



Further Support to refugees and IDPs in Serbia

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Project Report

Identification of Practical Obstacles to Return in Property and Non-Property cases

June 2011



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Table of Contents

| | |
|---|-----------|
| INTRODUCTION | 4 |
| CHAPTER I – THE LEGAL FRAMEWORK..... | 7 |
| 1) The Concept of property | 7 |
| 2) The legal framework regulating expropriation | 9 |
| 3) Specific features of the legal framework regulating Non-Movable Property in KiM | 10 |
| 4) The Current Court Structure and the Future Court Structure in KiM: a brief overview..... | 12 |
| 5) <i>Ad hoc</i> quasi judicial bodies dealing with property rights | 15 |
| CHAPTER II - LEGISLATIVE AND INSTITUTIONAL OBSTACLES TO RETURN.. | 18 |
| 1) Analysis of the current state of affairs vis-à-vis property rights in KiM, with special focus on IDP's..... | 18 |
| 2) Legislative shortcomings regarding property rights | 18 |
| 3) Institutional shortcomings regarding property rights and problems with the implementation of legislation | 20 |
| CHAPTER III -PRACTICAL OBSTACLES TO RETURN IN PROPERTY RELATED MATTERS | 22 |
| 1) Threats, duress, fraudulent transactions, trespassing, ineffective legal remedies..... | 22 |
| 2) Illegal Construction & Corruption | 23 |
| 3) Expropriation Problems for IDPs..... | 24 |
| 4) Intimidation of Local Judges and Prosecutors in cases affecting IDPs | 24 |
| 5) Corruption of the Judiciary and irregularity in court decisions | 25 |
| 6) Cadastre and Inheritance Decisions | 27 |
| CHAPTER IV -PRACTICAL OBSTACLES TO RETURN WITH A FOCUS ON NON-PROPERTY ISSUES AND INDIRECT DISCRIMINATION..... | 28 |



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| | | |
|--|---|-----------|
| 1) | The Legal Framework for Non-Property Rights in KiM. | 28 |
| 2) | The Office of the Ombudsperson | 30 |
| CHAPTER V- OVERVIEW OF LEGISLATIVE AND INSTITUTIONAL SHORTCOMINGS AFFECTING SUSTAINABILITY OF RETURN ANTI-DISCRIMINATION | | 32 |
| 1) | Discrimination..... | 32 |
| 2) | Obstacles to Legal Aid | 33 |
| 3) | Workers' rights | 33 |
| CHAPTER VI - PRACTICAL OBSTACLES TO RETURN WITH SPECIAL FOCUS ON NON-PROPERTY RIGHTS AND INDIRECT DISCRIMINATION AS PERCEIVED BY IDPS | | 35 |
| 1) | Economic | 36 |
| 2) | Language Rights | 36 |
| 3) | Freedom of movement and security | 37 |
| 4) | Education | 39 |
| 5) | Lack of Coordination of Key Stakeholders for Return | 40 |
| 6) | Recognition of Documents | 40 |
| 7) | War Crimes Accusations and Freedom of Movement..... | 41 |
| CONCLUSION..... | | 42 |

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Disclaimer

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Introduction

According to the UNHCR, Serbia is one of the five countries in the world listed to have a protracted refugee situation.¹ Deprivation of basic rights, especially property, limited access to justice, and poor social position for more than decade makes members of this population vulnerable with constant need for support and assistance. Addressing these problems requires a joint long-term effort of the international community and Serbia's state institutions in order to overcome this situation and create durable solutions.²

This report is the first of several to be drafted in identifying the practical obstacles to return affecting internally displaced persons (IDPs) from Kosovo in relation to property and non-property issues. This initial report will highlight the obstacles in legislation, practice of institutions or external factors, which have been reported by international and local organizations. A brief analysis regarding discrimination issues is also included, as this has obvious relevance to the subjective perceptions of officials who interact with IDPs by their objective actions. Subsequent reports will add the experience of the staff of this EU funded Project, titled Further Support to Refugees and IDPs³ (Project) in their assistance to these groups.

The main objective of the Project is to improve the provision of legal aid/assistance and increase availability of timely and accurate information necessary for realization of the rights of IDPs from Kosovo & Metohija (KiM) and refugees in Serbia. The Project is a continuation of previous similar projects related to the provision of support and assistance to this vulnerable group of the population since 2008 in providing legal assistance and representation before Kosovo courts.

¹ UNHCR, The High Commissioner's Dialogue on Protection Challenges, *Protracted Refugee Situations*, Dec 2008, Pg 20; OSCE Report, *Serbia Europe's Largest Protracted Refugee Situation*, p1. www.osce.org/serbia/24323

² Ibid, particular mention is made to Interim Pre-Accession projects, Pg 24.

³ Project implementation period is November 2010 – November 2012.



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The Project is dedicated to the improvement of the provision of legal aid/assistance and increase availability of timely and accurate information necessary for the protection and realization of the rights in their country or place of origin of IDPs and refugees in Serbia.

The Project's activities consist of:

1. The provision of free legal assistance and aid to beneficiaries (oral counselling, preparation of legal documents and representation in before institutions in Kosovo);
2. The provision of prompt and accurate information for the realization and protection of the rights of refugees and IDPs; and
3. The preparation and production of reports on issues of human rights monitoring and reporting reflecting the practical experience of the Project in the field, and reporting on legislative development and framework, and other legal or factual issues preventing IDPs and refugees from accessing their rights in their country or place of origin.

As an overall result of the implemented project activities, it is expected that through the provision of legal assistance, refugees and IDPs would have better access to property and other rights.

Through their work, the Project's legal officers are acutely acquainted with the numerous problems of their IDP/refugee clients. The majority of these legal problems are related to property (immovable and movable): restitution and repossession of property, compensation for damage or demolished/destroyed property, and compensation for use of property. In their work with individual cases the Project's legal officers face various obstacles and problems regarding the restitution of property in KiM.

These obstacles and problems originate from shortcomings in legislation, institutional settings, and practice of institution/bodies responsible for administration of justice in property matters. These obstacles have a direct impact on the subjective perception of access to justice by these displaced persons.



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There have been numerous analyses of legal and practical issues, especially those related to property, in KiM and this report should be viewed as a modest, but helpful, contribution on this subject. The difference between this report and those written by others is that the Project Team is in direct contact with the affected groups, and on their behalf undertakes legal action in front of the competent institutions. This enables the Project to have unique insight into the practical aspects of the implementation of legislation, as well as the practice of institutions.

During the preparation of this report the authors have conducted an analysis of information, relevant to the property and non-property problems of clients, analysed the legislative and institutional framework, the practical aspects of implementation. In the end they drafted a series of recommendations and conclusions. In addition, the authors conducted extensive desk research through the consultation of relevant literature, legislation, and accessible data on court /institutional practice in KiM. In future reports the Project will provide information received directly from their practice of representing clients before the institutions in KiM and compare this to the original report to identify ways to overcome any obstacles or any changes to the situation.

Through such actions the Project hopes that this initiative could have a positive impact, influencing relevant actors to take necessary steps for changes.



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CHAPTER I – The legal framework

1) The Concept of property

Property has been defined as any [physical](#) or [intangible entity](#) that is [owned](#) by a [person](#) or jointly by a group of people”⁴. Depending on the nature of the property, the rights associated with it allow for an owner to [consume](#), [sell](#), [rent](#), [mortgage](#), [transfer](#), [exchange](#) or destroy it, or to exclude others from doing these things. Important widely recognized types of property include [real property](#) (the combination of land and any improvements to or on the land), [personal property](#) (physical possessions belonging to a person), [private property](#) (property owned by legal persons or business entities), [public property](#) (state owned or publicly owned and available possessions) and [intellectual property](#) (exclusive rights over artistic creations, inventions, etc).⁵ Non-Movable property is defined as an immovable object, an item of property that cannot be moved without destroying or altering it - property that is fixed to the earth, such as **land or a house**. Non-movable property includes premises, and property rights (for example, inheritable building right), houses, land and associated goods and chattels if they are located on, or below or have a fixed address. It is delimited by geographic coordinates or by reference to local landmarks, depending on the jurisdiction.⁶ At this moment there are three types of ownership in KiM: **socially owned**, **state owned** and **privately owned** properties.

a) Origins of Property Legislation in KiM

Because of the social-political circumstances, the historical development of the legal system (including applicable legislation) in KiM was very specific. After the collapse of the medieval Serbian state until 1912 the territory of KiM was under the rule of the Ottoman Turks. In

⁴ BusinessDictionary.com, The American Heritage Dictionary & Word Net by Princeton (<http://wordnetweb.princeton.edu>)

⁵ From Wikipedia, definition of Property; www.wikipedia.com

⁶ Definition of Immovable Property by Wikipedia.



