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Analysis on the affirmative measure of registration of immovable property in the name of both spouses in the municipalities

*Prishtine, December 2020*

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Background

In Kosovo many of the laws related to women's property rights are relatively new laws, the first law related to this is in 2003. Within the customs of Kosovo, defined by traditional rules, women are excluded from family inheritance as the property has followed the male line. So, the transfer of property to women has meant a transfer outside the hereditary line. The traditional meaning for women to accept their inheritance is often seen as a disgrace to men or as a shameful appearance in public, as a lack of support from male relatives.[[1]](#footnote-1) In the following years, the advancement of gender equality has occurred after the Government of Kosovo has been given certain legal protection and organizations that have worked in this direction. Despite these legal improvements, another obstacle is the low economic independence of women in Kosovo, the number of working women is among the lowest in the entire region. Data from the Kosovo Agency of Statistics (KAS) show that the employment rate for women is only 14 percent. The number of working age women, according to these data, is over 600 thousand, while out of this number there are only 85,601 employed women[[2]](#footnote-2), making these women dependent on the family for their own well-being. This dependency coupled with cultural traditions can be detrimental to women facing domestic pressure to give up inheritance. Understanding these cultural and economic factors helps to explain the high level of abandonment by women given in detail in this report.

**Introduction**

The well-being of every individual is closely linked to the respect of Human Rights and Freedoms. In this regard, ‘the right to property’ is a fundamental right. The data show that in practice, this right does not find equal application for men and women, due to ignorance of their rights or due to various obstacles, even women themselves do not claim these rights. Therefore, raising the awareness of women and men to claim the property rights recognized by law remains a task for the Government of Kosovo, civil society organizations and independent institutions.

In order for Human Rights to be respected, the Division for the Advancement of Human Rights in Municipalities, within the Ministry of Local Government (MLG), even during 2020 which has been a difficult year due to the Global Pandemic COVID-19, which has affected not only Kosovo but the whole world, special attention has been paid to activities in the field of Gender Equality.

The analysis focuses on the activity around the affirmative measure of registration of immovable property on behalf of both spouses in the municipalities, more so of women's access to real estate inheritance in Kosovo. Article 7 of the Constitution of Kosovo and the subsequent legal framework, recognizes the equality of women and the equal division of property between heirs[[3]](#footnote-3).

Registration of joint immovable property in the name of both spouses is still in an unsatisfactory level in Kosovo. Precisely for this number, which although still low, from year to year is increasing, as the Government has reacted with an affirmative measure which is the Administrative Instruction on Registration of Immovable and Common Property on behalf of both Spouses. The Agency for Gender Equality in cooperation with the Kosovo Cadastral Agency has launched the "Administrative Instruction on special measures for registration of joint immovable property on behalf of both spouses", approved by the Government of the Republic of Kosovo in March 2016.

The right to property is a fundamental right guaranteed by the Constitution of the Republic of Kosovo, as the highest legal act of the country, as well as through laws that are in force such as: Law on Gender Equality, Law on Family, Law of Inheritance, Law on Property, Law on Protection from Discrimination, Law on Ombudsperson.

The Government of the Republic of Kosovo for the third time in the meeting of April 2020, has approved the continuation of the AI on special measures for the registration of joint immovable property in the name of both spouses for a period of one year April 2020-April 2021.

In this analysis are presented 20 municipalities that have reported for 2019 until November 2020, on the registration number of immovable property in the name of both spouses. Municipalities which are presented in this brief analysis are: *Prishtina, Peja, Podujeva, Gjakova, Mitrovica, Prizren, Gjilan, Obiliq, Viti, Shtime, Suhareka, Istog, Kamenica, Kacanik, Gllogoc, Decan, Rahovec, Hani i Elezit, Dragash and Mamushe*.

Legal framework

The legal framework in Kosovo provides equal opportunities for men and women in a range of issues related to the aspect of property and housing rights. In practice, law enforcement challenges and social norms that tend to favor men violate the ability of women to enjoy their rights equally in this regard.

Initially equal rights for women are guaranteed by international instruments, as follows:

* Universal Declaration of Human Rights;
* International Covenant on Economic, Social and Cultural Rights;
* International Covenant on Civil and Political Rights;
* Convention on the Elimination of all forms of Discrimination against Women, as well as
* Istanbul Convention.

