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Thematic Report „Destroyed and Damaged Property of Internally Displaced People from Kosovo and Metohija“

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This report was developed by Branislav Ristić, senior expert for social and legal matters. The content of this report is the reponisbility of the author and it cannot in any way reflect the official opinion of the European Union and the Project's beneficiary.

The project "Protection and Promotion of Property Rights of Internally Displaced People, Refugees and Returnees Upon Readmission Agreements" started in August 2016 and it will last two years. The beneficiary of this project is the Office for Kosovo and Metohija. The main activities of the project are providing free legal aid and assisting internally displaces people, including court representation and other institutions, as well as providing precise and timely information needed for exercising rights of internally displaced people, refugees and returnees upon readmission agreements in Serbia.

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Introduction

This report is one of the activities carried out within the project "Protection and Promotion of Property rights of Internally Displaced Persons, Refugees and Returnees Upon the Readmission Agreements" financed from EU funds and implemented by a consortium led by the European Consulting Group, in cooperation with the Office for Kosovo and Metohija of the Government of the Republic of Serbia. The particularity of this project consists in the fact that it is the first one implemented according to the decentralized management system, which means that integration reached a level where the complete project management was lowered to local level.

The subject of this report is the destroyed and damaged property of IDPs and their prospects of solving the problem, i.e. the entire report is focused on that subject. The subject is very extensive and complex because property rights are complex by themselves. The very definition of property according to the European Convention and additional protocols, as well as to the judgments based thereon, impose a very difficult task. The concept of property in the European convention practice is not limited to immovable assets, but it also includes intangible assets, such as interest, which can be treated as a property right (tangible and intangible). The practice of the European Court for Human Rights (hereinafter ESLJP) recognizes not only the immovable assets, but also the demands in interests. Movable and immovable property, tangible and intangible interests such as: stocks, patents, debts and claims are protected by the Article 1 of the Protocol 1.

Working on this report a particular challenge was dealing with the erratic data and statistics, as well as with the overlap of institutional responsibilities and the legal framework in force. It is very difficult to observe chronologically the problem, because many events occurred simultaneously. The destruction and damage of assets of non-Albanian communities is a continuous process and it is difficult to determine its actual situation. The author of this report, together with his colleagues tried to present, inasmuch as possible, the situation regarding the destruction and damage of IDP property, as well as the legislative and institutional framework and the reaction to that issue

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Property consists of a set of rights and obligations that belong to the legal subject, i.e. any natural or legal person. Simply put, property rights are only those civil subjective rights that can be expressed monetarily. Any lawyer that goes back to the beginning of his studies, will certainly recall that test question regarding the source of obligations (liabilities), which are: 1) a contract 2) the infliction of damages, 3. illicit enrichment 4) uninvited performance of other people's affairs and 5) a unilateral declaration of intent. Thus, obligations appeared and the list is too long. The position of the damaged parties is not very bright and it is necessary to make a huge effort to solve the problem, in

accordance to law and justice. Post-conflict and ethnically divided societies require a specific approach and fair solutions.

Different actors are involved in the right restitution process. However, throughout their numerous activities, they remained ambiguous in the solution of the problem. The United Nations (hereinafter: UN), the European Union (hereinafter: EU), the Organization for Security and Cooperation in Europe (hereinafter: OSCE) and the Provisional Institutions of Self-Government in Kosovo (PISG) are involved in this process, together with different countries at bilateral level, through various projects, international and local NGOs and many other institutions. To this we should add the challenges faced by post-conflict and ethnically divided societies in transition, the continuous intensity of the conflict, the real and unreal perception of security, the victims and their families, the historical heritage, the cultural and spiritual identity, returnees etc.

1. Basic information

1.1 The conflict in the former Yugoslavia

Twenty-six years after the first conflict in the former Yugoslavia, many essential and vital problems faced by forced migrants remain unsolved. During the break-up of Yugoslavia, a large number of precedents appeared in the legal system, both internationally and in the newly formed entities. One of the most special moments, from a theoretical and practical point of view, is the transformation of the status of IDPs throughout the displacement period, up to the status of foreigners, refugees, asylum seekers, persons with subsidiary or temporary protection, dual citizens or citizens of a completely new states.

During the war conflicts caused by the disintegration of the former Yugoslavia, more than 4 million people fled their homes. Out of this number more than 1,500,000 sought refuge within the borders of their country in internal displacement. After the end of the conflicts in Bosnia and Herzegovina, Croatia, Kosovo and Macedonia, the region was left with around 600,000 internally displaced persons (IDP), who had limited possibilities of returning to the place where they were displaced from or of integrating in the environment where they took shelter. Prior to the conflict in the Middle East, the Republic of Serbia was one of six countries with protracted displacement, together with Burundi, Colombia, Georgia, Sudan and Uganda and the country with the largest number of refugees and displaces people in Europe. The number of refugees in Serbia is 29,457 persons (20,334 from the Republic of Croatia and 9,080 from Bosnia and Herzegovina). Around 69,500 persons returned from Serbia to the Republic of Croatia and about 79,000 returned to Bosnia and Herzegovina and other republics of the former Yugoslavia. Around 46,000 persons left to third countries and it is estimated that approximately 40,000 persons died. [1]

[1] http://www.kirs.gov.rs/articles/onama.php?lang=SER

Readmission is a serious challenge for the Government of the Republic of Serbia (GRS) and the Commiserate for Refugees and Migrations (hereinafter KIRS) [2]. According to the readmission agreement, the Republic of Serbia is obliged to ensure their full integration and inclusion in society. According to estimates of the Council of Europe there are between 50,000 and 100,000 potential returnees from Western European countries. The strategy for the reintegration of returnees under the readmission agreement[3] provides that there are up to 100,000 returnees, mostly Roma from Germany.

Besides that, the territory of the Republic of Serbia has been transited by over 1,000,000 persons as part of a refugee wave from the Middle East, while there are currently more than 8,000 persons in reception centers.

1.2 Displacement - The case of Kosovo and Metohija

After the arrival of peacekeeping forces in June 1999, over 250,000 persons were expelled from their homes in Kosovo and Metohija. Displacement took place mainly to central Serbia and Montenegro, while a small number of displaced persons found shelter in the former Yugoslav Republic of Macedonia and Bosnia and Herzegovina, as well as in countries of Western Europe and America. Except for the municipalities of Leposavić, Zvečan and Zubin Potok, 312 settlements[4] were ethnically cleansed completely, out of the 437 settlements, where Serbs used to live. In urban areas south of the Ibar river, there are almost no Serbs or they were reduced to a few dozens.

Roma, Ashkali and Egyptians, a minority population collectively identified as RAE, became victim of violence after the 1999 conflict. According to the European Center for Roma Rights, 4/5 of the 120,000 members of the Roma ethnic community were expelled from Kosovo. According to the official census of IDPs conducted by the Commissariat for Refugees of the Republic of Serbia and UNHCR, there are 26,600 registered RAEs, while some reports mention figures of up to 50,000[5]. They were the victims of a retaliation, murders, intimidations and property usurpation and demolition equally as the Serbian and other non-Albanian population

More than 10,000 Goran, out of approximately 18,000, left Kosovo and Metohija upon the conflict termination.

[2] According to the Returnee Integration Strategy and on the basis of the Readmission Agreement, the Commissariat for Refugees and Migrations is in charge of coordinating and organizing the primary reception, as well as the cooperation with the receiving communities. It is also responsible for the operative implementation of the planned activities on the field, as well as for working on human trafficking issues and promoting positive discrimination principles, in order to ensure the successful integration of returnees. http://www.kirs.gov.rs/articles/onama.php?lang=SER

[3] http://www.kirs.gov.rs/docs/Strategija_reintegracije_povratnika.pdf

[4] Source: Office for Kosovo and Metohija.

[5] OSNA Report 2003.

The community of ethnic Croats, which had been present in Kosovo and Metohija for hundreds of years, has been almost completely displaced. Out of the approximately 4,500 Croats, who once lived in the villages of Letnica, Vrnavokolo, Vrnez and Šašare, only 47 remain still today, while out of the 5,000 Croats, who once lived in Janjevo, Lipljan municipality, only 300 remain, mainly old people.

In March 2000, the Commissariat for Refugees of the Republic of Serbia, in cooperation with the United Nations High Commissioner for Refugees (UNHCR), organized a census of internally displaced persons and registered 187,129 persons. In the period from 2000 to 2005, over 20,000 people left the area of Kosovo and Metohija, i.e. by the end of 2005, the number of internally displaced persons in the Republic of Serbia, excluding Kosovo and Metohija, totaled 209,021 persons. According to the UNHCR data, 203,140 IDPs are currently residing in the Republic of Serbia[6].

1.3 Return

From 2001 until July 2014, UNCHR reported 31,094 registered cases of IDPs' return to KiM. However, estimates suggest that a maximum of approximately 25% of the returns are successful, which means that the total number of IDPs, who remain in displacement has decreased by just 7000 - 8000 (assuming that the "unsuccessful returnees" go back to the place of displacement in Serbia and do not go anywhere else)[7]. Although there are no official data on the sustainability of returns, well-informed international actors estimate that the total number of returnees who received return assistance and remained in Kosovo and Metohija could be 5,000 or even less.[8] Opposed to that, the migration of Albanians towards urban arias exploded. In less than two years, Pristina, Peć, Gnjilane and Kosovska Mitrovica have doubled or tripled their population.

Similar to the data of damaged property, there is no precise conclusive data on the number of repaired properties. It is important to point out regarding the correlation between the damaged property and return, that it is generally considered that the people whose property was damaged have been compensated. Not entirely, but partially since the humanitarian aid for residential property reconstruction is limited, while furnishing the reconstructed property is considered a compensation for movable assets damage[9].

As for the return itself, even with the improved security measures and more concrete selection of beneficiaries, it faces many obstacles. The authorities were divided between many local and international participants, the process is not time limited the community resistance against the return is still active, the sustainability is weak and there are problems in the process of reintegration. Returnees and potential returnees face the

[6] Source: UNHCR Support for IDPs in Serbia http://www.unhcr.rs/media/docs/Support_for_IDPs_in_Serbia_SER_01-IZMENE--01-11-2016.pdf pg. 13

[7] http://www.unhcr.rs/media/docs/Support_for_IDPs_in_Serbia_SER-02-IZMENE-01-11-2016.pdf, pages 26 and 27.

[8] http://www.unhcr.rs/media/docs/Support_for_IDPs_in_Serbia_SER-02-IZMENE-01-11-2016.pdfpage 109

[9] One of the rare reports on the reconstruction activities is submitted to the European Parliament and the European Council by the European Agency for Reconstructions in 2011. According to this report, 17,100 houses have been reconstructed in Kosovo and Metohija, in total value of 127,7 million of Euros and 95% of beneficiaries are Albanians.

occupied lands, given that the return is mainly rural, and they cannot benefit from their rights to land.

