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**Thematic report "Impact of the Skopje Initiative on the
realization of the rights of internally displaced persons"**

Aleksandar Radovanovic, Expert



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LIST OF ABBREVIATIONS

IDP – internally displaced persons

KM – Kosovo and Metohija

TWG – Technical Working Group

EU – European Union

OSCE – Organization for Security and Co-operation in Europe

UNHCR – United Nations High Commissioner for Refugees

GSV – “Go-and-See” Visit

GIV – “Go-and-Inform” Visit

MOCR – Municipal Office for Communities and Return

KP – Kosovo Police*

MCR – Ministry for Communities and Return

KPCVA – Kosovo Property Comparison and Verification Agency

GK – Government of Kosovo*

Strategy – Kosovo National Strategy on Property Rights from the year 2016

HPD – Housing and Property Directorate

KPA – Kosovo Property Agency

PCC – Property Claims Commission

PVAC – Property Verification and Adjudication Commission

Regulation – Regulation on the Return of Displaced Persons and Durable Solutions

MCoR – Municipal Commission on Returns

CRC - Central Review Commission at the Ministry of Communities and Returns

CMS – “Case Management System”

* This name is without prejudice to the status and is in line with United Nations Security Council Resolution 1244 and the opinion of the International Court of Justice on the declaration of independence of Kosovo.

INTRODUCTORY REMARKS

The Skopje Initiative, or Skopje Process, is the common name for a gathering of regional conferences at a high and technical level, which has been running since the year 2014. The aim of the whole process is to more effectively protect the rights of internally displaced persons (IDPs) from Kosovo*, i.e. persons who in the period 1998 – 2004 had to leave their homes and live in one of the surrounding countries in the region (Northern Macedonia, Montenegro), in the territory of central Serbia or in Kosovo*, but not in the place of their previous residence.

In order to achieve these goals, five technical working groups with clear tasks were formed, each from a particular area of interest for the sustainable return process: property rights, personal documents, data exchange, solution planning, security, dialogue and reintegration. The Technical Working Groups (TWGs) meet regularly; they adopted an action plan on the steps which must be taken and they discuss in the meetings what has been achieved so far, what has not been achieved yet and the obstacles which must be removed in order for the process to continue.

What this report will attempt to portray is what the actual effects of the Skopje Initiative are on the lives and rights of IDPs.

The focus of our paper will be on the territory of Kosovo*. Not only because everyone fled the territory of Kosovo*, but also because the return is focused on the areas located in Kosovo*. In the course of our paper, in addition to the results which have already been achieved in the field, or which have potential in the future, we will review the documents which originated from the Skopje Initiative, i.e. the documents which are considered to have originated from the Skopje Initiative, and we will try to portray their possible impact on the future.

Finally, we will try to give practical recommendations for the most significant document which originated from the Skopje Initiative, and that is the Regulation on Returns.

1. DEVELOPMENT OF THE SKOPJE INITIATIVE

1.1. Reasons for the Initiative

After Kosovo* conflict in 1999, as well as the events of March 2004, about 220,000 persons were displaced from their homes¹. The largest percentage of displaced persons were non-Albanians², particularly from urban areas to which they have not returned in large numbers to date.

After the first problems with forced displacement, problems of another nature emerged as well: property in the place of origin, security problems of returnees, problems with the economic integration of returnees, negative campaigns against the return and returnees³, etc. Institutions in the place of origin have not proved adequate in resolving the accumulated problems of returnees, especially not at the systemic level. Thus, by December

¹ Office of the Chief of the UNHCR Mission in Kosovo, statistical review for December 2018

² Also, the largest number of refugees fled to the area of central Serbia, according to estimates of about 210,000 people, according to the same UNHCR data

³ <https://jugpress.com/bilbord-u-musutistu-kod-suve-reke-protiv-povratka-srba/> Billboard in Mushtisht near Suva Reka against the return of Serbs, the article from 22th August 2016

2018, i.e. 19 years after the end of the conflict, only 28,111 persons returned, i.e. slightly more than ten per cent of the total number of displaced persons or refugees⁴.

The dialogue between Belgrade and Pristina, which took place under the auspices of the European Union (EU), led to the calming of tensions, as well as progress in freedom of movement, recognition of personal and travel documents, and integration of Serbs from Kosovo* into institutions of local and central self-government in the system of Pristina. However, the issue of personal property and the issue of return continued to be points where further intervention was needed.

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Ten years after the aforementioned forced displacement from the previous place of residence in Kosovo*, the Kosovo Mission of the Organization for Security and Co-operation in Europe (OSCE) organized a two-day conference in Skopje in November 2014, following a period of intense lobbying, in order to reach a solution through the coordination of regional governments, at a high level, which would start the return process from the deadlock and set the process of protection of property rights of IDPs as a key principle in the legal system of Kosovo*.

1.2. Adopted principles

The gathered high representatives from Pristina, Podgorica, Skopje and Belgrade expressed their commitment to this regional initiative, called the "Skopje Initiative".

It was agreed at the conference to establish a High-Level Forum on Durable Solutions for Displaced Persons from Kosovo*, which will meet periodically to review progress and provide guidance and political support. In addition, it was agreed to establish Technical Working Groups (TWGs) which will operationalize the measures and priorities adopted by the High-Level Forum.

⁴ Assessment of Voluntary Returns in Kosovo, OSCE, November 2019, page 9

Following the conference in Skopje, the Technical Working Group met on July 15, 2015 to agree on a common concept for the initiative. At the meeting held on September 1, priority areas and measures were discussed, and on September 21, four documents adopted at the High-Level Forum held on September 22, 2015 were finalized:

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1. Concept of coordination and planning,
2. Priority areas and measures for inter-institutional cooperation on durable solutions,
3. Scope of work of the technical working group, and
4. Joint statement.

In the Concept Paper, the OSCE and the United Nations High Commissioner for Refugees (UNHCR) have established, in addition to the International Guiding Principles on Internal Displacement⁵, additional principles which respond to the specificities and specific needs of internal displacement from Kosovo*:

1. The need for comprehensiveness and inclusiveness reflects the interests of displaced persons.
2. Use the indicated open space to attract attention and available resources in order to optimize the effect, transparency and efficiency.
3. Consciously adopt the deadline – organize solutions by the year 2016.
4. Establish a regional platform which will be supported by both political commitment and agreement on principles, while ensuring localization and taking responsibility for plans related to durable solutions.

⁵ The Guiding Principles on Internal Displacement (1998), Inter-agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons (2010)

5. Support the development, review and implementation of strategies and action plans on durable solutions for the displaced population from Kosovo *, as well as advocacy for resources, while actively reaching solutions to all priority cases.
6. Make a list of priority cases based on the needs criteria.
7. Agree on order and tactics: fully explore the potential for return, while concurrently dealing with integration in the place of displacement for those who cannot or do not want to return.
8. Gather additional information on the needs, capacities and feasibility of options.
9. Use the existing impetus – do not wait for complete information, be constantly on the move.
10. Introduce a variety of assistance packages to different groups.

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Following these meetings, the TWG met regularly to review progress in achieving the goals and principles set out in those initial meetings. In addition to checking progress, participants also gave suggestions on what to do and how.

The Skopje Initiative started to produce the first results already in the following year⁶, while over time the activities which are generally viewed as activities arising from the Skopje Initiative increased in number.

In general, the activities arising from the Skopje Initiative could be grouped into two large broadly integrated groups, in order to monitor these results:

⁶ This paper will deal with the qualities and scope of these results in the further part of the presentation.

- 1) Field initiatives derived from the Skopje Initiative – initiatives related to direct work in the field, both work with IDPs and work with representatives of Pristina institutions in the field;
- 2) Documents derived from the Skopje Initiative – The most significant documents are the amendments to the Real Property Tax Law⁷, Kosovo* National Strategy on Property Rights⁸, Proposed amendments to the Law on Kosovo Property Comparison and Verification Agency⁹ and the Regulation on the Return of Displaced Persons and Durable Solutions¹⁰.

