

Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo*

- II PART -

May 2014

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the International Court of Justice Opinion on the Kosovo Declaration of Independence.

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The Project “Support to the Implementation of Strategies for IDPs, Refugees and Returnees-Legal Aid” is funded by the European Union and implemented by a consortium led by Diadikasia Business Consultants S.A. The Project started in December 2012 and it will last until June 2015.

The overall goal of the Project is to improve the provision of legal assistance and legal representation for refugees and IDPs in their place of origin with the goal of enhancing the protection and enjoyment of their rights. The project also provides legal assistance to returnees under readmission agreements.

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Executive summary

The present report is second in a series of reports dedicated to the compensation claims filed with the local courts in relation to property damaged or destroyed in the aftermath of the Kosovo conflict. While in the first report we tried to provide an estimate of the total number of these claims submitted through the Court Liaison Office in Gračanica/Graçanicë and to identify basic features of these claims, in this report we have tried to investigate what has happened with these claims after the UNMIK ordered stay of proceedings was lifted in 2009. Given the absence of publicly available data we have tried to find an answer to that question by analysing the cases of this type in which a plaintiff has been receiving legal assistance and/or in-court representation through the EU-funded project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid”. The principal objective of the report was to identify the main trends in the way the first, second and third instance courts have dealt with these cases. The report has also looked into the relevant case law of the Constitutional Court of Kosovo.

Although its findings are based on an analysis of a limited number of compensation cases, comprising 511 cases, they can offer at least a basic insight into the fate of these cases and can be summarized as follows:

- By the time of research the civil proceedings have started in less than 1/3 of the analysed cases;
- The civil proceedings were finalized in less than 1/3 of the analysed cases;
- All the finalized first instance proceedings were concluded negatively for the plaintiff;
- The courts mostly ruled by striking out the claim because “the lawsuit is not permitted by law”.
- Only a few appellate proceedings were concluded by the time of the research, some of which positively for the plaintiff;
- All appeals brought before the Supreme Court of Kosovo have failed.
- The Constitutional Court of Kosovo ruled in only one case of this type by rejecting the application.

Introduction

In the second half of 1999, after signing of the UN Security Council Resolution 1244 and in parallel with the deployment of NATO and UN forces, a new wave of violence spread through Kosovo. The targeted murders, abductions and attacks on civilians were primarily directed against Serbs, Roma and members of other minority communities. As a consequence, within one month after the end of Kosovo conflict more than 75 per cent of Kosovo Serbs and Roma were forced to leave the province while their homes and other property became target of a widespread pillage and destruction.¹

After the conflict no mechanism that would enable restitution in kind or compensation for the damaged or destroyed property was ever established.² The extra-judicial mechanism for resolving the claims over private immovable property, established by the United Nations Mission in Kosovo (UNMIK) already in November 1999, did not have the jurisdiction to award compensation for the conflict-related damages on property.³ Until 2004, the Housing and Property Directorate/Claims Commission (HPD/CC) was merely informing the claimants on its lack of competence and they were advised to submit this type of claims to the local courts. In April 2004 this practice was slightly changed and those who afterwards submitted claims to the HPD/CC were served with the so-called “category C declaratory orders”, which recognized the claimant’s right over the property at the time of its destruction.⁴

The majority of the owners could neither have hoped to have their properties rebuilt through the housing reconstruction programmes. Due to a shortage of funds, the reconstruction programmes conducted in the first years after the conflict were primarily directed at resolving the urgent housing needs of the Albanian returnees whose houses were destroyed/damaged *during the conflict*. Another reason was that the reconstruction projects were available, almost without exception, only to those who decided to return to Kosovo. Given the volatile security situation and the lack of freedom of movement for minority communities, which lasted for many years after the conflict was over, this was a condition impossible to fulfil for the greatest part of internally displaced persons (IDPs). This eventually led to the situation in

¹ See: Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo [S/1999/779] of 12 July 1999, para. 5; Human Rights Watch, “Abuses Against Serbs And Roma In The New Kosovo”, August 1999, Volume 11, No. 10, available at: <http://www.hrw.org/reports/1999/kosov2/> (last accessed on 1 February 2014).

² The same holds true when it comes to the damages inflicted on private property during the conflict.

³ Housing and Property Directorate and Claims Commission (HPD/CC) was established by UNMIK Regulation No. 1999/23 of 15 November 1999, to provide an efficient resolution of conflict related claims over residential property. Its rules of procedure were laid down in UNMIK Regulation No. 2000/60 On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission of 31 October 2000.

⁴ Bjorn Vagle, Fernando de Medina, “An Evaluation of the Housing and Property Directorate in Kosovo”, Nordem Report 12/2006, p. 40. See also, Margaret Cordial, Knut Rosandhaug, “Post-conflict Property Restitution: The Approach in Kosovo and Lessons Learned for Future International Practice”, Martinus Nijhoff, 2008, pp. 88 – 90.

which a very tiny portion of the houses destroyed or damaged *after the conflict* was reconstructed.

Faced with the lack of a mechanism for the post-conflict property restitution and/or compensation, the owners of the immovable property damaged or destroyed in the aftermath of the conflict commenced filing civil claims for damages (further “compensation claims”) before the Kosovo courts. According to the findings of the Legal Aid Project Report of September 2013, only through the Court Liaison Office **17,912** compensation claims were submitted to the courts in Kosovo.⁵ In order to meet the five-year time limit prescribed by the applicable law, most of these claims were lodged throughout 2004 and 2005.⁶

Faced with the mass influx of the compensation claims, on 26 August 2004 the Director of UNMIK Department of Justice (UNMIK DoJ) introduced an official stay of all proceedings by sending a circular notification to the presidents of the local courts. The Director of UNMIK DoJ requested from the courts not to process this type of claims “until such time as we have jointly determined how best to effect the processing of these cases.”⁷ The letter referred to the necessity to design a proper strategy because such a huge number of claims could become an obstacle to the functioning of the judicial system and given that “many claimants will require escorts in order to travel to the courts”.

The stay was only partly lifted on 15 November 2005, when UNMIK DoJ issued another instruction that called on the courts to begin processing compensation claims for damages caused by identified natural persons after October 2000.⁸ In practice, this enabled them to process an insignificantly small number of compensation claims and was rather related to the claims arising from the March 2004 riots.⁹ On 28 September 2008, shortly before the EU Mission in Kosovo replaced UNMIK in the rule of law sphere,¹⁰ the Head of UNMIK DoJ advised the local courts to start processing the stayed compensation cases.¹¹

It is not known what has happened to the compensation claims once the order to stay the proceedings was lifted by UNMIK at the end of its mandate. The official data on the outcome of the proceedings initiated by the compensation claims lawsuits are not available, if existing at all. There are neither reports nor other potential

⁵ EU-funded project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid”, “Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo* - Part I”, September 2013.

⁶ *Ibidem*, p. 14.

⁷ UNMIK Department of Justice Letter of 26 August 2004.

⁸ UNMIK Department of Justice Letter of 15 November 2005.

⁹ According to the facts established by HRAP in case *Milogoric and Others v. UNMIK* (nos. 38/08, 58/08, 61/08, 63/08 and 69/08), Opinion of 24 March 2010, para. 7.

¹⁰ On 9 December 2008, UNMIK’s responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44), welcoming the continued engagement of the European Union in Kosovo.

¹¹ *Milogorić and Others against UNMIK*, cases no. 38/08, 58/08, 61/08, 63/08 and 69/08, para. 8.

sources of secondary data that could give an insight into the way the courts in Kosovo handled these claims.

The aim of this report is to provide an account on what has happened with a certain number of these claims after 2008. The analysis was conducted on the compensation cases in which a plaintiff has been receiving legal assistance and/or in-court representation through the EU-funded project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid” (further “Legal Aid Project”). The objective of the report was to identify the main trends in the way the first, second and third instance courts have dealt with these cases. The report has also looked into the relevant case law of the Constitutional Court of Kosovo. Although the analysed data for several reasons cannot be considered representative of the entire class of compensation claims filed in relation to the damages/destruction of property that occurred in 1999, it is believed that the report can provide at least a basic insight into the fate of these claims.

The structure of the report follows the main research objectives and it was tailored to reflect the flow of civil proceedings in Kosovo. After the introduction the report gives a short description of the Legal Aid Project and its database as the source of data. Then it shortly explains the type of data used for the analysis and the research methods applied. The statistical analysis, as the main part of the report is divided in several subsections dealing with a) proceedings before the first instance courts, b) proceedings before the second instance courts, and c) proceedings before the Supreme Court of Kosovo. The report then looks into the complaint submitted before the Constitutional Court of Kosovo. In the conclusion the report summarizes the main findings.

Legal Aid Project and Its Database

In 2008 a project for the provision of legal aid to IDPs was approved under the Instrument for Pre-accession Assistance (IPA).¹² This was just the first in a series of successive projects that have been funded by the European Union, with the objective to support IDPs from Kosovo to realise their rights in the place of origin. Since November 2010 the fourth Legal Aid Project is being implemented by a consortium made of several international and local organisations and in cooperation with the Government of Serbia.¹³

The same as its predecessors, the current Legal Aid Project operates through a network of offices located in the areas with the high concentration of IDPs (Kraljevo, Niš, Belgrade) and through two additional offices in Kosovo (in Kosovska Mitrovica/Mitrovicë and in Gračanica/Graçanicë).¹⁴ The Project’s lawyers provide legal aid that

¹² “Further Support to Refugees and IDPs in Serbia”, implemented by the Danish Refugee Council (DRC).

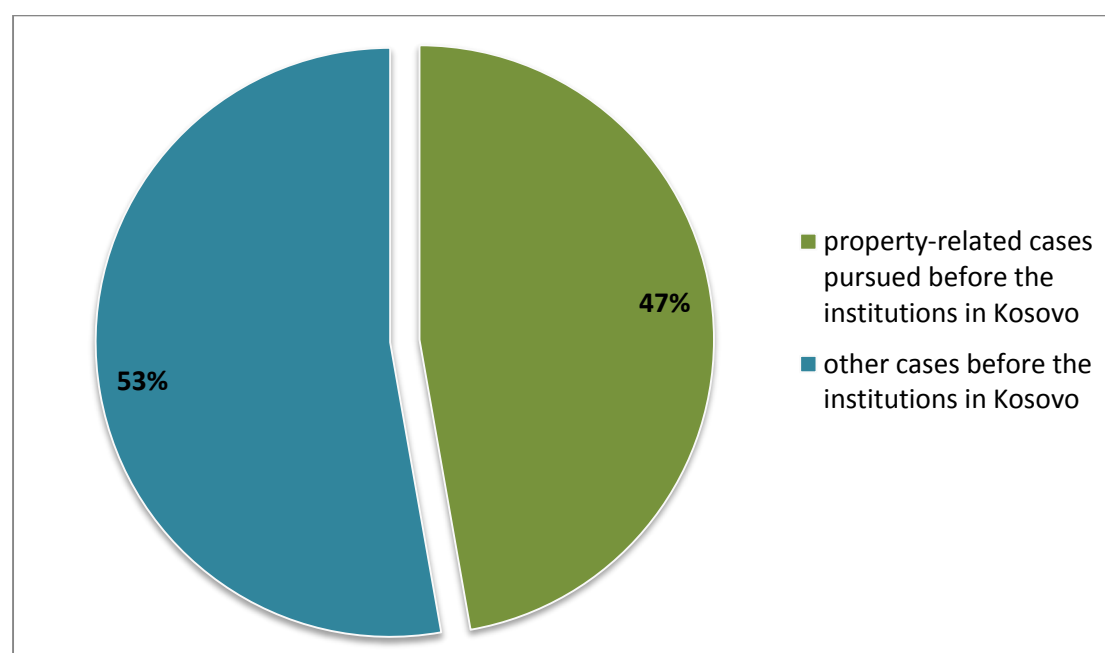
¹³ The project is implemented by Diadikasia S.A. Business Consultants in consortium with Euromed, Euro Management International and Initiative for Development and Cooperation - Serbia (IDC Serbia).

