier Kosovo is considered the third-poorest country in Europe, with one third of its population considered poor. Paying fees are not the first priority for many, and especially when many already feel secure without a formal title. The family's house has been there for generations, and many don't see the need to make juridical changes.

Many families choose not to go through with this process because they already feel that their property rights are secure without having the formal title. They do not see or know the benefits of having a formal title. The families that do not choose to go through a formal inheritance process exclude female heirs and male heirs that are not based in the country or not occupying the family property (Joireman 2015 p. 8).

Advocacy Training and Resource Center (2014) has conducted a report for USAID through court monitoring activities. In Lipjan branch court of Prishtina it was observed that women refused their shares, and the women who accepted were those with underage children. In Venera, a court in Peja, out of 19 inheritance hearings, only 3 women were heirs. The findings from the court in Gjakova showed that married daughters were not notified at all for the division of inheritance. The head of the household were allowed to sign on behalf of the rest of the family for juridical hearings. Since the head of the household is allowed to sign on behalf of others, it is easy to exclude people who are legally entitled to inheritance. This creates problems for the judiciary in the form that heirs who are entitled to inheritance are being excluded.

### **5.2.3 Missing cadaster documents**

Graphic and written cadastral documents that was registered in the period 1983 to 1999 are missing in all municipalities in Kosovo. These documents were confiscated by Serbian employees during the war in 1999. Since 2 September 2011 there has been an agreement between Serbia and Kosovo, that scanned original cadastral records will be returned. No documents have been returned yet. This paper will not go deeper in this conflict of why no records have been returned yet, but it is a working process and a two-sided story. The important aspect here is that Kosovos cadastre is missing a significant amount of cadastre information.

8. June 2016 Kosovo adopted the Law to establish a Technical Agency, Kosovo Property Comparison and Verification Agency (KPCVA). Their role will in the future be to compare and verify the old cadastral documents with the new.



#### **5.2.4 Discrimination and verbal contracts**

In 1989 Serbia lifted Kosovo's status as an autonomous province, and following was a 10-year period of ethnic discrimination. Property transactions between and to Kosovo Albanians was made illegal in the period between 1989 and 1999. A consequence of this was that the cadastral records remained incomplete and inaccurate. Transactions were not registered by the courts or in the cadastral offices, and were therefore done informally (USAID 2004).

Verbal contracts were accepted for transacting property rights at this time, and even though inter-ethnic sales of property-documents existed these were prohibited to be recorded. To resolve this issue, the buyer has to initiate a claim in the courts, and show that a contract did exist and the transaction was made freely. The issue here is that the seller is often hard to locate. An evidentiary gap is therefore made. The court appoints a temporary representative because they often cannot locate the initial seller, and the temporary representative has to act in the interest of the seller (USAID & Ministry of Justice 2016).

#### **5.2.5 Illegal and informal buildings**

As written earlier illegal and informal buildings are a big issue in Kosovo. Dr. Chrysi Potsiou (2016) has in her unpublished study concerning informal buildings in Kosovo estimated that more than 90 % of the new buildings that are sold are based on mutual trust; without a permit and/or title. The increase in demand for property in the urban areas has made the property market very active. The change in culture where people have started living in individual units, instead of the whole family living together has made an impact in the demand. The lack of property permits and ownership titles does not affect the market value, because the buyers are used to it being like this because they do not have other available options or are not well informed of the risk.

The sale is often conducted with a real estate agent bringing the buyer to the seller when the construction is finished. But it can also be sold prior to the construction being complete and therefore be sold for a lower price, but the buyer then has to finish the construction himself. Units sold may lack the technical acceptance. The real estate system is based on

mutual trust. The units sold can only be used for residence, and cannot mortgage or transfer the property (Potsiou 2016).