1.4 Socio-economic position of IDPs

Currently IDPs are one of the most vulnerable groups in Serbia. It is estimated that there are 22,886 IDP households in Serbia, i.e. 97,286 persons in social need. Out of the total number of collective centers in the territory of Serbia, excluding Kosovo and Metohija, there are 13 collective centers with 429 IDPs, while in the territory of Kosovo and Metohija there are 8 collective centers with 307 IDPs and 46 refugees.[10] IDPs are generally poorer than the rest of the population. As far as housing is concerned, a large percentage of IDPs live in rented apartments - about 30% of them, compared to approximately 5.4% among the general population.[11] Paying the rent represents a serious expenditure for these households and that factor places them in a group, which is at a much greater risk of poverty in combination with low incomes. IDPs are generally poorer than locals and/or in need are 45.2%[12]. In spite of the efforts made by the Republic of Serbia and the international community the situation of IDPs remains very difficult.

2 The legislative framework applicable in Kosovo and Metohija

2.1 International protection standards

The necessity of protecting guaranteed and proclaimed human rights and freedoms requires that all legislations should indiscriminately codify a legal framework, which allows the effective protection and continuous improvement of the universal rights and freedoms prescribed by international standards. This primarily involves the construction and strengthening of public awareness regarding the necessity to respect and constantly affirm the rights and freedoms prescribed by means of documents. The Universal Declaration of Human Rights is directly applicable, as well as the following documents: (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (3) International Covenant on Civil and Political Rights and its Protocols; (4) Framework Convention of the Council of Europe on the Protection of National Minorities; (5) Convention on the Elimination of All Forms of Racial Discrimination; (6) Convention on the Elimination of All Forms of Discrimination against Women; (7) Convention on the Rights of the Child; (8) Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. They shall be directly applicable and have priority in case of conflict, over the provisions of all laws and other documents issued by public institutions.[13]

[10] http://www.kirs.gov.rs/articles/centri.php?lang=SER
[11] http://www.unhcr.rs/media/docs/Support_for_IDPs_in_Serbia_SER-02-IZMENE-01-11-2016.pdf page 42.
[12] Source: The UNHCR research from 2010
[13] Article 22 of the temporary Constitution of Kosovo* [Direct Application of International Agreements and Instruments]

Besides that, we should also mention those Conventions that are applicable due to their universal nature, especially those related to the situation of IDPs and the protection of their rights. First of all, the Pinheiro principle regarding the restitution of housing and other assets stipulates that refugees and displaced persons "*have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal*".

Besides the Pinheiro principles, the Guiding Principles on Internal Displacement state in principle nº 10 that *"all refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity"*, as well as in principle nº 21, which provides that "*residential property should be protected in all circumstances. Property and possessions that internally displaced people left behind should be protected against destruction and arbitrary and illegal appropriation, occupation or use".*

2.2 Local legislative framework

The entire legal system is characterized by a significant degree of legal uncertainty, overlapping responsibilities, the existence of several legal regulations governing an area, a large number of invalid or anachronistic laws and regulations, as well as vague and unenforceable regulations related to the implementation of the legislative framework. In its evolution, the legal framework incorporated regulations of the Socialist Federal Republic of Yugoslavia, the Republic of Serbia (which are non-discriminatory), the Autonomous Province of Kosovo and Metohija, UNMIK regulations and administrative instructions, laws adopted by the Kosovo Assembly and promulgated by the Special Representative of the Secretary General, as well as laws enacted after the unilateral declaration of independence. A particular problem is the poor quality of the translated laws.

The legislative framework governing property rights are: Constitution[14], Law on Ownership and Other Real Rights (Law nº03/L-154), 03/L-154), Law on the Privatization Agency of Kosovo (Law nº 03/L-034), Law on Construction (Law nº 2004/15), Law on the Cadastre (Law nº 04/L-013), Law on Spatial Planning (Law nº 2003/14), Law on the Kosovo Agency for the Comparison and Verification of Property (05L-010), Inheritance Law (Law nº 2004/26), Law on Obligations (Law nº 04L-077), Civil Procedure Law (03L-006), Law on Extra-Judicial Proceedings (Law nº 03/L-007), Law on Taxes on Immovable Property (Law nº 03/L-204), Law on Copyright and Related Rights Act (Law nº 2004/45), Provisional Criminal Code of Kosovo[15] in connection with the forgery of property documents and fraudulent transactions, Anti-Discrimination Law, laws from the time of the SFRY, Law on Basic Ownership Relations, Law on Expropriation, Law on the registration of real estate in public ownership etc.

[14] Art. 46 establishes that "the right to personal property is guaranteed". Art. 113.7 grants to individuals the right of instituting legal proceedings before the Constitutional Court, in case of violation of the rights guaranteed under Article 46.
[15] Articles 332, 333 and 334.

The "Kosovo National Strategy for Property Rights"[16] was adopted in December 2016. The largest part of this document provides a realistic description of the proportions of ownership problems and proposes solutions thereto. The strategy recognizes the particular situation of IDPs and proposes measures to resolve their problems. On the other hand, the Strategy proposes general solutions that should lead to modifying the set of property laws related to real rights. The modification of all the proposed regulations requires a comprehensive legislative initiative. Certainly, this is an important document that should facilitate the solution of problems. It should be the starting point for improving the legislative and institutional framework in this area.

Contrary to this, it is important to point out the flaws mainly regarding the ascertainment that the Strategy should “map the road” regarding to property damage compensations, so the issue of claims and concrete mechanisms for overcoming the concrete problem remains for the future period. Apart from the mentioned, the Strategy lacks of somewhat critical attitude towards the work of certain institutions, it is in fact an objective ascertainment of some problems, but without concrete solutions for overcoming them, taking occasionally *de facto* state on the field for *de jure* solutions it offers.

3 Destruction of property

3.1 General observations

There is a basic classification of damage compensation to material and non-material damage. The Article 137 of Kosovo Law on Obligatory Relations stipulates that “the damage is a decrease of someone’s property (normal damage) and it prevents its increase (faded benefit), as well as inflicting physical and emotional pain and fear (non-material damage). Normal damage is the damage on the already existing property, while faded benefit is the inability of use and benefit in future and the Article 173 of the mentioned Law predicts to compensation obligation both material damage and faded benefit. Contrary to this, the forms of non-material damage are clearly listed in the Article 183 (numerus clausus): 1. Physical pain; 2. Emotional pain; a) impairment of life activities; b) disfigurement; c) infringement of reputation, honor, freedom and personality rights; d) death of loved ones. The main difference between material and non-material damage is that the goal of the material is the restitution of the assets before the damage and the non-material is to obtain some benefit that will reduce the suffering the damaged party is enduring, i.e. some form of a just satisfaction.

3.2 Non-material damage

Non-material damage includes physical pain, psychic suffering and fear. Anyone that has been injured during an event, in such a way that the consequences of that event manifest themselves in any of the above-mentioned ways, is entitled to compensation for non-material damages, i.e. to a fair compensation. Non-material damage shall be granted for physical pain, fear and mental suffering due to the impairment of general life

[16] http://www.kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_SRB.pdf

activities, resulting disfigurement, infringement of reputation, honor, freedom and personality rights or death of a close person[17].

The last category (emotional pain due to death of a close person) is especially important in the post-conflict context. According to statements of the Government's Committee for missing persons during the conflict in KiM, 5.800 persons are missing, and fate of 1.60 persons is unknown, 540 of them are Serbs or other non-Albanians. Also, The Committee has the information for another 30 people whose missing is related to the conflict and these cases are in the process of verification[18].

The compensation for damages in these cases is considered inadequate. The fact is that UNMIK has mismanaged the investigations[19] related to the kidnapping and killing of Serbian community members and that it failed to take adequate measures to prevent such situations.[20] The responsibility of UNMIK was confirmed in the Report of the

[17] Law No. 04/3-077, the Article 183. 1. For sustained physical pain, emotional pain for impairment of life activities, disfigurement and infringement of reputation, honor, freedom and personality rights or death of a close person as well as suffered fear, the court shall, adjudicate the just financial compensation, provided it concludes the circumstances of the case, and especially the pain and fear intensity and duration justify that, independently from the material damage compensation or its absence. 2. While deciding on the request for compensation of non-material damage, as well as the amount of compensation, the court shall take into account the significance of the damaged goods and the purpose of the compensation, but also that It cannot serve to the purposes not related to its nature and social purpose.

[18] Source: http://www.magacinportal.org/2017/02/01/veljko-odalovic-predsednik-komisije-za-nestala-lica-vlade-rs-o-ekshumacijama-identifikacijama-otetih-nestalih-na-kosovu-metohiji

[19] In essence, the Advisory Committee for Human Rights in Kosovo and Metohija and Amnesty International found that the investigation of ethnically motivated abductions and killings was not thorough and that, in some cases, it was closed "for no apparent reason, or because of political expediency". There was found a series of failures in the investigation of ethnically motivated abductions and murders, including: Failure to quickly gather evidence, incomplete documentation on the gathered evidence, absence of minutes of the statements of complainants or witnesses, mistakes in the management of the investigation files, failure to reassess the investigation and failure to inform the relatives of the victims about the progress of the investigation, the undertaking of investigative actions or the adoption of decisions, i.e. about the results of the investigation etc. The UNMIK Police failed to investigate abductions and murders in a fast, impartial and thorough way. In some cases, investigations were not conducted or even opened. "The apparent lack of any adequate reaction from the UNMIK Police seems to indicate that the perpetrators believe that the authorities were unable or unwilling to investigate these crimes. This attitude of the authorities towards the most serious crimes in any society, especially in post-conflict circumstances, inevitably creates a culture of impunity among criminals, which can only lead to a further deterioration of the situation. The problems that UNMIK encountered at the beginning of its mission ... do not justify such inaction at the beginning or later". In most cases, the KLA is responsible for the abductions of minority community members in Kosovo and Metohija, as it was correctly remarked by the Human Rights Fund. Therefore, it is not surprising that no investigation was conducted and that no one has been punished for the abductions and murders of citizens of Serbian and other minority nationalities. Bojan Đokić, Annals of the Review of the Faculty of Law of Belgrade. Violation of human rights in Kosovo and Metohija (1999-2014): A case. http://ojs.ius.bg.ac.rs/index.php/anali/article/view/78/253

[20] In the Report for 2013, the U.N. Advisory Committee for Human Rights in Kosovo and Metohija recommended that UNMIK should publicly admit its mistakes related to the complaints of the families of kidnapped and murdered people against that institution. EULEX proposed to carry out an investigation and grant compensations to the families for their pain and suffering. http://hrrp.eu/srb/docs/HRRP%20Godisnji%20izvestaj%202013.pdf

Parliamentary Assembly of the Council of Europe of December 17, 2013 and in the reports of Amnesty International.[21]

3.3 Material damage

After the international civilian mission of the United Nations (hereinafter: UNMIK) and the KFOR military mission arrived and established their control in the territory of Kosovo and Metohija in June 1999, we faced numerous cases of destruction, damage and usurpation of movable and immovable property, as well as many situations, when the ownership rights on those assets were challenged. In the period from July 1999 to November 2008, UNMIK was responsible for the protection of human rights, including the investigation and prosecution of serious crimes. In December 2008, the European Union Rule of Law Mission in Kosovo (EULEX) took over the functions of the police, prosecution and judiciary, which included the investigation and prosecution of serious crimes. EULEX Kosovo helps judicial and law enforcement organs in their improvement in terms of sustainability and responsibility, as well as in further development and strengthening of the independent, multiethnic judicial system, police and customs, making sure these institutions does not undergo political influence and respect multiethnic and recognizes standards and the best European practices. Through its executive function, the mission supports solving the problems of Constitutional and Civil Law, as well as the criminal prosecution in the selected criminal cases. Only in extraordinary circumstances the case can be assigned to a EULEX prosecutor or the panel consisting mainly of EULEX judges. EULEX judges and prosecutors are a part of Kosovo institutions and are working in accordance with Kosovo laws[22].

