



Mission in Kosovo

The OSCE Mission in Kosovo has been entrusted with the lead role in matters relating to institution- and democracy-building, rule of law, and human rights in the region. The Mission forms a distinct component of the United Nations Interim Administration Mission in Kosovo (UNMIK) and is responsible for, among other things, training police, judicial and civil administrators; furthering the development of a civil society; supporting media development; organizing and supervising elections; and, monitoring, protecting and promoting human rights.



ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

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The OSCE and Residential Property Rights

"Everyone has the right to own property.... No one shall be arbitrarily deprived of his property."
— *Universal Declaration of Human Rights, Article 17*

The OSCE and property rights

The protection of property rights in Kosovo is one of the Organization for Security and Co-operation in Europe's (OSCE) key areas of concern because a functioning property rights system is critical to the establishment of rule of law and economic development.

The Mission is involved with the issue on a variety of levels. OSCE staff monitor the development and implementation of property legislation, the activities of and access to the Housing and Property Directorate - the institution set up by the United Nations Interim Administration Mission in Kosovo (UNMIK) to resolve most residential property disputes - as well as the activities of the municipal authorities and the law enforcement agencies - UNMIK Police and Kosovo Force (KFOR). They highlight, for example, illegal occupancy and evictions and inconsistencies in practice, where this amounts to discrimination.

The OSCE-established Kosovo Judicial Institute and the Kosovo Law Centre provide training on property laws to the judicial and legal communities.

The property problem

Many properties in Kosovo have multiple claims to ownership. But proving ownership is exceptionally difficult because of the level of destruction, both of physical property and of records (many of which were also confiscated), the years of discriminatory legislation, and the mass population movements since 1989.

The need for residential accommodation within Kosovo remains critical. Up to 850,000 Kosovo Albanians fled between 1998-9. Most returned within months. Since the end of the war, large numbers of people from other ethnic communities have in turn fled, abandoning their property. In many cases, this property has been destroyed or occupied.

Thousands of people, from all ethnic groups, remain displaced, within and outside Kosovo. Until the creation of the joint administrative structures in January 2000, and, subsequently, the new municipal authorities, many illegal evictions were carried out. Other people were then illegally installed in those vacated buildings.

Instruments and procedures to demonstrate and protect property rights are conspicuously absent in Kosovo. Property and cadastral records - maps or surveys which indicate the boundaries, value and ownership of land - are key to any functioning property system. There is no functioning cadastre. The majority of cadastral records were removed from Kosovo by the former regime at the end of the conflict and remain in Serbia proper.

Many of the property transactions conducted between 1989 and 1999 were carried out informally and most of the documents are of little use. Furthermore, the majority of urban plans in Kosovo are outdated and provide no guidance to municipal officials in regulating construction. Lastly, there is no uniform and effective appeals mechanism in place to provide independent judicial review of municipal decisions affecting the property rights of individuals.

Property rights are important as they affect all communities in Kosovo. However, the approaches of the various authorities to the problem have been inconsistent. As a result, property rights are being violated without an effective remedy, and illegal occupations and illegal constructions are widespread. Most residential property disputes remain unresolved.

To compound the problem, illegal construction is carried out on land that is illegally occupied. Regulation of illegal construction is difficult because without a cadastre and an urban plan, the municipalities cannot determine with any degree of certainty which construction is illegal. Nonetheless, the duty to regulate construction falls squarely within the competencies of the municipalities. This

CONTACT INFORMATION

Press and Public Information
Belgrade Str. 32, 38000 Pristina
Press Office: +381 38 500 162 ext. 260
Public Information Office: +381 38 500 162 ext. 145
Fax: +381 38 500 188 | E-mail: press@omik.org
Website: www.osce.org/kosovo

raises the issue of lack of due process afforded to individuals affected by municipal decisions regarding their property as there is no opportunity for independent judicial review of municipal decisions.

The denial of property rights impacts particularly harshly on Kosovo's smaller ethnic communities and on efforts to repatriate internally displaced people and refugees. The resolution of property ownership and occupancy rights is fundamental both to the return process and to the protection of minority communities. So too is access by these groups to housing reconstruction assistance. A functioning property rights system is also critical to the establishment of the rule of law and to economic development. Commercial development is impossible without it.

The mechanisms in place

Property is one of the most complex areas of the law. Under the 1989 law, the municipal courts dealt with most property issues. Today, however, Kosovo's civil courts are just beginning to function again.

As a result, a quasi-judicial body has been set up to deal with major property issues. The Housing and Property Directorate (HPD), and Housing and Property Claims Commission (HPCC) is a joint international and local body vested with the exclusive jurisdiction to settle the most serious residential property claims until such time as the Kosovo courts are able to deal with these cases.

