National programme for the Republic of Serbia IPA 2013
Financed by the European Union

Protection and Promotion of Property Rights of Internally Displaced Persons, Refugees, and Returnees upon Readmission Agreements

Contract No. 48-00-133/2014-28

Thematic Report on National Strategy of Kosovo* on Property Rights
-draft-

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LIST OF ABBREVIATIONS:

CVA – Commission for Verification and Adjudication
ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR – European Court of Human Rights
GoK – Government of Kosovo*
HPCC – Housing and Property Claims Commission
HPD – Housing and Property Directorate
HPD – Housing and Property Directorate
IDP – Internally Displaced Person
IPRR – Immovable Property Rights Register (IPRR)
KCA – Kosovo Cadastral Agency
KPA – Kosovo Property Agency
KPCC – Kosovo Property Claims Commission
KPCVA – Kosovo Property Comparison and Verification Agency
KTA – Kosovo Trust Agency
LBOPR – Law on Basis of Ownership and Proprietary Relations
LCT – Law of Contract and Torts
LCP – Law on Contested Procedure
MCO – Municipal Cadastral Office
MESP – Ministry for Environment and Spatial Planning
MoJ – Ministry of Justice
OSCE – Organisation for Security and Cooperation in Europe
PAK – Privatisation Agency of Kosovo
PRP – Property Rights Programme
PVAC – Property Verification and Adjudication Commission
SFRY – Socialist Federal Republic of Yugoslavia
SOE – Socially-Owned Enterprise
Strategy – National Strategy of Kosovo* on Property Rights
UNHCR – United Nations High Commissioner for Refugees
UNMIK – United Nations Interim Administration Mission in Kosovo

1. INTRODUCTION

After the conflict in 1999 and the violence against Serbian people, which followed, together with mass and organised violence starting from 17th March, 2004, a large number of Serbs who have previously lived in Kosovo*, and who were forced to flee from the violence, lost their property, both movable and immovable. Movable property of Kosovo Serbs has mostly been robbed, while the immovable property they possessed has either been destroyed or occupied or, in case of arable land, usurped in order to be used.

This resulted in a great number of claims lodged with courts of Kosovo in relation to the immovable property. According to KPA's (Kosovo Property Agency) data, 42,696 claims have been filed regarding the return of immovable property. The KPA has made a decision on 42,749 cases, while at the moment procedures are still being conducted for approximately 540 of them before the Appeal Chamber of the Supreme Court of Kosovo*[1]. There is no reliable data on the claims regarding the movable property.

The National Strategy of Kosovo* on Property Rights (*Serbian: Nacionalna strategija Kosova o imovinskim pravima*)[2] (the Strategy) was intended to be a document containing a comprehensive overview of the situation in Kosovo and Metohija with respect to immovable property rights. In addition, the Strategy was intended as a document not only containing the greatest and the most frequent problems, but also as a document which was supposed to offer the most practical and optimal solutions that would solve the addressed problems in the best and most efficient manner. In other words, as the Strategy alone specifies: "*The NSPR's purpose is to provide a strategic vision for securing rights.*"[3]

The Strategy starts from the current situation, attempting to gain some insight into main problems in the field of property rights in relation to immovable property.[4] For this purpose, the Strategy identifies several groups of issues and offers solutions to those which are perceived as burning issues in the immovable property sector in Kosovo.

*This designation is without prejudice to positions on status, and is in line with Security Council United Nations Resolution 1244/99 and the International Court of Justice Opinion on independence of Kosovo and Metohija.

[1]OSCE data, by 2nd June, 2015

[2]The original translation of the document, downloaded from the official webpage on 20th October, 2017 http://www.kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_SRB.pdf

[3]National Strategy of Kosovo on Property Rights, Ministry of Justice of Kosovo, December 2016, p. 6

[4]Although it is not emphasised anywhere, the Strategy does not deal with all property rights, but only those related to immovable property

The purpose of this work is to give an overview of the structure, the perception of problems, as well as the solutions offered in this Strategy from the Sebian point of view, as well as other non-Albanian community members and the subcategory of internally displaced persons (IDPs), whose property rights are violated. The study does not focus solely on the problems perceived by the Strategy, but it also addresses problems not dealt with in the Strategy, but that do exist in the everyday field work and have an impact on failure of IDPs to exercise their rights before the authorities of Kosovo.

The study also deals with solutions offered in the Strategy, namely the possibility of their realisation under the specific conditions prevailing in Kosovo and their adequacy and possible adverse effects on Serbian community members and the subcategory of IDPs. As in the previous case, the study does not focus solely on the solutions offered in the Strategy, but it also offers solutions that were not dealt with in the Strategy, but that are, in our opinion, adequate when it comes to Serbian and other non-Albanian community members and the subcategory of IDPs exercising their rights.

2. LEGISLATIVE FRAMEWORK OF KOSOVO AND ITS APPLICATION

Due to peculiarities which took place in Kosovo, the legislative framework is very complex and often too complicated to understand. Frequent changes of the entire legal systems, legislation, and very frequent arbitrary interpretations, together contributed to a framework which is very complicated even before applied to specific problems. However, true problems occur when this complicated framework is applied in even more complicated circumstances. This is when various difficulties arise. These difficulties can be solved on a case-by-case basis and they very often tend to be interpreted in an arbitrary manner by an individual who decides on these rights, often to the detriment of one party in a dispute.

In order to get a complete insight into the issue, as well as the part of the issue that this Strategy did not deal with, along with certain material and procedural errors in the Strategy, which in turn caused errors in identification of problems and possible solutions, we also need to give an overview of history of laws which have been implemented in Kosovo since 1999, i.e. since the end of the conflict in this region.

The Constitution of Kosovo*[5], as a basic act all other acts have to be in accordance with, regulates property protection in a general way in Article 46 by guaranteeing the right to own property and leaving the use of property to be regulated by law "in accordance with the public interest". Apart from these, there are provisions on claims for lawfulness of expropriation, as well as on intellectual property protection. Article 119 of the Constitution defines protection of public and private property. Article 121 regulates types of property and the way property is acquired by foreign citizens. Article 156 prescribes that safe and dignified return of refugees and internally displaced persons shall be promoted and facilitated and that they shall be assisted

[5]Entered into force on 15th June, 2008

in recovering their property and possession. Article 159 regulates that "all interest and property" of socially-owned enterprises shall be owned by Kosovo*.

Therefore, the Constitution, as a basic act, prescribes formal protection of property rights although its use is subject to "public interest", and it promotes, in a general manner, rights of refugees and displaced persons to regain their property and possessions.

In order to get a better insight into what the Strategy promotes, we have to see the development of the relevant legislation of Kosovo apart from the current one.

After the war and the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK), a system where international legal standards had supremacy over the laws that were enforced prior to 1999 was established[6]. The ownership of all property owned by Yugoslavia or Serbia was transferred to UNMIK. The provision of Article 3 of this regulation was also interesting, because, apart from confirmation of applicability of the existing laws, it also contained a part that stated that regulations which conflict with internationally recognised standards shall not be applied. A later UNMIK regulation, which was adopted to have a retroactive effect as of 10th June, 1999, established that UNMIK regulations and legislation which was applicable in Kosovo until 22nd March, 1989[7] shall be applied in Kosovo, where as all legal acts adopted on the basis of the laws which were applicable after 22nd March, 1989, shall be valid as long as they were not adopted in contravention of legislation which was applicable to 22nd March, 1989 and with internationally recognised standards in the field of human rights.

In addition, the Kosovo Trust Agency (KTA) became the owner of the entire property[8]. The KTA had been in charge of the process of privatisation in Kosovo until the Kosovo Privatisation Agency (KAP) was established as a competent authority[9].

When it comes to private property, before Kosovo laws were adopted, the laws of Yugoslavia or Serbia had been implemented. In the beginning, their application also involved confusion about potentially discriminatory acts adopted after 1989, but the attitude which prevailed was that there was no discrimination in the laws, which, apart from very slight modifications, date from the time of Socialist Federal Republic of Yugoslavia (SFRY). These notably involved the Law of Contract and Torts (LOCT)[10], which regulated relations regarding ownership, possession, and usufruct over immovable property, sale of movable property, contracts, orders, rents, and other relations predominantly related to movable possessions, as well to certain economic contracts; and the Law on Basis of Ownership and Proprietary Relations (LBOPR)[11],

[6]UNMIK Regulation No. 1999/1 dated 25th July, 1999, "On the Authority of the Interim Administration in Kosovo*"
[7]UNMIK Regulation No. 1999/24 dated 12th December, 1999
[8]Established by UNMIK Regulation 2002/12 dated 13th June, 2002 "On the Establishment of the Kosovo Trust Agency"
[9]Established by the Law No. 03/L-067, "On the Privatisation Agency of Kosovo", dated 21st May, 2008
[10]Published in "The Official Gazette of SFRY", No. 29/78, dated 30th March, 1978
[11]Published in "The Official Gazette of SFRY", No. 6/80, dated 30th January, 1980

which regulated relations with respect to immovable possessions (notably prescribing relations upon a purchase contract for immovable property and possession of the immovable property, which is important for this study).

In the Provisional Criminal Code of Kosovo*[12] , there was only one article that addressed occupation of immovable property[13], which was punishable by imprisonment of up to one year or by a fine[14]. There is no data on the number of persons who were prosecuted according to the provisions of this Criminal Code.

A new Criminal Code was adopted in 2012[15], where the issues of occupation, destruction or damaging of property and arson were regulated in three articles[16]. It is interesting that, unlike the Provisional Criminal Code, the current Criminal Code makes a clear distinction between a person illegally occupying immovable property for the first time and a person illegally occupying immovable property that is already subject of eviction, i.e. if the person was already convicted of illegal occupation of property. There is no data on the number of persons who were prosecuted in accordance with provisions of this Criminal Code for occupation of property of Serbian and other non-Albanian people living in Kosovo or IDPs or for re-occupation of the said property.

The Law on Contested Procedure (LCP)[17], apart from judicial procedure in this matter, also prescribes the procedure of serving a notice to both complainant and defendant. The service is performed in the form of hand delivery with a possibility of delivery via e-mail. However, it is important to emphasise that delivery via e-mail has to be verified „by a qualified electronic signature“ (*Serbian: kvalifikovana elektronska firma*)[18].

The Law on the Kosovo Property Comparison and Verification Agency[19] (KPCVA) is a result of the Brussels process, i.e. a discussion between the representatives of Serbia and Kosovo*. The law itself is disputable because it was adopted despite fierce opposition of Serbian representatives, who felt that the law did not reflect what had been agreed upon in Brussels between the representatives of Serbia and Kosovo*. The KPCVA has a mandate to compare cadastral documentation dating from before 1999 and the current cadastral documentation in case there are any discrepancies between the two, as well as to reach a final conclusion on

[12]UNMIK Regulation No. 2003/25, dated 6th July, 2003
[13]Article 259 of the Provisional Criminal Code of Kosovo
[14]According to the provisions of Article 90.1.6 of the Provisional Criminal Code of Kosovo, limitation period for prosecution for criminal offences punishable by imprisonment for up to one year or by a fine was two years, which again provided space for the abuse.
[15]Law No. 04/L-082
[16]Articles 332, 333, and 334
[17]Law No. 03/L-006, dated 30th June, 2008
[18]Article 99 of the Law on Contested Procedure of Kosovo. The term “kvalifikovana elektronska firma” actually refers to a qualified electronic signature, which can be seen when comparing the Serbian and English version of the Law.

[19]Law No. 05/L-010 dated 9th June, 2016, promulgated by the Decree of the President of Kosovo as of 28th October, 2016

which register is valid. According to the Law on the KPCVA, an administrative procedure with certain modifications is conducted in the process of verification. The verification commission comprises five members, two of which are appointed by the Assembly of Kosovo* acting on a proposal of the President of the Supreme court of Kosovo*, and three of which are appointed by the Special Representative of the European Union, one of the three members being a member of a non-majority community[20]. However, what seems to be a highly unusual solution, especially when taking into account that it is a matter of formal administrative procedure, as well as that it involves an agency established as a result of the agreement between Serbia and Kosovo*, is a major role of the Secretariat.

The Secretariat has a director and a deputy director elected by the Assembly of Kosovo* on a proposal of the president of the Government of Kosovo*. This means that, by law, there is not even a formal obligation to at least consult members of non-majority community when electing the president and deputy president of the Secretariat. The Secretariat has resources and staff at its disposal and, in reality, conducts all activities of the KPCVA. So, the Secretariat makes comparisons, "makes decisions", gives recommendations to the Commission, writes its opinions, and takes all actions, which formally fall under the jurisdiction of KPCVA, i.e. the Commission. Although it has a final word and makes the decision according to the Law, the Commission alone practically has no capacity to do anything else besides accept the decision already prepared by the Secretariat through its staff, unless there is a member of the Commission familiar with the case, which can even be grounds for the exclusion of this member of the Commission when making a decision on this case.

