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**THE JUDICIAL PROCEEDINGS IN COMPENSATION  
CLAIMS ARISING FROM THE WIDESPREAD  
DESTRUCTION OF RESIDENTIAL PROPERTY IN THE  
AFTERMATH OF THE KOSOVO\* CONFLICT<sup>2</sup>**

*Abstract*

*In the aftermath of the conflict, wave of violence spread through Kosovo and led to the forced displacement of minority communities and to the large-scale destruction of their residential property. No mechanism that would enable compensation of the lost property was ever established. Throughout 2004 and 2005 the owners of the destroyed/damaged property approached the local courts seeking judicial protection of their property rights, which resulted in the submission of a massive number of compensation claims. The paper investigates what has happened with these compensation claims by looking into the group of cases assisted through a EU-funded legal aid project. The main objective of the research was to identify main trends in the way the first, second and third instance courts have dealt with the compensation cases. The results of the analysis show that the trials started in less than 1/3 of the analysed cases and that they were finalized in an even lower number of cases. So far only a small portion of the analysed proceedings has been completed by the final decision, all of which have been unfavourable for the plaintiff. The paper*

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\* This designation is without prejudice to positions on status, and is in line with the UN Security Council Resolution 1244/99 and the International Court of Justice Opinion on the Kosovo Declaration of Independence.

<sup>2</sup> The paper is second in series of statistical analysis dealing with the compensation claims filed with the courts in Kosovo in relation to the property damaged or destroyed in the aftermath of the 1999 conflict. These analyses are based on the results of the wider research on the violations of property rights of internally displaced persons in Kosovo conducted within the Project "Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid" (EuropeAid/131328/C/SER/RS), funded by the European Union and implemented by a consortium led by Diadikasia Business Consultants S.A.

*shows that the post-conflict property restitution has not yet taken place in post-1999 Kosovo despite the fact that it is a conditio sine qua non for return of displaced population and as such derived from the provisions of the core international human rights instruments.*

**Key words:** post-1999 Kosovo, internally displaced persons (IDPs), compensation claims for the property damaged/destroyed after the conflict, residential property, judicial proceedings.

## 1. Introduction

Following the adoption of the UN Security Council Resolution 1244 and in parallel with the deployment of NATO and UN forces, a new wave of violence spread through Kosovo. The murders, abductions and intimidation of civilians, which erupted throughout the second half of 1999 and 2000, were primarily directed against minority communities<sup>3</sup> and have resulted in forced displacement of more than 75 per cent of Kosovo Serbs and Roma.<sup>4</sup> Their homes and other property they left behind became target of a widespread pillage and destruction.<sup>5</sup>

Although the post-conflict property restitution is a precondition for the return of displaced population and an individual right guaranteed by a number of international instruments, no mechanism that would enable restitution in kind or compensation for the damaged/destroyed property was established in Kosovo.<sup>6</sup> Majority of the owners could neither have hoped to have their properties rebuilt through the housing reconstruction programmes. Due to the shortage of funds, the reconstruction programmes were primarily directed at resolving the urgent housing needs of the Albanian returnees whose houses were destroyed/damaged *during the conflict*. Another reason was that the reconstruction funds were available only for those who decided to return. Given the volatile security situation and the lack of freedom of movement affecting minority communities,

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<sup>3</sup> Violence was also directed against individuals of Albanian ethnicity who were regarded loyal to the Milošević regime.

<sup>4</sup> Human Rights Watch, "Abuses against Serbs and Roma in the New Kosovo", August 1999, Volume 11, No. 10, available at: <http://www.hrw.org/reports/1999/kosov2/> (last accessed on 1 February 2014).

<sup>5</sup> See: Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo [S/1999/779] of 12 July 1999, para. 5.

<sup>6</sup> The same holds true when it comes to the damages inflicted on private property *during the conflict*, which had been primarily sustained by the Albanian population in Kosovo.

this was for many years a condition impossible to fulfil for the greatest number of internally displaced persons (IDPs). Due to these factors, so far only a tiny portion of the houses destroyed or damaged *after the conflict* has been reconstructed.