¹⁴ Certain areas, which are not in the vicinity of the offices, are covered through the Legal Aid Project mobile team visits.

encompasses legal counselling, writing of pleadings and other submissions for the courts and administrative bodies, obtaining of documents necessary for the realization of IDPs' rights, and in-court representation before the judicial institutions in Kosovo. Given the continuity between the current and the previous legal aid projects, legal aid is provided to both newly registered cases and to those received by the previous projects and subsequently transferred to the on-going Legal Aid Project.

Legal assistance and in-court representation are provided for the whole spectrum of legal issues related to the protection of IDPs' rights, from the right of access to public services to the rights in the domain of family law, social security law, labour law, etc. The provision of legal aid in property rights related cases is among the principal activities of the Project since the cases involving property rights outnumber other types of cases for which IDPs are seeking assistance. As of 30th April 2014 there were in total **3733** active cases¹⁵ before the institutions in Kosovo, of which in **1763** cases IDPs sought legal aid in relation to their rights to real property.

Graph 1: Share of property rights related cases in the total number of active cases before the judicial and other institutions in Kosovo



Each case is registered in a legal database, which tracks various types of data about the cases and the Project's beneficiaries. The comprehensive legal aid database was established during the first project and since then it has been transferred to the each new legal aid project. As such it includes not only data for the cases registered during the on-going legal aid project but also for those in which the provision of legal aid had commenced during an earlier project but the cases have remained unresolved. The database encompasses all segments of work done in an individual case: activities related to the in-court representation, as well various other types of

¹⁵ The term "active cases" means cases which are still pending before the courts in Kosovo.

legal assistance provided to the beneficiaries. The developments in each case are tracked on a daily basis. Due to these features, the database enables opportunity an easy identification of trends and changes in the Kosovo justice system responses to different types of legal disputes involving IDPs' rights or interests.¹⁶

In addition to the electronic database, the Legal Aid Project also keeps a physical registry of all active cases. This registry is comprised of the case-files folders, which contain the information registered in the electronic database and the hard copies of the documents received from or sent to the courts and other institutions in Kosovo. As with the database, the registry includes hard copies of all active cases, *i.e.* of the sum of cases registered during the on-going Project and those in which the provision of legal assistance started during an earlier project but the case has not been solved yet. The physical registry is placed in the offices in Kraljevo, Niš and Belgrade.

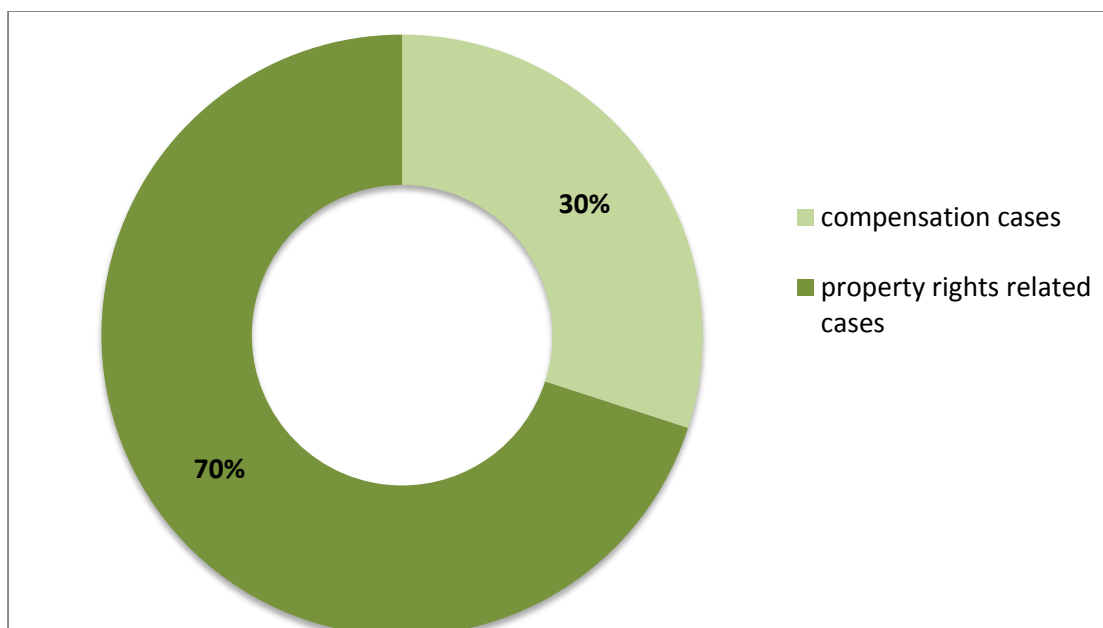
Data and Method

This report uses data on the compensation cases initiated before the courts in Kosovo for damages inflicted to private property in the aftermath of the 1999 conflict, in which a plaintiff received legal assistance or in-court representation through the Legal Aid Project. The data analysed in the report come from two sources – from the Legal Aid Project database and from the physical records of the cases kept in the Project's registry. The compensation cases were first extracted from the Project's database by filtering cases registered under the category "right to property" and its sub-category "compensation for damaged/destroyed property" (coded as "906" sub-category). The data for each compensation case identified in the database were then crosschecked by inspecting the case-files kept in the Project's physical registry. In order to collect data on the compensation cases contained in the physical records, three field researches were conducted in the Project's Offices in Kraljevo, Niš and Belgrade, during March and April 2014.

In this way total of **511 compensation cases** were identified. As shown in the following graph, these cases make **30 per cent** of all property rights related cases pursued before the institutions in Kosovo by the Project's beneficiaries.

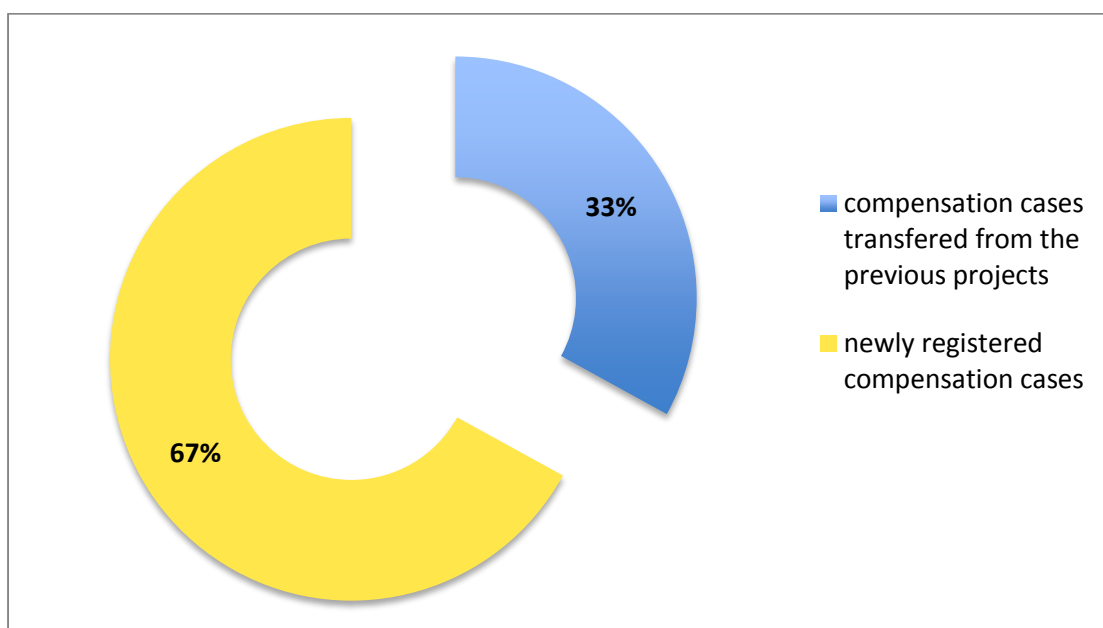
Graph 2: *Share of the compensation cases in the total number of property rights related cases.*

¹⁶ See: Massimo Moratti, Addressing systemic obstacles to restitution in Kosovo: Legal aid as a fact finding tool, Terra Nullius, March 2012, available at: <http://terraonullius.wordpress.com/2012/03/23/addressing-systemic-obstacles-to-restitution-in-kosovo-legal-aid-as-a-fact-finding-tool/> (last accessed on 16 May 2014).



The subject of the analysis were only “active” compensation cases *i.e.* those which were still pending before the courts in Kosovo by 30 April 2014. These are the cases that were registered during the on-going Legal Aid Project or in which the provision of legal aid was initiated at some of the three earlier legal aid projects, but have remained unresolved. If the case was taken over from a previous project, another important condition to be fulfilled for it to remain in the group of “active cases” was that IDP client has expressed a clear intention to remain the Legal Aid Project’s beneficiary for the given case. The share of “active” compensation cases transferred from the previous legal aid projects in the total number of the identified active compensation cases is shown in the graph below.

Graph 3: Share of compensation cases transferred from the previous projects in the total number of the active compensation cases



For most of the research questions, the results of the analyses were classified according to the seat of the first or second instance court before which the compensation claim was filed. The classification reflects both the old network of municipal courts in place until January 2013, and the new system of courts established after the reform of the Kosovo justice sector.¹⁷

The major limitation of the research is that the analysed cases cannot be considered as representative of the entire group of compensation cases initiated in relation to the damages inflicted on the private property in the aftermath of the conflict. The principal reason for this is that the plaintiffs in the analysed cases were supported through the free legal aid scheme, which at least theoretically places them in a better position in comparison to the other plaintiffs.¹⁸ The second reason springs from the obstacles to an effective communication of IDP plaintiffs with the courts in Kosovo and *vice versa*. There are no postal services between Kosovo and the Serbia proper and the only way in which an IDP who is not a beneficiary of the Legal Aid Project could communicate with a Kosovo court is to hire a local lawyer or engage a person with the residence in Kosovo as his/her authorized agent for the service of documents.¹⁹ This signifies that the Legal Aid Project beneficiaries are in the position to be much better informed about the proceedings in the compensation cases than an average IDP plaintiff in this type of cases.

