



Organization for Security and Co-operation in Europe  
OSCE Mission in Kosovo

Background Report

The Impending Property Crisis in Kosovo

25 September 2000

**Executive Summary**

The system for the protection of property rights in Kosovo is approaching crisis point. The level of destruction, both of physical property and of records, the years of discriminatory legislation, and the mass movements of persons since 1989 has led to a near total collapse in the structures that previously existed for the protection of property rights.<sup>1</sup> The emerging property crisis is aggravated by the lack of an effective policy response by the international community. The key problem is the **lack of clarity**, both in the law and in the actions of UNMIK Police and KFOR, regarding the determination of property rights, which has led directly to a large number of illegal occupations of homes and illegal constructions across the province. Without a resolution of the property issue, the situation of internally displaced persons (IDPs) and refugees is aggravated since their homes are often occupied or destroyed.

The **Housing and Property Directorate (HPD)** is the central mechanism created by UNMIK to resolve *residential property disputes*. The HPD is, however, still **not fully functional**, with its offices only open in Pristina region. This has meant that to date most residential property disputes remain unresolved (as courts no longer have jurisdiction), making it difficult, if not impossible, for the authorities to address the issue of illegal occupation. The existing legal vacuum has led to haphazard and widely varying attempts to address the problems at the local level. Consequently, **property rights are massively violated** without any effective remedy.

The **key recommendation** put forth in this paper is to make the HPD fully operational across the territory by the end of 2000. This requires a significant increase in HDP's funding, the immediate promulgation of the Regulation on its Rules of Procedure, and in the interim, that the HPD should accept claims from across the province. The HPD must also ensure that minority interests are fairly represented. The laws on property, including those governing the HPD, must be clarified and publicised for all affected parties, including the judiciary and lawyers. Finally, it is imperative that central guidance be given to ensure that consistent policies are applied on property by law enforcement agencies in all municipalities.

**Introduction**

Property issues have been of concern to the international mission in Kosovo throughout the last six months. A functioning system of property rights is a precondition to a successful economic system: privatisation, for example, is impossible without it. As of late, however, international agencies realize that the emerging property crisis needs to be addressed as a **priority**. The murder

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<sup>1</sup> See Annex: Property in Kosovo – Historical Overview

on 11 September 2000 of the Kosovo Albanian director of the Planning Directorate of Pristina municipality underscored the imperative to deal speedily with the issue<sup>2</sup>.

Property issues directly affect key issues of the OSCE Mission in Kosovo's mandate. The deprivation of a person's right to their property is one of the most fundamental human rights violations,<sup>3</sup> in particular when it results in denial of access to shelter. As the protection of property rights is a key facet of a **judicial system**, the establishment of a functioning property rights structure is also critical to the establishment of the **rule of law**. The resolution of property ownership and occupancy rights is also fundamental to the return process and thus the protection of minorities.

The OSCE Mission in Kosovo (OMIK) has closely monitored progress in this area. As OSCE Missions in South-Eastern Europe share similar experiences with property-related problems, property was also identified as an issue for joint review and policy guidance. This paper summarises the key OMIK concerns and suggests ways of addressing the situation for the future.

### **I. Current Mechanism in Place to Protect Property Rights**

The complexities and legal controversies surrounding property persuaded UNMIK that major property issues should be dealt with by a quasi-judicial body operating outside the normal judicial system.<sup>4</sup> Therefore, UNMIK set up a Housing and Property Directorate (HPD), and a Housing and Property Claims Commission (HPCC).<sup>5</sup>

The HPD has been given **exclusive jurisdiction** over the most controversial residential property claims, including:

- claims for restitution of property lost through discrimination,
- claims for registration of informal property transactions, and
- claims by refugees and IDPs who have lost possession of their homes and who wish to return or transfer their property.

The HPCC's initial panel of judges consists of two internationals and one local member and has been designated to resolve property claims until such time as the Kosovo courts are able to deal with these cases. All other property disputes remain with the local courts. The HPD is also designed to provide overall direction on property matters for UNMIK, including the recommendation of policies and the provision of legal advice on housing and property law.