2. FIELD INITIATIVES ORIGINATING FROM THE SKOPJE INITIATIVE

The Skopje Initiative is not and must not be a goal in itself. The primary goal of the Skopje Initiative is to return IDPs to their homes, i.e. to integrate IDPs into the local environment where possible¹¹, which would adhere to the so-called "Pinheiro Principles"¹². In this sense, everything which is agreed at a high level, or every document which is adopted, must have its operationalization in the field or it will not have any purpose.

In this regard, we need to first follow the initiatives concerning the facilitation of living conditions or basic security of returnees and those who would like to return. These are initiatives which currently exist and are focused primarily on facilitating return or obtaining

⁷ Real Property Tax Law No. 06/L-005, published in the Official Gazette on February 15, 2018

⁸ National Strategy on Property Rights of Kosovo* from the year 2016, available at http://www.kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_SRB.pdf

⁹ http://www.kuvendikosoves.org/Uploads/Data/Documents/110PLperndrysheligitperAgjencineperkrahasimdheverifikimteprones_DdaBVGatjy.pdf

¹⁰ Regulation on the Return of Displaced Persons and Durable Solutions No. 01/2018, available at [http://www.kryeministri-ks.net/repository/docs/RREGULLORE_\(QRK\)_-NR._01_-2018_P%C3%8BR_KTHIMIN_E_PERSONAVE_T%C3%8B_ZHVENDOSUR_DHE_ZGJIDHJE_T%C3%8B_Q%C3%8BN_DRUESHME..pdf](http://www.kryeministri-ks.net/repository/docs/RREGULLORE_(QRK)_-NR._01_-2018_P%C3%8BR_KTHIMIN_E_PERSONAVE_T%C3%8B_ZHVENDOSUR_DHE_ZGJIDHJE_T%C3%8B_Q%C3%8BN_DRUESHME..pdf)

¹¹ In principle, it is about the integration of IDPs into the local environment where the majority of the population is of the same ethnic composition as them. In these cases, it is (justifiably) considered that there is the least possibility of any return-related incidents and the greatest possibility of economic and social integration into the environment.

¹² Principles on Housing and Property Restitution for Refugees and Displaced Persons (August 2005, the 'Pinheiro' Principles)

information on the possibility of return for those IDPs whose homes before the war were located in mixed areas or areas which have since become ethnically clean.

2.1. General overview of the situation related to the return of IDPs

According to available data, the total number of IDPs affected by the 1998-2004 conflicts in Kosovo* is around 220,000¹³. Of that number, by the end of December 2018, a total of 28,111 persons had returned¹⁴. However, this number is constantly declining. According to the report of the Office of the Chief of UNHCR in Kosovo¹⁵, 582 persons returned in 2015, 498 persons in 2016, 498 persons in 2017 and 327 people in 2018. According to the OSCE report¹⁶, the biggest problems related to the return included problems related to property rights¹⁷, security incidents and opposition to return by the receiving community. In addition to these, there are problems with the economic perspective as well, i.e. what is called "sustainable return" - when all previous problems are solved, the economic aspect of return remains, as the returnee does not only have to live in a certain environment but also to have the means to live on and thus ensure that the return is durable¹⁸.

Given the presented situation regarding the return, it is extremely important to provide at least a minimum of security conditions for returnees.

To this end, some of the most significant measures developed as a direct consequence of the Skopje Initiative, which are not related to some of the legal acts which will be discussed

¹³ "Situation and needs of internally displaced persons", Commissariat for Refugees and Migration of the Republic of Serbia, page 12, available at

http://www.unhcr.rs/media/docs/2018/11/Stanje_i_potrebe_IRL_2018_SRB.pdf

¹⁴ UNHCR data

¹⁵ Office of the Chief of the UNHCR Mission in Kosovo, statistical review for December 2019

¹⁶ OSCE REPORT, "Assessment of Voluntary Returns in Kosovo*" December 2019, page 9

¹⁷ The property rights referred to herein mainly relate to the usurpation of IDP property.

¹⁸ This is important for a later presentation, as this issue has been systematically addressed since it had been addressed for the first time in 1999 in the Regulation on Returns and Durable Solutions, as an official and binding document adopted by Pristina.

in the later part of the presentation, are "Go-and-See" visits (GSV) and "Go-and-Inform" visits (GIV)¹⁹, organizing the Kosovo* Police in accordance with the needs of protection of returnees, working on the implementation of court decisions on the demolition of illegally constructed buildings and the introduction of video surveillance in places where returnees live.

2.2. GSV and GIV visits

According to the definitions in the Regulation on the Return of Displaced Persons, GSV visits include going to the former community, re-establishing contact with the local community and former neighbours and assessing the possibility of returning to the place of displacement²⁰. GIV visits are informing on the current situation in their former community, opportunities for return, as well as opportunities to receive assistance.²¹ Essentially, as the name suggests, GSV visits are of a more informal nature, and not necessarily for the purpose of return, while GIV visits are entirely in the service of the return of the displaced person to the place of displacement.

It must be emphasized that these visits have existed before, i.e. before the Skopje Process. However, as mentioned in the later part of the presentation, the problem is that prior to the Skopje Initiative, municipal offices were not active enough in terms of this activity. The advantage of the Regulation, as in other segments, is the centralization of working on the return, which applies to these types of visits as well; and although activities are still carried out through municipal offices and other bodies, there is now a central body overseeing the entire process and collecting data on how each institution conducts itself throughout the whole process.

¹⁹ GSV and GIV visits have existed before, but, until the Skopje Process, they were associated with administrative barriers and a lack of coordination between institutions. For the purposes of this review, when we talk about these visits as something that originated from the Skopje Initiative, we are talking about visits which are supported by institutions and in which a coordinated approach appears for the first time.

²⁰ Article 3.1.15. of the Regulation

²¹ Article 3.1.14. of the Regulation

These visits are organized through the Municipal Office for Return (MOCR)²². According to the OSCE report²³, in the year 2018, 12 MOCRs organized regular GSV or GIV visits, while three more municipalities organized either GSV or GIV visits. A total of 18 municipalities have organized this type of visit so far, including municipalities which have organized these visits before.

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Furthermore, the importance of these mechanisms within the Skopje Initiative was further strengthened by the TWG's documents for security, dialogue and integration as well as the TWG for personal documents. Thus, in the TWG's Action Points for Security, Dialogue and Reintegration, it was agreed that the Ministry will actively participate in this process by promoting dialogue between societies on GSV and GIV visits²⁴ and that it will also be worked on raising awareness of the importance of the right to return, specifically, through the work of mayors on raising awareness in local communities before these visits take place.²⁵ In this way, not only is a better atmosphere created for these visits but also the obligation of local authorities to actively participate in the whole process.

In order to avoid possible problems regarding personal documents, it was agreed at the TWG for personal documents that IDPs coming within the GSV program will have priority in obtaining the necessary documents, and even that, after the notification, a schedule of staff will be made to work on it regarding it as a priority task. As already pointed out, this shall be done through the Ministry as the central body in the whole process, which later shall coordinate with the Ministry of Interior and municipalities²⁶.

Although it is still too early to talk about the effects of these visits, the fact that they are being organized, along with the organization of municipalities which have not been very active so far in terms of IDP return, is progress. With the obligation of each municipality to adopt a strategy for the return of displaced persons, this is certainly the first step which, in cooperation with potential donors, will create a better atmosphere for achieving the

²² More about these offices in the later part of the presentation.

