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## **Evolving Property Rights in Kosova**

Ewolucja praw własności w Kosowie

**Abstract:** In July 2010, the European Parliament adopted a resolution on the European integration of Kosova.<sup>1</sup> This followed a major international post-Cold War liberal peacebuilding and state building project, with a central role being given to the creation of a post-communist, post-conflict property-law system. Private property ownership was seen as central to a multi-ethnic liberal democracy with guaranteed human rights and a market economy. While most “private” property in the form of housing, land and possessions already existed in Kosova, the international focus largely turned on the privatisation of large-scale, socially owned enterprises, the restitution of housing and property rights for displaced persons and, later, addressing (or not) several distinct Kosovan property rights issues. New institutional frameworks and mechanisms were established for addressing property issues, alongside and

<sup>1</sup> European Parliament Resolution of 8 July 2010 on the European integration process of Kosovo, OJ C 351E, 2.12.2011, [https://www.europarl.europa.eu/doceo/document/TA-7-2010-0281\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-7-2010-0281_EN.html) [access: 20.03.2025]. While the name Kosovo is how this country is internationally recognised, Kosovar people refer to their country as Kosova, and we use this name here.

instead of the courts. These measures and their outcomes have not been explored in detail. Therefore, this paper will shed light on aspects of the recent establishment of private property systems in Kosova, as well as the range of property types which have emerged, tracing the links between them and identifying some as yet unresolved issues.

**Keywords:** private property in Kosova, political context, liberal peacebuilding, privatisation, restitution, informally held ownership.

**Abstrakt:** W lipcu 2010 r. Parlament Europejski przyjął rezolucję w sprawie integracji europejskiej Kosowa. Stało się to po zakończeniu ważnego międzynarodowego projektu liberalnego budowania pokoju i państwowości po zimnej wojnie, w którym kluczowe znaczenie miało stworzenie postkomunistycznego, postkonfliktowego systemu prawa własności. Prywatna własność była postrzegana jako kluczowy element wieloetnicznej demokracji liberalnej z gwarantowanymi prawami człowieka i gospodarką rynkową. Podczas gdy większość „prywatnej” własności w postaci mieszkań, ziemi i dóbr materialnych istniała już w Kosowie, uwaga społeczności międzynarodowej skupiła się głównie na prywatyzacji dużych przedsiębiorstw społecznych, restytucji mieszkań i praw własności osób przesiedlonych, a następnie na rozwiązywaniu (lub nie) kilku odrębnych problemów związanych z prawami własności w Kosowie. Utworzono nowe ramy instytucjonalne i mechanizmy rozwiązywania problemów własnościowych, równoległe z sądami i zamiast nich. Środki te i ich rezultaty nie zostały szczegółowo omówione. W związku z tym niniejszy artykuł ma na celu naświetlić aspekty niedawnego ustanowienia prywatnych systemów własności w Kosowie, a także różnorodność rodzajów własności, jakie się wówczas pojawiły, prześledzenie powiązań między nimi i wskazanie niektórych nierozwiązanych jeszcze kwestii.

**Słowa kluczowe:** własność prywatna w Kosowie, kontekst polityczny, liberalne budowanie pokoju, prywatyzacja, restytucja, nieformalna własność.

## 1. The Political Evolution of Kosova

The evolution of property rights in Kosova is intertwined with its political evolution. The territory attained international attention in the early 1990s, as

a result of gross human rights violations against ethnic Albanians – prompting international intervention after the 1998–1999 conflict. Kosova was incorporated into Serbia following the defeat of the Ottoman Empire in the first Balkan Wars in 1912<sup>2</sup> and remained so after World War I, when Serbia became part of the Kingdom of Yugoslavia in 1918.<sup>3</sup> After World War II, Kosova remained part of Serbia, then a part of Yugoslavia<sup>4</sup>, initially as the Autonomous Region of Kosova and Metohija.<sup>5</sup> The position of Albanians improved progressively between 1945 and 1980<sup>6</sup>, and in 1963 the Region was recognised as an Autonomous Province.<sup>7</sup> In 1974, Kosova was recognised as an Autonomous Province within Serbia in the Yugoslav Constitution<sup>8</sup>, conferring a status almost identical with that of Yugoslavia's other republics.<sup>9</sup> This autonomous status was revoked by the Serbian state in 1989, following years of unrest by ethnic Albanians, who were demanding republic status for Kosova.<sup>10</sup> The years after the revocation were marked by violations of human rights, when ethnic Albanians were entirely expelled from the public and economic system, a situation viewed by many as closely resembling apartheid.<sup>11</sup>

As noted earlier, the 1998–1999 conflict represented one of the significant events in the political development of Kosova. The conflict ended following NATO intervention, carried out through a military air campaign.<sup>12</sup> This was followed by the deployment of one of the most unprecedented and comprehensive United Nations peace missions, known as the United Nations Interim

<sup>2</sup> See R.C. Hall, *The Balkan Wars 1912–1913: Prelude to the First World War*, Taylor & Francis Group, London 2000.

<sup>3</sup> The Yugoslav Kingdom or Kingdom of Serbs, Croats and Slovenes was established in 1918 and existed until 1941. See M.J. Calic, D. Geyer, *History of Yugoslavia*, Purdue University Press, West Lafayette 2019.

<sup>4</sup> R. Elsie, *Historical Dictionary of Kosovo*, Scarecrow Press, Lanham, Maryland 2010.

<sup>5</sup> Ibidem.

<sup>6</sup> See T. Judah, *Kosovo: What Everyone Needs to Know*, Oxford University Press, Oxford 2008.

<sup>7</sup> Ibidem.

