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A Comparative Analysis of the Implementation of Property Decisions in Bosnia and Herzegovina and in Kosovo*

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A Comparative Analysis of the Implementation of Property Decisions in Bosnia and Herzegovina and in Kosovo*

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The Project's main activities are provision of legal aid/assistance to IDPs and refugees, including direct representation of IDPs before courts and other relevant institutions, as well the provision of availability of timely and accurate information necessary for realization of the rights of IDPs and refugees in Serbia. All the cases are systematically registered in the database which currently has some 2200 cases.

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1. Introduction

Property restitution process in Bosnia and Herzegovina (BiH) as well in Kosovo are generally hailed as successes. In support of this statement, both processes claim a high number of solved property disputes. According to the official statistics, almost 93% of property claims were solved in Bosnia and Herzegovina[1], while in Kosovo 100% of claims for residential property has been implemented[2]. These impressive figures make it easily to the headlines of the local media and are very easy indicators to quote when reporting about successes or failure of international peacebuilding efforts. The goal of this paper is to look beyond the mere figures and to go deeper into the analysis of how each process solved the property claims it received. Its main assumption is that high implementation rates do not necessarily correspond to a high number of properties being actually returned to IDPs and that they need to be interpreted in the light of the way each procedure functions.

Given the extent of the topic and the fact that we are dealing with two different property restitution procedures[3], the comparison will be limited to the final phases of a property dispute, i.e. what is the procedure for the implementation of the claims that were previously adjudicated. We will use the official statistics provided by the two procedures as a factor of accountability, taking into consideration the criteria adopted by those mechanisms to report progress. Our purpose is to compare the reality behind the figures and how these do translate into the lives of IDPs or refugees who are eventually the final beneficiaries of the process.

For our comparison we will focus on the Housing and Property Directorate/Housing and Property Claims Commission in Kosovo (HPD/HPCC) and on the Property Law Implementation Plan (PLIP) in Bosnia and Herzegovina[4]. The first was a centralised mass claim mechanism which was tasked with receiving, deciding and implementing claims. The second was a de-centralised procedure, regulated by specific laws, conducted by domestic officials at the municipal level under tight and closely co-ordinated international supervision of five agencies: OHR, UNHCR, OSCE, UNMIBH and the Commission for Real Property Claims (CRPC) with an observatory status) which had committed to join efforts for this specific purpose. Since this study focuses on

[1] The latest available statistics date back to September 2004 and are available at http://www.ohr.int/plip/pdf/plip_09.04.PDF (accessed on 30//10/2012).
[2] http://www.kpaonline.org/hpd/newimplemented.asp (accessed on 29/10/2012).
[3] For reasons of space, we assume that the readers are already familiar with the mandate of the HPD/HPCC and the different types of claims and we will make only a brief reference to the different types of claims.
[4] For more information on PLIP check the "PLIP Inter-Agency Framework document" available at: http://www.ohr.int/plip/ (accessed on 01/11/2012)

the implementation of decisions, it will not analyse work of the CRPC, as this body did not have enforcement powers and it had no role in the implementation.[5]

2. Comparing the two processes

Although created in two different contexts, the two property restitution procedures carried out largely similar tasks. In both cases, in fact, the possessors of properties at the outbreak of hostilities were those entitled to claim a property of which they were no longer in possession. The property restitution procedure would confirm the rights of the claimants and it would then proceed to enforce such decision by granting to the claimant access to the property. The only exception concerns the so-called "B type" claims of the HPD/HPCC, which we will mention later. However, the "B" claims do represent only 1.4% of the claims received by the HPD. We will therefore proceed to the comparison by removing those claims from the analysis.

3. Implementation of property decisions under the PLIP

Under the PLIP, municipal officials were requested to report on a monthly basis to the focal points of the PLIP agencies on the status of implementation of the so-called "laws on cessation". Adopted by the Parliaments of Republika Srpska and Federation of BiH, and extensively amended by the Office of the High Representative, these laws have created a property restitution procedure for all displaced persons and refugees.[6] Under the "laws on cessation", property restitution was to be conducted by the local, municipal-level authorities[7]. Implementation of these laws was considered by the international community as crucial for the return of IDPs and refugees in Bosnia and Herzegovina.

