



Organization for Security and Co-operation in Europe
MISSION IN KOSOVO

**Challenges in the Resolution of Conflict-Related
Property Claims in Kosovo**

June, 2011

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
1. INTRODUCTION	3
2. ESTABLISHMENT OF A MASS-CLAIM MECHANISM	4
2.1. First Response: The Housing and Property Directorate	4
2.2. Second Measure: Kosovo Property Agency	6
3. MAIN ISSUES IN THE RESOLUTION OF CONFLICT-RELATED PROPERTY CLAIMS	8
3.1. Interaction with the courts	9
3.2. Problems linked to competing A and C category claims	9
3.3. Lack of effective compensation mechanism related to the apartments where occupancy rights are involved	10
3.4. Problems with the re-occupation of properties	11
3.5. Issues related to erroneo us physical notification of properties	12
3.6. Registration of confirmed property titles by successful claimants	12
3.7. Delays in the appointment of the Supreme Court’s appellate panel	12
3.8. Implementation of the voluntary rental scheme	13
4. CONCLUSION	14
5. RECOMMENDATIONS	15

EXECUTIVE SUMMARY

This report examines the mass-claim mechanism established in Kosovo - as an exception to the courts jurisdiction - to resolve specific categories of conflict-related property claims.

The Housing and Property Directorate (HPD), established and led by the United Nations Interim Administration Mission in Kosovo (UNMIK), has been succeeded by the Kosovo Property Agency (KPA). At present, the KPA is the only institution mandated to deal with conflict-related property claims and there is no existing or planned alternative to the KPA that could effectively resolve these claims.

The success of the KPA in providing a remedy for conflict-related property claims, which affect thousands of displaced persons, is essential to relieving tensions in Kosovo. This is especially important in order to protect the interests of Kosovo's non-Albanian communities as they constitute the majority of claimants.

Through its monitoring activities and field presence, the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) has assessed the challenges that KPA faces in the restitution of property that hamper the returns process, economic development and inter-community relations. These are related to issues that arise between HPD/KPA and the courts, problems linked to multiple claims filed over the same property, illegal re-occupation of properties, inaccurate physical notification of properties and obstacles to the registration of property titles. Delays in appointing all members of the Supreme Court's appellate panel and in the realization of the rental scheme for abandoned and vacant properties constitute further challenges to the full protection of property rights.

It is of utmost importance that the KPA continues with the implementation of its mandate as it plays an important role in the reconciliation process and the protection of property rights of those affected by the conflict. The main responsibility in ensuring the effective work of the KPA lies with Kosovo institutions. Furthermore, the support of the international donor community is necessary for the prompt restoration of property rights.

1. INTRODUCTION

Almost eleven years after the end of the conflict and despite the resolution of some 29,160 residential property cases, the Kosovo property crisis is far from being resolved. A large number of lands and buildings, mainly belonging to displaced persons, continue to be illegally occupied. The lack of restitution of property for those affected by the conflict hinders the returns process and adversely affects the human rights of all Kosovo communities, particularly Kosovo Serbs and other non-Albanian communities.

The resolution of conflict-related property claims is a necessary process which greatly impacts the stability of a post-conflict society. Indeed, the restitution of private properties that were lost as a consequence of the conflict is necessary for the protection of human rights, particularly the right to peaceful enjoyment of possessions¹ and the right to home.²

Firstly, this report describes the establishment of the mass-claims mechanism which was created to address property disputes deriving from the conflict. It also describes institutional and normative changes from the introduction of the initial Housing Property Directorate (HPD), established and led by the United Nations Interim Administration Mission in Kosovo (UNMIK), to the present Kosovo Property Agency (KPA).

Secondly, the report highlights the main challenges in the effective resolution of conflict-related property claims and the physical restitution of property. In particular, the report assesses the obstacles to property restitution that hinder the timely resolution of property claims. Some of the challenges identified concern misapplications of the normative framework which result in competence disputes between the KPA and the regular courts, as well as problems linked to competing discrimination and compensation claims.

Furthermore, the report identifies problems in processing claims and following the execution of final decisions, such as inaccurate physical notification of properties³, illegal re-occupation of properties and obstacles to the registration of property titles by successful claimants.

Lastly, the report considers how delays in appointing all members of the Supreme Court's appellate panel and the realization of the rental scheme for abandoned and vacant properties constitute obstacles to the effective implementation of the conflict-related property restitution process.

The report concludes with a number of recommendations addressed to relevant stakeholders calling for their greater involvement in the restoration of property to those who have been affected by the conflict. Providing a remedy to this continuing

¹ See Article 1, Protocol 1 to the European Convention of Human Rights and Fundamental Freedoms (ECHR).

