

Extrajudicial Protection of Property Rights in the Aftermath of Kosovo Armed Conflict

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Abstract

The aim and purpose of this paperwork is to review how the property rights in Kosovo are protected in the aftermath of the armed conflict of 1999. Paperwork moreover explains the quasi-judicial mechanisms created to protect property rights, their fundamental principles, legal framework, jurisdiction and their endorsed legal remedies.

This paperwork is prepared based in triangulation methodology, i.e. empirical method, including legislative application and statistical method.

The protection of property rights in Kosovo is considered a serious problem and the legal system here in particular the work of judicial institutions/regular courts has shown inefficiencies due to political interference in the judicial system and the large number of backlog cases in the courts, in the other hand insufficient number of judges to cope and handle that amount of backlogs.

Housing and Property Directorate and its successor Kosovo Property Agency were established as apolitical and independent institutions led and supervised internationally as an ideal solution for resolution of property disputes efficiently and un-biased.

Both institutions are faced with challenges and obstacles during the processing, adjudication and implementation of property claims. However, the results obtained in this

paperwork show that Housing and Property Directorate has accomplished its mission efficiently, un-biased and in accordance with its legal framework, while Kosovo Property Agency has been performing its mandate in effective manner.

Key Words: Housing and Property Directorate, Kosovo Property Agency, Commission, Claims, Property Rights, Adjudication and Legal Remedies.

1. Introduction

Normally the adjudication of property disputes falls within jurisdiction of the regular courts. Bearing in mind that in a post armed-conflict country where different ethnic groups confronted each other, a question can be raised on whether the regular courts would be able to resolve the property disputes in an impartial manner, particularly when parties who claim pertain different ethnic groups?

In this paper I will try to avoid the description of the history of property problems in Kosovo, also I will not try to explain the actions that produced the property disputes.

In regard to the paper title, an extra-judicial procedure is referring to actions outside the judicial (courts) system as in extrajudicial laws, procedures and legal evidence. Therefore, cases that are entrusted to adjudicate by specialized institution and do not belong to jurisdiction of regular courts.¹

The focus will be only on the mechanism created for the protection of property rights in the aftermath of the armed conflict, including their jurisdiction, legal framework and legal remedies. One of the main objectives of the UNMIK after its deployment in Kosovo was creation of an effective and impartial mechanism, which will resolve housing and property matters.

As such, on 15 November of 1999 Special Representative of Secretary General of United Nations (SRSG) signed UNMIK Regulation no. 1999/23, which established the Housing and Property Directorate (now on referred as HPD) and Housing and Property Claims Commission (now on referred as

¹ The Free Dictionary, Available from: <http://legal-dictionary.thefreedictionary.com/extrajudicial> [Accessed on: 18 September, 2014].

HPCC). HPD and HPCC were established as an internationally supervised institution with mandate to resolve certain categories of property claims and settlement of property disputes in relation to residential properties. Since the restitution process undertaken by HPD, was not helping much in returning process of IDP-s and refugees, the UNMIK was looking for additional means in order to promote the returning process.

The SRSG in April 2006 promulgated Regulation 2006/10, later amended by Regulation 2006/50, by which Kosovo Property Agency (now on referred as KPA) and Kosovo Property Claims Commission (now on referred as KPCC) was established as an independent administrative agency. KPA apart from finalizing the mandate of HPD, it is also mandated to resolve claims resulting from the 1998 – 1999 armed conflict, in respect to private immovable property, including: residential, agricultural and commercial property.

The HPD and KPA were created with intent that through mass claims processing be resolved many property claims at once, and in this way the returning process of the displaced people be fulfilled in a rapid way. With non functional court system that existed in Kosovo at the time when UNMIK deployed, backlog of cases that already existed in the courts, international community in Kosovo considered it impossible for the courts to handle with additional property claims that arose from the conflict of 1998/99, and claims involving discriminatory issues arisen due to application of discriminatory legislation against Albanians in Kosovo from 1989 – 1999.

Main objective of the establishment of HPD and KPA was to resolve certain categories of property claims in an impartial way and more rapid, while in a way facilitate as well returning process of the displaced persons. Was their mandate successful at this point? Did these mechanisms provide an effective and efficient resolution of property claims? What else should have been/not done to acquire better results? Would courts resolve these claims in more efficient manner than these institutions did?