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medieval Serbia large land parcels were under the ownership of the Serbian Orthodox Church, and during Ottoman rule Islamic religious community also had received donations and owned real estates (vakufi/waqfs). Under the Ottoman Turks, property ownership was based on the "tapija" system. A **Tapija** is a public written document issued by competent state institution proving that the person registered in it is lawful owner/possessor of real estate.

As a consequence of such a system, informal exchange of property and unreliability of land registries shaped up the mentality of population. In the period after 1912 and until 1945, during the Kingdom of Yugoslavia, the legal system was modernized. Private ownership and a capitalist economy were promoted as concepts in this period. Following the Second World War KiM, as part of the Socialist Republic of Serbia within SFR of Yugoslavia, was under a communist structured regime. In practice this affected property rights, as well as all other rights, and many of the legal institutes (socially owned property, tenancy rights, etc) still have a strong presence in KiM legal system. As a result of agrarian reform, land parcels belonging to individuals and religious communities were nationalised, and state/socially owned agricultural companies were created. The restoration of the concept of private ownership and market economy marked the period of 1990-1999, during which the privatization process was initiated, and also almost all socially owned apartments were purchased by their tenants.

b) The Property Regime After the Conflict

After June 1999 the administration of UNMIK was constituted on the basis of UN SC Resolution 1244/1999. The introduction of new practices and imposition of new legislation marked this period. According to UNMIK's "Regulation on applicable law in Kosovo" (1999/24) consists of: regulations promulgated by the Special Representative of the Secretary General (SRSG) of the United Nations and legislation applicable before 22 March 1989. In exceptional cases, in situations where there is a legal gap, non-discriminatory legislation applicable during period 1989-1999 can be applied.⁷ Several Laws and UNMIK Regulations were promulgated by the SRSG throughout the mandate of UNMIK for both the justice and administrative law systems.

⁷ See UNMIK Regulation 1999/24



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The latest phase of legislative development in KiM had continued under the unilateral declaration of independence (UDI) by members of the Kosovo Assembly in February 2008. Numerous laws and other legislative acts have been adopted that are substituting previously applied legislation. No legislation passed by the new “Kosovo Assembly” after the UDI has been promulgated by the SRSG.

2) The legal framework regulating expropriation

The "Law on Expropriation in Kosovo" governs how public authorities expropriate property.¹² It imposes four steps that a municipality must take before it can expropriate property:

1. **preparatory work** must be done to determine whether a parcel of land is suitable for development before even considering the issue of common interest.¹³
2. the authorities must decide whether a particular project **fulfils the criteria of common interest** as a justification for expropriation; property may be expropriated “when necessary for the construction of economic housing, communal health, and other objects in the common interest.”¹⁴
3. If the project is deemed to be in the common interest, then a **proposal for expropriation** is submitted to the competent municipal authority for the third stage. The proposal must be submitted within two years of the “Determination of Common Interest” for approval and the issuance of a decision on expropriation.¹⁵

¹² Law on Expropriation, Official Gazette of the Socialist Autonomous Province of Kosovo, 46/86, 1986.

¹³ Article 7 of the Law on Expropriation.

¹⁴ Article 2 of the Law on Expropriation.

¹⁵ OSCE Mission in Kosovo, Expropriation in Kosovo, Department of Human Rights & Rule of Law, Dec. 2006.



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4. A municipal evaluation commission decides how much compensation should be paid and by whom. Indeed, the proposal for expropriation needs to demonstrate that the **means for compensation exist**.¹⁶

Reportedly a number of expropriations in KiM have been conducted in violation of applicable law.¹⁷ There are examples of municipalities beginning to demolish private homes and undertaking subsequent construction without initiating expropriation procedures. Many homeowners are left without any remedy when faced with a *fait accompli* and are offered inadequate compensation.¹⁸

In the case of property of IDPs, municipalities make little effort to track down the owners, often displaced in Serbia proper or Montenegro, before expropriating their property. The determination of “common interest” in some cases of expropriation is reported to have not followed the law or is decided arbitrarily for the purpose of private development projects. The situation has become even more complicated since the UDI, and the closure of the Kosovo Trust Agency in June 2008.

3) Specific features of the legal framework regulating Non-Movable Property in KiM

The current legal system of KiM in relation to non-movable property is a mixture of legislation from the Socialist Federal Republic (SFR) of Yugoslavia, the Republic of Serbia, UNMIK regulations and recently adopted legislation following the UDI. Some of the institutions crucial for property issues, to be mentioned below, are functioning on a *sui generis* basis, with a quasi-

¹⁶ Ibid.

¹⁷ Ibid,

¹⁸ OSCE Report on Expropriations, Supra.



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judicial mandate and procedures that incorporate elements of administrative and judicial procedures.

In commercial law, especially the privatization process, elements of the common law (Anglo-Saxon law) have been introduced contrary to previous legal experience and practice. Administrative law, on the other hand, has remained with minor changes and is similar to the pre-war administration.

Civil and criminal law also are still predominantly under the influence of former Yugoslavian/Serbian legislation, and in many aspects resemble the applicable legislation in other states/entities of the former SFR of Yugoslavia. The judicial system was restructured, and by 2013 the new judicial scheme is supposed to be fully functional. According to the Constitution that was passed in June 2008, a Constitutional Court was established,¹⁹ but it is too early to evaluate its practice.

The specific development and status of Kosovo's legal system is visible especially regarding two issues:

- The role of international actors in the legal system.
- The implementation of international law and standards;

The specific role of international actors (i.e. EULEX, UNMIK, OSCE) is one of characteristics of Kosovo's legal system. In the period following the UDI both EULEX and the OSCE have played a significant role, especially in matters of the judiciary.

Competencies in matters of protection of property rights are being divided between locally and internationally comprised administrative and judicial bodies/institutions.

¹⁹ "Constitution of the Republic of Kosovo" Chapter VIII- Constitutional Court



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Ownership of immovable property and other official records are under the mandate of the Kosovo Cadastral Agency, an independent body with its head office in Pristina. Local branches of this institution are the Municipal Cadastre Commissions and exist in all municipalities.

For the protection of rights on property special bodies/institutions have been created: the Housing and property Directorate (HPD) & Kosovo Property Agency (KPA), Kosovo Trust Agency (now Privatisation Agency of Kosovo), including special judicial bodies – the Special Chamber of the Supreme Court for KTA/PAK matters and the Special Chamber of Supreme Court for KPA related matters²⁰.

A number of reports have noted deficiencies in the practice of these institutions, such as lengthy procedures, inconsistent practice, non-transparent and non-flexible procedures²¹, which are outlined in this report.

4) The Current Court Structure and the Future Court Structure in KiM: a brief overview

The courts are responsible for the administration of justice and, along with the legislative and executive branches, represent the third branch of authority. At this moment, the competent courts in KiM are the Municipal, District and Supreme courts. According to the recently adopted Law on Courts²² there is a new structure envisaged: basic courts (7 of them), court of appeals (one for territory of the whole KiM), and the Supreme Court. This structure of these courts is supposed to be completely applied after a transitional period lasting until 01 January 2013. Until then the current municipal and district courts will continue in their present form.

²⁰ This chamber has not been constituted yet.