<sup>8</sup> H.H. Perritt, Jr., *Final Status for Kosovo*, “Chicago-Kent Law Review” 2005, vol. 80, no. 3, p. 1–27, <https://scholarship.kentlaw.iit.edu/cklawreview/vol80/iss1/2> [access: 20.03.2025].

<sup>9</sup> Ibidem.

<sup>10</sup> See R. Pichler, H. Grandits, R. Fotiadis, *Kosovo in the 1980s: Yugoslav Perspectives and Interpretations*, “Comparative Southeast European Studies” 2021, vol. 69, no. 2–3, p. 171–182, <https://doi.org/10.1515/soeu-2021-0059>.

<sup>11</sup> See D. Eyre, A. Wittkowsky, *The Political Economy of Consolidating Kosovo: Property Rights, Political Conflict and Stability*, Friedrich-Ebert-Stiftung, Bonn 2002, <https://library.fes.de/fulltext/id/01351.htm> [access: 20.03.2025].

<sup>12</sup> F. Bieber, Z. Daskalovski, *Understanding the War in Kosovo*, Taylor & Francis Group, London 2003.

Mission in Kosovo (UNMIK)<sup>13</sup>, authorised by United Nations Security Council Resolution 1244.<sup>14</sup>

Following nearly a decade of UNMIK administration, Kosova declared its independence on 17 February 2008. After this declaration, one of the largest European Union missions, the European Union Rule of Law Mission in Kosovo (EULEX), was deployed with an executive mandate in the field of rule of law.<sup>15</sup>

## 2. Liberal Peacebuilding and State building

Kosova is known for having hosted one of the most complex and comprehensive liberal state building and peacebuilding interventions since the end of the Cold War. State building is defined as “an endogenous process to enhance capacity, institutions and legitimacy of the state driven by state–society relations”.<sup>16</sup> Peacebuilding is defined as “a complex, long-term process aimed at creating the necessary conditions for positive and sustainable peace by addressing the deep-rooted structural causes of violent conflict in a comprehensive manner”.<sup>17</sup> Both state building and peacebuilding “emerge as interrelated processes, addressing similar underlying problems and a common overall purpose”.<sup>18</sup>

Liberal peacebuilding is a term used to describe external peacebuilding interventions that share several characteristics: firstly, they are conducted by liberal, Western (US-backed) states; secondly, they are motivated by liberal objectives such as responding to large-scale human rights violations or being conducted under international supervision; and thirdly, these interventions were intended to promote liberal democratic political institutions, human rights, effective and

<sup>13</sup> A. Yannis, *The UN as Government in Kosovo*, “Global Governance” 2004, vol. 10, no. 1, p. 67–81, <http://www.jstor.org/stable/27800510> [access: 20.03.2025].

<sup>14</sup> Security Council resolution 1244 of 10 June 1999, on the deployment of international civil and security presences in Kosovo, S/RES/1244(1999), <https://digitallibrary.un.org/record/274488?ln=en&v=pdf> [access: 20.03.2025].

<sup>15</sup> Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo EULEX Kosovo, OJ L 42, 16.02.2008, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008E0124> [access: 20.03.2025].

<sup>16</sup> Report of the Organisation for Economic Co-operation and Development of 26 September 2008, *State Building in Situations of Fragility: Initial Findings*, DCD(2008)25. [https://one.oecd.org/document/DCD\(2008\)25/en/pdf](https://one.oecd.org/document/DCD(2008)25/en/pdf) [access: 20.03.2025].

<sup>17</sup> *Supporting Statebuilding in Situations of Conflict and Fragility: Policy Guidance*, OECD Publishing, Paris 2011, <https://doi.org/10.1787/9789264074989-en>.

<sup>18</sup> Ibidem.

good governance and economic liberalisation as a means to bringing peace and prosperity to war-torn countries.<sup>19</sup>

For some, the resolution of property issues is pivotal for the success of a peacebuilding process in a post-conflict situation.<sup>20</sup> According to Wallis, the development of a market economy is what liberal peacebuilding seeks to achieve, allowing capitalist market economies to flourish.<sup>21</sup> Thus, the role of private property within the paradigm of liberal peacebuilding operates both at an ideological level and as a facilitator for capitalist production and exchange. Roberts suggests that this will lead to a shared prosperity conducive to a form of social justice that is antithetical to internal state–social strife.<sup>22</sup> In Kosova, all this provided a property-based legal and political justification for privatising public (socialist) property and imposing a market economy.<sup>23</sup> At a later stage, the national strategy on property rights were to guarantee by law the property rights of women and members of minority communities and to enforce them by government agencies and courts; to regulate the rights to use land in order to protect valuable land assets and to encourage its productive use; to remove legal concepts from Kosova's socialist past; to clearly define in the law the rights and responsibilities of citizens and government entities in order to provide the basis for a vibrant land market; to establish efficient, affordable administrative processes for obtaining legal recognition of rights exercised *de facto*; to strengthen, protect and enforce the property rights of displaced persons (DPs) and members of non-majority communities; and to support Kosova's integration into the European Union and promote its economic growth.<sup>24</sup>

<sup>19</sup> D. Zaum, *Beyond the "Liberal Peace"*, "Global Governance" 2012, vol. 18, no. 1, p. 121–132, <http://www.jstor.org/stable/23104304> [access: 20.03.2025]; R. Paris, *Peacebuilding and the Limits of Liberal Internationalism*, "International Security" 1997, vol. 22, no. 2, p. 54–89, <https://doi.org/10.1162/isec.22.2.54>.

<sup>20</sup> L. von Carlowitz, *Crossing the Boundary from the International to the Domestic Legal Realm: UNMIK Lawmaking and Property Rights in Kosovo*, "Global Governance" 2004, vol. 10 no. 3, p. 307–331, <http://www.jstor.org/stable/27800531> [access: 20.03.2025].