These are the main points that I have raised in this paper and for which I have tried to come with a conclusion.

2. Establishment of extra-judicially mechanisms

2.1. Housing and Property Directorate (HPD)

UNMIK Regulation 1999/23 established the HPD, with mandate to “provide overall direction on property rights in Kosovo until the Special Representative of Secretary General determines that local government institutions are able to carry out the functions entrusted to the Directorate.”²

HPD was composed of two key bodies: the Directorate and the Commission. Directorate was responsible for the administrative management of claims, while Commission in composition of two internationals and one local member, had jurisdiction to adjudicate claims. The members of HPCC were distinguished lawyers and experts in the field of property law.

Housing and Property Directorate ceased existing in 2006 following the establishment of Kosovo Property Agency.

2.1.1. Categories of claims under jurisdiction of HPD/HPC³

(a) *“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.*

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.

Any person, who lost a property right due to ethnic discrimination, was entitled to restitution which could take the form of restoration of the property rights (i.e. restitution in kind) or monetary compensation.⁴

(b) *“B category claims” (informal transactions): Claims by persons who entered into informal, residential property transactions on a voluntary basis between 23 March 1989 and 13 October 1999 and who wished to formalize those transactions.*

² UNMIK Regulation 1999/23, sec. 1.1.

³ Ibid. section 1.2 (a, b, c).

⁴ UNMIK Regulation 2000/60, sec. 2.2.

This category, categorized as 'B' category, aimed to enable the persons who have entered into informal transactions over residential property, due to restrictions of legislation which was enacted to limit real estate transactions and prevent the sale of properties from Kosovo Serbs to Kosovo Albanians, with intent to stem the migration of the Serb population from Kosovo.⁵

(c) *"C category claims" (displacement): Claims by persons who had property rights to residential property on or before 24 March 1999 and subsequently lost possession of their property involuntarily due to circumstances surrounding the NATO air campaign.*

With this category of claim, categorized as "C" category, was intended to facilitate the returning process of displaced persons, who had property rights on 24 March 1999, and who were displaced due to circumstances originating from the armed conflict. Persons who lost possession of their homes on 24 March 1999 and had not voluntarily disposed of them were entitled to an order from the Commission for repossession of the property.⁶

2.1.2. Case processing

The responsibility of Directorate was to conduct case processing, which involved: registering and receiving claims, notifying the claims to current occupants and interested parties, verifying documents, collecting and scrutinizing documentary evidence, conducting interview with parties to the claim, making written submissions on claims and present them before the Commission for adjudication, notification of the parties with the decisions and implementing Commission's decisions.

Claim intake started in late 2000 and continued until July 2003. HPD had received and decided in total 29,160 claims.⁷

In order to ensure fair resolution of property claims, Directorate was to inform any party who might have any legal interest on the property being claimed. Notice of claim form was accompanied by Notice on participation, which informed the current occupant or any other person with legal

⁵ Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of the Socialist Republic of Serbia, 22/9). This law has been repealed by UNMIK with Regulation 1999/10 as being discriminatory in its intent.

⁶ UNMIK Regulation 2000/60, sec. 2.6.

⁷ KPA official website (www.kpaonline.org/hpd) [Accessed on: 16 September, 2014].

interest for opportunity to participate in the claim, which form was to be filed out and be returned to HPD within 30 days deadline.

Verification process is one of the main stages of the case processing. HPD verification officers were to conduct verification of documents submitted by the parties in support of their allegation, at the places of their issuance, or locate them *ex officio* from relevant institutions when the parties did not provide with.⁸ Verification was mainly conducted in the courts, municipal cadastral offices, public housing enterprises, allocation right holders, utility companies.

Once the verification of documents is done, the claims were ready for further review and investigation by lawyers of Claims Processing Unit. The lawyers at this stage could interview the parties, in order to get additional information in relation to the claim, when needed. All findings during investigation of claim must be elaborated in so-called "Claims Processing Report". This was in line with the requirements of section 10.4 of UNMIK Regulation 2000/60, which prescribed a role for the HPD in the preparation of "*summaries of submissions and evidence, translations of evidence, and recommendations*" for the HPCC.