Constitution of the Republic of Kosovo

The Constitution of the Republic of Kosovo as the highest legal act entered into force on June 15, 2008, this constitution recognizes full equality in all aspects for both genders. More precisely, Article 7, which provides that the State of Kosovo ensures gender equality as a fundamental value for democratic development in society, equal opportunities for participation of women and men in political, economic, social, cultural and other areas of social life. [[4]](#footnote-4)

The laws that are in force in Kosovo and which regulate property rights in general are:

* Law on Property Rights;
* Family Law;
* Law of Inheritance;
* Law on Gender Equality;
* Law on Protection from Discrimination;
* Law on Ombudsperson.

Therefore, in Kosovo the laws on property rights are harmonized with the EU legislation, but there are still delays for their implementation and it takes time for them to be implemented.

Mechanisms on property law

Law on Gender Equality, foresees the existence of institutional mechanisms for Gender Equality, which are as follows:

* Agency for Gender Equality;
* Inter-Ministerial Council for Gender Equality;
* The Ombudsperson;
* Gender Equality Officers in the ministry;
* Division for the Advancement of Human Rights in Municipalities/MLG;
* Municipal Human Rights Unit.

**Kosovo Gender Equality Program 2020-2024**

Kosovo Gender Equality Program 2020-2024 and Action Plan 2020-2022, approved by Decision of the Government of the Republic of Kosovo, obliges the institutions to implement this program according to the activities foreseen in the Action Plan, while it obliges the Agency for Gender Equality within the Office of the Prime Minister, to monitor the implementation and report annually on the implementation of the program.

Kosovo Gender Equality Program 2020-2024, defines gender equality as a fundamental right and one of the important factors for economic growth, development and stability in society.

The overall strategic objective of the Kosovo Gender Equality Program is to ensure gender equality as a focus of transformation processes in all structures, institutions, policies, procedures, practices and programs of government, agencies, civil society, the private sector and the donor community.

This objective is intended to be achieved by working in three directions:

* Creating equal opportunities to contribute and benefit from economic development, inclusion and improvement of social welfare;
* Promoting gender equality through quality education, quality health, inclusion and utilization of human capacities for a sustainable development and elimination of gender inequality and stereotypes;
* Advancing the rights for decision-making, peace, security and justice.

**Women’s rights on property**

Article 46 of the Constitution states “Protection of Property”[[5]](#footnote-5) The right to property can be acquired in several ways: By purchasing property, by inheritance, as well as given as a gift, etc.

Property right is also a fundamental human right, which is included in the Universal Declaration of Human Rights (Article 17)[[6]](#footnote-6) and the European Convention on Human Rights (Article 1, Protocol 1)[[7]](#footnote-7), which are directly applicable in Kosovo, while the conventions in question are included in the Constitution of Kosovo.

Affirmative measures

Affirmative measures are temporary positive measures in order to reduce gender inequalities and through these measures to promote as much as possible the rights, in order to strengthen the position of women in society. The Convention on the Elimination of all forms of Discrimination against Women is embodied in the Constitution of the Republic of Kosovo, which states that: The Constitution of the Republic of Kosovo recognizes the direct application of International Agreements and Instruments[[8]](#footnote-8):

1. Universal Declaration of Human Rights;
2. European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols;
3. Convention on the Elimination of all forms of Discrimination against Women.
4. Framework Convention for the Protection of National Minorities of the Council of Europe;
5. Convention on the Elimination of all forms of Racial Discrimination;
6. Convention on the Rights of the Child;
7. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
8. International Covenant on Civil and Political Rights and its Protocols;
9. Istanbul Convention.

Administrative Instruction (QRK) no. 03/2016 on Special Measures for the Registration of Joint Immovable Property on behalf of both Spouses

Pursuant to Article 92, paragraph 4, and Article 93, paragraph 4 of the Constitution of the Republic of Kosovo, based on Article 4 of Regulation no. 02/11, the Government of the Republic of Kosovo has issued on 18.02.2016 the decision number 07/75 for the approval of the Administrative Instruction for Special measures for the Registration of Immovable Property on behalf of both Spouses. Administrative Instruction GRK 03/2016 started to be implemented as of March 10, 2016 in all municipalities of Kosovo. This Administrative Instruction is prepared in order to stimulate the registration of property on behalf of both spouses in public registers.