Legislation is in place, and it is not legal to start construction without a permit. Tenure security is very important as mentioned earlier and impact the economic growth and human rights. The government and international experts have made a strategy to formalize the real estate sector. The Ministry of Environment and Spatial Planning of Kosovo has passed a law for construction in order to try to prevent constructions without permits. The requirement of detailed plans has changed, and the development of zoning plans are instead being used. I'm not going more into this issue. The importance here is to illustrate that informal constructions is a problem in Kosovo, and causing deficiencies in the cadastre in form of buildings not being registered and missing ownership titles.

#### **5.2.6 Conclusion**

It is clear that the Kosovos cadastre is facing big issues due to its history, culture and legislations. The deficiencies mentioned above is not a complete list, but are the biggest issues' today. There are many more that this thesis did not mention, and it only shows that it is a big task ahead to deal with these issues'. What these deficiencies entail will be mentioned in 5.3.

### **5.3. What challenges does deficiencies in the cadaster information entail?**

#### **5.3.1 Introduction**

When talking about what challenges deficiencies in the cadaster information entails we have to look at it both from a state and municipality-level and private-level. After conducting the interviews, I left with an impression that the biggest challenges are that the right owner is not registered and the challenges this brings. For the municipality taxes are also a big priority.

#### **5.3.2 Not trustworthy register**

It is clear that inheritance is a big issue in Kosovo, when it is estimated that 40 % of the properties remain registered in the name of the deceased, and 30 % of applicants that try to formalize their rights are not able to do so because they haven't formalized inheritance proceedings. The mixture of not knowing, now wanting because the benefits do not outweigh the disadvantages and economy all play a big role in why people choose not to go through formal inheritance proceedings. A consequence is that the cadastre is not a trustworthy register and its information cannot be trusted. The register should work as a guarantee of ownership, but when it is estimated that 40 % of the registered properties are not in the names of the right owners the trust to the cadastre minimizes. It should work as a guarantee for the ones that possess the formal rights, but it opens for the risk of informal transactions and making the land market a dead capital. The property market in Kosovo as said earlier is affected by lack of permits and lack of ownerships titles. Local buyers are used to the informalities, because of the lack of availability of other options or that they are not well informed and are not familiar with the risks. The market has not collapsed because they have trust. It works per now, but it is not ideal for facilitating good governance. By not having a trust-worthy register a consequence could be that banks and financial organizations that provide funds for landowners in form of mortgage are more hesitant to do so. This affects the economic development.

The well-functioning cadastre reduces land disputes because the boundaries and ownerships are clear. The time spent resolving disputes in court or with an advisor minimizes. The benefit of this is that the courts that already have too much to do can use their time more efficiently, and the process shortens. Kosovos register has not come to this level yet, because of the lack of cadastre documentations in the period from 1983 to 1999, but it should be a goal to get there.

A up-to-date cadastral plan provides basic and secure framework that can help improve and urban planning, infrastructure development, land consolidation and redistribution of land. The work will be more efficient when knowing the ownership status, boundaries and related property rights. By having a cadastre that you don't know if is trust worthy requires more work and time spent, and is not a sustainable long-term solution.

### **5.3.3 Taxes**

Traditionally Cadastral systems have served for land taxation purposes. For land taxation, an up-to-date cadastral system is an essential source of information. Absence of this information will make authorities unable to enforce a taxation system without the information about who is liable to pay, the taxable object and the market values (Otto & Hoekema 2012).

Property tax is important for the municipalities to increase the own-source revenue (USAID & Ministry of Justice 2016). The property tax that has to be paid every year is determined by taxable value multiplied with the tax rate. The tax rate can vary from municipality to municipality, and it may be established on an annual basis. The rate varies from 0.15 % to 1 %. Property category also affects the tax rate. The taxable value is determined by the appraised value minus principal residence deduction if this is applicable. The appraised value is affected by the buildings square meters, value category, value zone and quality. The principal residence deduction as mentioned applies if the house you live in is your own, and the deduction is 10.000 euro from the appraised value (Property Tax Department).