To adequately monitor the implementation of property laws, over the years, the PLIP agencies developed specific questionnaires followed by clear instructions for the housing officials on how to complete them. One important issue addressed by these instructions was when exactly a claim could be considered as positively solved[8]. The rather lengthy questionnaires provided

[5] The implementation of the CRPC decisions was in hands of the municipal authorities. See more on this in: C. Philpott, R. Williams, 'The Dayton Dialectic' in D. Haynes (ed.), *Deconstructing the Reconstruction – Human Rights and Rule of Law in Postwar Bosnia and Herzegovina",* London, Ashgate Publishing, 2008, p. 165.

[6] *Law on Cessation of the Application of the Law on Abandoned Apartments*, Official Gazette of the Federation of Bosnia and Herzegovina. 11/98, *Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens*, Official Gazette of the Federation of Bosnia and Herzegovina no. 11/98, *Law on the Cessation of the Application of the Law on Use of Abandoned Property*, Official Gazette of the Republic of Serbia no. 38/98.

[7] For an extensive examination of the application of these laws and the results, see Rhodri Williams, 'Post-Conflict Property Restitution and Refugee Return In Bosnia And Herzegovina: Implications For International Standard-Setting and Practice', *New York University Journal of International Law and Politics*, 37, 2006, or Charles Philpott, 'From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina', *International Journal of Refugee Law*, 18 (1), 2006.

[8] See the "13/1/2003 - PLIP Questionnaire" and the "13/1/2003 - Quick Reference" at: http://www.ohr.int/plip/ (accessed on 27/10/2012).

detailed information on the work of the housing authorities with the aim of enabling an effective supervision by the international community. The questionnaire was complemented by a quick reference guide to assist the domestic authorities. The PLIP agencies thus didn't only request information from the authorities, but did also provide technical support on how to report progress under PLIP.

The main indicator of progress was the so-called *PLIP Implementation ratio* which was defined as "the total number of closed cases divided by the total number of claims, given as a percentage"[9]. The implementation ratio in fact reflected the performance of each municipality, while the sum of the implementation ratios of all municipalities provided the overall *PLIP Implementation Ratio* for Bosnia and Herzegovina. The latest available statistics, dating back to September 2004[10], report that the overall implementation ratio for BiH was 92.71%, corresponding to 197,692 implemented claims out of 213,239claims submitted to the authorities in Bosnia and Herzegovina.[11] These are the latest statistics available online which have remained substantially unchanged for the following years. The PLIP implementation figures were published monthly in the newspapers in Bosnia and Herzegovina and regularly circulated amongst the international community operating in Bosnia as well among the diplomatic missions.

4. The PLIP Implementation Ratio as a tool for aid conditionality

The *PLIP Implementation Ratio* represented a very synthetic way of summarizing the compliance of each municipality with the property laws. However, since the largest group of beneficiaries of the property restitution process were IDPs, the *PLIP Implementation Ratio* was also used as one of the indicators of the attitude of each municipality towards their return, which was an obligation of Bosnia and Herzegovina under Annex VII of the Dayton Peace Agreement. For this reason, it was largely used as a conditionality tool to reward municipalities that were compliant with the Annex VII provisions[12] and to sanction those which did not perform well. Although the attitude of a municipality towards return could not be entirely equalised with its *PLIP Implementation Ratio*, nevertheless, it was very difficult to find municipalities that had comparatively high rates of return and low implementation ratios.

The municipal officials, especially those who were more reluctant to comply with the property laws, realized the importance attached by the international community to the *PLIP Implementation Ratio.* Therefore, when compiling the PLIP questionnaires they constantly tried to inflate the numbers of solved claims, by choosing the less difficult cases to solve, such as cases where the property was destroyed and no eviction was necessary or cases where they

[9] See the Explanatory Note at the beginning of each set of statistics, e.g. those published in April 2004: http://www.ohr.int/plip/pdf/plip_08.04.PDF , (accessed on 30/12/2012).

[10] In that period the PLIP agencies discontinued the collection of questionnaires.