Apart from this, what is important for the analysis of some of the proposed solutions offered in the Strategy is that the procedure itself is of formal and administrative nature, but it is a procedure established as a lex specialis, procedure governed by a specific law, based on an agreement, which is treated as international agreement in Kosovo. The procedure has a series of peculiarities in comparison to administrative procedures. Furthermore, the Supreme Court of Kosovo is the court of second instance, and this procedure is expressly intended to be conducted according to the rules of a contested procedure. Finally, another matter which is also unclear is the relation between the claims lodged with the ordinary courts of law and those lodged with the KPCVA, since the provision of Article 4.3 is extremely vague. Supremacy of law or proceedings sin case of lis pendens is also not regulated, since it is not clear what will happen with the proceedings that have already been instituted before the competent institutions or will be instituted in the meantime.

Finally, the Law on the KPCVA does not provide for the obligation of the members of the Agency to file a criminal complaint against persons who re-usurp another person's immovable property even after eviction[21]. This means that filing a criminal complaint is the responsibility

[20]Article 8 of the Law on the KPCVA

[21]Articles 19.6 and 19.7 of the Law on the KPCVA. According to the Law, in case of re-usurpation which takes place within 72 hours, the staff of the Agency has the obligation to perform eviction again, and if the property is usurped again, the procedure is performed according to the provisions of the law which regulates enforcement proceedings. Given the enforcement situation in Kosovo*, these two provisions basically entail that, if one usurps a property for the second time after eviction, the party is transferred back to the

of the owner of the property, which adds further complications, especially when the owner is an IDP with no place of residence in Kosovo.

Apart from these, it is also important to mention the Law on Administrative Procedure[22], as well as the Law on Administrative Disputes[23], used by government bodies for various matters concerning immovable property (e.g. in cadastral offices, when a party has an objection on the content of the cadastre or when they request registration or modification of rights in the cadastre). The significance of the Law on Administrative Procedures lies in the fact that it regulates the procedure of notifying parties involved in an administrative procedure and in procedures with the KPCVA, which is especially important when gaining an insight into certain aspects of the Strategy, which will be discussed below.

3. MAIN PROBLEMS IN EXERCISING PROPERTY RIGHTS IN KOSOVO ACCORDING TO THE STRATEGY

At the very beginning, the Strategy lists long-term objectives for Kosovo, namely: strengthening the rule of law, improvement of economic development, and the support of the EU integration of Kosovo*. As the Strategy specifies, after a comprehensive analysis conducted in 2015, the work on five groups of property rights issues began. These issues will be considered here.

Although these groups are ambitiously named "objectives" in the Strategy, it is obvious that these are actually identified problems. Apart from this, it is clear that these problems were identified by the authors of the Strategy as essential for regulation of property rights in Kosovo (although, as we have already stated, the problems and the solutions offered concern exclusively immovable property).

Further text of this study provides a short overview of the identified problems. The next section addresses the offered solutions as seen by the Strategy.

Note: the following text, except for the parts clearly marked as comments of the author of this study, is the summary of Strategy's report or a quotation of Strategy's report, provided here for the purpose of a critical analysis of the Strategy. What is more, all footnotes which are not clearly marked as being the footnotes of the author of this study or the author's comments, represent the footnotes taken from the Strategy.

The Strategy identifies five groups, named "objectives", as main problems in Kosovo:

jurisdiction of ordinary courts of law and executors, which is a guarantee of additional waiting, initiation of a new procedure, and additional expenses for the persons whose property has been usurped, which is in conflict with Article 156 of the Constitution of Kosovo, as well as with the principles of international law, which gives refugees a guarantee of their return to their homes.

[22]Law No. 02/L-28, dated 22nd July, 2005

[23]Law No. 03 L-202, dated 16th September, 2010

1) Securing rights to property by strengthening the legal framework
2) Securing rights to property by addressing informality
3) Enforcing and guaranteeing property rights of displaced persons and non-majority communities
4) Enforcing and guaranteeing property rights of women, and
5) Using secure rights to property to fuel economic growth

3. 1. Securing Rights to Property by Strengthening the Legal Framework

This segment of presenting the problem begins with a statement that legislation defining property rights must be sufficiently accessible, precise and foreseeable in its application in order to avoid any risk of arbitrariness[24], and also that property rights in Kosovo are reasonably well defined[25]. According to the Strategy, the main problems in this area are insufficiently regulated statuses of public and socially-owned property, as well as the insufficiently developed possibility of a foreign citizen acquiring rights to immovable property in Kosovo.

In this respect, the Strategy identifies the following problems:

3.1. 1 – Status of Socially-Owned Property

After World War II, former Yugoslavia nationalised property, which became state property, and was then transformed into socially-owned property, distributing it to socially-owned enterprises (SOEs) and agricultural cooperatives. The UNMIK administration recognised the existence of this property, but did not provide further clarity on its nature, even when it conducted privatisation. Following Kosovo's* declaration of independence and the adoption of the new Constitution, the new Constitution changed the legal nature of socially-owned property by transforming it into state-owned property, which was confirmed by the Constitutional Court of Kosovo*[26].. Thus, socially-owned property formally ceased to exist.

However, after the Constitution was amended in 2012, the provision transforming socially-owned property into state property was deleted. This created controversy and ambiguity over whether socially-owned property was reinstated into the legal system, which is an issue still debated by the legal community of Kosovo*.

3.1. 2 – Urban Land for Construction

The problem that arose in urban environments was that, under the former practice from the period of communism, all land designated for the construction of residential buildings was categorised as "urban land for construction." This meant that the users could obtain ownership

[24]Case law of the European Court of Human Rights; Novik v. Ukraine, No. 48068/06
[25]This opinion remained unsupported by a more detailed explanation. Instead, the footnote gives a list of laws regulating this field – author's comment.
[26]Constitutional Court of Kosovo Judgment in Case No. KI 08/09. 17th December 2010. p. 65

rights in the residential building constructed, but not on the land, for which only a right to use the land was granted. This represents a problem, since the right to use the land exists only as long as the building exists. If the building is destroyed for any reason, the right to use the land expires unless the owner obtains a new permission to build on this land. Furthermore, the problem that arises here is that the building and the land underneath it are not a single property unit and cannot be registered in the cadastre as a single property unit, which limits the property's marketability and reduces the value of the immovable property on the land. Finally, the Strategy sees the legalisation of unpermitted constructions as a much bigger problem, because current legislation prohibits legalisation of unpermitted constructions on state or public land. At the end of this section, the Strategy recommends that ownership of state land should be defined, given the de facto situation.

3.1.3 – Status of 99-year leases

During privatisation of SOEs, it was a common practice for the PAK to separate the land from the rest of the property of an enterprise which is under privatisation and grant a 99-year lease. This creates a great insecurity. It is recommended that legislation enabling transformation of rights to use urban land for construction and rights to 99-year leases into permanent private property rights should be enacted.

3.1.4 – Municipal Property Rights

The Law on Local Self-Government confirms previous UNMIK legislation, whereby municipalities are granted rights to own and manage immovable property, but due to outdated cadastral documents, it is not clear what constitutes as municipal property, which creates confusion. This law also provides municipalities with the possibility to request the PAK to revert a socially-owned property to them. The Strategy presumes that the entire socially-owned property has been transformed into state property. If this is so, then municipalities do not have authorisation, according to the authors of the Strategy, to transfer the property to the municipality.

3.1.5 – Right of Foreigners to Own Property

Article 121.2 of the Constitution of Kosovo* states that foreign natural and legal persons may acquire ownership rights over immovable property in accordance with conditions established by law or international agreement. However, in practice, foreign natural persons and legal entities encounter resistance from Municipal Cadastral Offices (MCOs) when attempting to register property in the cadastre. The problem is that cadastral legislation has not defined registration rights, who can register these rights, and the documents and other requirements for registration. What is more, such practices violate the obligations of Kosovo* under the Stabilisation and Association Agreement, signed between Kosovo* and the European Union.

3.2. SECURING RIGHTS TO PROPERTY BY ADDRESSING INFORMALITY IN THE IMMOVABLE PROPERTY SECTOR

The Strategy defines informality as a situation that occurs when formal rights to property (rights registered in the cadastre) are not transferred from the formal rights holder in accordance with the force of law. Informally transferred rights are exercised de facto by the informal rights holder[27] and generally respected by the community at large, but cannot be registered in the cadastre.

The Strategy identifies the following four scenarios giving rise to informality in Kosovo:

1) Cadastral records are not updated after the rights holder dies because families fail to initiate inheritance proceedings

2) Cultural norms and practices that regard verbal contracts for the purchase of land as sufficient legal security

3) Discriminatory legislation that prohibited the transaction of immovable property between Kosovo's Albanian and Serbian ethnic communities resulted in informal purchase contracts that could not be registered in the cadastre; and

4) Moving cadastral documents to Serbia resulted in lack of updated cadastral data, creating a layer of confusion over which set of documents currently provides evidence of property rights in Kosovo.

In further analysis of this part of the Strategy, it is stated that informality persists because inheritance and court proceedings are expensive, time-consuming, and burdensome, and the fact that cadastral procedures are not affordable, predictable, efficient, and transparent also discourages people from registering their rights "that are defined by law"[28].

3.2.1 – Cadastral Records Are Not Updated after the Death of the Rights Holder because Families Fail to Initiate Inheritance Proceedings

Inheritance claims are initiated by family members of a deceased property rights holder with delay, frequently 20 years or more after the immovable property rights holder's death. Potential heirs have often constructed homes and buildings on the deceased rights holder's land parcel and exercise de facto rights over the property. According to the Strategy, a great problem also lies in the fact that the number of heirs has increased in the meantime, which makes it difficult to conduct inheritance proceedings. Due to all these complications and expensive and

[27]This refers to an acquirer of rights over immovable property, where rights were acquired on whatever basis, but have not been registered in the cadastre – author's comment

[28]This formulation in this context is not clear, because the rights referred to as "informal" rights in the Strategy are certainly not legally confirmed. This is exactly where their "informality" lies. In other words, rights can either be legal, which entails that they are both recognised by competent institutions and registered or "informal", which means that they have not been recognised by competent institutions – author's comment.

complicated procedures, the Strategy sees this problem as something that will persist in the future. This creates a problem because, without a clear legal status, full rights to property cannot be exercised and the properties cannot be put on market.

3.2.2 – Verbal or Informal Contracts, i.e. Transactions without a Written Contract or without Registration in the Cadastre

In the past, as stated in the Strategy, enforcement of verbal contracts for purchase of land and immovable property was an accepted means for transacting property rights due to cultural and traditional norms and the prohibition of property transactions between Serbian and Albanian people in Kosovo. Therefore, these contracts could not be recorded in the cadastral documentation.

As a result, current de facto owners had to initiate a contested claim before courts to obtain a court decision determining that the contract did exist and the rights to property were freely transacted[29]. Great problems occurred when the purchaser had either moved from Kosovo* or could not be located. As a result, both the purchaser and the courts, due to a lack of seller's confirmation which could not be provided, have attempted to rely on " material execution" and "positive statute of limitation" to demonstrate that the contract had been concluded[30]. Since both "doctrines" require the presence of the seller in the proceedings but the seller could not be located for various reasons (they moved abroad or they are IDPs), temporary representatives were appointed. According to the Strategy, this is problematic when the rights of the formal owner of the land are considered, because in a conflict circumstances, there is a possibility that property was not voluntarily sold or that it was usurped upon displacement.

3.2.3 – Moving Cadastral Documents to Serbia

The Law on the KPCVA mandates the KPCVA to carry out two separate functions: to resolve remaining conflict-related property claims previously filed with the KPA mainly by IDPs, and to compare the cadastral records brought back from Serbia against the cadastral records in Kosovo to identify and resolve any discrepancies between the two sets of cadastral documents. These KPCVA's powers create opportunities for implementing administrative procedures to systemically resolve a significant portion of informality in Kosovo that creates a climate of uncertainty and discourages investment.

3.2.4 – Some Administrative Barriers that in Practice Discourage Citizens from Registering Their Rights

1) The Law on Obligatory Relationships[31] Does Not Stipulate the Contract's Form – according to the Strategy, the absence of standard contract forms requires registration clerks

[29]This refers to appeals seeking a declaration – author's comment

[30]"substantial performance" is actually validation of the contract, while "positive prescription" is adverse possession. – author's comment

[31]Law on Obligatory Relationships of Kosovo, Law. No. 04/L-077, adopted on 30th May 2012

to interpret contract content to identify if there is data required for registration, which slows and complicates the registration process.

2) Legislation Governing Registration of Property Does Not List All Documents Creating Rights in Immovable Property – The legislation[32] does not include decisions of the Housing and Property Claims Commission (HPCC), the Kosovo Property Claims Commission (KPCC)[33] recognising rights of IDPs, and notary acts documenting immovable property purchases and providing legal basis for registering rights in the Immovable Property Rights Register (IPRR).

3) Outdated Cadastral Data Does Not Correspond to the Current Reality on the Ground – Court decisions and notary acts acknowledging or confirming rights to immovable property must contain data describing the property that is identical with the data registered in the cadastre[34]. Informality, moving the cadastral documents to Central Serbia, and establishment of a new cadastral system with a new parcel identification system make it difficult to include property in these acts.

