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

Part 1
A Statistical Analysis -

September 2013

* 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 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:

Between 2003 and 2008 the courts in Kosovo received a large number of lawsuits lodged in relation to the widespread destruction of immovable properties in the aftermath of the conflict. The owners, mostly Serbs and members of other minority communities, claimed compensation for damages from UNMIK, KFOR and local institutions governing Kosovo after June 1999. The adjudication of these claims had been stayed by UNMIK for several years. Once concluded they were rejected on the basis of the lack of passive legitimacy of defendants and in many instances the plaintiffs asked to pay the court fees. Until today no mechanism was developed which would enable monetary or other compensation for the damages suffered by the owners. Due to their specific legal destiny the compensation claims stand as a reminder to the important yet still unresolved issues from the realms of post-conflict property restitution and right to return.

This report attempts at bringing these issues back to the table of international and local stakeholders. It presents set of data obtained through the statistical research conducted in June and August 2013 in the archive of the Court Liaison Office in Gračanica/Graçanicë. By starting with the objective of determining the total number of compensation claims stored in the archive, the research aim also was to learn about the basic features of these claims: their authenticity, the characteristics of plaintiffs and defendants, evidence used to support the claims, legal ground on which they were based, court fees waivers, etc. It is hoped that these new insights would enable a more comprehensive view on what was done and what remains to be done in the sphere of post-conflict property restitution in Kosovo.

INTRODUCTION

In 2004 the courts in Kosovo received a large number of lawsuits lodged by Serbs and other minority communities in relation to the widespread destruction of their homes in the aftermath of the 1999 conflict.[1] These lawsuits' subject matter was compensation for damages, which was claimed from the authorities established in Kosovo after June 1999: the United Nations Mission in Kosovo (UNMIK), Kosovo Force (KFOR), Provisional Institutions of Self-Governance in Kosovo (PISG) and municipalities.

For many years these compensation claims have been epitomizing the lingering issue of post-conflict property restitution in Kosovo. The initiated judicial proceedings were stayed on several occasions and it is still unknown how many of them have been concluded. The claims processed by the courts were rejected on the basis of the lack of passive legitimacy of defendants. The reconstruction projects undertaken in Kosovo were extremely scarce and by definition open only to those with the clear intention to return permanently to their place of origin. So far, no mechanism was developed which would enable monetary compensation for the damages suffered by the owners of destroyed properties.

The reliable data about the compensation claims are non-existent. There is no certainty of the exact number of the lawsuits submitted, nor of their main characteristics. This lack of precise data signals that not much has been done with regards to finding adequate methods to restore or compensate the owners.

The report presents set of statistical data obtained from the research conducted in the archive of the Court Liaison Office in Gračanica/Graçanicë in June and August 2013. The research had two goals. First, to determine the total number of compensation claims stored in the Court Liaison Office archive in order to gather additional data for any future attempt to determine the total number of these claims before the courts in Kosovo. Second, to identify the basic characteristics of the compensation claims by analysing them in relation to the following questions:

1. Does the lawsuit contain the endorsement stamp? If so, does the endorsement stamp contain the date of the court registration and the court file number?
2. In which year was the lawsuit registered in the court?
3. Where is the domicile of the plaintiff?
4. Who is the defendant?

[1] Without an intention to diminish the significance of the question of compensation for damages that occurred while the Serbian authorities were present in Kosovo, this report deals exclusively with the compensation claims lodged in relation to the destruction of property which took place after 10 June 1999.

5. On what legal ground was the compensation claim based?
6. Does the lawsuit contain the court fees waver?
7. Was the lawsuit submitted personally by the plaintiff or by his/her representative? Does the lawsuit contain the contact details of the plaintiff/representative?
8. What type of evidence was provided with the lawsuit?

The questions were chosen with regards to their relevance to the overall thematic objective of the research, *i.e.* to provide further elements for the analysis of the restitution process carried on in Kosovo after the 1999 conflict. For instance, the data about the plaintiff's domicile can assist in better understanding the relationship between the conflict-related demolition of real property, displacement and access to reconstruction projects. The percentage of lawsuits which contain court fees waiver provide useful data in the context of the practice of many courts in Kosovo to demand payment of court fees in the compensation cases. The part of the research that observes the quantity and type of evidence submitted by the plaintiffs says a lot about the amount of resources invested in these claims.

The report limits itself to a simple presentation of data through tables and charts.[2] The structure of the report follows the structure of the research. It first places the research in context by providing a brief overview of the way the compensation claims have been dealt with by the judicial institutions in Kosovo. Then, it gives a short description of the research methodology and of the Court Liaison Office archive. The central part of the report presents the data on the main characteristics of the analysed compensation claims lawsuits.

A brief overview of the Kosovo justice system responses to the compensation claims

Upon arrival of KFOR and the establishment of UNMIK, in the aftermath of the 1999 conflict, the real estate and other property of minority communities in Kosovo were to a large extent damaged or destroyed.

Although UNMIK established a special resolution mechanism for the claims related to immovable property[3], this mechanism did not have the jurisdiction to award compensation in cases of damaged and destroyed property. 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 compensation claims to the local courts. In April 2004 this practice was changed and those who

[2] The in-depth analysis of data will be the subject of some of the following Legal Aid Project reports.
[3] See UNMIK Resolution 1999/23 On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission of 15 November 1999; UNMIK Resolution 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; UNMIK Resolution 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property of 16 October 2006.

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] According to the final evaluation report of the work of HPD/CC, claims related to the destroyed properties amounted to more than 1/3 of the total claims submitted to this body.[5]

It is unknown when the owners of the damaged/destroyed real estate started submitting lawsuits, but it is certain that in 2004 the judicial authorities in Kosovo registered a massive influx of these claims. Apart from their numerousness, the compensation claims have become known for their judicial processing being subjected to administrative interventions on several occasions.

On 26 August 2004 the Director of UNMIK Department of Justice (UNMIK DoJ) introduced an official stay of all proceedings by issuing a circular notification to the presidents of the courts, which requested them not to process the cases "until such time as we have jointly determined how best to effect the processing of these cases."[6] The letter referred to "huge influx of claims" that posed problems to the courts' functioning[7] and to the necessity to design proper strategy 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 the courts to process an insignificantly small number of the compensation claims and was rather related to the claims arising out of the 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 that cases which had not been scheduled according to the 26 August 2004 DoJ request should be processed.[11]

In the succeeding years the judicial processing of the compensation claims followed two directions. A certain number of courts started processing the claims and

[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.

[5] Bjorn Vagle, Fernando de Medina, "An Evaluation of the Housing and Property Directorate in Kosovo", Nordem Report 12/2006, p. 80.

[6] UNMIK Department of Justice Letter of 26 August 2004.

[7] According to CoE Commissioner for Human Rights Report from 2009, at that time they represented "half of the backlog in the civil court system", in: Report from the CoE Commissioner for Human Rights' Special Mission to Kosovo, 2 July 2009, para. 174.

[8] According to the facts established by HRAP in the 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.

[9] *Ibidem.*

[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.

rejecting them on the grounds of the lack of passive legitimacy of defendant.[12] These courts assumed the position that UNMIK and KFOR could not be sued because of their legal immunity in Kosovo[13], while the Kosovo authorities could not be held liable for acts occurring before they had assumed responsibility for governing Kosovo.

Other courts had taken a completely different approach by resorting to a 180-day stay of the proceedings throughout 2009 and 2010. 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.[14] In 2010 the Law on Amendments on the Law of Public Financial Management and Accountability was passed, which effectively suspended the processing of these 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 public authority.[15] Reportedly, these courts started only in 2011 processing the claims without restrictions.[16] According to available data so far most of the compensation claims processed by the courts have been rejected on the grounds of the lack of the defendants' passive legitimacy. It has also been observed that significant number of courts has ordered the unsuccessful claimants, *i.e.* owners of property damaged/destroyed after the 1999 conflict, to pay the court fees and other expenses arising from the judicial proceedings.[17]

Since 2010, the Human Rights Review Panel (HRAP) - a mechanism established to deal with human rights violations allegedly committed by or attributable to UNMIK - found in a number of cases that "the fact that, for a long period of time, the complainants were prevented from having their compensation claims determined by the courts as a consequence of the interference by the DOJ, constituted a violation of Article 6 § 1 of the ECHR".[18]

A short note on methodology

[12] As observed by the Project Legal Team in 2010, this was the case with the compensation claims submitted before the Municipal Court in Skënderaj/Srbica, Malishevë/Mališevo and Vushtrri/Vučitrn. Today, however, there are indications that most if not all of the other Kosovo courts have concluded the compensation claims in this way.

