



Republika e Kosovës
Republika Kosovo - Republic of Kosovo
Qeveria - Vlada - Government

Zyra e Kryeministrit – Ured Premijera – Office of the Prime Minister

**CONCEPT PAPER ON THE KOSOVO PROPERTY COMPARISON AND VERIFICATION
AGENCY**

Prishtina, December 2017

1. Introduction

Following the Report with Recommendations by the Ombudsperson, with Case reference no. 551/2017, there is a need to address the Ombudsperson's findings in relation to the implementation of Law on Kosovo Property Comparison and Verification Agency (KPCVA).

Also, taking into account the priorities of the Government of the Republic of Kosovo for the purpose of providing a strategic vision for property rights, to clearly define by Law the property rights, through which the citizens are offered legal property rights recognition, the return of displaced persons and based on the protection of property rights guaranteed by Article 46 of the Constitution of the Republic of Kosovo, it is necessary to address the findings of the Ombudsperson regarding the Law on KPCVA, and amending and supplementing the Law based on the challenges that have been encountered during the implementation of the Law on KPCVA.

The Government considers the addressing the recommendations of the Ombudsperson a priority regarding these issues. In relation to the Ombudsman's concerns and recommendations, the articles highlighted in these recommendations constitute a violation of property rights, according to the Constitution of the Republic of Kosovo and European and international human rights instruments.

Addressing these issues in this respect aims to be in full compliance with the European and international human rights instruments that are of a permanent interest to the Government. On the other hand, amendments as a result of other challenges to the implementation of the applicable legislation are significant and have an impact in the human rights field in general and in the property rights field in particular, and as such they will be addressed.

By amending and supplementing the Law it is necessary and priority should be given to the formalization of the property rights of the citizens of Kosovo, to provide legal recognition of informal rights through the treatment of informality, giving additional competencies and duties to KPCVA, as prescribed by National Strategy on Property Rights and the Action Plan for its implementation.

2. Description and definition of the main issue/problem

Recommendations by the Ombudsperson

Upon entering into force of Law No. 05/L-10 on KPCVA in November 2016, the Ombudsperson addressed concerns regarding the end of the property administration and the restrictions on the execution of evictions by the KPCVA.

In order to realize the property rights, namely the access to the property, the administration of properties by KPCVA that were subject to the administration inherited from the former Housing and Property Directorate and the Kosovo Property Agency was foreseen.

Upon entering into force of the abovementioned Law on KPCVA, the administration of properties was foreseen to end within 18 months from entering into force of the Law. Also,

the competence of the KPCVA to conduct evictions following two evictions of the same property after 72 hours was revoked by this Law. This law prescribes that for any subsequent re-occupation of the same property, the rules of the general enforcement procedures shall be applicable based on the same decision/judgment and eviction order as enforcement documents.

The end of administration of properties under the administration of the Agency as well as the revocation of competencies to conduct evictions after two occupations constitute a deprivation of human rights, protection of the right and access to the property, in contradiction with the Constitution of the Republic of Kosovo and the European and International human rights instruments.

In practical terms this means the following: The lack property administration and the lack of evictions conducted after two occupations by the KPCVA constitute a deprivation of human rights, protection of the right and access to the property, potential illegal occupation, potential destruction of immovable property, potential deprivation from rental income, that are as mentioned above in contradiction with the Constitution of the Republic of Kosovo and the European and International human rights instruments. The revocation of these competencies by the abovementioned Law directly affected the Displaced Persons throughout the territory of the Republic of Kosovo.

In practical terms, this means: The non-administration of property and the non-execution of the evictions after two occupations of the KPCVA constitute a deprivation of human rights, protection of the right and access to the property, potential illegal occupation, potential destruction of immovable property, potential deprivation from the rental income, which as outlined above are in contradiction with the Constitution of the Republic of Kosovo and European and international human rights instruments. The revocation of these competencies by the abovementioned Law directly affected the Displaced Persons throughout the territory of the Republic of Kosovo.

Amendments as a result of challenges to implementing the Law

In addition to the issues raised above, other needs emerged to address the problems after the challenges that came out during the implementation of Law such as additional duties for the KPCVA bodies and on the other hand the clarification of certain legal provisions and issuing the sub-legal acts.

Implementation of article 22 of Law on KPCVA requires supplementing the Law in order to enable the complete implementation of the compensation scheme implementing decisions of the former Housing and Property Claims Commission (HPCC), which scheme was designed for the compensation of owners who lost their property rights as a result of discrimination. The implementation of these 143 decisions was also foreseen by the National Strategy on Property Rights. On the other hand, the implementation of this scheme for which an Administrative Instruction is being drafted, foresees additional duties for the KPCVA's Property Claims Commission. In this regard, the Property Claims Commission has not been

assigned the task of issuing a Decision confirming the fulfillment of obligation to implement the decision issued by the HPCC.