4) Inconsistent MCO Practices – Although it is required to perform a cadastral survey to change the data about an existing cadastral unit, some MCOs waive the survey requirement in inheritance cases, while performing a survey if the property right is to be transferred through transaction, but this practice is followed on a case-by-case basis and is not codified in the legislation. Moreover, costs for registering rights vary among municipalities. In addition, municipalities have instituted an additional requirement that any back taxes owed on the property must be paid before the MCO issues the certificates of ownership. Some MCOs have refused to register purchase transactions without a certificate issued by the municipality (for which a fee is charged) confirming that the municipality will not exercise its rights of pre-emption over the property. This was a requirement under the former regime that has not been explicitly repealed by more recent legislation. Apart from this, there is a legal requirement that payments for property sales in excess of €10,000 are made through banks, which is impossible for purchase transactions that occurred prior to this requirement coming into effect in 2005.

5) Transparency of Cadastral Data – Although the cadastral records should be accessible to the public in order to encourage economic activity and dynamic development of land markets, this is not the case. One of the reasons is a lack of clarity in the Law on Personal Data Protection, which is why it needs to be amended.

[32]Law on Amending and Supplementing the Law No. 2002/5 on the Establishment of the Immovable Property Rights Registry, Article 3 of the Law No. 04/L-009, adopted on 21st July 2011

[33]The HPCC-adjudicated claims submitted by IDPs under the Housing and Property Directorate (HPD). The KPA succeeded the HPD. The KPCC was the adjudicatory body for the KPA.

[34]Administrative Instruction on Implementing the Law on Cadastre. Ministry of Environment and Spatial Planning, Article 8, paragraph 2, AI 02/2013, dated 11th February 2013

3.3. GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF DISPLACED PERSONS AND NON-MAJORITY COMMUNITIES

Following the adoption of the "Principles on Housing and Property Restitution for Refugees and Displaced Persons", also known as the "Pinheiro Principles[35]," the concept of return, as understood by the international community, has become "not simply the return to one's country for refugees or one's city or region for displaced persons, but the re-assertion of control over one's original home, land, or property, i.e. the process of housing and property restitution"[36]. The UNHCR calculated that by July 2015 the number of IDPs in Kosovo amounted to 17,086, which includes 9,265 Kosovo Serbs and 7,078 Kosovo Albanians, while the remainder are Roma, Ashkali and Egyptians. A 2011 analysis states that there are still approximately 97,000 Serbian people displaced. A total of 42,749 property claims were filed with the KPA (mostly by IDPs and members of Kosovo's non-majority communities), 29,450 of which are pending implementation.

3.3.1 – Final Resolution of Claims Filed with the KPA

The first phase, according to the authors of the Strategy, has been completed by the Kosovo Property Claims Commission (KPCC) adjudicating on 41,852 out of 42,749 claims, which, according to the authors of the Strategy, shows that the Government of Kosovo* (GoK) is "committed to recognising and respecting the property rights of IDPs". However, current legislation does not mandate registration of KPA decisions in Kosovo's cadastre. Article 20 of the Law on the KPCVA requires registration of the decisions issued by the Property Verification and Adjudication Commission (PVAC) only. However, this does not cover registration of decisions issued by the KPCC (or its predecessor the HPCC) or the Property Claims Commission (PCC) created by the Law on KPCV, as there is no legal basis for this.

According to the Strategy, the second phase should be implemented by the KPCVA's Executive Secretariat. According to the KPA's data, there are currently 29,450 decisions pending enforcement. Legal remedies available to the Executive Secretariat include eviction, placement under KPCVA administration, renting and administrative closure of the claim. Additional remedies available to claimant include requests to confiscate the claimed property, to demolish unlawful constructions, and auction the property. However, Article 21.7 of the Law on the KPCVA states that within 18 months of the law coming into force, the KPCVA shall conclude its mandate to administer and rent properties.[37].

In further text, the Strategy evaluates that the GoK is cognisant of its obligations with respect to reverting to IDPs their property, committed to fulfilling its duties after conclusion of the

[35]"Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons: Final Report" of the Special Rapporteur, Paulo Sergio Pinheiro: E/CN.4/Sub.2/2005/17, 28th June 2005

[36] UNHCR, et al. 2007. Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the 'Pinheiro Principles': Inter-Agency, p. 10

[37]At the moment of writing this study, more than 12 months had already passed since this law entered into force having been signed by the president of Kosovo – author's comment

KPCVA mandate to provide IDPs with "final, fair, and effective remedies that will enable them to re-assert control over their immovable properties".

However, there are several challenges that need to be solved, one of which is re-occupation of properties after eviction. According to the OSCE report, in the period between 2008 and 2013, KPA submitted a total of 326 criminal complaints to the prosecution, which take two years and three months on average to be processed, and the amount of penalties that the courts impose is not sufficient for preventing future illegal re-occupations. Furthermore, there is a need for establishing better communication between the KPCVA and successful claimants. However, the Strategy sees the problem in the fact that the KPCVA does not have the mandate to work in Serbia, Montenegro, and Macedonia, where the majority of claimants are residing. What is more, the Law on the KPCVA does not address the status of properties currently under the KPA administration and rented following the end of KPCVA's mandate, and it also does not address the status of persons who use the property. In further text, the Strategy emphasises that families who have used the property for years may have made significant investment in the maintenance and upkeep of the property and that legislation is needed to clarify whether these persons have acquired any rights in the claimed property. According to the Strategy, clarification is also needed regarding the legal status of 9,041 decisions the enforcement of which is in "limbo" because the claimants never requested a remedy after receiving a notice from the KPA. At the end, it is stated that it is of utmost importance that the final HPCC, KPCC, and PCC decisions are not re-litigated in courts, which happened in some cases.

3.3.2 – Additional Issues Related to Displacement, Access to Justice, and Housing

Fraudulent Transactions – In the post-conflict environment, displacement created opportunities for property transactions using forged documents, without owners' knowledge. There is no policy to determine whether a party purchased real estate in good faith and how to fairly and efficiently allocate liability. In addition, policy will also need to be developed to determine the appropriate remedy in situations where the property was transacted several times and the current owners are good-faith purchasers who paid the real price of the property years after the conflict.

Legalisation of Unpermitted Constructions – There is a concern that IDPs did not have sufficient information and time to comply with the legalisation requirements, which were also criticised as being overly complex. In these cases, the human rights of any citizen whose immovable property is demolished without an adequate prior notice on legal requirements will be violated.

Privatisation Process Implemented by the Privatisation Agency of Kosovo (PAK) – There is a concern that the notice on privatisation procedure has not been provided in advance and that human rights standards have not been met for due process.

Also, a certain number of Serbs participated in restitution proceedings under the former Law on Restitution of Land[38]. This has not been declared discriminatory and presumably has legal effect in Kosovo. There are cases where such land was privatised and then sold or leased. Legislative policy and guidance is needed to determine the appropriate remedy.

Land Expropriation – Seizing property in the absence of due process is a human rights violation. The problem with IDPs involves the process of serving notices, which is why these procedures need to be strengthened.

Third Party Constructions Built on the Usurped Immovable Properties of IDPs – The GoK has not yet provided the requested funding for demolition of all objects, preventing the KPA from implementing this legal remedy. In its ruling on the "Jovanović Case", the Constitutional Court of Kosovo* found that the non-execution of the KPCC decision by the KPA, due to a lack of funding, was "in contradiction with the principle of the rule of law and constituted a violation of the fundamental human rights guaranteed by the Constitution." [39]

Implementation of HPD, "A" & "C" Category Decisions – So called "A" category encompasses Kosovo Albanians who were terminated from employment due to discriminatory legislation and decisions during the nineties, resulting in them being evicted from their socially-owned flats, while category "C" encompasses Kosovo Serbs, who were allocated these flats and who are now IDPs[40]. Under the legislation governing the work of the Housing and Property Directorate (HPD), claimant from "A" category could enforce their right to restitution of their flat, while claimant "C" would receive compensation for the rights lost. The KPA has not been able to secure funding from the GoK to pay compensation, and the claims remain unresolved.

Accrued Property Taxes and Utility Bills during Displacement – The Law on Taxes on Immovable Property stipulates that the taxpayer shall be the natural or legal person that actually uses the immovable property if the actual owner cannot be identified, or if the actual owner has no access to the immovable property[41]. Nonetheless, selective application has resulted in municipalities holding IDPs liable to pay these debts. In addition, IDPs incur liability for utilities that they did not use, because the relevant legislation does not exempt them from paying for utilities used in properties over which they do not exercise control and are required to pay the total amount when they re-assume control over their property.

Access to Justice – IDPs are precluded from accessing free legal aid because they do not receive social assistance in Kosovo, but do possess immovable property. Apart from this, the Law on the Use of Languages is "a comprehensive legal document", but in practice there are

[38]Law on Restitution of Land of the Federal Republic of Yugoslavia, 1991
[39]Constitutional Court of Kosovo, KI187/13, 16th April, 2014
[40]Thus formulated, this definition and the offered solutions based on such definition are absolutely untrue and represent one of the major flaws of the Strategy, which is most likely to leave room for violation of rights if this kind of approach is to be adopted. This is discussed further in sections where problems and solutions are presented – author's comment
[41]Article 5 (3) of the Law on Taxes on Immovable Property, 03/L-204, dated 7th October, 2010

still "challenges" in access to services in official languages both at the central and municipal level.

Costs of Proceedings and Travel – These expenses create additional difficulties for access to justice for IDPs. According to Pinheiro Principles, when it comes to IDPs, proceedings should be free of charge.

Social Housing/Land Allocation - Provisions have been made to assist returnees with temporary shelter and provisional housing on the basis of the Law on Housing Financing Specific Programs (03/L-164) and the Law on Allocation for Use and Exchange of Immovable Property of the Municipality (04/L-144). However, municipalities have not made consistent and regular use of this legal framework to assist returnees, which means that there is a risk of IDPs becoming permanently displaced persons.

Roma Camps/Informal Settlements – There are still about 100 informal settlements in Kosovo inhabited by Roma, Ashkali, and Egyptian people. People living in these settlements live in poor conditions and have poor access to utilities, public transport, and roads. The major problem is the lack of secure tenure. The Strategy for Regularisation of Informal Settlements 2011-2015 was never adopted.

3.4. – GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF WOMEN

Article 46 of the Constitution of Kosovo* guarantees the right to all citizens of Kosovo* to own property. However, due to cultural heritage and patterns whereby women are expected to give up their inheritance in favour of male family members, and due to widespread informality with respect to ownership, a very small number of women are registered in the cadastre as owners. In addition, there is no manner in which heirs can be prevented from failing to register female heirs in inheritance proceedings thus completely preventing them from participating in inheritance proceedings. Moreover, according to the Law on Inheritance, women who renounce their rights also renounce the rights of their children. There is no custodial oversight to ensure the rights of these children.

3.5. – USING SECURE RIGHTS TO PROPERTY TO FUEL ECONOMIC GROWTH

Excessive fragmentation of land parcels and unpermitted construction have significantly reduced the amount of land available for investment in Kosovo's agricultural sector, reducing agricultural productivity and the potential for economic growth.

3.5.1. – Treating Unpermitted Construction

The GoK enacted the Law for Treatment of Constructions without Permit[42] to regulate the process of legalising unpermitted constructions. Subsequent to adoption of this legislation, the Ministry for Environment and Spatial Planning (MESP) established a Registry of Unpermitted Constructions in which 352,836 buildings have been registered. Until rights in the building are legalised and registered in the cadastre, these buildings cannot be transacted in the land market or used as collateral to secure finance or investment. Additionally, registration of these buildings in the cadastre would make it easier for municipalities to levy and collect taxes for these immovable properties. However, this law excludes all unpermitted constructions built on public property. This also includes buildings built on "urban land for construction" in city and town centres, i.e. the land which is now public land according to legal nature of its transaction. Unless the legislation is amended, this would mean that unpermitted constructions in city and town centres will not be able to be formalised and will have to be demolished. Furthermore, a major problem, according to the Strategy, is that there is a set deadline for formalisation, which is problematic when it comes to inhabitants of Kosovo* living abroad or IDPs, since a large number of them never received a notice on the deadline laid down by law and other requirements. In addition, another problem in enforcement of rights under this law are also fees, which are too high for many inhabitants of Kosovo*.

3.5.2. – Land Consolidation though Effective Spatial Plans

Unpermitted construction and expansion of cities have significantly reduced the amount of arable land and fragmented arable land parcels in rural areas. The GoK "demonstrated its commitment" to address excessive fragmentation of arable land by developing National Strategy for Land Consolidation to complete the consolidation process begun nearly 30 years ago. Urban land was also fragmented due to the absence of effective spatial planning and unregulated construction. In 2013, the GoK passed the Law on Spatial Planning [43] to remove past deficiencies in this area. Mechanisms to monitor implementation of the law, as well as stricter penalties for violation of the law will help prevent uncontrolled and unregulated urban sprawl to the detriment of arable land.