2.1.3. Adjudication process and legal remedies

Adjudication of cases was done by HPCC. HPCC was composed of three members. Commission had quorum if two members were present in the session. The decisions were taken with consensus, but when consensus could not be reached, the decisions were taken with majority of votes. Commission's sessions were private and its deliberations confidential.

Pursuant to section 19.1 of UNMIK Regulation 2000/60, Commission decides claims based on written submissions. Oral hearing of parties before the Commission was not allowed unless invited by the Commission.⁹ Oral hearing of parties evidence were conducted by Albanian Commissioner who was appointed by the HPCC, who then reported back to the Commission.

When the Commission considered that the claim is not fully investigated and when further evidences or verification was needed it referred the claim back to Directorate to conduct additional investigations.

⁸ UNMIK Regulation 2000/60, sec. 10.2.

⁹ *Ibid*, sec. 19.2.

2.1.4. Legal remedies

The remedies that HPCC was mandated to give were set out in UNMIK Regulation 2000/60, which include: granting or dismissing a claim, including orders for restoration of property rights, repossession of property, registration of property rights in the public property records and compensation. The Commission could refer issues of the claim, which are not within its jurisdiction to competent local court, administrative bodies or tribunal.¹⁰

The HPCC decisions should contain the following: date of adoption; the names of the parties and their representatives; the order of the HPCC; the reasoning of the decision (including material facts and existing property rights).¹¹

Once the claim is decided, the decision was to be delivered to parties in a claim. Parties were provided with individual decision of HPCC. Claimants had to collect the HPCC decisions at any of HPD's regional offices, after they have been firstly informed of a decision being made.

Successful claimants had the opportunity within 30 days of being notified with the decision, to choose one of the available options for implementing a decision.

2.1.5. Right to appeal

Unsuccessful claimants and interested parties were provided with an opportunity to file reconsideration request of HPCC decision, 30 days after being notified with the decision, but no later than 1 year from the date of HPCC decision.

Section 14.1 of UNMIK Regulation 2000/60 sets out the following grounds upon which the unsatisfied parties with HPCC decision could file a reconsideration requests:

- (a) *There was legally relevant evidence, which was not considered by the HPCC in deciding the claim. In such cases it was necessary for the party to set out the reason why this evidence was not presented to the HPCC at the first instance hearing; or*
- (b) *The HPCC had error in the application of the law as set down in UNMIK Regulation 2000/60.*

¹⁰ Ibid, sec. 22.1.

¹¹ Ibid, sec. 22.8.

Once the HPD received the reconsideration requests, the HPD started the processing of claim with reconsideration request and then the claim was forwarded to HPCC for re-adjudication. In its decision-making procedure, the HPCC could either grant the reconsideration request and overturn its initial decision by issuing a new decision on a claim, or reject the reconsideration request and confirm its previous decision.

Decisions of the HPCC were binding and enforceable and could not be subject of reconsideration by any other judicial or administrative authority in Kosovo.¹²

2.2. Kosovo Property Agency (KPA)

Kosovo Property Agency was established by UNMIK Regulation 2006/10, on March 4th 2006 as an independent agency, which shall work as an independent body. Initially the mandate of KPA was foreseen to be quite limited and its activity was designed to be under the authority of the regular courts in Kosovo.

However, later of the same year (2006) SRSG promulgated UNMIK Regulation 2006/50 whereby previous UNMIK Regulation 2006/10 was repealed (except section 16, 17 and 18 which stipulate the right of KPA to inherit remaining issues of HPD) and the KPA gained the full autonomy to decide cases that fall within its mandate, thus, excluding jurisdiction of regular courts to involve in the cases that fall within jurisdiction of Kosovo Property Agency.

As per Reg. 2006/50 Kosovo Property Agency has competence to receive and register and, through the Property Claims Commission, have the competence to resolve categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999.¹³

Section 4 of UNMIK Regulation 2006/50, determines that KPA is to be composed of a Supervisory Board, Executive Secretariat and Kosovo Property Claims Commission (KPCC).

2.2.1. The Supervisory Board supervises the work of the KPA and provides it with administrative oversight, overall direction and policy guidance, but it will not participate in the process by which the

¹² UNMIK Regulation 1999/23, sec. 2.7.

¹³ UNMIK Regulation 2006/50, sec. 3.1.