[13] See e.g. UNMIK Resolution 2000/47 On the Status, Privileges and Immunities of UNMIK, KFOR and their Personnel in Kosovo of 18 August 2000.

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

[15] 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.

[16] *E.g,* municipal courts in Ferizaj/Urosevac, Shtërpcë/Štrpce and Istog/Istok. Information based on the observations of the Legal Aid Project Legal Team.

[17] Information based on the observations of the Legal Aid Project Legal Team.

[18] *Milogorić and Others against UNMIK*, cases no. 38/08, 58/08, 61/08, 63/08 and 69/08, para. 46.

The report presents data obtained through the statistical analysis of the copies of lawsuits archived in the Court Liaison Office in Gračanica/Graçanicë. The field research took place on 10 - 14 of June and 5 - 9 of August 2013.

The total number of lawsuits for compensation of damages inflicted on properties in the aftermath of 1999 conflict contained in the archive was determined by analysing all the lawsuits that were found therein. Due to limited resources, the part of the research investigating the main characteristics of these lawsuits was conducted on a sample comprised of **769 lawsuits** randomly selected from the pool of all the archived lawsuits for compensation of damages related to the 1999 conflict. As it will be shown later, the sample presents **4.29%** of the total number of the lawsuits of this type stored in the archive.

For the purpose of taking a representative sample, all the case files were divided into three categories depending on the seat of the municipal court to which the lawsuits were submitted.

The first group covers the municipal courts with a small number of archived lawsuits. Given their small number, all the compensation claim lawsuits from this category were included in the sample.

No.	**Seat of the municipal court**	**Total number of compensation claims**	**Number of analysed claims**	**Percentage of analysed claims in the total number of compensation claims**
1.	Kaçanik/Kačanik	43	43	100%
2.	Dragash/Dragaš	22	22	100%
3.	Zubin Potok	16	16	100%
4.	Gllogovc/Glogovac	13	13	100%
5.	Shtërpcë/Štrpce	9	9	100%
6.	Malishevë/Mališevo	6	6	100%

The second group encompassed the compensation claims lawsuits registered before the municipal courts where the number of archived lawsuits was superior to 100 and inferior to 1000 lawsuits per court. From this group 30 randomly selected copies of lawsuits were included in the sample.

No.	**Seat of the municipal court**	**Total number of**	**Number of analysed**	**Percentage of analysed claims in**

		compensation claims	claims	the total number of compensation claims
1.	Vushtrri/Vučitrn	757	30	4%
2.	Gjakovë/Đakovica	687	30	4.3%
3.	Gjilan/Gnjilane	552	30	5.4%
4.	Suharekë/Suva Reka	538	30	5.5%
5.	Viti/Vitina	464	30	6.4%
6.	Podujevë/Podujevo	376	30	8%
7.	K. Mitrovica/Mitrovicë	362	30	8.2%
8.	Deçan/Dečane	349	30	8.6%
9.	Lipjan/Lipljan	224	30	13.4%
10.	Skenderaj/Srbica	266	30	11.2%
11.	Kamenicë/Kamenica	191	30	15.7%
12.	Rahovec/Orahovac	122	30	24.6%

The third group contained lawsuits registered under the municipal courts that received more than 1000 compensation claims lawsuits. Here, 50 lawsuits were randomly drawn from the case files registered for each of these municipal courts and included in the sample.

No.	Seat of the municipal court	Total number of compensation claims	Number of analysed claims	Percentage of analysed claims in the total number of compensation claims
1.	Prishtinë/Priština	3234	50	1.5%
2.	Pejë/Peć	2741	50	1.8%
3.	Ferizaj/Uroševac	2254	50	2.2%

4.	Prizren	2002	50	2.5%
5.	Istog/Istok	1764	50	2.8%
6.	Klinë/Klina	920	50	5.4%

The given classification is based on the systematization the Court Liaison Office in Gračanica/Graçanicë used for archiving lawsuits. This systematization reflects the network of municipal courts that was in place in Kosovo until January 2013.[19]

As several tables and graphs will show, data on the number of lawsuits and on certain of their characteristics were also classified according to the municipal court to which the lawsuits were submitted.

Short description of the archive of the Court Liaison Office in Gračanica/Graçanicë

Aware of the serious security and other obstacles the minority communities encountered when trying to access the courts in Kosovo, the UNMIK Department of Justice established in 2003 the Court Liaison Office in Gračanica/Graçanicë.[20] Shortly after, the Court Liaison Office got a number of sub-offices in areas with significant presence of minority communities. These offices' main task was to enhance minority communities' access to justice by accompanying them to courts, filling in documents on their behalf and providing them with information about the justice system in Kosovo and with other types of support during the judicial proceedings.[21]

The Court Liaison Office and its sub-offices played very important role in facilitating access to courts in Kosovo of IDPs and other real estate owners whose property was demolished in the aftermath of the conflict. Due to the volatile security situation the frequent case was that the claimant would bring his/her compensation claim to a court liaison (sub)office and the office staff would then physically bring the claim to the court.

The Court Liaison Office's archive in Gračanica/Graçanicë contains copies of the compensation claims that its staff lodged before the courts on behalf of claimants. Each compensation claim lawsuit was drawn up in five copies; two copies were retained by the court after been certified; two were handed back to the plaintiff; one was stored in the Court Liaison Office's archive.[22] The copies kept by the Court Liaison Office were assigned a registration number and a note on the year of

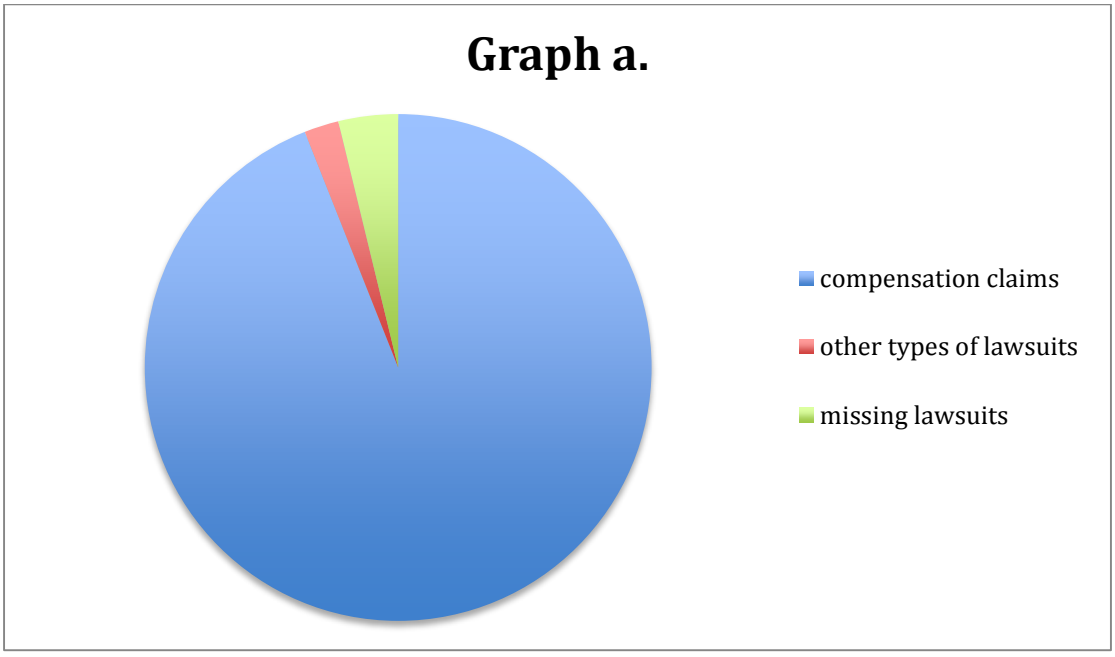
[19] Law on Courts No. 03/L-199, adopted on 22 July 2010 and completely entered into force on 1 January 2013.
[20] Yearbook of the United Nations, v. 57, United Nations publications, p. 425.
[21] UNMIK, Pillar I Presentation Paper, June 2004, p. 18.
[22] Interview with Trifun Jovanović, Head of the Court Liaison Office in Gračanica/Graçanicë, held on 10 June 2013 in Gračanica/Graçanicë.