Related to this, yet another limitation of the research ensues from the fact that its primary sources are the documents that were in the possession of the Project's beneficiaries at the time of the research. As there is no generally available system of communication between the courts and IDPs, this signifies that the results of the research can only show what has happened with the compensation cases *as known by the IDP plaintiffs*. In other words, it cannot be claimed that the analysed documentation in all cases necessarily reflects what has really happened with the compensation claims before the courts.

Statistical analysis

After the initial examination of the compensation cases and for the purpose of further analysis, all the identified active compensation cases were divided in two groups. The first group included **351 cases** where no court action other than registration of a lawsuit has taken place.²⁰ The second group encompassed the compensation cases in which at least one court action was identified, that being any

¹⁷ Law on Courts No. 03/L-199, adopted on 22 July 2010 and entered into force on 1 January 2013.

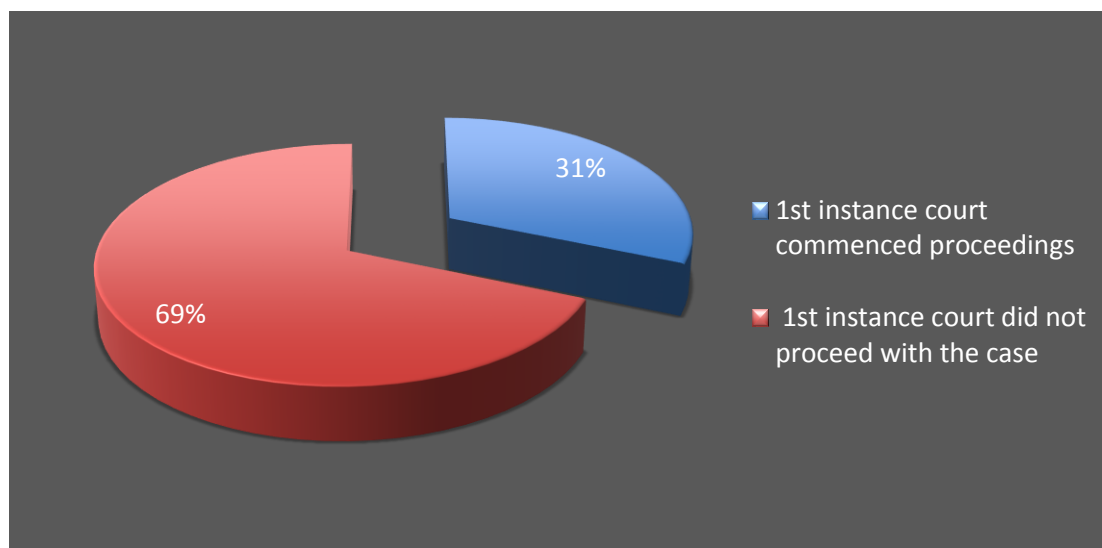
¹⁸ It should be added here that, since couple of years, the Legal Aid Project is the only project providing legal aid in these types of cases.

¹⁹ See more on this in: The EU-funded Project "Further support to refugees and IDPs in Serbia", "Access to Justice for the Internally Displaced Persons from Kosovo", June 2012, pp. 32 - 40, available at http://www.pravnapomoc.org/web/Access_to_Justice.pdf

²⁰ Given the lack of postal services between Kosovo and the Serbia proper a more suitable phrase would probably be "or has been known to take place since the lawsuit was filed".

of the actions that are normally taken by a court in the course of civil proceedings (in total **160 cases**). This classification showed that in only 30% of the analysed 511 compensation cases the trial started.

Graph 4: *Percentage of the compensation cases where the first instance court took action(s) towards adjudicating the case and percentage of those where no court action was identified, in the total number of the analysed compensation cases*



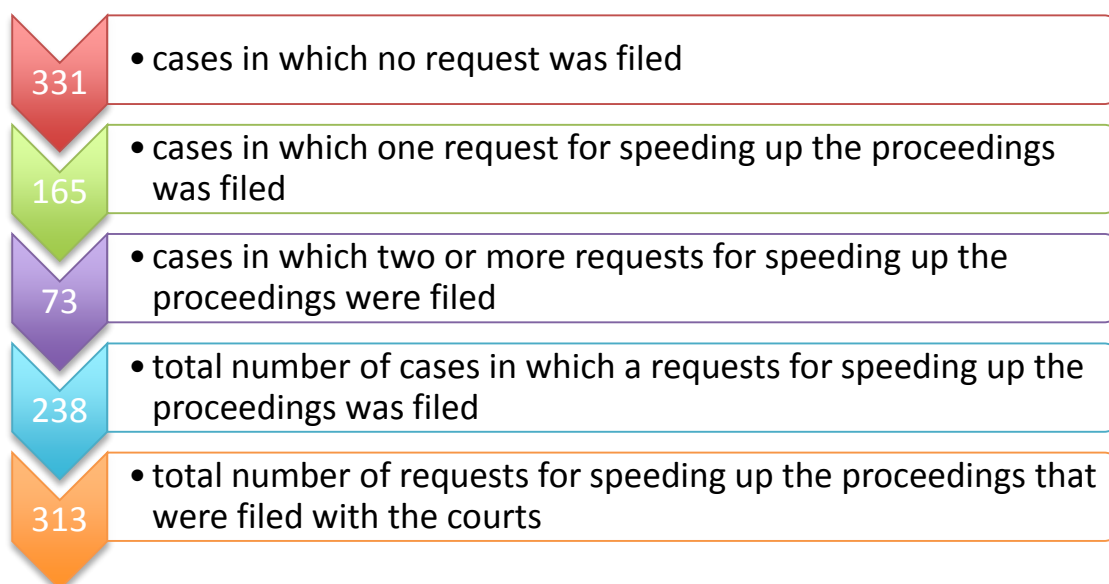
Besides the copies of the lawsuits, the only documents that were found in the files of cases in which no court action was identified were the requests to speed up the proceedings.²¹

Requests to speed up the proceedings

In the situation where no court hearing has been scheduled over long period of time, the only action the plaintiff can normally undertake is to address a competent court with a request to speed up the proceedings. This request is no more than information submitted to the president of a court with the suggestion to make use of its powers if it sees fit to do so.

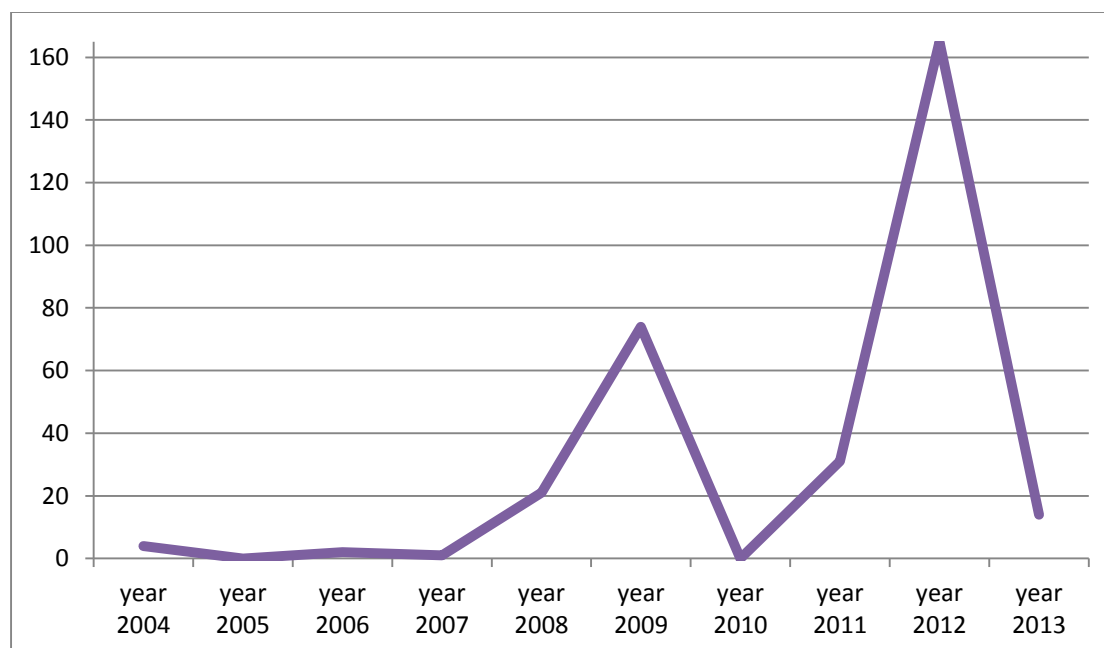
According to the findings a total of 313 requests to speed up proceedings were sent to the courts in relation to the compensation cases pursued by the Project's beneficiaries. These requests were submitted in 238 cases: in 165 case one request per case was found and in 73 cases the plaintiffs filed two or more requests for speeding up the proceedings.

²¹ Apart from the letters in which the plaintiffs notify the court about the change of address or about the appointment of a legal representative, which were sent through the assistance of the Legal Aid Project staff.



As it can be seen from the next graph most of the requests for speeding up the court proceedings were submitted in 2009 and 2012.