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<sup>2</sup> See Weekly Report 37/2000. The director had recently signed a destruction order for an illegally built hotel in Pristina, which came into effect several days before he was killed. The hotel, allegedly linked to the National Movement for the Liberation of Kosovo (LKCK) and the PDK, is only one of over 2000 illegal constructions in Pristina.

<sup>3</sup> See for example Art. 1 of Protocol 1, and Art. 6, 8 and 13 of the European Convention on Human Rights (ECHR).

<sup>4</sup> The applicable law in Kosovo is that which was in place on 22 March 1989 (UNMIK Reg. 1999/24), unless it has been superseded by an UNMIK Regulation. International human rights standards (including the ECHR) are also directly applicable and take precedence in the case of any conflict. According to the law in 1989, the municipal courts dealt with most property issues.

<sup>5</sup> On 15 November 1999, Regulation 1999/23 established the HPD/HPCC as a joint international and local body vested with the exclusive jurisdiction to settle residential property claims. It is managed and co-ordinated by the United Nations Centre for Human Settlements (Habitat) under the auspices of UNMIK. The HPD consists of an administrative and a judicial branch. As administrative branch, the "**Directorate**" supervises the temporary allocation of abandoned property for humanitarian purposes; mediates solutions to property claims in lieu of a formal judgement; acts as registrar of claims for the Commission; and advises international agencies on property matters.

The "**Commission**" is a quasi-judicial tribunal with exclusive jurisdiction over residential property claims which has the judicial power to resolve legal disputes and issue eviction orders and to issue final and binding decisions.

## **II. Major Problem Areas**

### **II.a Adjudication of Property Disputes**

Although the exclusive jurisdiction to determine key residential property disputes rests with the HPCC, this body is **barely functional**. In fact, it currently only has one office receiving claims in Pristina region, and even for these claims there is no indication as to when the legitimacy of these claims will be determined. The three members of the HPCC's first panel have been appointed. However, the HPCC is not able to begin hearing claims until a further Regulation is promulgated, which sets out the operating procedures of the Directorate and the Commission, including the principles of law and evidence that will be applied. The initial timelines planned for the HDP/HPCC to open offices in all five regions in Kosovo as well as in Belgrade and Podgorica,<sup>6</sup> were clearly too ambitious, given the immense challenges facing the HPD.<sup>7</sup>

As no effective mechanism currently exists to deal with the majority of residential property disputes, the local population has continued to lodge property complaints with the courts<sup>8</sup>. The reaction within the courts to property claims has largely been one of confusion since this is outside their jurisdiction as stipulated by Regulation 1999/23. However, from the complaints directed to the OSCE, it is apparent that most judges and lawyers are not clear as to the scope of their jurisdiction, or lack of it, to deal with property complaints in the continuing absence of the HPD. For a civil court system that is just beginning to function, attempting to deal with property cases - traditionally the most complex areas of law - is a major burden.

### **II.b Illegal Occupation and Evictions**

The lack of an effective mechanism to determine the key property disputes has several effects: It is very difficult for the authorities (particularly the municipalities) to address the very large number of illegal occupations of homes and land that have occurred in Kosovo. What is needed are clear, **fair and speedy procedures** to determine who is illegally occupying property, and a rapid and consistent action by the authorities (in the municipalities and law enforcement agencies) to carry out evictions. In addition, a fair procedure must be established to determine which of those evicted are to be provided with alternative accommodation. None of these currently exist.

Since the HDP is largely non-functional, the municipalities and security forces assumed the competency to 'determine' on an *ad hoc* basis what should be classified as illegal occupancy.<sup>9</sup> Most local authorities are, however, reluctant to make decisions about whether an occupation of a home is illegal. The main exception remains recent cases of forced evictions (in north Mitrovica) when it is usually clear that the new occupants have no right to occupy (and indeed rarely claim any right to do so) the property.