Commission adopts its decisions on individual claims. The Board is composed of five members who are appointed by the SRSG with two of these members nominated by the Prime Minister.¹⁴

2.2.2. Executive Secretariat is second component of KPA, whose main duties and responsibilities include: claims registration; notification of claimed properties to occupants of the claimed properties with claim submitted in KPA; publication of claims; verification of documents; case preparation for referral to the commission, which includes: collecting and scrutinizing documentary evidence, follow up interview with parties. In addition, pursuant to section 6.2 of UNMIK Regulation 2006/50, the Executive Secretariat may have the authority to dismiss the claims that are manifestly not receivable and clearly not within the scope of the jurisdiction of the Kosovo Property Agency (i.e. property right was lost outside prescribed time period set out by this regulation February 1998 and June 2009, or Claimant failed to provide a valid POA to represent the PRH or could not prove the family connection with the PRH).¹⁵

Competences of Secretariat include in post decision process the following duties: informing and notifying the parties with KPCC decision, implementation of KPCC decisions.

The Executive Secretariat consists of five units: Claims Processing Team, Verification Unit, Notification Unit, Implementation Unit and Information Unit.

2.2.3. Kosovo Property Claims Commission (KPCC) is an independent body, with authority to adjudicate claims submitted in KPA. Its composition is the same as of the HPCC, two international members with one of them as a chairperson and one local member. Decisions are taken with majority of votes of 2/3.

In addition, the KPCC can dismiss claims when for the same issue have commenced a judicial proceeding before competent local court before the UNMIK Reg. 2006/50 entered into force.¹⁶

KPCC applies the same mass claims processing techniques as HPCC, by considering together the claims that raise common legal issues.

¹⁴ Ibid, sec. 5.

¹⁵ Ibid, sec. 6.

¹⁶ Ibid, sec. 18.

Section 11.6 of UNMIK Regulation 2006/50 authorizes the Commission to conduct oral hearing of parties involved in the claim, experts and witnesses, when so, it is required to ensure effectiveness in decision making. KPCC decision can be appealed to the Supreme Court of Kosovo.¹⁷

2.2.4. Categories of claims under KPA/ KPCC jurisdiction¹⁸

- (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and*
- (b) Claims involving use rights in respect of private immovable property, including agricultural and commercial property.*

2.2.5. Case processing by KPA

KPA followed same procedures as those of HPD when processing claims. Claim intake process started in April 2006 in regional offices in Kosovo and by the end of 2006 in regional offices in Serbia, FYROM and Montenegro. Claim intake was closed in December 2007, with 38.335 claims registered at that time¹⁹ however, due to technical/ practical issues and rules of procedures this number until now increased to about 42.743 claims.²⁰

2.2.6. Legal Preparation of claims for referral to KPCC

Once the notification of the claimed property is done, claim is published and verification is conducted, the case is sent to Claims Processing Unit, where legal officers have to make final review of claim and give their recommendations on whether the claim should be granted, dismissed or refused. If the claim is contested, prior to making the final recommendation and conclusion, the disclosure of documents among the parties has to be done. Disclosure process involves providing each party in the proceedings with counter party's copy of claim/reply and copy of documents. Each party has 30 days deadline to respond on disclosed documents.

Legal officers handling the case are to scrutinize documentary evidence available in case file, request from the parties' additional documents or information, request additional verification when deemed necessary. All

¹⁷ Ibid, sec. 12.1.

¹⁸ UNMIK Regulation 2006/50, sec. 3.1 (a, b).

¹⁹ KPA annual report 2009, p.12 [<http://www.kpaonline.org/PDFs/AR2009.pdf>].

²⁰ KPA official website (www.kpaonline.org) [Accessed on: 23 September, 2014].

relevant information regarding the case has to be elaborated in so called "Claims Processing Report" and its annex.

Detailed information on claim, legal analysis and assessments, are elaborated in the annex of referral report.

With the aim of ensuring that claims are processed in compliance with the legal and international human rights standards and procedures, claims processing reports are to be checked by the legal coordinator, who is an international staff. Once the legal coordinator approves the referral report, the claim is then forwarded to the KPCC for adjudication.

2.2.7. Adjudication process and legal remedies

KPCC holds its sessions on bi-monthly bases. In the beginning, when the claims were much easier, the Secretariat in each session presented 2,500 claims. Since 2009, number of claims presented to KPCC has declined due to number of factors: previously Secretariat dealt with easier claims and remaining claims now are more complicated, frequent changes of case processing procedures requested by KPCC what makes the processing of claims longer.

