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Promotion and Protection of Property Rights of Internally Displaced Persons, Refugees and Returnee Upon Readmission Agreements

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Thematic Report on Fraudulent Property Cases

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This project is implemented by European Consulting Group in cooperation with *Human Dynamics, IBC, and PDC Serbia.*



List of Abbreviations

BiH	Bosnia and Herzegovina
BPRM	Bureau of Population and Migration
CCK	Co-ordination Centre for Kosovo and Metohija
CFCU	Contracting and Financing of EU Funded programmes
CLO	Court Liaison Office
CRPC	Commission for Real Property Claims
DRC	Danish Refugee Council
EAR	European Agency for Reconstruction
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPA	European Partnership Agreement
EPG	European Project Group
EU	European Union
EUD	European Union Delegation to the Republic of Serbia
EULEX	European Union Rule of Law Mission in Kosovo
EUSR	European Union Special Representative
FAO	Food and Agriculture Organisation of the United Nations
fYRoM	Former Yugoslav Republic of Macedonia
GoS	Government of Serbia
HLP	Housing, Land and Property
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
HRAP	Human Rights Advisory Panel
HRRP	Human Rights Review Panel
ICO	International Civilian Office
IDMC	International Displacement Monitoring Centre
IDP	Internally Displaced Person
KPA	Kosovo Property Agency
KPCC	Kosovo Property Claims Commission
KPCVA	Kosovo Property Claims and Verification Agency
OKM	Office for Kosovo and Metohija
OSCE	Office for Security and Cooperation in Europe
PISG	Provisional Institutions of Self Government
SITF	Special Investigative Task Force
UDI	Unilateral Declaration of Independence
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo



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Introduction:

This document is a Thematic Report on Fraudulent Property Cases in Kosovo and forms part of the Free Legal Aid Project¹:

“PROMOTION AND PROTECTION OF PROPERTY RIGHTS OF INTERNALLY DISPLACED PERSONS, REFUGEES AND RETURNEES UPON READMISSION AGREEMENTS”:

supported by the EU (the European Delegation to the Republic of Serbia) and the Government of Serbia, represented by the Ministry of Finance, Department for Contracting and Financing of EU Funded programmes (CFCU) Belgrade, Republic of Serbia and implemented by the European Project Group (EPG) Belgrade Serbia.

The project seeks to protect and promote the property rights of IDPs, refugees and returnees under readmission agreements and was launched in 2016. There is in theory free legal aid in the current Kosovo system but all recipients must be ‘social cases’ but if IDPs own property they are not social cases. Thus, the only Free Legal Aid project available to IDPs is that provided by this project.

The two-year project funded by the EU to the tune of EUR3.65 million is a follow-up to four earlier projects supported by the EU Delegation to Serbia (EUD) and the Office for Kosovo and Metohija (OKM) as the official representative of the Government of the Republic of Serbia (GoS).

The findings and opinions presented in this report are those of the consultant and should not necessarily be considered those of the GoS or of the EU Delegation to the Republic of Serbia.

¹ Hereinafter known as The Project



Methodology:

The methodology for the Thematic Report on Fraudulent Property Cases has included desk research reviewing relevant available documentation including reports from previous legal aid to IDPs. This has been supplemented by personal interviews with key informants from a variety of organisations. Necessarily as this is a thematic review the bulk of evidence presented is of a qualitative nature but the consultant has strived to present quantitative data as well where relevant and available. On this point the consultant would like to note that reliable and up to date data from the relevant competent authorities in Kosovo is difficult or impossible to obtain. It should be noted that all opinions and conclusions contained within the report are those of the consultant based on the research and do not necessarily reflect those of the European Delegation to the Republic of Serbia or the OKM.



Background:

In the aftermath of the Kosovo conflict in 1999 upon arrival of KFOR and the establishment of the United Nations Mission in Kosovo (UNMIK), the property of non-ethnic Albanian communities in Kosovo came under sustained attack resulting in widespread damage or destruction.

Diagram 1a and 1b below illustrate the extent to which Serbs and other non-Albanian communities had become restricted to specific areas around Kosovo by 2002 leading to serious problems regarding freedom of movement and ability to monitor properties left behind in areas the displaced had been forced to leave.



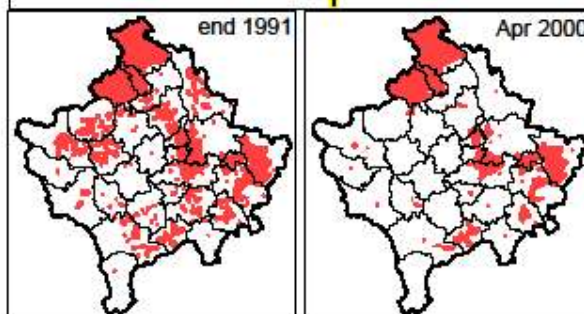
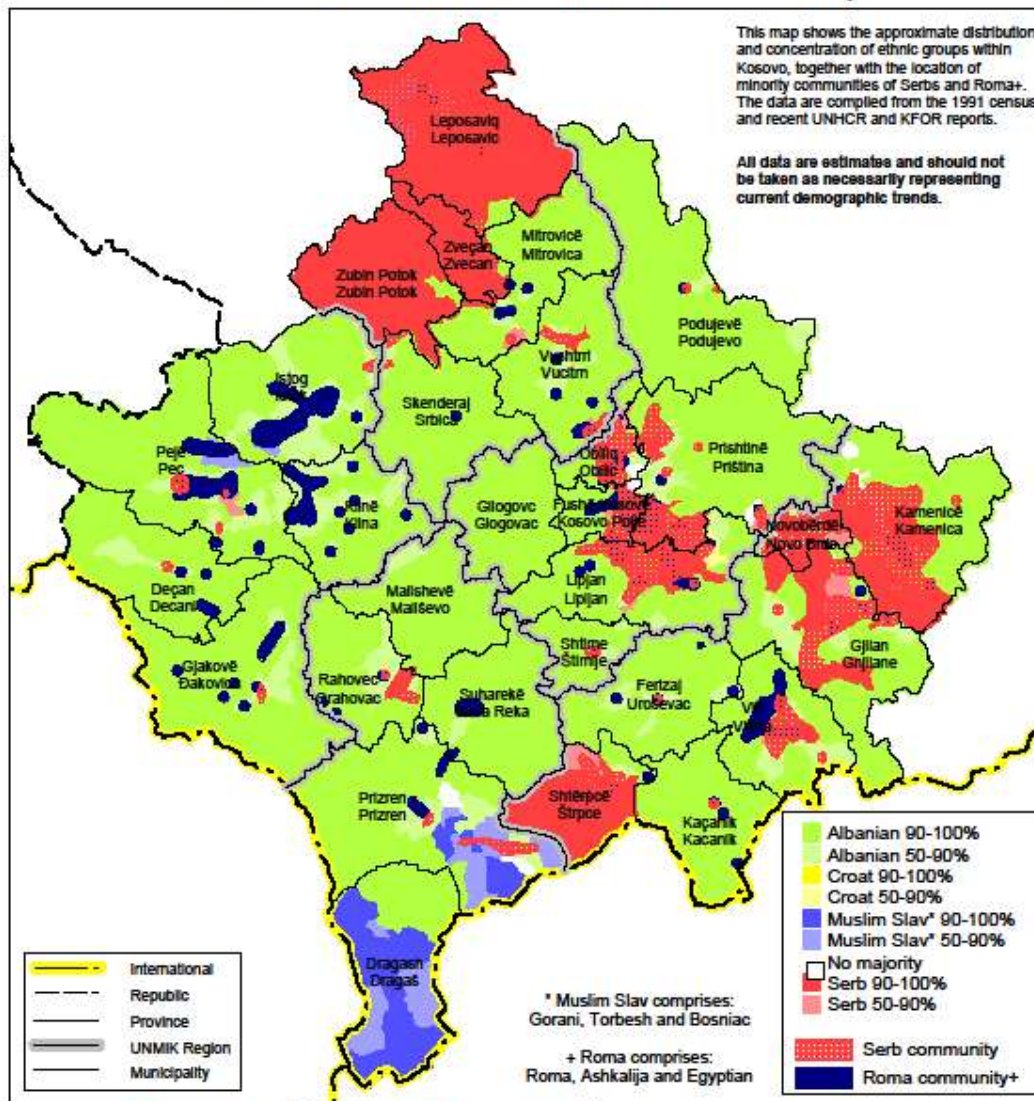
KOSOVO
Serbian Population 1999.
Source: Glas Janovsti





Ethnic Majorities 2000

Estimate Based on KFOR and UNHCR Surveys



Change in Serb Communities

The maps to the left compare Serb communities between 1991 and 2000.

1991 data are taken from the Yugoslav census.

2000 data are taken from the KFOR map 'Ethnic Distribution' dated 13 April 2000 and the UNHCR/OSCE report 'Assessment of the Situation of Ethnic Minorities in Kosovo' dated February 2000.



The boundaries and names displayed on this map do not imply official recognition by the United Nations

X:\Maps\Workspaces\Kosovo\Demographics\EM 2000
Source: YIS, KFOR, NIMA
Pristina, Kosovo, September 2000



Although the bulk of the damage was carried out in the immediate aftermath of the withdrawal of Serbian security forces and the arrival of KFOR and UNMIK in 1999 there was significant damage inflicted after this especially during the organised pogrom of March 2004.² Although UNMIK established a special claims resolution mechanism for the claims related to immovable property, this mechanism did not have the jurisdiction to award compensation in cases of damaged and destroyed property. Until 2004, the Housing and Property Directorate/Claims Commission (HPD/CC) could only inform claimants on its lack of competence for these cases and they were advised to submit compensation claims to the domestic courts in Kosovo. In April 2004 this practice was changed and those who afterwards submitted claims to the HPD/CC were served with “declaratory orders” recognizing the claimant’s right over the property at the time of its destruction.

By December 2004 more than 18,000 claims were filed by internally displaced Kosovo Serbs against UNMIK, KFOR, the Provisional Institutions of Self-Government (PISG), local municipalities and, occasionally, against identified individuals. Another, approximately 2,900 claims were filed by Kosovo Albanians. The exact numbers still remain uncertain as the claims were lodged individually, through domestic and international organizations and national/local authorities.³

At present there is no binding instrument that lays down the rights of IDPs under international law. For that reason most analyses start from two “soft-law” international instruments; namely the UN Guiding Principles on Internal Displacement (hereinafter: “Guiding Principles”) was the first attempt to formulate international standards for the protection of the internally displaced. The second attempt the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (hereinafter: the “Pinheiro Principles”) does not apply exclusively to IDPs but is the point of departure for any analysis dealing with the restitution of property lost during displacement. The section in this report on the International Institutional and Legal Framework goes into this in more detail.