Faced with nonexistence of the mechanism for post-conflict property restitution/compensation the owners of immovable property approached the local courts.<sup>7</sup> According to the available data, only through the Court Liaison Office **17 912** civil claims for damages (further “compensation claims”) were filed before the courts in Kosovo in the period between 2003 and 2008.<sup>8</sup>

The adjudication of the compensation claims was subject to administrative interventions on several occasions. As a reaction to mass influx of these claims, on 26 August 2004 the Director of UNMIK Department of Justice (UNMIK DoJ) requested from the local courts not to process this type of claims “until such time as we have jointly determined how best to effect the processing of these cases.”<sup>9</sup> The stay was lifted on 28 September 2008,<sup>10</sup> one month before the EU Mission in Kosovo replaced UNMIK in the rule of law sphere.<sup>11</sup> Furthermore, throughout 2008 and 2009 the proceedings before some courts were again suspended for the procedural reasons set in the local Law on Public

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<sup>7</sup> In order to meet the five-year time limit prescribed by the applicable law, most of these claims were lodged throughout 2004 and 2005. See report “Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo\* - Part I”, prepared within the EU-funded project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid”, September 2013, p. 14 (copy on file with the author).

<sup>8</sup> See EU-funded project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid”, “Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo\* - Part I”, September 2013, p. 11 (copy on file with the author). The research analysed compensation cases archived in the Court Liaison Office in Gračanica/Graçanicë, which was established in 2003 by UNMIK in order to enable minority communities’ access to the courts, impeded by the volatile security situation and other obstacles.

<sup>9</sup> The letter referred to the necessity to design proper strategy because a huge number of claims could become an obstacle to the functioning of the judicial system and given that “many claimants will require escorts in order to travel to the courts”. UNMIK Department of Justice Letter of 26 August 2004.

<sup>10</sup> Human Rights Advisory Panel case *Milogorić and Others against UNMIK*, cases no. 38/08, 58/08, 61/08, 63/08 and 69/08, para. 8.

<sup>11</sup> On 9 December 2008, UNMIK’s responsibility with regard to the judiciary in Kosovo ended with the establishment of the European Union Rule of Law Mission in Kosovo (EULEX), which assumed full operational control in the area of rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44) that welcomed the continued engagement of the European Union in Kosovo.

## Financial Management and Accountability.<sup>12</sup>

It is not known what has happened once the stays of proceeding were lifted. The official data on the civil trials in the compensation cases are not available, if existing at all. Nor there are reports or other sources of secondary data that could shed light on legal destiny of the compensation claims.

The paper investigates what has happened with the compensation claims after September 2008 when the stay of proceedings ordered by UNMIK was removed. It does so by trying to identify the main trends in the way the first, second and third instance courts have handled these claims. The paper also looks into the relevant case law of the Constitutional Court of Kosovo.

The structure of the paper reflects the main research objectives. After the introduction the paper describes the research methodology. Following that it presents the results of the statistical analysis which are grouped by the phases of civil trial. The proceedings before the first instance courts are analysed in Chapter 3.2., the appellate proceedings are dealt with in Chapter 3.3., while the Chapters 3.4. and 3.5. examine features of the proceedings before the Supreme Court and the Constitutional Court of Kosovo. In the conclusion the author summarizes the main findings.

## 2. Research methodology

The objective of the research inquiry was to investigate what has happened with the civil claims for damages inflicted on private property *after the 1999 conflict*. The analysed cases are distinct in several respects from the other compensation cases filled before the courts in Kosovo. They were initiated in relation to the damages caused by the acts of unidentified individuals. The compensation claims were based on the principle of objective responsibility and were directed against the

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<sup>12</sup> Articles 67 and 68 of Law on Public Financial Management and Accountability (Law No. 03/L-048 of 13 March 2008) stipulated that the Ministry of Justice and the Ministry of Economy and Finance should be notified about any compensation claim against any public authority in Kosovo before their processing. This law was amended in 2010 when it had effectively suspended the proceedings in the compensation cases for up to 18 months or until Kosovo's Ministry of Justice notifies the court in writing that it assumed representation on behalf of the government or public authority (Article 25 (amending Article 68.2) of the Law on Amendment to the Law on Public Financial Management and Accountability No. 03-L-221 of July 2010).

authorities established in Kosovo after June 1999: the United Nations Mission in Kosovo (UNMIK), Kosovo Force (KFOR), Provisional Institutions of Self-Governance in Kosovo (PISG) and municipalities. As already noted, these claims were lodged in large numbers and the claimants come from the minority community groups.