[11] PLIP Statistics, September 2004 http://www.ohr.int/plip/pdf/plip_09.04.PDF (accessed on 30/10/2012)

[12] In fact, municipalities which showed compliance with Annex VII benefitted from international assistance in the form of reconstruction projects, or reparation of infrastructures and so on.

knew that the current occupant would not show significant resistance[13]. The aim of this approach was to avoid the sanctions threatened by the international community, i.e. less support for the municipalities, dismissals from office, prosecutions and fines, while at the same time preserving the wartime ethnic composition of the municipality.

5. Improvement of international monitoring

After identifying such abuses, the international community attempted to correct them through a series of instructions, which culminated in the adoption of "A New Strategic Direction: Proposed Ways Ahead for Property Law Implementation in a Time of Decreasing IC Resources"[14]. The adoption of the new strategy prompted a whole set of new instructions for the housing authorities on how to report progress under PLIP. The new strategy also formally introduced the chronological principle, which removed their discretionary power to choose which claim to solve first. The housing officials were obliged to solve property disputes on the basis of the principle "first come, first served", with very limited exceptions, like persons for whom there was evidence that they had access to two accommodations.

Under the new system, when filling in questionnaires the housing officials were required to subtract from the total number of claims all those claims where there was no temporary occupant and where claimants could simply reoccupy their property without any impediment. In this way all the destroyed properties were simply subtracted from the overall number of filed claims. Thus, in accordance with the new instructions, the housing officials could count a case as solved i.e. a decision implemented only when they evicted the current occupant and officially informed both the claimant and the housing officials of the municipality of displacement that the property in the place of origin was sealed and awaiting the return of the claimant. If the claimant were inactive, this wouldn't affect the implementation ratio of the specific municipality as long as the housing authorities officially informed him/her that the property was vacant. Finally, in order to reduce the discretional power of housing officials to choose the claims they wanted to implement, the PLIP agencies required the municipalities to report under the PLIP questionnaire also their progress in solving claims in chronological order.

6. Limits of monitoring

It should be noted that monitoring only concerned the first instance bodies situated at the municipal level. Second instance bodies, competent to deal with appeals to the first instance procedure, were not systematically monitored by the PLIP agencies. This was largely due to the fact that property claims could be immediately enforced following the first instance decision[15].

[13] See point B.2.b of the "Non-negotiable principles in the context of the property law implementation", at: http://www.ohr.int/plip/ (accessed on 30/10/2012).
[14] http://www.ohr.int/plip/ (accessed on 31/10/2012).
[15] See for example, Article 12, *Law on Cessation of the Application of the Law on the Use of Abandoned Property of Republika Srpska* (consolidated text on file with the author).

Therefore, the number of cases that were appealed to the second instance was very limited and they mostly concerned those cases where the first instance authorities didn't confirm the rights of the claimant who then appealed. In this case, the housing authorities were instructed by the PLIP agencies not to consider the case as having been solved since it was still pending before the second instance that was usually very slow in providing feedback. The reason for this instruction was that the PLIP agencies were concerned that municipal authorities could improve their implementation ratio by simply issuing negative decisions, which would deny the right of the claimant to repossess the property. For this reason, the overall *PLIP Implementation Ratio* of the municipalities, and subsequently of BiH, could never achieve the target of 100% implementation and since 2004 has been stable at around 93%. The PLIP agencies were aware of this shortcoming in the monitoring system and introduced a special procedure to verify the actual completion of property restitution in each municipality at first instance level[16]. The procedure aimed at verifying that the municipal level bodies had actually implemented all cases submitted to their offices in accordance with the law and related instructions. Once this had been achieved, the PLIP agencies officially reported the conclusion of the process in the PLIP statistics and issued a press release informing the public that the municipality had completed its tasks.

7. Implementation of property restitution decisions in Kosovo

The situation was different in Kosovo where the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) were in charge of solving property disputes. The HPD was a body created by UNMIK[17] with a special jurisdiction to receive three types of property claims: a) claims lodged by persons who lost ownership, possession or occupancy rights to residential property based on discriminatory legislation subsequent to 23rd March 1989 ("A type" claims); claims of persons who, after 23rd March 1989, entered into free informal transactions without registering them in the property books ("B type" claims) and; c) claims by natural persons who lost possession of their residential property after NATO intervention, i.e. after 24th March 1999 ("C type" claims)[18].