Graph 5: *An overview of the requests for speeding up the proceedings by the year of their submission*



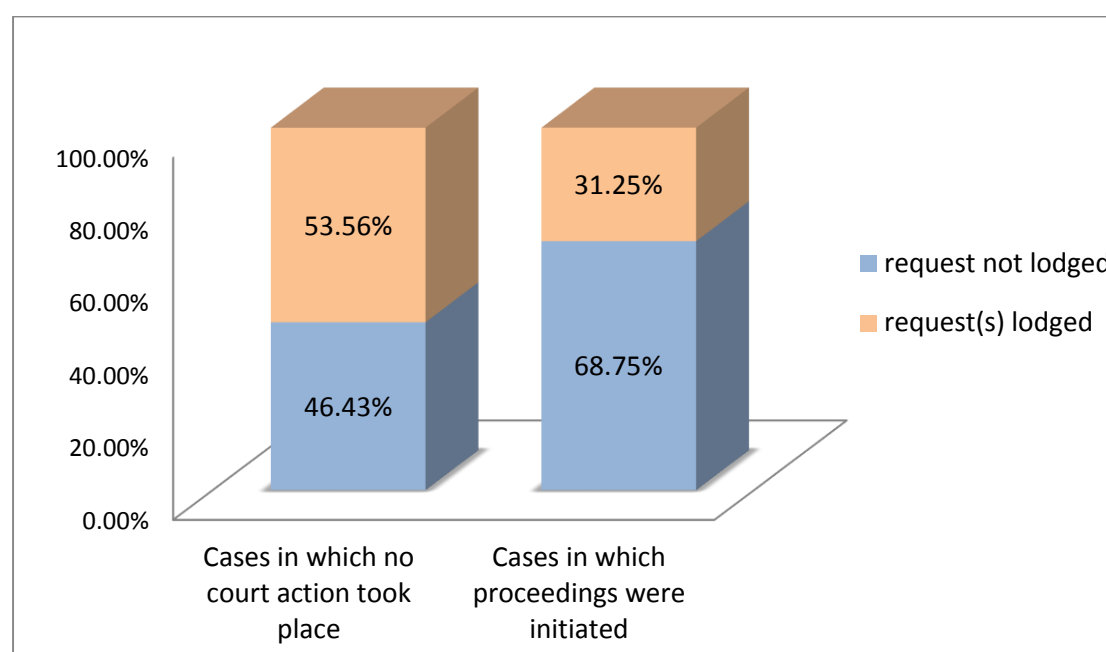
Since the addressee of these requests is not obliged to take any action upon their receipt, a request to speed up the proceedings cannot be considered a remedy for the excessive length of proceedings.²² For this reason they can neither be taken to signify that a plaintiff was active/passive in pursuing his/her compensation case. Yet, a comparison of the two groups of compensation cases (cases in the process of adjudication and cases where no court action was identified) with regards the

²² See European Court of Human Rights case of *Horvat v. Croatia*, no. 51585/99, 26 July 2001, para. 47

number of request for speeding up proceedings that were filed can indicate to what extent they might have influenced the processing of compensation claims.

The results of such comparison revealed that there is no correlation between the requests and the activity/passivity of the courts in the compensation cases. Namely, in over 50% of cases in which the courts so far have taken no action the plaintiffs lodged one or more request to speed up the proceedings (in 188 out of 351 cases). When it comes to the group of cases where the adjudication is on the way or has been completed, in just 31,25% of these cases the request(s) for speeding up the proceedings were filed with the courts (in 50 out of 160 cases).

Graph 6: *Comparison of two groups of compensation cases (cases in which no court action took place and cases in which at least one action was taken by the court) with regards the percentage of cases in which a request(s) for speeding up proceedings was lodged*



Proceedings before the first instance courts

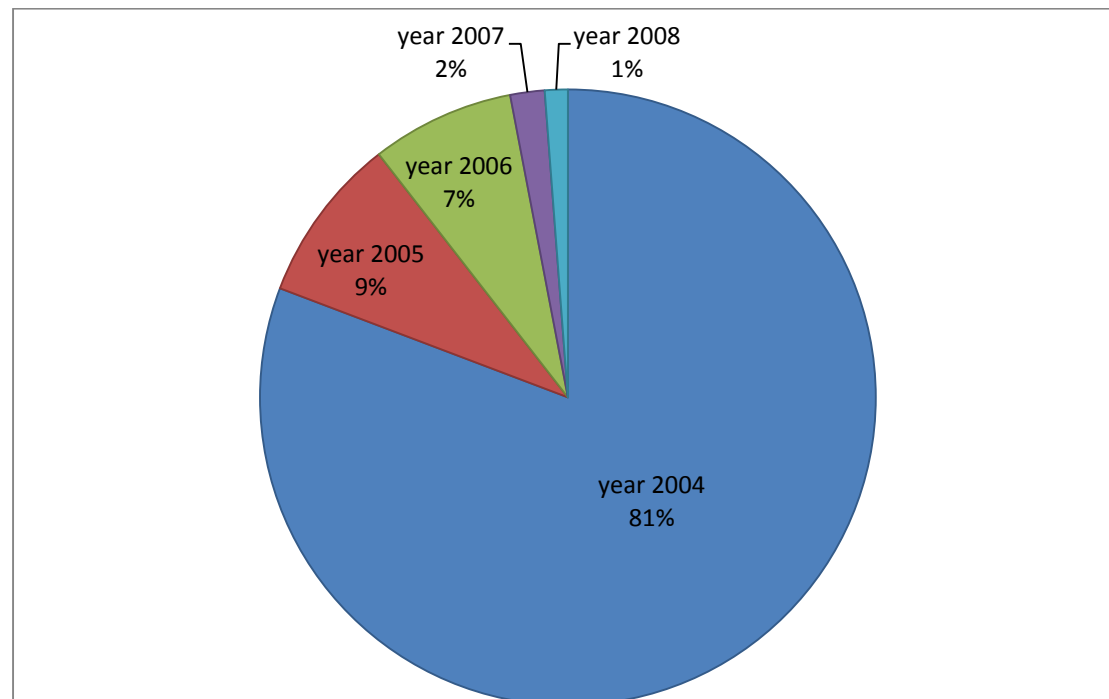
The results of the analysis conducted on 511 compensation cases in which the plaintiffs sought legal aid showed that in 160 of these cases a first instance court took an action towards adjudicating the claim.

As presented above, these 160 cases do not present a greater level of involvement of the plaintiff *vis-à-vis* the number of submitted requests to speed up the proceedings. The qualitative analysis of the lawsuits by which these cases were initiated also leads to the conclusion that they do not possess any distinctive feature in comparison to other compensation claims lawsuits.²³

²³ For an analysis of the basic features of these types of lawsuits see: EU-funded project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid”, “Shedding Light

Another possible explanation for the courts' action in these cases – their earlier submission - was also refuted given that the data on the years of their registration by the courts coincide with the trends established on a larger sample.²⁴ According to the analysis, most of the lawsuits were submitted in 2004 (129), a tiny portion of them in 2005 (14) and 2006 (12) and only few of them in 2007 (3) and 2008 (2).²⁵

Graph 7: *Percentage of compensation claims lawsuits per year of their registration before the court*



Final decisions of the first instance courts

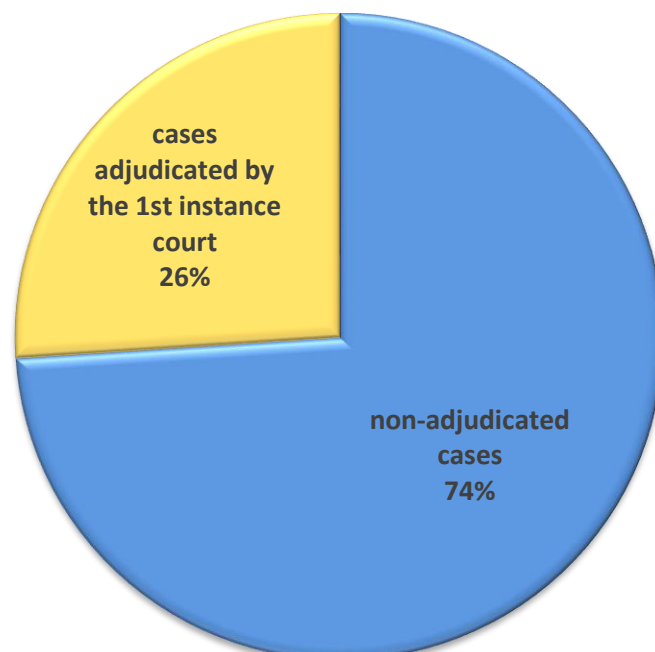
In this part of the research the compensation cases were analysed in order to determine in how many of them the first instance courts issued a decision with *res iudicata* effect. The analysis showed that in the great majority of cases in which a court was active, the first instance proceedings were already brought to an end by the time of research. In 133 cases the final decisions of the municipal/basic courts' were found, which makes 26% of all the analysed compensation cases.

Graph 8: *Share of compensation cases adjudicated by the first instance courts in the total number of analysed compensation cases*

on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo* - Part I'', September 2013.

²⁴ *Ibidem*, p. 14.

²⁵ As determined by inspecting the date indicated in the court endorsement stamp.



It should be noted, however, that no results were obtained for the courts in Kamenicë/Kamenica, Dragash/Dragaš, Deçan/Deçane, Gjakovë/Đakovica, Shtërpçë/Štrpce, Glllogovc/Glogovac, Kaçanik/Kaçanik and Podujevë/Podujevo²⁶. This might be a consequence of the structure of the sample – no compensation cases pursued before these courts by the Legal Aid Project beneficiaries - but an alternative explanation might also be that these courts did not proceed at all with the compensation cases.

Table 1: *Number of the final first instance court decisions per court*

Court	Judgements on merits	Decisions rejecting without entering into merits	Total
Gjilan/Gnjilane	0	1	1
Kamenicë/Kamenica	0	0	0
Viti/Vitina	1	1	2
Prizren	0	2	2
Dragash/Dragaš	0	0	0
Malishevë/Mališevo	4	0	4
Rahovec/Orahovac	0	2	2

²⁶ However a handful of cases for Djakovica and Dragas were registered in June 2014, outside this reporting period.

Suharekë/Suva Reka	0	5	5
Pejë/Peć	4	3	7
Deçan/Dečane	0	0	0
Gjakovë/Đakovica	0	1	1
Istog/Istok	0	5	5
Klinë/Klina	1	0	1
Prishtinë/Priština	1	37	38
Ferizaj/Uroševac	0	8	8
Shtërpcë/Štrpce	0	0	0
Gllgovc/Glogovac	0	0	0
Kaçanik/Kačanik	0	0	0
Lipjan/Lipljan	0	2	2
Podujevë/Podujevo	0	0	0
K. Mitrovica/ Mitrovicë	0	1	1
Skenderaj/Srbica	21	6	27
Vushtrri/Vučitrn	0	27	27
Leposavić/ Leposaviq	0	0	0
Zubin Potok	0	0	0
TOTAL	32	101	133

The analysis also showed that the first instance courts were the most active between year 2009 and 2011. Majority of the first instance decisions were brought in 2011 (41 rulings), 2009 (32 rulings) and 2010 (26 rulings).