² ECHR, Article 8.

³ Physical notification of properties consists of placing a signpost on a certain property indicating that there is a claim over the property in question.

human rights violation will help lay the basis for co-existence between members of different communities and restore assets to vulnerable individuals who need resources to rebuild their lives.

2. ESTABLISHMENT OF A MASS-CLAIM MECHANISM

2.1. First Response: The Housing and Property Directorate

In 1999, UNMIK was given the responsibility under UN Security Council Resolution 1244 to assure “the safe and unimpeded return of all refugees and displaced persons to their homes”.⁴ In line with this obligation and in view of the large number of persons whose property rights had been affected by the conflict and/or the discriminatory property legislation enacted between 1989 and 1999, UNMIK established a mechanism to resolve property disputes regarding the loss of residential property caused by the conflict and such discriminatory legislation. In establishing this mechanism, UNMIK assumed jurisdiction over certain types of property cases from Kosovo’s courts.

In November 1999, the HPD, responsible for the administrative management of claims, and its independent organ, the Housing and Property Claims Commission (HPCC), responsible to settle private non-commercial disputes concerning residential property, were established.⁵ Both bodies were established with the view to perform these duties until such a time as the local governmental institutions or courts would become able to carry out the functions entrusted to them.⁶

The HPCC did not have exclusive jurisdiction to decide on all property related claims. It was granted exclusive jurisdiction over the three types of residential property claims:⁷

- **A category claims (discrimination):** claims by individuals whose ownership, possession, or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent.⁸ In these cases, the HPCC had to determine whether claimants had valid occupancy or ownership rights and if those rights were lost as a result of discrimination.

⁴ UN Security Council Resolution 1244, S/RES/1244, 10 June 1999.

⁵ UNMIK Regulation No. 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, 15 November 1999 (Regulation No. 1999/23).

⁶ Ibid, Articles 1.1. and 2.1.

⁷ Section 1.2.(a), Regulation No. 1999/23.

⁸ This category of claims provided a remedy for persons who lost occupancy rights to socially owned apartments between 23 March 1989 and 24 March 1999 due to the discriminatory measures invoked by authorities during that period. As a result, many Kosovo Albanians were dismissed from their positions and lost occupancy rights over their properties which were linked to their actual employment. Consequently, it was primarily Kosovo Serb occupancy right holders who were in a position to convert their occupancy rights into ownership rights by purchasing the apartment from the allocation right holder under the privatization process enacted at that time. For further details see *the Final Report 2007*, Housing and Property Claims Commission, Chapter 2, pp. 18–20. <http://www.pca-cpa.org/upload/files/HPCCFinalReport.pdf> (accessed on 15 March, 2011).

- **B category claims (informal transactions):** claims by individuals who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989.⁹ Notably, the HPCC had to determine whether the claimant had acquired an ownership right over a property through an informal transaction. In successful cases it ordered the registration of the ownership right in the appropriate cadastral record.
- **C category claims (displacement):** claims by individuals who were the owners, possessors or occupancy right holders of residential property prior to 24 March 1999, who do not enjoy possession of the property, and where the property has not voluntarily been transferred. ‘C’ claims were numerically dominant (approximately 93%) and were submitted by displaced persons, mostly belonging to the Kosovo Serb community.¹⁰ In most of the cases, the HPCC limited its decision to determining who had the possession over the claimed property.¹¹

Despite various difficulties, the mechanism largely fulfilled its mandate, by implementing 99.7% of the decisions concerning residential property claims.¹² In late 2010, seven decisions still remain to be implemented.¹³

In spite of such a high implementation rate by the HPD, the actual repossession of property by claimants who are displaced and their return to Kosovo remains largely un-realized. This is mostly due to high number of claimants who perceived that they were not yet able to return due to the security or other reasons and therefore never took the physical repossession of their properties. Further, this is due to limited co-operation between the return-mandated agencies and officials and the HPD, which has hampered the effective resolution of issues related to the actual repossession of properties and the *de facto* return of displaced persons to their homes. In almost 11,000 claims, the HPCC found that the residential objects were destroyed.¹⁴

⁹ This category of claims aimed to establish certainty of title to those who entered into an informal transaction in spite of the 1991 Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of the Republic of Serbia, 22/91, 18 April 1991) that restricted those sales among parties which aimed, among others, at ‘altering the national structure of the population’ (see Article 3 of the Law on Changes and Supplements on the Limitation of Real Estate Transactions) . This mostly concerned sales from Kosovo Serbs to Kosovo Albanians. Any person who acquired ownership of a property through such an informal transaction was entitled to register his or her property in the public record pursuant to an order of the HPCC. Ibid., pp. 20–21.