² The March violence in Kosovo involved more than 50,000 rioters, and international officials quickly described the violence as organized by ethnic extremists. UNMIK spokesperson Derek Chappell described the acts of violence as having “a degree of organization behind them.” On March 23, during a visit to the violence-affected city of Obilic, UNMIK head Harri Holkeri stated that Albanian extremists “had a ready-made plan” for the violence (reported in Agence France Presse, March 24, 2004). During his March 22 visit to Kosovo, NATO Secretary-General Jaap de Hoop Scheffer described the “unacceptable” violence as “orchestrated and organized by extremist factions in the Albanian community” (Agence France Presse March 22 2004). Admiral Gregory Johnson, the commander of NATO forces for Southern Europe, a command which included the NATO-led KFOR troops in Kosovo, stated that there was a “modicum of organization” behind the violence and described the violence as “essentially amount[ing] to ethnic cleansing.” (Reported in Agence France Presse, March 18, 2004 and *Ottawa Citizen*, March 20, 2004). In his report to the U.N. Security Council, Secretary-General Kofi Annan stated that “the onslaught led by Kosovo Albanian extremists against the Serb, Roma and Ashkali communities of Kosovo was an organized, widespread, and targeted campaign.” (United Nations Security Council, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo,” April 30, 2004, para 2. U.N. Doc. S/2004/348)

³ **Right to Restitution and Compensation of Property Damaged or Destroyed During Displacement under International Human Rights Law and International Humanitarian Law;** Report prepared under the Further Support to refugees and IDPs in Serbia; EuropeAid/129208/C/SER/RS 2012



The International Institutional and Legal Framework

It should be noted that this section of the report is not the original research of the consultant. It is based on international conventions and articles analysing their implementation. Much of this summary is based on the book "Property and Sovereignty: Legal and Cultural Perspectives" 2016 which contains a series of articles edited by James Charles Smith. According to these analyses, international law governing refugees and the protection of IDPs supports three "durable solutions" to displacement: voluntary return, resettlement to another place, and integration into a host community. Of these solutions, the international community generally prefers return to a person's country or area of origin as the most sustainable option.

Communities and nations hosting displaced populations have only relatively recently emphasized return.⁴ After World War II, Western nations stressed integration into asylum communities or resettlement elsewhere, assuming that return was not feasible for refugees fleeing from communist regimes. When the cold war began to thaw in the 1980s, the United Nations (UN) agencies shifted strategy, maintaining that refugees from communist countries should return to promote post-conflict peace and development.⁵ The momentum behind returning refugees to their countries of origin was fuelled, in part, by a desire to counter an increase in migration from poor to rich nations.⁶

Despite its favoured status, the solution of voluntary return is not by itself a complete solution to the problem of displacement. Populations returning to their countries or communities need shelter, jobs, education, and security, among other things. Without minimal protections and resources, return may not be sustainable. To these barriers associated with return, many in the international community consider restoring property rights to a pre-war home as at least a partial solution. The idea is that displaced people will be more likely to return if they regain their former homes and land through a property restitution programme.

Restitution generally is a remedy intended to restore a person to his or her original position, prior to a loss or injury. Restitution related to a loss of, or injury to, real property typically can involve monetary compensation, the return of real property wrongfully taken, or the

⁴ Richard Black, *Return of Refugees: Retrospect and Prospect*, in *Palestinian Refugee Repatriation: Global Perspectives* 23, 28 (Michael Dumper ed., 2006) (noting that many refugees aspire to return); Giulia Paglione, *Individual Property Restitution: From Deng to Pinheiro – and the Challenges Ahead*, 20 Int'l J. Refugee L. 391, 403 (2008).

⁵ Patricia Weiss Fagen, *UNHCR and Repatriation*, in *Palestinian Refugee Repatriation: Global Perspectives* 46 (Michael Dumper ed., 2006).

⁶ Eric Rosand, *The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?*, (1998).



provision of substantially equivalent property. In a post-war context, however, restitution most often refers to the actual return of assets unlawfully seized.⁷

There is no certain and general right to property restitution under international law for people displaced by conflict from their homes and land. There is, however, an emerging—albeit disputed—entitlement to post-conflict property restitution.⁸

Many scholars and human rights practitioners identify the UN's *Principles on Housing and Property Restitution for Refugees and Displaced Persons* as a significant step towards solidifying a legal right to post-conflict property restitution. In 2005, a sub-commission of the UN Commission on Human Rights formally endorsed these Principles, commonly named the Pinheiro Principles after the UN Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons, Paulo Sérgio Pinheiro. The Pinheiro Principles propose a legal framework, as well as administrative and enforcement options, for property restitution processes. One key recommendation is the restoration of housing, land, and property, or compensation if restitution is impossible, to people unlawfully deprived of their former property.

Moreover, the Pinheiro Principles advise states to “prioritize restitution as the preferred remedy to displacement and as a key element of restorative justice,” but they do not define “restitution.” An earlier report, that is a preliminary report to the Final Report, by Special Rapporteur Pinheiro, however, states that “restitution refers specifically to the return of arbitrarily or illegally confiscated housing or property to the original owner(s) or right holders.”

The resolution of the war in Bosnia-Herzegovina (BiH) helped to shape the Pinheiro Principles.⁹ In 1995, the Dayton Accords ending the hostilities established the right of return for all refugees and displaced persons. Moreover, the agreement set forth a specific right of restitution to pre-war property and established a quasi-international commission to facilitate the remedial programme. The institutions and procedures established to enforce these restitution rights represented the most comprehensive and systematized post-conflict restitution efforts ever implemented.

⁷ Hans van Houtte, Bart Delmartino & Iasson Yi, *Post-War Restoration of Property Rights Under International Law* (2008) (discussing restitution following an international conflict)

⁸ Susan Breau, *The International Law Rights to Home and Homeland, in The Idea of Home in Law: Displacement and Dispossession* 165, 194 (Lorna Fox O'Mahoney & James A. Sweeney, eds., 2011); Williams, *Transitional Justice*, *supra* note 11, at 8. Nonetheless, the Parliamentary

Assembly of the Council of Europe suggests that member states take the Pinheiro Principles into account when resolving post-conflict property issues of refugees and IDPs. Eur. Parl. Ass. Res. 1708, ¶ 9 (Jan. 28, 2010),

⁹ Both the Working Paper and the Preliminary Report preceding the final Pinheiro Principles reflect the influence that the Bosnia experience had on crafting the Pinheiro Principles. The 2002 Working Paper, for example, includes a section on “Issues Requiring Further Study” expressly referencing problems encountered in Bosnia, such as the lack of independent local judicial systems. U.N. Econ. & Soc. Council, Sub-Comm’n on the Promotion & Prot. of Human Rts., *Working Paper of the Special Rapporteur, Paulo Sérgio Pinheiro, Submitted in Accordance with Sub-Commission Decision 2001/122*, 44, U.N. Doc. E/CN.4/Sub.2/2002/17 (June 12, 2002)



In addition to the restitution experience in Bosnia, the Pinheiro Principles rest on at least four normative precursors: the right of refugees and IDPs to voluntarily return to their countries and areas of origin, the right to adequate housing, the duty of states to assist IDPs in recovering property abandoned because of displacement and the right to a remedy for gross human rights violations. Various international treaties, declarations and other documents establish these first two norms—the rights to voluntary return and adequate housing.¹⁰ These instruments, however, fall short of identifying a right to return to a particular home. Nonetheless, both influenced the Pinheiro Principles.

The duty to protect property abandoned by IDPs is established in the UN Commission on Human Rights' 1998 *Guiding Principles on Internal Displacement* (Internal Displacement Principles). The Pinheiro Principle's *travaux préparatoires* (preparatory works or drafting history) quote this document, highlighting the duty to assist IDPs who have returned, or those who have been resettled elsewhere, "to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement."

Finally, the UN General Assembly pronounced a right to a remedy for human rights violations in the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Violations of International Human Rights and Humanitarian Law (Reparations Principles). These entitle victims of gross human rights violations, including victims of forced eviction, to a remedy.

Significantly, the Reparations Principles expressly adopt a "victim-oriented perspective" and advance a broad definition of reparations as a means to promote justice.

Since the restitution experiment in Bosnia and the subsequent issuing of the Pinheiro Principles, the international community has increasingly emphasized post-conflict property restitution as part of a humanitarian and legal response to widespread displacement caused by armed conflict. Proponents suggest that restitution can enhance the rule of law in a post-conflict society and link this remedy with promoting post-war peace and reconciliation as well as bolstering economic and social stability. However, there are a number of barriers associated with implementing the remedy of restitution. One of these barriers relates to the sufficiency of evidence available to establish a displaced person's right to a particular property be it a home or land or both.

The Report "Housing, Land and Property Rights (HLP) in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework" prepared by a consultant for UNHCR March 2005 states that:

¹⁰ Smit, *Property Rights*, *supra* note 25, at 9–33 (including a thorough review of the development of the right to return to a home of origin and to restitution of pre-conflict property).



“In none of the UN peace operations that have operated since 1990.... was an integral approach to HLP rights taken which was sufficiently responsive, remedial or environment-building in terms of the creation of conditions leading to the society-wide enjoyment of these rights for everyone.¹¹ Identifying some of the preliminary lessons learned during the past fifteen years of UN (and other) peace operation involvement in addressing HLP rights concerns will be useful in developing a proposed comprehensive, consistent and integral policy that takes the array of HLP rights concerns fully into account. The report includes a summary of lessons learned¹².