<sup>21</sup> J. Wallis, *Is There Still a Place for Liberal Peacebuilding?*, in: J. Wallis, L. Kent, M. Forsyth, S. Dinnen, S. Bose (eds), *Hybridity on the Ground in Peacebuilding and Development: Critical Conversations*, ANU Press, Canberra 2018, p. 83–98, <https://www.jstor.org/stable/j.ctvgd1g9.10> [access: 20.03.2025].

<sup>22</sup> D. Roberts, *Liberal Peacebuilding and Global Governance: Beyond the Metropolis*. Routledge, London 2011; R. MacGinty, *Hybrid Peace: The Interaction between Top-down and Bottom-up Peace*, "Security Dialogue" 2010, vol. 41, no. 4, p. 391–412, <http://www.jstor.org/stable/26301105> [access: 20.03.2025].

<sup>23</sup> R.A. Knudsen, *Privatization in Kosovo: The International Project 1999–2008* (NUPI Report No. 288), Norwegian Institute of International Affairs, Oslo 2010, <https://www.files.ethz.ch/isn/121346/Knudsen%20report-NUPI%20Report.pdf> [access: 20.03.2025].

<sup>24</sup> *Kosovo National Strategy on Property Rights*, USAID, Government of Kosova, Pristina 2016, [https://kryeministri.rks-gov.net/wp-content/uploads/2022/07/National\\_Strategy\\_and\\_Annexes\\_ENG.pdf](https://kryeministri.rks-gov.net/wp-content/uploads/2022/07/National_Strategy_and_Annexes_ENG.pdf) [access: 20.03.2025].

### 3. Property Rights

Arguing that the law lies at the heart of property is an age-old trope.<sup>25</sup> As Bentham claimed, “[p]roperty and law are born together and die together. Before laws were made there was no property; take away laws, and property ceases”.<sup>26</sup> Therefore, the existence of a property rights system presupposes adherence to the law in force, as without it property rights would lack legitimacy and enforceability. Liberal theories of property posit how it benefits the values of human autonomy and value pluralism.<sup>27</sup>

While the initial acquisition and justification of property in land have been well rehearsed, with the notable axioms of Locke’s labour desert theory and Blackstone’s “sole and despotic dominion”, the subsequent trajectory of land ownership through various political and social developments around the world has been variable, often marked by historical phases.<sup>28</sup> The formalisation and registration of hitherto informal or socialised smallholdings and homes as individual property rights, in line with the Peruvian economist Hernando de Soto, has created a globalised model. In *The Mystery of Capital*<sup>29</sup> de Soto argues that secure and well-defined property rights transform assets from “dead capital” into resources that can be used to generate additional capital and obtain credit, making property fungible.<sup>30</sup> The World Bank adopted this approach and funded a land registration and cadastral development programme around the world.<sup>31</sup> In the context of the global financialisation of housing and land it is not clear whether this model has universally improved access to land and housing for all. Of course, this approach largely downplays the prevalence of state-owned, religious, regal, tribal and socially owned land and buildings around the world, upon which most societies depend.<sup>32</sup> Other writers have also highlighted the

<sup>25</sup> G. Kantor, T. Lambert, H. Skoda, *Introduction. Property and Ownership: An Overview*, in: G. Kantor, T. Lambert, H. Skoda (eds), *Legalism: Property and Ownership*, Oxford Academic, Oxford 2018, p. 1–27, <https://doi-org.nuigalway.idm.oclc.org/10.1093/oso/9780198813415.003.0001> [access: 20.03.2025].

<sup>26</sup> J. Bentham, *The Theory of Legislation*, Weeks, Jordan & Co., Boston 1840.

<sup>27</sup> H. Dagan, *A Liberal Theory of Property*, Cambridge University Press, Cambridge 2021.

<sup>28</sup> M. Albertus, *Land Power*, Basic Books, London 2025.

<sup>29</sup> H. De Soto, *The Mystery of Capital*, Transworld, London 2000.

<sup>30</sup> C.W. Kramer, *The Two Sides of De Soto: Property Rights, Land Titling, and Development*, in: E. Chamlee-Wright (ed.), *The Annual Proceedings of the Wealth and Well-Being of Nations*, Beloit College, Beloit 2010, p. 95, <https://ssrn.com/abstract=1940201> [access: 20.03.2025].

<sup>31</sup> *Land*, <https://www.worldbank.org/en/topic/land> [access: 20.03.2025].

<sup>32</sup> In 2004 socially owned land constituted 43% of land ownership in Kosova – D. Stanfield, S. Thomas, K. Kelm, J.F. Dorsey, *An Assessment of Property Rights in Kosovo: Final Report (USAID Contract No. LAG-00-98-00031-00, Task Order No. 4)*, ARD Inc., Burlington 2004, <https://www.terrainstitute.org/pdf/Kosovo/FINALReport.pdf> [accessed: 26.05.2025].



disparities in society created by property ownership, and the need for a constitutionally recognised progressive tax on property.<sup>33</sup>