²¹ Advocacy and Legal Advice Center, *Corruption Cases Report*, 2009; [Praxis, March 2009, Protection of rights of internally displaced persons in anticipation of a durable solution](#), pg 35 & 36.; [United Nations Security Council \(UN SC\), 30 September 2009, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2009/497](#), p.15

²² Law on Courts was adopted on July 22, 2010, No. DL-047-2010, August 9, 2010



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For administrative disputes, the applicable law is the Law on Administrative Conflicts²³ and the competent court is the Supreme Court. After 01 January 2013 the Administrative Dispute Department of the Basic court in Pristina should take over these cases.²⁴ A similar set up covers commercial cases, as the Basic Court in Pristina should take over such cases²⁵.

For criminal cases, the municipal or District Courts have the mandate, depending on the offence. In the future the Basic Court will be mandated in first instance procedures, and the Court of Appeals in second instance decisions. The applicable legislation in criminal cases is the Law on Criminal Procedure and Criminal Law²⁶. Other important institutions in matters of criminal procedures are the Prosecutors Office and Kosovo Police Service (KPS). The Prosecutor's Office is organized as municipal prosecutor's offices and district prosecutor's offices covering the territories of competent municipal or district courts. Their organization will be also adapted to the new judicial scheme in KiM starting January 2013. The Law on Non-Contested Procedures regulates non-contested procedures (e.g. related to inheritance procedures, status matters). For such cases the municipal court (basic court in the future) is competent²⁷.

The highest court institution in KiM's legal system is Supreme Court of Kosovo. It is the final instance for all court cases, and also has a special chamber for Kosovo Property Agency's cases and Privatization Agency of Kosovo cases. The final institution responsible for protection of rights in Kosovo that beneficiaries can address is "Constitutional court of Kosovo". The "Constitutional Court" is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. Individuals are authorized to refer violations by public

²³ Law on Administrative Conflicts, Law No. 03/L-202

²⁴ Law on courts (2010) article 14.

²⁵ Law on courts (2010) article 13.

²⁶ Criminal Law (2004) articles 1, 99-104; Law on Criminal Procedures (2003) article 1.

²⁷ Law on contentious procedure was adopted on November 20, 2008, No. DL-068-2008, on December 13, 2008, and Law on Courts.



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authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.²⁸

a) Relevant Administrative Bodies of the Justice System.

A prominent role is also played by a number of administrative bodies and institutions in relation to venues for IDPs to approach. In their practice these institutions are usually implementing provisions of the Law on Administrative Procedure, or *lex specialis*.

The Kosovo Judicial Council (KJC) is an independent body with the mandate over the judiciary in KiM. Its main task is to ensure the independence and impartiality of the judicial system, and to ensure it fully reflects the multi-ethnic nature of KiM and follow the principles of gender equality. The KJC's main responsibility is recruiting and proposing candidates for appointment and reappointment to judicial office. Also, the KJC is responsible for the transfer and disciplinary proceedings of judges/prosecutors. The KJC is composed of thirteen (13) members, all of whom shall possess relevant professional qualifications and expertise with a term of 5 years.

One of the most important sectors within KJC is The Office of the Disciplinary Counsel, which was established by [Administrative Direction No. 2001/4](#), as a responsible service for inspection, audit and disciplinary investigations within the KiM Justice System. Currently, this unit has been transformed into the Office of the Disciplinary Counsel (ODC) based on UNMIK Administrative Direction No. 2008/7 dated June 14, 2008. The ODC's mandate includes investigations of complaints addressed against judges, lay-judges and prosecutors and it presents recommendations for the imposing of the disciplinary measures to the KJC. Procedures are initiated by the submission of complainants in written or verbal form, through electronic means, or the case might be initiated ex-officio. The ODC collects all relevant facts for confirming misconduct through investigations, including interviews with the judge/prosecutor against whom a case has been initiated. According to UNMIK [Administrative Direction 2006/8](#), misconduct is defined as:

²⁸ Constitution of the Republic of Kosovo of 2008 Chapter VIII- Constitutional Court, Article 113, Section 7.



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- Commitment of a criminal offence;
- Neglect of judge/prosecutor's function;
- An action that is not compatible with the judge's office to be independent and impartial;
- Any breach of the Code of Ethics and Professional Conduct;
- Acting in a manner incompatible with decisions and directions promulgated by the Kosovo Judicial Council pursuant to [UNMIK Regulation No. 2005/52](#) on the establishment of the Kosovo Judicial Council;
- Providing false or incomplete information regarding any authority of the Kosovo Judicial Council including data delivery on the request for appointment as a judge or prosecutor while requesting for promotion or in the context of the disciplinary issue.

On the basis of the ODC's report of misconduct the Disciplinary Committee is authorized to impose the following **disciplinary sanctions** on judges who are found to have committed misconduct: reprimand, reprimand and warning, suspension unpaid for the period up to six months and recommendation for dismissal from office. For any alleged criminal conduct committed by the judge the public prosecutor is authorised to submit criminal charges. Such cases are usually being heard by EULEX judges.

5) *Ad hoc* quasi judicial bodies dealing with property rights

a) *The Housing & Property Directorate and the Kosovo Property Agency*

The HPD & KPA²⁹ are important institutions in matters of return of property, especially housing property. On 15 November 1999, UNMIK passed Regulation 1999/23 establishing the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) in order to regularize housing and property rights in KiM and to resolve disputes over residential

²⁹ More info available on: www.kpaonline.org



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property. The HPD and Housing & Property Claims Commission (HPCC), the adjudicating body that decided upon property claims, were specifically set up to create an impartial and independent mechanism for resolving claims using local and international legal expertise. As an exception to the local courts, the HPD had exclusive jurisdiction over three categories of residential property claims;

- a) claims by individuals who lost property rights as a result of discrimination after 23 March 1989,
- b) claims by individuals who entered into informal property transactions which could not be registered due to discriminatory laws, between 24 March 1989 and 13 October 1999 and;
- c) claims by individuals who involuntarily lost possession of their properties after 24 March 1999.

The HPCC was the independent judicial organ of HPD, and was staffed by one local and two international Commissioners. Decisions made by the HPCC were **final and not subject to review by any other judicial authority** in KiM. They are implemented by the Directorate in line with UNMIK Regulation 2000/60. The rules of procedure and evidence of the HPD and HPCC is governed by UNMIK Regulation 2000/60, which came into force on 31 October 2000. In March 2006, the HPD/HPCC was succeeded by the [Kosovo Property Agency \(KPA\)](#).

b) Transition into the Kosovo Property Agency

Under UNMIK Regulation 2006/10, the HPD its staff and assets were subsumed into the KPA. The KPA assumed responsibility for the implementation of all residential property claims that were pending with the HPD on 4 March 2006.³⁰ In June 2008, the KPA integrated itself into institutions of self-proclaimed Republic of Kosovo's institutional system.³¹ The KPA is mandated

³⁰ Website of the Kosovo Property Agency; www.kpaonline.org/hpd/index.htm

³¹ This had caused a political issue that resulted in the closure of the KPA offices in Serbia proper for over a year.



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to resolve claims resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999 in respect of private immovable property, **including agricultural and commercial property**. The deadline for receiving claims expired on December 3, 2007. The KPA has since stopped receiving new claims, though it continues to proceed with pending claims.

A legislative gap can be identified in that any property claim filed after December 2007 falls now under the jurisdiction of the courts. The parties could appeal the commission's conclusion or the court's decision to the Special Chamber of the Supreme Court of Kosovo. Both the KPA, and its predecessor, the HPD, were immune from review.

c) Privatization Agency of Kosovo

The Privatisation Agency of Kosovo (PAK) was established as an independent public body that shall carry out its functions and responsibilities with full autonomy, by the Law No. 03/L-067, on the Privatization Agency of Kosovo. The PAK is established as the successor of the Kosovo Trust Agency (KTA) whose legal status and competencies were regulated by UNMIK Regulation 2002/12 "On the establishment of the Kosovo Trust Agency". Both the legislation and practice of the KTA has been the subject of concern, with several shortcomings cited.³²

The main responsibility of this institution is related to the privatization process, and administration of companies **formerly in public/state ownership**. Similar to the HPD/KPA, it is also semi-international composed institution integrated into "Kosovo institutions". The Special Chamber of the Supreme Court has exclusive jurisdiction for all suits against the Agencies' decisions. The main problems of IDPs related in practice of this institution/body were related to its practice. For the majority of IDPs in practice it was almost impossible to be included on list of employees eligible for distribution of profit obtained from sale of their company.