The destruction of buildings and their transformation into housing facilities, as well as the destruction of agricultural land, the usurpation of land and its exploitation, the construction of illegal buildings and the destruction of movable assets and their value still represent an unknown variable. A large number of properties have been exploited over a longer period of time, so it is difficult to quantify the extent of the damage. The number of destroyed, damaged and usurped buildings has been contentious from the very beginning and there are neither available reports nor exact data on this topic. According to UNHCR data from the registration campaign of IDPs in Serbia in 2000, internally displaced persons reported 27,418 destroyed and damaged houses, out of which 21,122 completely destroyed, and 5,993 damaged and destroyed apartments, out of which 935 completely destroyed, in total: 33,411 housing units[23]. The property of all non-Albanian communities was destroyed[24]. The Forced Migration journal[25] argues that during the

[21] The legacy of UNMIK in Kosovo: The failure to deliver justice and reparation to the relatives of the abucted, London 2013, 1-5; "Amnesty International: https://www.amnesty.ch/de/laender/europa-zentralasien/kosovo/dok/2013/unmik-verantwortung/bericht-unmiks-legacy-the-failure-to-deliver-justice-and-reparation-to-the-relatives-of-the-abducted.- August-2013.-38-pages

[22] http://www.eulex-kosovo.eu/?page=3,16

[23] Source: Office for Kosovo and Metohija
http://www.kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_SRB.pdf

[24] Before the conflict, there were 7,000 - 8,000 RAE (Roma, Ashkali and Egyptians) living at the Roma Mahala quarter in Kosovska Mitrovica. After the arson of the Mahala quarter in 1999, the RAE were expelled from the southern part of Mitrovica and since then they have lived in refugee centers on the northern part of the city. According to DRC, there were over 650 buildings in the territory of the Mahala quarter. Out of 13,5 hectares in the Roma Mahala quarter, 4,1 hectares were privately owned and divided into 355 parcels,

Kosovo conflict, in the period 1998 - 1999, there were destroyed or damaged almost 50% of the living space, without specifying the ethnic structure of the owners or the source of these data. Also privately owned commercial buildings were damaged and the proportions of these damages have not been established.

After 1999, a new massive wave of physical destruction against Serbian communities took place in the period March 17-19, 2004, when 930 housing units were destroyed. During the two-day violence in March 2004, 400 incidents took places and 629 fires were set. Approximately 4,000 Serbs were expelled from their homes, six towns and nine villages were ethnically cleansed and 935 Serbian houses were demolished, as well as 10 public buildings, including schools, health centers and post offices. Spiritual heritage was specifically targeted and, for that reason, there were demolished, burned or severely damaged 34 religious buildings, out of which 18 were cultural monuments. Since the conflict started, 155 orthodox churches and monasteries have been destroyed, while a large number of icons and religious objects disappeared or were destroyed.

One of the massive attacks took place in 2009 on a Roma returnee settlement in Gnjilan. Before 1999, 2,600 Roma lived in the Mahala quarter. Based on the data of the

Attacks on minority communities are a continuing phenomenon. According to the Office for Kosovo and Metohija, from 1999 to date around 8,000 ethnically motivated incidents in various forms have happened in KiM.

3.4 Material damage caused by the activities of the international missions

From the moment that KFOR arrived to Kosovo and Metohija (June 12, 1999), the national contingents of KFOR, under unified command and control, occupied property which belonged, among others, to people forced to leave due to the armed conflict or its consequences.

The primary problem in the realization of the rights of vulnerable people was the complete legal immunity of KFOR. According to the text of the Military Technical Agreement and its annexes, KFOR "*acts without any interference in the territory of Kosovo and Metohija and it has the authority to take all necessary measures to establish and maintain a safe environment for all the citizens of Kosovo and carry out otherwise its mission*"[26]. Moreover, KFOR (or anyone within KFOR) is not obliged to pay compensations for damages to public or private property resulting from the execution of

where there were 368 buildings, while 9.4 hectares, together with 280 buildings-premises, were publicly owned and transferred to the Municipality.
. http://www.drc-kosovo.org/history_srpski.html)

[25] Forced migration review Issue 7. April 2000. https://books.google.com/books?id=HyfqzaFBMLoC&pg=PA543&lpg=PA543&dq=forced+migration+review+Issue+7.+april+2000.&source=bl&ots=Y3v0wse30g&sig=OIUIFYs2Z9Ib3IRxn2H2q-c0v5E&hl=sr&sa=X&ved=0ahUKEwjPuOTEqYnUAhXmQZoKHbspA_YQ6AEIPjAD#v=onepage&q=forced%20migration%20review%20Issue%207.%20april%202000.&f=false page 14.

[26] Article 1, paragraph 2 and Annex B of the Military Technical Agreement.

activities related to the implementation of the Agreement[27]. Also, according to UNMIK Regulation nº 2000/47, "*KFOR, its property and personnel are immune from any legal process*"[28]. Chapter 7 of Regulation nº 2000/47 provides, as an exception, that the Claims Commission of KFOR may take into consideration the claims of interested parties related to eventual damages, which can be directly attributed to KFOR and are not derived from the so-called "operational necessity"[29]. The Regulation (or any other legal document) does not clarify what it means by "operational necessity"[30]. Despite of the fact that KFOR compensated for damages in certain cases, the entire mechanism was very complex[31].

3.5 Material damage caused caused by the privatization process

Privatization in Kosovo is characterized by a complex legal framework, as well as by the difficult access to the institutions in charge of protecting the property rights of internally displaced persons. In general, privatization in Kosovo and Metohija is burdened by transformation procedures, ownership confirmation and *"decisions",* which is reflected by the overlapping jurisdictions of international missions and local institutions, the participation of employees and former employees and their forced massive displacement, the cancellation of transformations carried out since the 90' and the issue of the legality of the whole process from the perspective of workers, their acquired rights and the rights of the Republic of Serbia .

The participation in the process, the preparation of the list of employees entitled to be paid from the privatization mass, the delivery of information to displaced persons, the short deadlines, the collection of documents, the consideration of the presented evidence and the issues of indirect discrimination[32] and representation remain major challenges for internally displaced persons.

[27] Item 3 of Annex B of the Military Technical Agreement.
[28] Section 2 of Regulation 2000/47 (August 18, 2000) on the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo.
[29] Section 7 Regulation 2000/47 "Liability to Third Parties".
[30] The very mechanism for processing damage claims, foreshadowed by the Regulation, was formally established on March 2003 by means of Standard Operating Procedure nº 3023 for Claims in Kosovo against KFOR personnel (SOP 3023). According to the aforementioned Section of SOP 6, each country that participates in KFOR is responsible for reviewing the applications related to their own activity, in accordance with their own rules, regulations and procedures. However, this mechanism for the settlement of claims is completely unbinding, i.e. any adopted decision has rather internal character for a specific national contingent. That means that the SOP is used just to "encourage" the participating countries to process the claim in accordance with the "advisory steps" proclaimed in the SOP and its annexes[30]. This lack of effective (and any other) civil control over such an important element of the military and security authorities in Kosovo deprives vulnerable people of any guarantee of legal protection against the violation of their ownership rights, first of all, in terms of the impossibility of ensuring restitution or reparation for the concerned property (and, consequently in terms of the impossibility of returning).
[31] Cf. IOM, "The Realization of Ownership rights of Internally Displaced Persons in Proceedings in Connection with KFOR", October 2008. Cf. Report on ESCR Rights
[32] In this regard, the Special Chamber of the Supreme Court has clearly identified the situation of indirect discrimination with regard to internally displaced persons and non-Albanian population after 1999 and it regularly confirms this position, when IDPs claim their rights in privatization processes. At the same time, the legal framework and the administrative KAP practice neither uphold nor apply these findings. That is why, the position and approach to the privatization process remain essentially discriminatory.

The privatization process started with adoption of the UNMIK Regulation 2003/13, when the mass displacement of non-Albanian population had already been done. The Article 10.4 of the mentioned Regulation defines that the employee is entitled to a part of the privatization value (20% for employees and former employees) if he/she was registered as employed in the enterprise in the period of the privatization, meaning in 2003 and spent at least three years working for said enterprise. This regulation directly prevented IDPs to participate in the privatization process on one hand, while on the other enabled new employees to exercises their rights without any obstacles.

It is important to point out that according to the effective regulations, the employees do not have a right to access the "the list of employees" before those lists are published in media, so they are unable to file a complaint to the lists to the Special Council outside of the court process.

The problem also lies in the procedures of reorganization and liquidation of state enterprises. When evaluating plans for reorganization requested by potential buyers, the advantage is given to preserving the employment of current employees and the problem of the mass displacement is not taken into account. The most frequent claims of IDPs in liquidation processes are unpaid salaries, as well as the part of non-propriety claims and the claims considered as property. The claims for unpaid salaries are filed for the period from June 1999 to September 2003. This period is considered as reference because the non-Albanian citizen were forced to leave KiM and the employees could not continue working in the enterprises due to the security reasons.