In former Yugoslavia, unlike in neighbouring socialist regimes, the principle of private ownership of property was never directly challenged, as there was widespread private ownership of homes, farms and commercial buildings.<sup>34</sup> While individual property ownership was not large-scale, and private enterprises could only employ a small numbers of workers, its legitimacy was continually questioned.<sup>35</sup> In agriculture, about 90 per cent of the land under systematic cultivation was owned by smallholder farmers.<sup>36</sup> Some two thirds of homes were privately owned. The definition of ownership in this system was influenced by Roman *dominium*, which included the right to use, the right to natural and civil fruits and the right or power to dispose of (*ius utendi*, *ius fruendi* and *ius abutendi*, respectively).<sup>37</sup> However, the antithesis of that part of private property viewed as capital or the means of production with the concept of “social property” had been created in the late 1950s.<sup>38</sup> Social(ist) ownership was not codified in a single legal instrument, and conceptually a social property was every citizen’s indivisible property.<sup>39</sup> It was not characterised by the lack of an owner, but rather by a lack of an identifiable owner, for it belonged to the broader community.<sup>40</sup>

However, the property rights predicament in Kosova was compounded by the legacy of ethnic discrimination that took place during the early 1990s.<sup>41</sup> Many ethnic Albanians lost their public-sector jobs, and consequently their rights to socially owned apartments. These apartments were often then allocated to Serb employees and subsequently converted into private ownership through the privatisation process.<sup>42</sup> During the 1990s, the Serbian Parliament also adopted legislation on restricting sales of property from Serbs to Albanians.<sup>43</sup> Other

<sup>33</sup> T. Piketty, *Capital and Ideology*, Harvard University Press, Cambridge, Massachusetts 2020, p. 996.

<sup>34</sup> K. Medjad, *The Fate of the Yugoslav Model: A Case against Legal Conformity*, “The American Journal of Comparative Law” 2004, vol. 52, no. 1, p. 287–319, <https://doi.org/10.2307/4144450>.

<sup>35</sup> M. Lazic, L. Sekelj, *Privatisation in Yugoslavia (Serbia and Montenegro)*, “Europe-Asia Studies” 1997, vol. 49, no. 6, p. 1057–1070, <http://www.jstor.org/stable/153347> [access: 26.05.2025].

<sup>36</sup> J.M. Fleming, V.R. Sertic, *The Yugoslav Economic System*, “International Monetary Found Staff Papers” 1962, vol. 9, no. 2, p. 202–225, <https://doi.org/10.5089/9781451947120.024.A003> [access: 9.06.2025].

<sup>37</sup> Law of 1 September on Basic Property Relations, Official Gazette of the SFRY 1980, No. 6/80, art. 3.

<sup>38</sup> K. Medjad, *The Fate of the Yugoslav Model...*, op. cit.

<sup>39</sup> Ibidem.

<sup>40</sup> Ibidem.

<sup>41</sup> H. Das, *Restoring Property Rights in the Aftermath of War*, “The International and Comparative Law Quarterly” 2004, vol. 53, no. 2, p. 429–443, <http://www.jstor.org/stable/3663092> [access: 20.03.2025].

<sup>42</sup> Ibidem.

<sup>43</sup> Law of 18 April 1991 on Changes and Supplements to the Law on the Limitation of Real Estate Transactions, Official Gazette of the Republic of Serbia No. 22/91.

property issues emerged from the lack of resources in the former Yugoslav property registration and enforcement systems.<sup>44</sup> The property/land registry often did not reflect the situation on the ground, and this further deteriorated due to damage and dislocation during the 1998–1999 conflict, making the determination of property titles extremely difficult.<sup>45</sup> As a result, the property registration system in Kosova has gradually become obsolete.<sup>46</sup>

#### 4. Privatisation

The evolution of property since the 1990s in the territory of former Yugoslavia involved privatising socially owned farms, socially owned housing and socially owned enterprises (SOEs), creating new forms of “property” alongside existing ones and settling new disputes on identity and nation-building, which are outlined below.

The privatisation of socially owned property began when the 1988 Enterprise Law diversified existing legal types of property and forms of enterprise, and the 1989 Law on Social Capital (amended in mid-1990, the so-called Markovic Law) laid out the framework for the privatisation of enterprises in the social sector.<sup>47</sup> The socialist model in Yugoslavia involved workers’ self-management of industries, neither private nor state-owned, alongside private enterprises.<sup>48</sup> Privatisation involved ownership of SOEs being distributed to the workers through shares,<sup>49</sup> but this only covered 30% of the SOE capital.<sup>50</sup> After the breakup of Yugoslavia, successor states followed different privatisation strategies in Croatia, North Macedonia, Montenegro, Serbia and Slovenia.<sup>51</sup>

<sup>44</sup> *Private property issues following the regional conflict in Bosnia and Herzegovina*, Croatia, and Kosovo, European Parliament, Brussels 2010.

<sup>45</sup> See D. Todorovski, J. Zevenbergen, P. van der Molen, *Conflict and Post-conflict Land Administration: The Case of Kosovo*, “Survey Review” 2016, vol. 48, no. 350, p. 316–328, <https://doi.org/10.1179/1752270615Y.0000000044>.

<sup>46</sup> H. Das, *Restoring Property Rights...*, op. cit.

<sup>47</sup> S. Estrin, M. Uvalic, *From Illyria towards Capitalism: Did Labour-management Theory Teach Us Anything about Yugoslavia and Transition in its Successor States?*, “Comp Econ Stud” 2008, vol. 50, no. 4, p. 663–696, <https://doi-org.nuigalway.idm.oclc.org/10.1057/ces.2008.41>.

<sup>48</sup> K. Medjad, *The Fate of the Yugoslav Model...*, op. cit.

<sup>49</sup> I. Mulaj, *Redefining Property Rights with Specific Reference to Social Ownership in Successor States of Former Yugoslavia: Did It Matter for Economic Efficiency?*, University Library of Munich, Munich 2006.

<sup>50</sup> S. Estrin, M. Uvalic, *From Illyria towards capitalism...*, op. cit.

<sup>51</sup> Ibidem.