³² OSCE Kosovo; Judicial Review of Kosovo Trust Agency Matters by the Special Chamber of the Supreme Court of Kosovo, May 2008, p15-23.



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CHAPTER II - Legislative and institutional obstacles to return

1) Analysis of the current state of affairs vis-à-vis property rights in KiM, with special focus on IDP's

The returns process in KiM, especially in urban areas, was affected by a failure of the relevant actors to secure, especially in first years after 1999, safety and freedom of movement for members of minority communities³³. The impossibility of IDPs to achieve institutional protection of their rights also had a negative impact on the return process. Although the general legislative framework creates a theoretical possibility for IDPs to protect their rights, its implementation has often seriously hampered attempts of IDPs to achieve their rights. Some of legislative shortcomings (described in the section below) are also producing a negative impact on the return process.

2) Legislative shortcomings regarding property rights

Since February 2008 legislative action in KiM has accelerated. However, major gaps/shortcomings have been reported, such as the following:

- Post Housing & Property Directorate (HPD) mandate legislation: there has not been legislative progress regarding several issues related to the HPD's practice:
 1. Legislation on the possibility for individuals to purchase socially owned apartments has entered into force only at the beginning of 2012.
 2. The provision of compensation through the KPA to a claimant (usually an IDP) who has been awarded pecuniary compensation for the loss of his/her apartment

³³ Secretary General of UN in its address to UN Security Council on October 15, 2003, p.7-8; UNHCR'S Eligibility guidelines for assessing the international protection needs of individuals from Kosovo (pages 10-11), November 2009.



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where occupancy rights are involved is hampered by the lack of an established mechanism to do so. This matter has not been resolved since 1999 and involves 258 such cases.³⁴

3. The Issue of KPA's³⁵ responsibility over damage caused on property under its administration is still unregulated.³⁶

Procedural issues: The Law on contested procedure does not limit the period of 1st instance court procedure which in practice leaves the possibility for prolonged duration of court procedures³⁷. While this is a general provision, it has particularly negative impact on property cases where the IDPs seek judicial protection of their property rights (i.e. fraudulent transaction, illegal occupation and construction and so on).

Language use: Although the legal system in KiM proclaims equal treatment of languages, and Serbian is an official language, the quality of translation of legislative texts is often unsatisfactory in particular in some cases of Serbian versions of laws and court decisions. This is expanded in more detail in the relevant section of this report.

- Free legal aid and procedural taxes payment:³⁸ Treatment of free legal aid beneficiaries is not regulated adequately. The legislation is unclear regarding whether IDPs receiving legal aid from an organization other than institutionalized legal aid, funded by the Kosovo budget, is entitled to a waiver of court fees.³⁹ The law creates difficulties for IDPs to qualify for receiving legal aid, as it lists as one of the criteria to be eligible for receiving

³⁴ OSCE Mission in Kosovo, Challenges in the Resolution of Conflict-Related Property Claims in Kosovo, June 2011, pg 9.

³⁵ The Kosovo Property Agency (KPA) is successor of the Housing & Property Directorate (HPD).

³⁶ Supra, Challenges in the Resolution of Conflict-Related Property Claims in Kosovo

³⁷ Law on Contested Procedures, Law No. 03/L- 006; International Crisis Group, Europe Report N°204, 19 May 2010, p.14,

³⁸ See UNMIK Regulation 2006/36

³⁹ Ibid, Section 17



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legal aid is to be "a habitual resident of Kosovo."⁴⁰ This would negatively affect IDPs that are displaced outside of KiM.

- Law on Restitution: Legislation on restitution of property nationalized in the period after 1945 has not yet been adapted.

3) Institutional shortcomings regarding property rights and problems with the implementation of legislation

The main **institutional** shortcomings regarding property are those related to the practice and performance of competent institutions, rather than the institutional set up. According to several independent reports, the institutions in charge of the protection of rights and administration of justice have not been successful in implementing their mandate and competencies.⁴¹ Administrative and judicial bodies have been conducting lengthy procedures, often with inconsistent practice.⁴² The practices of some of these bodies/institutions have imposed **high procedural requirements** on IDPs, which they are not able to fulfil, especially regarding presentation of proof in property claims.

Some of the institutions which were supposed to be constituted, such as Special Chamber of Supreme Court for KPA related matters, have not as of yet begun functioning.⁴³ EULEX has

⁴⁰ Ibid, Section 10

⁴¹ Lejla Sadiku; Civil Society Against Corruption Kosovo,pg7; Youth Initiative for Human Rights; State of Constriction? Governance and Free Expression in Kosovo, May 2010 pgs 53-54; Jens Narten, Taiwan Journal of Democracy; Assessing Kosovo's Post-war Democratization Between External Imposition and Local Self-Government, July 2009, pg 8.

⁴² OSCE Mission in Kosovo report, Conflicting Jurisdiction in Property Disputes, April 2009; OSCE Mission in Kosovo report Litigating Ownership of Immovable Property in Kosovo, March 2009.; International Crisis Group, The rule of law in independent Kosovo May 2010, pgs 1, 16-19; European Commission Kosovo under UNSCR 1244/99 2009 Progress Report, SEC (2009) 1340, 14 October 14, 2009, pgs 11, 31,

⁴³ Spura, Challenges in the Resolution of Conflict-Related Property Claims in Kosovo, pg 12



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reported that this was due to the delay in the appointment of a local member to the panel of judges.⁴⁴

⁴⁴ EULEX Annual Report, 2010, pg. 14.



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Chapter III - Practical Obstacles to Return in Property Related Matters

There are a significant number of reports that have outlined the practical obstacles to return by IDPs in relation to property. Some of these reports are referenced below highlighting the specific problems that these persons face, specifically in relation to the property related matters. The Project legal officers have also reported to have a number of clients who have also reported these problems.

1) Threats, duress, fraudulent transactions, trespassing, ineffective legal remedies.

The Council of Europe issued its findings during a fact-finding mission on the obstacles to property restitution for IDPs, stating; "The issue of tenancy and protection of property rights is still fragile in KiM. It affects mostly the displaced persons. The majority of IDPs had property (homes, agricultural land, commercial properties), which they cannot use for several reasons: they cannot physically access their property because of **fear and threats** from the current occupiers; they have no means to initiate a procedure before the court due to **poverty**; they are unable to visit KiM as "go and see" visits are organised only to certain towns; they are not acquainted with new regulations; local courts are **backlogged** with a large number of files; authorisations and property contracts are sometimes **forged**."