The existing regulations do not protect owners whose property was nationalized after 1945. The particularly complicated problem is with agricultural combine and cooperative that incorporate big agricultural lands that was nationalized after the World War II from the Serbian owners. What is particularly worrying is that trend to transform the right on leasing the land that lasts 99 years into ownership.

The privatization, generally speaking, did not lead to improving the economic activity and active employment of minorities.

Note: The subject of losing rights regarding to employment will be elaborated in one of the following reports.

3.6 Material damage caused by building on land belonging to others

The area of Kosovo and Metohija abounds in cases of illegal construction, as a result of the absence of the rule of law, the lack of implementation of the law and the unharmonized and bad practices of the municipal authorities.[33] In the absence of a functioning system, such activities gained momentum and modified the aspect of the entire area. A large number of residential and commercial buildings have been built in the entire area, most of them along the main roads, on agricultural land, which lost its essence in that way.[34] After demolishing a previous building, materials are used for the

[33] Ombudsperson Institution in Kosovo, "The Seventh Annual Report for 2006-2007".
[34] Road Pristina - Uroševac.

construction of new ones. In this way, new commercial or residential facilities get a completely different substance by combining things.

During the period of UNMIK administration, it was planned to regulate building issues through UNMIK Regulation nº 2000/53 of September 25, 2000 "On Construction in Kosovo", also known as "Rexhep Luci's Resolution on Construction." According to estimates of the Ombudsman, by July 2005 there were about 45,000[35] illegally built premises. Over 352,836[36] legalization requests were submitted in Kosovo. From the perspective of IDPs, this problem has two levels, namely that the premises were built on their land and that they were built without permit. The anecdote is that, out of this number, no probate proceedings have been conducted in almost 50% of the cases and that the land is still registered on the name of the deceased.[37] From the perspective od an IDP, this problem has two levels- that the object was built on their land and that it was built without permission. Law on Illegally built objects [38] in its current shape only offers the possibility of formalizing the right to occupy and use the object built without permission, but it does not solve the ownership issue of the land, i.e. if the land the object was built on rightfully belongs to a person building the object or not.

The Law on Obligations provides for different decisional variants depending on the constructor's good faith, i.e. whether the constructor was aware that it was building on someone else's property or not, the owner's reaction, i.e. whether the owner "immediately opposed the construction" and the value of the land and/or building.[39] These provisions place internally displaced persons in a particular disadvantageous situation, because most of these people did not have the opportunity to protect their rights since they were displaced. Legal decisions do not favor IDPs because of the presumption that owners must protect/should have protected their rights in court proceedings and oppose the actions. The variant, in which the court rules according to the value of the land and/or building, puts IDPs in an awkward position, due to their financial status and, in many cases, the value of the building in relation to the land, which is several times higher. If we add expiry deadlines, we shall quickly realize that this practice will effectively lead to the legalization of the situation on the ground.

3.7 Fraudulent transactions

There is a long list of people, whose property was stolen through fraudulent transactions, especially in the case of municipalities, where cadastral records were not removed. Various mechanisms are used, including falsified powers of attorney, contracts, possession registration sheets and personal documents.

Note: A special report on this subject is prepared within the project.

35 Cf. the Fifth Annual Report 2004/2005 of the Ombudsperson Institution in Kosovo, July 2005, page 15.
36 Source: Kosovo National Strategy on Property Rights ": page 35
37 USAID Kosovo Property Rights Program. Informality in the Land Sector: The Issue of Delayed Inheritance in Kosovo, April 2016.
38 Law No. 04/L-188
39 The Law on Basic Property Relations contains a number of provisions governing the construction on the land of another person.

3.8 Sale of the property

There are no precise data on the number of sold properties. Most sale contracts were not formalized by means of cadastral document concluded by the participants in the obligation relation. In central Serbia, there are strong prejudices that IDPs from Kosovo sold most of their assets for "huge" amounts of money. We cannot exclude that there were such cases and the fact is that many contracts are authentic. However, facts show that the property was sold under pressure, that there were numerous abuses and that in many cases there are grounds for the application of excessive damage. The principle of freedom of contract was completely disrupted in many cases. A study of UNHCR from 2010 states that nearly 47% of the IDPs owned a house or an apartment in Kosovo and Metohija and that nearly 24% of them had already sold their property after displacement. A small number of IDPs, who were in need, sold their property after displacement (12.7%). In its latest report, UNHCR states that even 30% of IDPs rent housing space, while 5.4% of the native population does that.[40]

Purchase agreements concluded in 1999 include a clause stating that the property was sold voluntarily and without any pressure, but it is a "lawyer's expression" that has no effective value, given that imperative regulations, public order and good customs justify the nullity of the contract. Logic and not a lawyer's mindset may draw the conclusion that such a clause was necessary precisely because of the opposite reasons, because we should obviously question whether this was convenient for both parties, whether it could jeopardize the goal (clause) of the contract and whether the party would ever enter into such a contract, if it had not been forced to do so by the circumstances.

3.9 Expropriation

Expropriation is a legal practice that refers to the transfer of immovable property with fair compensation, if required by public interest as provided for in the law. It is carried out by means of an act issued by the administrative authority, after previously determining that there is general interest and social needs to be met in connection with a legitimate purpose. The very idea of this practice is to allow the *"coercion"* of an owner to sell for a fair compensation, in order to achieve a general benefit. Article 1 of Protocol 1 of the Convention (European Convention on Human Rights and Fundamental Freedoms) regulates the issue of expropriation: "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law*". The Convention provides for the fulfillment of several elements including: general interest, availability and precision of the applicable law, adequate compensation, information etc.

In such a specific context, this practice is one of a series of practices that has been used to abuse the law. Municipalities have often declared immovable property owned by individuals as abandoned property, so that it might be transferred later into public ownership, avoiding thus the payment of a fair compensation, i.e. the compensation for the expropriated property. It is true that there is a possibility that *"the ownership right*

[40] UNHCR 2015 Page 74.

ceases by abandoning an object", but there is also a requirement that prescribes that the owner should declare that he does not wish to own it any more. The post-conflict context and the lack of access to institutions do not open certainly such a possibility. Forced displacement and the consequent abandonment of a property cannot be considered as the *"undoubted"* expression of the owner's will of not owning any longer the real estate.

In the described manner, there was forcibly seized and demolished a series of houses in historical Serbian areas of Peć (Patriarchate Street), Đakovica (Serbian Street).[41]

4 Institutional protection of residential and commercial property

4.1 Cadastre

Ownership rights on a real estate, on the basis of a legal transaction, are achieved by registering it at a public registry (ownership book) or in any other manner prescribed by law.

Land registries[42] were never established in Kosovo and Metohija, which led to the lack of a registry of ownership rights on land plots. Courts do not keep land registries in the territory of Kosovo and Metohija and therefore cadastre offices and deeds represent the only real estate records. Cadastral records do not include the registration or evidence of ownership rights, but only contain the lists of users of different parcels, the so-called possession registration sheets[43], i.e. they merely show the users (holders) that have been registered. The holder does not have to be the owner of the land at the same time, given that possession registration sheets are not issued in order to determine ownership but possession.

According to the cadaster records of the Republic Geodetic Authority (RGA), out of 1,299 cadaster municipalities, the ownership structure of 2,575,448 parcels is divers. Namely, according to the data in the cadaster records in KiM, 319,256 hectares, meaning 29% of the total land is registered as the ownership or the Republic of Serbia (state ownership), 157,666 hectares, 14%, is registered as social property and the privet property of Serbian and other non-Albanian population is 163,098 hectares, i.e. 15% of the total land, while the Serbian Orthodox Church owns 820 hectares, i.e. 0.001%. 447,859 hectares, i.e. 41% of the total land is the ownership of others. We would like to

[41] Source: The Office for Kosovo and Metohija

[42] According to Yugoslavian legislation, property rights related to land must be registered in the land registry. The Law on Land Registration of 1930 prescribes rules for the registration of property. The Law on Land Registration defines the principle, by which all that is registered in the land registry is considered correct and complete. According to the legality principle, registrations can be modified or amended after receiving the corresponding, legally valid documentation.

[43] Possession registration sheets indicate the name and number of cadastral area, where the possessed parcel is located, the number of ownership registration sheet, information on whether the parcels are located in urban or rural areas, whether they are privately or publicly owned, and whether the holder administrates one or several parcels. Each land plot is determined with more detail: The number of parcel, by which parcels are indicated on the cadastral, the sketch number, the name of the place where the parcel is located, the use of the name ("name of cultivation") of the parcel, the class of land (by which agricultural land is described), the number of hectares and acres (100 square meters) of the parcel and the date when the data on each parcel were updated last time on the possession registration sheet.

mention that land books did not exist in KiM, but only the cadastral records of land which do not include the surface and structure of residential units (houses and apartments).

The displaces Cadaster does not have the authority to change the data in the record related to acquisition or loss of property rights that occurred after 1999. Only a part of the map copies was removed from Kosovo and Metohija and therefore there are no map copies from the municipalities of Peć, Dečani, Klina, Istok, Orahovac, Kaçanik and Dragaš. This is not implemented to date given that Pristina breached the regulations on cadaster by adopting the Law on Kosovo Agency for Comparing and Verification of Property[44]. On the basis of the Brussels agreement, land registry data and maps were transferred, in electronic and digital, and surrendered to Pristina with mediation of the EU. It remains an open question what is the real situation on the ground.

Upon the arrival of UNMIK to KiM, one of the first activities during 2000 was establishing the Kosovo Cadaster Agency[45], in charge of the cadaster [46]and entire administration of register of the rights to immovable property[47] and it now is the authorized institution for cadaster, geodesic and cartography. The agency implements the informational system regarding the cadaster and land, as well as the register the right to immovable property[48].

The UNMIK Regulation No. 2002/05 declared the Law on Right to Immovable Property Register, and additional changes are added to the UNMIK Regulation 2003/13. This Law establishes the register of the right to immovable property, the first "*land book*" in KiM. With this register, the registry of following assets is enabled: right to property land, building, parts of the building- apartments and business premises); mortgage; easement and right to use. The Law on Cadaster No. 2003/25[49] is adopted in order to regulate the area of cadaster. The new Law on Cadaster was adopted in 2011[50], while the draft of the new law is in the process of writing.

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[44] Source: The Office for Kosovo and Metohija

[45] UNMIK Administrative Manual 2000/14

[46] The Kosovo Cadaster Agency is in charge of the Cadaster and authorized to create and manage the entire official record on immovbales in accordance with the dates of list recorded and land cadaster and is authorized to implement every cadaster activity (pursuant to the Law on Cadaster No 2003/25, Article, Paragraph 3.1). With this Law, the cadaster is established as an official registry that lists all the land parcels, buildings, parts of buildings and underground objects and installations in KiM (established in accordance with the Law on Cadaster, No. 2003/25, Article 1, Paragraph 1.1)

[47] Law No. 2002/05 on establishing the right to immovable property declared by the UNMIK regulation 2002/22 (effective as of 20.12.2002., signed 17.10.2002.)