However, without clear orders from legal authorities to evict people, the law enforcement agencies (primarily KFOR and UNMIK Police) are **unable to carry out lawful evictions**. Again, there appears to be no general policy on how to address eviction issues: with local police drawing up

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<sup>6</sup> Claims registration facilities were also planned for Western European countries hosting large numbers of Kosovar refugees.

<sup>7</sup> For instance, the estimated number of claims to be resolved amounts to a total of minimum 62,000 and maximum 106,000. Some indication of the potential scope of the temporary allocations scheme is provided by the total number of abandoned properties in Kosovo, which exceeds 40,000 housing units. What is more, there may be as many as 60,000 verification requests over the next two years.

<sup>8</sup> One example is Gnjilane Municipal Court, where, as of 9 July 2000, 56 out of the 110 civil cases lodged were property cases.

<sup>9</sup> This can lead to mistakes, such as when KFOR legitimised illegal flat evictions in Dragas in 1999, by issuing 'permits' for the occupants to remain in the flats, even though the legal owners, who were Kosovo Serb or Slavic Muslims, had been expelled.

their own policies in this area, practice varies greatly.<sup>10</sup> The lack of clear and consistent policies is demonstrated most clearly by the continuing eviction of minorities (including Kosovo Albanians) from north Mitrovica. While the law enforcement authorities in July 2000 announced a co-ordinated policy for evicting recent occupants, this does not appear to have been widely or uniformly applied, and the evictions and illegal occupations have continued.

### II.c Illegal Construction

Illegal construction is one of the major problems reported across Kosovo. One aspect of illegal construction is building work being carried out on land that is illegally occupied. This is of major concern when abandoned homes belonging to ethnic minorities are burned down or otherwise destroyed, and illegal constructions on the site begin almost immediately. Such incidents appear to be rising, particularly in Prizren, indicating an **organised pattern**. An additional concern is the construction which, although carried out with the permission of, (or even by), the legal owner of the property, are not desirable on security grounds.<sup>11</sup>

Addressing such problems requires at least two steps: **Adequate legislation** to provide a fair, open and efficient system by which the municipality can determine what constructions are 'illegal'. And, once this has been achieved, there must be **effective action** by the authorities to deal with the illegal constructions (including an adequate system of inspection and action by the law enforcement authorities). A consistent Kosovo-wide approach to either of these steps does not currently exist: In the absence of the HPCC, it is impossible, generally, to determine ownership of property when this is disputed. Further, determining whether a construction is legal will, in the absence of any Kosovo-wide regulation, require a clear procedure set up by municipalities to determine how they will authorise and record new constructions.

To be lawful, this procedure must be set up by a **Municipal Instruction (MI)**. However, there is a **vast difference in approach**<sup>12</sup> across the municipalities on issuing MIs for the authorisation of constructions. Even these systems that have been set up by the MIs to allow the municipality to determine what is an illegal construction, **lack fairness**. International human rights standards guarantee the right to a fair hearing by an independent tribunal against governmental decisions affecting property rights. Despite this, no municipality has created a right of appeal against their decisions to demolish illegal constructions that complies with these standards. In addition, the overwhelming impression of inspection systems set up by MIs is of massive variations and inconsistencies between the municipalities.<sup>13</sup>

Finally, when the municipality determines that a construction is illegal and should be demolished, the **implementation** of the decision to demolish or prevent the construction is inconsistent. It is perhaps not surprising that, at the time of writing, demolition of illegal constructions has been minimal, and largely limited to kiosks.<sup>14</sup> The involvement of both KFOR and UNMIK Police in the demolition of illegal constructions is clearly critical, but, as with the municipalities, the

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<sup>10</sup> Some law enforcement authorities have decided that they will only evict people who have illegally occupied a property within the previous 48 hrs, some within 72 hrs. Others have no clear policy or do not carry out evictions at all.