Moreover, the issue of the effective implementation of the legal remedies provided in Article 18 of Law on the KPCVA emerged. Therefore it is necessary to clarify and strengthen the legal basis regarding legal remedies of auction, seizure and demolition of illegal structures. However, in relation to the legal remedy of auction and seizure and eventually the lack of legal framework or the conjunction of competencies with other public institutions, the applicable Law lacks a clear provision for the implementation of these two legal remedies by the KPCVA.

With respect to the removal of the deadline for issuing sub-legal acts prescribed in article 30 of the Law, meeting this deadline constitutes a challenge. In this regard, amending and supplementing the Law to remove the deadline for issuing the secondary legislation, is necessary in order to facilitate the implementation of Law and good practice.

During the implementation of Law it was also noticed that there were uncertainties in the terms used, such as: “difference – gap and discrepancy/non-compliance” that directly affect the prolongation of processes and resolution of cases.

Challenges that emerged in the National Strategy on Property Rights.

Based on the National Strategy on Property Rights and the Action Plan for its implementation, it is envisaged to address the informality for the legal recognition of formal rights, which is not regulated by the applicable Law. The institutional capacities of the KPCVA, effective and simple procedures and best practices could also be implemented in other administrative procedures for a more effective resolution of the main reason of informality. According to abovementioned documents it is envisaged as an alternative to consider the possibility that this action be performed by the KPCVA as an additional duty due to the experience and procedures installed in this institution.

The treatment of informality by the KPCVA would have been in the interest of not only the Kosovo Institutions but also the Kosovo citizens because of the experience, best practices, effective and simple procedures installed by the KPCVA in dealing with property issues since after the war to date. Clear, transparent, efficient procedures, case handling and the experience with parties would enable this function to be performed by the KPCVA with no need to establish another institution that would have to start dealing with these procedures from the beginning. Furthermore, the establishment of another institution, except delaying the treatment of this category, which has already been delayed too much, would have a very high cost for the Kosovo Budget in the financial aspect, and at the same time the uncertainty and obscurity of the property rights of this category would continue for a long time.

A potential establishment of another institution other than the KPCVA would be an unnecessary budget and bureaucratic burden for the Kosovo institutions due to large investments and a long period of time to establish it, staff training, human resources capacity

building and technical know-how, creation of good practices that would take a lot of time and effort and above all, the option of establishing another institution would not guarantee a success because of the lack of experience in treating disputes and property issues.

Another additional reason not less important for vesting the KPCVA with competencies or mandate to deal with the informality would be the relation of this category of property issues with the current mandate of the KPCVA, such comparison and verification of cadastral documents. In case the KPCVA would deal with the informality, where it is considered that over 30% of properties in Kosovo belong to this category, these cases treated by the KPCVA would directly facilitate the reduction of the number of cases for comparison and verification that according to the applicable Law should also be treated by the KPCVA. In other words, the KPCVA could greatly reduce the duplicate work by dealing with informality as well as comparison and verification at the same time. In this way, additional costs of the Kosovo Budget would be avoided and at the same time the informality would be treated, and the comparison and verification cases would be reduced. Otherwise, all the cases treated by an institution other than the KPCVA could be subject to comparison and verification by the KPCVA.

Current Policy

1. Pursuant to paragraphs 7 and 8 of Article 21 of the Law on KPCVA, the Agency shall continue with the property administration and implementation of the rental scheme no later than 18 months from the day this law enters into force. Within this deadline, the Agency shall be obliged to notify all property right holders of the deadline for the administration and the deadline for submitting a claim for repossession or case closure. The agency has currently around 12647 properties under administration and around 4406 properties in the rental scheme, of which 1010 are rented out. However, the necessary procedures for the end of administration have not started to be applied due to the delay in adopting the Administrative Instruction (Circular) No.07/2017 on Procedures, Requirements and Criteria for the End of Administration of Properties under Administration and those included in the Rental Scheme.
2. Pursuant to paragraph 1 of Article 18 of the Law on KPCVA, one of the remedies for the implementation of judgments is the eviction, a remedy applied upon the request of property right holders in cases of claims for repossession of property. According to the legislation in force, the KPCVA executes ex-officio eviction in cases where a property is under the KPCVA administration or in the Rental Scheme and where the same is occupied. In all eviction cases with a claim for repossession of property by property right holders under Article 19 of the Law, if the property is reoccupied within seventy-two (72) hours after the execution of an eviction order and upon notice by the claimant that his/her property has been re-occupied, the KPCVA shall re-execute it once again by re-evicting the occupant, based on the newly issued eviction warrant. Under paragraph 7 of the same article, for any subsequent occupation of the same property, the KPCVA has no further jurisdiction.