Immovable properties registered under the name of deceased persons is an issue the property tax authorities are currently facing. The reason for it being under the name of a deceased is because the families do not formally initiate inheritance proceedings. The informal transferring is not registered, and the authorities do not have the correct information about the current owners. Municipalities have started a requirement that back taxes on property must be paid before the MCO issue the certificates of ownership. Living heirs have to pay back taxes for the years they were not registered as owners. This could discourage people from formalizing their rights. It also affects the people struggling economically, as they would not prioritize formalizing their rights.

#### **5.3.4 Conclusion**

The lack of information in Kosovos cadastre affect how trustworthy the information we get from it is. Even though Kosovos Constitution protects the right of property ownership, and the register implements validation of this right of immovable property one can set a question mark on if this is enough. When it is estimated, as said before that 40 % of the registered properties are not in the name of the right owner the trust to the information in the cadastre decreases. A cadastre is supposed to be up-to-date land information system. The missing cadastre documentation is a huge set back to this by its own, creating confusion. The trustworthiness to the cadaster decreases, and the benefits of an up-to-date and well-functioning cadastre are not there yet.

## **5.4. How do the municipalities deal with the deficiencies?**

### **5.4.1 Introduction**

Because I felt I already had an understanding of why the population in Kosovo do not register their properties – mostly because the lack of trust to the state from early on and because they do not see the need to do so. Kosovo being one of the poorest countries in Europe does not help when families have to prioritize their personal economy, and registering property they do not see the need to do is not a priority. Because of this I wanted to see how the municipalities deal with these deficiencies.

The interviewed municipalities are employees from MCO in Shtime and Ferizaj.

### **5.4.2 Municipalities**

The municipalities cannot do much more than guide the users. Deficiencies in the cadastre cannot be corrected before the correct documentation (documented proof of inheritance or executors right to entry as owner) is sent in. They have citizens coming in and asking questions on how to formalize their rights. Their job is to inform, and encourage them to proceed with their claims. Many see it as complicated, and quit when they get the message that inheritance proceedings have to be finalized before they can register their ownership to the property. They try to encourage people to finalize the inheritance proceedings with this generation, because the case will only get more complicated the more generations that passes. They try to speak as easily and clearly to encourage, and more people have started to see the importance of having ownership to their property. Trying to change people's attitude towards registering property is very important. Because in 1999 when Kosovo was still autonomous under Serbian rule, political parties has expressed to the people that they should not register their property because of Serbian workers. They expressed that they cannot be trusted. Albanians buying property ended up not trusting the system and not registering their new property. In reality the ones that wanted to register their property

ended up registering, even with Serbian workers. Attitude towards registering is an important aspect to get people to register and finalize inheritance proceedings.

The only time the municipality “forces” citizens to complete the inheritance proceedings is when the state has to expropriate. The citizens have a self-interest by actually receiving compensation, so they themselves take the initiative to complete the proceedings.

#### **5.4.3 Conclusion**

The municipalities have limited power to actually do something about the deficiencies in the cadaster. In order to have a trustworthy system of land registration the correct information has to be registered. The only thing they can do is to conduct the right information in the register when the right documentation is sent in. And to guide the citizens on what they have to do to formalize their rights, and what documentations they should bring to a judge or notary to formalize their ownership rights after an inheritance proceeding.





## **6.0 Conclusion and own reflections**

### **6.1 Introduction**

The main goal of this paper was to describe land administration in Kosovo and its challenges in form of deficiencies regarding the cadastre and the importance of having a trustworthy system. The lands history, culture and legal framework all work together in making a register of property.

Working with this thesis has been an interesting and informative process and I have gained more knowledge about land administration in general and the legal framework in Kosovo.

This chapter will summon up the findings and express final reflections on this theme.

### **6.2 Findings and reflections**

Kosovo is a part of an ongoing transformation as a country, and undergoing political, cultural and social changes. Much have been done in a short amount of time, and have had struggles along the way. Building up a new state with laws, regulations and institutions that had to be rebuild after the war.

The deficiencies with lack of inheritance proceedings, cadastral documents that has been confiscated, discrimination and verbal contracts and informal buildings all play a big role in the lack of information in Kosovos cadastre.