<sup>11</sup> Examples include constructions begun by one ethnic group within an area occupied by another (e.g. a recent attempted construction by a Kosovo Albanian of a petrol station in a Kosovo Serb village near Gnjilane). Such unauthorised constructions also include commercial enterprises such as petrol stations and kiosks.

<sup>12</sup> Many municipalities, such as Gnjilane and Vitina, have issued detailed MIs setting up the procedures governing how they will authorise constructions. At the time of writing, other municipalities, including Mitrovica, have not issued any MIs at all.

<sup>13</sup> Some municipalities do not have any inspection system. In Prizren, where an Inspectorate does exist, the municipal administration has admitted that this system is both inadequate and inconsistent.

<sup>14</sup> Even in Prizren, where organised illegal constructions are a growing and acknowledged problem, the first planned demolitions, due on 25 July 2000, did not take place because KFOR did not participate.

policies of the law enforcement agencies on property issues appear to be made at a local level, rather than centrally.

#### **II.d Humanitarian Assistance/Allocation of Abandoned Property**

As Kosovo has officially moved from an emergency phase, responsibility for providing adequate shelter for all (including temporary assistance) should lie with UNMIK's second pillar (and therefore, generally, with the municipalities).<sup>15</sup> However, the need for accommodation within Kosovo remains critical, given the continuing presence of IDPs, of all ethnicities, within Kosovo and the return of large numbers of Kosovars from Western Europe and elsewhere.<sup>16</sup> A key concern is to ensure that the rights of owners of abandoned properties (particularly those owned by members of minorities) are respected and that occupancies do not upset the local ethnic balance.

Although the OMIK currently has no information that people are receiving grossly inadequate accommodation, the continued increase in the number of returnees, and the onset of winter, may very well change this picture. Again, the lack of any central guidance has led to vast inconsistencies in policy across the province. In some municipalities, such as Vitina, the authorities issued Temporary Occupation Permits (TOP), apparently without any guidance or clear authority to do so, while in others, such as Prizren, the municipality has suggested that a Municipal Commission should have the power to issue official permits to occupy empty property.

### **III. Key Recommendations**

#### **III.a Housing and Property Directorate**

The idea behind the creation of the HPD, particularly the Claims Commission, was fundamentally correct, in that the key issue of property should be determined by a quasi-judicial body more remote than the courts are from the pressures of Kosovo society. However, the failure to ensure that the HPD functions effectively, a year after the Regulation that removed court jurisdiction over many property cases, is an **omission of the first magnitude**. Until the international mission is able to ensure that the HPD functions effectively, the international community remains responsible for this serious breach of human rights, including the right of peaceful enjoyment of one's property, the right to a home and the right to an independent tribunal to determine civil disputes within a reasonable time.

By promising the HPD, and failing to deliver on its promises, the international community has created **false expectations** amongst the Kosovo population. The longer the HPD fails to operate, the greater the ensuing confusion and the less confidence the population will have in the ability of the appointed authorities to resolve the property crisis. It must be ensured that the HPD, and in particular the property Claims Commission, operates in all areas of Kosovo **no later than by the end of 2000**. The current situation, whereby only part of the population in Kosovo is able to have their property claims assessed, is unfair and discriminatory. The following commitments must therefore be made.

- i. The international community must provide the **necessary funding** so that the HPD is able to become fully and effectively operational throughout all of Kosovo.<sup>17</sup> The funding

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<sup>15</sup> This is illustrated by the transfer of the Temporary Community Shelters from UNHCR's responsibility to Pillar II.

<sup>16</sup> The International Organisation for Migration (IOM) assisted 142,319 Kosovars to return to Kosovo from July 1999 to 31 July 2000. UNHCR monitored the forced return of 5643 Kosovars through Pristina airport, in the period from February to August 2000.