3. Regarding the implementation of HPCC decisions related to the compensation scheme under Article 22, the KPCVA did not implement this scheme in the absence of funds. The KPCVA is also in the process of drafting an Administrative Instruction on this issue. The KPCVA has been allocated part of the financial funds by the Government of the Republic of Kosovo, and for its successful implementation, it was necessary to amend the law on the KPCVA.
4. Legal remedies for the auction, seizure and demolition of illegal structures have not been applied so far in the absence of a legal basis for issuing secondary legislation.
5. Failure to address and handle issues related to informality, besides posing a challenge and commitment to the Kosovo's institutions, it has a negative impact on the rights of the Kosovo's citizens and on the other hand negatively affects the legal security of citizens by creating uncertainty for the future and the fate of their properties.

Carrying out this function by the KPCVA for addressing informality based on the following reasons: experience in resolving claims on property rights, best practices, transparency, human capacities, technical and technological infrastructure, system and method of processing cases, as well as the efficient and simple procedures that the KPCVA has installed, it would undoubtedly have a positive impact on a rapid and efficient resolution of such cases in the field of property rights addressed by the National Strategy on Property Rights, and would undoubtedly have a positive impact on reducing the financial burden to the Kosovo's budget.

Therefore, given that it is not necessary to have a double work from two different institutions, with different powers and mandates to handle such cases, whereby there would be a cost and financial burden for the Kosovo budget, double procedure, process delays from two institutions for the same work, unnecessary bureaucracy and potentially stagnation in addressing and handling the problem solving of this category, it is necessary to consider the option to amend the law to give powers to the KPCVA to deal with the informality.

Laws and bylaws related to these issues

The following laws and bylaws are directly related to the issues mentioned above:

- The Constitution of the Republic of Kosovo, Article 22 guaranteeing the human rights and freedoms guaranteed by international agreements and instruments, including the property right within the human rights. Article 46 directly guarantees the property right. In addition, the use of property is guaranteed and protects arbitrary deprivation of property rights whereas Article 55 protects human rights and freedoms and as such may

be limited only by law, including the property right as an inseparable part of the fundamental human rights;

- The Law No.05/L-10 on the KPCVA determining the organization, duties and responsibilities of the Kosovo Property Comparison and Verification Agency relating to the resolution of private immovable property related claims including private agricultural and commercial property as well as comparing and resolving discrepancies between original cadastral documents taken from Kosovo by the Serbian authorities before June 1999 and the current cadastral documents in the Republic of Kosovo on private property, commercial private property and private property of religious communities. The Administrative Instruction (Circular) No.07/2017 on Procedures, Requirements and Criteria for the End of Administration of Properties under Administration and those included in the Rental Scheme of the Kosovo Property Comparison and Verification Agency setting up the requirements and criteria for the end of administration of properties under administration and those included in the Rental Scheme of the Kosovo Property Comparison and Verification Agency, the rights and obligations of the Agency and parties pertaining to properties under administration as well as the end of administration of properties under the administration of the Agency.
- Regulation (Circular) No.10/2017 on Duties, Responsibilities and Organization of the Executive Secretariat of the Kosovo Property Comparison and Verification Agency, procedures for the comparison and verification of documents and resolution of claims, continuation in resolving claims filed under the procedures in the Kosovo Property Agency, rights of parties in the procedure, decision making, enforcement of decisions through remedies foreseen by law, cooperation with other institutions and criteria for the selection of the Director and the Deputy Director.
- Regulation (Circular) No.08/2017 on the Duties, Responsibilities and Procedures of the Kosovo Property Comparison and Verification Agency Commissions defining the duties, responsibilities, rules of procedures, general principles, organization, holding hearings and the manner of making decisions of the Commissions of the Kosovo Property Comparison and Verification Agency.

Current expenditures;

Table

Category of expenditures	Factual expences in previous year (2016)	Budget for this year (2017)	Medium Term Expenditure Framework (MTSF) for the next year
Agency's Budget	1,742,697	2,193,307	6,057,155 (including the compensation scheme and capital expenditures)
Other budgets	0	0	0
Donor Funding	140,402	0	0

Direct expenditures from MF	1,711,256	1,589,063	6,057,155
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3. Goals and objectives

Goals:

To improve the legal framework aiming the implementation of European and international standards and norms on respecting human and property rights for the citizens of the Republic of Kosovo.