The work of HPD was not subject to an external independent oversight besides its own supervisory board and this body functioned in a largely autonomous manner within the UNMIK institutional framework. According to the HPD website, the HPD had received altogether 29,160 claims, of which there were 1,212 "A type" claims, 766 "B type" claims, 27,182 "C type" claims[19]. In total 29,149 claims were implemented[20].

[16] PLIP "Guidelines for Verification of Substantial Completion of Property Law Implementation", (accessed on 29/10/2012), http://www.ohr.int/plip/

[17] UNMIK/REG/1999/23, *On The Establishment Of The Housing And Property Directorate And The Housing And Property Claims Commission*, 15 November 1999.

[18] UNMIK/REG/1999/23, Art. 1.2.

[19] HPD/HPCC website, at: http://www.kpaonline.org/hpd/statistics_m.asp (accessed on 29/10/2012).

[20] HPD/HPCC website, at: http://www.kpaonline.org/hpd/newimplemented.asp (accessed on 30/10/2012).

HPD employed various means of implementation of the resolved claims since the adjudication of the claims could bring a number of possible outcomes. For example, there was the possibility of restitution in kind, but also monetary compensation if restitution was not possible for certain "A" claims, while restitution in kind was the main remedy for "C type" claims. For "B type" claims the HPD/HPCC simply issued an order to the competent authorities to register the informal transaction.[21]

Out of total of 29,149 claims, which the official statistic counted as implemented, 7.5% (2,186 claims) was withdrawn on the claimants' request before a decision was made. One of the reasons for which a claim could be withdrawn was that there had been an agreement between the claimant and the current occupant on the sale of the property. HPD rejected 159 claims as they fell outside HPD mandate. The HPCC in its turn dismissed 2,700 (9.3%) claims on the merits and 65 because they manifestly fell outside the jurisdiction of the HPCC[22]. This means that the HPD/HPCC issued a total of 24,059 positive decisions in which the rights of the claimants were acknowledged, while in 5,410 cases the HPD/HPCC either issued a negative decision or rejected the claim.

We will consider how those 24,059 positive decisions were given effect by the HPD. 2,232 claims were closed on the claimant's request, after the HPCC ruled on the merits, meaning that the claimant declined the assistance of the HPD in the implementation of the decision possibly because s/he reached an agreement with the occupant.[23] Compensation was awarded in those cases where a "C" claimant had privatized an apartment to which an "A" claim existed and therefore there were two conflicting claims for the same apartment. These cases gave birth to a number of complicated issues, given the complexities following the sale of those apartments resulting in 253 claimants being awarded compensation (0.9%). Concerning "A" and "C" type claims, the HPD issued 10,041 decisions for destroyed property (34.4% of the total) known as declaratory orders. In these cases issuance of a decision simply required confirmation by the HPCC of the claimants' property rights at the outbreak of the conflict and no steps were necessary for HPD to enable the repossession, exactly like in the case of destroyed properties in BiH. In 5,706 cases (19.6%), the claimant sought the assistance from HPD in repossessing the housing unit through an eviction, while in 3,186 cases (10.9%), the claimant asked the HPD to administer the property, pending his/her decision on what to do with the property[24]. Finally, in around 2,205 cases (7.7%), no physical implementation occurred, as the HPD wasn't any longer able to locate the claimant or the claimant did not respond to HPD requests.[25] These HPD claims continued to be pending. Finally, HPCC granted ownership, i.e. confirmed the title to

[21] Housing and Property Claims Commission, *Final Report of the Housing and Property Claims Commission,* Pristina 2007, p. 60-61. Available at: http://www.kpaonline.org/hpd/pdf/HPCC-Final_Report.pdf (accessed on 05/11/2012).
[22] HPCC Final Report, p. 43.
[23] HPCC Final Report, p. 67.
[24] HPCC Final Report, p. 68.
[25] Bj. Vagle, F. De Medina–Rosales*, An Evaluation of the Housing and Property Directorate in Kosovo, 1999 – 2006*, NORDEM Report 12/2006, p. 76.
http://www.jus.uio.no/smr/english/about/programmes/nordem/publications/nordem-report/2006/1206.pdf (accessed on 26/10/2012).

property to 394 (1.4%) "B" claimants who sought confirmation of informal transactions which occurred during the period 1989-1999.