submission. Together with the copies of evidence submitted by the plaintiff, they were then placed in the office folders and classified according to the seat of municipal court before which the lawsuits were lodged. These folders were labelled according to the range of registration numbers of the lawsuits filed in them. The only exception concerns the lawsuits lodged by the Serbian Orthodox Church, which are kept in a separate archive. The examination of the archive also showed that it does not contain any case files registered by the Municipal Court in Leposavić/Leposaviq. Here are some basic figures about the Court Liaison Office archive:

- The total number of folders in the archive is **278;**
- The total number of lawsuits as indicated on the folders is **19 067;**
- The total number of lawsuits which are missing from the folders is **736;**
- The total number of lawsuits other than the compensation claims lawsuits is **422;**
- The total number of the compensation claims lawsuits is **17 912.**

The number of compensation claims lawsuits was calculated in the following way: the sum of the total number of lawsuits which are missing from the folders (736) and of the total number of lawsuits other than the compensation claims lawsuits (422) was subtracted from total number of the lawsuits as indicated on the folders (19 067).

As **Graph a.** shows the compensation claims make up the greatest portion of the lawsuits contained in the archive (94%).



The following part of the report presents the statistical data collected in relation to the basic elements of the compensation claims lawsuits found in the Court Liaison Office archive.

Statistical analysis of the compensation claims' basic elements

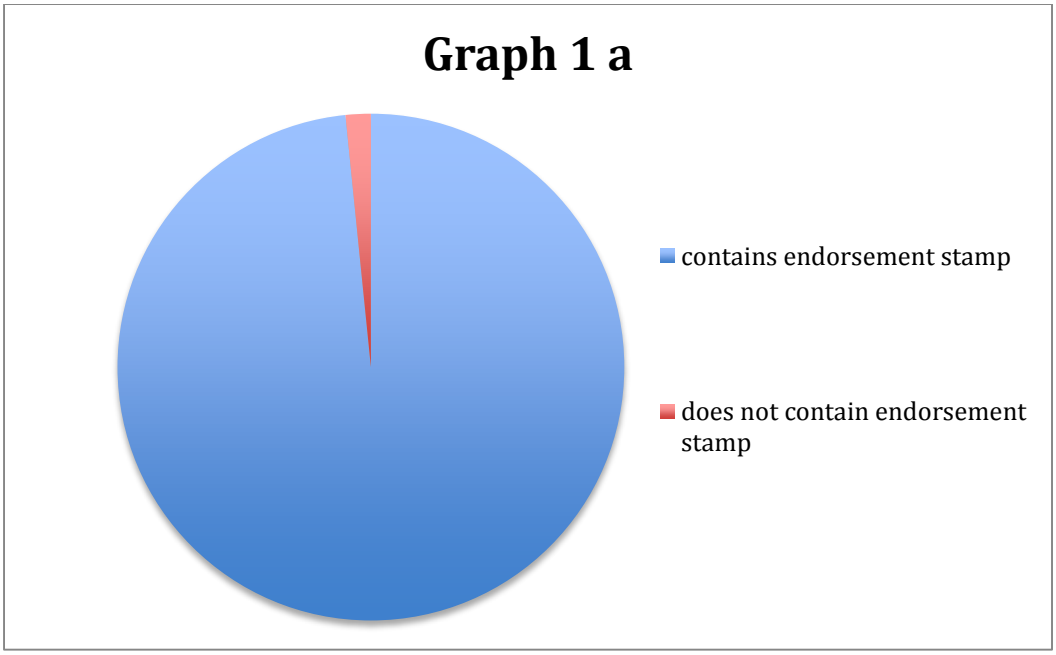
1) Court endorsement stamp, date of lawsuit's receipt and the court case file number

The first to be analysed was the court endorsement stamp and its elements, *i.e.* the date when lawsuit was received by the court and the court case file number. The statistical analysis of the sample was firstly directed at establishing the number of lawsuits which do/do not have a court endorsement stamp. Then, the endorsement stamp imprints were analysed in order to determine frequency of the lawsuits with the indicated receipt date (**Graph 1 b.**). The last step undertaken with regard to the court endorsement stamp was to find out the number of lawsuits to which the courts have assigned the court file number upon their receipt (**Graph 1 c.**).

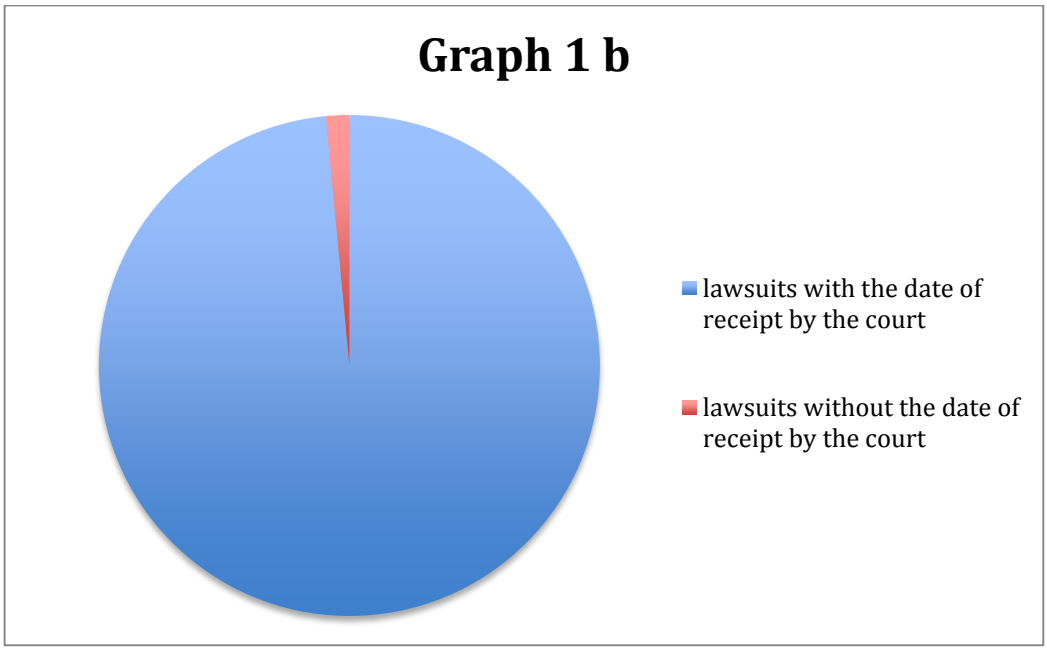
The results of the analysis are as follows:

- Almost all analysed lawsuits have the endorsement stamp imprints (98.3%). The low quality of the copies of original lawsuits could explain 1.6 % of lawsuits without the endorsement stamp imprints.
- Almost all endorsement stamp imprints contain the date of lawsuit's receipt (98.5%).
- The analysed lawsuits as a rule do not have the court case file number (94.2%). An exception to this are the lawsuits registered before the Municipal Courts in Skenderaj/Srbica and in Pristina. The data show that the Municipal Court in Skenderaj/Srbica received a small number of the compensation claims (122 claims in total) and that 27 out of 30 lawsuits registered before this court which were analysed contain a court case file number. Concerning the lawsuits with the court case file number that were submitted before Pristina's Municipal Court, they represent an insignificant portion of the total number of lawsuits registered for this court and covered by the analysis (17 out of 50 lawsuits).