²³ OSCE REPORT "Assessment of Voluntary Returns in Kosovo*" December 2019, page 16

²⁴ Item 1.4. of TWG's Action Points for Security, Dialogue and Reintegration

²⁵ Item 7.1 of TWG's Action Points for Security, Dialogue and Reintegration

²⁶ Item 3.3. of TWG's Action Points for Personal Documents

primary goal of the Skopje Initiative — which is to return IDPs to the place from which they were displaced. How successful it will be in all this, still largely depends on the receiving community.

2.3. Organizing the Kosovo* Police in order to protect returnees

One of the biggest, if not the biggest, problem in IDP returns is certainly security. The crimes that are nowadays the most common, and which certainly discourage the return, are the crimes of destruction and alienation of property. In 2018, there were major crimes against the property of returnees²⁷.

Another big problem is that persons who alienate property from returnee houses are almost never discovered or prosecuted. This is another factor in creating insecurity, as well as the inactivity of institutions, in this case the KP, to ensure the safety of returnees, which is a prerequisite for safe and sustainable return.

Through the Skopje Initiative, changes are being made to this way of treating returnees and their property. Although progress is limited for now, it must certainly stand out as a positive thing.

In the village of Ljubozda, where 13 returnee families have spontaneously returned, a threat to the safety of the returnees immediately appeared due to the reaction of the local population²⁸. After initial condemnation which did not stop the incidents, the KP, in

²⁷ The exact number of these crimes cannot be realistically determined, as a large number of these crimes are not treated by the Kosovo* Police as a crime with interethnic elements, nor is there a crime in the Kosovo* Criminal Code that would indicate these crimes as qualified crimes against returnees or the property of a returnee rather than as an ordinary crime against property, even in cases where it is clear what the motives for destroying someone's property are.

²⁸ Immediately upon the return, a "spontaneous" protest was organized, and after that insulting graffiti was written on the house of one of the returnees. In the local media, returnees were linked to war crimes from the 1999 war, and the whole atmosphere was very difficult for returnees at first

cooperation with the Ministry of Communities and Returns (MCR), established reinforced patrols through the village and then a permanent police checkpoint. After three months, the permanent police checkpoint was removed, but constant patrols and constant assessments of the security situation have remained.

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In some cases, municipalities compensated returnees who were victims of security incidents. Thus, the municipality of Klina paid 300 euros to two families whose 1,000 bales of hay were set on fire²⁹.

2.4. Work on the implementation of court decisions on the illegal demolition of illegally constructed buildings and the eviction of occupiers

Trials in which IDPs demand the demolition of buildings illegally erected on their properties or the eviction of persons who have illegally occupied their houses and flats generally take a very long time and are fraught with enormous costs³⁰. However, even when such trials are completed, the enforcement of these judgments is neither easy nor certain, especially in relation to the costs of enforcement.

The problem with returns of possession of houses and flats is that the real estate gets immediately illegally occupied again (sometimes even on the same day after the eviction), and it is necessary to again conduct the procedure for re-eviction or eviction of persons who illegally occupied the real estate³¹. Another problem is that, under current laws, the KP can

²⁹ OSCE REPORT "Assessment of Voluntary Returns in Kosovo*" December 2019, page 29.

³⁰ In one of the earlier papers, the same author came up with a total average figure of around 1,000 EUR only for the costs related to the basic trial, provided that the verdict was reached in IDP's favour. Enforcement costs, for which it is not possible to determine in advance how much they will be due to the very nature of this procedure and the possibility of the procedure before the Kosovo authorities being delayed by the enforcement debtor, are later added to the aforementioned figure.

³¹ Articles 19.6. and 19.7. of the Law on KPCVA. According to the Law, the staff of the Agency is obliged to carry out the eviction again in case of re-usurpation that occurs within 72 hours, and if the property is re-usurped after that, the procedure shall be carried out according to the provisions of the law regulating the executive procedure. Given the enforcement situation in Kosovo*, these two provisions in fact mean that if someone usurps property for the second time after eviction, the party shall again come under the jurisdiction of regular courts and bailiffs, which guarantees additional waiting, new proceedings and additional costs for persons

only help with evictions twice, while private executors must be hired afterwards³². This is also addressed as a problem in the Kosovo*'s Ombudsman's Report³³, which suggested that the Law on the Kosovo Property Comparison and Verification Agency (KPCVA) be amended to allow the KP to evict the person who has illegally occupied the property as many times as is required. Amendments to the law were not voted on then, both due to calling new elections and opposing the law³⁴, so the very positive initiative of the Ombudsman in Pristina, which is in line with the observed problems in the Skopje Process, has so far remained without materialization in the laws.

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Regarding the demolition or removal of illegally constructed buildings on the property of IDPs, KPCVA had not implemented its final decisions on the removal of these buildings while explaining the non-implementation with the lack of funds intended for the demolition of these buildings as well as the lack of bylaws regulating the procedure. After these obstacles had been removed with the cooperation of the actors of the Skopje Initiative, in October 2020, the first demolition and removal of illegally constructed buildings on the property of IDPs took place in the famous case of N.J. Namely, then, for the first time, KPCVA implemented its final decision on the removal of illegally constructed buildings and after that returned the real estate to the possession of N.J.

How these procedures will be further carried out remains to be seen, but the mere initiation and first execution is yet another direct influence of the Skopje Initiative, which is positively categorized.

2.5. Introduction of video surveillance in places where returnees live

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 provide guarantees for the return of refugees to their homes.

³² Article 19.6. of the Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency

³³ Report of the Ombudsman with recommendations (case No. 551/2017) regarding the abolition of certain competencies of the Kosovo Agency for Comparison and Verification of Assets in accordance with the Law No. 5/L-010 on the Kosovo Property Comparison and Verification Agency, October 17, 2017

³⁴ In addition to representatives of the Serbs in the Kosovo* Assembly, some representatives of the international community have expressed strong opposition as well. Although the law was then passed in the first reading, there were great concerns and great opposition to the final passing of this law, after which parliamentary elections were called.

One of the points of action at the level of working groups concerned the installation of video surveillance where necessary. For now, this project has been implemented in Osojane, while a working group from Pristina institutions informed their colleagues from Belgrade that they are working on the possibilities for setting up video surveillance in several other places where the need for such action was noticed³⁵.

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The installation of video surveillance, first in Osojane, and then in other places where it is needed, came directly from the Skopje Initiative and is certainly one of the things that increases the sense of security of the inhabitants of the places where it exists. Desirable future activities, if funds are found for these needs, are to set up video surveillance in all places where there is a return or for video surveillance to become an integral part of the preparation for the return of IDPs to certain places. Time will show whether this measure will drastically reduce robberies and other acts against the property of returnees, and at the same time that the KP will react and prosecute the perpetrators once it has video evidence of the crime if it is committed.

In this way, this item from the Skopje Initiative as well will be completely fulfilled and will show its full potential.

3. GENERAL LEGAL ACTS AND STRATEGY ADOPTED ON THE BASIS OF OBJECTIVES FROM THE SKOPJE INITIATIVE

Field initiatives related to what emerged from the Skopje Initiative are mostly positive. This does not mean that there are still no problems in the field, which emerge even 20 years after the end of the armed conflict and display systemic failures in action. However, everything that resulted from the Skopje Initiative mainly gives results or will give results in

³⁵ At the meeting of the two working groups that took place in Belgrade on September 26, 2018, a working group from Pristina informed its Belgrade colleagues to start by considering the villages around Osojane (at that time a tender had just been conducted for the installation of video surveillance in Osojane itself).

the future, primarily because these solutions, and the monitoring of the implementation of these solutions, were joint work.

While we have acts which are very well written, such as the Regulation on Returns and Permanent Solutions (Regulation on Returns, Regulation), or the Law on Taxes³⁶, we also have the Draft Law on Amendments to the Law on KPCVA and the Kosovo* National Strategy on Property Rights³⁷, which have shortcomings and controversial regulations on certain issues.