Liberal economists suggest that the foundation of capitalism lies in the private ownership of productive resources, which provides the basis for the autonomy of the economic enterprise.<sup>52</sup> From this theoretical standpoint, the process of privatisation of around 400 SOEs took place<sup>53</sup>, framed by the liberal peacebuilding approach and implemented by the UNMIK.<sup>54</sup> In relation to the land attached to the SOEs – and given the silence of UN Security Council Resolution No. 1244 on SOE privatisation and the complex property rights issues involved – the UNMIK initially opted for a process of commercialisation that involved leases for a fixed period.<sup>55</sup> The UNMIK established distinct institutional structures that would carry out the privatisation process: the Kosova Trust Agency (KTA)<sup>56</sup> and the Special Chamber of the Supreme Court of Kosova on Kosova Trust Agency Related Matters.<sup>57</sup> This EU intervention acted as the exogenous administrative power that managed and implemented the privatisation of SOEs in Kosova.<sup>58</sup>

Following the declaration of independence of Kosova, privatisation was continued with the Kosova Privatisation Agency (KPA)<sup>59</sup> and the Special Chamber of the Supreme Court of Kosova on Kosova Trust Agency Related Matters.<sup>60</sup>

<sup>52</sup> D. Lane, *Global Neoliberal Capitalism and the Alternatives: From Social Democracy to State Capitalisms*, Bristol University Press, Bristol 2023, <https://doi.org/10.1332/policypress/9781529220902.001.0001>.

<sup>53</sup> A. Aslund, *How Capitalism Was Built: The Transformation of Central and Eastern Europe, Russia, and Central Asia*, Cambridge University Press, Cambridge 2007.

<sup>54</sup> J.H. Peterson, *Privatisation: Liberal Reform and the Creation of New Conflict Economies*, in: J.H. Peterson (ed.), *Building a Peace Economy? Liberal Peacebuilding and the Development-security Industry*, Manchester University Press, Manchester 2014, p. 115–137, <https://doi.org/10.7228/manchester/9780719087301.003.0006>; see also *The Ottoman Dilemma: Power and Property Relations under the United Nations Mission in Kosovo*, European Stability Initiative, Pristina 2002, <https://www.esiweb.org/publications/ottoman-dilemma> [access: 20.03.2025].

<sup>55</sup> R. Moalla-Fetini, S. Hussein, H. Hatanpaa, N. Koliadina, *Kosovo*, International Monetary Fund, Washington 2005, <https://doi.org/10.5089/9781589064225.071>.

<sup>56</sup> Regulation No. 2002/12 of United Nations Interim Administration Mission in Kosovo of 13 June 2002 on the establishment of the Kosovo Trust Agency, UNMIK/REG/2002/12, [https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002\\_12.pdf](https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002_12.pdf) [access: 20.03.2025].

<sup>57</sup> Regulation No. 2002/13 of United Nations Interim Administration Mission in Kosovo of 13 June 2002 on the establishment of a special chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, UNMIK/REG/2002/13, [https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002\\_13.pdf](https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002_13.pdf) [access: 20.03.2025].

<sup>58</sup> Under the UNMIK pillar system, the European Union was responsible for the economic reconstruction and development of Kosovo; therefore, socially owned enterprises fell within the scope of the EU pillar – R. A. Knudsen, *Privatization in Kosovo...*, op. cit.

<sup>59</sup> Law No. 04/L-034 of 21 September 2011 on the Privatization Agency of Kosovo, Official Gazette of the Republic of Kosovo No. 19, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2773&langid=2> [access: 20.03.2025].

<sup>60</sup> Law No. 06/L-086 of 8 June 2019 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency related matters, Official Gazette of the Republic of Kosovo No. 12/2019.

In recognition of the legal impediments to an outright sale of land held under the right of use of an SOE, a formula was developed by the UNMIK that allowed the sale of transferable 99-year leases.<sup>61</sup> In 2016, the National Strategy on Property Rights proposed *ipso iure* transferring the 99-year leasehold into full ownership.<sup>62</sup>

However, the privatisation of SOEs was also complicated by the Serbian government opposition, on the belief that SOEs were either the property of Serbian private investors or of the Serbian people.<sup>63</sup> This increased the nervousness among the international officials as to future problems, should they be found to have exceeded their mandate when privatising.<sup>64</sup> The period of internationally managed privatisation in Kosova was also influenced by its status at the time, being internationally controversial and undefined.<sup>65</sup>

## 5. Restitution

The post-conflict restitution of housing, land and property rights forms one of the preconditions for the return of refugees and displaced persons.<sup>66</sup> In the *Pinherio Principles* this is outlined as follows:

All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.<sup>67</sup>

<sup>61</sup> Regulation No. 2003/13 of United Nations Interim Administration Mission in Kosovo of 9 May 2003 on the transformation of the right of use to socially-owned immovable property, UNMIK/REG/2003/13, section 2.

<sup>62</sup> *Kosovo national strategy...*, op. cit. Nonetheless, in the civil-law system, a 99-year lease arrangement, known as emphyteusis and originating from Roman law, is recognised as a valid form of property right – See A. di Robilant, *The Tensions of Absolute Property*, in: *The Making of Modern Property: Reinventing Roman Law in Europe and its Peripheries 1789–1950*, Cambridge University Press, Cambridge 2023, p. 204–234.

<sup>63</sup> J.P. Korovilas, *Is Privatisation in Post-conflict Kosovo Possible?*, “Comparative Economic Studies” 2006, vol. 48, no. 2, p. 326–350.

<sup>64</sup> R.A. Knudsen, *Privatization in Kosovo...*, op. cit.

<sup>65</sup> Ibidem.