¹⁰ This category of claims provided a remedy for those who had property rights to residential property on 24 March 1999, and who fled their homes and could not return because they had become illegally occupied. Ibid., pp. 21–22.

¹¹ An exception to this was in relation to cases where there were competing valid category A and C claims filed over the same property. This is further examined in the Section 3.2. of the report.

¹² The HPD was authorized to implement the HPCC decisions through issuing and executing eviction orders, ensuring repossession of the property by handing the keys to the owner or placing the claimed property under administration, and closing the claim file which was requested by the claimants who have found other solutions and no longer required the HPD’s assistance. Ibid., Chapter 8, pp. 66–73. <http://www.pca-cpa.org/upload/files/HPCCFinalReport.pdf> (accessed on 15 March, 2010).

¹³ According to the KPA representative consulted in November 2010, the decisions have not been enforced due to security reasons as the residential properties are located in northern Mitrovicë/ Mitrovica.

¹⁴ Ibid., Chapter 10, p. 79. <http://www.pca-cpa.org/upload/files/HPCCFinalReport.pdf> (accessed on 15 March, 2011).

However, it did not have jurisdiction to award compensation for damage to or destruction of property. Subsequently, no adequate remedy to the owners of these objects has been provided. Such cases demonstrate the absence of a co-ordinated approach of all stakeholders in the return process, in particular at the legislative and policy level.

2.2. Second Measure: Kosovo Property Agency

In 2005, the United Nations Secretary-General appointed Ambassador Kai Eide, Permanent Representative of Norway to the North Atlantic Treaty Organization, as his Special Envoy to carry out a comprehensive review of the situation in Kosovo.¹⁵ The Special Envoy issued a report identifying the illegal occupation of agricultural and commercial property as one of the major factors hindering returns in Kosovo, and calling for an urgent action to address this issue. The UNMIK responded to the specific findings of the report in March 2006 by establishing the KPA. The KPA's mandate covered claims involving agricultural and commercial properties, in addition to claims involving residential properties previously falling under the HPD.

The KPA retained the organizational structure of the HPD. It is formed of an Executive Secretariat, a Supervisory Board, and the Kosovo Property Claims Commission (KPCC).¹⁶ Its primary function at the time of its establishment was to receive, register and assist courts in resolving ownership claims as well as claims involving property use rights over immovable private property, including agricultural and commercial property.¹⁷ In October 2006, UNMIK substantially extended KPA's power to receive, register and resolve property claims under its jurisdiction.¹⁸ This meant that the KPCC issued decisions which were subject to review only by the Supreme Court of Kosovo and not subject to the jurisdiction of the regular courts. As of 31 December 2008, the KPA has operated according to the law amending UNMIK Regulation 2006/50.¹⁹

The KPA also retained the field presence of the HPD, comprised of field offices throughout Kosovo, as well as in Podgorica, Skopje, Belgrade, Kragujevac and Niš. These offices have been designed to function as the primary focal point for the vast majority of claimants to deliver additional documentation and to collect their adjudicated decisions. As of July 2008, the Law 3/L-079 amending UNMIK Regulation 2006/50 on the resolution of claims relating to private immovable property has been applied. The new law regulating the mandate of KPA and replacing the authority of the UN Special Representative of the Secretary-General with that of the European Union Special Representative/International Civilian Representative was not accepted by the Serbian government, and the KPA offices in Belgrade, Kragujevac

¹⁵ See United Nations Security Council, *A Comprehensive Review of the Situation in Kosovo*, S/2005/635, 7 October 2005.. <http://www.unosek.org/docref/KaiEidereport.pdf>, accessed on 11 April 2011.

¹⁶ UNMIK Regulation No. 2006/50 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, 16 October 2006 (Regulation No. 2006/50).

¹⁷ Section 2 of the Regulation No. 2006/10.

¹⁸ Section 3 of the Regulation No. 2006/50.