3.5.3. – Complete Privatisation of SOE Land to Increase Amount of Arable Agricultural Land Available for Investment and Agricultural Production

The PAK is mandated to privatise socially-owned land, which is mostly consolidated, to increase investment in agricultural land in order to increase agricultural productivity. Thus far, 22,000 hectares have been sold, while 17,000 hectares have yet to be privatised. By October 2015, the PAK had received and processed 5,095 claims contesting its liquidation of socially-owned enterprise assets, primarily land. Although there is no law on restitution, many claims referred to the ownership over the land prior to its nationalisation. Despite the fact that the Supreme Court of Kosovo* established practice whereby such claims lacked legal base, they

[42] Law for Treatment of Constructions without Permit, No. 04/L-188, dated 26th December, 2013
[43] Law on Spatial Planning, No. 04/L-174, dated 7th September, 2013

continued to be filed to the Special Chamber of the Supreme Court of Kosovo*. In addition, another problem is that arable land is privatised through a 99-year lease, which is a form of privatisation which discourages potential investors because it is not deemed secure enough.

3.5.4. – Creating Incentives to Encourage Productive Use of Arable Land and Generate Own Source Revenue for Municipalities

Although 53% of the land in Kosovo is classified as agricultural land, much of it is left fallow. The Strategy believes that part of the problem is that no cost is incurred when land is left fallow. However, implementation of a transparent, fair, and effective land and immovable property tax regime would create, according to the Strategy, an incentive for many owners of arable land to either produce crops to recoup the cost of taxes or sell or lease the land to others who will use the land more productively. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) explicitly recognizes the right of a state to impose taxes and take measures that are necessary to secure their payment. However, in accordance with the practice of the ECtHR, a proper balance must be struck between the generating revenue to achieve public policy objectives and mitigating risks of creating excessive demands on low income families and the poor. Moreover, municipalities face challenges with respect to identifying the properties to be taxed due to widespread informality and outdated cadastral records and the on-going process of assigning addresses to immovable property. Identifying taxpayers is also challenging A significant portion of properties in the cadastre are registered in the name of deceased people. The legislation does not specify who is responsible to pay taxes in this case. It also does not specify tax liability for properties co-owned or co-possessed and the party responsible for paying back taxes owed on transacted properties.

4. SOLUTIONS TO MAJOR PROBLEMS IN KOSOVO, ACCORDING TO THE STRATEGY ("RECOMMENDED COURSE OF ACTION")

As was already stated, the approach of the Strategy consists in presenting major property issues as seen by the Strategy being a strategic document, and then solutions to these specific problems are offered. As in the previous section, this study will give a short description of the recommended solutions, in the same form as they are presented in the very Strategy, so that they can be analysed in subsequent parts of this study.

In addition, as in the previous chapter, everything written is actually a summary of the Strategy presented for the purpose of critical analysis. Everything written in this chapter, including any footnotes, is a summary of quotations or direct quotations from the Strategy, except for the parts and footnotes which are clearly marked as comments of the author of this study.

4.1. – RECOMMENDATIONS: SECURING RIGHTS TO PROPERTY BY STRENGTHENING THE LEGAL FRAMEWORK

4.1.1 – Transformation of Rights to Socially-Owned Property

The legislation will convert socially-owned rights to urban land for construction and 99-year leases into a right of ownership and stipulate that the land and building constructed above it are joined into a single unit[44]. In cases where buildings were constructed in accordance with applicable procedures, the rights of ownership over the single property unit (land and building) could then be registered in the cadastral office upon completion of the requirements for registration of rights. In cases where buildings were constructed without permission, a clear legal procedure needs to be developed. With regards to 99-year leases and urban land for construction, they should be transformed into the proprietary right, i.e. the ownership over them should be transferred to the acquirers.

4.1.2 – Legislation Governing Public and State Property

Legislation should be drafted to clarify that public property is a general legal category which consists of state property and municipal property, which would resolve the difference between these two categories of property. The law would also list all assets which are owned by Kosovo*. Municipal property would be defined as property where the municipality is registered as a holder of a right of use, and provisions should be drafted to govern the manner of management and transfer of municipal property.

[44]This refers to the Civil Code, which was not yet in the adoption process at the moment of writing this study – author's comment

4.1.3 –Rights of Foreign Citizens to Own Property in Kosovo

The recommended measure is to amend the Law on Property and other Real Rights, so that it would clearly define that foreign citizens have rights to be owners of property in Kosovo. Within the meaning of this proposal, the GoK could restrict the rights of foreign persons to acquire property in certain geographic regions or to impose no limitations on this right.

4.1.4 – Reviewing the Legal Property Framework

The review process would suggest replacing or eliminating existing inconsistent or obsolete provisions, or even entire laws, which will have become outdated due to the new provisions.

4.2. – RECOMMENDATIONS: SECURING RIGHTS TO PROPERTY

There are five measures proposed in this section:

1) Development of "procedures and processes" to make delayed inheritance proceedings more streamlined, efficient, predictable, and affordable for citizens to encourage them to formalise their rights
2) Development of "new and enhanced" notification procedures and use of the legal doctrine of "Constructive Notice" to increase efficiency while providing due process protections
3) Use of administrative procedures to provide legal recognition of informal rights in order that they may be registered
4) Development of procedures to formalise rights in unpermitted constructions, and
5) Creation of incentives and removal of administrative barriers to encourage registration of formalised rights in the cadastre

4.2.1 – Development of Delayed Inheritance Procedures

Up to 50% of cadastral records are registered in the name of deceased rights holders. The package of reforms required to encourage informal rights holders to initiate inheritance proceedings to obtain legal recognition of their rights are neither extensive nor difficult to implement and will achieve significant impact to update and improve the accuracy of cadastral data. The USAID Property Rights Program (PRP) Report titled "Informality in the Land Sector: The Issue of Delayed Inheritance in Kosovo" recommends that a matter of priority is to determine whether notaries or courts will have exclusive jurisdiction in these proceedings. In addition, another conclusion is that a great challenge lies in delivery of judicial files and notices on hearings to parties whose whereabouts are unknown, but all interested persons must be provided with a notice in order for the proceedings to be legally valid. Legal provisions governing notice typically require hand delivery, publication in a Kosovo newspaper, or posting on a municipal message board. According to the Strategy, this is problematic because the courts lack the personnel to deliver notices by hand; and publication in Kosovo newspapers, or posting on message boards means that persons who are not currently in Kosovo, and interested parties are often not, will not be able to receive the notice. Notification procedures

need to be enhanced by digital technology and by enhancement of the procedure in order to reach persons living outside Kosovo*, which will, coupled with the "doctrine of Constructive Notice", increase efficiency of proceedings impacting safeguard of rights in the process.

4.2.2 – Development of "Enhanced" Notification Procedures and Use of Constructive Notice to Increase Efficiency while Providing Due Process Protections

The Republic of Estonia's Ministry of Justice (MoJ) official online publication and electronic database for inheritance proceedings provides an example of an effective means of providing notices to parties and complying with all applicable human rights standards for due process. Other forms of mass media include newspapers, television, SMS and radio messages delivered via mobile phone networks, and also through embassies of Kosovo* abroad. Nevertheless, technology alone is not sufficient to ensure that rights are fully protected, because evidence on documentation and notification receipt need to be provided in order to meet due process standards. With respect to proceedings involving IDPs outside Kosovo*, more specific modalities could be prescribed through agreements between Kosovo* and Serbia, Montenegro, or Macedonia. Such modalities might also address how to make direct contact with displaced persons and government agencies and non-governmental organisations supporting the vulnerable.

"Constructive Notice"

Constructive notice is "a legal doctrine" that presumes that all parties with an interest in the claim are provided with a notice and knowledge about the claim and proceedings by regular means of notification. Unlike the current notification procedure, where information is physically delivered to the parties, constructive notice implies notice deemed by law to provide parties with the sufficient amount of information to participate in the claim and the opportunity to do so. According to the "doctrine", once a notice on a claim and proceedings is disseminated, it is the responsibility of the parties with an interest to come forward to assert their rights. If they do not do so, they are precluded from the possibility to assert their rights and the proceedings then move forward. This is already applied in inheritance proceedings when the heirs' identity is unknown, as well as when informing on the rights registered in the cadastre, and according to the Strategy, this will also help achieve finality of administrative decisions providing legal recognition of informal rights to enable their registration in the cadastre of Kosovo*.

4.2.3. – Use of Administrative Procedures to Provide Legal Recognition of Informal Rights

The only means available to citizens to formalise their rights in property they exercise de facto is to initiate a contested claim in the courts. This, according to the Strategy, is inefficient remedy, it is time-consuming and creates disincentives to formalise rights. The recent legislation establishing the KPCVA provides an opportunity to utilise administrative

procedures to systemically adjudicate and provide legal recognition of informal rights. The KPCVA's Property Verification and Adjudication Commission (PVAC) is mandated to review and inspect all cadastral documents returned from Serbia by comparing them against Kosovo's cadastral documents to adjudicate the rights that will finally be registered in the cadastre of Kosovo*. This procedure could be applied in administrative procedures as a more efficient solution to "the main cause of informality", and, according to the Strategy, these are informal contracts for the transfer of immovable property between Albanians and Serbs. Adjudicating and providing legal recognition of informal rights through administrative procedures from a relevant state institution will secure legal recognition of informal rights. Moreover, the KPCVA could do this under its new mandate. Regardless of which option is pursued, it is believed in the Strategy that it is vital that the GoK should initiate measures to encourage and enable citizens to access an efficient and affordable administrative procedures to obtain legal recognition of their informal rights and then register these rights in the cadastre.

4.2.4 – Development of Procedures to Formalise Rights in Unpermitted Constructions

More than 350,000 buildings were constructed without a permit and they lack legal status and the rights in them cannot be registered in the cadastre. One of the issues preventing formalisation of rights in these buildings is delayed inheritance. Reforms to make it easier to obtain an inheritance decision will make it easier to formalise rights over these buildings and will help achieve great impact on updating and improving the accuracy of cadastral information.

4.2.5 – Creation of Incentives and Removal of Administrative Barriers to Encourage Registration of Formalised Rights in the Cadastre

Once rights receive legal recognition, they must be registered in the cadastre to complete the formalisation process. It is municipal cadastral offices that should conduct a review of their procedures and analyse their work to increase the efficiency. The Strategy offers the following recommendation for improvement of services provided by MCOs: A list of all documents required for registering property in the cadastre must be produced and included in legislation regulating the cadastral system; Strengthen the institutional relationship between the Kosovo Cadastral Agency (KCA) and MCOs to establish uniform business processes and standards for delivery of services; Standardised templates, forms, and instructions for registration and transaction of rights should be designed; the KCA, courts, notaries, and relevant administrative agencies should design standardised templates and forms to provide information required to describe the property as well as to include the descriptions in decisions or other legal acts that convey property rights; Create clear procedures and guidelines to ensure consistent registration practices in all MCOs; Develop a training program for MCO staff to improve service delivery; Design policies that distinguish between the recognition/formalisation of rights and the transaction of rights and procedures, costs, and fees respective to each; Subsidise or waive the fees and costs charged to citizens seeking only the recognition and formalisation of rights as is currently done in cadastral zones selected for reconstruction; Design policies and guidelines for determining the circumstances under which cadastral surveys (typically the highest cost in

the registration process) should be conducted and those under which "general boundaries" are sufficient to demonstrate rights; Design policies in consultation with the Ministry of Finance to provide tax relief to encourage the formalisation of rights.

4.3 – GUARANTEEING PROPERTY RIGHTS OF IDPs AND NON-MAJORITY COMMUNITIES

IDPs are not a homogenous group and provision of effective remedy depends on individual needs and circumstances. Some have ownership rights in their property, while others have only the right of use. They also possess rights over different types of property. Remedy appropriate to agricultural land may not be appropriate for a residential flat. Each IDP has different needs and desires regarding access to and exercising control over their properties. Currently, the KPA has executed evictions free of charge. Policies should be developed to determine the circumstances under which successful claimants will be required to pay for evictions in the future. Consideration might be given to providing successful claimants with the right to request one eviction to be executed by the Police of Kosovo* free of charge and any subsequent evictions to be executed by a private bailiff for a fee of certain amount.

4.3.1 – Ensuring Implementation of Legal Remedies Available to Internally Displaced Persons after the Conclusion of the KPCVA Mandate

Step 1: Document that all HPCC, KPCC, and PCC decisions recognising the rights of successful claimants are registered in Kosovo's cadastral system. These decisions are binding and IDPs would have the right to request that an eviction should be carried out by the Police of Kosovo* and private bailiffs based on registration into the cadastre.

Step 2: Develop procedures and conditions to guide the handover of the KPCVA functions to private entities. Clearly defined procedures must be developed to ensure successful claimants can directly request the Police of Kosovo* and private bailiffs to execute evictions.

Step 3: Facilitate and strengthen two-way communication between the KPCVA and IDPs. Enhanced notification procedures should be utilised to reduce the time required and burden on the KPCVA in order to directly contact each successful claimant. Through an enhanced notification procedure, successful claimants would be informed that the KPCVA will not contact them directly about legal remedy, but that it is the successful claimants' obligation to contact the KPCVA to request remedy.

Step 4: Prior to concluding its mandate, the KPCVA should document that procedures are in place to enable successful claimants to request evictions after the KPCVA mandate concludes and request legal remedy from the private sector.