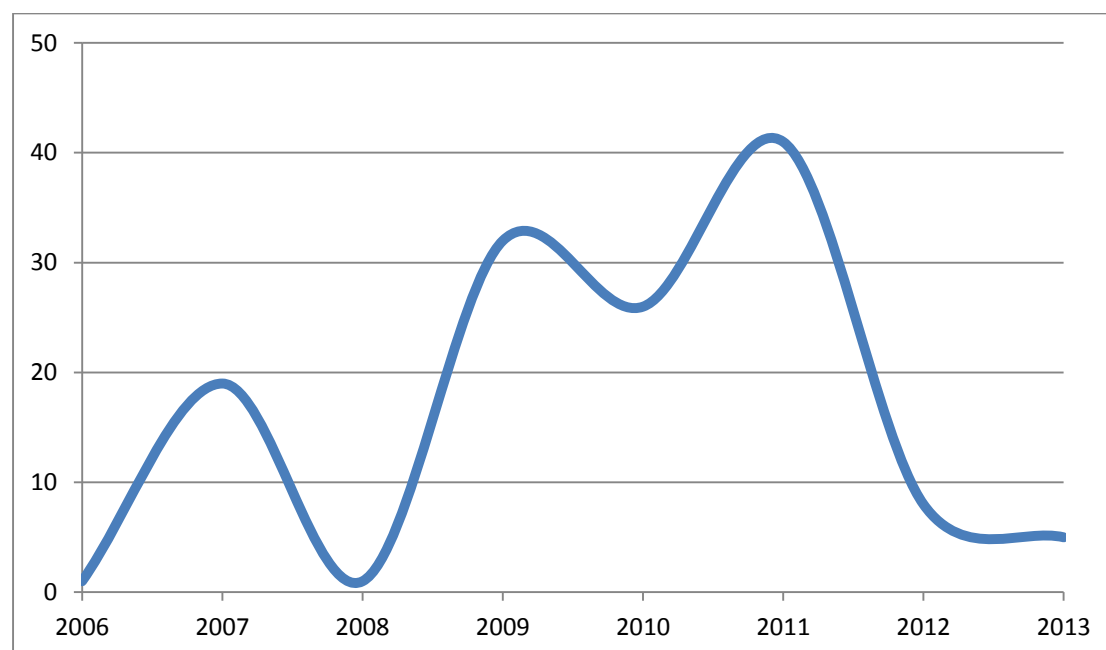
Table 2: *Number of the final first instance decisions at the annual level*

Year of the 1 st instance ruling									
2005	2006	2007	2008	2009	2010	2011	2012	2013	2014*
0	1	19	1	32	26	41	8	5	0

TOTAL: 133									

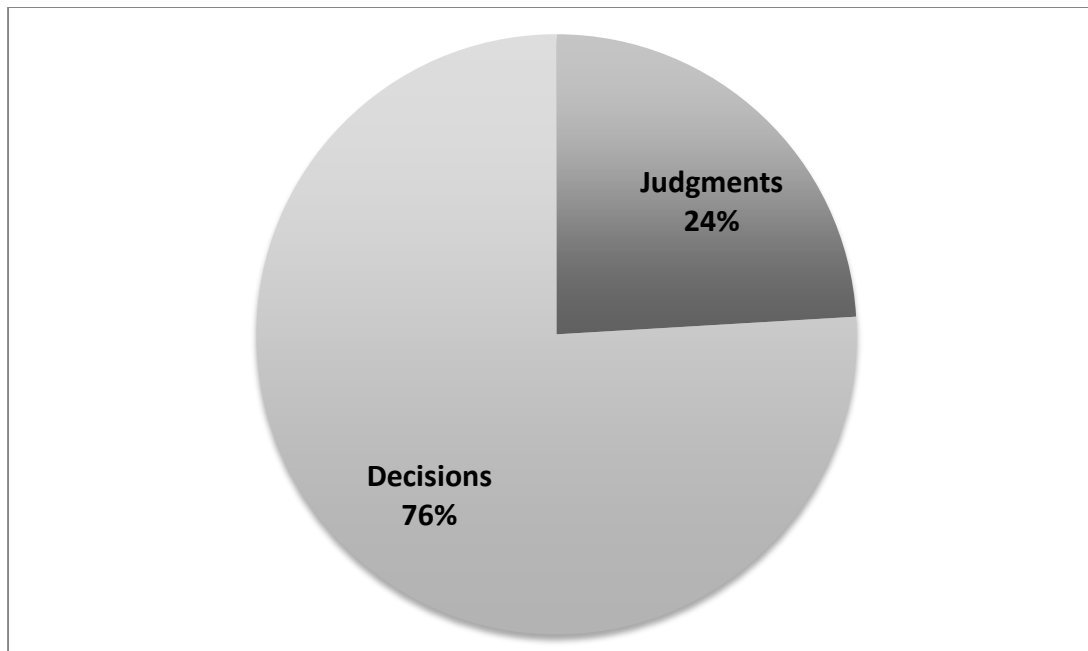
(*Data available only for the first 4 months of 2014)

Graph 9: *Trend in the number of claims determined by final first instance decision over time*



In most of the cases, the verdict was given in the form of a decision (in 101 cases), when the claim didn't meet the formal requirements to be decided on the merits, and in less than 1/3 of them in the form of a judgment (32 cases), when the courts went into the merits. However, no matter which of these two forms was used, both types of verdicts were final *i.e.* capable of having *res iudicata* effect.

Graph 9: *Percentages of the first instance rulings in the form of decision/judgment*



Without exception, **all the first instance civil proceedings were concluded negatively for the plaintiff.** This means that the first instance courts have issued in total 32 negative judgments and 101 negative decisions.

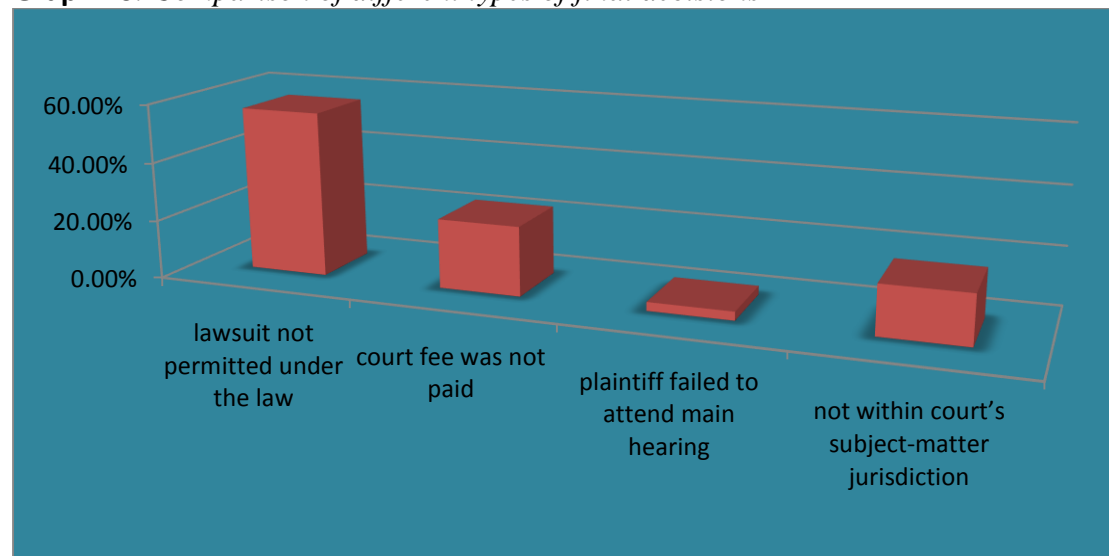
As observed in Table 1, only six courts have issued judgments in the compensation cases (court in Viti/Vitina, Malishevë/Mališevo, Pejë/Peć, Klinë/Klina, Prishtinë/Priština and in Skenderaj/Srbica). None of those courts have ruled on the merits *i.e.* all analysed compensation claims were dismissed for procedural reasons. The claims against the Provisional Institutions of Self-Government (PISG) and the municipalities were found to be “ungrounded” because the respondents did not have the capacity to be sued (“the respondents do not have passive legitimacy”). When it comes to UNMIK and KFOR as respondents, the courts concluded that these two legal entities were “outside of the jurisdiction of the courts in Kosovo” and that part of the claim was declared inadmissible because of the lack of jurisdiction.

The qualitative analysis of the text of these judgments revealed that they closely resemble each other. Apart from the heading, the statement of facts and the signature of the judge, their main elements (legal ruling, facts upon which the judgment is based and the grounds for the decision) contain very similar if not identical text no matter which court has issued the judgment. It was also observed that the Municipal Court in Pejë/Peć and the Municipal Court in Skenderaj/Srbica have issued judgments by filling in pre-designed forms. This can probably explain how have these courts managed to issue a great number of judgments in a short period of time. For instance, almost all of the analysed judgments issued by the Municipal Court in Skenderaj/Srbica date from 2009.

When it comes to the final negative decisions, the courts struck out compensation claims for four principal reasons: 1) “the lawsuit is not permitted by law”, 2) the plaintiff failed to pay the court fee for filing a civil lawsuit, 3) the plaintiff failed to

attend the main hearing, 4) the lawsuit is not within the court's subject-matter jurisdiction.

Graph 10: *Comparison of different types of final decisions*



As presented in the graph above, the greatest number of the lawsuits was struck out because the first instance court assessed that “the lawsuit is not permitted by law” (57 final decisions). These decisions were in many cases brought through kind of “summarized procedure” without the court holding a hearing. As it is the case with most of the analysed judgments, the courts have often used templates when preparing these decisions and many of them were issued in a very short period of time. This was especially observed in relation to the cases pursued before the Municipal Court in Prishtinë/Priština.

In a significant number of decisions, all of which were issued by the Municipal Court in Vushtrri/Vučitrn,²⁷ the claims were struck out because the plaintiff failed to pay the court fee for initiating a civil action (24 decisions). As the court in question did not have the possibility to deliver to IDP plaintiffs the order to pay court fees because of the lack of postal services, it used a legal presumption envisioned by the applicable law, that the service of documents is effectuated week after they were placed at the court's notice board. Subsequently the court would consider the lawsuit to be withdrawn because the plaintiff did not pay the fees and it would strike out the claim. The court in Vushtrri/Vučitrn used the same method to make the decision become final. Namely, after ruling to strike out the claim the court was issuing another decision stating that the service of the final decision is to be effectuated by posting it on the notice board of the court.

Another 3 compensation claims were struck out for the similar reasons before the court in Istog/Istok. Although neither this court could send any of the documents to the plaintiff the court struck out the compensation claims because the “plaintiff failed to attend the main hearing”.

²⁷ Now a branch office of the Basic Court in K. Mitrovica/ Mitrovicë.

In 17 other cases, the Municipal courts in Prizren (1 case), Rahovec/Orahovac (1 case), Pejë/Peć (2 cases), Gjakovë/Đakovica (1 case), Istog/Istok (2 cases), Prishtinë/Priština (1 case), Ferizaj/Uroševac (3 cases) and in Skenderaj/Srbica (6 cases) have dismissed the claim as being outside their subject-matter jurisdiction. By the same decisions these courts ordered the claim to be transferred to the Kosovo Property Agency (KPA).

Stay of proceedings

The examination of the case files also showed that the stay of proceedings ordered by UNMIK DoJ in 2004 was not the only situation in which the trials in the compensation cases were suspended. It was found that in 15 cases the first instance courts have ordered stay of proceedings for reasons other than the UNMIK DoJ letter.