Lessons Learned from UN Approaches to Housing Rights in Post-Conflict Situations (1990 – 2004)

- Include HLP Rights Directly Within Peace Agreements, Security Council Resolutions, Voluntary Repatriation Agreements and Other Policy Documents
- Include HLP Rights Competencies within Peace Operations Institutional and Administrative Structures
- Addressing HLP Rights is Not Discretionary if the Protection and Promotion of Human Rights Are Key Features of the Peace Operation
- Plan Early, Appropriately and Integrally
- Determine the Applicable Legal and Policy Framework During the Planning Process
- Establish a HLP Rights Expert Standby Network
- Ignoring HLP Rights Will not Make the Problems Go Away
- Peacekeepers are Important HLP Rights Protectors
- Recruit Local Lawyers and Housing Experts First
- Resolving HLP Disputes Promotes Economic and Social Stability
- Reversing HLP Rights Violations Is Invariably Difficult But Not Impossible
- Treating HLP Rights as Human Rights Can Promote Reconciliation
- Peace Operations Do Not Need to Build All New Housing to Take HLP Rights Seriously
- Prepare for a Long-Term Process
- Create an Enabling Environment at the Community-Level

The Situation in Kosovo

In theory internally displaced persons enjoy the same rights as other citizens of the state where they are residents. For IDPs from Kosovo this implies that they can assert their property rights on the same basis as any other inhabitant of Kosovo i.e. that their property rights can rely on

¹¹ See, for instance: ICISS (2001) The Responsibility to Protect (Report of the International Commission on Intervention and State Sovereignty), IDRC, Ottawa. This report delineates three types of action to be pursued in addressing the consequences of conflict: (1) responsive action: ‘any activity undertaken in connection with an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it, and/or alleviating its immediate effects’; (2) remedial action: ‘any activity aimed at restoring people’s dignity and ensuring adequate living conditions subsequent to a pattern of abuse (through rehabilitation, restitution, compensation and reparation)’; (3) environment-building action: ‘any activity aimed at creating and/or consolidating an environment – political, social, cultural, institutional, economic and legal – conducive to full respect for the rights of the individual’, pp. 11-12.

¹² P.20 “Housing, Land and Property Rights (HLP) in Post-Conflict Societies: Proposals for a New United Nations Institutional and Policy Framework; UNHCR 2005



the protection provided for by the Serbian national legal framework as well by the special legal framework applicable to the territory of Kosovo. However, the legal framework applicable in Kosovo is a confusing mixture of laws and by-laws originating from a number of different sources. Firstly, there are legal texts laid down by the UN Mission in Kosovo (UNMIK). Secondly, there are the set of laws enacted by the Kosovo Assembly and promulgated by the UN Special Representative of the Secretary General. After the unilateral declaration of independence (UDI) on 17 Feb 2008, the legal framework became even more complicated with the introduction of new laws enacted by the Kosovo Assembly and promulgated by the President of Kosovo.

The Kosovo Property Agency (KPA) was established as an independent Agency by the promulgation of

UNMIK Regulation 2006/10 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial property. UNMIK Regulation 2006/10 was amended by UNMIK Regulation 2006/50 that provided the Agency with a clear mandate and a division of roles between its three main bodies, namely the Executive Secretariat, the Kosovo Property Claims Commission (KPCC) and the Supervisory Board. Following the non-extension of the UNMIK mandate, Regulation 2006/50 ceased to have legal effect on 31 December 2008 and the KPA has been operating under the Assembly of Kosovo Law No. 03/L-079 amending UNMIK Regulation 2006/50, which itself was amended by the Assembly Law No 04/L-155.

The KPA was mandated to receive and register and through the KPCC to resolve claims resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 in respect of private immovable property, including agricultural and commercial property. Decisions taken by the KPCC are subject to a right of appeal only to the Supreme Court of Kosovo.

The KPA operated out of its main offices in Prishtinë/Prishtina; Gjilan/Gnjilane; Mitrovicë/Mitrovica (with satellite offices in both the northern and southern part of the city); Pejë/Pec; and Prizren. In addition, the UNHCR has established two property offices to provide assistance to any person who has submitted a claim to the Kosovo Property Agency which are located in Belgrade and Kragujevac. It should be noted that the KPA was subsumed into the KPCVA which now holds their mandate.

In relation to the KPA's mandate to receive claims relating to private immovable property including agricultural and commercial property the claims intake commenced on 5 April 2006 and closed on 3 December 2007. The KPA was also mandated to deal with a limited number of activities which fell within the mandate of the HPD established under UNMIK Regulation 2003/23 whose closure coincided with the establishment of the KPA. Namely the implementation of the Housing and Property Claims Commission (HPCC) decisions which were pending enforcement in addition to the management of properties under the administration of the HPD. In exercising this aspect of its mandate, the KPA was vested with the rights, obligations, responsibilities and powers of the HPD. Further the HPD's physical assets were



transferred to the KPA, and a certain number of its personnel were redeployed to carry out similar duties within the KPA.

According to the HPCC Final Report 2007 (pages 36-37) the Applicable Human Rights Framework consisted of the following: UNMIK Regulation 1999/1 determined how executive and legislative authority was to be exercised by UNMIK and obliged all persons undertaking public duties or holding public office to observe internationally recognized human rights standards. Further, international human rights standards were part of the applicable law through, inter alia, UNMIK Regulation 1999/24, (as amended by 2000/59). Section 1.3 of the Regulation required compliance with the standards set down in the following instruments: The Universal Declaration of Human Rights; The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto; The International Covenant on Civil and Political Rights and the Protocols thereto; The International Covenant on Economic, Social and Cultural Rights; The Convention on the Elimination of All Forms of Racial Discrimination; The Convention on Elimination of All Forms of Discrimination Against Women; The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment; The International Convention on the Rights of the Child.

The Final Report (pages 40-41) lists the total number of claims received:

“Some 29,160 claims were filed with the HPD. The majority of claims (93.2%) were filed pursuant to section 1.2(c) of the Regulation (category C claims); 4.2% were filed pursuant to section 1.2(a) (category A claims), while 2.6% were filed pursuant to section 1.2(b) (category B claims). The highest number of claims related to properties in the Pec and Pristina regions, and the underlying chart sets out the nature, geographical breakdown and number of claims received.

Region/Category ¹³	Gnjilan	Mitrovica	Pec	Pristina	Prizren	Total	%of Total Claims
A	112	203	97	698	102	1,212	4.2
B	45	65	47	579	20	767	2.6
C	3,617	3,542	7,975	8,293	3,755	27,182	93.2
Total	3,774	3,810	8,129	9,570	3,877	29,160	
%of Total Claims	12.9	13	27.9	32.9	13.3	100	

As somewhere in the region of 20,000 claims were collected in Serbia proper, Montenegro and FYROM, claim intake outside Kosovo proved vital to facilitating access to the process for the vast majority of claimants. The vast majority of claims, namely 93.2%, arose out of events which occurred in the aftermath of the NATO air campaign in which Kosovo Serbs and other minorities were forced to flee their homes (i.e. category C claims). A number of Kosovo Albanians who had fled North Mitrovica and other enclaves also filed category C claims.”

¹³ Spelling of Regions as in original report



The Concluding Remarks of the HPCC Final Report in 2007 claim success in fulfilling its mandate but highlights what it sees as weaknesses in the restitution mechanism.

“The HPCC has effectively implemented its mandate and resolved some 29,000 residential property claims. This accomplishment has assisted dispossessed property right holders gain repossession of their homes and it is hoped has contributed to peace building and post conflict rehabilitation in Kosovo. The establishment of the HPCC evidences growing recognition of the fact that the resolution of property rights issues is a central component of peace building efforts and indispensable to economic revitalization and the stability of peace building. Most importantly it demonstrates a willingness on the part of the international community to engage actively to ensure that the restitution remedy is enforced as an integral part of post conflict reconstruction and rehabilitation. The approach to the resolution of residential property issues in Kosovo has been successful. However a more comprehensive approach earlier on in the Mission on the basis of a clear institutional and policy framework for addressing all legitimate property issues would have ensured that other legitimate and urgent property rights challenges were also effectively addressed. Tackling issues in the residential property sector as early as possible is in itself a key component of peace building. Unfortunately no comparable initiatives were taken early on to address other urgent property rights challenges, such as the resolution of disputes over non-residential properties. Happily this is now being addressed”.¹⁴

Furthermore the report notes (p79):

“.. but to date, no comprehensive compensation scheme has been put in place. The HPCC highlighted this issue and proposed compensation as a remedy. It called on UNMIK to take the necessary steps by way of legislative amendment to address this issue. To date no such measures have been taken. If a scheme is devised, consideration should also be given to compensating those category C claimants who were unable to perfect their occupancy or lease rights because the apartments allocated to them were still under construction when the 1999 conflict started.

Another weakness of the HPD/HPCC process is that it failed to provide an adequate remedy for almost 11,000 claimants whose properties were found to have been destroyed. The HPCC did not have jurisdiction to award compensation for damage to or destruction of property. The only remedy the HPCC could provide was a decision known as a ‘declaratory order’ which recognized the claimant’s property right over the property at the time of its destruction. A declaratory order could be used by a claimant in court proceedings to contest any subsequent illegal occupation of the land parcel on which the residential property stood or as evidence of the property right where the claimant sought to benefit from any future reconstruction project or compensation scheme. The process left claimants in such cases with no other option than to file claims for compensation in the local courts, an option which most have been unable to exercise. While reconstruction assistance was provided by various donors after 1999, many property right holders were not able to benefit from this assistance, because they were unable

¹⁴ HPCC Final Report 2007 page 78



due to the security situation, to satisfy one of the essential requirements for such assistance, namely to return to Kosovo during the reconstruction process.”

Finally, the report (page 80) states:

“Finally, Article 11(k) of UN Security Council Resolution 1244 (1999) envisages as one of the main responsibilities of the international civil presence that it assures the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo. Article 10 envisages the establishment of conditions for a peaceful and normal life for all inhabitants of Kosovo. There is much work still to be done in this regard. It is hoped that the work of the HPCC and the HPD has gone some way towards establishing the conditions where these goals might be achieved.”

In December 2016, the Department for European Integration and Policy Coordination (DEIPC) within the Kosovo Ministry of Justice (MoJ) launched the Kosovo National Strategy on Property Rights. The overall objective of the National Strategy on Property Rights is to address informality in the land sector. The Strategy has 5 objectives:

- Objective 1 Securing rights to property by strengthening the legal framework
- Objective 2 Securing rights to property by addressing informality in the immovable property sector
- Objective 3 Guaranteeing and enforcing the property rights of displaced persons and non-majority communities
- Objective 4 Guaranteeing and enforcing the property rights of women
- Objective 5 Promoting productive use of immovable property to fuel economic growth

The ability of the MoJ in present day Kosovo to achieve these objectives, laudable as they are, remains in doubt.

According to the Annual report (2016) of the Kosovo Property Claims and Verification Agency (KPVCA) the organisation that has inherited the HPD/KPA mandate the HLP claims are as follows:

“On the closing date of claims receipt on 3 December 2007, approximately 38,335 claims were registered. During the claims processing it was discovered that a number of claims that were submitted as individual claims for multiple parcels and which at the time of submission were described as close to each or adjacent, in fact were entirely separated, something which was discovered only after the notification and inspection of the parcel/s in question. Consequently and by the end of the reporting period, the number of registered claims increased to 42,749. However, the increased number does not include new claims filed after the deadline, but only separation and re-registration of claims already submitted. Around 37,641 claims (88.1%) of the total received relate to agricultural land, while 943 claims (2.2%) relate to commercial properties and 4,162 (9.7%) to residential property. For 98.8% of claims the claimants claim ownership rights over the claimed properties. The largest number of the submitted claims is



related to the properties located in Peja region (34.4%). The following tables set out the number of submitted claims, nature, geographical breakdown and classification of claims.”