4.3.2 – DEVELOPMENT OF INTERVENTIONS TO ADDRESS ISSUES RELATED TO IDPs, ACCESS TO JUSTICE, AND HOUSING

The proposed measures in this recommendation are:

- To prevent illegal re-occupation of property after a KPA eviction, develop procedures that would require the KPCVA to request the Police of Kosovo* or a private bailiff to immediately enforce the original KPA eviction order prior to referring the matter to the Prosecutor's Office.
- Develop judicial guidelines to prevent re-litigation of cases where HPCC, KPCC, and PCC have made final decisions. The Judicial Council of Kosovo*, through the Office of the Disciplinary Counsel, should initiate procedures before the Disciplinary Commission to take disciplinary actions against judges who wilfully ignore the guidelines and hold them accountable.
- The GoK should either provide funds or use its own budget or seek donor funding to implement demolition of unlawful third party constructions on illegally occupied land, or to provide compensation for claims filed with the KPA on the grounds of third party constructions and to compensate "A"and "C" category claimants.
- Fully implement provisions contained in Article 5 of the Law on Taxes on Immovable Property to ensure IDPs are not liable for taxes on properties over which they cannot exercise effective control, and the provisions contained in the Administrative Instruction on exempting property rights holders from payment of utilities for properties under KPCVA administration.
- Implement "enhanced notification procedures for parties".
- Develop policies to efficiently allocate risks and liability to achieve equitable remedies in cases of fraudulent purchase of immovable property.
- Revise eligibility criteria for free legal aid to include IDPs and persons residing in informal settlements; and, substantially increase government funding for the free legal aid Agency.
- Introduce unified court fee regulations, whereby IDPs in precarious socio-economic conditions are exempted from paying court expenses.
- Fully implement in practice the Law on the Use of Languages.
- Adopt the three-year Kosovo strategy on social housing and strengthen consistent implementation of the Law on Housing and Financing Specific Programs and the Law on Allocation for Use and Exchange of Immovable Property of the Municipality to ensure sustainable housing solutions for returnees.

- Harmonise and implement the Strategy for Regularisation of Informal Settlements with provisions of the Law on Spatial Planning and with procedures for regularisation of unpermitted constructions.

4.4. – GUARANTEEING AND ENFORCING THE PROPERTY RIGHTS OF WOMEN

Although the Constitution of Kosovo* guarantees women the same rights to immovable property as men, cultural norms and practices exert pressure on women to renounce their rights to inherit property from birth families and spouses. This renunciation later creates difficulties for their minor children, since according to the existing legislation, the women in this case renounce their rights on behalf of their children as well.

4.4.1 – Consistent Recognition of Extramarital Unions

The Inheritance Law secures inheritance rights to extramarital spouses if their extramarital union lasted for ten years, or five years with children. The Laws on Inheritance and Family should be amended to provide legal recognition of these unions as marriages after five years or three years if there are children from the relationship to prioritise the well-being of children to align with the practices of other countries in the region.

4.4.2 – Development of Safeguard in Cases of Exclusion and Renunciation

Heirs who bring an inheritance action to a notary or a judge should be required to swear upon penalty of law that they are not concealing any known heirs. In parallel, the data management capacity of the Civil Registry System should be improved to enable municipal officers to produce accurate and reliable lists of the deceased's family members. Any heirs declaring their intent to renounce their right to inherit should be required to make this declaration at a special session before a judge or notary. The Law on Inheritance requires division of an estate among all surviving heirs as soon as the inheritance procedure is completed, which can occur immediately following death. To foreclose the possibility that a surviving spouse will lose the right to inhabit his or her home, the Law on Inheritance should be amended to delay the mandatory estate distribution until after the death of the surviving spouse to allow the living spouse access to the marital home and property until death.

4.4.3 – Protecting the Inheritance Rights of Minor Children

Currently, any heir that renounces the right to inherit also renounces the inheritance of their minor children, without any custodian body involved to take care of rights of minor children. The law needs to be altered in the part which stipulates that a parent renouncing inheritance also renounces the inheritance of their minor children, as well as the involvement of custodian bodies in the procedure.

4.5. – USING SECURE RIGHTS TO PROPERTY TO FUEL ECONOMIC GROWTH

Recommended interventions under this objective are intended to mitigate the harmful effects of unpermitted constructions by clarifying the legal status of rights in both the building and the land upon which it was constructed to form a single property unit that can then be registered in the cadastre and transacted in the land market. This will bring the economic benefits that can be realised through the investment in the construction and market transactions of legalised buildings.

4.5.1 – Treatment of Unpermitted Constructions

The current legislation provides applicants only with the opportunity to formalise their rights to occupy the unpermitted construction. Amendments should be developed that create incentives to encourage formalisation of rights and provide the legal mechanism through which applicants can formalise their rights in both the building and land as a single property unit and then register it in the cadastre. Legislation should also address circumstances under which the unpermitted construction encroaches, in whole or in part, on land owned by third parties. Under these circumstances policies and legislative guidelines are required to arrive at a fair and equitable solution to assign clear legal status to the rights in the land and the building. Options include allowing the parties to resolve the issue themselves through agreement. Another option would be for the GoK to expropriate the land in question and then pay market-based compensation to the land owner. The formalisation process must be accessible to all inhabitants of Kosovo. Fees should be reduced for the citizens with low incomes, while cumbersome administrative barriers, such as the requirement to provide architectural drawings with applications, should be eliminated.

4.5.2 – Land Consolidation through Effective Spatial Plans

Before effective land consolidation initiatives can have effect, it is first necessary to prevent unpermitted constructions leading to further fragmentation of land parcels in rural and urban areas. Municipalities should put more emphasis on monitoring and enforcing spatial plans and strengthening enforcement powers of building inspectors to prevent unpermitted construction. Penalties in Kosovo's Criminal Code should be rigorously enforced to serve as an effective deterrent. After strengthening mechanisms to enforce spatial plans, municipalities should begin to implement means for appraisal of land value in order to encourage land consolidation and promote development objectives.

4.5.3 – Privatisation of Formerly Socially-Owned Arable Land

Conversion of the 99-year lease issued by PAK into rights of ownership will help to strengthen tenure security for investors. Investors also need to be protected from ungrounded lawsuits seeking restitution for land consolidated under the former regime[45]. The Judicial Council of Kosovo* should apply sanctions against judges who allow claims not grounded in law to proceed against purchasers of privatised land, previously owned by SOEs.

[45]This refers to protection from claims for restitution of seized property during the communist regime, i.e. claim for restitution – author's comment

4.5.4 – Creation of Incentives to Encourage Market Transactions and Productive Use of Arable Land

Imposition of a tax on land will create an incentive for owners of arable agricultural land to either use the land for agricultural production or lease the land to someone else if they want to. Imposition of a rational and fair taxation scheme is constrained by a lack of information about actual market prices with which to determine rates at which land would be taxed. Procedures must be developed to guide market-based appraisals and require reporting of actual prices paid for immovable property and recording this information in the cadastre. The possibility of hiring private appraisers should be considered. Once an accurate, fair, and equitable tax rate is established, capacity at the municipal level must be built to efficiently deliver tax bills and collect taxes.

5. GENERAL CRITICAL REVIEW OF THE STRATEGY

The Strategy is intended to be a comprehensive document offering an overview of problems in property rights sector of Kosovo* and to offer solutions to these problems. The problems which are identified as primary or solely detected as problems are regarded in relation to the set objectives throughout the Strategy. The set objectives of the Strategy are, as was previously stated, strengthening the rule of law, fuelling economic development, and supporting the EU integration of Kosovo*.

However, throughout the Strategy, the goals not explicitly expressed, but implied, are given the central importance often to the detriment of the goals which are formally proclaimed. These include increase of income of municipalities through taxation, regularisation of legal and factual situation on immovable property market, consolidation of agricultural land and legal consolidation of urban land for construction, and creation of legal and factual conditions for providing foreign citizens with formal rights in ownership of immovable property in Kosovo (including both buildings and large agricultural property obtained by consolidation).

By doing so, the Strategy often sacrifices one of the set objectives, which should be the leading idea of every strategy concerning legal and statutory sector in a society – strengthening the rule of law.

For instance, this is how an absurd situation is created where the authors of the Strategy set preservation of communist heritage as the prime imperative and instead of calling it forced seizure, they refer to it as land "consolidation" in certain parts of the Strategy. Additionally, in the part offering recommendations for accelerated procedures, the Strategy basically sides with formalisation of the factual situation regardless of how the situation was created, with a recommendation that disputes over land ownership should be settled in administrative

procedures, i.e. with bodies who are neither authorised nor specialised for such activity, nor is it anywhere else common for them to be grated such authorisation (this will be discussed in more detail in the further text).

Moreover, the Strategy failed to use the opportunity to scan the judiciary situation in Kosovo in more detail, i.e. the law implementation sector. Although it is not true that this situation has been completely ignored, it was by no means given the importance it actually has when it comes to occurrence and persistence of all the problems that Strategy points out. Instead of tardiness, corruption, failure to process certain cases, constant violation of rights to language and writing system use against non-Albanian population, problems in application or a lack of application of certain regulations, the Strategy decided to focus on matters of marginal importance compared to the problems mentioned, such as the problem of delivering notices and court files outside Kosovo* or locating the legal owner of immovable property (who is registered in the land registry with the sufficient amount of identification data to be located).

When we take the mistakes in presenting the problem in immovable property sector into consideration (with respect to both nominally proclaimed objectives and priority), it should not come as a surprise that the solutions offered by the Strategy, although "creative" at first sight, are inadequate for both the identified problems and the situation in the society in Kosovo, and especially for the administrative and judicial system. Instead of giving recommendations which would lead to regulation of judicial and administrative system, which would entail a long-term process, they offer solutions that cannot be applied, but do not require major effort. This means that if these solutions were indeed to be implemented, they would work for the benefit of only one specific group in almost every proposed case, while the rights of other groups, especially the rights of internally displaced persons, who do not have access to their immovable property, although it has been eighteen years since the end of the conflict, would be violated.

On the other hand, the problems existing in Kosovo judiciary would persist and keep growing because nobody has the strength or the will to tackle them because this entails a long and difficult process.

In formal and legal sense, the Strategy is a document full of contradictions. Although the titles and the content refer to property rights, the Strategy actually addresses rights to immovable property only. Following this logic, the Strategy often confuses obligatory and material regulations which should be applied in a specific case, it uses names of legal institutions that were never used before in this region[46], and it also often confuses existing and past regulations, even SFRY regulations that have not been valid and applied in a long time because they have been replaced with laws adopted by the Assembly of Kosovo in the meantime or with laws adopted during the UNMIK administration. This is not a surprise if we take into consideration that a great number of practitioners in Kosovo are not sure either about the law versions in use as a result of well-known problems in publishing laws, but it still remains one of many inconsistencies and technical errors in the Strategy.

[46]Note: The author refers to the version of the Strategy in the Serbian language.

The overall impression is that this is a document whose objectives are set ambitiously, but have not been attained. Besides, the problems are presented in a way that makes some enormous problems invisible and these problems are currently insolvable for Kosovo because there is no will for solving them. Ignoring these problems makes it seem that the solutions are offered as if these problems did not exist, which finally results in making proposals, which, if implemented, would cause mass and ultimate violation of human rights of non-Albanians and IDPs by formalising a situation which is the result of mass abuse, violence, and criminal offences.

Therefore, this document should not be used for the intended purpose, i.e. to serve as guidelines to legislators when adopting new laws to solve the current situation in the rights to immovable property sector, because these solutions, as was previously stated, would only create additional violation of rights of numerous groups in Kosovo.

As a final remark in this general overview, the positive aspect of the Strategy is the fact that it is indeed a document with a lot of effort and research put into it, which is obvious throughout. The data was thoroughly gathered, previous studies on these matters have been consulted, and the problems presented, despite all flaws that cannot be ignored, do, however, constitute a starting point for creation of a more comprehensive document with a different approach to the issue.

6 – CRITICAL REVIEW OF THE PROBLEMS PRESENTED IN THE STRATEGY WITH AN OVERVIEW OF MAIN PROBLEMS NOT ADDRESSED IN THE STRATEGY

According to the Strategy, the greatest problems regarding the situation in immovable property sector in Kosovo, which all other problems come from, are unclear property relations in the immovable property sector and informality in the structure of the ownership in privately-owned immovable property. When it comes to the process, main problems are delayed proceedings (with several subparts which will be addressed later), unfinished privatisation, and failure to execute decisions concerning immovable property.

The main flaw of the Strategy, when it comes to a material and legal aspect of the overview of situation in Kosovo, are constant efforts to formalise the factual situation. Such situation was caused in many ways. As the Strategy legitimately emphasises, this situation is a result of informal contracts between Albanians and Serbs, and a failure to carry out inheritance proceedings. However, by far the greatest source of insecurity is seizure of property by communist authorities during the 1940s and 1950s, displacement of Serbian people after the war of 1999, demolition or unlawful occupation of their immovable property after the war, fraudulent transactions which were a mass phenomenon, as well as preventing Serbs from returning, contrary to Pinheiro Principles emphasised in the Strategy on several occasions in an exclusively formal manner.