The Government of the Republic of Kosovo has approved the AI (GRK) no. 08/2018 for Amending and Supplementing the AI no. 03/2016 on special measures for the Registration of joint immovable property in the name of both spouses.[[9]](#footnote-9) Article 9 of the AI applies for a period of 1 year from the day of entry into force, thus is replaced by a period of 3 years.

Also in April 2020 the Government of Kosovo approved the AI (GRK) no. 02/2020 on Amending and Supplementing the AI no. 03/2016 on special measures for the Registration of joint immovable property in the name of both spouses[[10]](#footnote-10). Therefore, Article 9, paragraph 1 of the Administrative Instruction applies for a period of one (1) year from the day of entry into force, which change shows the continuation of the application of these measures until April 2021.

Bodies responsible for the implementation of the Administrative Instruction

The bodies responsible for the implementation of the Administrative Instruction on Special Measures for Property Registration on behalf of both Spouses at the local level are: Municipal Cadastral Offices, Civil Registry Offices, Municipal Property Tax Directorate, notaries and other institutions dealing with registration of property rights[[11]](#footnote-11).

Supervisory bodies for the implementation of the Administrative Instruction

* Agency for Gender Equality and
* Kosovo Cadastral Agency.

Data on immovable property registration in the name of both spouses in the Municipalities

According to the Administrative Instruction on special measures for the registration of joint immovable property in the name of both spouses

 

**Registration of immovable property in the name of both spouses in the municipalities**

Based on the reporting for the period January - December 2019, the municipalities that have reported for this point are a total of 20 municipalities. The Administrative Instruction on Registration of Immovable Property on behalf of both spouses has had a sensitizing and awareness-raising effect on society in general. The Municipality of Podujeva in 2019 has registered the most properties in the name of both spouses, which leads with the largest number of 399 registered properties, Gjakova 218 cases, Prishtina 180, Prizren 130, Gjilan 105 cases, Mitrovica 81, Kacanik 56, Gllogoc 46, Viti 45, Istog 42, Kamenica 28, Obiliq 30, Decan 18, Peja 16, Dragash 14, Shtime 8, Hani i Elezit 7, Suhareka 2, Rahovec 2 and Mamusha 2 cases. A total of *1429* properties have been registered in the name of both spouses. While in 2020 for the period January - November, the municipality which leads with the largest number in the registration of immovable property in the name of both spouses is the municipality of Peja with 261 cases, Gjakova with 171 cases, Prishtina 167, Prizren 141, Podujeva 112, Mitrovica 89 , Viti 85, Istog 75, Obiliq 33, Gjilan 32, Gllogoc 30, Decan 27, Suhareka 27, Shtime 22, Kacanik 16, Dragash 3, Kamenica 2, Rahovec 2, Hani i Elezit 1, and Mamusha 1 case. A total of *1297* cases have been registered, always keeping in mind the difficulties in 2020 of the outbreak of the global pandemic COVID-19.

The following are the real estate registration numbers in the name of two spouses for 20 municipalities, for 2019 and 2020

The Administrative Instruction on the Registration of Immovable Property on behalf of both spouses has had a sensitizing and awareness-raising effect on society in general. Therefore, when analyzing the last two years from the general data of the Kosovo Cadastral Agency, in 2019 the registration number is 2110 cases, while for 2020 until November the registration number of properties in the name of both spouses is 2025 cases[[12]](#footnote-12). Taking into account the past years, as of 2016 the spouses have decided to register their property in a joint name.

The Division for the Advancement of Human Rights in Municipalities (DAHRM), this year has had difficulties in collecting data for this field, due to the difficulties that the Human Rights Unit officials at the local level faced by working remotely. However, the affirmative action has been appropriate to stimulate citizens to register immovable property in the name of both spouses.

Podujevë

2019

2020

Gjakovë

2019

2020

Prishtinë

2019

2020

**Fig. 1.0. Immovable property registration (Podujeva, Gjakova and Prishtina)**

The municipality of Prishtina in 2019 has registered 180 properties, and in 2020 until November the number of registered properties is 167.