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In order to give impetus to positive initiatives in this way, we will first process the Strategy on Property Rights from 2016 (Strategy) and the Draft Law on Amendments to the Law on KPCVA, and then the other two solutions (Property Tax Law and the Regulation on Returns), which we believe should be highlighted as positive examples of general acts. These positive examples show that it is quite possible to adopt and implement positive general acts, especially through joint action.

3.1. Kosovo* National Strategy on Property Rights from the year 2016

The Strategy was adopted in 2016 as a document designed to provide final and comprehensive solutions to property problems in Kosovo*. As some of the main problems from the IDP's point of view, the Strategy mentioned unresolved issues of "unused agricultural land", social ownership of land, then long notification procedures, the use of the administrative procedure to regulate property rights, even where these rights are disputed, restitution, as well as other issues mentioned in the Strategy³⁸.

³⁶ More precisely, Article 39 of the Real Property Tax Law No. 06/L-005 dealing with issues related to IDP property

³⁷ Kosovo* National Strategy on Property Rights, December 2016, http://www.kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_SRB.pdf

³⁸ Note: Only certain solutions in the Strategy which directly concern the rights of IDPs were observed in this review.

Furthermore, the Strategy starts from a legal system which no longer exists – the system of international presence in Kosovo* in which it was possible to establish agencies with special powers such as the Housing and Property Directorate (HPD), the Kosovo Property Agency (KPA) and similar agencies, and its decisions violate the existing legal order in Kosovo*.

3.1.1. Use of administrative procedure for resolving property disputes

In practice, it is common for property rights disputes to be resolved in civil proceedings. Thus, if we have one person who claims to be entitled to the property but is not registered as the formal owner³⁹, it is common practice to sue the formal titleholder. After that, court proceedings are conducted before a judge who is trained to deal with such issues. In civil proceedings, i.e. contradictory proceedings with evidence⁴⁰, each party presents its view of the legal situation and the judge, based on the presented evidence and their experience, makes a reasoned decision to which each party later has the right to appeal to a higher court, and then, depending on the value of the dispute, to both the Supreme Court and, ultimately, the Constitutional Court.

Unlike civil court proceedings, administrative proceedings are, as a rule, one-sided and resolve relations between an individual and a state body. Furthermore, as a rule, third parties do not participate in the civil proceedings and, usually, no evidence is presented by testifying or going to the field, except in specific cases. Finally, as a rule, in an administrative procedure, there is no disputable situation between two persons but a request for registration of a right that is not disputable.

The Strategy ignores all this and proposes to find a way to exclude these procedures from the jurisdiction of the courts and give them to the jurisdiction of KPCVA. It refers to the

³⁹ This is a common case in the former Yugoslavia, and especially in Kosovo*, due to the widespread culture of informal business as well as the failure to conduct inheritance proceedings. This behaviour was even encouraged by a system which in no way encouraged sellers to formally transfer their rights to customers, especially because the tax collection system was very poor when it came to non-urban environments.

⁴⁰ Witnesses, written evidence, going to the field, etc.—everything that, with the exception of written evidence, is rarely used in administrative proceedings—are used as evidence.

already existing administrative procedures carried out by KPCVA. Finally, this would mean that the parties do not have the right to standard legal protection against KPCVA decisions, which would further reduce their rights⁴¹.

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KPCVA, which emerged as something that is seen as an international treaty in Kosovo*, has a strictly limited mandate under that treaty⁴². The staff employed by KPCVA is in no way trained in such actions, nor is there any evidence of their experience and impartiality, as such a thing can currently only exist with sworn judges and court judges, with all the duties and responsibilities that a judge function carries with it.

3.1.2. Electronic notification and the "doctrine of constructive notification"

As one of the possible ways of informing the parties to the procedure, the Strategy proposes notification via the Internet, citing the widespread use of Internet access among the population in Kosovo* as well as similar examples that already exist in the world. The strategy cites the data called the "internet access rate". In addition to providing data which does not say how many IDPs and how they use the Internet, the Strategy did not provide any guidance on how to ensure the identity of the parties to the procedure. Given that the only secure way, which is recognized everywhere as such, is a digital signature which is not widespread among the general population, much less among IDPs who are very often older or less educated people, it is not clear how to ensure that the receipt of submissions by IDPs, i.e. the identity of IDPs when sending requests is confirmed.

If the "doctrine of constructive notification" were adopted for dealing with the immovable property whose ownership is disputed or may be disputed, it would mean that the responsibility for informing about the procedure is transferred from the body deciding in the initiated procedure to the party who has the interest to participate in the procedure and who very often does not even have the possibility to find out that the procedure has been

⁴¹ This was confirmed by the Draft Law on Amendments to the Law on KPCVA, which will be discussed later.

⁴² This regards Item 4 of the Agreement on Cadastre, reached within the Brussels process of dialogue between Belgrade and Pristina, <http://www.kim.gov.rs/p07.php>

initiated at all. In essence, the "doctrine of constructive information"⁴³, as well as many issues in the Strategy, is not concretized but it lists a number of elements of which such a way of "creative information" could consist of: bulletin boards of cadastral offices, websites of institutions, newspapers published in Kosovo*, an invitation through Serbian institutions or non-governmental organizations with which cooperation is to be established, etc. With the legitimate question of how many IDPs check the websites of Kosovo institutions or boards in places in Kosovo* which are not physically accessible to them, even if the calls are published in media outlets in central Serbia, there is no guarantee that the calls will reach a specific IDP to whom the call was made.

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This, due to space limitations, was only a basic review of the Strategy. We believe that this is a very significant document, especially because of the negative effects it can have on the rights of IDPs. As the focus of this paper will be other documents derived from the Skopje Initiative, anyone who wants to read a thorough overview of the Strategy can do so on the website of the project of free legal aid for IDPs⁴⁴.

3.2. Draft Law on Amendments to the Law on Kosovo Property Comparison and Verification Agency

⁴³ "Doctrine" is a term used by the Strategy

⁴⁴ "Thematic report on the strategic normative framework for the regulation of property rights in Kosovo* "

<https://pravnapomoc.org/wp-content/uploads/2018/01/%D0%A2%D0%B5%D0%BC%D0%B0%D1%82%D1%81%D0%BA%D0%B8-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-%D0%BE-%D1%81%D1%82%D1%80%D0%B0%D1%82%D0%B5%D1%88%D0%BA%D0%BE%D0%BC-%D0%BD%D0%BE%D1%80%D0%BC%D0%B0%D1%82%D0%B8%D0%B2%D0%BD%D0%BE%D0%BC-%D0%BE%D0%BA%D0%B2%D0%B8%D1%80%D1%83-%D0%B7%D0%B0-%D1%80%D0%B5%D0%B3%D1%83%D0%BB%D0%B8%D1%81%D0%B0%D1%9A%D0%B5-%D0%B8%D0%BC%D0%BE%D0%B2%D0%B8%D0%BD%D1%81%D0%BA%D0%B8%D1%85-%D0%BF%D1%80%D0%B0%D0%B2%D0%B0-%D0%BD%D0%B0-%D0%9A%D0%BE%D1%81%D0%BE%D0%B2%D1%83.pdf>

Based on the Ombudsman's recommendations⁴⁵ the Draft Law on Amendments to the Law on Kosovo Property Comparison and Verification Agency (the Law on KPCVA, the Law)⁴⁶ was proposed. The Law was already faced with numerous disagreements at an early stage, especially the proposed solutions for resolving "informal property rights"⁴⁷, as well as due to concerns about the constitutionality of the Law.

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These amendments followed the Ombudsman's recommendation and now the number of evictions carried out by KPCVA is not limited to two evictions⁴⁸.