Table 3: The nature of the property right sought ¹⁵

	Gjilan	Mitrovica	Peja	Prishtina	Prizren	Total	
Ownership	9328	4621	14559	7146	6571	42226	
User Right	49	66	148	185	76	523	
Total	9377	4687	14707	7331	6647	42749	
% of Total Claims	22	11	34.4	17	15.6	100	

Numerous obstacles have been reported by the previous legal aid projects attempting to assist IDPs from Kosovo. For instance, in various cases courts in Kosovo have assumed the position that UNMIK and KFOR could not be sued due to the possession of legal immunity in Kosovo while the Kosovo authorities could not be sued for acts occurring before their formation.

In the course of 2009 and 2010, the courts changed approach again by legally resorting to a 180-day stay of proceedings, instead of rejecting the application outright as they had done previously. These decisions were based on the 2008 Law on Public Financial Management and Accountability and the main reason cited was that the Ministry of Justice and the Ministry of Economy and Finance should be introduced to any unresolved compensation claim against a public authority in Kosovo. In 2010 the new Amendment on the Law of Public Financial Management and Accountability was passed, which effectively suspended the processing of these compensation claims for up to 18 months or until the Ministry of Justice of Kosovo notifies the court in writing that it is assuming representation on behalf of the government or public authority. Reportedly, only in 2011, a number of courts started processing the claims without restrictions.

A further complication arises from the cadastral records in use in Kosovo. The cadastral records in use as of 1999 have been superseded by new cadastral records now in use in Kosovo a situation complicated by the fact that not all of the records were safely relocated when the 1999 Kumanovo agreement came into effect. It is no coincidence that many of the fraudulent property cases originate in regions where the cadastral record from pre-1999 is incomplete. Previous legal aid assistance has assisted many in registering their claims but recognition of or access to documentation remains a problem.

As the OSCE Report “Challenges in the Resolution of Conflict-Related Property Claims in Kosovo” June 2011 notes:

“The decisions of the KPCC constitute title determinations and should be registered in the cadastre. Successful claimants can file a written request to the relevant Municipal Cadastral Office to register the title. However, in many cases the successful claimant is displaced and

¹⁵ Spelling of municipalities/areas as in Annual Report KPCVA 2016



cannot access the municipal cadastral office where the property is located, as required by the legislative framework governing the immovable property rights register. The failure to register a property title means that the right to property has not been restored in its entirety. If the successful claimants cannot register their title, this leaves a gap in which there is room for fraudulent registration practices. This can adversely impact the individual's right to property.”

Generally, fraudulent transactions in which residential, agricultural and commercial properties belonging to IDPs have been sold involve fabricated powers of attorney signed to a third party to sell the property, contracts of sale fraudulently drafted and fake identification cards used during the signing of contracts. The fact that IDPs remain displaced from their places of origin nearly two decades after the conflict provides fertile ground for fraudulent transactions to take place. Although there is a distinction in law between civil and criminal cases, given the organised nature of the fraudulent transactions in Kosovo it is perhaps best to consider most if not all fraudulent property transactions as violations of the criminal code. However, there is a statute of limitations regarding criminal cases meaning many victims of fraudulent transactions have lost out and their only recourse is to civil cases. Moreover access to the civil courts in Kosovo as elsewhere usually involves a greater delay in coming to court than criminal proceedings. The fact that EULEX as of November 2016 has ceased monitoring civil cases in Kosovo would seem to indicate a serious lack of concern on the part of the international community as regards the upholding of justice and basic human rights in Kosovo.

Thus, although both the Serbian national legal framework and that in existence today in Kosovo contain guarantees of the right to property, including the right to be compensated for unlawful damages or destruction of one's property, in practice the access of IDPs to resolution of their property cases remains problematic to say the least and the ability or willingness of authorities in Kosovo to enforce judgements ranges from poor to non-existent. For example the well-publicised case of the land belonging to Decani Monastery is a case in point.

CASE STUDY ONE: Visoki Monastery Decani

In May 2016, several hundred Kosovo Albanians protested against the ruling of the Kosovo Constitutional Court, which confirmed the rights of the Serbian Orthodox Visoki Decani monastery to 24 hectares of land. The land was the focus of previous demonstrations in 2012 after the Supreme Court ruled that the disputed 24 hectares belonged to the monastery, not to two Kosovo companies, which have claimed it ever since the withdrawal of Serbian security forces in 1999.

After 16 years of litigation, the Constitutional Court on May 20, 2016 confirmed the monastery's right to the 24 hectares of land (approximately 59 acres).

In its decision, the Constitutional Court rejected the decision of the Appellate panel of the Supreme Court's Special Chamber in 2015 to return the lawsuit to the basic court in Decani. The Constitutional Court also ascertained that the previous decision of the Supreme Court from 27 December 2012, which confirmed the ownership rights of the Monastery was res judicata (a matter adjudged).

At the protest in May 2016 local Kosovo Albanians gathered in response to the call of the chairman of



Decani municipality, Rasim Selmanaj, who urged local residents to object to the decision. In his speech at the protest, Selmanaj told the crowd that they will not accept the court's decision, and vowed to oppose it.



Graffiti on the walls of Decani Monastery

Not all official documents issued by institutions in today's Kosovo recognise the importance of the issue of IDPs' rights or for that matter the specific circumstances of Serbian communities south of the Ibar. For instance, the Annual Report for 2016 issued by the Ombudsperson Institution of Kosovo (published 31 March 2017) notes that:



“Ombudsperson Institution of Kosovo (OIK) from the beginning of its establishment has paid special attention to the state of play of human rights of minority communities in Kosovo, and because of this, the annual report in front of you will consistently continue with the reporting and work to promote and protect the rights of minority communities in Kosovo. In all previous years, Ombudspersons has pointed out serious problems which minority community face as well as has drawn attention on these issues in every subsequent annual report without any indication by institutions that such situations will improve, in order that rights be respected, above all, by institutions and citizens. It has been observed that there are specific achievements in the creation of satisfactory situation towards the improvement and advancement of freedom of movement, the establishment of new municipalities in the areas which are mainly inhabited by Serbian community members, access to justice, media, issuance of personal documents in the language and alphabet of minorities. In this respect, one should remind and reiterate that respect of the rights of minorities contributes to the development of political and social stability. It is indispensable that OIK reiterates to authorities but the citizens as well, that minority rights are based on the principle of an integrated society which means the return of the displaced persons and refugees, use of mother tongue, respect for and implementation of official languages and the ones in use, as well as maintaining cultural, religious and national identity.”

However, the report then goes to examine in detail the situation of the Montenegrin community in Kosovo, the Albanian communities living north of the Ibar and the RAE population. While these may well be deserving of special attention it is unusual to say the least that there is no specific focus on the largest non-Albanian population, the Serbian communities still resident in Kosovo.

As regards property, Section 1.6.2 of the report considers ‘The right to property and inheritance’ but does not consider legal problems for IDPs or the issue of fraudulent property transactions. Instead the focus is on the problem for women to inherit property. This is of course an important issue but the report makes points which are over-generalised or that should be considered the author’s opinion rather than proven fact such as the claim that:

“However, due to tradition and patriarchalism in our society, in the majority of cases property is inherited by men, and this situation is mainly expressed in rural areas, unfortunately this practise¹⁶ is also present in urban areas. In majority of cases, only men represent the subject of the right to inheritance, while women through announcement, especially if they are children to decedents, waive their inheritance in favour of male children, and such a situation exists in all communities in Kosovo without exception.” (pages 20-21)

Many would dispute this claim certainly in terms of such bias against women in terms of inheritance being present in all Kosovo communities.

In Section 1.2 of the OIK report ‘Judicial Protection of rights’ it is noted that:

¹⁶ Spelling as in the original report



“Despite the legal and organisational reform, domestic judiciary did not manage to secure the protection of human rights according to international standards, in particular ECHR¹⁷ and case-law of European Court of Human Rights (ECtHR).”

Finally, it should be noted that Serbs and other non – Albanians face significant obstacles in areas where they are now the ‘minority’. As noted in the report Kosovo Overview (10 Oct 2012) by the International Displacement Monitoring Centre:

“For many internally displaced people, return to their place of origin is not a viable option after 13 years of displacement, and the prospects for durable solutions are limited. Many still face obstacles in obtaining personal and property documents from their places of origin, and in repossessing their property or getting compensation for it. Widespread discrimination against Serbs and Roma people has made it difficult for them to return to areas where they constitute a minority.”



Container camp in Gracanica Serb enclave with a high proportion of elderly displaced people.
IDMC/B. McCallin, May 2009

¹⁷ European Convention on Human Rights



The situation regarding fraudulent property cases:

The initial effort on the part of the international community to assist IDPs from KiM in resolving property disputes arising from their displacement was the EU (European Agency for Reconstruction) supported legal aid project implemented in 2007 by the Danish Refugee Council (DRC). The current project was immediately preceded by the EU-supported Free Legal Aid projects 2010-2012 and 2012-2015 and implemented by Diadikasia. The final report and various interim reports point out the relevance and recurrent nature of fraudulent property transactions regarding IDPs' access to resolving their problems.¹⁸ In addition the team leader of the former project has pointed out certain relevant issues as regards the fraudulent property transactions issue.¹⁹

According to the Final Report²⁰ of the previous Free Legal Aid project fraudulent transactions have continued to feature prominently amongst the cases that the Project has been covering. To the Project lawyers, it became clear that this issue is the work of organised groups interested in acquiring land from IDPs in an illegal manner.

As previously reported, these transactions are not just a legacy of the past, but they continue to date and a few of them were initiated in 2012/2013, through a new wave of cases. Taking over land via a fraudulent transaction requires a wide network of accomplices who effectively turn a blind eye in order to allow the transaction to happen. The previous projects witnessed that several actors were involved in this "business", from notaries in neighbouring countries, to alleged guarantors of such transactions to staff members in the different Cadastre offices, who first registered the transaction and later on denied the Project clients access to the historical records of the property in question.

The previous Project identified two main groups that have been carrying out these fraudulent transactions. A first group is located in Prizren, a second group in Pec, Djakovica and Decani.