KPCC decides the claims based on written submissions and documentary evidence.²¹ Oral hearing of the parties of the claim or witnesses may be conducted only when the KPCC requests so.²² The witnesses or the parties are invited to orally present the facts before the Commission. The KPCC held an oral hearing only when through written evidence is impossible to settle the claims. To date oral hearings have been conducted in few claims only.

UNMIK Regulation 2006/50 prescribes that, the Commission may dismiss the whole or part of the claim where:²³

- (a) The Claimant has failed to file a complete claim in accordance with the procedures set out in the present Regulation;*
- (b) The claim is not within the scope of jurisdiction of the Kosovo Property Agency;*
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.*

²¹ Administrative Direction, annex III, sec. 5.1.

²² Ibid.

²³ UNMIK Regulation 2006/50, sec. 11.4.

The KPCC grants the claims by confirming property right: ownership or right of use, relying on the documents that have been positively verified against cadastral records. However, the Commission confirms ownership or right of use, also when the title is not updated in cadastral records. This is the case when the transactions or court decisions are not reported in Kosovo Cadastral Agency or Municipal Cadastral Offices respectively cadastral registers are not updated in accordance with the contracts or court decisions. In these scenarios, the KPCC confirms the property right and the party may approach cadastral office with KPCC's decision to seek update of the cadastral register in accordance with the KPCC's decision.

Together with the order for confirmation of property right, the Commission will make an order for repossession of the property in favor of the successful claimant.

When claim is filed in capacity of family household member, KPCC may grant the property right claimed in the name of PRH alleged and an order for repossession is awarded to claimant.

In claims where there is more than one owner, the KPCC may grant the claim only for one of co-owners corresponding to his co-ownership part (i.e. 1/2 or 2/3), without affecting the rights of other co-owners.

There are many claims, where Claimant in addition to seeking confirmation of property right and/or repossession of the claimed property, requests also monetary compensation for any physical damage in the property being claimed or compensation from current occupant for using the property without permission. In such cases, the KPCC dismisses this part of claim, since it lacks jurisdiction to decide on this remedy sought.²⁴

Further, the KPCC dismisses the claims that are not conflict related, as being outside its jurisdiction. KPCC dismisses also claims on the account of lack of POA or insufficient proof of family relationship between the claimant and property right holder.

Pursuant to annex III section 8 of Administrative Direction 2007/5 KPCC may refer part or whole claim that does not fall within jurisdiction of KPCC, at competent local court or tribunal. Although, the KPCC only few claims referred to local courts so far, with reasoning that parties are not prohibited from KPCC to address their claims themselves to the local courts.

²⁴ KPA annual report 2009, p. 19.

KPCC refuses the claims in which there is absence of legal documentation confirming ownership or user rights as relevant to the substantive issue of the existence of property right.

If KPCC needs more documentary evidence or additional information, it may refer the claims back to the Executive Secretariat for further processing.

2.2.8. Notification of parties and right of appeal

When claim is adjudicated by KPCC, the Secretariat shall notify the parties in claim with KPCC decision, and publish the same in KPA official gazette. Within 30 days of notification of the KPCC's decision, parties unsatisfied with the decision may appeal the KPCC's decision at the Supreme Court of Kosovo.²⁵

Pursuant to section 12.3 of UNMIK Regulation 2006/50, the appeal may be filed on the grounds that:

- a. The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or*
- b. The decision rests upon an erroneous or incomplete determination of the facts.*

Once the KPCC decision is appealed, the execution of decision is suspended until the Supreme Court of Kosovo considers the case.

Supreme Court of Kosovo decides on the panel of three judges; two international and one national judge.

Section 13.3 of UNMIK Regulation provides that Supreme Court of Kosovo shall:

- a) Accept the appeal and make new decision with any modifications that may be required in the decision of the Commission;*
- b) Dismiss the appeal as inadmissible on procedural grounds; or*
- c) Reject the appeal as ungrounded and confirm the decision of the Commission.*

So far, the Secretariat of KPA registered: ²⁶

- 484 complaints against KPCC decisions, out of these: 115 complaints fulfilled the appeal criteria to be addressed to the Supreme Court of

²⁵ UNMIK Regulation 2006/50, section 12.1.

