



Project: Fostering NGO human rights network

Thematic meeting on exercising the rights of internally displaced persons from the territory of Kosovo¹

July 2012

CONCLUSIONS

1. GENERAL REMARKS

1.1. It is necessary to remove, as soon as possible, all the remaining institutional obstacles that internally displaced persons face and that hamper or completely prevent their access to economic, social, and cultural rights in their places of displacement. It is particularly important to remove the obstacles mostly affecting the displaced persons of Roma ethnicity and other most vulnerable groups among displaced persons.

1.2. Significant improvements of the practical protection of the guaranteed rights for IDPs are necessary and required in order to enable the fulfilment of their rights in Kosovo.

1.3. There are open cooperation possibilities between the Network and other organisations and regional networks dealing with issues of mutual interest that are relevant for the work of the Network.

1.4. The need for initiating joint submissions that would contain proposal for redress mechanism removing systemic obstacles faced by IDPs seeking protection of their right before competent institutions in the territory of Kosovo.

2. DOCUMENTS AND ACCESS TO RIGHTS (ECONOMIC, SOCIAL, AND CULTURAL) IN PLACES OF DISPLACEMENT

2.1. Records could further be enhanced on the basis of the Agreement on civil registry books between Pristina and Belgrade. It is necessary to continuously monitor the implementation of the Agreement, and it is currently pivotal to start immediately with an efficient and essential implementation of the Agreement in the best interest of displaced persons from Kosovo. It is important that the monitoring of the implementation of the Agreement is accompanied by periodical independent evaluation reports containing the recommendations for the improvement of the implementation process, and that all the information and processes are easily accessible to public and relevant civil society organisations.

2.2. It is important to completely digitalise all the dislocated registry books from the territory of Kosovo. In places where there are no electronic records, the renewal of the entry into registry books is extremely difficult, as well as the access to the registry books, particularly in case of the records for the Pristina region.

2.3. Through the development and adoption of new legal provisions, it is necessary to simplify the possibility of subsequent registration into registry books in the Republic of Serbia, as soon as possible. We propose that the National Assembly of the Republic of Serbia adopts urgently the Bill Amending the Law on Extra-Judicial Procedure which would stipulate a special procedure for determining the fact of birth (in an analogous manner as the procedure for determining the fact of death).

¹ All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.

2.4. It is necessary to continuously and persistently advocate for practical implementation of the new legal provisions (by adopting by-laws and through other measures) in order to avoid having the good legal provisions only as a dead letter for a long period of time. In this regard, currently, in the Republic of Serbia, there are problems with the implementation of the Law Amending the Identity Card Law and the Law on Domicile and Residence of Citizens. We reiterate that in order to apply the legal provisions regulating temporary ID cards and registration of residence at the address of a social welfare centre and the place of general abode, it is necessary to adopt relevant by-laws, as soon as possible. Firstly, it is essential to establish a relevant domicile or residence registration form for registering at the address of a social welfare centre, and police administrations need to be provided with precise instructions for the implementation of the relevant provisions regulating the procedure for determining residence for the purpose of issuing a temporary ID card.

2.5. The Regulation adopted by the Government of the Republic of Serbia² which, contrary to the Law on Health Insurance, repeals the possibility of realising health insurance on the basis of a statement in which a person claims to be of Roma ethnicity and a statement on the domicile in the territory of the competent branch office of the National Fund for Health Insurance, should be amended accordingly. While the Law on Health Insurance of 2005, in a relevant provision of its Article 22, clearly indicates the legislator's intention to enable the application for the compulsory health insurance for all the persons of Roma ethnicity who cannot obtain a regular proof of their residence. The Regulation, on the other hand, explicitly stipulates that a person of Roma ethnicity must submit a certificate of the registration of residence as a proof necessary for realising the insurance. Therefore, in order to harmonise the Regulation with the Law, it is necessary to amend its item 8 of section 2.1 by envisaging that a person of Roma ethnicity, besides the certificate of registration of residence, could also submit a personal statement on the place of temporary residence, as a relevant proof.