Table 3: *Number of decisions to stay proceedings by type*

DECISIONS TO STAY PROCEEDINGS		
Stay of proceedings in order to notify the Ministry of Finance	Stay of proceedings because the plaintiff or both parties did not attend the hearing	Stay of proceedings because court cannot deliver documents to the plaintiff
4	10	1
TOTAL: 15		

Most of the decisions to stay proceedings (10) were issued when one or both parties to the proceedings did not attend the main hearing. An interesting feature of these decisions is that they *in fact* could lead to the negative conclusion of the proceedings because they included the following warning:

“The proceedings will be stayed until one of the parties submits a motion for the continuation of proceedings. [...] If none of the parties submits the motion for the continuation of proceedings within six months from the day when the stay of proceedings commenced, the court would hold that the lawsuit was withdrawn”.

The chance of a compensation claim being considered withdrawn after these six months was very high since the service of the decisions on stay of proceedings was actually done by their posting on the court’s notice board.

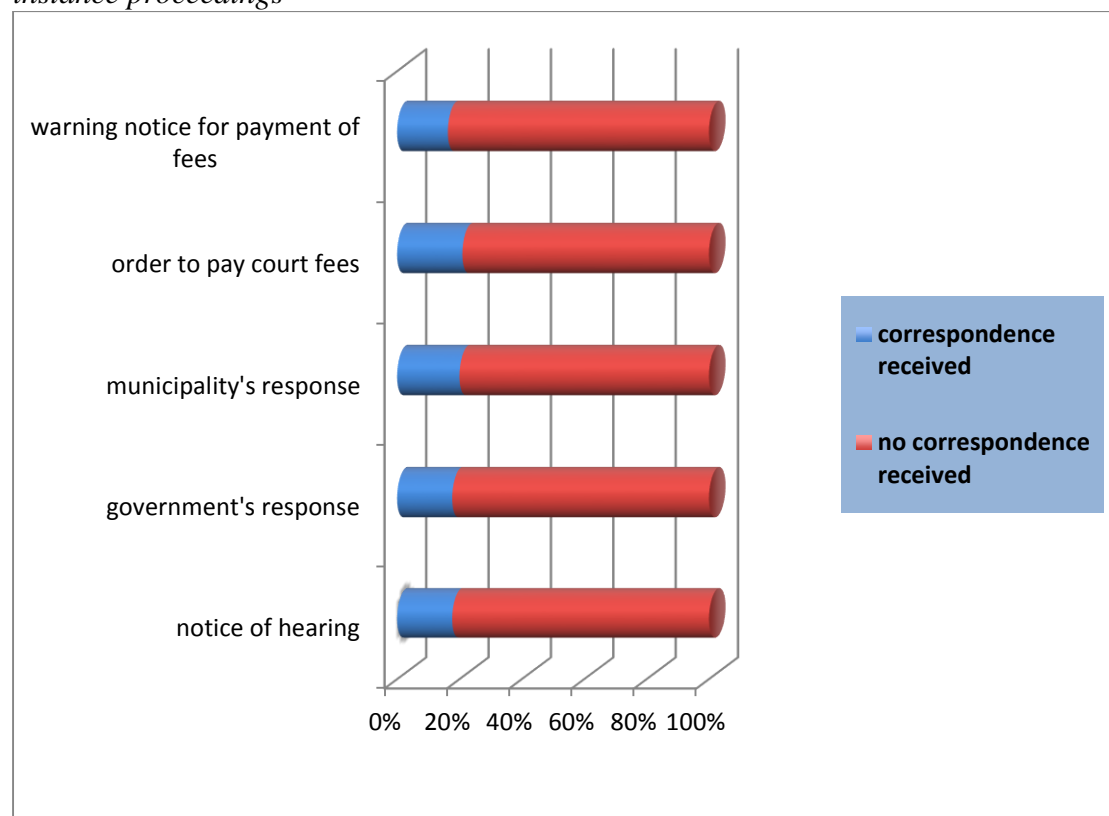
Other courts had taken a completely different approach by resorting to a 180-day stay of proceedings. These decisions were based on the 2008 Law on Public Financial Management and Accountability, which ordered that the Ministry of Justice and the Ministry of Economy and Finance be informed about any unresolved compensation

claim against a public authority in Kosovo before processing it.²⁸ In 2010 the Law on Amendments on the Law of Public Financial Management and Accountability was passed, which effectively suspended the processing of the compensation claims for up to 18 months or until Kosovo's Ministry of Justice notifies the court in writing that it assumed representation on behalf of the Government or other public authority.²⁹

Other documents issued by the first instance courts

Besides the final rulings, other types of documents issued by the courts in the course of civil proceedings were also found during the research (in total 215 documents). These documents were mostly issued during the preparation of the main hearing or in relation to the payment of courts fees and can be classified as follows: a) notice of court hearing (38), municipalities' response to claim (43), Government's response to claim (38), order to pay court fees (45), warning notice for the payment of courts fees (35), other documents (16).

Graph 11: Percentage of different types of documents issued in the course of the first instance proceedings



The low number of the court hearing notices indicates that in a great majority of cases the courts decided on the claim without holding a hearing. Furthermore, a

²⁸ See articles 67 and 68 of the Law on Public Financial Management and Accountability, No. 03/L-048 of 13 March 2008.

²⁹ Article 25 (amending Article 68.2) of the Law on Amendment to the Law on Public Financial Management and Accountability No. 03-L-221 of July 2010.

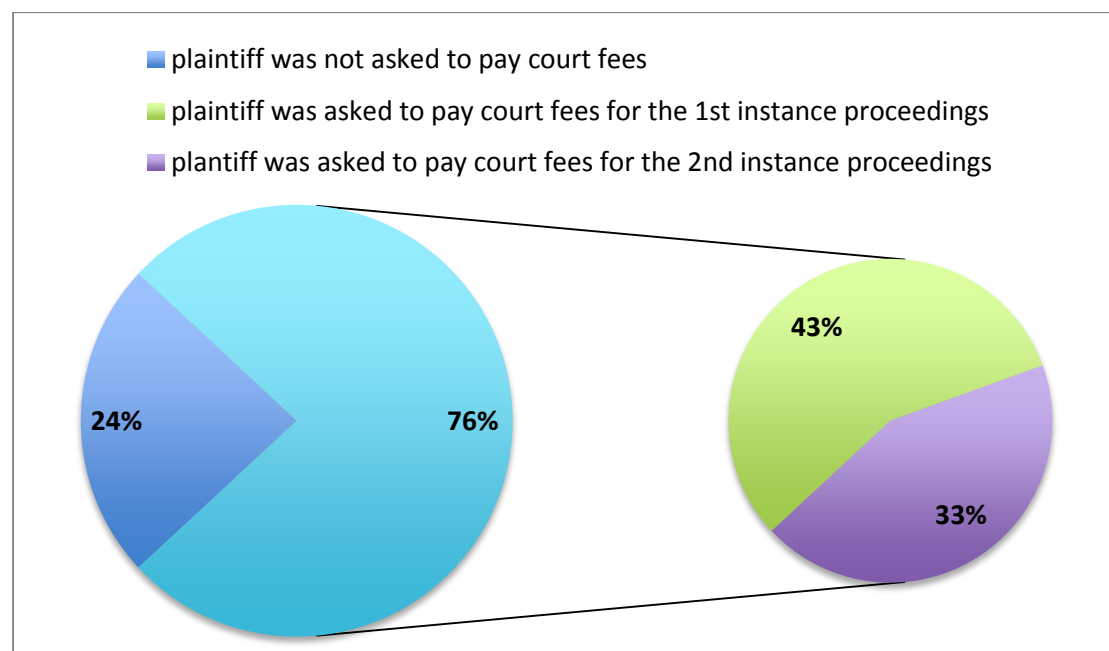
notable feature of the written responses to the claims submitted by municipalities and the Government of Kosovo was that the majority of them were issued through the use of templates. In most of the cases these responses, apart from the plaintiff's name and the court file number, were identical.

Court fees

As it ensues from the previous chapter, the orders to pay court taxes and the warnings about the payment of court taxes were found in a significant number of cases. It was also found that a number of claims were struck out because the plaintiff did not pay the court fee for lodging a lawsuit. These findings largely coincide with the conclusions reached after the examination of the compensation cases in relation to the issue of court fees.

As presented in the following graph, the plaintiff was ordered to pay court fees in 110 cases, which makes 76% of the analysed compensation cases in which a court took action. This figure encompasses the cases in which the plaintiff was asked to pay fees for the first instance proceedings (62 cases), as well the cases in which the plaintiff was asked to pay the court fee for lodging appeal to the first instance decision (48 cases).

Graph 12: *Percentage of cases in which the plaintiff was asked to pay court fees*

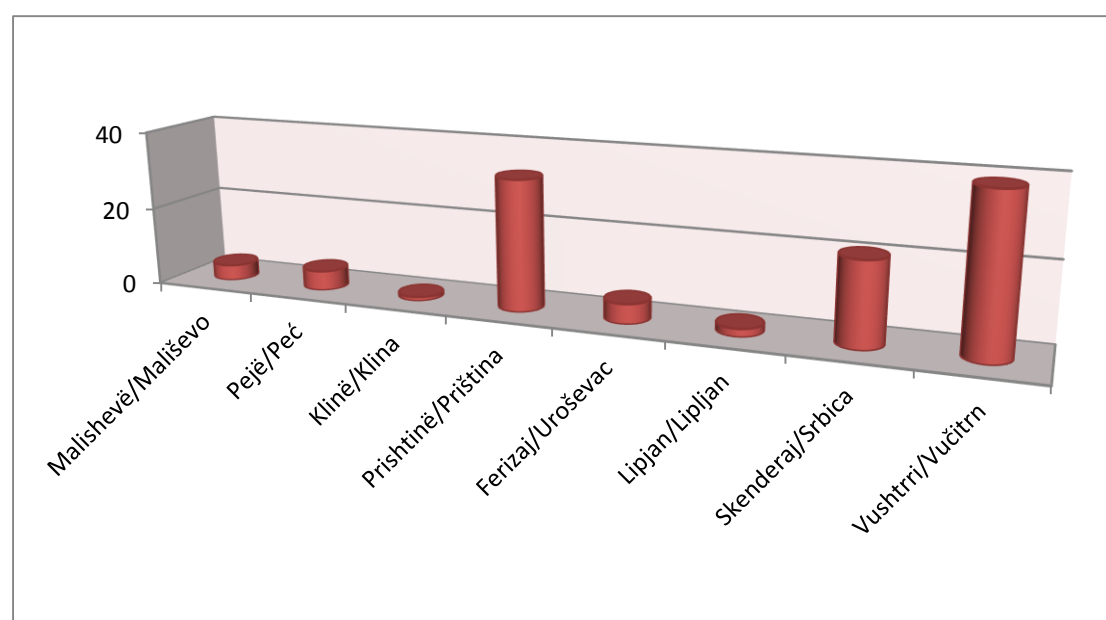


A notable aspect of the issue of court fees is that different courts had different approaches to the questions of whether the plaintiffs should pay court fees in the compensation cases and in which phase of the first instance proceedings should the court fees be paid.