²⁶ These statistics are shown in KP internal database.

Kosovo. Subsequently, The Supreme Court received 115 appeals, out of them:

- Accepted the appeal, quashed and returned the case back for reconsideration to KPCC, in 1 claim;
- Appeal granted and KPCC decision rejected in 7 claims;
- Appeal rejected in 1 claim;
- Appeal rejected and KPCC decision granted in 51 claims.

The Decisions of Supreme Court of Kosovo are final and enforceable and cannot be challenged through ordinary or extraordinary remedies.²⁷

2.2.9. Enforcement of KPCC decisions

KPCC's decision is enforceable within 15 days of notification date with the decision, if there is no appeal made against such decision.²⁸ The remedies for implementation of the decision include: eviction, placing property under KPA administration, a lease agreement, demolition of unlawful structures, seizure and auction.²⁹ The staff of KPA was trained for the techniques of mediation process, and in the future claims this extra judicial remedy will be applied.

Eviction is conducted following the notification of current occupant with KPCC decision. When a person refuses to leave the property, eviction is conducted by the law enforcement authorities.

KPA is authorized to place the claimed properties under its administration or lease it when successful claimants request so, until claimant or property right holder seeks repossession.

No demolition of unlawful structures, seizure or a public auction is undertaken to date. In few claims granted by KPCC so far, third party structures built illegally on the claimed land were not treated in the Commission's decision. In these claims, the Commission only granted the right over the original property and ordered an eviction order for the occupant with no demolition order for illegal structures being issued. The Commission considers the demolition of these structures as an extreme measure, since there is possibility that parties in the dispute can reach a settlement.

²⁷ UNMIK Regulation 2006/50, sec. 13.6.

²⁸ *Ibid*, sec. 14.1.

²⁹ *Ibid*, sec. 15.

3. Legal framework of HPD and KPA

The legal framework which regulates the resolution of property claims before the HPD/HPCC and KPA/KPCC is set of *Leg specialis* (*special laws*) that adopted and applied only to those institutions and not to others. This legal framework was/is a combination of UNMIK Regulations, domestic property laws, HPCC/KPCC decisions and instructions, and international instruments on human rights.

3.1. UNMIK Regulations

UNMIK Regulation 1999/23 prescribed the scope jurisdiction of HPD and HPCC. The UNMIK Regulation 1999/23, was amended by UNMIK Regulation 2000/60. The latter contains provisions, which set down detailed rules of procedure concerning the resolution and implementation of claims.

UNMIK Regulation 2006/10 prescribed the scope jurisdiction of KPA and KPCC, later amended by UNMIK Regulation 2006/50, which sets down detailed rules and procedure in relation to resolution of the claims and implementation of the decisions. The UNMIK Regulation 2006/50 is amended by Law no. 03/L-079. Detailed provisions on procedures related to overall resolution of claims are set down as well in the Administrative Direction 2007/5.

3.2. HPCC's and KPCC's Instructions and Jurisprudence

HPCC as well as KPCC, in order to ensure consistency in the resolution of claims, after each session issued guidelines which were to be used by HPD and KPA personnel during case process.

Instructions were issued for variety of issues, including verification of documents, notification of claims, content of referral reports, legal submissions in referral reports, etc.

3.3. Domestic applicable property laws

In order to determine the claimed property rights, the HPD/ HPCC and KPC/KPCC apply many domestic property laws. The UNMIK Regulation 1999/24 (amended by UNMIK Regulation 2000/59) defines the legal framework, which should be applicable in Kosovo. The property applicable laws in Kosovo include:

- The UNMIK regulations promulgated by the Special Representative of the Secretary-General, that regulate property matters;
- The law in force in Kosovo on 22 March 1989, that regulate property matters;
- Law in force in Kosovo after 22 March 1989 which is not discriminatory, that regulate property matters;
- Laws adopted by the Kosovo Assembly and promulgated by UNMIK, that regulate property matters;
- Since 2008, the laws adopted by the Kosovo Assembly, that regulate property matters (Law 03/L-079).

4. Fundamental principles

The Housing and Property Directorate and Kosovo Property Agency have been established following some fundamental principles, i.e. Quasi-judicial principle, Exclusive jurisdiction, impartiality and neutrality, principle of independence, efficiency and effective and principle of professionalism.