Objectives

- Draft the legislation according to European and international standards related to property rights;
- Easier and more efficient implementation of the law through repossession and administration of property;
- Amend the law in order to define additional duties for the issuance of decisions confirming the fulfilment of obligation to implement decisions issued by HPCC;
- Amend and supplement the law to address informality in accordance with the National Strategy and the Action Plan for its implementation;
- Amend and supplement the law for an efficient implementation of the law for the adoption of bylaws.

4. Options

Option 1: Status Quo

Under this option, no action should be undertaken to amend and supplement the existing law and bylaws.

This situation does not allow full realization of human rights under the Constitution of the Republic of Kosovo, European and international standards. By continuing to implement the existing law, the human rights and property rights would continue to be infringed as noted in the Ombudsperson's report.

Option 2: Amending and supplementing the existing policy

Amending and supplementing the law related to the issues raised above directly affects the full and effective implementation of the law on one hand and the realization of property rights on the other hand.

This option implies adoption of a law amending the existing law based on which, other bylaws would be adopted which, altogether would enable realization of human rights under the Constitution of the Republic of Kosovo, European and international standards.

Article 18 of the existing law on KPCVA should be amended to clarify the application of remedies for the auction and confiscation. It is also necessary to add a new paragraph that obliges drafting of secondary legislation regarding the implementation of such remedies.

In addition, Article 19 of the existing Law on the KPCVA should be amended to enable the eviction from property if the property is re-occupied and after the notification by the claimant for re-occupation of the property. The KPCVA would re-execute it through re-eviction of the occupant, based on the newly issued eviction warrant. It is also necessary to add a new paragraph that obliges the drafting of secondary legislation regarding the implementation of such remedies.

Paragraphs 7 and 8 of Article 21 of the existing Law on the KPCVA should be amended to enable the administration to continue for another reasonable period until the KPCVA recommends the Government of the Republic of Kosovo to initiate procedures for the end of administration as well as adoption of secondary legislation on rules and procedures for the continuation of property administration by the KPCVA.

Article 22 of the existing Law on the KPCVA should be amended regarding the implementation of HPCC decisions on the compensation scheme. In this regard, the Property Claims Commission should be vested additional duties by issuing decisions confirming the fulfilment of obligation to implement decisions issued by HPCC.

Article 30 of the Law on the KPCVA should be amended due to the challenges that may appear during its implementation.

The amended and supplemented law should also clarify and define the terms “difference – gap and discrepancy/non-compliance” that have caused obstacles in implementing the law.

In addition, with the adoption of amendments to the law on the KPCVA, the issue of informality for the legal recognition of formal rights would be regulated.

Option 3

Based on the Ombudsperson's recommendations regarding the existing policy to suspend the administrative instruction, a new administrative instruction, which would regulate the process of notification of owners for the end of the administration, could be issued.

However, this option does not provide a sustainable solution to the issues raised by the Ombudsperson, as the provisions of the law do not change with a new administrative instruction.

In other words, this option does not solve the raised issues on the violation of human and property rights.

5. Summary of options

Main characteristics	Option 1	Option 2	Option 3
Main characteristics of the option	Status Quo	Amend and supplement the Law on the KPCVA	Change the existing access
Segment of population/section/targeted region	Citizens of Kosovo/Territory of the Republic of Kosovo	Citizens of Kosovo/Territory of the Republic of Kosovo	Citizens of Kosovo/Territory of the Republic of Kosovo
Implementation characteristics – who is responsible – a Government’s Department (which?), private sector, citizens	Kosovo Property Comparison and Verification Agency	Kosovo Property Comparison and Verification Agency	Kosovo Property Comparison and Verification Agency
Administration or implementation of program or service	KPCVA	KPCVA	KPCVA
Laws, bylaws, amendment and supplement of existing laws and implementation and penalties	Nothing changes	Amend and supplement the Law on the KPCVA	Amend and supplement the Administrative Instruction 07/2017 on Procedures, Requirements and Criteria for the End of Administration of Properties under Administration and those included in the Rental Scheme of the KPCVA
Economic incentives or non-incentives – subsidies or taxes	None	None	None
Education and communication campaign	Awareness campaign to affected parties	Awareness campaign to affected parties	Awareness campaign to affected parties
Instructions and codes	None	None	None
Time limits – when an option enters in force	In force	May 2018	February 2018

6. Analysis

Benefits of Option 1 (Status Quo). Under this option administration of properties under the administration of the KPCVA would end by which the KPCVA would accomplish part of its mandate.