¹⁹ Law No. 03/L-079 on amending the UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, 15 June 2008 (Law No. 03/L-079).

and Niš were subsequently closed. The closure of these KPA offices had an adverse impact on a large number of claimants residing in their areas. In April 2010, following negotiations between representatives of the KPA and the United Nations High Commissioner for Refugees (UNHCR) Prishtinë/Priština-based office²⁰ on the one side, and the UNHCR Belgrade-based office and the Serbian government on the other side, it was agreed that UNHCR property offices could open to undertake the functions previously carried out by the KPA offices in those cities.²¹

The KPA has the mandate to resolve claims relating to private immovable property, without the need for such claims to be referred to the courts with territorial (*ratione loci*) and subject-matter (*ratione materiae*) jurisdiction over them.²² Consequently, the KPA has jurisdiction to resolve all claims directly related to or resulting from the conflict that occurred between 27 February 1998 and 20 June 1999 (*ratione temporis*)²³ In this regard the KPA has registered more than 40,000 claims,²⁴ of which approximately 90 percent were received through the KPA offices located in Belgrade, Kragujevac and Niš.²⁵ Notably, the deadline for submitting claims expired on 3 December 2007. Any property claim filed after December 2007 now falls under the jurisdiction of courts in Kosovo.

The KPA is also mandated to implement the decisions of the HPCC which were pending enforcement in March 2006²⁶ and to take over the management of the HPD's administered properties portfolio.²⁷

The KPA has the mandate to administer abandoned residential properties, most of which belong to displaced Kosovo Serbs. Abandoned housing means "any property which the owner or lawful possessor and the members of his/her family household

²⁰ A Memorandum of Understanding was signed between the UNHCR and the KPA on 19 August 2009.

²¹ The UNHCR has established three property offices in Belgrade, Kragujevac and Niš to provide assistance to any person who has submitted a claim to the KPA.

²² Note, however, that there is a right of appeal against a decision of the KPCC to the Supreme Court of Kosovo Appeal Panel for the Kosovo Property Agency Related Matters. See Section 12 of Regulation No. 2006/50.

²³ Section 3 of Regulation No. 2006/50 prescribed KPA mandate over: a) ownership claims with respect to private immovable property, including agricultural and commercial property; and b) claims involving property use rights in respect of immovable property; including agricultural and commercial property.

²⁴ The total number of claims received fluctuated slightly over time. This was due to technical corrections made during the processing of claims, which required that claims be split or consolidated. For example, where one claimant filed multiple claims over the same property, these claims were processed together and treated as one claim. Where a claimant filed one claim which covered multiple properties, the claim had to be split into several claims, and a new claims file was created for each property.

²⁵ Data provided in the Kosovo Property Agency, *Annual Report 2009*, Chapter 6, pp. 22–23.

²⁶ At the time of reporting, there were seven pending decisions, all to be implemented in northern Mitrovicë/Mitrovica. The delay was caused due to the lack of police support in executing evictions of illegal occupants in the northern Mitrovicë/Mitrovica up to June 2008. The Deputy Executive Director of KPA on 10 November 2009, stated that the implementation of decisions that were blocked at the end of 2007, as well as the implementation of the KPA rental scheme, had begun to be implemented with the help of Kosovo police in northern Mitrovicë/Mitrovica.

²⁷ The KPA assumed responsibility for administration of abandoned residential property from the HPD. There are some 3,513 properties under KPA's administration. Out of this number, 721 were placed under administration upon claimants' requests, and the remaining properties placed under administration *ex officio*.

have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied.”²⁸ The KPA can place such a property under administration upon the request of the property right holder by agreement of the parties in settlement of a claim. Alternatively, where no request has been submitted following the eviction of the current occupant, KPA can place the property under administration if the property right holder fails to repossess the property on being notified of the execution of the eviction.²⁹

In April 2006, the KPA launched a voluntary rental scheme for the properties under its administration.³⁰ Under this scheme, each property placed under administration is eligible for renting upon the claimant’s consent and the KPA’s assessment that it is in fact suitable to be rented. The occupants are obliged to pay a monthly rent to the successful claimant through the KPA. The aim of the scheme is to provide for legal and physical protection of the properties placed under the KPA administration and to secure incomes for the successful claimants and displaced property right holders. In addition, the scheme is used to provide alternatives for local authorities in meeting the growing social housing demands in Kosovo. This gives the displaced property right holders time to consider their options so that they are not pressed to sell their properties or risk their properties being damaged or destroyed. However, there are a number of concerns related to the implementation of the scheme, as explained in the next section.

The KPA’s mandate represents a solid basis for ensuring sustainable solutions regarding the recovery of private immovable properties. However, the effective implementation of this mandate remains challenged by various factors, as further examined in this report.

3. MAIN ISSUES IN THE RESOLUTION OF CONFLICT-RELATED PROPERTY CLAIMS

There are a number of challenges that the KPA faces in implementing its mandate. This section outlines not only the main challenges that the KPA still faces, but also other challenges that hamper the effective and timely resolution of property-related claims, as well as the physical restitution of property lost as a consequence of the conflict.