Progress in the reconstruction of Albanian homes has not ended the widespread illegal occupation. An estimated one-third of all evictions of temporary occupants are followed by either immediate re-occupation or looting."⁵⁶

The US Department of State issued a report outlining several other problems that IDPs face in relation to non-movable property and makes reference to UNMIK Regulation 2001/17 which was

⁵⁶ Parliamentary Assembly of the Council of Europe, Committee on Migration, Refugees and Population Report, *Situation of longstanding refugees and displaced persons in South East Europe*, 24 May 2007, para. 89-90



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promulgated to address intimidation to sell properties at low rates; "There were cases of Kosovo Albanians destroying private property belonging to Kosovo Serbs; some cases of violence against Serbs may have been attempts to **force them to sell their property**. An UNMIK regulation prevents the wholesale buy-out of many Kosovo Serbian communities in an effort to prevent the intimidation of minority property owners in certain areas⁵⁷; however, it was rarely enforced. There were reports that Serbians had difficulties accessing their property, which was sometimes occupied or used by Kosovo Albanians. In some cases, Serbian property was reportedly sold by persons falsely claiming to be their **attorneys** and presenting **forged documents** in court; in situations where the rightful owners did not live in KiM, such fraud went undiscovered for months."⁵⁸

2) Illegal Construction & Corruption

The "Ombudsperson of Kosovo" addressed issues of **corruption** and **illegal construction** being obstacles to return; "Ensuring the inviolability of property rights in KiM remains a great challenge. Due to the general shortcomings in Kosovo's rule of law, property owners are only protected if they are able to protect themselves. The competent public authorities are often accused of corruption, nepotism and failing to react to blatant violations of the existing laws, and this situation can only improve if the authorities begin assuming greater responsibility for upholding those laws. This failure to act responsibly is especially apparent in the field of illegal construction, which still runs rampant throughout KiM. During the reporting period, some municipal inspectorates were quite active, occasionally demolishing illegally constructed buildings or preventing construction from being completed. Such cases were rare, however, and do not demonstrate a general trend of enforcing the rule of law." and "...property owners complain that municipal inspectorates rarely address their complaints properly. The municipal officials alleged that it was difficult to ensure that their orders were followed in the absence of a

⁵⁷ See UNMIK Regulation 2001/17

⁵⁸ Department of States, Bureau of Democracy, Human Rights, and Labor, 2006, March 6, 2007



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functioning inspection police. A continuing problem is that there is no proper **legal remedy** for persons complaining about the negative effects of illegal construction on their property."⁵⁹

3) Expropriation Problems for IDPs

The United Nations Secretary General, in a report to the Security Council, also addressed the issue of expropriation of IDP property "as concerns remain over the proper implementation of **expropriations by Kosovo institutions**, the protection of individual property rights and the proper implementation of demolitions". A new instance of demolition of property belonging to internally displaced persons occurred in Klinë/Klina municipality without the lawful holders of property rights having been informed or given adequate compensation."⁶⁰

4) Intimidation of Local Judges and Prosecutors in cases affecting IDPs

The OSCE has published a recent report citing **intimidation of judges, prosecutors and even court** support staff in KiM and has stated that this **clearly affects** the impartiality of independence of the judiciary.⁶¹ Such pressures will no doubt have objective and subjective effects on the decisions of judges, which reflect on the credibility of the justice system. The European Commission of Human Rights, has stated that in order to establish whether a judicial body can be considered independent, regard must be had, inter alia, to the manner of appointment of its members and their term of office, to the existence of guarantees against outside pressures, and to the question of whether the body presents an appearance of independence.⁶²

⁵⁹ Ombudsman of Kosovo, Annual Report, 11 July 2007, p.49

⁶⁰ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2007/134, 9 March 2007,

⁶¹ OSCE Department of Legal System Monitoring, Intimidation of the Judiciary, Security of Judges and Prosecutors. April 2010.

⁶² See Application No. 19589/92, B Company v. the Netherlands, par. 60, Report of the European Commission of Human Rights, 19 May 1994.



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In a recent case involving a high profile political figure a local judge on a mixed international-local panel publicly stated his dissenting opinion in the course of confidential deliberations, in contravention of the Article 122 of the "Provisional Criminal Procedure Code of Kosovo".⁶³ EULEX issued a press release stating "[...] the **judiciary does not appear to have sufficient protection from outside interference**. KiM judges work in a difficult environment where threats are made and pressure exerted."⁶⁴

5) Corruption of the Judiciary and irregularity in court decisions

A recent report by the Advocacy and Legal Advice Center, established as a program by Kosovo Democratic Institute (KDI) together with Transparency International, states that "the Kosovo judiciary is characterized with a widespread corruption, low level of reform implementation, lack of appropriate legal infrastructure and external interference. A large number of corruption cases reported in the judicial system are related to civil, property and heritage disputes. The high level of corruption in judicial system is also illustrated by the data provided in the Corruption Global Barometer for 2009, which reveals that 8% of Kosovo citizens paid a bribe while dealing with the judicial system."⁶⁵

The report goes further to report **irregularity** in court decisions: "It is worrisome the practice of courts to announce different court verdicts for cases of similar nature. Courts did not manage to create a common decision making practice for cases of similar nature. Furthermore, this is an indicator of the possibility for external interference, personal interests and corruption. On one hand we have different court verdicts for cases of similar nature, while on the other hand when interpreting some of the court verdicts, one can easily notice the possibility of existence of corruption and close personal interests."⁶⁶

⁶³ UNMIK Regulation 2003/25 on the Provisional Criminal Procedure Code of Kosovo, 6 July, 2003

⁶⁴ Eulex Press release 06 October 2009, <http://www.eulex-kosovo.eu/en/pressreleases/0026.php>

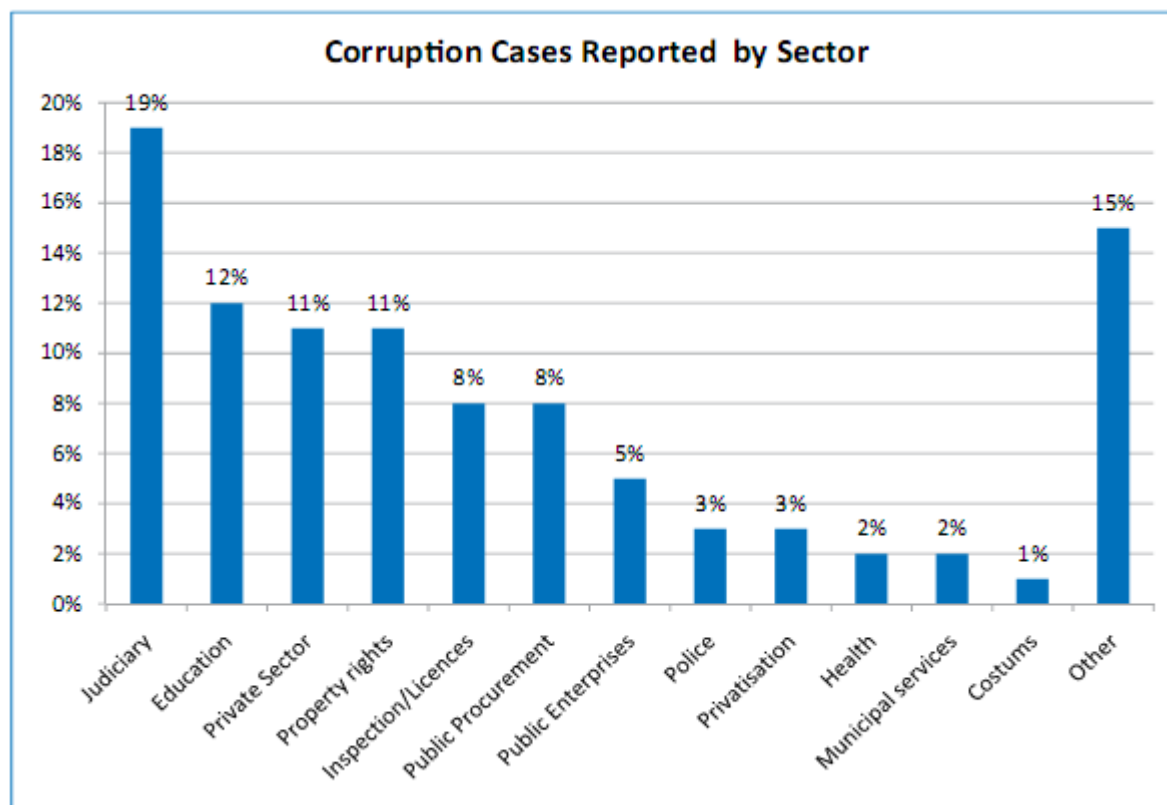
⁶⁵ Advocacy and Legal Advice Center, Corruption Cases Report, 2009

⁶⁶ Ibid.