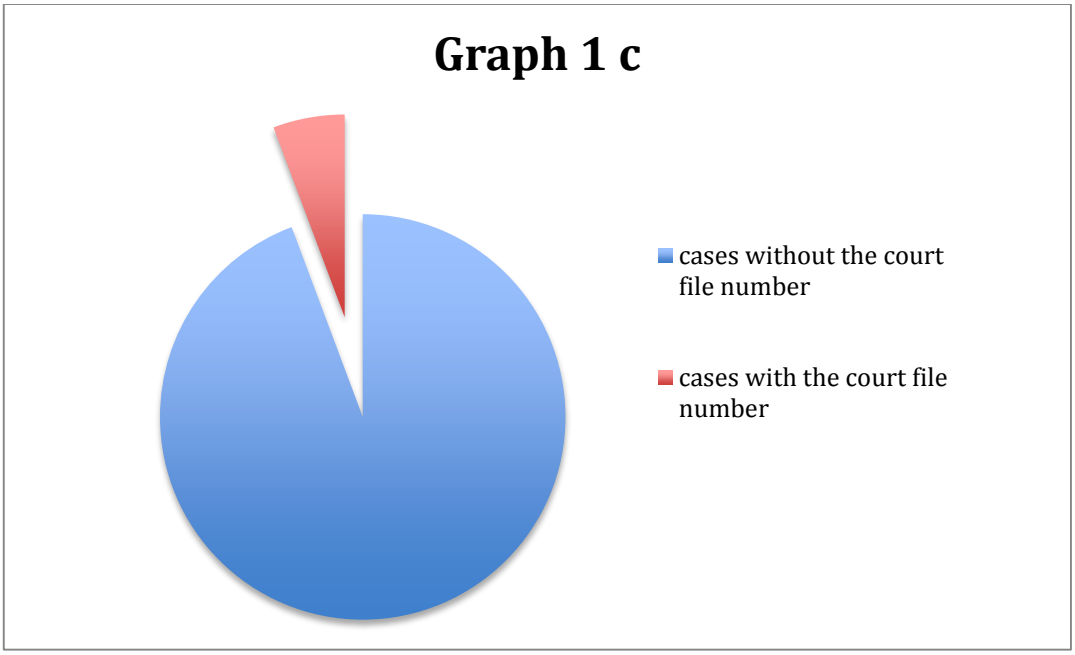
Graph 1 a. shows the ratio between the lawsuits with the endorsement stamp and those without the endorsement stamp.



Graph 1 b. shows the percentage of the lawsuits with the clearly indicated date of receipt by the court in the overall number of compensation claims lawsuits contained in the archive.

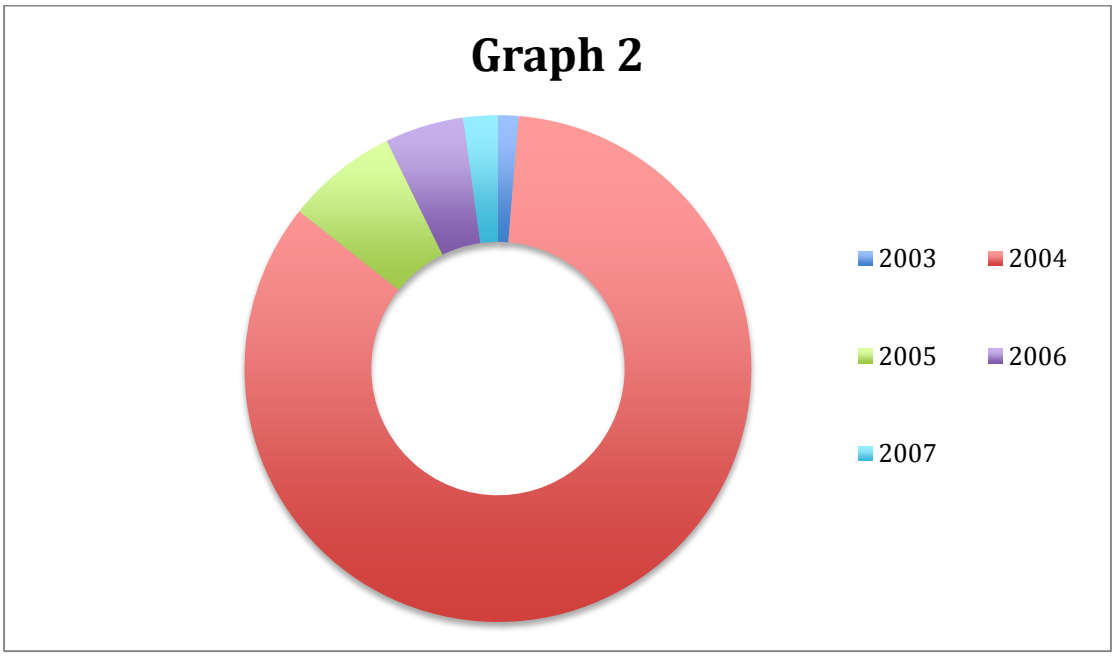


Graph 1 c. shows the ratio between the lawsuits that were assigned a court case file number by the courts and those without the court case file number.



2) Year of submission

The year of submission of the analysed lawsuits was determined on the basis of the date indicated in the court endorsment stamp. As **Graph 2** shows the greatest majority of claims reached the courts in Kosovo in 2004 (84.1%); a certain number of lawsuits were also submitted to courts in 2005 (7.1%) and a tiny percentige of them was received by the courts throughout 2003, 2007 and 2008 (in total 3.7%).



3) Basic characteristics of the plaintiff

This part of the analysis examines whether the plaintiff was a natural or legal person and where was his/her residence at the moment of the lawsuit submission. The data on the domicile of the plaintiff were then used as an indicator of whether the plaintiff was in a position of an internally displaced person (IDP) or the so-called "internally-internally displaced person" (IIDP)[23] at the time of the lawsuit's submission. Namely, when the plaintiff's temporary address was in Serbia proper or in Kosovo that was taken as an indicator that he/she has an IDP or IIDP status. It should be noted that, due to the limited resources available for the research, this data was taken only for one plaintiff per lawsuit[24] although in many lawsuits there was more than one plaintiff.

The results obtained in this way are as follows:

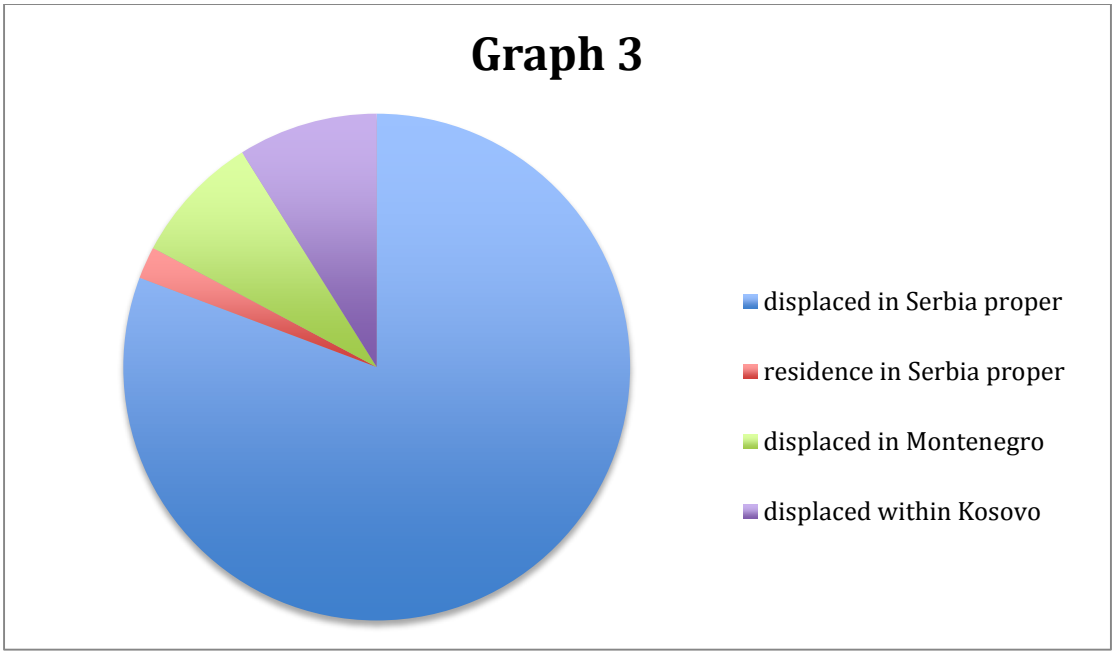
- All plaintiffs in the analysed lawsuits were natural persons;
- The greatest majority of plaintiffs had a temporary residence in Serbia proper at the time of lawsuit's submission (78.8%), which was taken as an indicator that 78.8% of plaintiffs were internally displaced persons (IDPs);
- In total 8.7% of plaintiffs were categorized as internally-internally displaced persons (IIDPs) because they provided only a temporary address in Kosovo that was different from their pre-conflict address in Kosovo.
- A certain portion of plaintiffs (8.1%) was internally displaced in Montenegro at the time of the submission of the compensation claim.[25]
- Only one plaintiff had temporary residence abroad and no plaintiff from the analysed lawsuits was permanently settled abroad.