In order to solve these cases, the Project needed to rely on the assistance of the EULEX mission. The presence of EULEX monitors contributed to the smooth development of the cases and abuses were minimized, even if EULEX monitors themselves were sometimes subject to intimidation from persons close to the defendants, as occurred in June 2013, according to the Final report. Such episodes in any case started a positive reaction, in the sense that it attracted the attention of the EULEX Executive Department, which became directly involved in the issue of fraudulent transactions as a part of a larger criminal scheme. International investigators and

¹⁸ Final report *Support for implementation of strategies for IDPs, refugees and returnees – legal aid*; EuropeAid/131328/C/SER/RS June 2014;

Right to Restitution and Compensation of Property Damaged or Destroyed During Displacement under International Human Rights Law and International Humanitarian Law; Report prepared under the Further Support to refugees and IDPs in Serbia; EuropeAid/129208/C/SER/RS 2012

¹⁹ Interview with Massimo Moratti Belgrade April 2017 and the following articles by Massimo Moratti on website blog "Terra Nullius"; *Lost in transition – EU financed legal aid programme between Serbia and Kosovo falters*; August 29 2016; and *The Kosovo Constitutional Court on displaced persons' property rights: Can mediation ever count as enforcement?* May 2014;

²⁰ Page 25; Final report *Support for implementation of strategies for IDPs, refugees and returnees – legal aid*; EuropeAid/131328/C/SER/RS June 2014;



international prosecutors started working on these cases and they sought the assistance of the Project in facilitating such contacts and contacting potential witnesses.

In total, the previous Project registered 122 cases of fraudulent property transactions.

There appears to be a greater if somewhat belated recognition of organised fraud conducted on a large scale against IDPs and their property. As reported by the Agjencia E Lajmeve Ekonomia website (Pristina) on March 6 2017, a prosecutor with the Special Prosecution of the Republic of Kosovo filed an indictment against five defendants charged with participation in an organized crime group involved in the commission of fraudulent land transactions. The report states that the investigation conducted by the Prosecutor concerns an organized crime scheme that, by the commission of fraudulent land transactions and the legalization of false contractual provisions, sought to acquire, register and transfer immovable ownership rights to the detriment of displaced Kosovo Serbs and to the detriment of the subsequent Albanian buyers in the municipalities of Djakovica/Gjakova; Pec/Peja and Decani/Decan.

These property crimes were reportedly committed during the period between the years 2000 and 2012. The aggregate amount of the fraud is reported to be in the region of 1,300,000 Euro. The indictment was filed by an International Prosecutor with the office of Special Prosecutor's office in Kosovo, following an investigation conducted by EULEX Prosecution, Kosovo Police and EULEX police.

However as the case studies presented in this document illustrate the search for justice for IDPs especially as regards fraudulent transactions and the loss of property remains fraught with difficulty regardless of international oversight (See Case Studies). Furthermore, as OSCE pointed out in an interview for this report, April 2017 Pristina, the Real Estate sector was vibrant especially after June 1999 and many Serbs who did choose to sell were 'put in a corner and had to sell low.'

Various reports over the years have highlighted problems and even suggested solutions regarding the overall property issue for IDPs from Kosovo. It should be noted that the EU Progress reports for 2014 and 2015 comment that property issues remain a sore point in terms of progress in KiM.

The OSCE report ***"Fraudulent Property Transactions in the Peje/Pec Region"*** August 2009, notes that the OSCE has identified a significant number of sales of property belonging to Kosovo Serb displaced persons that have been sold without their knowledge. The means by which these properties have been sold varied but included falsified powers of attorney, personal identification documents and court stamps. Given their absence, displaced persons do not become aware of such transactions until after some time has passed. These fraudulent transactions have enabled perpetrators to sell property on behalf of or "personally" by the owners who remain displaced from Kosovo and have not consented to the transaction. Traditionally HR violations are carried out by states, not by individuals. However, since 1999 there has been a series of criminal acts constituting fraud and criminal activity and that the authorities in Pristina refusing to address them has committed a HR violation.



According to HPD data, the OSCE report notes, there were 70 cases where the HPD suspected criminal activity. The report notes that the HPD dealt only with residential property and not with agricultural or commercial property, which are the subject of claims filed with the Kosovo Property Agency (KPA) and which are being brought before the Kosovo Property Claims Commission (KPCC)²¹.

The 2009 report noted that bearing in mind that the cases filed with the KPA might unearth evidence of similar alleged criminal activity the OSCE was concerned that the number of alleged fraud related to real estate other than residential property could be significantly greater. However, another problem as the report pointed out is the need for invalidation of the fraudulent transactions in court and cadastral records. This was not in the mandate of HPD. Once a property title is certified by a court or the cadastre it has a legal effect. Theoretically in two or three years the possessor of a counterfeit contract that has been certified by court and/or registered in the cadastre could again initiate the court procedure requesting repossession. For this reason all owners were advised by the HPD to initiate a court procedure in which they would request invalidation of the alleged fraudulent property transaction. The results were however very poor. According to the Danish Refugee Council's Legal Assistance Programme in Serbia (the first legal Aid Project supported by the EU/EAR) out of 49 cases registered by them four procedures were concluded by the time of the report in August 2009.

The OSCE report concludes on fraudulent transactions that:

"The 40 reported cases are from Pejë/Peć, Klinë/Klina, Istog/Istok, Gjakovë/Djakovica and Deçan/Dečani, although there are some cases in other parts of Kosovo as well."

As a follow up to the 2009 report the OSCE in 2011 held a conference in 2011 to highlight the need to deal with fraudulent property transactions.

In addition, the OSCE report of June 2011 "***Challenges in the Resolution of Conflict-Related property Claims in Kosovo***" makes detailed recommendations for various stakeholders:²²

To the Kosovo Property Agency:

- The KPA should ensure that non-payment of the rent for property treated under the rental scheme is followed by timely evictions.
- The KPA should increase the number of cases regularly presented before the KPCC in order to ensure their timely resolution.
- The KPA should co-operate with the local courts on how to treat cases referred to them by the HPCC as well as on their scope of review in order to avoid conflicting decisions.

To the government of Kosovo:

- Ensure that all necessary support is provided to the KPA in implementing its Mandate and that awareness campaigns are conducted to decrease the reoccupation of properties that have been vacated following evictions.

²¹ HPD had a total of over 21,000 claims regarding residential property; KPA had a total of 41,000 claims regarding agricultural and commercial property

²² Underlining of key points by consultant



- Develop the normative framework establishing the method of calculation and payment of compensation to those individuals who are entitled to pecuniary compensation for the loss of legitimately held property rights pursuant to section 4 of UNMIK Regulation 2000/60.
- Ensure the funds in order to implement the compensation scheme pursuant to the section 4 of UNMIK Regulation 2000/60.
- Introduce a compensation scheme or provide reconstruction assistance for those HPD claimants whose properties have been destroyed or damaged so as to ensure that an effective remedy is afforded on an equitable basis to all victims of property rights violations.

To the Supreme Court:

- Inform the courts on the KPA/KPCC mandate and jurisdiction in order to avoid potential conflict of jurisdiction.
- Inform the courts about their precise jurisdiction regarding the resolution of property claims not filed with the KPA (after the expiry of the KPA's claim intake deadline, the courts are responsible to decide on new conflict related claims over private immovable property).

To the courts in Kosovo:

- Avoid parallel proceedings on the same property by respecting the final and enforceable character of HPCC/KPCC decisions.

To the Kosovo Judicial Institute:

- Provide training to all municipal court judges on the competences and jurisdiction of the KPA, in particular those residing with the KPCC.

To Kosovo police:

- Following re-eviction of persons illegally re-occupying properties, all such cases should be referred to the public prosecutor's office to initiate proceedings pursuant to the criminal code.

To the public prosecutor's offices

- Ensure that criminal charges as foreseen under the criminal code in Kosovo are filed against persons illegally re-occupying properties following an initial eviction.

To the international community:

- The stakeholders involved in the returns process should more strongly advocate for bridging the gap between the legal and physical restitution of properties.
- To support the allocation of funds in order to permit the implementation of pending HPCC decisions where restitution in kind and pecuniary compensation for the loss of legitimately held property rights was ordered pursuant to section 4 of UNMIK Regulation 2000/60.
- Advocate for and support the provision of assistance to the KPA in implementing its mandate.



The recommendations above are, in theory, in line with good practice as regards property claims regarding IDPs. However, even by 2017, few if any of these recommendations have ever been implemented mainly due to a lack of ability or willingness to enforce decisions whether the decisions are from municipal or higher court level. International oversight has been singularly lacking in encouraging/persuading authorities in Kosovo to support the rights of Serbian and other non-Albanian IDPs especially as regards recourse to justice following fraudulent property transactions. The failure to deal with destroyed property has effectively denied any form of problem resolution to many IDPs.

As Guido van Heugten noted in his article ***“Post-conflict property restitution in Kosovo: A continuing challenge”*** Nov 2012²³:

“The Organisation for Security and Co-operation in Europe (OSCE) also reported that local judges often fail to maintain a neutral stance in certain cases”. This observation is supported by opinions expressed to the consultant during the research for this report.

By 2017, the mass claims mechanism is now the mandate of the KPCVA the successor of KPA which has been established to compare and rectify the cadastres, the ones taken away from Kosovo, with the ones in Kosovo now. The second objective of the KPCVA is to deal with remaining cases and restitution. OSCE reports that sub-legislation to facilitate these two objectives is still being developed. Currently, the OSCE has between 5-6,000 claims in its database.²⁴

There are several basic problems that have hindered the KPCVA in fulfilling its mandate. In the KPCVA Annual Report Dec 2016 it is noted:

“In 2014 and 2015 the initial draft law on the KPCVA, as the successor of the KPA, was elaborated by the Government, and after amendments it was adopted by the Kosovo Assembly on 9 June 2016.

The delay for many years in voting this law has been a challenge for the Agency because it has created uncertainty and discouraged the Agency’s staff and has caused the loss of key staff, thus complicating the preparation of a credible work plan, of a financial strategy and exit/transition.”²⁵

Also on page 164 Section 6.1.6 the report notes:

“The KPCVA succeeded the pending duties of its predecessor, the Kosovo Property Agency (KPA). However, under the current financial situation, the Agency will not be able to cover expenses relating to the implementation of 143 decisions issued under Article 4 of UNMIK/REG/2000/60 relating to the HPD Compensation Scheme.

The amount necessary to effectuate the according compensation payments adds up to a total of 3.2 million Euros. Since the Agency has no financial capacities, it has therefore sent a letter to all donors offering them a proposal to fund the scheme. The issue was also addressed with

²³ Available on legal website blog Terra Nullius November 2012

²⁴ Interview with OSCE Pristina April 2017

²⁵ KPCVA Annual Report 2016 (p164; Section 6.1.4)



the Government of Kosovo which with the 2017 Budget Law has funded this scheme with 300,000 Euros. Therefore, the Agency will continue to raise this issue.