The analysis was conducted on the group of compensation cases specific for the fact that at the time of the research the plaintiffs were receiving legal assistance and/or in-court representation. Namely, the research was carried on the sample of compensation cases that were initiated by IDPs owners who, at the time of the research, were beneficiaries of the project “Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid” (further “Legal Aid Project”).<sup>13</sup>

### **2.1. A brief note on the Legal Aid Project**

The Legal Aid Project was initiated in November 2010 with the aim to provide legal aid to IDPs in the administrative, judicial and other matters before the institutions in Kosovo as their place of origin. It is fourth in series of successive legal aid projects funded by the European Union and the Government of Serbia.<sup>14</sup> As its predecessors, the Legal Aid Project operates through a network of offices located in the areas with the high concentration of IDPs (Kraljevo, Niš, Belgrade) and through two additional offices in Kosovo (in Kosovska Mitrovica/ Mitrovicë and in Gračanica/Gračanicë).<sup>15</sup>

The Project’s lawyers provide legal aid that encompasses legal counselling, writing of pleadings and other submissions for the courts and administrative bodies, obtaining of documents necessary for the realization of IDPs’ rights, and in-court representation before the judicial institutions in Kosovo. Given the interconnectedness between the current and the previous legal aid projects, legal aid is provided to both newly

<sup>13</sup> The project is implemented by Diadikasia S.A. Business Consultants in consortium with Euromed, Euro Management International and Initiative for Development and Cooperation - Serbia (IDC Serbia).

<sup>14</sup> The first project for the provision of legal aid to IDPs “Further Support to Refugees and IDPs in Serbia” was approved in 2008 under the Instrument for Pre-accession Assistance (IPA) and it was implemented by the Danish Refugee Council (DRC).

<sup>15</sup> The names of places in Kosovo are written in accordance with UNMIK Regulation No. 2000/43 on the Number, Names and Boundaries of Municipalities of 27 July 2000, which sets the rule that they should be written in both official languages and that the first in the order of names should be the name in the language of the community which makes the majority population in the named municipality.

registered cases and to those registered during the previous projects and subsequently transferred to the on-going Project. The provision of legal aid in property rights related cases is among the principal activities of the Project because these cases outnumber other types of cases for which IDPs are seeking assistance.<sup>16</sup>

Each case is registered in a legal database, which tracks various types of data about the cases and the Project's beneficiaries. The comprehensive legal aid database was established during the first project and since then it has been transferred to each new legal aid project. Hence, the database includes not only data for the cases registered during the on-going project but also for those in which the provision of legal aid had commenced during an earlier project but the cases have remained unresolved. The database encompasses all the activities undertaken in an individual case and the developments are tracked on the daily basis.

In addition to the electronic database, the Legal Aid Project also keeps a physical registry of cases. This registry is comprised of the case-files folders that contain the information registered in the electronic database, and the hard copies of the documents received from or sent to courts and other institutions in Kosovo. As with the database, the registry includes hard copies of all "active" cases. The physical registry is placed in the offices in Kraljevo, Niš and Belgrade.

## **2.2. Collection of data and limitations of the research**

The data analysed in the research come from two sources – from the Legal Aid Project database and from the physical records of the cases kept in the Project's registry. The compensation cases were first extracted from the Project's database by filtering cases registered under the category "right to property" and its sub-category "compensation for damaged/destroyed property" (coded as "906" sub-category). The data for each compensation case identified in the database were then crosschecked by inspecting the case-files kept in the Project's physical registry. In order to collect data contained in the physical records, three field researches were undertaken in the Project's Offices in Kraljevo, Niš and Belgrade, during March and April 2014. In this way total of 511 compensation cases were identified, which make 30 per cent of all property rights related cases

<sup>16</sup> By 30 April 2014 when the research was initiated, the legal aid was being provided in 3733 cases before the institutions in Kosovo, of which in 1763 cases IDPs sought legal aid in relation to their property rights.

pursued before the institutions in Kosovo by the Project's beneficiaries. The subject of the analysis were only the "active" compensation cases *i.e.* those which were still pending before the courts in Kosovo by 30 April 2014.