[48] http://mmph-rks.org/sr/Kosovska-Agencija-za-Katastar

[49] The Law on Cadastre No. 2003/25, adopted at the Kosovo Parliament session (effective as of 18.02.2004, adopted on 14.12.2003), declared by UNMIK Regulation No. 2004/4. This Law is replacing the Law on measuring and cadastre of the land (Official Gazette SAP Kosovo, No. 12/80), that gives the Kosovo Cadastre Agency (hereinafter the Agency) is responsible for the cadastre, consolidation and maintenance of all the official records of immovable, established on the basis of measuring and cadastre land, in charge of the general cadastre monitoring and all the bylaws regarding the cadastre service (Article 3, Paragraph 3.1). This Law consolidates the cadastre, that is the official register of cadastral parcels, buildings, parts of building and underground objects (Article 1, Paragraph 1.1)

[50] Law No. 04L-013 http://www.kuvendikosoves.org/common/docs/ligjet/Zakon%20o%20katastru.pdf

4.2 Behavior of courts in ownership disputes

In any system, the judiciary is the backbone of right protection. According to most reports, the judiciary represents one of the weakest links in Kosovo and Metohija, because it is burdened with a large number of cases, lacks the necessary capacity, works slowly etc. According to the OSCE report of January 2015, the number of cases judged in basic courts was 213,327, while cases judged in courts of appeal and the supreme court represent a special challenge[51]. According to the statements of the Council of Prosecutors, current number of cases before courts of all instances is 399,031[52]. The weakness of the system can be seen in the proportion of ownership claims filed by minority communities and their low level of confidence in justice institutions. Numerous ownership cases are characterized by the violation of procedural rights, especially in terms of summoning the parties, administrating and evaluating the evidence, motivating the sentence and appointing a temporary attorney.

After analyzing the lawyers' experience in direct representation within the project, as well as the judicial praxis during the resolution of ownership cases, it is possible to establish the following decisional models: The courts base their decisions on essential execution facts or at least on prevalent execution, i.e. on the fact that the complainant paid the sale price and totally or partially took over possession of the property. Such an approach is retained by the new Kosovo Strategy on Property Rights. Secondly, we should mention the relativization of the compulsory written form of a certified contract. Praxis actually recognizes a large number of cases, in which real estate may be procured on the basis of witness' statements. In addition to that, in order to avoid the condition of a written procurement contract as the basis of a legal transaction, courts often apply adverse possession as procurement method according to law. In this way, an individual can procure ownership rights, by establishing possession, i.e. the object is *de facto* in his possession for a certain period of time according to law[53]. In its report of May 2009 "Litigating Ownership of Immovable Property in Kosovo", OSCE confirmed an almost identical praxis, which has not evidently changed.

4.2.1 Provisional attorney

According to procedural regulations, the provisional attorney is the legal representative that the court assigns to the party during the proceedings, if the legal conditions are

[51] OSCE Community Assessment Report, fourth edition, 2015. The vast majority of non-Albanian and Albanian respondents that participated in the OSCE survey considered that the neglect and delays in the resolution of legal proceedings by the relevant judicial institutions represented one of the main obstacles in the exercise of their rights (87 out of 184 non-Albanian respondents and 843 out of 1116 Albanian respondents).
51 OSCE monitoring apparently indicates that in some cases particularly important for the members of non-Albanian communities things are treated with maximum efficacy and efficiency. page 8.
[52] file:///C:/Users/Ristic/Downloads/VJETORI%20I%20PERGJITHSHEM%202016%20serbishte.pdf
[53] Article 40 Law on Ownership and Other Real Rights. http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=387&Itemid=28&lang=bh

met[54]. Provisional attorneys can be exceptionally appointed by the Court in first degree proceedings if all the possibilities of informing the parties have been exhausted. The provisional attorney institution has been abused in court proceedings and it is one of the models that judicial institutions have used, in order to abuse procedural regulations. A frequent court praxis consists in automatically assigning provisional attorneys, when charges are brought against Kosovo Serbs without known address. A well known case took place in the Prizren area in 2004, when the court appointed three lawyers to represent 24 defendants, who were Kosovo Serbs. The court did not try even once to localize the defendants before appointing the provisional attorneys. Besides that, the court published the relevant notices on the bulletin board of the court, as well as in newspapers in Albanian language[55]. Despite of the fact that the law stipulates that the proceedings can be repeated, that is very rare in practice, because the decision must be taken by the same judge that appointed the provisional attorney. The context of displacement imposes the obligation of using this institution in a limited manner, because it is possible that the property was not sold voluntarily.

4.3 Quasi-judicial defense

Awareness of the proportions of ownership problems determined the international community to revoke the competence of regular courts in cases that referred to tenants' rights. The newly formed judicial system, which involved international and local judges, could not absorb the quantity of potential claims, so it decided to create quasi-judicial instances and, in a later period, a combination of administrative and judicial institutions, in order to process massively the claims. By nature, such a system was unknown to the local tradition.

4.3.1 The Directorate for Housing and Ownership Issues

In order to regulate and protect ownership rights in Kosovo and Metohija, UNMIK adopted Regulation nº 1999/23 of December 15, 1999, by which there were founded the Directorate for Housing and Ownership Issues (further in the text: DHOI) and the Commission for the Solution of Housing and Ownership Claims (further in the text: CSHOC). Regulation nº 2000/60 on the Directorate for Housing and Ownership Issues and the Commission for the Solution of Housing and Ownership Claims were adopted on October 31, 2000, including the operational regulations of the Commission for the Solution of Housing and Ownership Claims. The mandate of DHOI was to ensure the general administration of ownership rights in Kosovo and Metohija until the establishment of independent local institutions, as well as to carry out the inventory of abandoned apartments in private, public and state ownership, to supervise the use and lease of temporarily abandoned properties, to provide UNMIK and other international institutions in Kosovo with guidelines about concrete issues related to ownership rights and, most important for IDPs, to act as the international administrative authority with

[54] A provisional attorney can be appointed for the defendant in the following cases: (1) if the place of residence of the defendant is unknown, (2) if the defendant has no attorney and (3) if the regular procedure for the appointment of a legal representative of the defendant would last too long, which would lead to adverse consequences for one or both parties.
[55] OSCE, "Litigating Ownership of Immovable Property in Kosovo", March 2009, page 21.

exclusive competences to decide on claims for the restitution of usurped housing property and to bring owners back to their properties.

Until 2006, DHOI received 29,155 claims for the restitution of property, submitted in 90% of the cases by Serbs and other non-Albanians. Out of the three types of claim submitted to DHOI[56], the so-called C-claims[57] represented the large majority (27,178 out of a total of 29.155). They were submitted mainly by IDPs residing in Central Serbia. In 10,495 cases it was not possible to restitute the housing property, because it was completely destroyed (mainly houses) or so damaged that it was not possible to dwell any longer in them (apartments), which was confirmed by decision of DHOI. CSHOC held its last session in June 2007, when it brought second instance decisions in all the remaining cases. That definitely ended the role of DHOI/CSHOC as the reviewing mechanism in the field of ownership rights.

Pursuant to regulations, the Agency adopted declaratory decisions on legal possession and it had no competence to grant whatsoever reparation for destroyed property. According to the Regulation, current tenants could extend their stay in the occupied property by submitting a request for humanitarian housing. The process of restituting a property to the legal owner was prolonged by the absence of deadlines for the execution of eviction orders, as well as for the adoption of eviction orders, confirming the court decision of evicting the people who moved into the property. The Regulation did not provide either for a suitable mechanism for the restitution of property based on eviction orders. In many cases, the properties were occupied again after eviction, by breaking the official seal regardless of criminal prosecution.

In 3,498 cases, the illegal occupants were evicted, but the owners were not able to use their property, due to security reasons, so they decided to give it under the administration of DHOI. According to reports, over 15,395 CSHOC decisions were implemented until September 2005, which resulted in 1,220 evictions, while 264 properties were willingly abandoned. Only 1,691 resolved claims (11%) led to the restitution of possession to the owner.

4.3.2 Kosovo Property Agency

In 2006, UNMIK created the Kosovo Property Agency (hereinafter: KPA), a combination of administrative and judicial institution. Besides being mandated to resolve restitution claims related to residential property, it had competences also on agricultural and commercial properties. Unlike HPD, which dealt with exclusively residential property,

[56] DHOI/CSHOC had exclusive jurisdiction to examine **three types of claims:** Claims of persons who lost their property right (right of ownership, possession or occupancy) in the period between March 23, 1989 and March 24, 1999 due to discrimination (the so-called "**A**- category claims "); Claims of persons who voluntarily performed informal transactions between March 23, 1989 and March 24, 1999, which were in contradiction with the regulations of that time in the field of real estate transactions ("**B**- category claims") and Claims of persons who were involuntarily deprived of their right of ownership, possession or occupancy on a residential property after March 24, 1999 due to the armed conflict ("**C**- category claims").

[57] When examining "*the legal framework for the protection of human and minority rights",* UNMIK stated that "***C****- category claims were particularly intended to correct the consequences of interfering in the property rights of refugees and internally displaced persons through illegal occupation, and points out to the fact that most C - category claims were submitted by internally displaced persons*". The official UNMIK report was submitted on June 2, 2005 by the Advisory Committee on the Framework Convention for the Protection of National Minorities, page 24.

KPA was competent to decide on land issues, according to the existing regulations, but it could also provide the legal protection of Municipal Courts and the Supreme Court, within the existing mechanisms. According to UNMIK Regulation nº 2006/10, the Kosovo Property Agency was established as an "administrative organization", which was competent, within its mandate, to receive and register complaints, as well as to assist courts in their solution. The responsibilities of the Executive Secretariat of KPA include "the registration of complaints and answers to the complaints, the notification of the parties and the preparation of complaints and answers, so that they might be examined by the Commission" (Section 5.2). In addition to that, Regulation 2006/10 mentions several possibilities of execution, such as: eviction, placing the property under administration, lease agreement, confiscation of illegal structures, auction and compensation. Regulation nº 2006/10 contains the same procedure as Regulation 2000/60, according to which the claimant is entitled to only one eviction by the housing institution. That is why, pursuant to Regulation 2000/60, after carrying out the eviction, the claimant is obliged to enter immediately into possession of the claimed property and agree with DHOI about the time and place for the handover of the keys. If the claimant does not appear at the meeting with DHOI, it shall be deemed that the property was taken back into possession and that the competence for the protection of rights is transferred back to court. The notification, information and summoning system was very complex, starting from the submission of the complaint to the Executive Secretariat, through the adoption of conclusions by the Commission, up to the decision of the competent court and the appeal proceedings before the Supreme Court. A great confusion was created by section 20 of the same Regulation, according to which the proceedings initiated before the Regulation went into force were left in the competence of ordinary courts, on the condition that such proceedings had not been initiated. In contrast, the Law clearly defines that the procedure is initiated by submitting a claim, i.e. part of the procedure remained outside the jurisdiction of the KPA.