2.6. It is important to use the favourable momentum created in the process of preparing periodic reports for the UN treaty bodies, during which all the relevant Ministries of the Republic of Serbia recognised, in the Draft of the Common Court Document the existence of the problem pertaining to issuance of the employment booklets to internally displaced persons. Having in mind the favourable situation, adequate amendments to the Rulebook on Employment Booklet should be initiated in order to introduce a comprehensive solution and create a possibility for issuing an employment booklet, for certain categories of persons, on the basis of the place of temporary residence as well.

2.7. With the inclusion of the agreements reached by Pristina and Belgrade into the legal system of the Republic of Serbia, it is possible and necessary to significantly improve, at the earliest time, the mechanisms of solving the majority of issues of interest for the persons displaced from Kosovo, particularly the issues of recognising diplomas, years of service, exercising the right to pension, and recognition of property records.

2.8. The competent state authorities should constantly be encouraged to define and take measures that would address position of various vulnerable and/or migration groups in the systemic manner. In processes of lobbying and advocating for adequate solutions, civil society organisations are recommended to establish a closer and continuous cooperation with independent regulatory institutions such as the Ombudsman and the Commissioner for Protection of Equality.

3. PROTECTION OF PROPERTY RIGHTS AND PROCEDURES BEFORE KOSOVO COURTS

3.1. It is necessary that the Kosovo Property Claims Commission uses its jurisdiction as stipulated in the Administrative Instruction accompanying the Regulation 2006/50, so as to establish the practice that its decisions, in case of fraudulent property transactions, with the order on cancellation of the agreement, also contain an order to delete the relevant data from the cadastre records.

²It is the Regulation on contents, form, and manner of submission of a unique application for compulsory social insurance, unique methodology principles, and unique codes for entering data into the Single Database of the Central Register of Compulsory Social Insurance, Official Gazette of RS, No. 54/10).

3.2. Lack of communication between the judicial systems of Serbia and Kosovo significantly impedes the execution of rights in the procedures related to fraudulent property transactions. In order to provide for the efficient verification of credibility of letter of attorney and an agreement, as well as timely delivery of court decisions, notices and other documents, we recommend urgent establishment of the institutional communication channel and exchange of documents, under the auspices of EULEX, between the competent institutions of Serbia and Kosovo.

3.3. Lack of the efficiency of courts in Serbia when dealing with the relevant criminal and other proceedings hampers and delays the closure of proceedings of fraudulent property transactions taking place in Kosovo. Therefore, the measures should be taken to increase the efficiency of courts in Serbia and consequently result in increased effectiveness of the legal protection of property rights in Kosovo.

3.4. Inexistence of postal traffic between Serbia and Kosovo obstructs and in certain cases completely disables the access to justice in Kosovo for internally displaced persons. The procedures in which internally displaced persons are defendants before the courts in Kosovo are often conducted in their absence, with appointment of temporary representative, in majority of cases this is to the detriment of an internally displaced person as defendant. When a decision, a verdict or other document is sent from court and delivered to an internally displaced person to the address of their temporary residence, in majority of cases this does not mean that a person is left enough time to meet the deadlines set by the court, i.e. to fulfil the obligation that a document needs to be at the address of the certain court instance till the expiry of the stipulated deadline. Therefore, the issue of postal traffic is necessary to be solved as urgently as possible, i.e. to be placed on the list of priorities that will be discussed in the continued dialogue on technical issues between Pristina and Belgrade.

3.5. It is necessary to immediately and completely abolish the non-selective and inadequate application of the institute of temporary representation by Kosovo courts. This institute should be applied strictly in accordance with the law so as to guarantee effective protection of rights in accordance with the Article 6 and 13 of the European Convention on Human Rights.

3.6. It is necessary that Kosovo Judicial Council undertakes particular strategic measures to completely prevent the possibility that the application of the National Strategy for reducing old cases causes a delay in processing of cases that unresolved may result to serious violation of property rights (fraudulent property transactions, illegal occupation of property, building on someone else's land, and alike).

3.7. It is necessary to ensure that Kosovo courts act upon all cases in accordance with applicable regulations. Additionally, it is also very important that the conduct of Kosovo courts in accordance with the National Strategy for reducing old cases also includes the cases that the courts inherited from the Housing and Property Directorate, so that these cases would also be given certain priority, in accordance with their nature.