For most of the research questions, the results of the analyses were classified according to the seat of the first or second instance court before which the compensation claim was filed. The classification reflects the old network of municipal courts in place until January 2013, as well the new system of courts established after the reform of the Kosovo justice sector.<sup>17</sup>

The major limitation of the research is that the analysed cases cannot be considered as representative of the entire group of compensation cases initiated in relation to the damages inflicted on the private property in the aftermath of the conflict. The principal reason for this is that the plaintiffs in these cases were supported through the free legal aid scheme, which at least theoretically places them in a better position in comparison to the other plaintiffs.<sup>18</sup> The second reason springs from the barriers that prevent an effective communication of IDP plaintiffs with the courts in Kosovo and *vice versa*. Namely, there are no postal services between Kosovo and the Serbia proper and the only way in which an IDP who is not a beneficiary of the Legal Aid Project could communicate with a Kosovo court is to hire a local lawyer or engage a person with the residence in Kosovo as his/her authorized agent for the service of documents.<sup>19</sup> This signifies that the Legal Aid Project beneficiaries are also in the position to be much better informed about the proceedings in the compensation cases than an average IDP plaintiff in this type of cases.

Another related limitation of the research ensues from the fact that its primary sources are the documents that were in the possession of the Project's beneficiaries at the time of the research. As there is no generally available system of communication between the courts and IDPs, this signifies that the results of the research can only show what has happened with the compensation cases *as known by the IDP plaintiffs*. In other words, it cannot be claimed that the analysed documentation in all cases necessarily reflects what has really happened with the compensation claims before the courts.

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<sup>17</sup> Law on Courts No. 03/L-199, adopted on 22 July 2010 and entered into force on 1 January 2013.

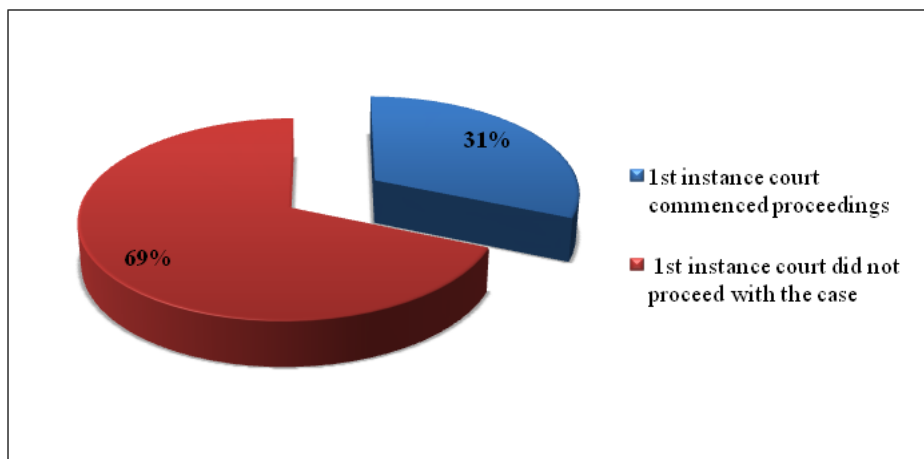
<sup>18</sup> It should be added that for last couple of years the Legal Aid Project is the only project providing legal aid in these types of cases.

<sup>19</sup> See more on this in: The EU-funded Project "Further support to refugees and IDPs in Serbia", "Access to Justice for the Internally Displaced Persons from Kosovo", June 2012, pp. 32 - 40, available at [http://www.pravnapomoc.org/web/Access\\_to\\_Justice.pdf](http://www.pravnapomoc.org/web/Access_to_Justice.pdf)

### 3. Statistical analysis

After the initial examination of the compensation cases all the identified “active” compensation cases (in total 511 cases) were divided in two groups. The first group included 351 cases where no court action other than registration of a lawsuit had taken place.<sup>20</sup> The second group encompassed the compensation cases in which at least one court action was identified, that being any of the actions that are normally taken by a court in the course of civil proceedings (in total 160 cases). This classification showed that in only 31% of the analysed cases the trial started, as showed in the following graph.

**Graph 1:** Percentage of the compensation cases where the first instance court took action(s) towards adjudicating the case and percentage of those where no court action was identified, out of the total number of analysed compensation cases



Besides the copies of lawsuits, the only documents that were found in the files of cases in which no court action was identified were requests to speed up the proceedings.<sup>21</sup>

<sup>20</sup> Given the lack of postal services between Kosovo and the Serbia proper a more suitable phrase would probably be “or has been known to take place since the lawsuit was filed”.