The municipality of Podujeva, has shown an increase in property registration in the name of both spouses since 2019 with 399 cases and in 2020 with 112 cases (until November 2020). Also, the municipality of Gjakova has shown an increase in the registration of joint properties in the last two years, 2019 with 218 cases and in 2020 with 171 cases.

Prizren

2019

2020

Gjilan

2019

2020

Gllogoc

2019

2020

**Fig.1.1. Immovable property registration (Prizren, Gjilan and Gllogoc)**

**The Municipality of Prizren, according to reports from 2019, had 130 cases of property registration in the name of both spouses, and in 2020 with a number of 141 cases. While the municipality of Gjilan in 2019 had 105 cases and in 2020 had 32 cases.**

If we look at the municipality of Gllogoc in 2019 the number has reached to 46 registered properties and in 2020 until November 30 properties.

Viti

2019

2020

Kamenicë

2019

2020

Obiliq

2019

2020

**Fig.1.2. Immovable property registration (Viti, Kemenica and Obiliq)**

If we compare the last two years in the municipality of Viti, the number of immovable property registration in the name of two spouses according to the figure presented above, has an increase for 2020 with 85 cases of property registration, compared to 2019 with 28 cases. While the municipality of Kamenica from the reporting for 2020 had 2 cases of property registration, compared to 2019 where there were 28 properties registered in the name of both spouses.

In the municipality of Obiliq, the number of registered immovable properties in the name of both spouses, in 2019 is 30 properties, and in 2020 until November the number is 33 properties registered in the name of both spouses.

Pejë

2019

2020

Dragash

2019

2020

Shtime

2019

2020

**Fig.1.3. Immovable property registration (Peja, Dragash and Shtime)**

Municipality of Peja in the last two years according to the report from 2019, the number of property registration is 16 and in 2020 is 261 properties, therefore we see a satisfactory increase and the effect of the AI. While in the municipality of Dragash shows that the registration number is still low, for the last two years there are a total of 17 cases.

If we compare the municipality of Shtime in 2019 with 8 registered cases, and in 2020 with a slight increase of 22 cases, which shows a positive increase of joint properties.

Hani i Elezit

2019

2020

Suharekë

2019

2020

Mamushë

2019

2020

**Fig.1.4. Immovable property registration (Hani i Elezit, Suhareka and Mamusha)**

In the municipality of Hani i Elezit, after the entry into force of the Administrative Instruction on Registration of Immovable Property in the name of both spouses, in 2019 there were 7 properties registered in the name of both spouses, while in 2020 until November there was only 1 case registered. This shows that in this municipality the registration number is still low. While in the municipality of Suhareka in 2019 there were 2 cases registered, and in 2020 there were 27 cases registered.

The Municipality of Mamusha does not show any progress in the last two years with regards to the registration of immovable property on behalf of both spouses, as there are only 3 cases presented in total.

Mitrovicë

2019

2020

Istog

2019

2020

Kaçanik

2019

2020

**Fig.1.5. Immovable property registration (Mitrovica, Istog and Kacanik)**

In the municipality of Kacanik in 2019 there were 56 cases registered, while in 2020 the number of registered cases in the name of both spouses is 16. Also, in the municipality of Mitrovica could be seen the effect of the AI, since the number of registered cases in 2019 was 81, whereas in 2020 the registered number of cases is 89. Also, the municipality of Istog in 2019 has registered 42 cases, and in 2020 has registered 75 cases.

Rahovec

2019

2020

Deçan

2019

2020

**Fig.1.6. Immovable property registration (Rahovec and Decan)**

In the municipality of Rahovec there are 2 registered cases in 2019, and the same number of cases is also in 2020, only 2 cases registered. While the municipality of Decan in 2019 has 18 cases and in 2020 there are 27 cases.

From this analysis we see that in general the central and local level institutions have influenced the stimulation of the registration of joint property, but there is still work to be done, especially by organizing awareness campaign for informing citizens, particularly in the smaller municipalities where we notice a small number of immovable property registrations in the name of both spouses.