8. A few observations

A few observations can be made on some of the common features of the property restitution procedures in BiH and Kosovo as well as on the different means which were employed to implement decisions.

The first observation concerns destroyed properties. In Bosnia and Herzegovina, destroyed properties were subtracted from the overall implementation ratio, and housing officials were instructed to remove those claims from the overall number of claims received. For this reason, the overall number of claims decreased by 51,000 claims, from 262,807 in February 2002[26] to the current 211,781. The assumption was that the property restitution procedures served the purpose of restoring the property rights and that it was not necessary for IDPs and refugees to have a formal decision by the housing authorities to reoccupy their vacant property which was destroyed.[27] In Bosnia and Herzegovina 51,000 destroyed properties corresponded to approximately 19% of the overall number of claimed properties, while in Kosovo destroyed properties were 34.4% of the total caseload. In Kosovo it was not always clear when those properties had been destroyed, i.e. before or after the beginning of the property restitution process. For instance, it was reported that at least 606 properties were destroyed after the HPD started processing the case[28] and that HPD/HPCC could have been more proactive in trying to protect those properties. In Bosnia, once the housing authorities issued a decision on repossession they were obliged to draft minutes of condition of the property, warn the temporary occupants of the criminal consequences of looting and, if necessary, bring criminal charges against the occupants for damages to the property. The municipal authorities were also liable for any damage to the apartment that had occurred after the departure of temporary occupant while the property was vacant.[29] This prevented looting as a deterrent to return.

A second consideration concerns claims which concluded with an agreement between the claimant and the occupant. In the mandate of the HPD/HPCC, it is possible for the occupant of the property and the claimant to reach an agreement in cases where the claimant withdrew the claim or where they requested the closure of the claim by HPD once the decision was issued. Such agreement occurred without involvement of the HPD/HPCC, as the HPD/HPCC had no such jurisdiction. While it is assumed that in many cases the property might have been sold, nevertheless there are no guarantees that, for example, pressure was not exerted on the claimants in order to make them withdraw their claims. The amount of those informal

[26] http://www.ohr.int/plip/pdf/Plip_02.02.PDF (accessed on 29/10/2012).
[27] See for example, article 11a, *Law on Cessation of the Application of the Law on the Use of Abandoned Property of Republika Srpska* (consolidated text on file with the author).
[28] *An Evaluation of the Housing and Property Directorate in Kosovo, 1999 – 2006,* supra n. 25, p. 81.
[29] Article 24, *Law on Cessation of the Application of the Law on the Use of Abandoned Property of Republika Srpska* (consolidated text on file with the author).

agreements is relatively high (4,418, i.e. 15 % of the total claims). In Bosnia and Herzegovina, if the claimant and occupant had concluded a similar agreement, the authorities were instructed to formally close the case and count the property as repossessed with the understanding that the agreement would occur once the claimant had repossessed his/her property. Therefore there are no real separate data on how many of those cases were closed in this manner. In addition, proxies were also allowed to "collect the keys", i.e. be part of the reinstatement procedure and it is likely that in many cases those proxies were actually the new owners of the properties[30].

A third consideration concerns the negative decisions or claims dismissed through the property restitution procedures. In Bosnia and Herzegovina, negative decisions amounted to approximately 6% of the claims. In Kosovo, those amounted to 2,924 claims, which correspond to 10% of the total claims and, since the rejected claims do not need to be implemented, they didn't lead to any repossession for the claimant.

Finally, the administration of properties by HPD is also an issue that deserves attention. At the end of the HPD mandate, 11% of the claims (3,186) were temporarily administered. According to the available statistics, at the end of last year the KPA was administering in total 4,898 properties.[31] The question is what will happen to those claims once the KPA ends it activities? While this issue has not been decided yet, it is likely that the claimants at certain point will request an eviction and the repossession of the property. In this regard, the administration of property by the HPD will simply result into repossession of property although significantly differed in time, from the initial deadline. In addition, of the properties under temporary administration, in 979 cases a rental agreement was signed and KPA collected €3,122,433.66 in rent and deposits by the end of 2011 while €2,328,079.80 were transferred to the landlords[32]. The rental scheme represents an interesting feature as it provides for monetary compensation for the claimant, paid by the temporary occupant[33], for the time during which s/he can't enjoy the possession of the property. There was no correspondent way of solving a claim in Bosnia and Herzegovina.