The Agency was handed over 42,116 [58]restitution claims. In 97% of the cases, the claimants were Serbs and other non-Albanians and most cases referred to usurped agricultural and urban development land. According to the OSCE report, KPA solved 42,749 cases as of 2 June 2015 and approximately 540 cases are currently being judged by the panel of appeal of the Supreme Court. According to the Kosovo National Strategy on Property Rights, KPA adopted decisions on all pending claims and 29,450 KPA decisions are still waiting for implementation, including decisions on the placement of property under KPA administration and claims closed due to the lack of collaboration, based on the claimant's right to demand restitution or submit his claim again. This number includes 7,660 decisions, which have not been submitted yet to successful claimants and 9,041 decisions, in which the successful claimant was contacted, but he did not request the use of legal remedy. There are 13,009 assets of successful claimants under KPA administration, which have been included in its leasing program[59].

Between 2008 and 2013, KPA forwarded 326 cases to the prosecutor's office, in order to initiate criminal proceedings. About 95% of these cases refer to Serbian community

[58] Source: Nevenka Mrdakovic http://www.rts.rs/page/stories/ci/story/124/drustvo/2554057/izbegli-sa-kim-podneli-40000-zahteva-za-povracaj-imovine.html

[59] "Kosovo National Strategy for Property Rights", pages 9, 28 and 30.

members (only those related to property under their administration)[60]. In the same report it was estimated that it takes an average of two years and three months to process the cases, from the moment that KPA forwards the case to the prosecutor's office until the final judgment of the court[61]. Furthermore, some prosecutors' offices did not process the cases immediately, which led to delayed reactions, and failed to request sentences harsh enough to deter the future illegal re-occupation of properties.

4.3.3 Kosovo Property Comparison and Verification Agency

Another in a series of agencies that will crucially affect the protection of IDPs' rights is the newly established Kosovo Property Comparison and Verification Agency[62]. Also this agency is a combination of administrative and judicial institution. The mandate of the Agency refers to the resolution of claims related to private immovable property, including agricultural property and private commercial property, as well as the comparison and conciliation of differences between the original cadastral documents from Kosovo and Metohija before June 1999 and the existing cadastral documents in Kosovo and Metohija related to private property, private commercial property and the private property of religious communities[63]. In addition to that, the Agency took over cases, which had not been concluded during the mandate of KPA. According to Law, the parties shall have at their disposal, just as in the case of KPA, the legal means necessary for the execution of the decision, which may include, but are not limited to eviction, placement of the assets under administration, lease agreement, confiscation or destruction of illegal structures, auction and request for the registration of real estate rights".[64]

The project shall dedicate a special report to this topic, but it will give priority to emphasizing that the Agency will inherit property management and, in accordance with Article 21, it will apply the lease program "no later than eighteen months from the date of entry into force of this Law. The Agency is required to inform all ownership right holders or possession right holders, who placed their property under the administration of the Agency and under lease, about the deadline for the management of their property by the Agency, as well as about the deadline for the submission of claims regarding the repossession of the property or of requests for closing the case". In this situation, IDPs will have to make decisions regarding the further disposal of their property, on the one hand, which imply a high risk of a new wave of property occupation, on the other hand. That is true, especially if we take into consideration that 13,039 housing units are currently under administration.

The Constitutional Court in its judgment of the so-called "Jovanović Case" concluded that the non-enforcement of a decision by KPA due to the lack of resources was "contrary to the principle of the rule of law and represented a violation of basic human rights guaranteed by the Constitution. There were 33 more cases filed before the Constitutional Court against KPA.[65]

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[60] OSCE. *Review of cases of illegal re-occupation of property in Kosovo,* February 2015, page 3
[61] Ibid page 6.
[62] Law no. 05/L-010. http://www.kpaonline.org/framwworkPDFs/srpski/zakon_br._05_l010__o_kosovskoj_agenciji_za_uporedivanje_i_verifikaciju_imovine.pdf
[63] Ibid Art. 2.
[64] Ibid Art. 18.
[65] Source: "Kosovo National Strategy for Property Rights", page 32.

4.3.4 Advisory Council for Human Rights

Despite of that the fact that this Council belongs to history, it is necessary to explain its role in the process of protecting the property rights of IDPs. The Council was established with the mandate to investigate the complaints of persons or groups claiming to be victims of human rights violations committed by UNMIK after April 23, 2005 or arising from facts that occurred before that date, if such violations took place continuously. The Council was formed by three international lawyers nominated by the President of the European Court of Human Rights and elected by the Special Representative of the Secretary General. The conclusions adopted by the Council could be implemented only with the consent of the Special Representative of the Secretary General, who had the discretionary power to act or not to act according to the recommendation. Until the end of its mandate, the Advisory Council was the only institutional form of international legal monitoring of human rights in accordance with international and European human rights conventions, taking into consideration that the European Court of Human Rights had no competences[66].

The Council was founded in 2006 but it began to work on cases as late as in the middle of 2008. March 31, 2010 was the last day for the submission of complaints to the Advisory Council, after which no further complaints were accepted[67]. The Advisory Council processed 902 cases[68]. UNMIK never took any concrete measure to implement the recommendations of the Commission of the Advisory Council for Human Rights.

4.4 Access to courts for the resolution of lawsuits related to destroyed property

In order to avoid the deadline for the absolute statute of limitations, internally displaced people filed 18,000 lawsuits for damages. Most of the damage was caused after June 12, 1999 and the arrival of international peacekeepers. According to UNMIK and OSCE data, 18,396[69] lawsuits were brought to the judicial authorities before January 2007, mostly in 2004 and 2005. Lawsuits were filed in accordance with the Law on Obligations in force in Kosovo in 2004, which provides, in Article 180[70] that the responsibility for damages caused by the destruction of the property of a natural person as a result of acts of violence and terror shall belong to the socio-political community or public authority,

[66] According to the recommendations of the Parliament of the Council of Europe of January 2005, after the pogrom of March 2004, this institution was originally supposed to be a Special Court for Human Rights in Kosovo and Metohija, with all the legal powers and possibilities to make decisions (a small Strasbourg Court of Justice), but due to the obstructions of PISG and the inertia of UNMIK, the role of this institution was reduced to advising the Special Representative of the Secretary General, who had the right to disregard its decisions.

[67] Administrative Instruction nº 2009/1 of October 17, 2009 for the implementation of UNMIK Regulation nº 2006/12 on the Establishment of the Advisory Council for Human Rights.

[68] Out of 902 cases, 515 were ruled as acceptable, 3 were partially accepted, 16 was taken off the list, in 355 the decision on meritum of dispute was made (essence), in 1 the partial meritum, while 12 cases have been sent to revision, i.e. reopening the dispute. Source: Statistical-summary-eng HRAP

[69] EU Project "Support for the Implementation of the Strategy for Internally Displaced Persons, Refugees and Returnees - Legal Assistance, "On the Lawsuits for the Compensation of Damage Caused to the Property of Natural Persons Immediately After the End of the Conflict in Kosovo * - 1st part", September 2013.

[70] Official Gazette of Yugoslavia nº 29/78, 39/85.

whose institutions were obliged to prevent the acts of violence, damage, destruction and theft of property of the plaintiff. The defendants were UNMIK, KFOR, PISG and the municipalities and, on the basis of the so-called objective liability, the responsibility for the damages belongs to UNMIK, KFOR, the Provisional Institutions of Self-Government and the Local Self-Government, which were responsible for maintaining public order and peace after the withdrawal of Serbian security forces in 1999, in accordance with the UN Security Council Resolution 1244, the Military-Technical Agreement and the Constitutional framework for the Provisional Self-Government. In most cases, the plaintiffs claimed the compensation of damages for their movable property and the complaints contained a request for the exemption from court costs. This process went through different phases, from filing claims to suspension of processing per orders of UNMIK and court epilogue without results.

Given that the judiciary could not absorb such a large number of claims, the Department of Justice began to postpone the cases. First, it sent an order to the presidents of municipal and district courts, on August 26, 2004, so that they would not undertake any judicial activities related to the lawsuits, arguing that the judicial system did not have the capacity to resolve so many disputes and that IDPs could not be granted safe access to the courts[71]. Later on, after more than one year, the UNMIK judiciary sent new instructions to courts, on November 15, 2005, by which "they were instructed to initiate proceedings only in the case of those claims for the compensation of damages, in which natural persons were designated as perpetrators and it was mentioned that the property was destroyed after October 2000"[72]. Finally, on September 28, 2008, UNMIK issued a new instruction that required the initiation of proceedings for the submitted claims, but at the same time, it clearly instructed court presidents, by means of a special paragraph, that UNMIK and KFOR had immunity and could not be held responsible in court proceedings, in accordance with the provisions of UNMIK Regulation 2000/47, which governs the privileges and immunities of the aforementioned institutions[73]. That is the last decision taken by UNMIK in relation to those lawsuits, because EULEX took over the area related to the rule of law[74].

4.4.1 Municipal (Basic) [75]courts

One of the first activities undertaken by courts in relation with the lawsuits began in 2007, but unfortunately it was just an attempt to allow judicial authorities to declare themselves incompetent for the solution of these cases. Thus, in 416 cases, it was decided that the court was not competent to judge the case and that it should be sent to the Kosovo Property Agency (KPA), on the grounds that the property was of residential nature and that the plaintiffs alleged that their property was usurped.[76] The hearings

[71] DOJ/JDD/499/04
[72] DOJ/JDD/04562/05
[73] DOJ/JDD/03661/08
[74] On 9 December 2008, UNMIK's responsibility regarding the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX)full operational control in the area of the rule of law the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.
[75] Note: According to current classification of authorized courts, Basic court presides in the first degree cases
[76] Source: Office for Kosovo and Metohija.

were scheduled more intensively since 2008 and first-instance courts were most active between 2009 and 2011.