In short, the mandate of KPCVA would be changed in such a way that in the future requests related to the requirements for the establishment of ownership of real estate and requests for the establishment of the right of use over real estate would be received through PCC. Furthermore, the PCC shall be renamed to what the law calls a "quasi-judicial body", it shall continue to decide on claims submitted to the Kosovo Property Agency (KPA) as well as on property that has been transferred through informal contracts but could not be registered due to the law in force. The Property Verification and Adjudication Commission (PVAC) shall also be transformed into a quasi-judicial body. Upon receipt of the request, the other party shall be notified, provided that the procedure of notifying the party is conducted through the KPCVA website or through the media, after which the procedure is to be initiated. The dissatisfied party, as before, shall have the right to appeal to the Supreme Court. However, final decisions of the KPCVA Commission shall become enforceable and may not be subject to review by any other judicial or administrative authority in Kosovo*. This means that even the party that learned in the meantime that it had missed the deadline, as it was not even aware that proceedings were being conducted against it, shall not be able to try to change this decision in any way.

⁴⁵ In the "additional document" which accompanied the draft law, the Ombudsman's recommendation was stated as the reason for passing the draft law.

⁴⁶ Law on Amendments to the Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency, proposed in June 2018

⁴⁷ The term itself, which is not the term encountered in this area before, as well as the proposed solutions, refer to the recommendations given in the Strategy, which were applied in those parts that were most controversial for representatives of IDPs.

⁴⁸ Article 19 of the Law, which amends Articles 6 and 7 of the Basic Law.

3.2.1. Manner of informing the parties to the procedure

One of the guidelines of the Strategy included in this draft law is the manner of informing the parties to the procedure.

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The current Law on KPCVA states that the Secretariat shall make "all possible efforts, including public notice", in order to reach the parties to the procedure⁴⁹. On the other hand, the proposed Article 11A.2, which deals with the recognition of informal rights, states that the Secretariat "shall make every effort to notify all parties with an interest in the property in question by publishing a public notice of the request. To inform interested parties, KPCVA shall use an electronic platform for notification and publication in written or electronic media."

If these amendments are adopted, the notification will be reduced to the publication of a public notice of the submitted request, exactly as recommended by the Strategy, on its website or in written or electronic media.

Unlike bankruptcy announcements or advertisements informing potential successors, where it is not known which circle of persons may have a legal interest in publishing their claim and where this way of informing could make sense, as by informing through the media it is actually required that all persons who potentially have a legal interest declare their legal interest, in these cases, it is known who an individual with legal interest is. This is the individual who is registered as the owner of the real estate and to whom someone disputes the right that is registered in the public books. Therefore, there is no reason not to use regular means of communication for such notification.

We remind you that this is a procedure in which anyone can come and point out a right to a person who is listed in the books as the owner. The consequence may be that the person who is the owner loses his or her right over the property, and as we will see, he or she would not have the right to appeal this decision in either regular or extraordinary

⁴⁹ Article 11.1 of the Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency

proceedings for legal remedies. Therefore, notification in these proceedings cannot be done in any way, except in a way that would unequivocally guarantee that a person who would have the status of a respondent in the proceedings was notified by immediate receipt of the notification. It is up to the petitioner to determine how this would be implemented, but it certainly cannot and must not be just a notification through electronic media and cannot be a way of notification that is contrary to the rules of procedure⁵⁰.

3.2.2. Lack of regular and extraordinary legal remedies against the decision of KPCVA on “informal right holders”

Given that the idea is to remove decisions on "informal right holders" from the jurisdiction of the regular courts which have so far decided on these requests, the lack of regular and extraordinary legal remedies for the decisions of KPCVA, i.e. its "quasi-judicial bodies", represents a drastic reduction of the rights of property owners and other parties in the proceedings in relation to the existing situation.

These rights of property owners have been revoked by the Draft Law on Amendments to the Law on Kosovo Property Comparison and Verification Agency No. 05/L-010. All the rights that property owners have under this draft law, if they even find out about the procedure before KPCVA, are reduced to participation in a "quasi-court" procedure, with unclear procedures and accelerated procedure as well as with a drastic reduction of rights regarding regular and extraordinary remedies.

All rights of property owners, who in a large number of cases will be IDPs, and which concern the rebuttal of KPCVA decisions, are reduced to proceedings before the Supreme Court of Kosovo* as a second instance body whose decision, in this case, is final. Furthermore, according to Article 10 of the Draft Law, final decisions of the KPCVA

⁵⁰ Furthermore, what is interesting is the legal issue of which procedure is actually in question here. While the Strategy and the law give indications all the time that this is a modified administrative procedure, for the most part, this is actually a non-litigious procedure for the recognition of the rights which the petitioner has towards the respondent. This is merely one more reason why the entire planned procedure is disputable, as even in non-litigious procedures, there is no notification of individuals through the media if their identity is known, except in case of declaring a missing person dead.

Commission (after confirmation by the Supreme Court) are binding and are not subject to reconsideration by any other judicial or administrative body in Kosovo*.

It follows from this formulation that the parties do not have the right to extraordinary legal remedies, as well as that the parties do not have the right to submit constitutional complaints to the Constitutional Court of Kosovo*, which is contrary to the Constitution and laws in force, which regulate this matter.

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Cases are excluded from the jurisdiction of regular courts and assigned to an *ad hoc* body which has no jurisdiction to deal with such claims, no clear procedures for dealing with such claims, no trained and experienced staff and which does not guarantee participants in the procedure the same opportunities for protection of rights that they had in previous proceedings.

3.3. Amendments to the Real Property Tax Law

Unlike the Strategy and amendments to the Law on KPCVA, the representatives of Serbs in the competent institutions participated in the adoption of the next two documents which will be processed in this paper. Therefore, these two examples of good governance which we will discuss not only follow the recommendations of the Skopje Initiative but also provide space for institutions to continuously perform their work. This will, without a doubt, lead to results, to the extent to which this is possible in the current circumstances and with the existing climate.

Tax exemptions to persons whose property was illegally occupied were for the first time recognized by the Real Property Tax Law⁵¹. Although this seems like something that should be taken for granted, this has not been regulated anywhere so far. Especially, keeping in mind the recommendations from the Strategy, according to which the tax burden should be used as one of the "incentives" for the sale of agricultural land, which would increase the holdings.

⁵¹ Law 06/L-005, adopted on January 26, 2018

Article 39 of this Law stipulates in paragraph 1 that municipalities are obliged to exempt from taxes persons whose property was illegally occupied, which is proven by a decision of a public authority. Paragraph 2 of this article further states that this tax exemption is valid retroactively as well, for all years for which the person did not have access to his or her property, which is again proven by the decision of the public authority. In paragraph 3, municipalities are obliged to cooperate with KPCVA, courts and other public authorities in order to determine which property has been usurped.

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The article formulated in this way provides enough space for this issue, which could potentially have led to the confiscation of IDP property, to be finally resolved. In addition, the article formulated in this way gives enough space to the institutions dealing with the rights of IDPs, in the first place the Ministry of Returns, to be able to share its data with other bodies in order to achieve these exemptions.

This is, in addition to the Regulation on Returns, one of the most positive outcomes of the Skopje Initiative.

3.4. Regulation on the Return of Displaced Persons and Durable Solutions

The most significant document, which is an undoubted result of the Skopje Initiative and which fully reflects the goals and methods that are in the spirit of the Skopje Initiative, is certainly the Regulation on the Return of Displaced Persons and Durable Solutions (the Regulation)⁵². Along with the Regulation, as an accompanying document, the instruction for the implementation of the Regulation⁵³ is applied, which is not specifically discussed here, as it is more of a technical document which prescribes the manner of application, assessment, etc.⁵⁴

⁵² Regulation on the Return of Displaced Persons and Durable Solutions No. 01/2018, adopted on January 15, 2018

⁵³ Instructions for the implementation of the Regulation on the Return of Displaced Persons and Durable Solutions (GRK) – No. 02/2018, June 2018

⁵⁴ Although this is certainly a significant document, as it prescribes the manner of implementing the Regulation, we would like to dedicate more space to the Regulation, which is an essential document that

In the first place, the difference between the Regulation and other documents, some of which are mentioned in this paper as well, is clearly visible. The difference is both technical and substantial: the process of drafting and adopting the Regulation was transparent and public, with the participation of stakeholders. Furthermore, the Regulation was drafted with a full understanding of the problems of IDPs and potential and existing returnees, and the realization that these problems require urgent solution, with the greatest possible degree of inter-institutional connection. In addition, the nomotechnics of writing the Regulation itself exudes concrete and precise language and a clear goal to approach solving problems in the best possible manner.