9. Property restitution as a form of reparation

It is rather interesting to examine the performance of the property restitution procedures in Bosnia and Kosovo in the light of the international applicable standards in terms of reparations. From its early stage, reparations were understood as aiming at "wip[ing] out all the consequences of the illegal act and re-establish the situation which would […] have existed if

[30] See for example, Article 21, *Law on Cessation of the Application of the Law on the Use of Abandoned Property of Republika Srpska* (consolidated text on file with the author).
[31] Kosovo Property Agency, *Annual Report 2011,* p. 23, available at http://www.kpaonline.org/PDFs/AR2011.pdf (accessed on 10/11/2012).
[32] Ibidem, p. 24.
[33] HPD/HPCC introduced this rental scheme, as part of the original mandate, in 2006 and it was inherited by KPA. For more information: Kosovo Property Agency, *Annual Report 2008,* p. 29.

that act had not been committed"[34]. In the context of displacement and the resultant loss of housing and land, re-establishing the previous situation means returning property. Further, international human rights standards codify the obligation of competent authorities to assist IDPs in recovering their properties, or when the recovery is not possible, to assist them in securing another form of just reparation.[35] Restitution of property (as well as return to the place of former residence) is also enshrined in the main set of principles on reparations approved by the United Nations[36]. Finally, the Pinheiro Principles, which contribute to setting a new standards in this field, specifically state that "all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore". This documents also gives a clear preference to restitution over compensation by stressing that "states shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice."[37] The Pinheiro Principles also provide guidance for those IDPs who, based on a "free, informed and individual choice" choose to "effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property"[38]. In such case, full and effective compensation can be provided if the "injured party knowingly and voluntarily accepts compensation"[39] instead of restitution.

Applying these principles to the situation in Bosnia and Kosovo, it is possible to assess the compliance of the property restitution processes with the right to property restitution and compensation. Leaving aside the so-called destroyed properties, which under normal security conditions can be freely accessed by the owners, the focus is on the properties that were adversely occupied. In these cases, obviously, the property restitution procedures in BiH and Kosovo achieved their goal when the claimant was granted free access to the property.

The same would apply also to the cases where, without any external pressure, the claimants decided to sell their properties for a fair price. In fact, it is not necessarily the case that compensation needs to be provided by the state: a private sale of property could be easily considered as a form of compensation. The problem with such procedures is that there has been no real oversight of such transactions. It is therefore not possible to assess whether undue pressure was exerted on IDPs to sell the property or if properties were sold at a price significantly lower than the market one.

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[34] *Chórzow Factory* (Jurisdiction) (Germany v. Poland), 26 July 1927, Permanent Court of International Justice, Series A, no. 9, p. 21. See also UN Doc. A/56/10, p. 223.
[35] *UN Guiding Principles on Internal Displacement*, n. 29.
[36] *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,* UN DOC A/Res. 60/147, n. 19.
[37] *Final report of the Special Rapporteur, Paulo Sérgio Pinheiro Principles on housing and property restitution for refugees and displaced persons*, UN Sub-Commission on the Promotion and Protection of Human Rights, UN Doc. E/CN.4/Sub.2/2005/17, n. 2.1 and 2.2.
[38] UN Doc. E/CN.4/Sub.2/2005/17, n. 10.1 and 10.3.
[39] UN Doc. E/CN.4/Sub.2/2005/17, n. 21.1.

However, it appears fair to conclude that in those cases where the claimant could freely dispose of his/her property in a permanent manner, the property restitution procedure achieved its primary goal.

More complicated is the case of temporary administration of properties, including the KPA rental scheme. If properly implemented, this scheme could represent a "combination of compensation and restitution."[40] Thus, while waiting for the best time to return to their homes or to dispose of their property, claimants in the meantime receive income from them. What is most important about the rental scheme is that at some point, those properties will be returned to the claimants, who will be in a position to make their final decision. Otherwise, the simple rental scheme, as it is now, can't be considered as a full compensation for the property.