Noteworthy, KPA has faced a constant funding crisis since its establishment in March 2006, which constitutes an underlying challenge. The lack of financial means has a negative impact on organizational planning and, consequently, the timely resolution of property claims. To illustrate, in 2009, 26% of the KPA budget was provided from the Kosovo consolidated budget, whereas other funds came from international

²⁸ Section 1 of the UNMIK Regulation No. 2000/60 on the Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission, 31 October 2000 (Regulation No. 2000/60)

²⁹ Section 23 of Administrative Direction No. 2007/5 on Implementing UNMIK Regulation No. 2006/50 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property, 1 June 2007.

³⁰ The scheme was established by Section 1.1(b) of the Regulation No. 1999/23, but it became fully functional only in 2006. For further information see the Kosovo Property Agency, *Annual Report 2009*, Chapter 6, pp. 22–23.

donors.³¹ In 2010, Kosovo institutions increased the budget allocation to cover 45% of the entire KPA budget while international donors made the remaining contributions.³² The OSCE continues to encourage the provision of financial support both from the Kosovo consolidated budget, as well as by international donors, as any scaling down of the budget of the KPA would stall the prompt implementation of the HPCC/KPCC decisions and negatively impact on the protection of property rights in Kosovo.

3.1. Interaction with the courts

The mandate of the KPA, as that of the HPD previously, constitutes an exception to the regular jurisdiction of the courts in Kosovo. Nevertheless, the OSCE has observed cases where the regular courts initiated procedures for cases that were clearly within the HPD/KPA's responsibility.³³ In these cases, conflicting judgments would leave parties without true resolution of their claims, which is against fair trial and the rule of law principles.

In addition, the KPA has initiated the transfer of particular cases to the regular courts. These cases pertain to decided claims where the dismissed party is referred to the court to determine the issue of discrimination, as well as in cases where the HPCC declared its incompetence to rule on them.³⁴ These cases mainly involved claims for compensation of damages or disputed purchase prices or were subject to secondary requests filed together with the initial claim, which fell outside of the HPCC jurisdiction.

3.2. Problems linked to competing A and C category claims

As mentioned in section 2, the HPCC had the exclusive jurisdiction to decide on three categories of claims: A category claims (discrimination), B category claims (informal transactions) and C category claims (displacement and occupation). In certain cases there are two competing claims over the same apartment with occupancy rights involved. This happened when a person claimed to have lost his/her apartment due to a discriminatory decision (A category discrimination claimant) and the person who was allocated the same apartment during the 1990s claimed to have lost the possession of the same apartment as a result of forced displacement (C category displacement claimant). These cases presented highly complex scenarios that can be broken down as follows:

- **Dismissed A category discrimination claims:** In 709³⁵ cases the A category claim has been dismissed and the competing C category claimant has been granted the lawful possession.
- **Successful A category discrimination claimant is awarded a restoration of the property right (restitution in kind):** In 258 cases, involving 143

³¹ See Kosovo Property Agency, *Annual Report 2009*, Chapter 8, pp. 26–27.

³² The 2010 KPA budget was 3.24 million EUR. Source: Director of the KPA, written correspondence, 4 March 2011.

³³ For more details see OSCE Report *Conflicting Jurisdiction in Property Dispute*, Monthly Report – April 2009. <http://www.osce.org/files/documents/3/6/37717.pdf> (accessed 15 March, 2011).

³⁴ Section 22.1. of the Regulation No. 2000/60.

³⁵ Source: Director of the KPA, written correspondence, 13 April 2011.

properties,³⁶ the A category claimant was granted the lawful possession and the competing C category claimant is awarded pecuniary compensation.

- **Dismissed A category discrimination claimant is referred to the regular court:** The referral of these cases raises concerns from a due process perspective. Namely, the HPCC decision on the claim does not constitute a determination on title but rather a determination on lawful possession. Thus, if the title is later successfully challenged in the court and restitution in kind is awarded, the C category claimant will lose the possession of the residence. The court's decision in this case has in practice reversed the decision of the HPCC by granting the possession of the property in question to the dismissed A category claimant. In 263 cases,³⁷ the HPCC referred the dismissed A category claimant to seek the relief with the local courts.

The problematic issue in this last category of decisions is that the HPCC referred the dismissed discrimination claimant to the regular court instead of deciding on these claims as the final and ultimate authority as envisaged in the legal framework. The referral of these claimants to regular courts creates the potential for dual proceedings by two different institutions on the same matter which may result in different outcomes. Notably, conflicting judgments leave parties without a true resolution of their claims, which is against fair trial and rule of law principles.