During this period, all first-instance civil proceedings, without exception, had a negative outcome for the plaintiff. Regarding the judgments, whenever UNMIK and KFOR were in the role of the defendants, the courts concluded that the two legal entities were "outside the jurisdiction of the courts of Kosovo" and that part of the complaint was declared inadmissible due to the lack of jurisdiction. The courts also ruled that the plaintiffs' claims against the Provisional Institutions of Self-Government (PISG) of Pristina and the municipalities were "unfounded", because these entities could not be sued in relation to the events referred to in the complaints ("the defendant has passive legitimacy") [77]and "the claim is not permitted by law". The characteristics of all written responses to complainants were uniform, except for the name of the plaintiff and the number of case. The judgments were final or had the character of final decision, i.e. the status of *res judicata*.

When it comes to the rulings, the courts rejected the damage claims for four reasons: 1) "the claim is not permitted by law"; 2) the plaintiff failed to pay the court fees for the submission of lawsuits[78]; 3) the plaintiff did not attend the trial[79]; 4) The court has no jurisdiction for the lawsuit. Some courts have applied a completely different approach and resorted to interrupt the proceedings for a period of 180 days.[80]

4.4.2 Courts of Appeals

Most final decisions on the reparation of damages were appealed before second-instance courts and were mainly dismissed.

4.4.3 Supreme Court

The plaintiffs requested the retrial of the case, arguing mainly that a) the Court of Appeals violated the provisions of the Code of Civil Procedure, b) the decision of the court of appeals was based on incomplete and inaccurate factual findings and/or c) the

[77] The party that has an interest to protect a right before court and had the authorization to request such protection has the active legitimacy. Oppose to that, the party that can be suit in order to protect rights or interests is passively legitimised.

[78] Lawsuit dismissed because the plaintiff failed to pay court fees for filing the lawsuit. The plaintiff is required to pay court fees for first-instance proceedings, as well as for appeals filed against the first-instance decision.

[79] Given that the court could not deliver any of its decisions to the plaintiff due to the lack of postal services, the court dismissed the claim for the compensation of damages, because "the plaintiff was not present in the trial".

[80]The Law on the Amendments to the Law on Public Financial Management and Accountability was adopted in 2010. The aforementioned law suspended damage compensation proceedings for a period of 18 months or until the Ministry of Justice would announce in written form that it had taken over the representation on behalf of the Government or another authority. These decisions were based on the Law on Public Financial Management and Accountability of 2008, which required that the Ministry of Justice and Ministry of Economy and Finance should be informed of any action filed against public authorities of Kosovo for the compensation of damages, before proceeding. Cf. articles 67 and 68 of the Law on Public Financial Management and Accountability, nº 03/L-048.

decision was based on an erroneous application of the law in force. In most cases, the Supreme Court rejected the appeals as unfounded.

4.4.4 Constitutional Court

A complainant submitted a request to review the constitutionality of the decision of the Court of Appeals. The complainant claimed that there was a series of violations of the rights guaranteed by the Constitution of Kosovo, such as the right to a fair trial, the right to property, the right to an effective legal remedy, the right to a home, the right to non-discrimination etc. The Constitutional Court rejected the complaint as inadmissible.

5 The Skopje initiative

The Skopje Initiative is a high level forum on permanent solutions for displaced people from KiM that will meet occasionally to discuss improvement of giving guidelines and political support regarding the issues of IDPs. The technical working (hereinafter: TWG) group was formed and the members are representatives of institutions from Belgrade, Pristina, Podgorica and Skopje, as well as the relevant representatives of specialized civil society and international organizations, primarily OSCE and UNMIK. TWG discusses the following areas: property rights, personal documents, safety, dialog and re-integration, data management and solution planning. This forum should lead to a breakthrough regarding the position of IDPs and permanent solutions. This initiative acts on a technical level for now, it has recognized the specific position of IDPs, however concrete and operative improvements in the area it covers still do not exist.

Within the TWG scope of work for solving IDP's property issues, the Action plan predicting the following measures have been adopted:

1. The Action plan for solving issues of IDP's property, sets up the action provision No. 1 of setting up the mechanism for solving the court proceedings related to property of displaced people, and the Item 1 of this provision predicts conducting a feasibility study on the possibilities for establishing a social court mechanism whether by setting up special court chambers or appointing special judges to handle cases of IDPs. Implementation of the study is a responsibility of the Ministry for Return and Community and the Ministry of Justice in cooperation with the Kosovo Court and the Prosecutors Council, as well as the Kosovo Property Agency and they were supposed to implement this activity by March 2016;
2. The Action Provision No.5, setting up the mechanism for compensation of destroyed and damaged property of displaced people and demolition of illegal contractions built by usurpers on the land of displaces people have been established in the Action plan for solving the issues of IDPs. The Item 5.2 of the Provision proscribes developing the feasibly study on possibilities of setting up a special fund starting with 50,000 Euros intended for removing illegal contrustructins from the IDP's property, per decisions of Kosovo Property Agency of courts. The Ministry of Return and Communities is in charge of the implementation of the feasible study, in collaboration with the Ministry of Finance

and Kosovo Property Agency and the activity should have been finalized by June 2016.

3. The Action Provision No.5, setting up the mechanism for compensation of destroyed and damaged property of displaced people and demolition of illegal contractions built by usurpers on the land of displaces people have been established in the Action plan for solving the issues of IDPs. The item 5.5 of this Provision proscribes developing a feasibly study on possibilities for setting up a special fund intended for reconstruction of damaged or destroyed residential objects of IDPs. The Ministry of Return and Communities is in charge of the implementation of this feasible study in collaboration with Ministry of Finance and local institutions, with dead line end of June 2016.
4. The Action Provision No. 6 have been established by the Action Plan- re-consideration of the Draft Law on the Agency for Comparing and Verification in order to include the Ministry of Return and Communities and IDPs' associations and consolidation with the Technical Agreement between Belgrade and Pristina on the cadaster records in the Draft.

The general conclusion is that the adopted provisions have not been implemented to date.

6 Conclusions

Despite of the fact that the conflict in the territory of Kosovo and Metohija ended almost 18 years ago, the protection of property rights in all its forms represents a major challenge. The effective protection of ownership rights is an essential precondition for establishing the rule of law and the proper functioning of the economic system. That is particularly important from the standpoint of IDP for the selection of durable solutions. The economic base of a person, whose property has been destroyed, does not provide opportunities for further improvement and a better existence in the place of displacement. In this vicious circle, by far the biggest losers are the internally displaced persons and their rights, which are not protected, despite of the fact that they should be under the protection of international and domestic law. Of course, it is needless to talk about things that are obvious and, in this case, it is that the institutions of any system have the constitutional and legal obligation to protect the acquired rights of people and ensure their peaceful enjoyment in accordance with the applicable norms of international and domestic law.

The work of quasi-judicial and judicial institutions has not led to the protection of property rights of IDPs. Over 399,031 claims are being processed by courts of different instances in the field of civil rights, which largely include members of non-Albanian communities. DHOI and KPA have not been efficiently implemented and the number of cases that will be submitted to the new Agency remains unknown. The requests for the compensation for damages caused to houses belonging to Serbian and non-Albanian population, which were destroyed after the arrival of UNMIK and KFOR to Kosovo from 1999 until today, have been inadequately processed. Given that UNMIK and KFOR invoke immunity, if the temporary institutions do not exercise power effectively, the people whose property was destroyed are left without legal protection and the possibility of claiming damages.

From a formal standpoint, all the legal remedies have been exhausted, the initiation of procedures is subject to the absolute statute of limitations and the obligation to compensate the damages has become a natural obligation, i.e. it became voluntary in the sense of the obligation to pay. There is no possibility of protection before the European Court of Human Rights and the mechanisms of the UN system are not suitable for the protection of rights.

There is no continuous monitoring and reporting on damaged and destroyed property. Despite of the fact that this is one of the priorities for IDPs, reports on this subject are sporadic, except for OSCE reports. The statistics of institutions and international organizations are not completely accurate and the proportions of the damages remain an open question. Occupied property is subject to significant internal changes, while the continuing exploitation of agricultural and commercial land is not an exception.

The process of return has slowed down significantly and the donor community allocates fewer and fewer funds for these projects. Returnees, who try to regain the residential and commercial property that they previously owned in Kosovo and Metohija or attempt to obtain an adequate replacement therefor, encounter problems to protect their rights. The majority community has accumulated substantial capital and property of IDPs in the most diverse ways. Such an approach, in which owners have no protection, significantly affects the majority community, which, on the one hand, profits from the situation, but on the other hand, remains in a constant state of internal tension, due to the great potential of conflict implied by the protection of its own interests.

The abuse of rights and legal institutions through a formalistic approach is evident. The access to judicial institutions is difficult, because there is an insufficient number of qualified attorneys from minority communities and the translation services are ill-equipped and with limited possibilities of delivery. Legal texts in Serbian language are particularly deficient; legal concepts are completely mixed and the terminology is not coexistent.

Potential solutions are connected at level of the international community and at regional level as well. That is why; the non-functionality of the system at every level blocks the entire process. Comprehensive and sustainable solutions require an enhanced level of trust and active cooperation in the region. Programs that support any form of durable solutions should be developed in different directions and encourage the joint action of partners, together with the resources available to internally displaced persons. It is necessary to affirm the Skopje Initiative to its full extent, because it shall lead to ensuring that all those people, whose property was destroyed or damaged, will be granted a pecuniary compensation, if they cannot obtain a natural one.

Legal assistance intended to obtain and facilitate the delivery of the documents necessary to resolve a case must be very flexible. The specificity of the displacement situation, the degree of economic vulnerability, the lack of documents, the difficult access to institutions, the dualism of the legal system etc. impose a serious approach to the provision of legal aid. Legal aid represents a very important segment in the protection of property rights of IDPs, but unfortunately there are not many organizations, which are actively engaged in this issue. In the future, it will be a great challenge to provide legal assistance to IDPs, because of the differences in legal systems.

Professional legal assistance is necessary in order to protect the complainant's rights, because the nature of the procedure increases the need for legal counseling and representation in any system. Projects financed by the EU and USAID are the main carriers of this activity. Only a few local organizations keep providing legal assistance, by expanding their activities to other vulnerable groups. Balkan center for migration and humanitarian activities is the only organization that offers aid to IDPs continuously. As far as international organizations (UNHCR, IOM, DRC) are concerned, they represent the main component in returnee programs. Also domestic institutions contribute to the protection of rights through their activities and the work of their sectors. In central Serbia, the Law on Legal Aid has not been adopted yet and several bills are still "waiting" in the form of drafts. In Kosovo and Metohija there was adopted the Law on Free Legal Assistance in Civil, Administrative and Criminal Proceedings nº 04/L-017[81], by which there was established the Agency for Legal Aid, which operates in five regional centers and has a total of thirteen offices, located in Pristina, Prizren, Peć, Mitrovica, Gnjilane, Uroševac, Gračanica, Dragaš, Gjakova, northern Mitrovica, Srbica, Klina and Klokot. However, this practice has no effective value, because IDPs do not meet two basic conditions, namely being beneficiaries of social assistance and not disposing of property.