<sup>17</sup> The lack of resources has significantly affected the HPD's ability to achieve the objectives set out in Regulation 1999/23. For the year 2001, USD 10,406 million needs to be raised to cover the operational costs of HPD and the HPD/HPCC. Only Canada, Germany and Finland have so far contributed to the HPD's finances, which otherwise come directly from the Kosovo

attributed to the HPD/HPCC through the Kosovo Consolidated Budget should be evaluated and reconsidered in accordance with the present property situation. This is a key priority area. Donor countries should be strongly encouraged to actively participate in providing financial support to the HPD's projected activities. If funding permits, HPD must commit itself to have **all five regional offices open** and able to accept claims on behalf of the Claims Commission by 31 December 2000.

- ii. The HPD/HPCC will not be able to resolve property disputes until the **adoption** of the 'Regulation on the Principles of Law Regularising Residential Property Rights and the Rules of Procedure and Evidence of the HPD and the HPCC'. UNMIK should ensure the existing draft regulation is adopted immediately.
- iii. The **staffing of the HPD must be re-examined** according to current needs, building upon local expertise whilst maintaining international supervision.<sup>18</sup> In order to ensure that housing and property rights are fairly and impartially restored, the salaries and working conditions of the HPD's local staff must be improved.<sup>19</sup> In addition, the possibility of the temporary secondments of international staff to the HPD must be considered to deal with the critical staffing levels currently faced by the Directorate.
- iv. Any emergency measures must ensure that **minority interests are fairly represented** within the HPD. The composition of the HPD should be able to reflect the multi-ethnic nature of Kosovo. Considering the sensitive and controversial nature of the HPD/HPCC's work, **active support from UNMIK Police and KFOR** is needed in order to provide sufficient security to local staff.

However, until the HPD is fully operational in all five regions, its functions must be **reconsidered and adapted to the present circumstances**. Possible solutions to the key areas:

- v. It is unacceptable that access to the resolution of property claims should be limited to certain regions. In the interim, the **HPD offices** that are open **should accept claims from across Kosovo**. Allowing everyone to issue claims will, at least, diffuse some of the growing tension.
- vi. The acceptance of, and judgment on, residential property rights should **not revert to the courts** unless it appears that the HPD will never be fully operational.

### **III.b UNMIK Central Authority**

The **inconsistent approaches** to property issues by the competent authorities, in particular the municipalities and law enforcement agencies, stems from a **lack of central direction**.

- i. The UNMIK Central Authority must **appoint a key property person** to provide policy guidance and to draft regulations and directives governing, in particular, the authorisation of constructions, the demolition of illegal constructions and the municipal Inspectorate. The policies that are drawn up at central level must be followed by every municipality.
- ii. UNMIK Police and KFOR should also issue clear **central guidance** on how they will deal with property matters, including evictions, property demolition and criminal attacks on

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Consolidated Budget. However, even if the HPD was fully financed, its current plan would still leave two critical regions – Prizren and Pec - without any coverage until mid-2001.

<sup>18</sup> In total, HPD anticipates recruiting up to 75 internationals and over 300 local employees. As of 11 August 2000, the HPD was only employing 6 internationals, and approximately 40 national staff.

<sup>19</sup> The work of the HPD/HPCC relies heavily on the ability to employ qualified and competent staff who will ensure the integrity and confidentiality of its activities. Recruitment of suitable local experts under the Kosovo Consolidated Budget salary scales proves to be extremely difficult.

property which should be implemented by local forces. All legal decisions regarding property, including decisions to evict, must be **speedily and effectively implemented** by the authorities. Individuals, and other legal bodies, should have an effective remedy available against authorities that fail to implement such decisions.

- ii. All the authorities should share information and **co-ordinate responses** on property issues on a systematic basis. In order to accelerate the re-establishment of the **cadastre system** in Kosovo and hence the re-introduction of a land and property management system, it is of paramount importance to support UN in these efforts.<sup>20</sup>

### III.c OMIK

OMIK should continue playing a key role in monitoring the implementation of property legislation, and the activities of the HPD, municipal authorities and law enforcement agencies.