3.3. Lack of effective compensation mechanism related to the apartments where occupancy rights are involved

The provision of compensation through the KPA to a claimant who has been awarded pecuniary compensation for the loss of his/her apartment where the occupancy right are involved is hampered by the lack of an established mechanism to do so.³⁸

The KPA designed the proposal for the implementation of the compensation scheme in 2007. In 2008 and 2009, the KPA addressed the issue of compensation with the central institutions during consultations on a draft law regulating the sale of apartments with occupancy rights. The institutions saw no need for the compensation scheme to be included in the draft law as "this would undoubtedly delay its approval as the payment of compensation to those dispossessed of an apartment would require a substantial budget increase".³⁹ In 2010, the KPA submitted the proposal for the compensation scheme to the central institutions requesting them to enact the necessary legislation in order to implement the scheme. Nevertheless, in spite of the KPA's continuous efforts, no legislation has been drafted or adopted to date.

The OSCE is concerned that the rights of the C category displacement claimants who are entitled to compensation are adversely affected in the absence of this mechanism.⁴⁰ Therefore, it is crucial that the establishment of an effective mechanism

³⁶ Ibid.

³⁷ Ibid.

³⁸ *Supra* note 8.

³⁹ See Kosovo Property Agency, *Annual Report 2009*, Chapter 5, p. 21.

⁴⁰ During consultations on a draft law regulating the sale of apartments with occupancy rights, the OSCE raised its concern with the Assembly of Kosovo with regard to the fact that the draft law does not clearly take into account the decisions concerning occupancy rights and title determinations made by the former HPCC and the current proceedings by the KPCC.

for delivering compensation remains high on the political agenda, so as to ensure the goal of restitution, and a means to realize it.

3.4. Problems with the re-occupation of properties

Illegal re-occupation of properties, following the KPA-performed eviction of illegal occupants, has been an ongoing problem throughout the implementation of the property repossession process.

Although Kosovo police regularly assist the KPA in eviction procedures, there are cases where the police fail to undertake all legal actions against those illegal occupants who entered residential properties following the initial eviction conducted by the KPA. In this regard, the OSCE monitored cases where the police, instead of performing the necessary action of removing the illegal occupant from the re-occupied property following the eviction carried out by the KPA,⁴¹ referred the cases to the public prosecutor's office for review of the merits of the claim – that is, the property right already determined to reside with the claimant by the HPCC's decision – despite the fact that the HPCC's final decisions are binding and enforceable, and as such cannot be reviewed by any other judicial or administrative body in Kosovo. In order to remedy this situation, the UNMIK office of legal affairs issued a legal interpretation stating that the police are obliged to *ex officio* remove the illegal occupant without referring the case to the public prosecutor for review of the merits of the claim, but instead shall only refer such cases to the public prosecutor for the prosecution of the illegal occupant for the criminal offenses of unlawful occupation of real property and removing or damaging of official stamps or marks.⁴² In other cases, the police referred incorrectly to ongoing court proceedings as a justification and urged the successful claimants to await the outcome of these proceedings or to file a new claim with the KPA. In yet other cases the same properties were re-occupied multiple times despite the police undertaking all necessary actions.

Notably, while there is no systematic data collection, based on the OSCE field monitoring, there appears to be an overall decline in the number of re-occupation cases, in particular following the improved co-operation between Kosovo police and the KPA which resulted in signing of a Memorandum of Understanding (MOU) on 19 October 2009. The MOU outlines the obligations and procedures with regard to execution of evictions, and was signed following a long term advocacy campaign by the OSCE. As a result, the long-halted eviction process in northern Mitrovicë/Mitrovica resumed in September 2009.⁴³

⁴¹ Section 13.6. of the Regulation 2000/60 provides that “any person who, without lawful excuse, enters a property by breaking a seal may be subject to removal from the property by the law enforcement authorities”.

⁴² UNMIK Office of Legal Affairs, *Standard Operating Procedures regarding Usurpations, Evictions and Re-Usurpation of Property/Clarification* on Section 13.6. of the UNMIK Regulation No. 2000/60, 13 February 2007. Articles 259 and 322 of the Provisional Criminal Code of Kosovo, as promulgated by UNMIK Regulation 2003/25, 6 July 2003.

⁴³ As a result of the MOU, since November 2009, five evictions were enforced in northern Mitrovica/Mitrovicë.