It is necessary to find modalities to submit and deliver claims and complaints, so that IDPs might expect the resolution of property issues by the Comparison and Verification Agency. It is necessary to establish an institutional network of offices that will keep in contact with the relevant organizations and institutions, so that internally displaced persons in the territory of central Serbia might be informed about the mechanisms for the protection of their property rights, facilitating thus the realization of their rights in this area.

7 Annexes

7.1 **Annex 1** Case study: Occupation of military apartments in Prizer

From mid-June 1999 to the end of July 2004, the German contingent of KFOR used over 30 apartments in one residential block (Banijska Street) in Prizren, which they turned into their military base.

[81] http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20free%20legal%20aid.pdf

Since February 2001 the representatives of interested parties (NGO “Praxis”) have been maintaining active communication with the German KFOR regarding the possible use of property and compensation to the owners of those properties, presenting all the documents that prove their ownership.

Over time, the German KFOR has shown opposite attitudes regrading this matter. Despite the complete paperwork presented as proof (at the time evaluated as indisputable) and first indicia of the claims recognition, the German KFOR at one point started additional requesting decisions of KPA that would have been in the favor of the requestor as “proof of ownership”. Due to objective reasons, a few years was needed to finalize the first degree decisions of KPA and receive positive decisions. In the meantime, on grounds of alleged absence of indisputable proof, the state ownership was transferred to individual persons, the German KFOR denied the requests in July 2004.

After the KPA decisions, together with renewed claims, had been submitted to the German KFOR in 2005 and 2006, the German Ministry of defense officially denied the importance of those decisions as the proof of ownership in August 2007. The rightful compensations have been denied in the negative first degree, and, upon requests, second degree decisions of the Ministry of defense (May 2008), made on the largest number of claims submitted and completely unfounded.

In one of these cases the proceeding before the European Court for Human Rights was initiated (Gajice vs Germany)[82]. The proceeding was finalized with the Court decision on unacceptable application on August 28, 2007, referring to the prior decision in cases Bahrami and Bahrami versus France and Samarati versus France, German and Norway from May 2, 2007, when the Court confirmed the activities of KFOR, mainly attributed to the UN, and proclaimed unauthorized (ratione personae) to evaluate activities of Germany implemented under the auspices of UN.

7.2 **Annex 2** Case study: Privatization

PEC BREWARY, PEC

The preliminary list for he workers who are entitled to the 20% share of the profit gained in privatization process was published on August 15, 2007 and it contained 521 workers[83].
The Legal Aid Project filed a complaint to Kosovo Privatization Agency on March 22, 2012 on behalf of 118 workers. The complaints to the preliminary list were denied: in KPA’s opinion, the complainants should have asked the protection from UNMIK and KFOR for arriving and departing their working place. The final KPA list contained 498 workers.

[82] Number of application 31446/02
[83] http://kta-kosovo.org/ktapub/ser/birraria-peje-ser.pdf

Ruling of the Supreme Court's Special Chamber for matters of Kosovo Privatization Agency (SCEL-09-0021), 181 were added to the final list, with usual formulation that those workers were not included in the final list because of discrimination.

However, the KPA complained to the decision of the Supreme Court's Special Chamber on September 20, 2013. The legal arguments of the complaint are the same as the ones denied in the first degree.

THE FACROTY FOR WILDED PIPES, UROSEVAC

The preliminary list of workers entitled to the 20% share of the profit gained in privatization process includes 647 workers. The list was published on December 22, 2010[84].
The final list includes 559 workers. The list was published in December 15, 2011[85].
The decision of the Supreme Court in Kosovo on the issues related to the KPA (SCEL 11-0073) includes 267 workers pursuant to the notorious fact that these workers were not included in the list because of discrimination.

Both lists were published after the Supreme Court's decision that confirmed the discrimination to be the notorious fact.

TOBACCO FACTORY, GNJILANE

The preliminary list of workers entitled to the 20% share of the profit gained in privatization process includes 221 workers. The list was published on September 19, 2007[86].
The final list includes 411 workers. The list is published on June 9, 2011[87]. The decision of the Supreme Court in Kosovo regarding the matters of KPA (SCEL 11-0039) includes 61 workers based on the notorious fact that these workers were not included in the final list because of discrimination.

7.3 **Annex 3** Case study: Building on someone else's land

The client was given the permission to use the building land from the municipality P. in 1993, where he built the house. The client left his house on August 28, 1999 due the well-known events.

The client addressed to the HPD on April 30, 2005. The client's request was accepted by the HPD in December 2005. The opposing party was ordered to move out, but he did

[84] http://www.pak-ks.org/repository/docs/I_20101222012248343.pdf

[85] http://www.pak-ks.org/repository/docs/DP_IMK_Kosovska_metalna_industrija.pdf

[86] http://kta-kosovo.org/ktapub/ser/idgj-ser.pdf

[87] http://www.pak-ks.org/repository/docs/nsh_idgj_kombinati_i_duhanit.pdf

not. The client filed a lawsuit in July 2005 because the usurper built additional floors on her house.

The criminal charges were filed to the Prosecution's office in P., but the report was never processed, so the new one was filed in April 2012 for illegal immovable property occupation. Not even the criminal charges brought in April 2012 were processed and the client haven't had any information on the case to date. The client filed proposal for Interim Measure, the Court never issued a decision on this proposal.

In October 2009 the Court issued a decision to dismiss the lawsuit as impermissible. The complainant filed a complaint to this decision, which was accepted and the case was sent back to court.

The case was taken over by the EULEX judges on May 31, 2011 per request of a local judge and the decision ordering the defendant to return the land to its previous state, precisely to remove the objects built without knowledge and approval of the complainant was issued. The defendant filed a complaint, but it was rejected as unfounded. The defendant then filed request for revision, but the Supreme Court rejected it as unfounded.

In July 2012 the complainant filed a proposal for execution to the court in town P. The first decision was issued on March 14, 2014, ordering the defendant to advance to funds for demolition of the illegally built object. The second decision was issued by the court on September 9, 2014, ordering, without any legal grounds, the complainant to deposit the funds for demolition of the illegally built object by the insolvent. The complainant filed a complaint to this scandalous decision. The complaint was accepted.

In the meantime, the court requested the opinion of the Supreme Court in Kosovo on how to act in cases like this one. The Supreme Court in Kosovo gives the opinion that supposedly the creditor should advance the funds in these cases, and then to charge it to the debtor later on. But despite this, On February 16, 2016 the decision was issued ordering the debtor to advance the funds for demolition. The debtor filed a complaint to this decision, that were extraordinary, but despite it, he filed a proposal for returning to the previous state, which the first instance court adopted, but was rejected by the second instance court.
After the final hearing on February 27, 2017, the presiding judge re-issued the decision obliging the creditor to advance the funds for the demolition of illegal object built by the debtor. The Creditor filed a complaint once again.

The Ombudsperson concluded the human rights were violated pursuant to the Article 13 of EKLJP. The complaint is registered at the Ombudsperson office under the number 303/2015 with date 12/08/2016.

7.4 **Annex 4** Case Study: Compensation for the damaged and destroyed property

The client SDJ is an IDP and the owner of immovable property- apartment in KiM, leased after June 1999 to AZ from KiM, who had done a great damage to the apartment during the leas. He illegally confiscated almost all the movable assets in the apartment

(furniture and gadgets), while other things damaged so much that they were not usable and left unpaid electricity bills in amount of 5,500 Euros. SDJ brought criminal charges against NN person to the Prosecutor's office in KiM in November 2012 for the criminal act of theft, Article 253, Paragraph 1, Item 2 and 3 of the Criminal Law and the criminal act of damaging the movable property, Article 260, Paragraph 2, Item 1 of the Criminal Law, given that the complainant did not have information on who the perpetrator was, i.e. whether the criminal act was done for the duration of the leas or after by the third party. The Prosecution in KiM identified the perpetrator and opened the investigation against him and the complainant joined the criminal investigation by giving her statement and presented the legal property claim against him. However, the Prosecution dismissed the claim upon investigation, due to reasonable doubt that the suspect did the criminal acts in question.

The complainant SDJ started a criminal prosecution on December 28, 2012 by filing a lawsuit delivered to the court in the South of Kosovo and Metohija by registered mail.

On January 1, 2013 a new Law on Criminal Act was adopted in KiM, that does not recognize the subsidiary prosecutor and thus it does not recognize the criminal prosecution takeover when the criminal charges had been dropped, but in its intermediary regulations, the Law defines that it will be implemented only in cases filed after the Law's effective date, i.e. January 1, 2013.

In February 2013 the court rejected the lawsuit of the subsidiary prosecutor, considering it to be filed after January 1, 2013 (it is stipulated in the explanation that the lawsuit was effective from the date it was received by the court, which was after January 1, 2013, disregarding the fact that the it was sent by registered mail on 28th of December 2012, in which case the posting date is considered effective)

The subsidiary prosecutor SDJ filed a complaint against the said decision to the Court of Appeal I Pristina in April 2013, for which the decision has not been issued to date, despite a few urgencies sent.

7.5. **Annex 5** Case study: Advisory council for human rights- Elektroprivreda Srbija

The workers of EPS from KiM submitted just before the dead line expiration date, 30th of March 2010, in total 6,564 requests for protection of their labor rights and other rights from the labor relation recognized by the International Convention on economic and social rights from 1966.

The workers were organized to submit the requests by three syndicates of EPS from KiM (surface mining, Power plants and Transmission systems). The respondent party was UNMIK – Kosovo energy corporation having in mind that KEK, as a social enterprise, founded by UNMIK, took over the property and infrastructure of EPS in KiM.

In their requests, the workers ask to be returned to their work places that they left in 1999 due to the safety reason, payment of their unpaid te year salaries and contributions as the compensation of the damage caused by the violation of their rights.

The Advisory Council for human rights protection issued a decision No. 34/10 on 17th of April 2011 rejecting all 6,564 requests, i.e. rejected the possibility of council discussing the foundation (meritum), referring to the Regulation 2006/12 that defines the authorities of the council only for the cases of human rights violation happened after April 23, 2005, while the workers of Serbian nationality state they were expelled from their work places in June 1999.

The Council did not accept the statements that the workers were unable to return to their work places until the date of request submission, due to constant life jeopardy (50 murders and 27 missing workers of EPS in KiM form June 1999), so the human rights violation is constant. The Council in its explanation is referring to the claim that the expelled workers could have requested from the Kosovo Energy Corporation to return to work after the conflict, which they did not do.