Formalisation of de facto situation created in this manner would be nothing but new legalised violence against people who are already deprived of their rights, inhabitants of Kosovo* displaced from their homes and estates.

6.1. – Restitution of Land

Starting from the problems in material legislation as they are presented in the Strategy, one of the major flaws of the Strategy can be isolated and it consists in dealing with consequences instead of the problems. The flaw in the property sector that the Strategy keeps addressing is unregulated ownership, i.e. the fact that there are several types of property ownership (state, public, social, and private property, where public property has subcategories of the property of different entities and levels of authority), and the fact that owning land in urban zones is not possible (the land designated as "urban land for construction").

Such situation in the property sector is the consequence of violence in a legal sense by communist authorities, who seized private property on several occasions in the mid-twentieth century[47]. Apart from natural persons, the Serbian Orthodox Church is also a private property owner, as it owned enormous land property before the Second World War, which was acquired and accumulated over centuries. Communist authorities later used this seized property to form great socially-owned enterprises, whose land fund is referred to in the Strategy as a land fund where "arable land market", which would be available for purchase to foreign citizens as well, would be made.

Laws on land restitution have been adopted in almost entire region, and in most places, the restitution process is either completed or nearly completed[48]. Although it is difficult to completely correct the injustice of such proportions, the purpose of the adopted laws on restitution is to at least materially compensate the heirs of those whose land was seized by communists for injustice and suffering they went through by reversion of seized property, annulling decisions proclaiming them the enemies, or at least compensation in the amount of property's value.[49]

[47]After the Second World War, the communist SFRY adopted a set of laws on nationalisation, confiscation, sequestration, agrarian reforms, seizure of property owned by religious communities, which was later used to create social and housing fund of socially-owned enterprises, cooperatives, public institutions, and state institutions in SFY.

[48]The Law on Restitution of Confiscated Property and Compensation, 2011 in Serbia; the Law on Compensation for Property Appropriated During Yugoslav Communist Rule in Croatia; The Law on Restitution of Property Rights and Compensation, 2004 in Montenegro; the Law on Denationalisation, 1998 in Macedonia; the Law on Denationalisation, 1991 in Slovenia;

[49]Seizure of property was not merely a process whereby families were destroyed financially. This process was often accompanied by trials, executions by shooting, denial of civil rights, proclaiming wealthy individuals traitors, forced repurchase, and crimes of every kind. When it comes to the Serbian Orthodox Church, this process was especially brutal because the Church as a whole was proclaimed an enemy of the communist system.

The problems stressed out later on in the Strategy, concerning the existence of several types of property, some of which can be further subdivided, as well as the problems with respect to urban land for construction, stem from the communist regime acts. When the original accumulation of capital is based on the large-scale crime it is completely expected that a legal confusion arises when distributing capital thus acquired. Later, when former Yugoslavia experimented with a management system named "self-management", additional confusion was created.

This is not a problem specifically related to Kosovo*, but a problem that exists in the entire region of former Yugoslavia. All newly emerged entities tried to solve the problems by compensating former owners or their descendants to the extent to which this was possible[50].

However, the situation in Kosovo was significantly different. The commission whose task was to discuss the Law on Restitution met only once more than ten years ago and never again. International representatives were also part of the commission. When the moment from which the restitution should be initiated was supposed to be decided upon, international representatives insisted that it should be the seizure of land by communist authorities, while representatives of Kosovo wanted to go further in the past, which was not accepted by international participants in the meeting. The purpose of this effort by Kosovo's side was an attempt against conducting restitution in favour of the Serbs whose property was seized by the communist regime, and to proclaim Kosovo's side "the heir" to the property of the banished Turkish occupiers at the beginning of the twentieth century and basically not to conduct expropriation at all, or conduct it to a very small extent.

After this meeting, the Commission never assembled again.[51] Currently, the Law on Restitution in Kosovo is not mentioned even as a theoretical possibility.

The purpose of this short presentation of the restitution problem is to introduce the real problem, which truly is the cause of many problems in this segment.

There is no room for legal security of investors if they invest in immovable property which is basically not owned by Kosovo*, but which acts as a seller. Even the 99-year lease, which Strategy identified as the main source of insecurity, is not a problem for potential investors as much as unresolved issues concerning property ownership[52].

Since Kosovo* seeks membership in the European Union, it is not clear how compensation to former owners will be solved, which is one of the ways to break with the communist past.

[50] In all former Yugoslavia countries, except for Kosovo, with the exception of Bosnia and Herzegovina, which is still under international protectorate.

[51] Personal findings of the author of this study obtained from a member of the commission

[52] The lease was actually regulated by the UMNIK regulation No. 2003/13 dated 5th June, 2003, where Article 2 defines this type of lease as basically ownership over property with the right to transfer the property to a third party. This type of lease is later also referred to in the Law No. 04/L-034 on the Privatisation Agency of Kosovo dated 21st September, 2011, where Article 1.10 defines "rent" as in the cited UNMIK regulation, which means that this is actually a type of ownership with a fixed term of 99 years.

By supporting this kind of land ownership system, which is a result of seizure by the communist regime, often coupled with enormous crimes, the Strategy enters a paradoxical situation of addressing the solution of property rights, while at the same time supporting the situation created by the system which brutally abolished these rights with great crimes. In fact, the Strategy not only supports this situation, but strives to strengthen the communist regime acts by recommending courts to decline all claims of the aggrieved land owners from the start, and even to impose sanctions against the judges who would even take such claims into consideration.[53]

The course that the Strategy took with respect to this issue significantly deviates from the proclaimed objectives, although, unfortunately, it does not deviate from the course taken in the rest of the Strategy. There is no legal security without compensation to former owners, whose property was used for half a century for accumulation of social wealth of Kosovo*. Instead of giving recommendations for solving this situation, which will primarily be to Kosovo's benefit, the Strategy is headed to strengthen the decisions of a totalitarian communist regime. Apart from formalisation of factual situation in other fields, this is one of the main flaws of the Strategy, which is why it should not be a systematic document providing guidelines for any authority caring about the rule of law.

6.2. – Legalisation of the "Factual Situation"

For the purpose of regularising the situation in the immovable property sector in Kosovo regarding private ownership, The Strategy sets legalisation of factual situation as an imperative. Although criminal offences after conflicts in Kosovo are mentioned several times, the Strategy does not give them even a remote degree of the importance and scale they ought to be given.

In order to demonstrate just how complex and complicated this situation is, we will provide only one piece of information as an example: Around 40,000 Serbs lived in Priština before the war. The majority lived in socially-owned flats, which, as a part of social housing fund, were treated in a special way with all their peculiarities during the communist regime. They were users of these flats having majority of rights which flat owners are granted, and they were paying for these flats in the form of long-term repayments, but until fully repaid, the flats were owned by the social housing fund. They could not dispose these flats or mortgage them, and they were not considered the flat owners either, but merely users with all peculiarities this form of use involved. Apart from Priština, many Serbs and other non-Albanians in other towns and cities lived in flats owned by the social solidarity fund.

However, the Strategy mentions only Serbs who moved into flats after Kosovo Albanians who lived in these flats were forced to move out, which was one of the repressive measures of the

[53]Seizure of land from the lawful owners is not addressed in a negative manner anywhere in the Strategy. Whenever possible, even the term "nationalisation" is avoided, and neutral terms are used instead, such as "land consolidation"

former regime. The Strategy gives a general recommendation to pay compensation to this category and to revert to previous tenants, i.e. evicted Kosovo Albanians, these flats.

However, the Strategy does not deal at all with non-Albanian users of the social solidarity flats whose rights did not threaten anybody else. It is not even statistically likely that all Serbs who lived in these flats were usurpers, assigned these flats by the former regime. Thus, the Strategy leaves a gap here that again leads to legalisation of the factual situation, again to the detriment of the displaced Serbs and other non-Albanians, who had already suffered an injustice.

Apart from socially-owned flats, legalisation of "the factual situation" in the Strategy applies to other cases as well. For instance, in cases of unpermitted construction on another person's land, inspection into legality of one's right to use a property land, identification of a problem in institutions' activities, recommendations concerning the manner and pace of transformation of rights of use into rights of ownership, etc., the accent is always on accelerating proceedings to the detriment of the rights of the land owner, and in favour of legalisation of the "factual situation" and "situation on the ground" regardless of how the situation was created.

If such approach were to be adopted, already aggrieved categories would again be significantly aggrieved: IDPs, who, through no fault of their own, are not able to use their own property, persons who are victims of frauds which were numerous after the war, persons on whose land another person's building was constructed, as well as other broad categories, whose number became enormous after the conflict was over. Again, those who would derive benefit are persons who have already violated rights of other people and whose crimes would now be validated as completely legal actions, from the point of view of international law construed by international experts, who participated in writing this Strategy in the capacity of advisors.

6.3. – Judicial and Institutional Frame

In several parts, the Strategy mentions determination of the Government of Kosovo* (GoK) to engage in resolving the status of IDPs, solving the issue of reverting to IDPs their immovable property, evicting usurpers from the immovable property owned by IDPs, and paying compensation to "category A" in relation to flats from social solidarity funds.

However, the Strategy is contradictory in this respect, because these very same sections state that the GoK, for example, has not provided funds for eviction of usurpers from IDPs' immovable property, that it has not provided funds for paying compensation to tenants from "category A", that it has not provided funds for demolition of unpermitted constructions built on IDPs' land, whereas other problems which the GoK has not solved, but has constantly participated in, are usually not mentioned in the Strategy.

It is true that the Strategy addresses certain problems in judiciary on several occasions, but usually just parenthetically, and usually only those problems which hinder a faster solution of the status of factual situation, regardless of the consequences of such acceleration. So, the Strategy acknowledges the issue of serving summons and other court files, the issues regarding the language used in proceedings and the issues regarding duration of proceedings. However,

the Strategy does not acknowledge or does not place much importance on certain problems, which will be addressed here.

6.3.1. – Legal Framework and Availability of Law

There is certain confusion reigning in Kosovo's judiciary with respect to a legal framework to be applied, especially in immovable property sector. The laws of former Yugoslavia, laws of Kosovo, even laws on obligatory relationships in some cases are all used quite inconsistently. The Strategy alone sets the legal framework inconsistently and inaccurately on several occasions[54].

One of the problems in application of the law is of temporal nature, i.e. determining the moment when a specific law version will be applied given the nature of a specific problem and time of its occurrence. In this respect, courts (which is also the problem of the Strategy) apply provisions of the SFRY legislation to certain property disputes in an irregular manner. These disputes arise or may arise as a result of adoption of new versions of laws. This is the biggest issue in disputes which involve positive prescription, because courts very often apply legislation which was valid at the moment when the positive prescription started, rather than legislation valid at the moment when a complaint for determination of ownership is filed, when this ownership was acquired by means of positive prescription, which is a legal standard in such cases.

In addition, when it comes to disputes over immovable property, courts almost regularly fail to examine legality and conscientiousness of positive prescription, which is one of the essential conditions of the existence of positive prescription, and they especially fail to do so when the other party does not appear in court or when it is represented by a temporary representative. The only matter that courts pay attention to in these cases is the duration of positive prescription, which is not the intent or point of provisions on positive prescription.

However, a problem of equal gravity are available versions of Kosovo laws. This represents a problem most notably to IDPs, but often to the very participants of judicial or administrative systems in Kosovo.

All laws of Kosovo are uploaded on the Internet presentation of the Assembly of Kosovo and the Internet presentation of the Official Gazette of Kosovo*. But versions of laws which are there are not updated, certain laws often cannot be found, it happens that the website has two versions of one and the same law (i.e. old version is not removed and co-exists with the new one), and if a law has been amended in the mean time, these two versions need to be searched

[54]For instance, the Strategy states that the Law on Obligatory Relationships does not prescribe the form of contracts on transfer of rights to immovable property, creating confusion. However, the form of contract on transfer of ownership in immovable property is stipulated in Article 36.2 of the Law on Ownership and Other Real Rights, while other forms of disposal of rights to immovable property are covered by other articles of this Law. In addition, other parts of the Strategy also contain confusions between provisions of the Law on Obligatory Relationships and laws whose purpose is to regulate immovable property transaction, adding laws from the time of the SFRY to this confusion in some parts.

separately. For example, when the Law on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo* (*Serbian: Zakon izmenama i dopuna zakona koji se odnose na zaključivanje međunarodnog nadlgledanja nezavisnosti Kosova*[55]) was in the process of adoption, 21 laws which were applicable in Kosovo at the time were also amended. None of these laws was updated in the meantime on the website of the Assembly of Kosovo.

What is more, when adopting new laws there is confusion in relation to the existing amendments to a law. This confusion sometimes caused certain provisions which were part of a law by amendments to simply "perish" [56]. This is exactly what happened to the provision of the Constitution of Kosovo*, which the Strategy writes about and which simply "got lost" during the process of the amendment of the Constitution due to such mistakes[57]. Also, until 2015, the website of the Constitutional Court of Kosovo* contained a version of the Constitution which was replaced a long time. This version stipulates supremacy of the so-called "Ahtisaari Plan"[58], which was removed when the Constitution was amended in 2012.