<sup>66</sup> E.C. Martínez, A. Díaz Anabitarte, *Right to Land, Housing, and Property*, in: C. Stahn, J. Iverson (eds), *Just Peace after Conflict: Jus Post Bellum and the Justice of Peace*, Oxford University Press, Oxford 2020, p. 252–266, <https://doi.org/10.1093/oso/9780198823285.003.0014>.

<sup>67</sup> Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights of 28 June 2005, *Housing and property restitution in the context of the return of refugees and internally displaced persons: Final report of the Special Rapporteur, Paulo Sérgio Pinheiro*;

Apart from the returning of refugees and displaced persons, the restitution process plays important role for the property rights system.<sup>68</sup> In many conflict situations, housing and property cadastres and records are consciously destroyed or confiscated by one of the warring parties with the aim of extinguishing the rights of members of another group.<sup>69</sup> In this situation, restitutions programmes involve establishing property rights and improving ownership information on cadastral records. Longstanding, pre-conflict disputes over housing, land, property ownership and tenancy can re-emerge following the conflict, and they require resolution.<sup>70</sup> In some instances, no clear title may have ever existed to the land or dwelling in question, while in others several people may place competing claims on the same house or piece of land.<sup>71</sup>

The restitution programme in Kosova was built upon the Bosnian and South African precedents and effectively combines elements of both.<sup>72</sup> It was initially handled by the Housing and Property Directorate (HPD)<sup>73</sup>, with a quasi-judicial independent branch, the Housing and Property Claim Commission (HPCC).<sup>74</sup> The HPD and the HPCC had exclusive jurisdiction on receiving and deciding three specific categories of residential property claims. The first category pertained to residential claims regarding property rights lost after 23 March 1989 as a result of discrimination.<sup>75</sup> A second category applied to property transactions between Serbs and Albanians that were restricted during the 1990s, as explained above.<sup>76</sup> The third category concerned housing and property claims

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*Principles on housing and property restitution for refugees and displaced persons*, E/CN.4/Sub.2/2005/17, <https://undocs.org/E/CN.4/Sub.2/2005/17> [access: 20.03.2025].

<sup>68</sup> J. Unruh, *Land Rights and Peacebuilding: Challenges and Responses for the International Community*, "International Journal of Peace Studies" 2010, vol. 15, no. 2, p. 89–125, <http://www.jstor.org/stable/41853008> [access: 20.03.2025].

<sup>69</sup> S. Leckie, *Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials*, Cambridge University Press, Cambridge 2007.

<sup>70</sup> Ibidem.

<sup>71</sup> Ibidem.

<sup>72</sup> H. Das, *Restoring Property Rights...*, op. cit.

<sup>73</sup> Regulation No. 1999/23 of United Nations Interim Administration Mission in Kosovo of 15 November 1999 on the establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, UNMIK/REG/1999/23.

<sup>74</sup> Regulation No. 2000/60 of United Nations Interim Administration Mission in Kosovo of 31 October 2000 on residential property claims and the rules of procedure and evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, UNMIK/REG/2000/60.

<sup>75</sup> Ibidem.

<sup>76</sup> Ibidem.

of refugees and displaced persons who had lost possession of their homes in connection with the 1999 conflict.<sup>77</sup>

The general procedures and principles governing the claim adjudication process and the mass adjudication mechanism were laid out in UNMIK Regulation No. 2000/60.<sup>78</sup> The procedure was founded on a “mass claims” approach combined with relaxed procedural rules.<sup>79</sup> Leckie justified these relaxed rules of procedure on the following grounds:

States may, in situations of mass displacement where little documentary evidence exists as to ownership or possessory rights, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution. In such cases, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.<sup>80</sup>

The restitution of housing and property rights have been extended with the establishment of the Kosova Property Agency (KPA)<sup>81</sup> and the Kosova Property Claims Commission (KPCC).<sup>82</sup> In addition to the residential properties, the KPA and KPCC mandate also included property claims related to agricultural and commercial property rights.<sup>83</sup> The KPA and the KPCC applied the same procedural principles in the processing and adjudication of property claims as the HPD and the HPCC. However, there is a significant difference between these two institutions, based on the fact that decisions of the KPCC, as a quasi-judicial body, have been reviewed by the Appeal Panel of the Supreme Court. Currently, restitution of housing and property rights is being carried out by the Kosova Property

<sup>77</sup> Ibidem.

<sup>78</sup> Ibidem.

<sup>79</sup> Regulation No. 2000/60 of United Nations Interim Administration Mission in Kosovo of 31 October 2000 on residential property claims and the rules of procedure and evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, Section 21.1, UNMIK/REG/2000/60; A.R. Smit, *Property Restitution and Ending Displacement in Kosovo: Coordinated Effort or at Cross-purposes?*, “Northern Ireland Legal Quarterly” 2004, vol. 55, no. 2, p. 182–205, <https://doi.org/10.53386/nllq.v55i2.768>.

<sup>80</sup> S. Leckie, *Housing, Land, and Property Restitution Rights...*, op. cit.

<sup>81</sup> Regulation No. 2006/50 of United Nations Interim Administration Mission in Kosovo of 16 October 2006 on the resolution of claims relating to private immovable property, including agricultural and commercial property, UNMIK/REG/2006/50.

<sup>82</sup> Ibidem.

<sup>83</sup> Ibidem, Section 3.