Finally, all those cases where the claim was rejected, fall outside of the right to property restitution as those claimants, as assessed by the property restitution procedure, failed to demonstrate their entitlement to restitution. These represent approximately 6% of the cases in Bosnia and 10% in Kosovo. Similarly, it can be said that the same right is not available to those claimants who can't be located or who simply don't respond to KPA requests for information.

10. Conclusion

After considering these issues, there are still questions that remain to be answered. How efficient were the restitution procedures in both places? What is the overall number of properties returned to the claimants? It is easy to answer this question concerning Bosnia and Herzegovina: 197,682 properties or 92,71 % of the claims submitted for property that was not destroyed were returned by the first instance bodies. More complicated is the answer concerning Kosovo. If we want to compare the figures between the two procedures it is necessary to subtract destroyed properties and "B" type claims, which brings the overall number of disputed properties to 18,725. In this case, the number of properties which were formally repossessed was at least 5,703, which represents 30.4% of the overall claims for "A" and "C" property which was not destroyed. Additionally, it is possible that IDPs, in one way or another, managed also to repossess some of those properties for which claims were withdrawn (4,418 claims), which corresponds to 23.3% of the claims for non-destroyed property. In any case, it is fair to conclude that they freely disposed of them.

The same doesn't apply for those properties under administration or for those properties for which HPD couldn't locate the claimant (5,436 claims), which represents 29% of the claims. Those properties are still under the KPA management and therefore resolution of their status is still pending. With regard to Bosnia and Herzegovina it is not possible to obtain figures because no temporary administration existed in Bosnia and also because the proceedings before second instance bodies were not monitored and most likely by now those proceedings are completed.

[40] E/CN.4/Sub.2/2005/17, n. 21.2.

In the light of this data, it is fair to conclude that property restitution procedure in Kosovo and Bosnia resolved respectively 54% and 93% of the claims for inhabitable properties. Table 1 summarizes this comparison.

Table 1:

	Total Number of habitable claimed properties	**Properties returned to the claimants or otherwise freely disposed**	**%**	**Property Claims awaiting implementation**	**%**
Kosovo	18,725	10,121	54%	5,436	29%
BiH	211,781	197,682	93%	?	?

As a general conclusion, it can be observed that in Bosnia available information is less accurate than in Kosovo and in some cases even lacking, as the HPD/KPCC has been much more effective in providing feedback on the claims submitted and in reporting on its activities. However, as it has been pointed out, in many cases this can't be actually considered as property law implementation since there is no work conducted by the HPD/KPA to give "effect to the decision of the Commission"[41]. On the other side, the property restitution process in Bosnia provides very clear data on the number of properties being returned and on the compliance of each municipality with the property legislation in place.

It appears that the two processes were responding to different needs: the HPD/HPCC to the need of efficiently solving property disputes and closing them as soon as possible, while PLIP was much more linked to the return of IDPs and refugees (and sometimes even confused with it). In BiH, it was the international community that oversaw the work of the domestic authorities and held them accountable by publishing the results of the property restitution procedures in the main newspapers and using them as an indicator of compliance with the Dayton Peace Agreement. The assumption was that the more people were able to repossess their properties and possibly return, the more stable the country would be in the future. For this reason, the focus was on making sure that no claimants were left behind and that the process could return all the properties to their legal owners. In Kosovo, the main goal was of a different nature. The HPD was for long time more focused on accountability towards the donors and towards UNMIK rather than on supporting the process of return and/or of a durable solution for IDPs. Hence, the emphasis was placed on how functional the HPD/HPCC was in terms of claims processing rather than on addressing the specific problems faced by IDPs and those who suffered from property violations during the conflict. To make a comparison, the PLIP process was like an old and large bus, full of mechanical defects, that need the constant maintenance, but which in the end makes it to final destination carrying a large number of

[41] *An Evaluation of the Housing and Property Directorate in Kosovo, 1999 – 2006,* supra n. 2525 p. 75.

passengers. The HPD/HPCC was, on the other hand, rather like a fancy sport car, with a state-of-the art engine, but which in the end can carry only a handful of persons to destination and has a hard time on the rocky road of the post-conflict property repossession.

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