Therefore this shows that the municipalities are implementing the Administrative Instruction on Registration of Immovable Property on behalf of both Spouses, respecting the continuation of the affirmative measures to stimulate women to register property on behalf of both spouses. So, this affirmative measure has affected the registration of property in the name of both spouses, which exempts citizens from the property registration fee when registering the property in the name of both spouses.

Women's participation in local policies regarding property, it’s quite important in how they are developed, regulated and creates an effect for all citizens of the municipality. This type of incentive can further increase the number of joint property registration in municipalities.

Total number of properties on behalf of both spouses from 2016 to November 2020, according to data from the Kosovo Cadastral Agency

|  |  |
| --- | --- |
| Years | Number of properties in the name of both Spouses (Right of Ownership - Joint Possession) |
| 2016 | 694 |
| 2017 | 1.065 |
| 2018 | 1.523 |
| 2019 | 2.110 |
| Deri me 26.11.2020 | 2.025 |
| TOTAL | **7.417** |

**Tabela.1.0. Number of properties in the name of both spouses**

The data according to the table show that there is an increase from year to year, in 2016 there were 694 cases at country level, while in 2020 (until 26.11.2020), there were 2025 cases, which means that for five (5 ) years, the number has increased to 1331 cases.

CONCLUSIONS AND RECOMMENDATIONS

Initially, an analysis should be made as of 2016 for all municipalities in the Republic of Kosovo, which shows the implementation of the Administrative Instruction from the beginning, the effect and increase of the number of property registration on behalf of both spouses. Therefore it can been noticed the effect of the Administrative Instruction on Property Registration on behalf of both Spouses in general.

In some municipalities it is seen that the number of property registration in the name of both spouses is still low, and an awareness campaign is required to inform the citizens.

The Constitution of the Republic of Kosovo clearly defines the equal role of women and men in society, excluding any possibility of discrimination as a fundamental value sanctioned through special domestic legislation and the ratification of the international conventions mentioned in it.

Based on the Analysis of the affirmative measures of the Administrative Instruction for the registration of immovable property in the name of both spouses, according to the statistics obtained from the 2019 questionnaires from DAHRM and the data collected for 2020, as well as the general data from the KCA and other internet searches we recommend:

1. All bodies which are responsible for the implementation of the AI from the central to the local level, to be committed to the registration and property rights of women, as there will be public debates which should be initiated within each municipality and in cooperation with Municipal Gender Equality Officials, in order to inform citizens both men and women, on women's rights to inheritance and property;

2. Responsible supervisory bodies of the Administrative Instruction (GRK) 03/2016, to allocate more funds for information campaigns of citizens, especially in rural areas, on the issue of gender equality and property rights;

3. Civil society organizations, media, local radio stations, to make efforts to better inform citizens about property rights.

1. https://scholarship.richmond.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1056&context=polisci-faculty-publications [↑](#footnote-ref-1)
2. https://www.evropaelire.org/a/punesimi-i-grave-ne-kosove-/30900742.html [↑](#footnote-ref-2)
3. The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of society, equal opportunities for participation of women and men in political, economic, social, cultural and other areas of social life [↑](#footnote-ref-3)
4. http://www.kryeministri-ks.net/repository/docs/Kushtetuta.e.Republikes.se.Kosoves.pdf [↑](#footnote-ref-4)
5. Article 46 paragraph 3 of the Constitution of Kosovo, Protection of property: ‘No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated’. [↑](#footnote-ref-5)
6. Universal Declaration of Human Rights, Article 17 ‘Everyone has the right to own property alone as well as in association with others. No one should be arbitrarily deprived of his property’. [↑](#footnote-ref-6)
7. European Convention on Human Rights, Article 1 Protocol 1: ‘Every person has the right to the peaceful enjoyment of his possessions’ [↑](#footnote-ref-7)
8. Direct applicability of International Agreements and Instruments, Article 22 of the Constitution of Kosovo [↑](#footnote-ref-8)
9. https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=17698 [↑](#footnote-ref-9)
10. https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=27729 [↑](#footnote-ref-10)
11. https://gzk.rks-gov.net/ActDetail.aspx?ActID=15131 [↑](#footnote-ref-11)
12. https://akk-statistics.rks-gov.net/ [↑](#footnote-ref-12)