The lack of information in Kosovos cadastre affect how trustworthy the information we get from it is. Even though Kosovos Constitution protects the right of property ownership, and the register implements validation of this right of immovable property one can set a question mark on if this is enough. When it is estimated, as said before that 40 % of the registered properties are not in the name of the right owner, the trust to the information in the cadastre decreases. A cadastre is supposed to a be up-to-date land information system. The missing cadastre documentation is a huge set back to this by its own, creating confusion.

The trustworthiness to the cadastre decreases, and the benefits of an up-to-date and well-functioning cadastre are not there yet.

The starting point for Kosovo as a new country has not been easy, with a troublesome history. Building an institutional framework is a tough process, and everything is not perfect on the first try. Patience and learning from mistakes takes time, and is never perfect. That is why institutions are constantly changing; formal laws, norms of behavior changes over time, contracts, codes of conduct etc.

The fact that municipalities cannot do much more than guide the citizens was a little expected, because of the legal framework intact. Trying to contribute to attitudinal change is important for Kosovos land administration system further. Institutions should generally have equal practice, especially the courts that should be a model for others. It is clear that change in this practice must exist when it is that easy to exclude potential heirs.

The practice municipalities have added when requiring that back taxes owed on the property must be paid before the MCO will issue the certificate of ownership required, have done that people are more resistant to have ownership rights over their immovable property. This practice should change as it should be desirable to get more people to register their rights. And then potentially require payment for unpaid taxes at a later date. Tax rate reduction for people with low incomes could also be a solution to get more people to register.

### **6.3 Own reflections**

Working with this thesis have been demanding as there has been a lot to acquaint oneself within a short period of time. Restricting the thesis has been challenging, because the more I read about the situation in Kosovo, the more challenges came up. Reading up on laws and regulations to a new country was demanding by its own.

Before my field trip to Kosovo the tension between Serbs and Albanians were rising. Kosovo had in January prevented a Serbian train from crossing the border to Kosovo because the train was painted with the slogan “Kosovo is Serbia” in 20 languages (Kentish 2017). A

controversial Serb-built wall built in Desember 2016 in the northern town of Mitrovica dividing the Serb and Albanian population was in the beginning of February demolished (Morina 2017). And 10. May 2017 the government collapsed due to no confidence in the government (Byrne 2017), one of the main disputes was over border demarcations with Montenegro. Political disturbance contributes to create more uncertainty for institutions and Kosovos future. The country need stability and security, for the population to trust the institutions. At the same time it is important to have in mind that Kosovos history has been turbulent throughout the ages, and undergone much. The country is relatively new, and construction takes time.

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**Legislative text**

The Administrative Instruction No. 08/2014 - Fees on Product for Registering the Immovable Property Rights from Municipal Cadastral Offices

Constitution of the Republic of Kosovo – 07. April 2008

No. 2000/14 - UMNİK Administrative Direction

No. 2006/10 – UMNİK regulation on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property.

Law No. 03/L-006 – Law on Contested Procedure

Law No. 03/L-10 – Law on Notary

Law No. 03/L-154 – Law on Property and Other Real Rights

Law No. 04-L/013 – Law on Cadastre

Law No. 2004/26 – Law on inheritance in Kosovo

Law No. 04/L-174 – Law on Spatial Planning



## Attachment 1



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1430 AS

Vår dato: 27.01.2017

Vår ref: 51969 / 3 / BGH

Deres dato:

Deres ref:

#### TILBAKEMELDING PÅ MELDING OM BEHANDLING AV PERSONOPPLYSNINGER

Vi viser til melding om behandling av personopplysninger, mottatt 08.01.2017. Meldingen gjelder prosjektet:

51969	<i>Deficiencies with regard to cadaster information – a comparative study Kosovo-Norway</i>
Behandlingsansvarlig	Norges miljø- og biovitenskapelige universitet, ved institusjonens øverste leder
Daglig ansvarlig	Einar A. Hegstad
Student	Betina Osmani

Personvernombudet har vurdert prosjektet og finner at behandlingen av personopplysninger er meldepliktig i henhold til personopplysningsloven § 31. Behandlingen tilfredsstiller kravene i personopplysningsloven.