In this kind of situation, when basically no one has access to laws except for the self-government bodies or judiciary (often neither do they) there are no grounds for the rule of law or "regularising the situation" in the legal sector dealing with immovable property. This is not a new problem, but one that persists for years and keeps growing as the number of laws and amendments to these laws in Kosovo increases and it represents a major legal insecurity for all those who would like to engage in application of the law.

6.3.2. – Language of the Procedure

The Law on the Language Use[59] stipulates that the Albanian and Serbian language are equal in the entire territory of Kosovo*. Furthermore, the articles of the same Law stipulate the obligation of all agents in Kosovo to respect this equality by providing the parties involved in proceedings with the use of language they understand in all stages of proceedings. Article 14 of the said Law stipulates as an imperative obligation of courts the issue of proceedings-related documents in another language as well, if a party involved in the proceedings asks for it.

However, although nominally providing great guarantee of rights of non-majority community members, this law is rarely implemented in its entirety in practice. In court practice, the most common form of "providing language rights" involves hiring an interpreter who interprets the

[55]The original name of the Serbian version of the Law No. 04/L-115, dated 31st August, 2012

[56]An example of this is the first version of the Law on Amending and Supplementing the Law on Freedom of Religion, which is currently in the process. In its first version, this proposal involved Article 7A, which would, if adopted, "annul" the existing Article 7A, which concerns the status of the Serbian Orthodox Church and which was adopted when adopting a package within the Law on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo

[57]This is why the Strategy, although having expressed preference for certain interpretations, adopted a sincere attitude that it is not currently clear whether there is private property in Kosovo* or not.

[58]A comprehensive plan for solving Kosovo's status, 2nd February, 2007

[59]Law No. 02/L-37, dated 27th July, 2006

oral part of proceedings, while minutes and all other documents are made out exclusively in Albanian. When parties explicitly ask to have the minutes translated into Serbian, they are often provided with an "explanation" that courts lack budget for this and that the presence of an interpreter in the oral part of a trial is a "completely sufficient respect for the rights". This way the parties who do not understand the Albanian language are forced to sign minutes in a language they do not understand or to base potential legal remedies on the facts established in the minutes that they do not understand. In addition, this also entails additional costs for the parties who do not understand Albanian, since they have to hire a translator at their own expense.

Given that the majority of claimants for protection of rights to immovable property are of non-Albanian descent and that they are very often IDPs without funds to enable them to pay for these costs, the language problem is not only violation of rights to language use during the proceedings, but also a complete impediment to access to justice. Such actions mean that, despite constitutional and legal guarantees, the parties who want a full representation of good quality need to hire Albanian lawyers at their own expense, since they are not provided with free legal aid, they need to pay for court fees, travel expenses, and translation of minutes and other court files so that they are able to follow the course of proceedings.

For many participants in proceedings, especially IDPs, expenses of this extent entail a lack of possibility for the proceedings to be of good quality, in accordance with nominal, legal, and constitutional guarantees. This is why many people just accept the "factual situation" and are forced to participate in the proceedings, the large part of which they do not understand and neither do their representatives (those who represent them free for charge as part of the provided free legal aid programmes for IDPs).

6.3.3. – Failure to Ensure the Return of Internally Displaced Persons

All problems of IDPs that the Strategy addresses are related to institution-related flaws, such as duration of court proceedings, violation of IDP rights concerning notification procedures, and so forth. However, in the Strategy, there is no mention whatsoever of a problem which a large number of returnees face – a lack of institutional support.

Since 1999 to this date, only a small number of IDPs have returned to their homes[60]. There are numerous reasons for this, but the most prominent one is a lack of institutional support. Although the Strategy praises the GoK in several parts, saying it is "aware of its obligations", the reality is that returnees often immediately upon their return face maltreatment, intimidation, theft and demolition of property, and it often happens that they are target of protests containing strong nationalist rhetoric and hateful messages[61]. Reported criminal offences usually remain

[60] Only 12,145 persons have come back out of 204,049 displaced persons of non-Albanian nationality, and only 4,000 persons have achieved a sustainable return according to the UNHCR data

[61] On 1st April, 2017 there was a protest against IDPs who wanted to return to their homes in the village of Ljubožda

unsettled with a frequent display of complete a lack of interest for settling them on the part of the police of Kosovo[62].

6.4. – Taxation of Property as a New Imposition on IDPs

Although a part of the Strategy addresses the problem returnees are facing, which is taxation of their property while they are not able to use it, and later attempts of cumulative recovery of debts, another part[63] of the Strategy sees the problem in the fact that the arable land is not used. In the further text, after having presented the problem, the Strategy immediately offers a "solution" to the problem. The solution to the problem of the agricultural land left fallow is, according to the Strategy, taxation of agricultural land. This will, according to the Strategy, "act as an incentive" for many owners to either produce crops in order to be able to pay taxes or sell or lease their land to other people, who would use it in a more productive way.

What such provision on taxation would cause in reality is a new violation of rights of IDPs who do not have access to their land, which is why it remains fallow. Levying taxes on this land would create a situation where arable agricultural land is sold for a price which is below the actual market price or leased for a very low lease price only to try to avoid land confiscation as a result of not paying taxes.

7 – SOME OF THE SOLUTIONS OFFERED IN THE STRATEGY AND THEIR POSSIBLE IMPLICATIONS FOR IDPs AND NON-MAJORITY POPULATION

It is important to emphasise at the very beginning that the solutions offered by the Strategy follow the same logic as the presentation of the problems. In other words, they pursue the same objectives that are not overtly proclaimed, but are implied throughout the Strategy (boosting municipalities' income through taxation, regularising legal and factual situation in immovable property market, consolidation of land and legal consolidation of urban land for construction, and creating legal and factual conditions for formally providing foreign citizens with a possibility to become owners of immovable property in Kosovo). Having this goal in mind, the solutions drastically deviate from the objectives proclaimed in the Strategy, and primarily from the principle of the rule of the law.

In this section, this study will give an overview of certain solutions offered in the Strategy that could have implications for IDPs or non-majority population.

7.1. – Enhancement of Notification Procedure

The Strategy justifiably addresses the issue of notification in contested procedures concerning immovable property, especially when it comes to non-majority population and IDPs. It is the

[62] On 3rd April, 2017 also in the municipality of Istok, returnees to the village of Dragoljevac had their building material burnt a few days before reconstruction of the immovable property, the purpose of which was to intimidate the returnees. This is only one of the examples, which are, unfortunately, common and whose perpetrators often remain unidentified.

[63] Section 5.5.4 of the Strategy, page 38 (Serbian version)

procedure of notifying interested persons that the respect for rights to fair proceedings depend on, which is something that is set as one of the basic legal principles everywhere, including Kosovo. The next problem that the Strategy presents is the inadequate representation of parties who cannot be reached. They are assigned temporary representatives, whose representation and concern cannot be guaranteed.

According to the experience of the author of this study, after the conflict was over, there were cases of fictional complaints for determination of rights to immovable property. These complaints either contained no evidence or "the witnesses to the existence of contracts" served as evidence, relying on the fact that the opposing party simply cannot appear before the court due to safety reasons. Such examples still exist, although they are less frequent than before.

The Strategy relies on three proposed methods as solutions to this situation: electronic notification, notification through the media or the Internet (the so-called "doctrine of Constructive Notice"), and notification through collaboration with governmental and non-governmental organisations outside Kosovo*.

7.1.1. – Enhancement of Notification Procedure – Electronic Notification via the Internet

One of the possible methods of notifying parties involved in proceedings suggested by the Strategy are notices via the Internet, giving widespread use of the Internet access among the population in Kosovo as a reason, as well as similar example that already exist in the world.

Although it is true that the use of Internet has increased dramatically nowadays, this means for now cannot be used as a medium for notifying parties about initiating proceedings, course of proceedings, and serving the required documentation due to various reasons.

Firstly, there is no information on what the expression "access to the Internet" exactly entails. It is not clear whether it entails the use of social media, mobile phone applications, users who have email and know how to check it, or whether the criterion was solely the availability of the Internet[64]. In such situation, one cannot rely on the fact that this method of communication could be established as a secure way of summoning guaranteeing respect of the rights of parties involved in proceedings.

In addition, in order to use this method of notification, a party involved in proceedings must possess a qualified electronic signature or a similar means of electronic identification as a proof that they (the party) are indeed the one who received certain notice. This "new solution" is actually not a novelty at all and it already exists in the Law on Contested Procedure, but is rarely used. The use of electronic signatures has not taken off in Kosovo yet, and especially not to the extent needed for electronic serving in court proceedings. Therefore, no matter how interesting, this idea of the Strategy could not be applied in conditions prevailing in Kosovo.

[64]This was actually named "rate of access to the Internet" in the Strategy, which is a very vague term that has not been further explained.

7.1.2. – "Doctrine of Constructive Notice"

According to the Strategy, "Doctrine of Constructive Notice"[65] is a procedure currently used in non-contentious procedures, and it concerns treatment of property when heirs either do not exist or their identity is unknown (putting an advertisement in Kosovo newspapers asking potential heirs to answer the advertisement within six months), as well as the procedure in the cadastre whereby every change in the competent cadastre service is displayed on noticeboards of municipalities for 5 days. According to this "doctrine", as explained in the Strategy, the party who has interest in certain proceedings also has liability to show interest in initiation of the proceedings, conduct of proceedings, and decision made during the proceedings once it is published in a way which is "robust" enough.

If the "doctrine of Constructive Notice" for procedures related to cases about immovable property whose ownership is either disputed or can become disputed, this would mean that the responsibility for notification on proceedings transfers from the body adjudicating in the initiated proceedings to the party who has interest to participate in the proceedings and who is often unaware that the proceedings were initiated in the first place.

This method of notification can be applied in some proceedings. In inheritance proceedings, actions to set disposition of property aside must be brought within ten years and the legal reasons for actions are given. If the potential heir did not know about the initiated proceedings, they must bring actions to set the proceedings aside within ten years and claim their inheritance. Registration in the cadastre is not a constitutive, but a declarative act, resulting from a legal transaction. So, an interested party must bring actions to set the registration aside in the cadastre on any grounds as long as it is not arising from the registration in the cadastre, but from a legal transaction which preceded the registration and which is attended to be set aside by an action before ordinary courts of law, so a notice on the noticeboard can be considered when registering in the cadastre.

However, in the proceedings where a validity of a legal transaction is decided upon (for instance, a purchase contract that has not been concluded in an adequate form), notifying interested parties is of vital importance for proceedings to be valid because the judgment in these proceedings can be passed due to a party's absence. Extraordinary appeals against such judgments (once the existence of the judgment comes to interested party's knowledge) are extremely complicated and can be made for a relatively low number of restrictive reasons. Finally, limitation periods for bringing actions to set such judgments aside by means of extraordinary appeals are much shorter than time limitations set by laws for bringing actions to set aside decisions on inheritance or transactions serving as grounds for registration in the cadastre[66].

[65] "Doctrine" is a term used in the Strategy for this method of notification.

[66] See Articles 211 –251 the Law on Contested Procedure (the version uploaded on the Assembly of Kosovo website as of 11th November, 2017)

Given that the Strategy regards notification via official institution websites in the Serbian language as part of "the doctrine of Constructive Notice", it is important to emphasise that official institutions in Serbian often lack Serbian version. Even if they do have it, translation is poor, the news, translated documentation, call for transactions, etc. are often missing[67]. In these situations, IDPs would be expected not only to check the websites regularly, but also to check the websites in other languages at the same time.

Even if the notices to persons having interest in proceedings for determination of ownership in immovable properties are published in the media in Serbia, this is still not legal remedy which is, within the boundaries of fair proceedings, suitable for proving that the notice has actually been received, i.e. that the existence of proceedings where interested party's rights are decided upon has come to their knowledge. Along with some other "creative" solutions that the Strategy offers as a possibility, this represents a potential means for mass violation of rights of non-majority population and IDPs, and "settlement of property dispute in the fastest possible way" to their detriment and in favour of the usurpers of their property.

7.1.3. – Collaboration with Official Authorities or Non-Governmental Organisations in the Region

The Strategy offers another idea for enhancement of delivery procedure, and it consists in delivery through credible organisations acting outside Kosovo*. Although given least attention, this idea of Strategy is the only one which, given the circumstances, could guarantee minimum respect for rights of parties when it comes to delivery, especially when they are members of non-majority population and IDPs. A great deal of attention would certainly have to be paid to the choice of the partner non-governmental organisation, but given the situation on the ground, this is the only idea that can guarantee respect for rights of IDPs living outside Kosovo*, if conducted in a good way, because the obligation of delivery would be assumed by the organisations having the logistics on the ground and interest in locating the persons who the delivery should be made to and who should be delivered a summons or an application. In addition, there are organisations dealing with these activities ever since the conflict ended, they have large databases, and in some situations, they are able to locate an IDP more easily than a government body.

7.2. – Use of Administrative Procedures to Provide Legal Recognition of Informal Rights in order to Register These Rights

Informal rights, as named in the Strategy, are rights to immovable property factually enjoyed by a person not registered in official registers as the owner of the immovable property. This situation has been caused in various ways, but the most common are informal purchases of land, usurpation of immovable property of IDPs, and unsettled inheritance proceedings.