As to the first question the results of the analysis show that in 98 cases (60% of the analysed cases) the courts did not take any action in relation to the payment of court fees for the first instance proceedings. This could be partly explained by the fact that until several years ago the courts were not conditioning the filing of a lawsuit by the payment of the court fees.³⁰ Another explanation could also be that the greatest number of compensation claims was struck out for the procedural reasons. Furthermore, it was also observed that in none of the adjudicated cases the respondents claimed recovery of their legal costs.

Only 8 out of 25 first instance courts asked the plaintiffs to pay court fees. As it can be seen in the following graph, the majority of orders for the payment of court fees (84%) came from only three courts – the courts in Prishtinë/Priština (30%), in Skenderaj/Srbica (19%) and in Vushtrri/Vučitrn (35%).

Graph 14: *Number of court fee orders/warnings per court*



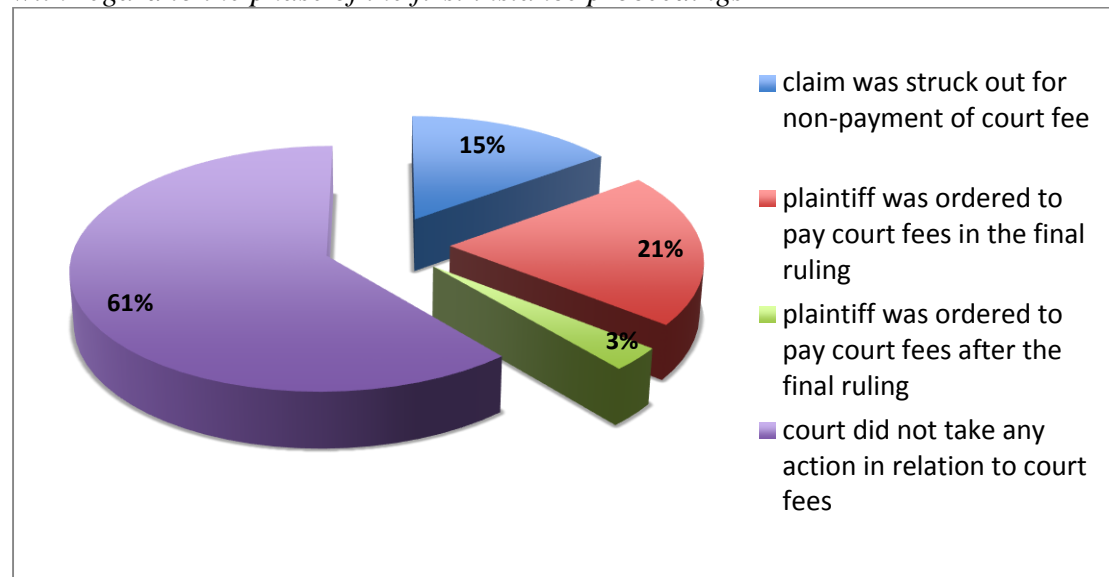
Despite such divergent practice all the courts responded in the same way to the court fee waivers. Namely, the analysis shows that 99% of the analysed lawsuits contained a request for the exemption from the payment of court fees.³¹ Yet, in not even of the cases has the first instance court decided about a request for the exemption from the payment of court fees lodged by the plaintiff.

³⁰ According to the observations of the Legal Aid Project lawyers, before the issuance of Administrative Instruction No. 2008/02 on Unification of Court Fees of November 2008, the courts were not conditioning the registration and adjudication of a lawsuit by the prior payment of court fees.

³¹ These findings are in line with the results of the analysis conducted on the claims archived in the Court Liaison Office, where it was found that 97% of these lawsuits included a court fee waiver. See: EU-funded project "Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid", "Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo* - Part I", September 2013, p. 18.

The courts have ordered payment of court fees in different phases of the proceedings. The payment of a court fee for filing a lawsuit was set as a requirement for the adjudication of a claim in 24 cases. In 33 cases the plaintiffs were asked to pay court fees in the final decision while in 5 cases the courts charged plaintiffs through an order issued after the final decision was brought.

Graph 13: *Percentage of cases in which the plaintiff was ordered to pay court fees with regard to the phase of the first instance proceedings*



According to the analysis, the due amounts varied from court to court and depending on whether the fees were charged separately for each legal action or altogether at the end of the proceedings. For instance, the lowest amount charged at the end of the trial was 128 EUR and the highest 1030 EUR. The only similarity between the courts in this respect was the fee for the appeal, which was always charged in the amount of 30 EUR.

Table 3: *The amounts of court fees charged in individual cases*: into brackets the number of fees and their different amounts.*

SEAT OF FIRST INSTANCE COURT	FEE FOR LAWSUIT	FEE FOR FINAL DECISION	FEE FOR APPEAL	FEE FOR WHOLE PROCEEDINGS
Pejë/Peć	2 (1 x 250; 1x 500)	2 (1 x 250; 1x 500)	2 (2x30)	2 (1x530; 1x1030)
Prishtinë/Priština	0	1 (1x37)	30 (30x30)	
Ferizaj/Uroševac	-	-	-	5 (1x400, 1x128, 1x362, 1x208, 1x444)

Lipjan/Lipljan	2 (2x50)	-	1 (1x30)	-
Vushtrri/Vučitrn	-	-	15 (15x30)	-
TOTAL: 6172				

(*The amounts are expressed in EUR. The table covers only the courts that have issued court fee orders with the specified amount of the court fee(s).)

Appellate proceedings

Most of the final verdicts in the analysed compensation claims were appealed before the second instance courts, the Supreme Court of Kosovo and even the Constitutional Court. Despite a high number of appeals only a tiny portion of them was decided by the time of the research.

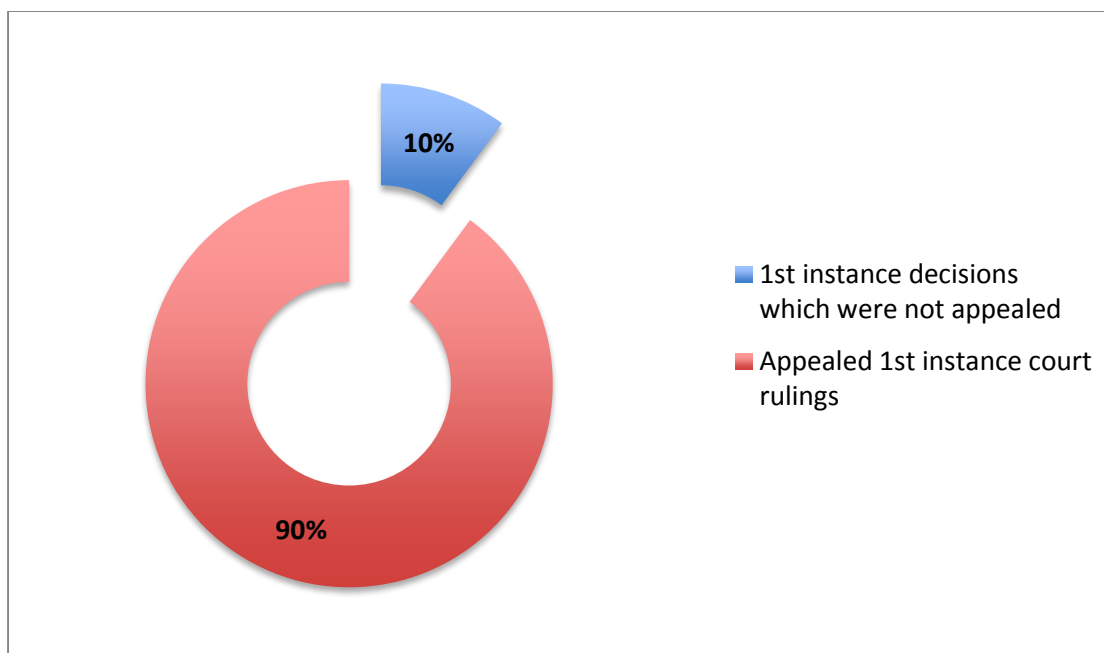
Table 4: Number of the first, second and third instance court decisions

1st instance decisions	2nd instance decisions	3rd instance decisions
133	15	3

Proceedings before the second instance courts

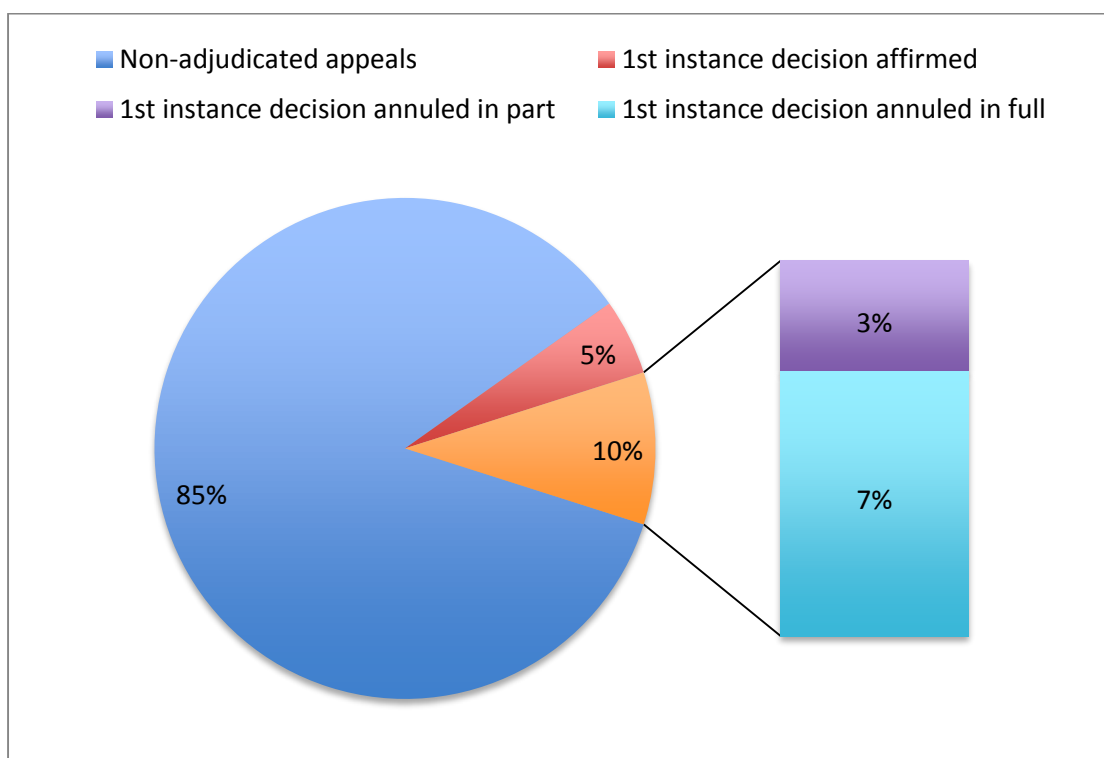
Majority of claims determined at the first instance were brought before the appellate courts. This is not surprising since all the claims adjudicated by the municipal/basic courts were concluded negatively for the plaintiff. The analysis included both the appeals of the final verdict and the appeals lodged on the decisions to stay the proceedings.