In order to better understand what is written in the Regulation, this paper will first provide a brief overview of the content of the Regulation, and then highlight a few key things as well as provide concrete suggestions for further improvements to this document.

3.4.1. Content of the Regulation

In order to easily understand the content of the Regulation, we will approach it in units which deal with each of its parts:

Objective of the Regulation – The objective of the Regulation is to create the necessary conditions for achieving durable solutions for displaced persons in Kosovo* and in the region, in the period from February 28, 1998 to March 31, 2004.

The definitions of the displaced person and the expression "return and returnees" indicate that this is a process from the Skopje Initiative, as it speaks of persons from Serbia, Montenegro, Macedonia and Kosovo*. Return means a sustainable solution in their place of origin, local integration or accommodation elsewhere in Kosovo*.

reflects all the positive aspects of the Skopje Initiative, and which is, certainly, a very important document. With all due respect to the technical documentation which accompanies the Regulation, this paper, which focuses on the results of the Skopje Initiative, nevertheless wishes to dedicate to the Regulation the place that appertains to it.

The form for assistance must be submitted to Municipal Office for Communities and Return (MOCR), either at the place of origin, the place of displacement or in another municipality to which they would like to return. IDPs outside Kosovo* must submit a request for assistance to the authorities of the country in which they are currently located, and then these authorities must then submit it to the Ministry of Returns. All requests and all documents must be entered into the central information system, whose headquarters are in the MCR.

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After submitting a request for assistance, the MOCR must conduct a field assessment, in the municipality where the IDP has expressed a desire to return, within 15 days of receiving the application. Then, after the assessment by the MOCR, a final recommendation must be made by the Municipal Commission on Returns (MCoR) and sent to the MCR. The Central Review Commission at the MCR (CRC) shall have 15 days to decide whether to adopt the MCoR's recommendation or to decide on the "suspension" of the recommendation while requesting additional information on the case. The applicant shall have the right to appeal the decision of the Central Review Commission to the MCR Appeals Commission within 30 days from the day of receipt.

Municipal Action Plans – MOCR are developing a Municipal Action Plan for the Return, which includes return measures, financial resources, socio-economic integration and interethnic dialogue, among others.

CMS – CMS stands for "Case Management System". This is actually a centralized data management system at the MCR level. Everything that each MOCR does when processing data on requests, case management, problems, results achieved, organized visits, etc. is automatically forwarded to CMS, where a database of displaced persons is being created, in one place, from the moment of contacting the authorities who work under this Regulation, in compliance with the regulations on personal data protection.

Criteria for assistance – Articles 9 and 10 of the Regulation provide criteria for assistance. The most important thing to emphasize here is that priority is given to persons without a

resolved housing issue, unless their property is located in places where they do not have access, as well as to those who have not been beneficiaries of any form of assistance, especially regarding construction of a real estate. Furthermore, one's material condition, health condition, number of household members, etc. is included in the scoring as well. The assessment of the fulfilment of the criteria is distributed into three categories: difficult condition, average condition and mild condition, and according to the degree of endangerment, the needs of the beneficiaries are later determined as well as the justification of the help and the possibility to help the beneficiaries. This categorization determines the largest form of assistance that is allowed, according to the needs of the Regulation.

Information Assistance – A displaced person shall be able to obtain all relevant information regarding the return. The central body for this type of assistance is the MCR, which, in addition to organizing GSV and GIV visits, also serves as a central body for collecting information related to the return, the information provided to them by both the MOCR as well as other local authorities. The bodies at the local level are certainly the MOCR.

Assistance in transport and customs, food, non-food items - Returnees shall be provided with assistance in transport, if they cannot bear the costs themselves, then during customs clearance, so that their items are exempt from customs duties, in food and non-food items, in an amount sufficient up to three months, depending on the degree of threat.

Assistance in accommodation and housing – This assistance includes housing for IDPs and returnees. The types of assistance are the following: rent payment, real estate repairs, construction of real estate, allocation of land with the right to use and support through social housing programs. If he or she meets the conditions for paying the rent from paragraph 15.2, the IDP, or the returnee, can count on assistance for a period of 3 to 12 months, after which the competent municipality shall provide conditions for accommodation in accordance with the law on social housing. It must be emphasized that from paragraph 15.2.4, implicitly, there is a possibility that, within the period within which rent assistance can be provided, the assistance is valid until the eviction of the person who

had illegally occupied the property of the returnee, or the construction/repair of real estate that is damaged or needs to be built. Renovation assistance is granted to returnees in such a way that, depending on their vulnerability category, this assistance is granted either in construction materials or in construction materials and labour. Returnees who own immovable property, but their property is damaged so much that it is not possible to live in it, depending on the categorization of the vulnerability of those persons, are granted either assistance only in construction materials or assistance in construction materials and labour. Regarding the allocation of municipal land, all three categories of returnees can receive municipal land for use, provided that the procedure of assistance in construction materials, i.e. construction materials and labour, is the same as in the previous paragraph regarding construction and reconstruction.

Compensation for communal services – The costs of connection to the sewerage, water supply and electricity networks are borne by the municipality, as assistance to returnees who are assisted by the construction or reconstruction of real estate.

Economic and social integration – According to Article 17, the MOCR takes care of each returnee by referring him or her to the employment office or helping him or her to acquire new knowledge through adult education, giving them information about schools if they have children, and there is also the possibility of providing financial assistance in the case of returnees who are classified in the middle or the heavier category. In general, the MOCR is the body in the field which communicates most directly with beneficiaries and provides them with all the information and all the assistance. That is, the MOCR can be called customer service for returnees and IDPs in the field.

Articles 18, 19 and 20 oblige beneficiaries to respect what they have signed with the MCR and establish MOCR mechanisms to monitor the adaptation and possible difficulties of beneficiaries in the environment into which they are trying to integrate.

Articles 21-26 establish **inter-institutional cooperation** and prescribe accountability for all institutions involved in the return process. In the first place, the MCR is the central

institution dealing with these issues, which has the rights and obligations under this Regulation to monitor the work of all other institutions and which is the last instance in deciding on the received requests. This does not end the role of the MCR, as the MCR can also work directly with IDPs or returnees. The Municipal Office for Communities and Return serves to coordinate efforts for the return of displaced persons at the local level. In this regard, the MOCR maintains contacts with IDPs or returnees, provides access to IDPs to municipalities or municipal services, raises awareness of return and works with the local community that should accept IDPs, provides information to IDPs, implements repatriation or integration projects, monitors respect for returnees' or IDPs' rights and provides progress reports. In essence, the MOCR is designed as a body which connects IDPs with municipalities and assists them in the administrative processing of requests as well as answers to questions that IDPs or returnees might have. The Municipal Commission on Returns (MCoR) makes decisions in the first instance on all requests for assistance that IDPs or returnees could submit to the competent municipality. It is founded by the president of the municipality, headed by the head of the MOCR, and a representative of the MCR is obligatory within the MOCR. It meets at least once a month and sends recommendations to MCR for final decision-making, and it may cooperate with representatives of civil society organizations. The CRC is the body within the MCR which makes final decisions on submitted recommendations by the MCoR, or requests additional information. It meets at least once a month to make decisions. Finally, there is the MCR Appeals Commission as well, which makes decisions on appeals against decisions made by the CRC.