The HPD's mandate includes dealing with claims for restitution of property lost through discrimination; claims for registration of informal property transactions, and claims by refugees and internally displaced persons who have lost possession of their homes but wish to return or transfer their property. The HPD also acts as a mediator in property disputes, and as the registrar of claims for the HPCC. In addition, the HPD is authorised to compile a Kosovo-wide inventory of abandoned and vacant housing and to supervise the temporary allocation of such property for humanitarian purposes.

As of 28 July 2002, the HPD placed 1,642 properties under its administration and legally allocated 550 properties. HPD enforced a total of 193 evictions, 66 based on HPCC decisions.

The HPCC has the exclusive power to resolve residential property legal disputes, issue eviction orders and issue final and binding decisions. Claims may be presented in any HPD/HPCC office or through its mobile team.

As of 28 July 2002, 19,159 claims have been submitted to the HPCC. The overwhelming majority, 18,139 or 94.7%, were from those who claimed they lost their properties as a result of the 1999 conflict. Thus far the HPCC has resolved only 644 of the claims, 454 or 70.05% by decision, and 159, or 24.7% of the claimants settled prior to the commission taking a decision. HPCC decisions resulted in 43 enforced evictions and 13 instances where the party occupying the property voluntarily vacated it.

While the lack of resources affecting HPD/HPCC's ability to fulfil its mandate are well known, OSCE is concerned that the present rate of claim resolutions will render the directorate's mandate in Kosovo meaningless.

The issues requiring urgent attention

The key problem is the lack of a consistent Kosovo-wide approach to the residential property issues. All those involved—from judges and lawyers to the municipal housing authorities and the people themselves—need clarification, information and guidance on the housing laws and procedures. For example, people continue to lodge residential property complaints with the courts but many of these complaints are outside their jurisdiction. Judges and lawyers are not clear on the scope of their jurisdiction and that of the HPD/HPCC or on the applicable laws.

The cadastre recording system needs to be drastically overhauled. Realistic urban plans need to be drafted. Legal reform is needed

to implement private ownership of property. The status of state-owned firms needs to be resolved. Steps must be taken to harmonise UNMIK regulations based on a western model with the local applicable law grounded in socialist concepts of property rights.

Due process protections need to be incorporated in the regulations and laws governing the competencies of the municipalities. Clarification is needed on the 1986 Law on Housing Relations, which allows municipalities to carry out evictions under certain circumstances. There is also a need for legislation to address the confiscation and nationalisation of land in Kosovo that occurred after 1945.

Eventually, the functions of the HPD will be handed over to the municipal authorities. Some responsibilities have already been delegated to a number of Municipal Housing Committees. However, it is necessary to ensure that they deal with this issue in an objective and neutral manner and that the criteria used for deciding whether those evicted are entitled to be provided with alternative accommodation are applied in a consistent way.

Another major concern is to ensure that the rights of owners of abandoned properties, particularly those owned by members of minority communities, are respected and that occupancies do not upset the local ethnic balance. At present, access by those communities (both those within Kosovo and those outside) to the HPD is limited. People from different ethnic communities have been recruited for the HPD's mobile team but more mobile teams and more staff from all communities are required. HPD offices and personnel are dealing with an extremely sensitive issue. They require security back-up from UNMIK police and KFOR.

Monitoring how the administration, including the HPD and the municipal authorities, deals with the property issue also falls within the jurisdiction of the Ombudsperson Institution - Kosovo's human rights "watchdog" on the authorities.

The HPD requires support, particularly financial, from the international community in order to become fully operational throughout Kosovo and ensure access by all communities to its services. In November 2001, the HPD introduced a Contingency Plan as a result of dwindling resources continued to be implemented with the focus on claims intake and implementation of existing Commission decisions in accordance with that plan. The implementation of the contingency plan resulted as planned, in a reduction in claims processing. The HPD urgently requires 2.4 million US \$ for the remainder of 2002, to become fully operational, and commitments, which provide sustained core funding for 2003 and beyond.

The European Union's (EU) housing reconstruction assistance programme is a "self-help" scheme that provides building materials. The procedures for allocating assistance can, however, take some time and the criteria used for deciding who should receive the assistance are very strict. Access to the scheme by vulnerable ethnic communities and by displaced people and refugees is particularly limited.

Attacks on empty properties owned by members of minority communities, or on property recently bought from them is an-ongoing and serious problem throughout Kosovo. Violent incidents, as well as persistent intimidation and harassment, on members of small isolated ethnic communities are forcing them to leave their homes and discouraging those who have already left from returning.

The issue of sales of homes owned by communities in a specific minority area, and access by them to reconstruction assistance must be addressed. UNMIK promulgated regulation 2001/17 to regulate and monitor property sales by members of these communities. OSCE is concerned that the regulation is not being sufficiently enforced and additional measures to address the problem of forced sales are needed.