Graph 3 shows what portion of plaintiffs had residence in Serbia proper, Kosovo or Montenegro and how many of them in comparison to the total number of analysed plaintiffs could be considered to belong to the category of displaced persons.

[23] Internally-internally displaced persons are persons who were forced to leave their homes in 1999 and 2004, but remained as displaced persons within the boundaries of Kosovo. According to UNHCR, there are approximately 18,000 internally-internally displaced persons (IIDPs) in Kosovo (UNHCR, 2013 UNHCR Country Operations Profile – Serbia (and Kosovo: SC Res. 1244)), available at: http://www.unhcr.org/pages/49e48d9f6.html (last accessed on 19 November 2013).

[24] More specifically, the data were taken for the first plaintiff indicated in the lawsuit.

[25] The State Union of Serbia and Montenegro came to an end in 2006, after the referendum on independence held in Montenegro on 21 May 2006.

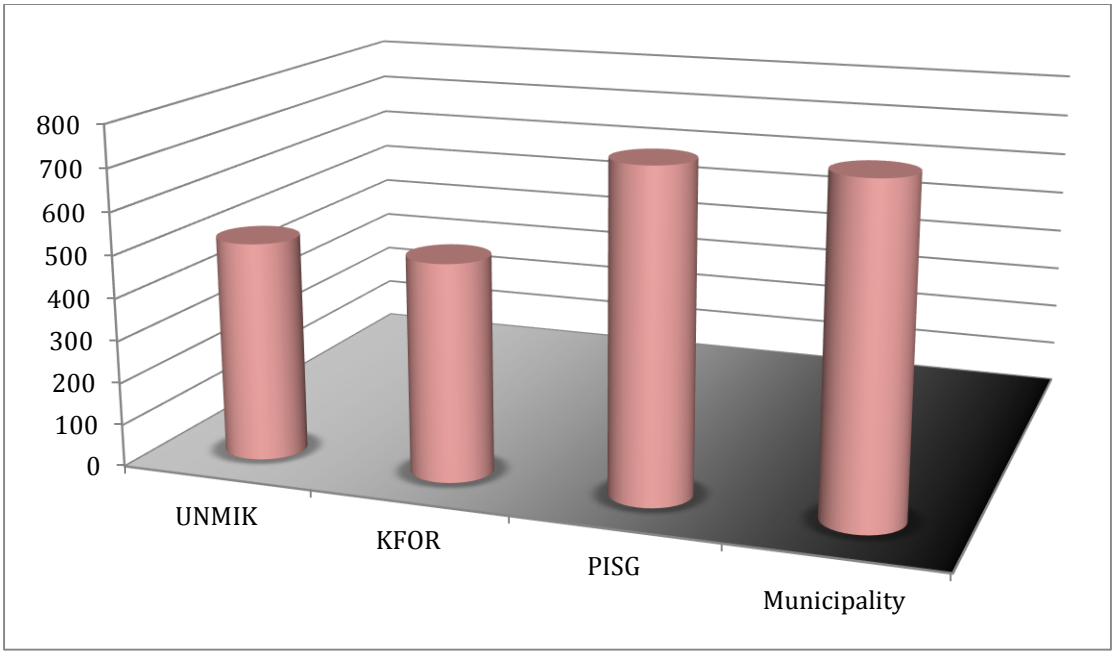


4) Basic characteristics of defendant(s)

One of the distinctive features of the compensation claims under consideration is that they were lodged against the international and/or local institutions established after the 1999 conflict. Here the goal of the research was to determine who exactly were the defendant(s) and how frequently these different institutions were named as defendants in the analysed lawsuits.

As shown in Table 4 (Annex), the plaintiffs were demanding compensation for damages primarily from the local institutions. Namely, in almost all analysed cases the plaintiffs sued municipalities (99.86%) and the local central level institutions, referred to as "the Kosovo Government" or as "the Provisional Institutions of Self-Governance" (99%). UNMIK and KFOR were defendants in 67.1% and 66.3% of analysed lawsuits, respectively. In an insignificant number of cases the plaintiffs also sued identified natural persons (1.3%) and the Housing and Property Directorate (HPD), but these two types of defendants were always sued together with the main defendants as indicated above.

Graph 4 presents the number of lawsuits grouped according to the entity that was in the role of defendant.



5) Legal basis of compensation claims

According to the results of the analysis the lawsuits invoked several different legal texts as ground for the compensation claims. Certain of these legal texts served to establish the responsibility of the defendant(s) for the damages that occurred in the aftermath of the 1999 conflict. Others were used to invoke direct applicability of the European Convention on Human Rights (ECHR), in particular Article 1 of Protocol 1, which many plaintiffs referred to as the legal basis for their claims. The following figures illustrate how plaintiffs used different normative frameworks applicable at the time in Kosovo in order to establish their claims:[26]

- Almost all complainants (98.8%) based their claims on the principle of objective responsibility of public authorities, as provided in Section 180(1) of the Civil Obligations Act from 1978 (Zakon o obligacionim odnosima).[27]
- In total 94% of the complainants also referred to the European Convention on Human Rights Article 1, Protocol 1, as a legal foundation of their claims.
- More than half of plaintiffs (in 403 lawsuits) invoked the provisions of UNMIK Regulation No. 1999/24.[28]
- UN Security Council Resolution 1244[29] was cited in 391 lawsuits.
- In 386 lawsuits the plaintiffs invoked the Military Technical Agreement between the International Security Force (KFOR) and the Governments of

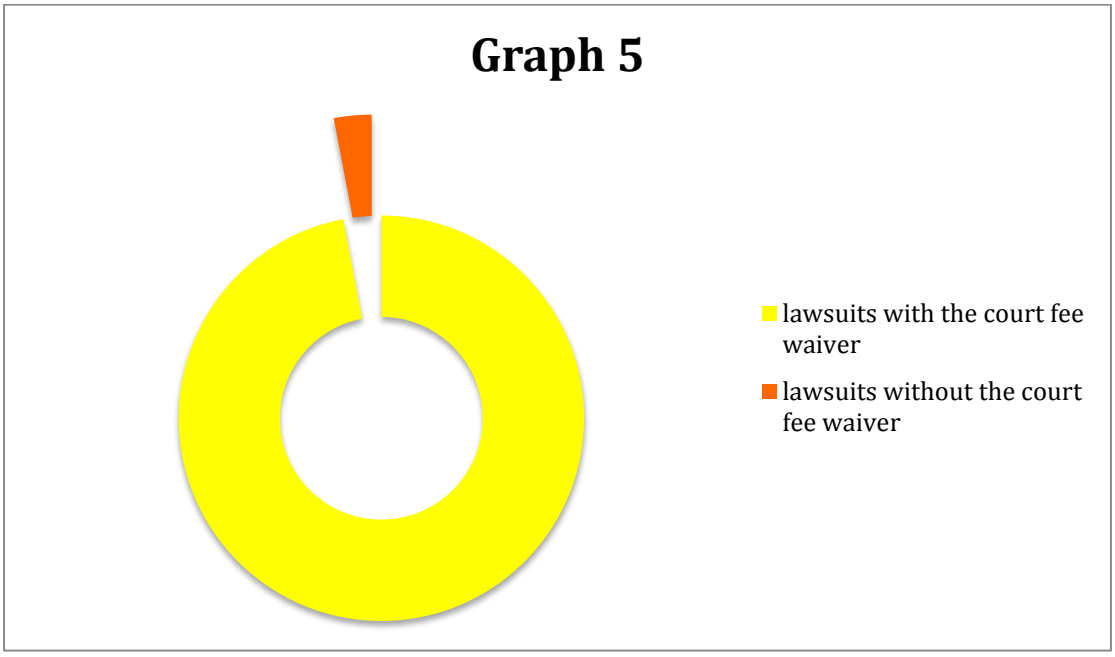
[26] For more detailed information consult Table 5 provided in Annex to the report.
[27] This law was applicable in Kosovo at the time of the submission of the lawsuits by virtue of UNMIK Regulation 1999/24 On the Law Applicable in Kosovo of 12 December 1999.
[28] UNMIK Regulation 1999/24 On the Law Applicable in Kosovo of 12 December 1999.
[29] UN Security Council, *Security Council resolution 1244 (1999) [on the deployment of international civil and security presences in Kosovo]*, 10 June 1999, S/RES/1244 (1999).

the Federal Republic of Yugoslavia and the Republic of Serbia, known as the "Kumanovo Agreement".[30]

- A significant number of plaintiffs (38,3%) also referred to the Constitutional Framework for the Provisional Self-Governance in Kosovo[31].