3.4.2 The position of the MCR as a guarantor of a fair process

The Regulation, although not the first document to address these issues, is a document that is purposeful and operational. Although this is not the first time that there have been efforts in Kosovo* to build houses for returnees or provide the assistance they need to return⁵⁵, this is the first time that a structure has been established at the central level to monitor the

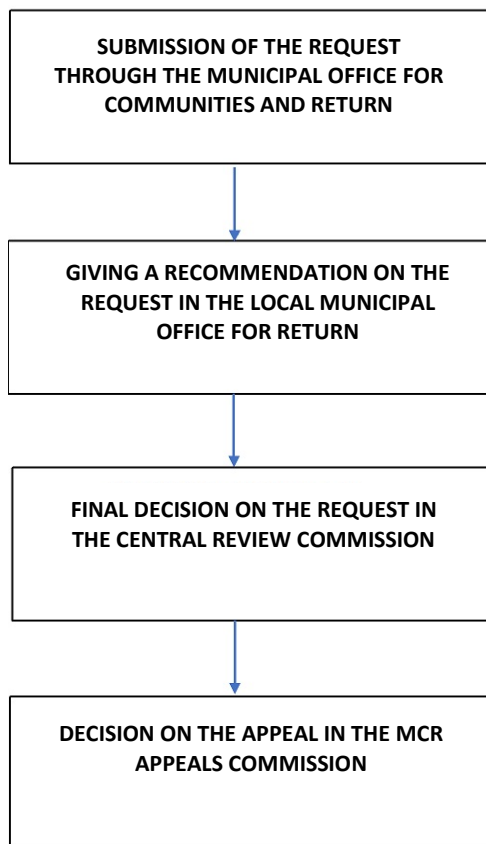
⁵⁵ Until now, there have been organizations, international and local, that have built houses for returnees, provided them with wood or livestock and the like

whole process, participate in every step of decision-making as well as to invalidate or reconsider certain harmful decisions, which can be expected given the situation in the field.

This structure is the Ministry for Communities and Return.

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According to the Regulation, the procedure itself, from the moment of submitting the request, is hierarchically strictly defined, and rectilinearly, this is what it looks like:



Therefore, if we were observing only the procedure which exists in the Regulation, we might think that the MCR does not get involved in the procedure before the third step, and only after the MOCR had collected all the data and forwarded its opinion to the MCoR, and the MCoR had made its recommendation based on the MOCR data and their criteria⁵⁶, and that, then, it all gets sent to the Ministry for processing based on data collected by other bodies.

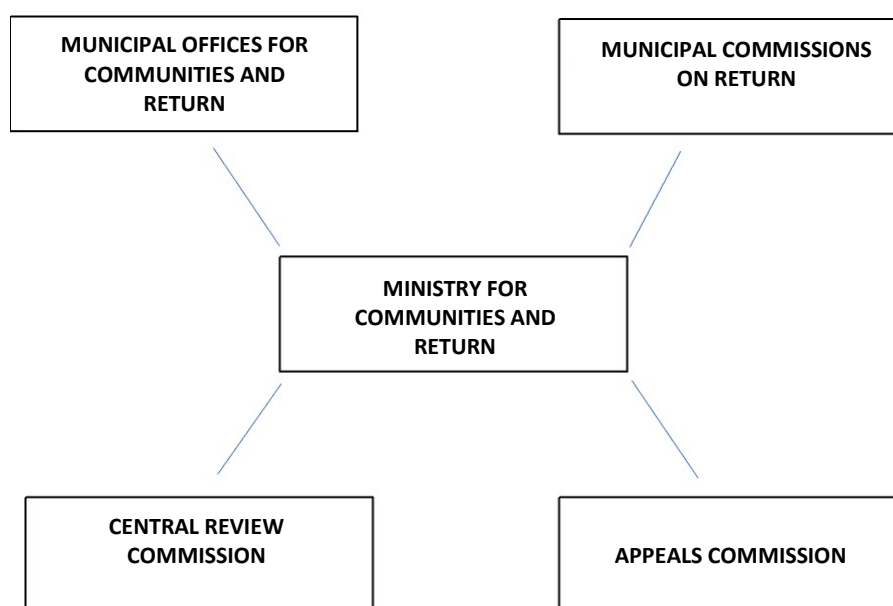
However, according to the Regulation itself, the MOCR not only works closely with the Ministry in all aspects of its activities, but the Ministry also has insight into everything the MOCR does from the moment it contacts the IDP/returnee, through the CMS. Then, in each MCoR there is a representative of the MCR, who, indeed, is one of the members who vote on the recommendation in each individual case and is certainly involved in decision-making, thus, in any case, there will be a possibility for the opinion of the MCR to be presented in

⁵⁶ This includes concerns about possible security, the budget for these purposes, the availability of donations, etc.

each individual case of this kind. After that, that opinion comes before CRC, which is another body of the Ministry. Finally, the appeal procedure is decided by the Appeals Commission, which is another body of the Ministry.

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With this in mind, if we were not to observe the procedure from the moment of submitting the application rectilinearly and by the degree of decision-making, but by the connection of the participants in the decision-making process, our flowchart would look a little different:



This second flowchart shows the relationship between all institutions involved in the overall process and the MCR. This does not mean that the Ministry is the only one that decides in the entire process. The MOCR collects data from the field, the MCoR makes recommendations according to the capabilities of each municipality, while the Ministry makes final decisions in each individual case. However, what is the role of the Ministry is to monitor the work of each individual participant in this procedure, to connect them, encourage them to perform their obligations under the Regulation and ultimately be the final arbiter in the decision-making process.

Criticism of "too much centralization" can be heard about this role of the MCR. However, we believe that this solution is the only possible and optimal solution, which at the same time will be able to ensure uninterrupted compliance with the Regulation, with all the obligations that the Regulation imposes on all parties to the proceeding. Taught by previous experiences, when the entire return process depended on each individual municipality and on how much the international community was ready to give them an incentive⁵⁷ to take the first step, which would rarely be followed by further steps, it is clear that the current system of work simply did not function. In some cases, municipalities were ready to organize GSVs or GIVs, and sometimes, with the help of donations, they even renovated houses for returnees. However, after these steps, returnees were usually left to fend for themselves. This meant that there was no one body they could always turn to for integration into the local community neither assistance of any kind (of which perhaps by far the most important is connecting with local authorities), someone to monitor their progress and evaluate the whole process – and that is why, in many cases, the return was unsuccessful, or the return would have been sabotaged even before it had happened⁵⁸.

Finally, the Ministry has a very interesting and so far rarely seen competence, and that is direct communication with bodies and organizations in Kosovo*, but also with the bodies and organizations from the environment dealing with these issues, without the mediation of other bodies which are usually set as intermediaries in such situations. This gives the

⁵⁷ This primarily refers to incentives of a financial nature, but also incentives related to informing the institutions of Pristina how important for the international community is to make a civilizational step forward which would represent the return of IDPs.