[67] This subject is dealt with in the research conducted in 2014 by the Association of Serbian Lawyers of Kosovo with the support of the Embassy of the United Kingdom. During a review of websites of Kosovo institutions, no page containing all information in Serbian was found, unlike in other two languages (Albanian and English). At this point, all institutions were sent recommendations, but the situation remains unchanged to this day.

In order to solve this "in the fastest and most efficient way possible", the Strategy suggests making proceedings shorter by applying administrative procedures instead of the current court proceedings. The Strategy does not specifically name the authorities which would deal with this, but according to certain solutions, it is implied that these proceedings would be conducted by competent municipal cadastral services.

This proposed solution is highly problematic and can lead to another mass violation of human rights of IDPs and non-majority population in Kosovo.

Although the Strategy invokes administrative procedures conducted in the KPCVA, we believe that this is not applicable to other cases nor that it should become a rule. Firstly, the KPCVA, as its predecessors, has been founded by a lex specialis for a specific purpose, has a limited mandate, and the processes conducted in it are not strictly administrative, but administrative procedures with significant modifications. Furthermore, the KPCVA was founded as a result of agreement between Serbia and Kosovo* with a view to attain the specific goal it has. Due to the structure of the KPCVA, despite all its flaws that have already been addressed, the processes and funding available to the KPCVA ensure a method of locating IDPs, notably owing to collaboration with organisations from the region, which can be much more informal than with other authorities and agencies in Kosovo. Finally, parties have rights to court protection against KPCVA decisions, which is initiated before the Supreme Court of Kosovo* (which has two instances) and can get to the Constitutional Court of Kosovo*.

On the other hand, what the Strategy suggests is that the GoK should find the best method and make procedures whereby the KPCV or another administrative body can basically replace the court in proceedings concerning ownership of immovable property, which are often disputed. These proceedings include a great deal of evidence, many witnesses, there are many procedures prescribed, and they are ruled, or rather should be ruled, by impartial judges who have passed the bar examination and have experience in these cases, which should be a guarantee of respect for rights of parties involved in the proceedings. These cases cannot be regarded as equal to a simple comparison of cadastral data, which is essentially the major part of the KPCVA's mandate. In addition, due to past malversations with Serbian property in administrative authorities in Kosovo, a great number of investigations and criminal proceedings for corruption were initiated, so the trustworthiness of system institutions is justifiably questioned.

Having regard to this, it absolutely cannot be permitted to transfer the cases where ownership in immovable property is decided upon to administrative authorities, because this would again lead to mass violation of human rights of IDPs and non-majority population, this time, giving "disburdening of courts" as justification.

7.3. – Offered Solutions for Eviction of Usurpers of IDPs' Immovable Property

Implementation of HPCC, KPCC, and PCC decisions is an obligation of Kosovo authorities, notably the GoK, the prosecution, and the Police of Kosovo*. Therefore, the problems addressed in the Strategy, namely the failure to implement final and enforceable decisions of

the said bodies, insufficient proceedings against usurpers and re-usurpers, and many other disturbances, all of which reflect unpreparedness of institutions to evict the usurpers from the immovable property they occupied, show that this is an institutional problem, i.e. institutions' unpreparedness to implement laws. Having regard to this, the main task in this field has to be making institutions do their job.

However, the solution proposed in the Strategy is quite opposite and involves (once again) shift of liability to the aggrieved party. The Strategy proposes a solution where the Police of Kosovo* performs the first eviction free of charge, while any subsequent eviction, in case of re-usurpation, would be conducted by private bailiffs, who would be paid by the persons whose immovable property has been usurped.

In practice, this will mean that, if a person leaves an immovable property and re-occupies it (which is not rare), it is not Prosecutor's responsibility to prosecute them nor is it the responsibility of the police to execute enforceable and binding decisions, but it is the responsibility of the aggrieved party, who will, in addition to proceedings before the bailiff, which they have to participate in while they are outside Kosovo*, have to pay high fees. In other words, this will entail a definite suspension of these proceedings for most IDPs and leaving the immovable property to usurpers, since they will not be able to come to Kosovo* and pay for all costs which enforcement proceedings and eviction of usurpers involve.

This kind of solution cannot be justified by anything else but coming to terms with de facto "situation on the ground" and artificial "regularisation of the situation" once more. The ultimate effect of application of such solution will once again be harmful only to the persons who have already been aggrieved, while unscrupulous usurpers of another person's property will profit from a crime committed by occupying another person's immovable property. Finally, the final effect of these recommendations will harm all inhabitants of Kosovo* because the rule of law is built on respect for law and decisions made by relevant institutions, rather than on "recognition of factual situation" brought about by violence.

7.4. – Rights of Usurpers and Reimbursement of Their Expenses

The Strategy also contains hints of possible rights that usurpers would enforce by construction on another person's land or by occupying another person's immovable property.

Section 5.3.1 of the Strategy (Final Resolution of Claims Lodged at the KPA) mentions potential rights that the persons who have been given the right to use an immovable property, usually under lease, by the KPA may have acquired. Possible vast expenses that these persons met while investing in the property are mentioned as possible grounds for acquisition of rights. Given that this usually involves usurpers of IDPs' property, who have been granted the right of residing in return for rent, the solution which would give them rights to immovable property which they occupied illegally would mean an additional legalisation of violent and unlawful occupation of property. In addition, from the moment their status was formalised, these persons acquired a status of tenants and are not allowed to make any large investments or acquire any rights over the immovable property without an explicit permission and consent of the landlord

(in this case the KPA) except in the case of violence in a legal sense against legal owners of the immovable property.

Secondly, as a solution to the problem of unlawful constructions on another person's land, the Strategy proposes agreement between the owner and the usurper of a land. In case the agreement fails, the Strategy offers another "creative" solution in a series of others, whereby the GoK could expropriate the disputed land and pay the owner the market price. The offered solution is not problematic only from the point of view of the Law on Expropriation, which would not allow something like this by any means since there is no public interest in settling a dispute over ownership in immovable property from the central level of government, but it is also problematic from the point of view of legal practice of the Constitutional Court of Kosovo*. Even the Strategy invokes the "Jovanović Case". In this case, the person who usurped a property and lower courts in Kosovo followed the same logic as the Strategy: to keep the immovable property and pay the owner the "market" price for the land. In expropriation proceedings, these prices are regularly lower than actual market prices. However, the Constitutional Court adopted the attitude that the owner of a land has the right to choose what will happen to their immovable property, and that it is the sole task of the institutions is to implement this decision whatever it may be (in this case this would mean securing funding for demolition of unlawful constructions).

It is superfluous to emphasise again that granting "rights to immovable property on grounds of investment" to usurpers or tenants who were not allowed to do that without a permission of the owner or the landlord is, once again, violation of rights of persons who are actually victims in this situation, i.e. persons who lost their property due to physical violence or violence in a legal sense, which they have been and still are exposed to.

7.5. – Solving Rights of Persons from Categories "A" and "C"

The Strategy does not deal with persons of non-Albanian nationality who lost their flats where they lawfully and legitimately resided without infringing anybody's rights. No recommendations are given on reversion of flats to persons who own them or to compensate them for their loss, probably as a result of coming to terms with the "situation on the ground" again.

However, what is more dangerous here is the way in which the Strategy classified persons who filed property claims before the HPD. This classification, which is by no means a result of ignorance, reveals the true intentions of the individuals who participated in composing the Strategy.

The Strategy mentions two groups of persons, namely "category A", persons of Albanian nationality, who were expelled from their homes by means of actions of Serbian authorities, and "category C", which, according to the Strategy, comprises persons of Serbian nationality who later moved into these flats.

However, the truth is that, according to the classification made by the HPD, which dealt with this issue, there were three categories of claimants. The first category, i.e. "category A" comprised Kosovo Albanians who lost their flats due to acts adopted during the Milošević regime. "Category B" comprised Kosovo Albanians who bought flats, but could not be registered as buyers by law. Finally, "category C" comprised Serbs who lost their flats after having been displaced from Kosovo* in 1999.

Despite HPD's expectations that the largest number of claims for reversion of housing would come from the first two categories, out of a total of 29,155 claims filed to the HPD, 27,182 claims were filed by Kosovo Serbs and other non-Albanians, i.e. persons from "category C". There were 1,212 claims from "category A", while there were 766 claims from "category B". Classifying persons from "category C" as persons who were Serbian usurpers of Albanian flats is not only a blatant untruth, but it cannot be supported by the number of claims filed either. More than 90% of claimants before the HPD are Serbs and other non-Albanians, while all others together make less than ten percent, which cannot be explained in any other way, but as Serbs and other non-Albanians being the most frequent victims of flat occupation[68].

The Strategy gives a recommendation that persons from "category C" should be paid compensation for their housing. The amount mentioned amounts to a total of three million euros of compensation to persons from "Category A" and persons from "Category C"[69]. In other words, this transforms a possible material claim that these persons could file into a contractual claim. More specifically, it is recommended that these persons should be paid compensation instead of solving their potential claims so that they can return to their flats which they were expelled from although they were scrupulous and never expelled or endangered another person in any way[70].

This solution can be very worrying. Unless a lex specialis is adopted for persons of non-Albanian nationality who invested their money in the Kosovo housing fund (which is almost impossible), these potential contractual claims would be decided upon during ordinary proceedings. This in turn means that compensation claims will take the form of contractual claims, which in Kosovo become outdated due to a general 10-year limitation period. Since more than eighteen years have passed since the conflict ended and IDPs were expelled from their flats, it is almost certain that their claims will be rejected on account of lapse time. This

[68]The HPD has made decisions on these claims. According to these decisions, flats or houses were demolished or damaged to the extent it was no longer possible to live in them in 36% of the cases. A certain number of usurpers of housing, more precisely 12%, were evicted, but the return was still not possible due to safety reasons. In other cases, the HPD has made formal decisions on eviction that have never been implemented.

[69]The amount of 3,000,000 euros is a total compensation to categories "A" and "C", but there is no further explanation on how this amount was calculated.

[70]We will take this chance to remind the readers one more time that the Strategy pays special attention to persons who bought usurped property, but who did not participate in expulsion of its owner. In other words, these persons were scrupulous in their relation to owners who are IDPs. These persons in question were scrupulous in all matters, but the Strategy adopts a different approach: it does not encourage their return to their own homes, but paying them the total amount instead, which was calculated in an unknown way.

way "the situation on the ground" would be legalised once more, although it was brought about through various forms of violence against lawful owners of immovable properties.

Therefore, this solution or any other solution from the Strategy cannot guarantee respect for rights that IDPs are entitled to – notably the right to return to their homes, and then to decide on what they want to do with their immovable properties. It is superfluous to say that such classification of claimants, where the entire category of persons who had their homes usurped are called usurpers, swapping the roles of usurpers and their victims, is a clear indicator of real intentions of the individuals who participated in writing the Strategy.

8. – CONCLUDING REMARKS

The goal of this short overview was to point to main dangers and flaws that the Strategy brings, while at the same time focusing on non-Albanian population and IDPs, as well as potential violation of their rights in case the solutions from the Strategy were to be adopted. It is indisputable that this paper did not cover all the flaws, and it is also indisputable that there are also flaws in other segments which the Strategy addressed, but which were not subject of this paper[71].

Taking into consideration everything we pointed out, we believe it is indisputable that the Strategy is a very dangerous document, which attempts to conceal its real objectives from the very beginning, but they are nevertheless obvious in every presentation of a problem and in every offered solution.

Adoption of recommendations from the Strategy will lead to legalisation of the current situation, which was created through force and a later obstruction of implementation of decisions[72]. In other words, all persons who had already been victims will be victimised once more, but this time for the purpose of "regularising the situation on the ground". Whether this involves pre-war owners who had their land seized, or persons who were displaced and cannot

[71]For example, consolidation of land fund in Kosovo* cannot be discussed without at least mentioning the Law on Inheritance as the potentially leading cause of fragmentation of land, as well as the need for reforming the Law in order to provide more testamentary freedom to testators.

[72]The Strategy alone repeats in several places that the GoK does not constantly provide the means for implementation of decisions concerning immovable property, that the police and the prosecution do not proceed against usurpers and re-usurpers, although it is repeated in several parts that the GoK is "devoted to its objective", "aware of its responsibilities", etc.

return to their homes, or persons who are victims of fraudulent transactions or property usurpation, everybody loses if the Strategy solutions were to be implemented.

The "Pinheiro Principles", invoked at the beginning of the Strategy, are thus out of the question. The principle of people returning to their homes is constantly simply set aside, although it is formally mentioned. Instead of giving recommendations that would guarantee implementation of decisions, eviction of usurpers, and return of the displaced, the recommendations in the Strategy do not only guarantee that usurpers will keep what they obtained by force, but also that they will acquire certain rights over the property they usurped without any compensation whatsoever to persons whose property was usurped.

The Strategy may be regarded as anything but a document to be taken into consideration when drafting law proposals, at least when it comes to IDPs. If laws were to be implemented on the basis of these proposals, violence and taking displaced people's property by force would be made legal.

This time and forever.