6) Court fees waiver

While providing legal aid to IDPs in relation to their compensation claims Legal Aid Project lawyers have observed that in many cases plaintiffs were asked to pay court fees. This observation led part of the research to the question of whether and how many plaintiffs had asked the court to submit their petition *in forma pauperis*. The results of the analysis are presented in **Graph 5,** which shows that only a tiny minority of analysed lawsuits (3%) did not contain a court fee waiver.

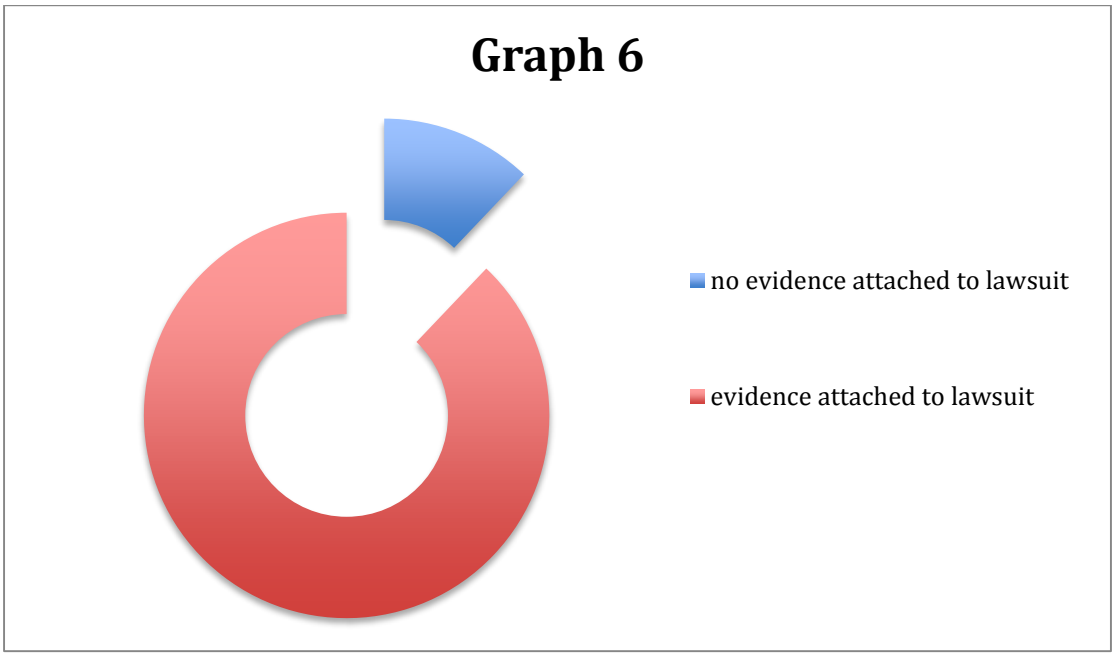


7) Evidence

The research examined the evidence attached to the lawsuits to determine how many plaintiffs submitted evidence together with the lawsuit. An important objective of this part of the research was also to determine the main types of evidence submitted with the initial pleadings.

[30] The Agreement was concluded on 9 June 1999 in Kumanovo (Macedonia).
[31] UNMIK Regulation No. 2001/9 On Constitutional Framework for the Provisional Self-Governance in Kosovo of 15 May 2001.

The results of the analysis show, as presented in **Graph 6**, that 676 compensation claims (87.9% of the sample) contained at least one piece of evidence, *i.e.* that in only 12.1% of the analysed cases no evidence was found.



The total number of evidence items attached to the lawsuits was not determined given that the main objective of the research was to identify the main types of evidence and their distribution in the pool of the analysed evidence. Namely, for each compensation claim only one piece of evidence of the same type was analysed; for instance, if a lawsuit contained copies of 5 different possession lists for 5 different immovable properties, only 1 copy of a possession list was included in the total number of analysed evidence. In this way the research identified **2199 pieces of different types of evidence attached to 769 analysed compensation claims**. This signifies that there was in average **3.25 different pieces of evidence per lawsuit**. In reality, the number of evidence items is several times higher since many lawsuits contained several pieces of evidence of the same type that were not included in the analysis.

The table below enlists the main types of evidence and their distribution in the total number of analysed pieces of evidence. Roughly speaking, the various evidence items were used to substantiate either the compensation claim (e.g. copies of possession lists) or the court fees waver (e.g. copies of the Red Cross certificates). As can be observed, copies of possession lists, IDP and ID cards are the most usual types of evidence found in the archive.

DIRECT EVIDENCE OF THE POSESSION OF PROPERTY[32]	
POSSESSION LISTS AND SIMILAR	387
DOCUMENTS PROVING TENANCY	105

[32] Needless to say, the lawsuits contained not the originals but the copies of these types of evidence.

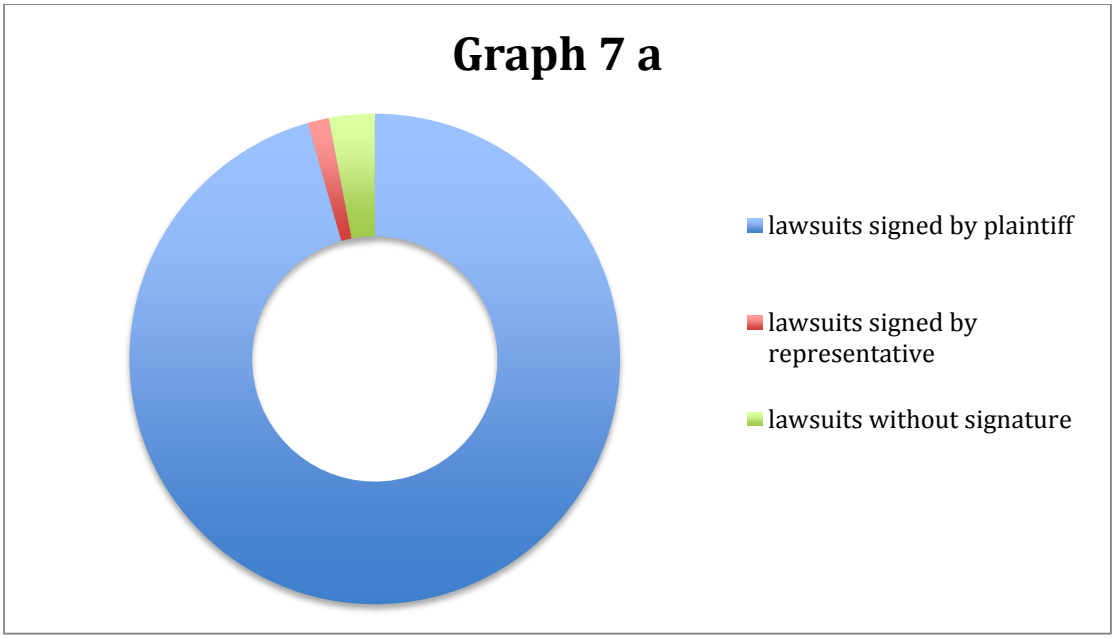
RIGHTS OVER PUBLICLY OWNED APARTMENTS	
COURT INHERITANCE DECISIONS	81
VARIOUS PURCHASE RECEIPTS	56
REAL ESTATE SALES CONTRACTS	43
VARIOUS COURT DECISIONS	18
DEEDS OF GIFT	11
VEHICLE REGISTRATION PERMITS	11
INDIRECT EVIDENCE OF THE POSESSION OF PROPERTY	
ID CARDS	389
BIRTH, DEATH AND MARRIAGE CERTIFICATES	79
CADASTRAL PLANS	75
CONSTRUCTION PERMITS AND SIMILAR DOCUMENTS	44
TAX AUTHORITY CERYIFICATES ON PAYMENT OF IMMOVABLE PROPERTY TAXES	31
PUBLIC UTILITIES BILLS	24
REQUESTS FOR REPOSSESSION OF PROPERTY SUBMITTED TO HPD	21
CERTIFIED WITNESS STATEMENTS	17
RECEIPTS OF PAYMENT FROM THE REAL ESTATE SALES CONTRACT	14
EVIDENCE OF THE DAMAGES/DESTRUCTION OF PROPERTY	
HPD DECLARATORY ORDERS	54
PHOTOS OF REAL ESTATE	47
INVENTORIES OF DESTROYED PROPERTY	17
EVIDENCE FOR THE COURT FEES WAIVER	
IDP CARDS	446
CHANGE OF RESIDENCE CERTIFICATES	72
RED CROSS CERTIFICATES THAT PLAINTIFF RECEIVES HUMANITARIAN ASSISTANCE	17
TAX AUTHORITY CERTIFICATES CONFIRMING THAT PLAINTIFF DOES NOT POSSESS OTHER IMMOVABLE PROPERTY	12
CADASTRE CERTIFICATE CONFIRMING THAT PLAINTIFF DOES NOT POSSESS	8