Comparison and Verification Agency.<sup>84</sup> However, decisions on restitutions have become a challenge for Kosova's justice system. The complexity of transplanting these resolution and adjudication agencies into the judicial and legal institutional framework of Kosova is often reflected in parallel (and conflicting) decisions brought by regular courts.<sup>85</sup> Another issue is the length of time that specialised institutions are involved in resolving housing and property rights issues.<sup>86</sup>

## 6. Informally Held Property Rights

Ribeiro de Almeida outlines the informal property rights system as “land tenure systems that have no recognition from state laws”.<sup>87</sup> Formalisation is a three-step process:

Property formalisation involves, first, the provision of legal representation of property in the form of title deeds, licences, permits, contracts or the like. Second, these representations must receive official sanction and protection from legitimate national authorities. And third, the information contained in these representations should be integrated in an accessible national registry.<sup>88</sup>

The two most common causes of informality in Kosova are verbal contracts for the sale of land and immovable property, and “informal inheritance” – where the property of deceased persons is possessed by heirs who did not initiate or complete formal inheritance proceedings.<sup>89</sup> In the past, the execution of verbal

<sup>84</sup> Law No. 05/L-010 of 3 November 2016 on the Kosovo Property Comparison and Verification Agency, Official Gazette of the Republic of Kosovo No. 37, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=13023&langid=2> [access: 20.03.2025].

<sup>85</sup> See *Property Rights Mass-claim Mechanism: Kosovo Experience*, Organization for Security and Co-operation in Europe, Helsinki 2020, <https://www.osce.org/files/f/documents/2/7/454179.pdf> [access: 20.03.2025].

<sup>86</sup> A. Mora, “Property Rights are Human Rights”: Bureaucratization and the Logics of Rule of Law Interventionism in Postwar Kosovo, “PoLAR: Political and Legal Anthropology Review” 2023, vol. 46, p. 82–96, <https://doi.org/10.1111/plar.12517>.

<sup>87</sup> B. Ribeiro de Almeida, *Building Land Tenure Systems: The Political, Legal, and Institutional Struggles of Timor-Leste*, Leiden University, Leiden 2020, <https://hdl.handle.net/1887/136944> [access: 20.03.2025].

<sup>88</sup> T.A. Benjaminsen, S. Holden, C. Lund, E. Sjaastad, *Formalisation of Land Rights: Some Empirical Evidence from Mali, Niger and South Africa*, “Land Use Policy” 2009, vol. 26, no. 1, p. 28–35, <https://doi.org/10.1016/j.landusepol.2008.07.003>.

<sup>89</sup> L. Keefe, M. Limani, G. Salihu, *Role Constructive Notice Could Play to Formalize Property Rights in Kosovo*, Tetra Tech, Burlington 2017, <https://www.oicrf.org/-/role-constructive-notice-could-play-to-formalize-property-rights-in-koso-1> [access: 20.03.2025].

contracts for the sale of land and immovable property was an accepted means for transacting property rights due to cultural and traditional norms practiced in rural areas of Kosova.<sup>90</sup> However, subsequent to 1991, even if a contract document for inter-ethnic sales of property existed, the transaction could not be recorded in the cadastre due to discriminatory legislation in effect at the time prohibiting such transactions.<sup>91</sup>

The National Strategy on Property Rights outlines informality on property rights in Kosova as follows:

Informality occurs when formal rights in property (rights registered in the cadastre) are not transferred from the formal rights holder through operation of law. Rights informally transferred are exercised de facto by the informal rights holder and generally respected by the community at large but cannot be registered in the cadastre. As a result, rights remain registered in the cadastre in the name of the formal rights holder who already transferred the rights, rather than the person currently exercising rights over the property.<sup>92</sup>

The “culture of informality in Kosova’s land sector can be traced back to the 500-year period it was under Ottoman Empire rule”.<sup>93</sup>

Due to the different Ottoman legal heritage and a general lack of emphasis on property rights in the socialist regime, the property rights register was never de facto introduced in Kosovo nor in many other southern parts of the former Yugoslavia. Ongoing reform efforts were interrupted by Kosovo’s recent turbulent history. Instead, cadastre entries based on a court certification of relevant legal documents replaced the registration function to some extent. Yet the cadastre did not provide legal title to ownership, and the registration procedure was complicated and opaque. This coincided with a partial tendency in the region to rely on spoken transactions, partially due to financial considerations. For these reasons, the registration procedure was often not adhered to and the cadastral records became largely outdated.<sup>94</sup>

<sup>90</sup> *Kosovo National Strategy...*, op. cit.

<sup>91</sup> Ibidem.

<sup>92</sup> Ibidem.

<sup>93</sup> J. Keefe, M. Limani, G. Salihu, *Role Constructive Notice Could Play...* op. cit.

<sup>94</sup> L. von Carlowitz, *Crossing the Boundary...*, op. cit.



## 7. Unpermitted Structures

The existence of 350,000 unpermitted structures makes this one of the most significant property issues in Kosova. It originates primarily from traditional and cultural norms, since much of it stemmed from the rural-to-urban migration in post-conflict Kosova. However, unpermitted structures were also the mark of urban development of Yugoslavia.<sup>95</sup> Illegal building is defined as an activity of land transformation and construction/use of buildings that infringes the territorial planning rules in force.<sup>96</sup> According to the law that addresses this issue in Kosova, an unpermitted structure is defined as one that was built without a construction permit from the relevant public authority, or in a violation of construction permit,<sup>97</sup> including cases where more floors were built than were permitted, the building footprint was expanded beyond the permit or the use/designation was changed from what was permitted.