⁵⁸ House set on fire in Berkovo near Klina, Новости (eng. "News", Serbian daily newspaper), May 23, 2020, <https://www.novosti.rs/%D0%B2%D0%B5%D1%81%D1%82%D0%B8/%D0%BD%D0%B0%D1%81%D0%BB%D0%BE%D0%B2%D0%BD%D0%B0/%D0%BF%D0%BE%D0%BB%D0%B8%D1%82%D0%B8%D0%BA%D0%B0.393.html:866539-%D0%9D%D0%BE%D0%B2%D0%B8-%D0%BF%D1%80%D0%B8%D0%BC%D0%B5%D1%80-%D0%9D%D0%90%D0%A1%D0%98%D0%89%D0%90-%D0%BF%D1%80%D0%B5%D0%BC%D0%B0-%D0%A1%D1%80%D0%B1%D0%B8%D0%BC%D0%B0-%D0%BF%D0%BE%D0%B2%D1%80%D0%B0%D1%82%D0%BD%D0%B8%D1%86%D0%B8%D0%BC%D0%B0-%D0%BD%D0%B0-%D0%9A%D0%B8%D0%9C-%D0%97%D0%90%D0%9F%D0%90%D0%89%D0%95%D0%9D%D0%90-%D0%9A%D0%A3%D0%8B%D0%90-%D1%83-%D0%91%D0%B5%D1%80%D0%BA%D0%BE%D0%B2%D1%83-%D0%BA%D0%BE%D0%B4-%D0%9A%D0%BB%D0%B8%D0%BD%D0%B5-%D0%9F%D0%9E%D0%94%D0%9C%D0%95%D0%A2%D0%9D%D0%A3%D0%A2-%D0%9F%D0%9E%D0%96%D0%90%D0%A0-%D0%A3-%D0%A3%D0%9D%D0%A3%D0%A2%D0%A0%D0%90%D0%A8%D0%8A%D0%9E%D0%A1%D0%A2%D0%98>

Ministry even more opportunities to work more expeditiously, with more accurate and complete data, and to be even more at the service of IDPs and returnees.

Certainly, the MCR has a huge responsibility to which the MCR will have to respond, both logistically and in terms of personnel, which will not be an easy task at all. However, this way of decision-making, in which everything is connected and coordinated from one place, in our opinion, is the only way which has a chance of success.

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3.4.3. Significance of the Regulation for IDPs and returnees

As already stated, the Regulation is not the first document to address these issues. However, the Regulation is the first document, drafted and adopted in a systematic way, which not only ensures the rights of IDPs and returnees to receive information or submit a request but also establishes responsibility for acting on such requests and centralizes the whole process, leading to publicity and transparency and, perhaps most importantly, given past experience, it makes it impossible to avoid liability for omissions. The centralized information system provides monitoring of the work at any time and at every step, and the final decision-making in the MCR gives the possibility to check the already adopted recommendations. This is perhaps the most important novelty in everything that has existed in Kosovo* so far: IDPs and returnees immediately know who to turn to, what to expect, where to get information about everything, and if they fail to do so at the municipal level from for any reason, they can always establish direct communication with the MCR.

Further advantages of the Regulation are numerous and obvious: the Regulation provides space to systematically regulate the issue of return in each individual municipality, according to the circumstances in that individual municipality. Furthermore, following what has emerged from the Skopje Initiative, IDPs and returnees are no longer limited to municipalities of origin, but can also apply for return in other municipalities, be it the municipalities in which they are currently located or the municipalities which are known to offer them conditions for safe and sustainable return.

The Regulation also establishes mechanisms to do everything possible on the sustainability of returns: the financial situation of returnees is being monitored, efforts are being invested to find jobs for the returnees and schools for children, groceries and other material supplies are being provided as well as financial assistance, where this is justified and necessary.

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There is a possibility of systematic organizing of GSV and GIV visits. Requests must be processed within a certain period of time from the day they were submitted, with clear evaluation criteria and with clear explanations if all or part of the request is not accepted.

With the caveat that this is not the first document of its kind, it is the first document written in such a systematic way, with all solutions combined within one document, with a clear division of responsibilities and a centralized system of monitoring everything that happens to avoid negative situations, which have certainly happened in the past.

For IDPs and potential returnees, this Regulation means what should have existed from the outset: the first document which provides a realistic opportunity to return to an environment from which IDPs have been expatriated or to which they cannot return for any reason or in which there are no conditions for the return⁵⁹.

The Regulation represents quite a good document, which deals with the subject matter in a systematic way and which also sets the institutional framework for rapid action. Considering that it also covers persons displaced during March 2004, and not only persons displaced until 1999, the impression is even more complete.

3.4.4. Suggestions to think about in the future

In the first place, these are the criteria which a person needs to meet in order to qualify for assistance in the reconstruction or construction of real estate. It is not clear why the social

⁵⁹ In practice, these will most often be communities with the same ethnic composition as the applicant.

card of returnees is taken as the main criterion. Thus, preference is given to persons of poor financial and health condition, without any explanation as to why this is so. Although we understand the difficulty of finding criteria which would fully satisfy justice in such sensitive cases, we must nevertheless draw attention to the fact that these are persons who lost their home and were displaced. If these persons want to return to their local environment, or to an environment where this is possible, it is Pristina's obligation to enable them to return. While the set social or health criteria in providing assistance for sustainable return are somewhat clear, the purpose of those criteria for those who are displaced and want to return is not. The reasoning is that people have lost the right to a home and the peaceful enjoyment of property through no fault of their own and that the competent institutions are obliged to restitute them. If we set as a criterion the degree of disability of the returnee or the property status of the returnee, we certainly come to the situation of again violating the rights that the returnee has as a person who escaped from his home through no fault of his own due to violence or threat of violence. With the understanding that some criteria must exist in order to satisfy both local authorities and donors whose funds are not unlimited, it must always be borne in mind that this is an obligation which exists independently of any other factors and that the right of the applicant is certainly violated, regardless of all other factors (of course, if the truth of the allegations from the submitted request is established).

A technical, but very important thing is the promotion of the possibilities provided by the Regulation. From the experience of the author, who works both in Kosovo* and in the area of central Serbia, apart from a narrow circle of experts who are familiar with this Regulation, the general public does not know about it. Especially not the public most affected by the regulation, which are IDPs and potential returnees. It is necessary to consider if there are possibilities to reach a wider circle of the public in central Serbia itself, where the largest number of IDPs still live: participation in TV shows, especially in watched news programs, advertising on TV and the like. Only by acquainting a wide circle of people with the possibilities they have, can we hope that the full potential of the Regulation will be realized.

4. CONCLUDING REMARKS

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The Skopje Initiative certainly has its positive sides regarding the rights of IDPs and returnees. As we have had the opportunity to see, the two most positive results of this process are the final resolution of the tax issue and the Regulation on the Return of Displaced Persons. Thus, we have a situation that for the first time, 18 years after the end of the conflict, the issue of taxes, which could have served as a way to confiscate the property of IDPs due to unpaid taxes, was resolved. In addition, after 18 years, a document has been adopted that has the potential, especially if supported by sufficient financial resources, to address much of the problem of IDP returns or their sustainable integration elsewhere in Kosovo*, where possible.

Furthermore, with great effort and great merit of the OSCE mission, the process was launched 15 years after the end of the conflict, i.e. 10 years after the last major displacement of the non-Albanian population from Kosovo*. Until then, there were local experiments that did not bear fruit. Although a justified objection can be made that such a solution has been waited for too long, it is certainly not possible to object it once the procedure has been initiated, and especially not when it has begun to yield results.

Having in mind all the above, the Skopje Initiative is without a doubt a positive process, the results of which are visible and which we hope will continue and expand in terms of its results, until it resolves all open issues.

Finally, we can sublimate the recommendations:

- In order to better achieve the sustainable return of displaced persons who have lost their property, it is desirable to remove the condition of social vulnerability from the Regulation on the Return of Displaced Persons and Permanent Solutions.

- It is recommended that the Draft Law on Amendments to the Law on KPCVA be revised so that it refers exclusively to the recommendations of the Ombudsman, and omit thereof provisions that may be unfavourable for IDPs (listed in this report).
- Better promotion of all benefits available to IDPs arising from the Skopje Initiative.
- Finding mechanisms which will encourage and dynamize other relevant institutions and individuals to binding cooperation with the Ministry of Communities and Returns, all in order to implement the recommendations or measures covered by the Skopje Initiative, which serve to improve the exercise of IDP rights in their communities.
- Finding opportunities for cooperation with institutions or organizations which are interested in helping IDPs to obtain real estate for use or long-term lease.