3.8. With the exception of the Constitutional Court, Kosovo courts practically do not apply the provisions of international instruments for human rights protection, although all key international legal acts for human rights protection, in accordance with Article 22 of Kosovo Constitution, are directly applicable in the constitutional and legal system of Kosovo. We recommend that local Kosovo courts start implementing the practice of the European Court of Human Rights and practice of the UN treaty bodies, having as a goal the establishment of court practice in accordance with international human rights standards.

3.9. Inefficiency of Kosovo judiciary is still a problem to which significant attention should be paid. Reform of the Kosovo court system introduced improvements, but reform processes should be made faster and more efficient. It is of special importance to exactly define all sources of insufficient efficiency of Kosovo judiciary system, including among other issues the number of judges and prosecutors, the quality of professional staff and adequacy of the application of rules of civil and criminal procedures, and to undertake respective measures to support and remove these weaknesses and shortcomings.

3.10. As regards claims for compensation of damage for destroyed or damaged real estate, we recommend the establishment of a special legal mechanism that will provide for efficient and fair procedures of all such

compensation claims. It is necessary to ensure that all compensation claims are solved following a specially regulated procedure, which will make a clear difference between the issue of defining the damage and the ways of their compensation from the issue of passive legitimacy for the damage caused.

3.11. It is important to increase the awareness about the role and competences of Kosovo Judicial Council both with the internally displaced persons and with experts. We recommend to NGOs and lawyers, legal aid providers to IDPs, to use the possibility to refer all cases of unethical performance of judges to this institution.

3.12. It is necessary to enable for members of minority communities to address the Kosovo Judicial Council in an effective and undisturbed way in accordance with the effective legal regulations. Therefore, it is necessary that the Kosovo Judicial Council abides by the constitutional provisions on official use of language and international standards in this field, and to translate its forms into Serbian, as official language, and also to the languages of minorities which are in official use in Kosovo, which would include electronic forms available at the web site of the Council. In this regard, in order to enhance the possibilities of access to the Kosovo Judicial Council, we also recommend the introduction of regular communication between the Kosovo Judicial Council with the Court Liaison Office, of the Department for Court Integration of the Kosovo Ministry of Justice, as well as representatives of NGOs providing legal aid to the displaced from Kosovo, including also Network.

3.13. It is necessary to provide consistent application of Administrative Instruction of the Kosovo Judicial Council no. 2008/02 for unification of court fees in the whole territory of Kosovo. Additionally, we recommend that the Kosovo Judicial Council expands its list of submissions that are exempt from payment of court fees in a manner that it adds to the existing list contained in the Decision on Amending the Administrative Instruction no. 2008/02, as of 9 March 2012, also the rush notes, notices on the change of address and some other forms of submissions for which the payment of court fees is unjustifiable.

3.14. We also find that the procedures for resolving the claims for restitution of property rights lost as a consequence of conflict and/or compensation of property damage incurred during the conflict, in accordance with the rules included in the Pinheiro principles (Principle no. 13 (2)) and the UN Guiding Principles on Internal Displacement (Principle no. 29(2)), should be executed without payment of court fees. Taking into account that local courts are responsible for certain types of claims, we suggest that initiation and conduct of proceedings in such cases should be free of charge. In order to facilitate this, it is necessary to amend the Administrative Instruction of the Kosovo Judicial Council no. 2008/02, so that Article 7, which specifies the group of persons exempt from payment of court expenses, also includes internally displaced persons in cases when they initiate or conduct procedures related to the above-stipulated property claims.

3.15. Special panel of the Kosovo Supreme Court for issues regarding the Kosovo Property Agency charges court expenses for considering appeals to the first instance decisions of Kosovo Property Claims Commission. This practice is completely opposite to the above stated international legal standards which regulate the right to resolve property claims arising from the conflict.

4. ISSUES REGARDING THE OPERATIONS OF KOSOVO PROPERTY AGENCY

4.1. It is a legal obligation of Kosovo Property Agency to provide all documentation during the procedure in one or two languages in official use in Kosovo according to the party's preference, i.e. to provide translation of all documents necessary for equal participation in the procedure. Failure to observe this legal obligation cannot be justified by the lack of budget funds for translation of documents or any other reason of this kind, as it is upon the competent institutions to provide for the conditions for undisturbed exercise of the right to access justice.