As *quasi-judicial institutions*, HPD and KPA had similar competences as to those of regular courts; however they may adjudicate only cases that fall within their jurisdiction, while the other cases may only dismiss as being out of their jurisdiction, without going into merits. Moreover, HPD and KPA are independent from the Kosovo Judicial umbrella and that they may only issue binding decisions and no judgment.

Exclusive jurisdiction in respect of this paragraph means that cases that fall within jurisdiction of HPD and KPA are not subject matter of consideration by any other institution in Kosovo.

Impartiality and neutrality of both institutions was assured by presence of international community, where management and key working positions were held by international staff. In this regard the cases have been processed in fair manner regardless ethnicity or other distinguished aspects.

Independence of the HPD and KPA was assured by their specific status. HPD was under supervision of SRCG while KPA is supervised by Parliament of Kosovo through their supervisory board. Therefore, there was no government control over them or political influence.

Efficiency and effectiveness were assured by separation of duties between the Secretariat and the Commission. The Secretariat moreover was

separated into sub-teams, i.e. Case Processing Team (CPT), Verification Unit, Notification Unit, Information Unit and Implementation Unit.

Duties and responsibilities are moving like a chain from one unit to another one, until the case is decided and ready for implementation. Therefore, work is dependent among units and the efficiency is automatically assured by mutual multi tasks.

5. Conclusion

During their mandate, Housing and Property Directorate and Kosovo Property Agency were often criticized for slow undertaking process of claims resolution. Bearing in mind that both institutions faced lack of funds and consequently, with shortages in staff and technical equipments, the production achieved under these circumstances should be deemed reasonable.

The KPA did not finish its mandate yet, consequently facing a financial problem, especially with donations for the coming months, when its mandate is expected to end, and the new mandate foreseen to start in 2015 but under another name and jurisdiction.

However, in general it can be concluded that the Housing and Property Directorate and Kosovo Property Agency achieved implementation of their legal framework and jurisdiction in an effective manner. Perhaps better results would be reached if their legal framework would be amended so that they would be provided with wider range of competences.

Regarding the effectiveness of the remedies provided from the Kosovo Property Claims Commission it can be said that they were equipped with very narrow competences, limited in only confirming the ownership or user right and return of possession over the properties. Thus, Commission does not have sufficient room in decision-making. Unless, the Housing and Property Claims Commission decisions of successful "A" and "B" Claimants had executive power before the Cadastral Agency, the KPCC decisions do not have such legal influence. KPCC only confirms the property right based on already existing documentation but does not recognize a property right. Possibly KPCC decisions provide better relief only in the claims that are contested, since in its final conclusion ascertains who is a real property right holder of a certain property.

On the other side, greater advantage from the restitution process undertaken from the HPD can be considered that the claims adjudicated

from KPCC can appeal to Supreme Court of Kosovo, unless the decisions of HPCC in second instance were still reviewed from the same body. This implies that claims before the KPA would be resolved in more efficient way rather than the claims in HPD.

In post conflict countries, resolution of property claims arising from the conflict is required to be conducted in an expeditious way. It can be generally said that the HPD and KPA (until now) process, at any rate, have a value through guaranteeing decisions according to international standards, taken by a neutral body enjoying confidence from both claimants and responding parties. Especially the latter would be difficult to accomplish through regular court adjudication.

The claims by the regular courts would be adjudicated, if not slower, then at least at the same rate. The standard would however undoubtedly be lower, as the KPA/HPD is ad hoc specialized body with expertise in property law. Leaving property restitution to local court would also leave questions regarding impartiality and fairness of decisions.

Finally, with the HPD and KPA also being in charge of enforcement of decisions, although the adjudication process might have taken time, the final restitution will take less time, as it is centralized in the same body, ensuring prompt and impartial implementation of a decision after adjudication.

Even though, the property restoring process undertaken from HPD and KPA until now, did not promote really the returning process of the refugees and internally displaced persons, these institutions cannot be blamed for this. Non-willingness of the successful claimants to repossess their properties can be mainly attributed to overall political environment. In certain areas of Kosovo there are not created safe conditions yet for living together, the Serbs and the Albanians. On the other hand, Serbs are more interested in selling their properties and settling elsewhere outside Kosovo, rather to accept and live with the reality of Kosovo as an independent country.

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