Personvernombudets vurdering forutsetter at prosjektet gjennomføres i tråd med opplysningene gitt i melde skjemaet, korrespondanse med ombudet, ombudets kommentarer samt personopplysningsloven og helseregisterloven med forskrifter. Behandlingen av personopplysninger kan settes i gang.

Det gjøres oppmerksom på at det skal gis ny melding dersom behandlingen endres i forhold til de opplysninger som ligger til grunn for personvernombudets vurdering. Endringsmeldinger gis via et eget skjema, <http://www.nsd.uib.no/personvern/meldeplikt/skjema.html>. Det skal også gis melding etter tre år dersom prosjektet fortsatt pågår. Meldinger skal skje skriftlig til ombudet.

Personvernombudet har lagt ut opplysninger om prosjektet i en offentlig database, <http://pvo.nsd.no/prosjekt>.

Personvernombudet vil ved prosjektets avslutning, 15.05.2017, rette en henvendelse angående status for behandlingen av personopplysninger.

Vennlig hilsen

Kjersti Haugstvedt

Belinda Gloppen Helle

Dokumentet er elektronisk produsert og godkjent ved NSDs rutiner for elektronisk godkjenning.

## Attachment 2

## Interview guide – Ferizaj and Shtime

<b>Theme</b>	Deficiencies regarding cadaster data in Kosovo
<b>Research questions</b>	<ol style="list-style-type: none"> <li>1. What kind of deficiencies are there in the cadaster in Kosovo?</li> <li>2. What challenges does deficiencies in the cadaster information entail?</li> <li>3. How do the municipalities deal with the deficiencies?</li> </ol>
<b>Form</b>	Semi-structured interview

<b>Frame</b>	<ul style="list-style-type: none"> <li>• Introduction</li> <li>• Theme of the conversation (background and purpose)</li> <li>• What the assignment will be used for</li> <li>• No names will be referred to directly in the thesis</li> <li>• Ask if something is unclear or if the respondent has any questions</li> <li>• Consent for audio recording (with consent – start audio recording here)</li> </ul>
<b>Focus</b>	<ul style="list-style-type: none"> <li>• What kind of deficiencies are there in the Cadaster, especially in Shtime/Ferizaj? For example: <ul style="list-style-type: none"> <li>- Delayed inheritance</li> <li>- Verbal or informal contracts</li> <li>- Removal of cadastral documents to Serbia</li> </ul> </li> <li>• The removal of documents. What issues did this bring for the municipality? <ul style="list-style-type: none"> <li>- Has Shtime/Ferizaj received any of the old cadastral documents from Serbia?</li> </ul> </li> <li>• What challenges does these deficiencies entail? For example:</li> </ul>

	<ul style="list-style-type: none"><li>- Tax?</li><li>- Not a trust worthy register</li><li>• How does the municipality or other organizations that use the cadaster data deal with the deficiencies?</li><li>- Are there any internal/external regulations on this factor?</li></ul>
<b>End</b>	<ul style="list-style-type: none"><li>• Do you have any questions?</li><li>• Is it possible to contact you after the interview if more questions should come up?</li></ul>

## Attachment 3

Table 2 Inheritance and property transfer process for uncontested cases using a notary (Joireman 2015 p. 9)

Required steps in the process of transferring inherited property.

	Bank	Municipal Property Tax Office	Civil Registry Office (place of birth)	Municipal Cadastral Office	Notary	Hospital	Civil Registry Office (place of death)
Medical statement of death or statement of two witnesses					X	X	
Birth certificate of the person who died			X				
Death certificate							X
Request for Review				X	X		
List of Properties owned				X			
Bank statements	X						
Birth certificates of all heirs			X				
Act of Death							X
Document review					X		
Declaration of Inheritance					X		
Division of Property				X			
Division of Property					X		
Pay Transaction Tax		X					
Certificate of Ownership				X			



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