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While the report states that corruption in the judiciary is the **highest of all sectors** there are other areas worth noting as outlined in the table below;⁶⁷ EULEX has reported on a number of cases where local judges have been convicted by EULEX judges for accepting bribes.⁶⁸



In relation to property issues, there report cites several problems including bribes; “through additional unreasonable requests for documents and other justifications for delays, citizens are indirectly put in a position to offer bribes... Legal uncertainty and facts mentioned above force citizens to offer bribes to judges for ensuring that court verdict will be in their favor.”⁶⁹ This

⁶⁷ Ibid.

⁶⁸ Supra, EULEX Annual Report 2010, pg 21.

⁶⁹ Supra, Advocacy and Legal Advice Center, Corruption Cases Report, page 20.



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relates to obtaining property documents, court proceedings, fabrication of documents and transfer of ownership rights.

6) Cadastre and Inheritance Decisions

Problems concerning non-recognition by courts and other institutions in KiM of a power of attorney verified by regular courts in Serbia proper occur in cadastre offices in some municipalities. Also, non-enforcement, or rather, **non-recognition of inheritance decisions** issued by regular courts in Serbia, where the decedent died in Serbia is one of the obstacles to exercise the property rights of IDP returnees. Under the applicable law an inheritance decision can be either in the municipality where the person in question died or where they were registered as residents before the conflict or temporary residence, but it appears that the IDPs are being forced under new legislation to only conduct hearings in KiM. The Kosovo Cadastre Agency now requests that the inheritance decisions be issued and verified by Kosovo courts and the same for power of attorney if there is a legal representative.⁷⁰

⁷⁰ Group 484; *Challenges of Forced Migration in Serbia, Position of Refugees, Internally Displaced Persons, Returnees and Asylum Seekers*, June 2011, par 1.2.3



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Chapter IV -Practical Obstacles to Return with a Focus on Non-Property issues and Indirect Discrimination

Besides the right to property, there are a numerous other human rights which are particularly important for IDPs and returnees as they are key to ensuring the provision of durable solutions, i.e. social security, education, health, security and Identification documents). While those rights are contained in the most common international human rights treaties (International Covenant on Economic Social and Cultural Rights, International Covenant on Civil and Political Rights, European Convention on Human Rights), their relevance to the issue of IDPs has been further highlighted and explained by the Guiding Principles on Internal Displacement (*Deng Principles*).

1) The Legal Framework for Non-Property Rights in KiM.

In KiM, the protection of human rights, as envisaged in international treaties, is ensured by the unilaterally declared Constitution of June 2008,⁸⁰ and elaborated by subsequent legislation. The Constitution guarantees all fundamental rights (section II), and has a special section (section III) on rights of members of minority communities. The provisions of those international treaties are thus directly applicable in Kosovo. Specifically, article 19 provides for direct effect supremacy of ratified international agreements.

Moreover, Article 22 stipulates that the human rights and fundamental freedoms provided by the following international agreements and other instruments are guaranteed and directly applicable in KiM:

- the UN Universal Declaration of Human Rights,⁸¹

⁸⁰ See <http://www.kushtetutakosoves.info/repository/docs/Constitution.of.the.Republic.of.Kosovo.pdf>

⁸¹ See http://www.un.org/events/humanrights/2007/hrphotos/declaration%20_eng.pdf



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- the European Convention on Protection of Human Rights and Basic Freedoms with protocols ,
- the UN International Covenant on Civil and Political Rights with protocols,⁸²
- the Framework Convention of Council of Europe on the Protection of National Minorities,⁸³
- the UN Convention on Elimination of All Forms of Racial Discrimination,⁸⁴
- the UN Convention on elimination of all forms of women discrimination,⁸⁵
- the UN Convention on Rights of the Child,⁸⁶
- the UN Convention against Torture and Other Cruel, Inhumane and Humiliation Actions or Punishments.⁸⁷

In addition to those listed about the unilaterally proclaimed constitution foresees a number of provision aimed at directly protecting the economic, social and cultural rights of Kosovo residents (right to work, right to health and social protection, right to education). The Constitution also guarantees human rights and the respect for and protection of minorities and lists the main international agreements and instruments directly applicable in KiM. However, the institutional set-up and the lack of political will hamper the effective implementation of legal standards in this area.⁸⁸

⁸² See <http://www.hrweb.org/legal/cpr.html>

⁸³ See <http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>

⁸⁴ See <http://www2.ohchr.org/english/law/cerd.htm>

⁸⁵ See <http://www.un.org/womenwatch/daw/cedaw/>

⁸⁶ See <http://www2.ohchr.org/english/law/pdf/crc.pdf>

⁸⁷ See <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>

⁸⁸ extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2010-2011", COM(2010)660 final



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Since the government in KiM, has accepted to respect, protect and fulfill the abovementioned international instruments and consider them directly applicable, the institutions in KiM are obliged to respect the rights guaranteed by those instruments. Accordingly those rights can be invoked by individuals and competent judicial bodies, when deciding on claims by individuals regarding violations of their rights, should therefore have regard to these provisions.

Currently violations of these rights occurring in KiM cannot be brought before international judicial bodies, such as the European Court of Human Rights. As a result of its status under UN Resolution 1244 various reports regarding KiM have been filed by UNMIK with a number of international human rights bodies, for example the United Nations Human Rights Council and its Committee on Economic, Social and Cultural Rights.⁸⁹

At this moment, the adoption of new legislation (laws, regulations) by institutions of the government in KiM has increased. On issues related to anti-discrimination, and the rights of minority community members several laws have been adopted, including the laws: on the Law on Anti-Discrimination (Law No.2004/3), on Use of Languages (Law No. 2006/02-L37) Rights of Communities (Law No. 2008/03-L047) as well as on regulating pensions.⁹⁰

2) The Office of the Ombudsperson

The Office of the Ombudsperson was created as an independent organisation with a mandate to address alleged human rights violations or abuses of authority by public institutions in Kosovo. Originally headed by and international, it was eventually transitioned to local management. The Ombudsperson reports that it has had limited success in addressing many

⁸⁹ Shadow reports by IDP associations were sent to both of these bodies when UNMIK reported before these Committees in 2008.

⁹⁰ UNMIK Regulation No. 2001/35 On Pensions in Kosovo of 22 December 2001, as amended by UNMIK Regulation No. 2005/20 of 29 April 2005. In addition, Law No. 2003/23 On Disability Pensions in Kosovo, promulgated by UNMIK Regulation No. 2003/40 of 17 December 2003, introduces a disability pension scheme for the purpose of creating a social safety net, which provides adequate minimum protection for the most vulnerable members of society.



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issues brought before it.⁹¹ The effectiveness of the Ombudsperson in relation to IDPs can also be questioned; as it has no representative offices or visits to IDPs outside of Kosovo, moreover, the annual report of 2009 only uses Albanian names for Serbian towns/villages (in violation of UNMIK Regulation 2000/45) and the appointment of the Ombudsperson has transitioned to the Kosovo Assembly. The most recent report of this office is of activities in 2009.⁹²

⁹¹ Kosovo Ombudsperson Annual Report 2008 - 2009

⁹² Ombudsman of Kosovo Annual Report, 2009.



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Chapter V- Overview of legislative and institutional shortcomings affecting sustainability of return anti-discrimination

It is important to point out that there has been a significant amount of legislation that has been promulgated over recent years, much of which directly ensuring the protection of rights of individuals. However, the promulgation of laws is distinct from the implementation of them.

1) Discrimination

The Anti-discrimination law was promulgated in 2004⁹³, yet there is little data on its effectiveness, as there are no examples any existing court cases using this law. The Ombudsman of Kosovo has reported that the Anti-Discrimination law is not implemented effectively, citing only one case before a local court since its promulgation.⁹⁴

For legal practitioners it is difficult to obtain an administrative or judicial decision on the grounds of acts of alleged discrimination. So far there is no accurate data on administrative or judicial decisions in such cases. There is no recent data on court or administrative decisions in cases of alleged discrimination as the anti discrimination law has **not been implemented** since its promulgation in 2004. Reportedly this is because of lack of awareness about what constitutes discrimination and in what way the law can provide remedies in case of discrimination.⁹⁵ A report funded by the European Commission on the justice system stated that **no judgment** of any Kosovo court has been based on this Law to prove the existence of a discriminatory act. ⁹⁶ A

⁹³ Ibid, pg 16.