Graph 15: *Percentage of the appealed first instance rulings*



According to the findings so far only 15 appeals were adjudicated. The appeal was dismissed in 5 cases and in 10 cases the appeal was successful or partially successful and appealed decision remanded back to the trial court.

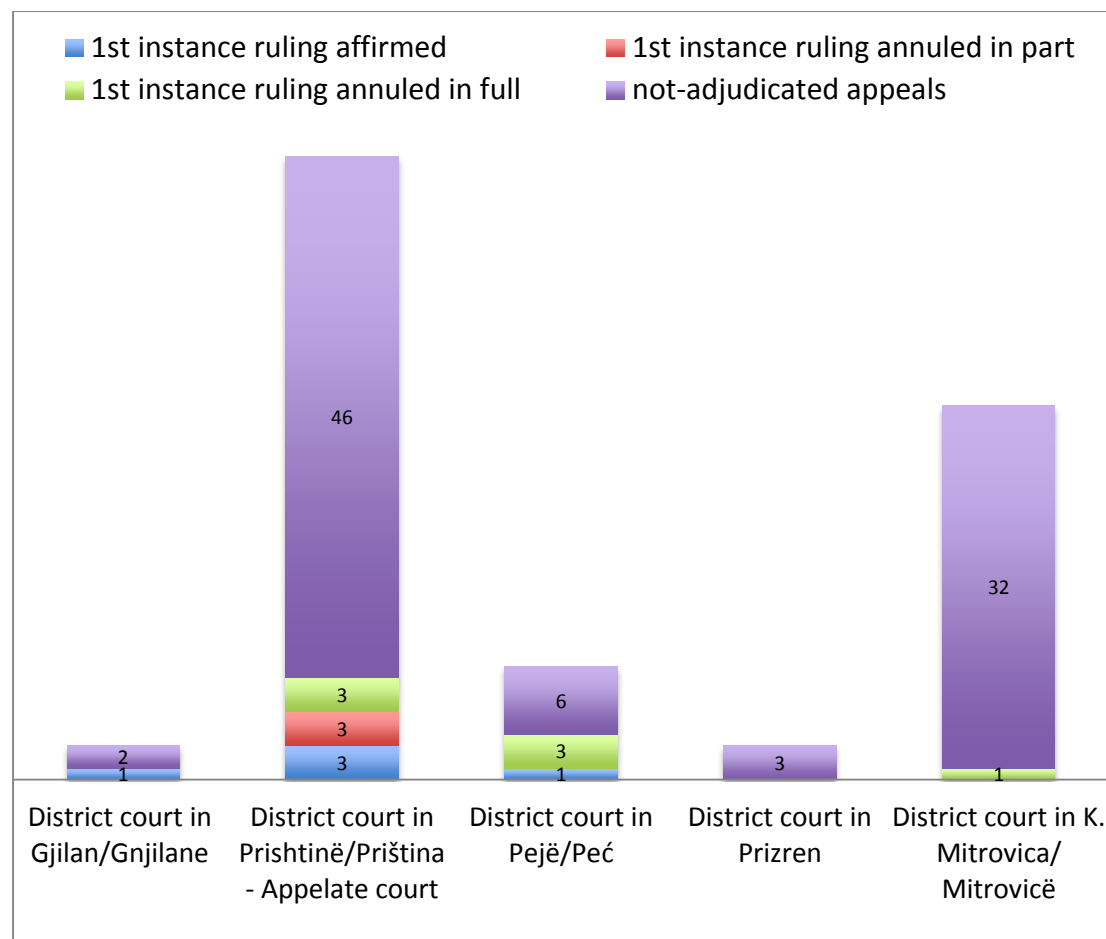
Graph 16: *Overview of the appellate proceedings by their outcome*



Over half of the appeals were lodged before the second instance court in Prishtinë/Priština (in 52 cases). A part of the explanation for this lays in the fact that

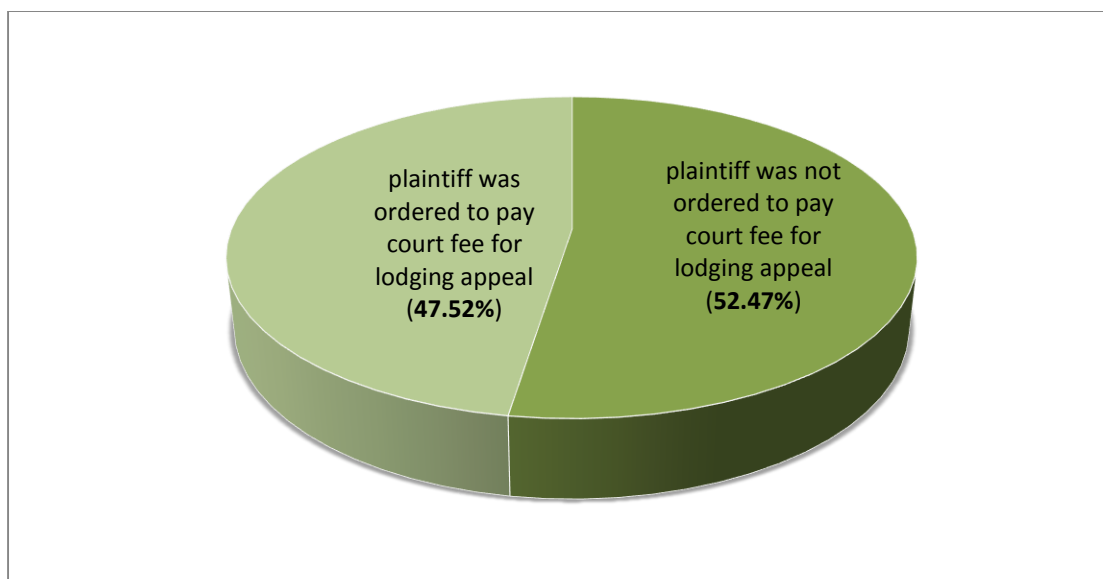
after the 2013 justice system reform, this court became the appellate court for the whole Kosovo.

Graph17: *Overview of the outcomes of the appellate proceedings by the seat of the second instance court*



As already mentioned, the orders for the payment of court fees were in many cases related to the appellate proceedings. The plaintiffs were asked to pay fee for the appeal even in those cases in which the appeal was referring to the trial court's omission to rule about the court fee waiver.

Graph 18: *Percentage of appeals for which the plaintiff was order to pay court fee*



Proceedings before the Supreme Court of Kosovo

Very few cases, 4 in total, were also appealed before the Supreme Court of Kosovo as the court of last instance. In these cases the plaintiffs have filed petition for extraordinary review ("Revizija") claiming that a) the second instance court has violated the provisions of Civil Procedure Code, b) that the decision of the court is based on inaccurate and incomplete determination of the factual situation, and/or c) that the decision is based on an incorrect application of the applicable law. The Supreme Court of Kosovo has decided in three of these cases by dismissing the petition as ungrounded.

Proceedings before the Constitutional Court of Kosovo

So far, in only two compensation case, related to claim arising from the 1999 conflict, supported through the Project's legal aid scheme, the plaintiff sought protection of his rights before the Constitutional Court of Kosovo.³² In the *case of Branko Radeč* (Case No. KI96/13), the applicant submitted the application for the constitutional review of the Kosovo Court of Appeal decision. The applicant alleged violation of a number of rights guaranteed by the Constitution of Kosovo, which in effect point to the violations of the right to fair trial, right to property, right to an efficient legal remedy, right to home and the prohibition of discrimination.

In 2004 the applicant filed a compensation claim before the Municipal Court in Vushtrri/Vučitrn against the Municipality of Vushtrri/Vučitrn and the Provisional Institutions of Self-Governance in Kosovo, seeking compensation for damaged property. In the complaint, the applicant alleged that *"after the arrival of KFOR in Kosovo, the buildings that are located in the mentioned plot have been completely*

³² One more referral was submitted to the Constitutional Court of Kosovo in relation to the compensation claim after the date when the report was drafted.

destroyed and the immovable property was stolen and destroyed, the orchard, acacia plantation and the forest were cut down, and the agricultural land is used by unauthorized persons." The applicant also requested exemption from the payment of court fees by recalling his IDP status, loss of all his belongings as a consequence of the conflict and the fact that the payment of court fees would drastically affect his and his family's subsistence.

The Municipal Court in Vushtrri/Vučitrn in 2010 ruled negatively on the claim because of the plaintiff's "failure to pay the court fee for lodging a lawsuit". As described above in relation to other similar decisions of the same court, the decision was based on the presumption of withdrawal of the claim because the fee was not paid after the court has placed the warning for the payment of the fee on the court's notification board. In practice, none of the documents issued by the court, including the warning, could be delivered to the IDP plaintiff for the lack of the functional postal services between Kosovo and the Serbia proper.

Three years later the second instance court rejected the applicant's appeal and confirmed the decision of the Municipal Court in Vushtrri/Vučitrn. The Court of Appeal held the appeal to be ungrounded for the reasons that could be summarised as follows: a) the first instance court has undertaken at least two actions in order to notify the claimant about the court fees which were due - in 2010 it notified the Office for International Cooperation of the Kosovo Ministry of Justice and later on it posted the warning on the payment of court fees at its notice board; b) the plaintiff did not submit any evidence to substantiate his court fee waiver.

The Constitutional Court found that the Municipal Court and the Court of Appeal *"followed the relevant rules and procedures and reasoned their decisions"* and that therefore, it cannot be concluded *"that the relevant proceedings were in any way unfair or tainted by arbitrariness"*. For these reasons the Constitutional Court decided to reject the referral in the case of *Branko Radeč* as inadmissible.

Conclusion

Although the compensation cases analysed in the report for several reasons cannot be considered as representative of the entire class of compensation claims filed before the courts of Kosovo for war related damages or demolition to property, the report can provide at least a basic insight into fate of these claims. The analysis showed that the proceedings started in less than 1/3 of the analysed cases and that in an even lower number of cases these proceedings were finalized by the time of the research. All the analysed first instance proceedings were concluded negatively for the plaintiff and were predominantly issued in the form of decision. In most of these final decisions the court struck out the claim by assessing that "the lawsuit is not permitted by law". It was also noted that a very tiny percentage of the appellate proceedings were finalized. The appeals determined by the Supreme Court in Kosovo were unsuccessful as well the complaint brought before the Constitutional Court of Kosovo.