OTHER IMMOVABLE PROPERTY	
VARIUS CERTIFICATES CONFIRMING STATUS OF INTERNALLY DISPLACED PERSON OTHER THEN IDP CARDS	9
OTHER TYPES OF EVIDENCE AND EVIDENCE IDENTIFIED IN SMALL NUMBER OF CASES	
PROPERTY SETTLEMENT AGREEMENTS, OTHER TYPES OF DEATH CERTIFICATES, DECISIONS OF CADASTRE TO REGISTER PROPERTY, OTHER DECISIONS OF CADASTRE, DECLARATIONS OF DAMAGES ON PROPERTY, UNMIK CERTIFICATES ON DESTRUCTION OF PROPERTY, VARIOS CERTIFIED WRITTEN RECORDS, VARIOS RECEIPTS, ETC.	111
TOTAL	**2199**

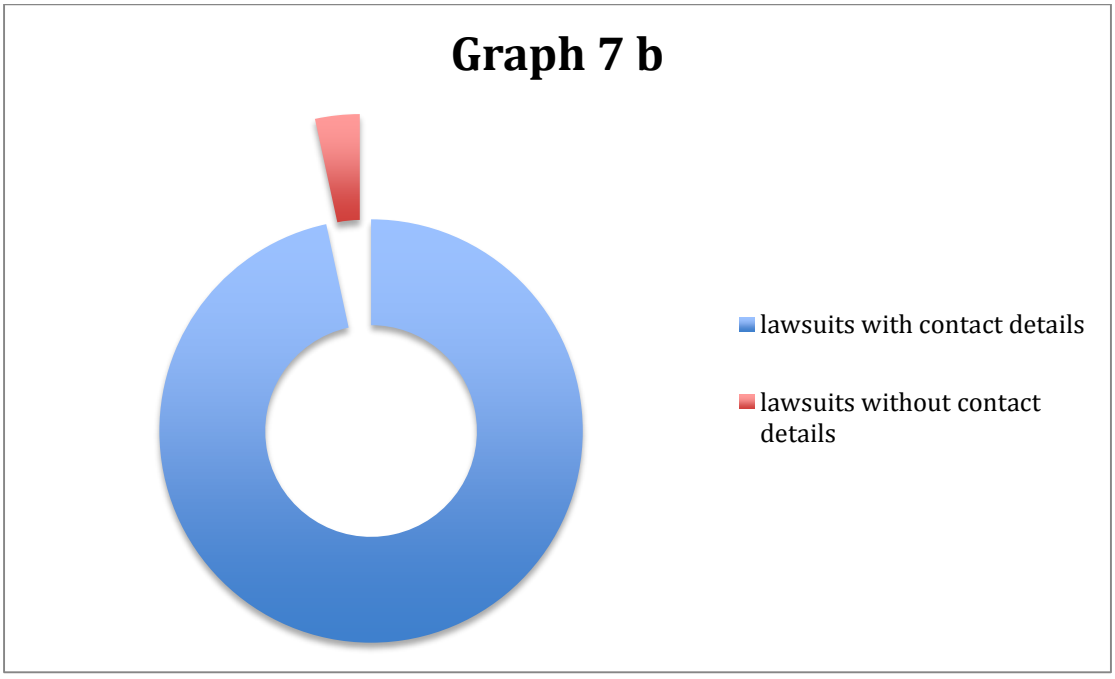
8) Signature and contact details

The last part of the research has looked into the issue of the authenticity of the compensation claims lawsuits. Its goal was to determine the number of lawsuits signed by the plaintiffs in comparison to the number of those signed by the representatives of the plaintiffs. Another question the research looked into is whether the plaintiff or his/her representative provided his/her contact details in the lawsuit.

Although many analysed lawsuits presented certain set of features that could indicate that they were written through the use of templates, the results of the research assert their authenticity. Namely, as shown in **Graph 7 a.**, plaintiffs signed 95.5% of the analysed lawsuits.



Furthermore, 96.6% of the compensation claims lawsuits contained contact details of the plaintiff or/and of his/her representative.



CONCLUSION

The present report summarizes the results of a research that was conducted with the aim of collecting information about the compensation claims. The idea was to provide further elements for the debate about the way the international community and local authorities have dealt with these claims. It is believed that better knowledge of the compensation claims could enable a more comprehensive view on

what was done and what remains to be done in the sphere of post-conflict property restitution in Kosovo.

ANNEX

TABLE 1: REGISTRATION OF LAWSUIT BEFORE THE COURT

SEAT OF MUNICIPAL COURT	COPY OF LAWSUIT		ENDORSEMENT STAMP			
	POSSESSES ENDORSEMENT STAMP	DOES NOT POSSESS ENDORSEMENT STAMP	CONTAINS DATE OF RECEIPT OF LAWSUIT	DOES NOT CONTAIN DATE OF RECEIPT OF LAWSUIT	CONTAINS COURT FILE NUMBER	DOES NOT CONTAIN COURT FILE NUMBER
Gjilan/ Gnjilane	30	-	30	-	-	30
Kamenicë/ Kamenica	30	-	30	-	-	30
Viti/ Vitina	30	-	30	-	-	30

Prizren	**50**	**-**	**50**	**-**	**-**	**50**
Dragash/ Dragaš	**22**	**-**	**22**	**-**	**-**	**22**
Malishevë/ Mališevo	**6**	**-**	**6**	**-**	**-**	**6**
Rahovec/ Orahovac	**30**	**-**	**30**	**-**	**-**	**30**
Suharekë/ Suva Reka	**20**	**10**	**20**	**10**	**-**	**30**
Pejë/ Peć	**50**	**-**	**50**	**-**	**-**	**50**
Deçan/ Dečane	**30**	**-**	**30**	**-**	**-**	**30**

Gjakovë/ Đakovica	**30**	**-**	**30**	**-**	**-**	**30**
Istog/ Istok	**50**	**-**	**50**	**-**	**-**	**50**
Klinë/ Klina	**50**	**-**	**50**	**-**	**-**	**50**
Prishtinë/ Priština	**50**	**-**	**50**	**-**	**17**	**33**
Ferizaj/ Uroševac	**49**	**1**	**49**	**1**	**-**	**50**
Shtërpcë/ Štrpce	**9**	**-**	**9**	**-**	**-**	**9**
Gllogovc/ Glogovac	**11**	**2**	**13**	**-**	**-**	**13**

Kaçanik/ Kačanik	**43**	**-**	**43**	**-**	**-**	**43**
Lipjan/ Lipljan	**30**	**-**	**30**	**-**	**-**	**30**
Podujevë/ Podujevo	**30**	**-**	**30**	**-**	**-**	**30**
K. Mitrovica/ Mitrovicë	**30**	**-**	**30**	**-**	**-**	**30**
Skenderaj/ Srbica	**30**	**-**	**30**	**-**	**27**	**3**
Vushtrri/ Vučitrn	**30**	**-**	**30**	**-**	**-**	**30**
Leposavić/ Leposaviq	**-**	**-**	**-**	**-**	**-**	**-**

Zubin Potok	**16**	**-**	**16**	**-**	**-**	**16**
TOTAL	**756**	**13**	**758**	**11**	**44**	**725**