Without providing these funds, such decisions cannot be implemented and also this responsibility inherited from KPA will not be able to be completed.

The Constitutional Court of Kosovo has, up to now, issued three judgements concluding that the non-execution of HPCC decision in terms of compensation is contrary to the principles of the rule of law and constitutes a violation of fundamental human rights guaranteed by the Constitution of the Republic of Kosovo.”

It should be noted that in 2016 the Constitutional Court issued four more judgments in favour of the plaintiffs all of them Serbs and each case was brought by the Legal Aid Project.

Finally, the KPCVA Annual Report 2016 (p130) refers to the cadastral records to be compared and reconciled with current cadastres in Kosovo.

“The KPCVA’s mandate is of utmost importance, which, among others, will help that the current cadastral register be more complete and accurate. The total number of cadastral documents scanned and indexed in Serbia, expected to be returned is 4,037,264. All these cadastral documents on private property, commercial private property and private property of religious communities taken away by Serbia before June 1999, will be received, compared with current cadastral documents in the Republic of Kosovo and through PVAC resolve differences and discrepancies between these two groups of documents.”

An additional difficulty in resolving the problem of fraudulent property transactions is the involvement of former Kosovo Liberation Army (KLA) commanders, many of whom attained positions of power in post-1999 Kosovo, has complicated the situation regarding the resolution of fraudulent property transactions and the international community’s willingness to intervene. For example, “Balkan Insight” on 26 Oct 2016 reported that:

‘Kosovo’s special prosecution on Tuesday filed two indictments for organized crime and money laundering against 22 and 17 persons respectively.

Both groups were allegedly led by Azem Sylja, former member of the Kosovo Assembly from the ruling Democratic Party of Kosovo, PDK, and a former commander of the KLA. The groups are alleged to have appropriated land near Pristina (Caglaviva and Laplje Selo) illegally by falsifying the ownership documents and by obtaining unlawful court documents.

The first indictment contains 10 charges relating to organized crime, money laundering, bribery, aggravated fraud, fraud in office, unlawful court decisions, abuse of office, legalization of false assets and fiscal evasion. The second indictment involves 17 persons charged with money laundering.

“A structured criminal group with a long-term, organized hierarchy ... damaged Kosovo’s state budget and Kosovo Serbian families whose land rights were abused,” the prosecution said.

The prosecution has indicted, among others, Nuhi Uka, a former judge and president of Pristina municipal court, and Hajrullah Berisha, a former local UNMIK official.



He allegedly helped the group with court proceedings at the Pristina municipal court and at the Special Chamber of the Kosovo Supreme court.’

The group reportedly transferred ownership of the land in question to three Kosovo Serbian families without their knowledge, by falsifying their signatures. It was then sold off as private property.

Although released after being charged and placed under house arrest according to Albanian website Pristina Insight (16 Sept 2016) Sylja, who was described as being the General Commander of KLA Headquarters during the conflict, was rearrested three weeks after being released for attempting to influence a witness, thereby violating the terms of his house arrest. Although the case remains in court it illustrates one of the commonly reported problem facing Serbs and other non-Albanian IDPs who seek redress through the system established in Kosovo. The fact that many of the leading political and judicial figures at central and local level in today’s Kosovo have direct links to the KLA and allegedly organised crime creates at the very least a conflict of interest in terms of how they could be involved in a just resolution of fraudulent property cases. The representative of the Office for Kosovo and Metohija (OKM) noted that courts in Kosovo very often intimidated non-Albanians who appeared before them. There was a general atmosphere of intimidation and few plaintiffs felt comfortable or hopeful that they would receive a just decision. This is not to say that there were no successful cases. For instance the Serbian lawyer from DRC in the original legal aid project won seven cases in the Constitutional Court of Kosovo.

Many of those interviewed during the research for this report noted that it is difficult to follow up on cases in Kosovo. The Director of the legal NGO PRAXIS in Belgrade commented that it was difficult to assist IDPs given that few lawyers would take their cases in Kosovo. Due to the difficulties Serbs faced in working in Kosovo they hired Albanian lawyers there, those that were prepared to take on ‘Serb’ cases. However this entails difficulties for overseeing the work of the lawyers given that they are in a different jurisdiction and working on cases that are unpopular with courts and public alike. Thus, the PRAXIS representative noted it was difficult to ensure that everything is done properly. Moreover she noted it was difficult to attract donor interest in this issue. The international community did not seem to view it as a priority. The Free Legal Aid project and its predecessors all supported by the EU are the only legal aid projects established to assist IDPs from Kosovo especially those with no financial resources of their own.

However, it should be noted that the USAID property rights project (which drafted the national Kosovo strategy on property rights of December 2016) stated to representatives of this project that they are interested in assisting IDP clients of legal aid in getting their court costs waived. An agreement to start with pilot municipalities in Pec, Urosevac and Gnjilane was made and for possible collaboration during a thematic working group hosted by the legal aid project.²⁶

²⁶ Free Legal Aid Project Monthly Report March 2017



The report by the Special rapporteur Chaloka Beyani on the human rights of IDPs - Follow-up mission to Serbia, including Kosovo presented to the 26th Session of the UN General Assembly June 2014 made three crucial points about Housing, Land and Property. These were:

1. The process of resolving property issues in Kosovo faces many challenges, hindering returns and the prospects for IDPs to freely choose between returning and other durable solutions. Some of the main challenges are the caseload of unresolved compensation claims (numbering around 22,000), problems with evictions and re-evictions, the lack of an effective response to fraudulent transactions²⁷, illegal occupation of agricultural land and other property, and a lack of effective protection for empty reconstructed property. Other issues relate to limited access to courts, including lengthy and expensive proceedings, non-recognition of the Serbian language and non-recognition of Serbian property documentation. In the case of Roma, Ashkali and Egyptian IDPs, there are also challenges regarding the allocation of land for new settlements.
2. A large number of IDPs are unable to exercise their right to use their property, or their ownership over it, due to the illegal occupation of properties in Kosovo. The mechanisms for mass restitution of dispossessed property put in place by the international administration in Kosovo and Metohija have proven ineffective in respect of the return of immovable property, which has also had a significant effect on the process of IDP returns. Authorities are often unable to enforce repossession decisions, particularly in cases of reoccupation of property, frustrating the legitimate aspirations of IDPs to regain their properties. Similarly, Serb IDPs face the challenge of repossession of properties as well as a lack of access to rental and compensatory schemes. The lack of compensation schemes often denies IDPs the opportunity to receive indemnification for the loss of their property and, consequently, deprives them of the possibility of securing alternative housing solutions for themselves with their own means.
3. It was brought to the attention of the Special Rapporteur that two of the main challenges in terms of housing rights for Roma, Ashkali and Egyptian returnees are the insufficient allocation of land by municipalities and the lack of recognition of occupancy rights in informal settlements prior to the conflict. Although most Roma, Ashkali and Egyptian IDPs had a private house, their land occupancy rights were never registered and they lack personal documentation and title records for their homes. The vast majority of property-less returnees belong to

²⁷ Underlining by consultant



the Roma, Ashkali and Egyptian communities, and they find it increasingly difficult to be included in house reconstruction projects. About 30 per cent of Roma, Ashkali and Egyptian returnees end up in secondary displacement.

In addition, there are problems concerning the security of the judiciary in Kosovo. According to the report 'Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions'²⁸: "A recurring theme in the discussion of judicial independence in Kosovo is that of security... the OSCE has become aware of a disconcerting number of incidents where parties to litigation physically attacked judges and prosecutors. These incidents prompted the OSCE to issue a monthly report in April 2010 on security of judges and prosecutors.²⁹ The situation has not significantly improved. In the realm of judicial independence, equally troubling are the credible threats levelled against judges and their family members. The OSCE's 2010 report reviewing war crimes cases contained a section devoted specifically to threats against local judges sitting on those cases.³⁰ EULEX has reported similar situations where, "the judiciary does not appear to have sufficient protection from outside interference. Kosovo judges work in a difficult environment where threats are made and pressure exerted."³¹ The EC noted the same phenomenon in its 2010 Progress Report.³² According to the OSCE report in January 2012, there is no shortage of security-related anecdotes. At an OSCE-sponsored roundtable on intimidation of the judiciary held in May, 2010, the report states that nearly every judge present had his or her own story of threat or attack. When asked the question directly, no judge or prosecutor interviewed expressed confidence in the ability of the existing security apparatus to protect them should a threat arise. That said, it was not so much the physical attacks in the courthouse they feared. It was outside and at home where they felt the most vulnerable, according to the report.

In addition, it should be stated that where freedom of movement is limited or non-existent or the lack of physical security is an unresolved issue then property restitution remains difficult if not impossible to implement. It is clear from research carried out for this report that many feel that an atmosphere of impunity has existed in Kosovo since June 1999. Perpetrators of crimes against non-Albanian communities in Kosovo have clearly felt they were unlikely to be brought

²⁸ OSCE Mission in Kosovo, January 2012 pages 18-19

²⁹ OSCE report 'Intimidation of the Judiciary: Security of Judges and Prosecutors', April 2010

³⁰ "Numerous concerns have been raised by members of the local judiciary regarding threats of violence to them and their families while serving on such panels. These can manifest in the form of direct as well as indirect pressure for the purpose of intimidation, such as from the public at large or other officials utilizing political pressure. Local judges do not have the same level of close protection as international judges. As such, some members of the local judiciary have confided that they are thankful not to serve on war crimes panels because of this threat." For another OSCE report Kosovo's War Crimes Trials: An Assessment Ten Years On, 1999–2009, May 2010, p. 26. <http://www.osce.org/kosovo/68569>. See also the OSCE Report Review of the Criminal Justice System: Protection of Witnesses in the Criminal Justice System, March 2002–April 2003, (April 2003) p. 12. <http://www.osce.org/kosovo/12555>

³¹ EULEX Press Statement 'Deliberations are Confidential', 6 October 2009

³² EC Progress Report 2010 "In several instances, judges and prosecutors have refused to deal with sensitive cases. There have been reports of threats and intimidation against them."



to account for their criminal activities and the denial of basic human rights to their victims. Fraudulent property transactions form just one aspect of widespread organised criminal activity as well as being, in many cases, part of an ethnically motivated campaign to clear specific areas of particular communities. The fact that even judges feel to some extent under threat indicates the enormity of problems associated with property restitution let alone other issues such as return of IDPs or prosecuting suspected war criminals.

