“Restitution of Property Rights of IDPs before the Courts in Kosovo”

Project “**Further Support to Refugees and IDPs in Serbia”,**
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LITIGATION COSTS AND THE REPOSSESSION OF PROPERTY LOST DURING THE CONFLICT OR DISPLACEMENT

Description:

- Court clerks refuse to register a claim, appeal or other relevant submission before receiving a proof that the court fee is paid;
- Courts rarely, if ever, grant exemption from paying costs of the proceedings.

Negative consequences:

- The conduct of the court clerks results in IDPs desisting from their claims;
- The lack of a court decision on the court fees waiver creates a significant level of legal uncertainty for the claimant.

Applicable domestic laws:

- **Equal access to court** - UNMIK Regulation No. 2001/9 On the Constitutional Framework for Provisional Self-Government in Kosovo of 15 May 2001; Constitution of the self-proclaimed Republic of Kosovo of 15 June 2008; Law No. 03/L-19 on Courts of 22 July 2010.
- **General principles on the collection of court fees** - Law on Court Fees of 3 October 1987; Law No. 03/L-006 on Contested Procedure of 30 June 2008.

- **The eligibility requirements for the exemption from payment of court fees** - Administrative Instruction No. 2008/02 on Unification of Court Fees of 27 November 2008.
- **The eligibility requirements for being a beneficiary of the social welfare assistance in Kosovo or a recipient of the free legal aid** - Law No. 2003/15 on the Social Assistance Scheme in Kosovo of 11 July 2003; UNMIK Regulation No. 2006/36 on Legal Aid of 7 June 2006.

Pinheiro principle

- 13.1 Everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property should be able to submit a claim for restitution and/or compensation to an independent and impartial body, to have a determination made on their claim and to receive notice of such determination. States should not establish any preconditions for filing a restitution claim.
- 13.2 States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive […]

Human Rights Committee - General Comments No. 32 from 2007:

- “The right of access to courts and tribunals and equality before them is not limited to citizens of States Parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State party.”

* Kosovo is not a subject of international law and as such cannot be a “state party” to the international human rights instruments. However, these general comments shall be applicable also to the conduct of its institutions as the provisions of the ICCPR are directly applicable in Kosovo.

Kreuz v. Poland (2001) - the ECtHR held that a requirement to pay substantial fees to civil courts could be regarded as a restriction on the right of access to a court.

Examples:

- Compensation claims lodged by IDPs for the damages or destruction of their pre-conflict immovable and movable property;
- A displaced person whose property is occupied by a third person seeks protection of his/her property rights before the local court;

LEGAL REPRESENTATION OF IDPs IN CIVIL PROCEEDINGS

BEFORE THE COURTS IN KOSOVO

Description:

Since 2010 many courts in Kosovo have not been accepting powers of attorney issued and/or certified in Serbia proper.

*Exception: This does not apply to the proceedings before the Special Chamber of the Supreme Court on the Kosovo Trust Agency Related Matters or to the proceedings before the Human Rights Advisory Panel.

Negative consequences:

An IDP can de facto have a legal representative in civil proceedings before the court in Kosovo only if she/he appoints a legal representative verbally in the course of the proceedings.

- This practice eliminates IDPs' effective access to courts for (the majority of) those unable to personally attend the proceedings.
- It also indirectly discriminates against the minority community members in displacement (other displacement-unaffected communities are not affected).

Applicable domestic laws:

- **Legal representation of the parties in civil proceedings** - Law No. 03/L-006 on Contested Procedure of 30 June 2008;

The authorized representative may be appointed either in writing or verbally to be recorded in the court minutes and "[i]f there is a suspicion on the authenticity of the authorization, the court may decide by a ruling that a certified authorization be produced" (Article 92).

- **Partial exception** - UNMIK Administrative Direction No. 2006/17:

“21.1 Claimants and respondents, other than the Agency, shall be represented by a member of a bar association in Kosovo or in Serbia except for natural persons who may choose to represent themselves, subject to section 21.2. […]

21.2 Upon application by any party or upon his or her own motion, the Presiding Judge shall order that any party must be represented by a member of a bar association in Kosovo or in Serbia, if he or she is satisfied that such an order is required for the protection of that party’s rights and interests, for the orderly conduct of proceedings or is otherwise in the interests of justice.”

International law:

- The right of access to court is a component of the right to fair trial guaranteed in Article 6 of the ECHR (Article 14 ICCPR).
- Article 2 of the ICCPR (Article 13 ECHR) guarantees a right to an effective remedy to any person whose other rights or freedoms recognized in the Covenant are violated.

- *Golder v. United Kingdom (1974*) - "it would be inconceivable […] that Article 6 para. 1 should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a Court"

USE OF THE OFFICIAL LANGUAGES IN THE PROCEEDINGS BEFORE THE SPECIAL CHAMBER

OF THE SUPREME COURT
ON KOSOVO TRUST AGENCY RELATED MATTERS

Description:

- Submissions and documentary evidence in the proceedings before the SCSC shall be translated in English at the cost of the party to the proceedings.

- The rules of procedure, decisions, judgments and orders passed by the SCSC are issued in Albanian, Serbian and English language. The English versions prevail in case of conflicting interpretations.

- The documents containing rules of proceedings issued by the President of the SCSC cannot be easily accessed in the Serbian language.

*see: http://eulex-kosovo.eu/en/justice/rules-for-case-allocation.php