TABLE 2: YEAR OF RECEIPT OF THE LAWSUIT

SEAT OF MUNICIPAL COURT	YEAR OF RECEIPT OF LAWSUIT									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Gjilan/ Gnjilane	-	-	-	-	-	25	1	3	1	-
Kamenicë/ Kamenica	-	-	-	-	-	29	1	-	-	-
Viti/ Vitina	-	-	-	-	-	27	2	1	-	-

Prizren	**-**	**-**	**-**	**-**	**-**	**44**	**2**	**2**	**2**	**-**
Dragash/ Dragaš	**-**	**-**	**-**	**-**	**-**	**20**	**1**	**1**	**-**	**-**
Malishevë/ Mališevo	**-**	**-**	**-**	**-**	**-**	**1**	**5**	**-**	**-**	**-**
Rahovec/ Orahovac	**-**	**-**	**-**	**-**	**-**	**28**	**2**	**-**	**-**	**-**
Suharekë/ Suva Reka	**-**	**-**	**-**	**-**	**-**	**28**	**1**	**1**	**-**	**-**
Pejë/ Peć	**-**	**-**	**-**	**-**	**-**	**47**	**3**	**-**	**-**	**-**
Deçan/ Dečane	**-**	**-**	**-**	**-**	**-**	**28**	**1**	**1**	**-**	**-**

Gjakovë/ Đakovica	**-**	**-**	**-**	**-**	**-**	**28**	**1**	**-**	**1**	**-**
Istog/ Istok	**-**	**-**	**-**	**-**	**-**	**44**	**5**	**1**	**-**	**-**
Klinë/ Klina	**-**	**-**	**-**	**-**	**8**	**36**	**1**	**2**	**3**	**-**
Prishtinë/ Priština	**-**	**-**	**-**	**-**	**-**	**30**	**7**	**8**	**4**	**1**
Ferizaj/ Uroševac	**-**	**-**	**-**	**-**	**-**	**38**	**3**	**6**	**3**	**-**
Shtërpcë/ Štrpce	**-**	**-**	**-**	**-**	**-**	**9**	**-**	**-**	**-**	**-**
Gllogovc/	**-**	**-**	**-**	**-**	**-**	**12**	**1**	**-**	**-**	**-**

Glogovac										
Kaçanik/ Kačanik	**-**	**-**	**-**	**-**	**-**	**42**	**-**	**1**	**-**	**-**
Lipjan/ Lipljan	**-**	**-**	**-**	**-**	**-**	**20**	**2**	**5**	**3**	**-**
Podujevë/ Podujevo	**-**	**-**	**-**	**-**	**2**	**16**	**5**	**7**	**-**	**-**
K. Mitrovica/ Mitrovicë	**-**	**-**	**-**	**-**	**-**	**27**	**3**	**-**	**-**	**-**
Skenderaj/ Srbica	**-**	**-**	**-**	**-**	**-**	**28**	**2**	**-**	**-**	**-**
Vushtrri/ Vučitrn	**-**	**-**	**-**	**-**	**-**	**25**	**5**	**-**	**-**	**-**
Leposavić/	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**

Leposaviq										
Zubin Potok	**-**	**-**	**-**	**-**	**-**	**16**	**-**	**-**	**-**	**-**
<u>TOTAL:</u>					**10**	**648**	**54**	**39**	**17**	**1**

TABLE 3: DOMICILE OF THE PLAINTIFF

DOMICILE OF THE PLAINTIFF							
RESIDENCE IN KOSOVO		**RESIDENCE IN SERBIA PROPER**		**RESIDENCE IN MONTENEGRO**		**RESIDENCE ABROAD**	
Temporary	**Permanent**	**Temporary**	**Permanent**	**Temporary**	**Permanent**	**Temporary**	**Permanent**
67	**15**	**607**	**15**	**63**	**1**	**1**	**-**

TABLE 4: DEFENDANT(S)

SEAT OF MUNICIPAL COURT	DEFENDANT					
	PROVISIONAL INSTITUTIONS OF SELF-GOVERNANCE IN KOSOVO	UNMIK	KFOR	MUNICIPALITY	OTHER LEGAL PERSON	NATURAL PERSON
Gjilan/ Gnjilane	30	25	25	30	-	2
Kamenicë/ Kamenica	30	22	22	29	-	1
Viti/ Vitina	29	26	26	30	-	-
Prizren	50	44	43	50	-	-
Dragash/	22	15	15	22	-	-

Dragaš						
Malishevë/ Mališevo	**6**	**-**	**-**	**6**	**-**	**-**
Rahovec/ Orahovac	**30**	**23**	**23**	**30**	**-**	**-**
Suharekë/ Suva Reka	**30**	**18**	**18**	**30**	**-**	**-**
Pejë/ Peć	**50**	**29**	**28**	**50**	**-**	**-**
Deçan/ Dečane	**30**	**7**	**7**	**30**	**-**	**-**
Gjakovë/ Đakovica	**30**	**15**	**14**	**30**	**-**	**-**
Istog/	**50**	**29**	**29**	**50**	**-**	**-**

Istok						
Klinë/ Klina	**49**	**32**	**31**	**50**	**-**	**-**
Prishtinë/ Priština	**50**	**41**	**40**	**50**	**2**	**6**
Ferizaj/ Uroševac	**50**	**39**	**39**	**50**	**-**	**-**
Shtërpcë/ Štrpce	**9**	**8**	**8**	**9**	**-**	**-**
Gllogovc/ Glogovac	**11**	**7**	**7**	**13**	**-**	**-**
Kaçanik/ Kačanik	**43**	**32**	**32**	**43**	**1**	**1**
Lipjan/	**30**	**22**	**22**	**30**	**-**	**-**

Lipljan						
Podujevë/ Podujevo	**30**	**26**	**25**	**30**	**-**	**-**
K. Mitrovica/ Mitrovicë	**29**	**15**	**14**	**30**	**-**	**-**
Skenderaj/ Srbica	**29**	**19**	**20**	**30**	**-**	**-**
Vushtrri/ Vučitrn	**30**	**12**	**12**	**30**	**-**	**-**
Leposavić/ Leposaviq	**-**	**-**	**-**	**-**	**-**	**-**
Zubin Potok	**15**	**10**	**10**	**16**	**-**	**-**
TOTAL	**762**	**516**	**510**	**768**	**3**	**10**

TABLE 5: LEGAL BASIS OF THE COMPENSATION CLAIM

LEGAL BASIS							
OBJECTIVE RESPONSABILITY	KUMANOVO AGREEMENT	UN RESOLUTION 1244	UNMIK REGULATION NO. 1999/24	ECHR	CONSTITUTIONAL FRAMEWORK FOR THE PROVISIONAL SELF-GOVERNMENT IN KOSOVO	OTHER	NONE
760	386	391	403	724	295	8	9

TABLE 6: COURT FEES

COURT FEES WAIVER	
CONTAINS REQUEST FOR THE EXEMPTION FROM COURT FEES	DOES NOT CONTAIN REQUEST FOR THE EXEMPTION FROM COURT FEES
745	24

TABLE 7: EVIDENCE

NO EVIDENCE ATTACHED	MAIN TYPES OF EVIDENCE									
	COPY OF IDP CARD	COPY OF ID CARD	CHANGE OF RESIDENCE CERTIFICATE	BIRTH, DEATH AND MARRIAGE CERTIFICATES	POSSESSION LISTS AND SIMILAR	REAL ESTATE SALES CONTRACT	HPD DECISIONS	DOCUMENTS PROOVING TENANCY RIGHTS OVER PUBLICLY OWNED APARTMENTS	COURT INHERITANCE DECISION	PHOTOS OF REAL ESTATE
93	446	383	72	79	387	43	54	105	81	47

TABLE 8: SIGNATURE AND THE CONTACT DETAILS

SIGNATURE AND CONTACT DETAILS					
LAWSUITS SIGNED BY PLAINTIFF		LAWSUIT SIGNED BY REPRESENTATIVE OF PLAINTIFF		LAWSUIT WAS NOT SIGNED	
CONTACT DETAILS PROVIDED	CONTACT DETAILS MISSING	CONTACT DETAILS PROVIDED	CONTACT DETAILS MISSING	CONTACT DETAILS PROVIDED	CONTACT DETAILS MISSING
711	24	11	-	21	2