- i. In addition, OMIK should continue to work with all those agencies involved to ensure that effective measures are in place to **facilitate full minority access** to the HPD and the HPCC. As a priority, the OSCE should urge its member states that adequate funding be given to the HPD to ensure it can become fully functional by the end of the year.
- ii. OMIK should assist in the **dissemination of information** to the legal community (including the judiciary and prosecutors) about property legislation, and the various competencies of the HPD/HPCC and the courts in property matters.
- iii. OMIK will support any **public awareness campaign** across Kosovo organised by the HPD to explain the procedures/mechanisms available for the protection of property rights.
- iv. There is a need for organising a **property conference**, which OSCE should contribute to on the basis of its regional experience.

### III.d Law & Courts

- i. The **current applicable law** on property, at both central and regional, must be **compiled and clarified** by UNMIK as a matter of urgency.
- ii. The Administrative Department of Justice must issue a **circular to judges clearly setting out their role and jurisdiction**, as opposed to that of the HPD, including which courts will deal with which property issues (such as socially-owned), and which property cases should be treated as a priority.
- iii. The judiciary and the legal community should be **trained in the jurisdiction of the HPD and the local courts**, including the applicability of human rights standards to property cases.
- iv. All municipal instructions and other official documents regarding property should make it clear that the **right to a fair hearing** is included in decisions affecting property rights, including appeals.

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<sup>20</sup> See Background Paper by the UN Centre for Human Settlements (Habitat), *"The Kosovo Cadastre Support Programme"*.

## **Annex: Property in Kosovo – Historical Overview**

The lack of clarity regarding the ownership of property in Kosovo is compounded by the numerous incidents of mass confiscation of property that has taken place this century, whether for ethnic reasons, or for political and social reasons. This in itself would have created sufficient problems that would have taken years to resolve, as in other post-socialist countries. However, the situation in Kosovo, since 1989, has left a legacy of property problems.

The property system began to collapse as of 1989, when the Belgrade regime instituted increasingly discriminatory property laws on the majority Albanian population. As a result, significant numbers of Albanians lost their occupancy rights to socially owned properties which were reallocated to Kosovo Serbs or Croatian Serb refugees. As a consequence, most property transactions amongst the Albanian community during this time were carried out informally (i.e. without legal records) which led to the property and cadastral records, the key to any functioning property system, losing most of their value as accurate documentation.

The property system was further damaged as a consequence of events after 1998. The destruction and removal by the FRY authorities of many of the property records have made proving ownership of property an increasingly difficult task. The war, followed by the NATO bombing, led to a substantial destruction of property, and in 1999, the mass evacuation of the Albanian population. Since the arrival of UNMIK and KFOR, the situation has further deteriorated with the flight of large numbers of the ethnic minorities (Kosovo Serbs, Roma,<sup>21</sup> Slavic Muslims) leaving behind abandoned property. In many cases this property was then destroyed or occupied.<sup>22</sup>

With the lack of official municipal authorities in Kosovo following the departure of the FRY authorities in 1999, the emergence of parallel ‘governments’ further complicated the situation. These self-styled authorities, which were largely tolerated by the international community until the creation of the JIAS structure in January 2000, often set up their own ‘Property Commissions’ which in instances carried out further (illegal) evictions and installed illegal occupiers with the support of illegal ‘police’ forces.

Kosovo has therefore been left with much destroyed and abandoned property. Many properties have multiple claimants to ownership, and proving ownership of a property is exceptionally difficult. Given the legal and institutional vacuum, it is hardly surprising that illegal occupations and constructions are widespread. The problems are further compounded by the wave of voluntary and involuntary returns of Kosovars to the province, since the arrival of UNMIK and KFOR.

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<sup>21</sup> Including Ashkali and Egyptians.

<sup>22</sup> In some cases, Kosovo Albanians alleged that departing minorities had destroyed the property themselves, to prevent anyone from moving in. The evidence, however, suggests that while there were examples of damage or destruction by departing minorities, such cases were far less common than destruction by other, generally unidentified, individuals.