⁹⁴ Ibid, pg 19.

⁹⁵ Human Rights Defenders Report in Kosovo, September 2010, www.civilrightsdefenders.org/en/analysis/7608/

⁹⁶ European Commission Seventh Framework Programme Project Atlas, Success or failures in the integration of a human rights component in the EU Civilian European Union Rule of Law Mission in Kosovo (EULEX). May 2010. Page 13.



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report to the European Commission has stated that the implementation of the anti-discrimination legislation has been inadequate.⁹⁷

Similar to problems related to property rights, IDP's are facing many problems and obstacles in their attempts to address their non-property rights. It can be said that these problems and obstacles are equally originating from legislation as well as from the institutional set up.

2) Obstacles to Legal Aid

Obvious shortcomings in the law include the legal aid law,⁹⁸ which states that recipients of legal aid are entitled to a waiver from paying court fees.⁹⁹ The legislation is silent regarding whether an IDP receiving legal aid from an organization other than institutionalized legal aid funded by the Kosovo budget is entitled to a waiver of court fees.¹⁰⁰ The law is also problematic when it comes to IDPs qualifying for receiving legal aid, insofar as it lists as one of the criteria to be eligible for receiving legal aid is to be "a habitual resident of Kosovo."¹⁰¹

3) Workers' rights

One of the most serious legislative shortcomings is evident in the privatization legislation and implementation. The competent administrative body in privatization matters is the Privatization Agency of Kosovo (PAK), and judicial control/review over its decision is under the mandate of the Special Chamber of Supreme Court. The legislative framework is set by the Law on the

⁹⁷ Supra, Communication from the Commission to the Council and the European Parliament

⁹⁸ UNMIK Regulation 2006/36

⁹⁹ Ibid, Section 17.

¹⁰⁰ Ibid, Section 17.

¹⁰¹ Ibid, Section 10.



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Privatization Agency of Kosovo,¹⁰² UNMIK Regulation 2002/12¹⁰³ and UNMIK Regulation 2002/13,¹⁰⁴ Administrative directions 2008/6¹⁰⁵ and 2007/1.¹⁰⁶ These legislative acts and their implementation in practice directly **negatively affected** the rights of IDPs who used to work in privatized enterprises. Strict and formal requirements regarding the provision of evidence is imposed on IDPs, as well as unequal treatment of trade union organizations, puts IDPs in very difficult position. Such a practice results in a very low number of IDP workers who manage to achieve their rights during the privatization process.¹⁰⁷

¹⁰² See http://www.pak-ks.org/data/bid/l_2009021802473047127.pdf

¹⁰³ See http://www.unmikonline.org/regulations/2002/RE2002_12.pdf

¹⁰⁴ See http://www.unmikonline.org/regulations/2002/RE2002_13.pdf

¹⁰⁵ See http://www.eulex-kosovo.eu/training/justice/docs/ADE2008_06.pdf

¹⁰⁶ See http://www.unmikonline.org/regulations/unmikgazette/02english/E2007ads/ADE2007_01.pdf

¹⁰⁷ See http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/UNIJA_UNMIK41.doc



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Chapter VI - Practical obstacles to return with special focus on non-property rights and indirect discrimination as perceived by IDPs

As part of its analysis, the Project Team reviewed concrete statements by IDPs as to what they considered as their main obstacles to return. The Project Team also studied a number of reports prepared by intergovernmental and non-governmental agencies. One of these reports, UNDP/UNHCR's survey from 2008,¹⁰⁸ proved to be particularly useful. The Survey lists a number of the reasons why IDPs do not wish to return to Kosovo (the survey included statements made by IDPs who had stated a wish to return). As these reasons by and large correspond to those which IDPs have conveyed to Project team members, they have been used as a basis for this report. The following are the main reasons for not wanting to return listed by IDPs in the UNDP/UNHCR Survey:

| | Reason | % |
|----|---|------|
| 1 | Poor safety conditions | 49.6 |
| 2 | Fear of violence | 42.3 |
| 3 | Fear of ethnic discrimination | 39.7 |
| 4 | Lack of mobility freedom | 39.5 |
| 5 | Distrust in Kosovo authorities | 32.6 |
| 6 | Unstable political situation | 32.2 |
| 7 | Lack of basic human rights and freedom | 30.6 |
| 8 | No possibility to make income | 25.1 |
| 9 | House destroyed | 19.6 |
| 10 | Unfavourable ethnic structure in the settlement | 19.6 |
| 11 | Lack of health care | 18.2 |
| 12 | Inadequate condition for education | 17.1 |
| 13 | Complicated return procedure | 12.6 |
| 14 | House possessed by unauthorized person | 10.3 |
| 15 | Infrastructure destroyed | 9.6 |
| 16 | Other | 4.5 |

¹⁰⁸ "Social and economic position of IDPs in Serbia"; Slobodan Cvejic and Marija Babovic, published by UNDP and UNHCR Serbia, 2008



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Taking into consideration all objective, as well as subjective, circumstances listed above the IDP perception of all issues related to return process, the main practical obstacles to return related to non-property rights are listed below.

1) Economic

Lack of economic prospects due to Kosovo's difficult economic situation: the **low employment rate**¹⁰⁹ in KiM, as well as other socio-economic factors, represents serious obstacles for return of IDPs. Very low possibilities for employment, be it in the private or public sector, and economic sustainability are negatively impacting on IDPs.¹¹⁰ Although income generation and community development projects were provided for returnees, the returnee population is still financially dependent on donations and social welfare/support.

2) Language Rights

Another important problem affecting access to services is the **poor quality** of translations, specifically legislation, judgments, administrative orders, signage in institutions and other official communication. These documents in their Serbian version are often difficult to understand and confusing.¹¹¹ This creates a problem for interpretation of these texts, and consequently problems for both legal advisers and beneficiaries in the process of protection of their rights. In practice there are many examples of shortcomings on this matter, especially regarding translations of official documents issued by courts/administrative bodies, or the quality of translation. Contrary to their obligation set by legislation, some institutions maintain the practice

¹⁰⁹ World Bank Country Report on Kosovo 2010, <http://web.worldbank.org>

¹¹⁰ Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo, Sept. 30, 2009, pg 6/par. 35.

¹¹¹ Ibid footnote 17.



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of issuing official documents only in Albanian.¹¹² There are a number of examples of other institutions, in breach of the legislation, delivering decisions only in Albanian language, or the quality of translation of these documents into Serbian is very poor.¹¹³

3) Freedom of movement and security

The lack of freedom of movement has a strong impact on displaced persons and returnees: even after reconstruction of their houses, they do not return due to security reasons. A number of sources concur in this regard and eventually provide evidence of the existing problem.

For example, the US Department of State reported that in 2008, IDPs have been **arrested, threatened, accused** and even **deliberately shot**, during Go and See Visits in various locations in KiM.¹¹⁴ In the same report it is mentioned that inter-ethnic violence, tensions, and **real and perceived security concerns** continue to restrict minorities' freedom of movement. Members of ethnic communities continued to remain within or travel between areas where their group comprised the majority. Threats, attacks, rock-throwing and other forms of intimidation continued to affect KiM Serbians and returnees when travelling outside their majority areas.¹¹⁵

In relation to freedom of movement the Ombudsperson Institution reported in its annual report in July 2008:

- **"Tensions** between the Albanian and Serbian communities continued to lead to interethnic incidents, even if there were less incidents of this nature in this reporting period compared to previous years. The stoning of busses transporting mainly Serbians

¹¹² OSCE Mission in Kosovo, Implementation of the Law on the Use of Languages by Kosovo Municipalities, June 2008; OSCE Mission in Kosovo, Communities Rights Assessment Report Second Edition, December 2010, p. 10.; Implementation of the Law on the Use of Languages by Kosovo Municipalities, OSCE Mission in Kosovo, June 2008; UNHCR's eligibility guidelines for assessing the international protection needs of individuals from Kosovo; November 2009, page 13.