Benefits of Option 2

This option would provide legal security of property administration, realization of rights, compliance with international standards and guaranteed property rights, protection against possible occupations and misuse of untitled immovable property, creation of an environment for the return of displaced persons.

This option would also address the solution of informality or the handling this category of properties thus providing legal security to the citizens.

Benefits from Option 3

This option would enable a short time to notify the parties of the end of property administration.

Negative consequences

Option 1 (Status Quo)

This option affects directly the parties who have placed their properties under the KPCVA administration and the parties whose properties could be illegally occupied. This issue may slow down integration of Kosovo to European integration processes.

Option 2

This option would undermine the legal security of the parties to exercise their fundamental property rights as well as the possible damage to properties, which would remain without institutional care. Failure to address formalities and its delay or prolongation would negatively affect property rights of the Kosovo's citizens, a legal uncertainty over property rights, and uncertain future on the destiny of property rights for this category would be created, and it could potentially have negative impact on the property market.

Option 3

Institutions, all parties that have entered into rent agreements with the KPCVA and property owners would be affected by this option.

Costs

Summary of Financial Impact Assessment				
	(Euro)			
	Current year 2017	2018	2019	2020
Option 1 (no changes)	2,193,307	2,191,951	2,160,595	2,144,239
Net difference in allocating the	--	(1,356)	(31,356)	(16,356)

expenditures				
Net difference in generating revenues	--	(35,000)	(35,000)	(35,000)
Expected financing by donors	-	0	0	0
Option 2 (amending existing policy)	2,193,307	2,199,307	2,200,807	2,202,657
Net difference in allocating the expenditures	-	3,000	1,500	1,850
Net difference in generating revenues	35,000	35,000	35,000	35,000
Expected financing by donors	0	0	0	0
Option 3 (amending existing policy)	2,193,307	2,204,951	2,160,595	2,144,239
Net difference in allocating the expenditures		11,644	(32,712)	(16,356)
Net difference in generating revenues		(35,000)	(35,000)	(35,000)
Expected financing by donors	0	0	0	0

7. Consultation

Following the receipt of recommendations from the Ombudsperson's Office, we have discussed it and during this stage, we have consulted the KPCVA, Kosovo Police, OSCE and EUSR.

Consultations were conducted in accordance with the Regulation 09/2011 on the Rules of Procedures of the Government of the Republic of Kosovo and Guidelines on Public Consultation Process whereby the above actors were directly delivered the initial draft concept paper from where we received remarks and suggestions, which were then incorporated in the final draft of this concept paper.

These consultations produced the conclusion that the amendments mentioned above in the Law on KPCVA are necessary.

8. Comparison of options

Option 1: (Status Quo) would imply continuation of such a situation for a period, which is not an appropriate situation due to the challenges in the law implementation and violations presented in the Ombudsperson's Report. This option would directly affect the rights of displaced persons, including property rights.

Option 2: (Amending and supplementing the Law); This option enables full and efficient implementation of the law pertaining to property rights as well as addressing and settling concerns raised by the Ombudsperson realizing thus the human rights under the Constitution of the Republic of Kosovo and other European and international legal instruments. Granting

the powers to the KPCVA for handling the informality would enable the institutions of Kosovo and its citizens a faster solution of informality and would greatly reduce the time period for the resolution of such property problems. At the same time, it would facilitate the burden to Kosovo budget thus avoiding creation of other institutions unnecessary to solve this problem as well as the use of the current KPCVA capacities for a quick and efficient resolution of this category of property.

Option 3: Amending existing policy

Based on the Ombudsperson's recommendations regarding the existing policy to suspend the administrative instruction, a new administrative instruction could be issued which would regulate the owners' notification process for the end of the administration.

However, this option does not provide a sustainable solution on the issues raised by the Ombudsperson, as the provisions of the law do not change with a new administrative instruction.

In other words, this option does not solve the issues raised for the violation of human and property rights.

9. Recommendation

By comparing the options, based on the opportunities each option provides, to be more coherent and in order to create a better legal basis, the commission recommends the **Option 2 (Amending/Supplementing the Law)**.

10. Communication

Communication, coordination and sharing the information among all actors involved is a key issue.

In order to provide the best and transparent information to the interested parties and wider public on the new developments, novelties and advantages that the amendment of the law would bring, an Action Plan will be prepared by the Government and the KPCVA where along with the persons responsible for drafting the initial draft on amending/supplementing the Law on the KPCVA all the actors and interested parties affected by this law will be informed.