The National Strategy of Property Rights pointed out the following complications on the issue:

Additionally, anecdotal information indicates that up to 50% or more of applicants seeking to formalize rights over the more than 350,000 unpermitted buildings through the government of Kosovo's (GoK's) legalization program cannot demonstrate rights in the land upon which the buildings are constructed because the land is currently registered in the name of a deceased rights holder.<sup>98</sup>

This segment of informally held property-related issues has remained outside the liberal peacebuilding framework in Kosova. During the UNMIK administration, a cadastral registry was re-established and cadastral data were reconstructed.<sup>99</sup> Informally held property rights, based on verbal contracts, were addressed through general courts, based on the doctrine of substantial perfor-

<sup>95</sup> R. Archer, *The Moral Economy of Home Construction in Late Socialist Yugoslavia*, "History and Anthropology" 2017, vol. 29, no. 2, p. 141–162, <https://doi.org/10.1080/02757206.2017.1340279>.

<sup>96</sup> B. Romano, F. Zullo, L. Fiorini, A. Marucci, *Illegal Building in Italy: Too Complex a Problem for National Land Policy?*, "Cities" 2021, vol. 112, <https://doi.org/10.1016/j.cities.2021.103159>.

<sup>97</sup> Law No. 06/L-024 of 20 August 2018 on treatment of constructions without permit (Official Gazette of the Republic of Kosovo, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=17767> [access: 20.03.2025]).

<sup>98</sup> *Kosovo National Strategy...*, op. cit.

<sup>99</sup> See D. Todorovski, J. Zevenbergen, P. van der Molen, *Conflict and Post-conflict Land Administration...*, op. cit.

mance and the doctrines of positive prescription or adverse possession.<sup>100</sup> Only a fraction of informally held property rights were addressed under the HPD.<sup>101</sup> Currently, verbal contracts are being addressed under a convoluted institutional framework, involving the Kosova Property Comparison and Verification Agency,<sup>102</sup> the Kosova Cadastral Agency<sup>103</sup> and general courts, all of which have competence for handling such issues. The process of comparing and verifying cadastral records that were dislocated in Serbia with the set of post-conflict cadastral records of Kosova<sup>104</sup> represents another significant challenge for addressing informally held property rights. The process of addressing unpermitted structures in property-law terms is proving to be a major challenge.

## 8. Conclusion

The central role of property in the peacebuilding and state building project in Kosova has created a unique legal landscape, largely based on neoliberal principles and orthodox market-based theory. Hehir argues that “it is highly unlikely that anything like the project launched in Kosovo in 1999 will be attempted in the foreseeable future”.<sup>105</sup> Similarly, Richmond and Franks asserted that “[u]nderwritten by the principal tenets of the liberal peace, the Kosova ‘trusteeship’ was to be the most ambitious UN state building project”.<sup>106</sup> Its nature and institutions have been fundamentally changed since the late 1990s, first

<sup>100</sup> *Litigating Ownership of Immovable Property in Kosovo*, Organization for Security and Co-operation in Europe, Helsinki 2009, <https://www.osce.org/files/f/documents/9/9/36815.pdf> [access: 20.03.2025].

<sup>101</sup> See Regulation No. 2000/60 of United Nations Interim Administration Mission in Kosovo of 31 October 2000 on residential property claims and the rules of procedure and evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, UNMIK/REG/2000/60.

<sup>102</sup> Law No. 08/L-052 of 11 January 2023 on amending and supplementing Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency, Official Gazette of the Republic of Kosovo No. 3, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=13023&langid=2> [access: 20.03.2025].

<sup>103</sup> Law No. 08/L-237 of 9 January 2024 on Cadastre of Immovable Property, Official Gazette of the Republic of Kosovo No. 2, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2757&langid=2> [access: 20.03.2025].

<sup>104</sup> Law No. 05/L-010 of 3 November 2016 on the Kosovo Property Comparison and Verification Agency, Official Gazette of the Republic of Kosovo No. 37, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=13023&langid=2> [access: 20.03.2025].

<sup>105</sup> A. Hehir, *Continuity or Change? Intervention and Statebuilding after Kosovo*, “Journal of Intervention and Statebuilding” 2019, vol. 13, no. 5, p. 581–593, <https://doi.org/10.1080/17502977.2019.1658563>.

<sup>106</sup> O.P. Richmond, J. Franks, *Liberal Peace Transitions: Between Statebuilding and Peacebuilding*, Edinburgh University Press, Edinburgh 2009.

by the UNMIK, then by EULEX, including major privatisation programmes and the introduction of the 99-year lease. The impact of this unconventional institutional interaction and the potential incoherence of many decisions by the various agencies on property disputes remains to be assessed. However, as the most comprehensive, distinct, unprecedented and *sui generis* legal and political landscape, the liberal peace project of Kosova might be considered experimental – especially in the field of property rights. Yet, neither the objective of ownership transformation nor the objective of restitution has been fundamentally addressed. The restitution of housing and property rights was advanced with weak land, housing and property rights documentation and records. Informality in land ownership and the issue of unpermitted structures are being addressed in isolation from other unresolved land rights issues, and eventually will be reviewed by the process of comparison and verification with previous cadastre registers. All this takes place in the context of major foreign investment (by the diaspora) in Kosova on new housing, rather than manufacturing industries, which explains the fact that in 2024 some 33% of all 560,000 houses and flats in Kosova were uninhabited.<sup>107</sup> Some contemporary issues, such as affordability and the low level of ownership by women, despite gender equality in the Kosovan Constitution,<sup>108</sup> have yet to be addressed.

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<sup>107</sup> *Population and Housing Census in Kosova*, <https://askapi.rks-gov.net/Custom/b9e499d4-2474-4be5-8bad-17e6a2467ed8.pdf> [access: 20.03.2025].

<sup>108</sup> European Parliament Resolution of 7 May 2025 on the 2023 and 2024 Commission Reports on Kosovo, 2025/2019(INI), [https://www.europarl.europa.eu/doceo/document/TA-10-2025-0094\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-10-2025-0094_EN.html) [access: 20.03.2025].

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