¹¹³ OSCE Kosovo; Implementation of the Law on the Use of Languages by Kosovo Municipalities, OSCE, June 2008.

¹¹⁴ US State Department *Human Rights Report: Kosovo 2008*, www.state.gov/g/drl/rls/hrrpt/2008/eur/119462.htm

¹¹⁵ Ibid.



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to and from enclaves in Skenderaj/Srbica Municipality and returnees in villages in the Pejë/Peć region continued to occur during this reporting period. In July 2007, two Serbian houses were **burned** in Rahovec/Orahovac Municipality. Due to the delayed reaction of the fire brigade, the houses were completely burned to the ground. In August 2007, unknown persons wrote anti-Serbian messages on the walls of the Orthodox Church in Gjilan/Gnjilane, whose premises were being used as a school for Serbian students. Also in Gjilan/Gnjilane, in December 2007, a **Molotov cocktail** was thrown into the house of a Serbian family. Fortunately, nobody was injured or wounded. By the end of September 2007, two priests at a Church yard in the village Binaç were **gun fired** but were not wounded. In December 2007, a Serbian **house** was attacked in Obiliq/Obilić Municipality and according to the statements of KPS officials, the investigation of this case is still ongoing.”¹¹⁶

- In May 2008, an old man of Serbian ethnicity who had recently returned in Deçan/Dečani, was **beaten up**. This incident was also confirmed by KPS officers, but the perpetrators have not yet been arrested. Further, in May 2008, a special KPS unit beat up a minor from Gračanica/Gračanicë, following a verbal dispute. This incident spread fear among young people living in this enclave in the central part of KiM.
- Members of the Serbian and Roma communities living in areas surrounded by the Albanian majority population still suffer from the **fear of being attacked**, be it real or perceived. Even after their houses, destroyed during the armed conflict of 1999 and the riots in 2004, are reconstructed, many of the owners do **not** dare to return to their homes and live there, mainly due to the lack of opportunities for economic development and also because of their perceived fear. They very often sell their houses and move to Serbia or Montenegro or to other enclaves in Kosovo where they feel safer because they live with members of their own communities and they are physically less isolated due to the lack of transport.(...)”¹¹⁷

¹¹⁶ Ombudsperson Institution in Kosovo – Annual Report 2008, Jul, page 39-40, 50.

¹¹⁷ Ibid.



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The Union of seven KiM IDP associations (UNIJA) issued a report before the Human Rights Committee of the United Nations outlining what they perceived as impediments to return citing that from “February to August 2008 seven Go and See visits of IDPs in various locations in Kosovo (Vitimirica, Jelovac, Prizren, Kijevo, Gornja/Donja Lapastica, Sojc, Dvoran) resulted in IDPs being **threatened, accused, arrested** and even deliberately **shot**.”

Real or perceived insecurity, restrictions of freedom of movement: IDPs still do not have freedom of movement, and they still feel insecure outside of their community. Perceptions of a lack of freedom of movement create obstacles to access public services and act as an impediment to return. Although at this moment such fear has apparently decreased, interethnic attacks and incidents continue to occur, and the response of the competent institutions remains to be verbal and declarative, hence, not always effective in practice.¹¹⁸ Human Rights Watch recently reported an incident where “ethnic Albanians pelted stones at the tents of Serbian returnees to the village of Zac, in Istok municipality, and also staged protests against the returnees following rumors that there were war criminals among them. UNHCR denied these allegations, and Kosovan and international authorities robustly condemned the violence. But in August, in the same village, a bulldozer was used to demolish three houses of Kosovo Serb returnees. The police arrested two Kosovo Albanian teenagers in the incident, and Kosovo Prime Minister Hashim Thaci condemned the destruction.”¹¹⁹

4) Education

In practice IDPs are facing **limited access to education** and health protection. Also, access to other community services remains limited or even impossible.¹²⁰ Except in Serbian dominated enclaves, access to Serbian language education in Albanian majority areas is very limited and for non-Albanian language communities. The UN Children's Fund (UNICEF) reported that the

¹¹⁸ Amnesty International 2009 Annual report, pg. 286

¹¹⁹ Human Rights Watch - 24 January 2011 World Report 2011 Serbia and Kosovo

¹²⁰ <http://reliefweb.int/node/316022>



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lack of facilities for minority education in parts of KiM made it difficult for some IDPs to return to their homes.¹²¹ In a similar study the OSCE reported that IDPs list limited access to education as the **second highest reason** for not returning, second only to lack of job prospects.¹²²

5) Lack of Coordination of Key Stakeholders for Return

Lack of coordination between actors responsible for return: there are problems among stakeholders responsible for the return process in KiM. Moreover, local authorities (i.e. municipalities) **failed to develop strategies** for the return and integration of IDPs the implementation rate of adopted strategies remains low. Moreover, the protocol for the voluntary and sustainable return of IDPs to Kosovo, signed between the then Provisional Institutional Self-Government, UNMIK and the Government of Serbia in June 2006 has not been effectively implemented after Kosovo's unilateral declaration of independence.¹²³

6) Recognition of Documents

Difficulties regarding recognition of documents: The Secretary General of the United Nations reported in 2009 that Kosovo Serbians continued to face problems related to the issuance of **identification cards** by the authorities in KiM, who do not recognize birth certificates issued by the Serbian authorities prior to June 1999. This is despite the fact that Kosovo Serbs have applied for Kosovo identity documents and driver's licences in considerable numbers. Kosovo Serbs continued to experience problems in trying to obtain the return of confiscated driving

¹²¹ U.S. Department of State (U.S. DOS), 25 February 2009, 2008 Human Rights Report: Kosovo

¹²² OSCE Mission in Kosovo, 29 April 2009, Kosovo non-majority communities within the primary and secondary educational systems

¹²³ Presentation of UNIJA – network of IDP associations to the UN Human Rights Committee, December 2008.



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permits, issued by the Serbian authorities before 1999. UNMIK and EULEX facilitated the resolution of several such cases.¹²⁴

7) War Crimes Accusations and Freedom of Movement

UNHCR also cited **accusations** of involvement in war crimes to be an impediment, as this has the effect of instilling fear into potential returnees.¹²⁵ To date there are over 23 claims by Serbian IDPs for compensation, as they were arrested and charged with various war crimes upon returning to KiM. All were subsequently found **not guilty** and released, but many were only acquitted of the charges on appeal to international judges and after spending several months, and in some cases years, in prison.¹²⁶ Such incidents obviously have a **chilling effect** on potential returns.

Indeed, in the Serbian village of Dusanici in Klina, **all men** have been accused of war crimes. There have been no returns to the village since. In 2007 a Serbian male was arrested and charged with murder, allegedly committed during the conflict when he returned to KiM to repossess his family apartment in Pristina from an illegal occupant. He was 15 years old when the alleged incident occurred. The case has received a great deal of notice by the IDP community.¹²⁷

¹²⁴ United Nations Security Council (UN SC), 30 September 2009, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2009/497

¹²⁵ Ibid.

¹²⁶ OSCE Kosovo report, *Kosovo's War Crimes Trials, A Review*. September 2002.

¹²⁷ Municipal Court Pristina, *Case of Marko Simonovic* KPM 2008



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Conclusion

As is the situation in most post-conflict societies, there are numerous challenges that obstruct displaced persons from realizing many of their rights. The situation in Kosovo is distinctive given the myriad number of agencies that have overlapping jurisdiction in property related issues.

There are a number of shortcomings in KiM for the efficient protection of property from demolition, illegal occupation, usurpation and utilization. Problems are evident with respect to restitution of property, protection from re-usurpation and destruction of property, registration in cadastres, etc. Access to judiciary and other institutions in KiM is impeded. Court procedures are inefficient, unduly long, the procedures are often obstructed and there is no efficient judicial review. Although the Serbian language is officially used in KiM, there have been reported cases where the language law has not been respected.

It is expected that the Project will in the near future begin to add its own experience to this report in order to update any changes to the situation (i.e. improvement or worsening of the situation).