Finally, given that the vast majority of IDPs have been displaced from their homes and property in Kosovo for nearly two decades, the use of statutes of limitation for resolving property cases especially fraudulent property transactions is an impediment to upholding the human rights of the IDPs. Serious consideration should be given to extending deadlines for making a claim through the court system in Kosovo for restitution of property taken from the proper owner through illegal means. This would need the encouragement and direct intervention of the international community to help the court system in Kosovo to uphold the rights of IDPs and others as regards their stolen property. Although one can argue that such cases could be dealt with through civil cases it is clear that civil cases take an inordinate amount of time to settle in Kosovo, if they ever reach settlement. More fundamentally, the organised nature of fraudulent property transactions in Kosovo indicates a criminal conspiracy to deprive IDPs of their property to obtain money illegally and at the same time to prevent any possibility of return. Serbs and other non-Albanian IDPs are not the only victims. Albanians and others who have purchased property that has been illegally sold are also victims of fraud. The sheer scale of the fraudulent transactions indicates the importance of the free legal aid project not only to redress a crime against individual IDPs but also to strengthen the rule of law in today's Kosovo ensuring it is in line with best practices elsewhere in Europe.

The staff at the Project Office in Gracanica pointed out that the resolution of property cases involving IDPs has been difficult since Serbs and other non-Albanians were forced from Kosovo and their property and land usurped. The mechanism established by the international community lacked sufficient competences to resolve these issues. HPD could only identify the rightful owner but had no means of ensuring restitution or eviction of illegal occupants let alone providing legal assistance to IDPs. In addition they had no mandate for commercial or agricultural property.³³ KPA took over from HPD with a wider mandate but has still not been able to enforce decisions. Moreover project staff point out that IDPs are still confused as to where to lodge a claim or pursue a case. KPA for instance ceased taking claims in mid-2009 and EULEX in mid-2013. The scale of the problem is complicated by the fact that not only have IDPs lost their residential and commercial property and land but that illegal construction on a massive scale has taken place since on the illegally occupied land.³⁴ EULEX established a Property and Human Rights Department which functioned from 2008-2013 but the results of its activities are reportedly not apparent. The general opinion among those interviewed in Kosovo during the research for this report was that no one has been providing international oversight

³³ Cases involving State property fall under the Special Chamber of the Supreme Court of Kosovo

³⁴ OSCE Pristina estimated in an interview with the consultant April 2017 that there are over 300,000 illegal constructions in Kosovo



probably since about 2010, that is, two years after the Unilateral Declaration of Independence (UDI) was declared in Pristina.

The staff project at the Kraljevo office informed the consultant that OSCE and EULEX have been very useful for oral hearings in Kosovo. However, according to the information available to the legal aid project staff in Kraljevo EULEX will no longer monitor civil cases as of 01 November 2016. The Kraljevo office is unaware of any reason for this except perhaps that EULEX is downsizing. This confirms what the Gracanica office staff stated in that as part of the downsizing exercise EULEX let go the six Serbian staff members working for them. Former Serbian staff members noted that they were told the local staff to be retained by EULEX in November 2016 had to be tri-lingual, that is, speaking English, Albanian and Serbian. The chances of local Serb staff members being fluent in Albanian are minimal, thus ruling out the possibility of Serbian staff to be employed at EULEX.

It should be noted that IDPs from Kosovo tend to be concentrated in specific areas of Serbia. For instance, in Kraljevo there are reportedly more than 19,000 IDPs, in Nis more than 10,000, in Krusevac nearly 8,000 and more than 3,500 in Vrnjaska Banja. To put it in perspective IDPs represent more than 15% of the population of Kraljevo.³⁵

CASE STUDY TWO³⁶

Plaintiff: Ms J

Property belonging to a Serb woman Ms J was illegally occupied after she was forced to flee. Although it is not strictly speaking a case of fraudulent transaction, rather a case of illegal construction it illustrates the problems that property owners face in today's KiM. The KPA was obliged to destroy the illegal construction and return the property or to compensate the plaintiff. KPA offered to mediate, which is not a remedy foreseen by the law, nor in line with the ECHR. Ms. J went to court and she won. The court ordered KPA to implement their decision. But no action was ever implemented and the KPA never received funds to demolish the property. This property consisted of land approximately 14-16 ars in size. The illegal occupant after taking over the land has built three houses each equipped with a swimming pool. These constructions are entirely illegal. This case was first lodged more than 10 years ago and the current legal aid project inherited it from the previous project. KPA did not follow up on the case. It eventually went to the Constitutional Court where it was decided in favour of Ms J. However, the question remains who will execute the judgement? Despite winning her case Ms J is no nearer restitution. Now KPA must mediate to get the illegal occupant out of the illegally built houses. In addition there is the question of what to do with the constructions. Should they be demolished and who will do it? Intimidation is a real concern regarding restitution of illegally obtained property or demolition of illegal construction. In September 2000, Rexhep Luci, the city's leading urban planner, launched an initiative "Vision for Pristina, 2000-2005" at a workshop in the Grand Hotel, Pristina. His goal was to initiate the preparation of a new urban plan that would meet the development needs of the city for the

³⁵ According to UNHCR as of the end of 2015 there were 203,140 IDPs in Serbia

³⁶ Although strictly speaking not a fraudulent property transaction case, this case does illustrate the difficulties facing IDPs in resolving their property disputes. Names of plaintiffs have been withheld from this report for legal and security reasons.



next generation. In the run up to the workshop, he announced his intention to tackle the problem of illegal construction. Teams of municipal staff and students armed with cameras were dispatched across the city, returning with 2,000 documented cases. With the support of the UN Administration, he issued his first three decisions ordering the demolition of the most blatant of illegal structures including a restaurant built in the middle of a public park.

On his way home from the cocktail party following the workshop Luci was shot dead.

“In the wake of the murder, UNMIK issued a new Regulation on Construction, named after Rexhep Luci, confirming the requirement for building permits from the competent municipal authority. In 2004 a new Law on Construction was passed. In reality, however, little has been done to enforce the law”.³⁷ These types of incidents act as a deterrent to many to pursue justice as regards property cases in Kosovo. OSCE noted that currently, as of April 2017, there are 180 constructions to be demolished in Pristina but it is not clear who will be prepared to carry out the demolition and OSCE noted that it was often difficult to establish the real owners of property where illegal construction had taken place.

CASE STUDY THREE

SIGMA

Plaintiff: Mr S

Owner of a major computer company Pristina

Mr S was, in 1999, the owner of a large Real estate and Computer company in Pristina which provided computers and support to many companies throughout Kosovo including OSCE, western and local business companies and major banks. This included hardware and software for their operating computers and back-up support. In 1999 at the time of the withdrawal of Serbian forces his company was seized by KLA/Criminal elements including Albanians who had been working for his company. His mother was kidnapped and held to ransom for 950,000 Deutsche Marks and his company assets. Thankfully, his mother was released unharmed. At the time apart from three large business premises in Pristina he owned three apartments there as well. Mr S claims elements directly connected to senior Albanian politicians in Pristina were involved in the criminal operation. Mr S claims that the company is still in operation but the operators are those who stole the company and the contracts from him. The relevance of the case is clear. Knowingly or unknowingly foreign organizations used the services of a company that had been stolen from the legal owner in a criminal act. Mr S has pursued the case through the courts in Kosovo for many years. HPPD did issue a ruling finding that his rights and those of his mother Desanka (who has since died) were violated but no compensation or restitution has ever been enforced. Currently he has a case in the European Court of Human Rights in the Hague (the special court formed in 2017 to assess crimes including war crimes in Kosovo). He is awaiting their decision. In addition, a team of three members of the Special Investigative Task Force (SITF) from EULEX interviewed him in an office in Ustanicka St in Belgrade on 28 January 2014. None of the SITF consented to give Mr S their names or contact details. He explained his case from 08.00 hrs (8a.m.) until 18.20hrs (6.20 p.m.) and gave the team members copies of all the documentation he had including earlier court

³⁷ Discussion paper: “Utopian Visions. Governance failures in Kosovo's capital” June 2006; downloaded from European stability Initiative website Apr 2017



documentation. They expressed surprise at the level and sophistication of the documentation he had. He claims he told them that most Serbs had not got the chance to document their displacement and their losses as well as he had. He had the acumen and the finances to pursue justice unlike most of his fellow IDPs. He also commented that many IDPs had lost hope in pursuing justice as they saw no hope of a successful outcome. He also commented that Kosovo institutions cannot be trusted to investigate themselves. There should be external investigation. On 19 Dec 2014 Mr S wrote a protest letter to the Special Prosecutor for War Crimes complaining at his virtual imprisonment by three unnamed persons from SITF and the fact that he was not allowed assistance in his presentation of the evidence. He has had no reply since. Mr S comments that the irony of the situation is that the company when he owned and operated it was a multi-ethnic company employing Serbs, Albanians, Croats and Muslims. Now, as far as he is aware, it is a mono-ethnic, Albanian enterprise. He wonders how the companies that now use its services could be unaware that the company directors and those who profit by it are involved in a criminal enterprise based on the theft of a company and its assets in 1999. He commented that all the institutions in Kosovo do not want to issue judgments in favour of Serbs, thereby proving that illegal acts were done against them. Mr S commented that if the international community fails in supporting IDPs to resolve their outstanding property cases then history will record what happened since June 1999 as 'Kosovo- The Perfect Crime'.

CASE STUDY Four

The Case of Mr P; Case referred to legal NGO PRAXIS

The house belonging to Mr P in the centre of Klina was purchased under a forged Power of Attorney. Praxis has the following documents:

- Power of Attorney verified in Podgorica on April 30th 2003 and Purchase Contract in Albanian verified in Klina on May 6th 2003;
- Ownership Certificate issued by the Krusevac Cadastre dating from February 3rd 2002 in which Dobrivoje Pesic is registered as the owner and Ownership Certificate issued by the Kosovo Cadastre Agency (KCA) dating from April 1st 2004 in which Hamdi Thaci is registered as the owner of the same property;
- Certificate from Municipal Court in Podgorica Montenegro stating that the Power of Attorney supposedly given by Dobrivoje Pesic No. 8547/2003, 8546/2003 was not verified in that court;
- Positive HPD Decision DS 302200

PRAXIS notes that criminal charges for forgery should be filed and a complaint submitted nullifying the Purchase Contract.

CASE STUDY FIVE

The Case of Ms. N: Current case with the Free Legal Aid Project

During a criminal court trial on 27 March 2017, the client provided a witness statement that I Z., illegally occupied her property. However, the judge appeared to be biased from the beginning in favor of the defendant and stated that this is not a criminal act of illegal occupation of someone else's property but



it is a disturbance of possession and he tried persuading the victim to negotiate with the defendant about the price of the sale.