4.2. The fact that Kosovo Property Agency has taken over the responsibility for managing and renting certain real estates, indicates that KPA is also responsible to compensate for any damages caused to the property, something that is not happening in practice.

4.3. It is necessary to define more clearly the role of Kosovo Property Agency as it regards the management of real estate and, among other issues, to define in a precise and measurable manner the meaning of the term *reasonable efforts* that KPA is obliged to undertake in order to prevent that this kind of property is damaged, in accordance to Article 23(4) of Administrative Instruction no. 2007/5.

4.4. Concerning the property that KPA rents, the formula for calculating renting fees should be in accordance with the usual values of renting real estate at the local market, as clearly defined by the legal framework effective in Kosovo and the case-law of the European Court of Human Rights (see the case *Kunic against Croatia*).

4.5. It is necessary to urgently define procedures and formulas for compensations which should, according to the applicable law, be given to the persons who lost their property rights acquired during the procedure of purchasing of the social apartments, based on the decisions on joint claims of A and C categories of the former Housing and Property Claims Commission.

4.6. In the procedures of protection of rights of the persons who lost their property right in this way, it is recommended that the possibilities offered by the Kosovo's Anti-Discrimination Law adopted in 2004 be applied.

4.7. It is necessary that Kosovo Property Agency performs evictions in accordance with the effective legal framework, and to return the property to their owners free from persons and commodities, and in the same manner to bear the costs of transport and storage of movable property of illegal occupant.

4.8. In case that illegal occupant moves again into the apartment, police authorities should immediately act promptly at the request of the claimant (owner), and, in accordance with the valid decision of KPCC, evict them immediately. The agreement between the KPA and Ministry of Interior should be available to the public, especially to the owners of the usurped property. Unauthorized users, while receiving the order of KPA on eviction, should also be informed about this agreement, but also about the consequences in case they do not comply with eviction order.

5. ACCESS TO JUSTICE IN KOSOVO FOR INTERNALLY DISPLACED PERSONS

5.1. Provision of conditions enabling an equal access to courts and enabling efficiency of judicial system in Kosovo in regards to the restitution and protection of property rights, is a prerequisite for internally displaced persons to realise their unalienable right to return to their homes or the right to opt for another type of durable solutions.

5.2. The judicial system in Kosovo treats the internally displaced persons in the same manner as its resident population, meaning that it does not recognise the specific situation these persons are in, which results in increased risks of violating property rights to movable and immovable property. Internally displaced persons are physically distant from the places where their property is located, but also from the offices of relevant court institutions and they are frequently in a difficult social and economic situation, so that these are some of the circumstances that should be taken into consideration when defining the conditions for realisation and protection of their property rights.

5.3. Furthermore, the judicial system in Kosovo does not recognise the need for creating special conditions under which conflict-related property claims, which are under the jurisdiction of regular courts, would be resolved. This is another form of discrimination of internally displaced persons, having in mind that the displaced persons are the majority of those whose conflict-related property claims are not resolved.

5.4. Proceedings which do not recognise these specific circumstances result in indirect discrimination of internally displaced persons, being therefore neither in line with national and international legal standards for the prevention of discrimination, nor with the UN Guiding Principles on Internal Displacement. IDPs mostly belong to minority communities, with some exceptions. Therefore, the indirect discrimination based on their status frequently turns into the discrimination based on nationality and ethnicity. Having in mind the

abovementioned, we believe that the only adequate solution would be to adopt and efficiently implement a strategy that would introduce specific and comprehensive changes to Kosovo legislative framework and procedures of relevant institutions, which would consequently significantly improve the access to judicial institutions in Kosovo for internally displaced persons.

5.5. However, as regards the access to courts in Kosovo, IDPs constantly face the increasing challenges many of which stem from the fact that institutions in Kosovo now do not recognise the validity of documents issued by the institutions of the Republic of Serbia, and from the lack of communication between institutions in Kosovo and the ones in the territory of Serbia proper. This seriously hampers the access to justice, and thus requires immediate and adequate response to all the challenges by putting them on the agenda of the dialogue on technical issues between Pristina and Belgrade.

5.6. EULEX Mission in Kosovo and all international organizations and their partners are obliged to remain committed to ensuring the respect of international standards concerning prevention of discrimination, protection of internally displaced persons, and restitution of the property lost as the consequence of the conflicts.