3.5. Issues related to erroneous physical notification of properties

Physical notification of properties – that is, identifying the location of the claimed property – is crucial for processing any claim. When processing claims, the KPA relies to a large extent on the information gathered from cadastral records which are managed by the Kosovo Cadastral Agency (KCA).⁴⁴ This information is needed to locate the claimed properties and also to verify the documents submitted by the claimants. However, the KPA has faced difficulties in accessing this data due to the refusal of the KCA to allow free and full access of the KPA officials to these records. Only in July 2009, following a MoU concluded between the KPA and the KCA, was the KPA granted full access to cadastral records. The KPA reviewed its notification process against the cadastral records, and found that a large number of signposts placed on plots (residential, commercial or agricultural) to indicate to any other interested party that a claim had been made over the property did not correspond to the exact location of the plots as indicated in the cadastral records. Therefore, the KPA had to undertake a re-notification process, which caused a delay in the timely resolution of claims. At the time of reporting, the KPA has undertaken re-notification for over 25,000 claims. There are still some 50 properties to be reviewed.

3.6. Registration of confirmed property titles by successful claimants

The decisions of the KPCC constitute title determinations and should be registered in the cadastre. Successful claimants can file a written request to the relevant Municipal Cadastral Office to register the title. However, in many cases the successful claimant is displaced and cannot access the municipal cadastral office where the property is located, as required by the legislative framework governing the immovable property rights register.⁴⁵ The failure to register a property title means that the right to property has not been restored in its entirety. If the successful claimants cannot register their title, this leaves a gap in which there is room for fraudulent registration practices. This can adversely impact the individual's right to property.

3.7. Delays in the appointment of the Supreme Court's appellate panel

Final decisions of the KPCC are subject to appeal to the Supreme Court of Kosovo. Unsatisfied parties may submit an appeal to the Supreme Court within 30 days of the notification of the KPCC decision through the KPA. However, it took more than four years for the Supreme Court appellate panel to deal with KPCC-related appeals to become fully functional, only to become dysfunctional again. Namely, delays in the appointment of a local judge and shifts of international judges have resulted in the panel being largely non-operational.⁴⁶ Such a delay in the establishment of the functional appeals panel has resulted in delays in legal proceedings, thus leading to a violation of fair trial principles.

⁴⁴ The Kosovo Cadastral Agency was established in 2000 under a UN-HABITAT programme. www.kca-ks.org (accessed 15 March, 2011).

⁴⁵ Law No. 2002/22 on the Establishment of an Immoveable Property Rights Register, as promulgated by UNMIK Regulation 2002/22, 20 December 2002.

⁴⁶ Two international judges were appointed in January and May 2009, whereas a local judge was appointed in November 2010. In the meantime, both international judges resigned and their replacements have been recruited following a lengthy process of appointment.

3.8. Implementation of the voluntary rental scheme

The rental scheme, introduced with the aim to ensure both legal and physical protection of properties placed under administration and to secure incomes for the successful claimants, was enacted in most of the municipalities in Kosovo. However, some concerns remain with the implementation of the rental scheme.

For instance, some of the properties that should be rented are in very poor physical condition. A reduction in the rent of these objects is foreseen, however, tenants have to pay one month's rent and a deposit equivalent to two months' rent in advance when signing the agreement due to the lack of other practical means to secure compensation in case of damage. Remote and less attractive properties remain difficult for KPA to incorporate successfully into the rental scheme.⁴⁷ Notably, 398 properties have been identified as not being suitable for admission to the scheme.⁴⁸

Additionally, the enforcement of the scheme faced obstacles with police refusing in some cases to assist the KPA in evicting occupants who failed to pay the rent. In order to reinforce the implementation of the rental scheme, the KPA introduced new procedure following the signature of the MOU with Kosovo police in 2009⁴⁹. If an occupant stops paying the rent the KPA regional office sends an eviction order to the occupant explaining that within 30 days the occupant must either pay the rental amount or vacate the premises. If no rental payment is made, the KPA regional office issues a final warning stating that, should the rent not be paid within five days, the person must vacate the premises or the eviction will be enforced. In cases where the occupant refuses to vacate the premises on the instruction of a KPA officer an eviction with police support is scheduled. Nevertheless, the OSCE has observed that in many cases scheduled evictions were cancelled either because occupants agreed to pay rent or they provided evidence to show that they have concluded an agreement directly with the property right holder for the use of the property during the intervening period.⁵⁰

⁴⁷ As of July 2010, some 3,513 properties, either residential or agricultural, have been included in the rental scheme. Source: Kosovo Property Agency.

⁴⁸ See Kosovo Property Agency, *Annual Report 2010*, Chapter 6, page 23.

⁴⁹ See paragraph 3.4.