In the meantime the defendant, with the approval of the judges, started to speak offensively using insulting remarks to Ms. N calling her various derogatory names (e.g. Serbian whore, thief, deceiver, etc.) While he spoke he addressed the legal aid lawyer saying that the Serbian time has passed long ago and that he cannot be sentenced since he was an UCK fighter and a patriot. The project lawyer complained to the judge who responded "Colleague, I am ruling this process not you." ³⁸

During the trial the Albanian language was used, along with a partial translation in Serbian while many of the insults that were made by the defendant were not put into the record. The public prosecutor was passive potentially out of fear from the defendant, at one point she was prepared to stay the criminal charges, which the legal aid lawyer managed to prevent. The next hearing was not scheduled by the judge, when asked by the legal aid lawyer it was explained that this is because the case would be time consuming, although the project legal officer reported that he is the neighbor and personal associate of the defendant.

The acting team leader informed the EUSR office in Kosovo, who forwarded the information to both the OSCE and the US Embassy. The project has learned that key stakeholders plan to discuss the incident with the judicial council and at the next property rights working group in Pristina, where the project was invited, on 4 April 2017. Moreover, some stakeholders have indicated interest in attending the next hearing.

CASE STUDY SIX

The Case of Mr. K

Mr K owned a house in Klina (Emin Duraku/Beli Drim Street close to the Klina Police Station). Subsequent to Mr K and his family becoming IDPs his house was illegally occupied. Mr K filed a claim with HPD. After some time HPD informed him that the house did not exist. Mr K filed an appeal providing photographs of the property.

In March 2007 he was informed by a friend that the municipality in Klina intended to destroy the house in order to build a new apartment building. Mr K has been informed that other houses were also included in the destruction plan all of them belonging to Serbs. In March 2007 he travelled to Klina with his ownership papers but he discovered that the house had been destroyed a few days earlier (03 March 2007). Mr K started a court case in Klina through a lawyer from Pristina.

³⁸ Legal Aid Project Monthly Report March 2017



The Right to Have Rights:

- Thousands and thousands of people visited by this consultant over the years in Collective Centres living in abject poverty while their properties in KiM are sold and resold or destroyed
- In 1999 Albanians only required the signature of a neighbour to prove the property belonged to them/Serbs and other non-Albanians were never afforded this option.
- No recourse to justice
- This project the only one of its kind that has sought to help the dispossessed
- "States cannot arbitrarily apply cut-off dates for outstanding restitution claims. Importantly, restitution rights and related claims to homes, lands and properties do not lapse if and when unreasonable, disproportionate or unfair date restrictions are imposed upon the restitution process." Food and Agriculture Organisation "Handbook on Housing and Property Restitution for Refugees and Displaced Persons", 2007, p27

Findings and conclusions:

- The only Free Legal Aid project available to IDPs is that provided by this project.
- The solution of voluntary return is not by itself a complete solution to the problem of displacement. Populations returning to their countries or communities need shelter, jobs, education, and security, among other things. Without minimal protections and resources, return may not be sustainable. To these barriers associated with return, many in the international community consider restoring property rights to a pre-war home as at least a partial solution. The idea is that displaced people will be more likely to return if they regain their former homes and land through a property restitution programme. Illegal activities like fraudulent property transactions not only serve to defraud property owners but also diminish the possibilities of proper restitution and/or return of the displaced to Kosovo.
- In none of the UN peace operations that have operated since 1990.... was an integral approach to HLP rights taken which was sufficiently responsive, remedial or environment-building in terms of the creation of conditions leading to the society-wide enjoyment of these rights for everyone.
- The cadastral records in use as of 1999 have been superseded by new cadastral records now in use in Kosovo a situation complicated by the fact that not all of the records were safely relocated when the 1999 Kumanovo agreement came into effect. It is no coincidence that many of the fraudulent property cases originate in regions where the cadastral record from pre-1999 is incomplete.



- Generally, fraudulent transactions in which residential, agricultural and commercial properties belonging to IDPs have been sold involve fabricated powers of attorney signed to a third party to sell the property, contracts of sale fraudulently drafted and fake identification cards used during the signing of contracts.
- Thus, although both the Serbian national legal framework and that in existence today in Kosovo contain guarantees of the right to property, including the right to be compensated for unlawful damages or destruction of one's property, in practice the access of IDPs to resolution of their property cases remains problematic to say the least and the ability or willingness of authorities in Kosovo to enforce judgements ranges from poor to non-existent.
- According to the Final Report³⁹ of the previous Free Legal Aid project fraudulent transactions have continued to feature prominently amongst the cases that the Project has been covering. To the Project lawyers, it became clear that this issue is the work of organised groups interested in acquiring land from IDPs in an illegal manner.
- The previous Project identified two main groups that have been carrying out these fraudulent transactions. A first group is located in Prizren, a second group in Pec, Djakovica and Decani.
- The OSCE 2009 report⁴⁰ noted that bearing in mind that the cases filed with the KPA might unearth evidence of similar alleged criminal activity (that is similar to residential property cases) the OSCE was concerned that the number of alleged fraud related to real estate other than residential property could be significantly greater. However, another problem as the report pointed out is the need for invalidation of the fraudulent transactions in court and cadastral records. This was not in the mandate of HPD. Resolving cadastral irregularities remains crucial to supporting justice and upholding the rights of property owners particularly those that have been displaced for many years.
- On-going prosecutions against those allegedly behind fraudulent property transactions are a welcome sign that the authorities in Kosovo with the support of the international community are carrying out their responsibilities as regards upholding the rights of wronged property owners. However, the number of prosecutions is minimal compared to the scale of the problem of fraudulent property transactions.
- The report by the Special rapporteur Chaloka Beyani on the human rights of IDPs - Follow-up mission to Serbia, including Kosovo presented to the 26th Session of the UN General Assembly June 2014 noted that:

³⁹ Page 25; Final report Support for implementation of strategies for IDPs, refugees and returnees – legal aid; EuropeAid/131328/C/SER/RS June 2014;

⁴⁰ "Fraudulent Property Transactions in the Peje/Pec Region" August 2009,



- *Some of the main challenges are the caseload of unresolved compensation claims (numbering around 22,000), problems with evictions and re-evictions, the lack of an effective response to fraudulent transactions⁴¹, illegal occupation of agricultural land and other property, and a lack of effective protection for empty reconstructed property.*
- In addition, it should be stated that where freedom of movement is limited or non-existent or the lack of physical security is an unresolved issue then property restitution remains difficult if not impossible to implement.
- It is clear from research carried out for this report that many feel that an atmosphere of impunity has existed in Kosovo since June 1999.
- The general opinion among those interviewed in Kosovo during the research for this report was that no one has been providing international oversight probably since about 2010, that is, two years after the Unilateral Declaration of Independence (UDI) was declared in Pristina.

Recommendations:

“Land, housing and property rights play an important role in the search for durable solutions for IDPs regardless of whether they opt to return or to integrate in the place of their displacement. IDPs have right to have restored to them any housing land and/or property (including commercial and agricultural) of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land or property that is impossible to restore as determined by an independent, impartial tribunal. Obstacles faced by IDPs in documenting rights of use and ownership in Kosovo, prevent the effective realisation of this right.”

UNHCR and PRAXIS March 2007

It is worth considering what the Food and Agriculture Organisation (FAO) “Handbook on Housing and Property Restitution for Refugees and Displaced Persons”, 2007, p27 has to say on: “How long do refugees and displaced persons retain restitution rights?”

This is one of the most frequently asked questions concerning the restitution issue. It is based on the fact that some refugee and displaced populations have been physically displaced from their original homes for many years, and in some cases, decades. Though no precise answer can

⁴¹ Underlining by consultant



be given to this question in terms of a universally valid number of years that restitution claims remain valid, several points can be made. Firstly, Principle 2.2 is clear in asserting that housing and property restitution rights are not prejudiced by the non-return of those possessing these rights. As such, practitioners must distinguish between remedies and durable solutions; restitution rights are not affected by the voluntary choice of resettlement or local integration, as opposed to return and do not lapse purely on the basis of a refugee or IDP not being able to physically exercise these rights. Secondly, restitution experiences around the world reveal a very wide range of cut-off dates for establishing the basis of restitution claims. In South Africa, restitution claims could be submitted for any discriminatory land dispossession carried out from 1913 to the end of apartheid in the early 1990s. A variety of UN resolutions dating back to 1948 confer housing and property restitution rights on displaced Palestinian refugees. Many of those who lost properties in Eastern Europe from 1945 onwards were accorded restitution rights following the collapse of the Communist governments in the region in the late 1980s and early 1990s. By contrast, restitution claims to recover original homes and lands following the 1994 genocide in Rwanda were only deemed valid if those making the claims had not been displaced for longer than ten years. Similarly, the Czech Republic restricted restitution claims to acts of expropriation occurring after 1948, which had the net result of excluding large numbers of those displaced immediately following the end of World War II from securing restitution rights. While thirdly, States cannot arbitrarily apply cut-off dates for outstanding restitution claims. Importantly, restitution rights and related claims to homes, lands and properties do not lapse if and when unreasonable, disproportionate or unfair date restrictions are imposed upon the restitution process.”

- The Legal Aid Project is the only project currently operating in KiM that can assist clients who have lost property through fraudulent transactions, criminal damage or illegal occupation
- There are still cases to be brought
- Address the inhabitants remaining in CCs
- The project needs greater visibility particularly in KiM
- The project should continue to cooperate with international organisations and to lobby for international monitoring of court cases in KiM both criminal and civil
- Although civil cases do not have a statute of limitations they often involve long delays. The project should lobby the EU and the US office in Pristina to encourage the authorities in Pristina to provide a more just and more transparent legal system
- Fraudulent transactions have been on-going since June 1999 but victims have little recourse to justice. The project should lobby international authorities to uphold the rights of the victims and insist that authorities in Pristina uphold the ECHR and the Guiding principles



- The Serbian Government through the Office for KiM should continue to lobby on IDPs' behalf especially as regards return and restitution
- Develop a Human Rights approach to the restitution of property
- No more ad hoc/knee jerk solutions to return and property restitution
- In future quick return should be the preferred option not unfair selection of return sites/Return to place of origin should be effective and fair and not just a paper exercise or a smokescreen
- International oversight of courts is vital
- There should be a dedicated media campaign to raise awareness among IDPs of the project to ensure as far as possible that victims of dispossession through fraudulent transactions or other means receive assistance to pursue justice and have their Human Rights upheld
- Compensation for destroyed property should be raised at every level possible by the project and by the Office for KiM
- A transparent and accountable restitution mechanism should be established along the lines of PLIP as implemented in BiH to ensure access to rights for all