⁵⁰ Information provided on 23 April 2010, during the meeting with the KPA Head of Enforcement Unit. In addition, see Kosovo Property Agency, *Annual Report 2009*, Chapter 6, p. 23.

4. CONCLUSION

The caseload of more than 40,000 property claims registered with the KPA implies a great deal of responsibility for the KPA in resolving property claims that affect thousands of persons, many of whom belong to the Kosovo Serb community. The fact that the majority of claimants belong to non-Albanian communities makes the KPA one of the most relevant mechanisms for the protection of these communities' interests in Kosovo.

However, the KPA faces considerable challenges in the implementation of its mandate, which leaves affected parties without access to an effective and timely remedy. Lack of funding, as well as lack of efficient support from Kosovo institutions – whether executive, legislative, or judicial – are at the core of the problem. Deficiencies related to the legal gaps, inadequate implementation of the legislation in force, lack of co-ordination between the KPA and other agencies, including courts, need to be addressed promptly. The swift resolution of the conflict-related property claims needs to become a priority for the local institutions and the international community.

The KPA needs to be placed firmly on the agenda of international and local institutions until it fulfils its mandate. The institutions need to support the KPA by allocating sufficient funds in the Kosovo consolidated budget, and to ensure that KPA's mandate is implemented throughout Kosovo. Similarly, the international community should ensure that the KPA is fully supported and able to complete its work. Otherwise, Kosovo inhabitants and those who remain displaced outside of Kosovo will continue to suffer uncertainty over property rights protection as an ongoing impact of the conflict.

Moreover, equitable and effective remedy has to be granted to all victims of property rights violations, including those whose property has been determined as destroyed by the HPCC. As the effective implementation of the KPA's mandate will not mean that the displaced owners of the almost 11,000 destroyed properties identified by the HPD will receive in-kind or financial compensation, this matter has to be treated separately. Notably, there are cases where the owners received redress through various reconstruction programs. However, Kosovo institutions should continue addressing the issue of destroyed properties through returns activities, housing assistance and other policies aimed at ameliorating the damage caused by the conflict.

5. RECOMMENDATIONS

To the Kosovo Property Agency:

- The KPA should ensure that non-payment of the rent for the property treated under the rental scheme is followed by timely evictions.
- The KPA should increase the number of cases regularly presented before the KPCC in order to ensure their timely resolution.
- The KPA should co-operate with the local courts on how to treat cases referred to them by the HPCC as well as on their scope of review in order to avoid conflicting decisions.

To the government of Kosovo:

- Ensure that all necessary support is provided to the KPA in implementing its mandate, and that awareness campaigns are conducted to decrease the re-occupation of properties that have been vacated following evictions.
- Develop the normative framework establishing the method of calculation and payment of compensation to those individuals who are entitled to pecuniary compensation for the loss of legitimately held property rights pursuant to section 4 of UNMIK Regulation 2000/60.
- Ensure the funds in order to implement the compensation scheme pursuant to the section 4 of UNMIK Regulation 2000/60.
- Introduce a compensation scheme or provide reconstruction assistance for those HPD claimants whose properties have been destroyed or damaged so as to ensure that an effective remedy is afforded on an equitable basis to all victims of property rights violations.

To the Supreme Court:

- Inform the courts on the KPA/KPCC mandate and jurisdiction in order to avoid potential conflict of jurisdiction.
- Inform the courts about their precise jurisdiction regarding the resolution of property claims not filed with the KPA (after the expiry of the KPA's claim intake deadline, the courts are responsible to decide on new conflict related claims over private immovable property).

To the courts in Kosovo:

- Avoid parallel proceedings on the same property by respecting the final and enforceable character of HPCC/KPCC decisions.

To the Kosovo Judicial Institute:

- Provide training to all municipal court judges on the competences and jurisdiction of the KPA, in particular those residing with the KPCC.

To Kosovo police:

- Following re-eviction of persons illegally re-occupying properties, all such cases should be referred to the public prosecutor's office to initiate proceedings pursuant to the criminal code.

To the public prosecutor's offices

- Ensure that criminal charges as foreseen under the criminal code in Kosovo are filed against persons illegally re-occupying properties following an initial eviction.

To the international community:

- The stakeholders involved in the returns process should more strongly advocate for bridging the gap between the legal and physical restitution of properties.
- To support the allocation of funds in order to permit the implementation of pending HPCC decisions where restitution in kind and pecuniary compensation for the loss of legitimately held property rights was ordered pursuant to section 4 of UNMIK Regulation 2000/60.
- Advocate for and support the provision of assistance to the KPA in implementing its mandate.