<sup>21</sup> Apart from the letters by which the plaintiffs notify the court about the change of address or about the appointment of a legal representative, which were sent through the assistance of the Legal Aid Project staff.



### **3.1. Requests to speed up the proceedings**

When no court hearing has been scheduled over a long period of time, the only action the plaintiff can normally undertake is to address a competent court with a request to speed up the proceedings. In the local justice system this request represents information submitted to the president of a court with the suggestion to make use of its powers if it sees fit to do so.

According to the findings a total of 313 requests to speed up proceedings were sent to the courts in relation to the compensation cases pursued by the Project's beneficiaries. These requests were submitted in 238 cases: in 165 case one request per case was found and in 73 cases the plaintiffs filed two or more requests for speeding up the proceedings.

Given that their addressee is not obliged to take any legal action, a request to speed up the proceedings is not a remedy for the excessive length of proceedings.<sup>22</sup> For this reason it can neither be taken as an indication whether a plaintiff was active or passive in pursuing his/her case. Yet, the research has compared the two groups of compensation cases (cases in the process of adjudication and cases where no court action was identified) with regards the number of requests in order to investigate whether there is a reason to believe that they might have influenced the processing of compensation claims. The results of such comparison revealed that there is no correlation between the requests for speeding up proceedings and the activity/passivity of the courts in the compensation cases. Namely, in over 50% of cases in which the courts have taken no action one or more request(s) was lodged (in 188 out of 351 cases). When it comes to the group of cases where the adjudication is on the way or has been completed, in just 31,25% of these cases the request(s) for speeding up proceedings were filed (in 50 out of 160 cases).

### **3.2. Proceedings before the first instance courts**

The results of the analysis conducted on 511 compensation cases in which the plaintiffs sought legal aid showed that in only 160 of these cases the first instance court started and/or completed the proceedings. These 160 cases, as presented above, do not exhibit a greater level of

<sup>22</sup> See ECtHR case of *Horvat v. Croatia*, no. 51585/99, 26 July 2001, para. 47.

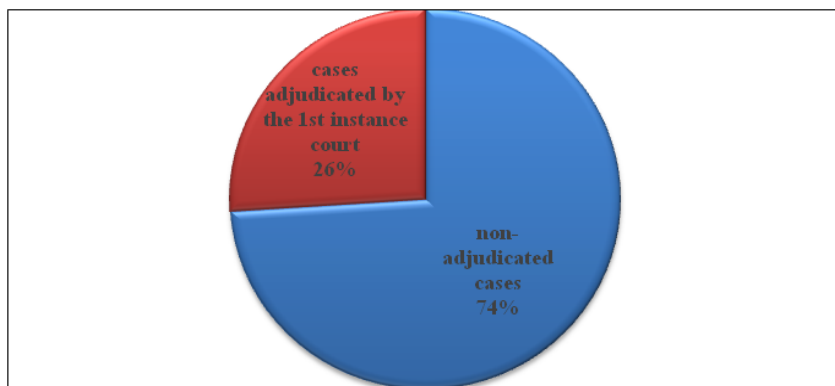
involvement of the plaintiff measured by the number of requests to speed up proceedings that were sent to the courts. The qualitative analysis of the lawsuits by which these cases were initiated also shows that they do not possess any distinctive feature in comparison to other analysed lawsuits.<sup>23</sup>

Another possible explanation for the courts' activity in these cases – their earlier submission – was also refuted given that the data on the years of their registration by the courts coincide with the trends established on a larger sample.<sup>24</sup> According to the analysis, most of the lawsuits were submitted in 2004 (129), a tiny portion of them in 2005 (14) and 2006 (12) and only few of them in 2007 (3) and 2008 (2).<sup>25</sup>

### 3.2.1. Final decisions of the first instance courts

In this part of the research the compensation cases were analysed in order to determine in how many of them the first instance courts issued a decision with *res iudicata* effect. The analysis showed that in the great majority of cases in which courts were active the first instance proceedings were already brought to an end. In 133 cases the final decisions of the municipal/basic courts were found, which makes 26% of all the analysed compensation cases.

**Graph 2:** Share of compensation cases adjudicated by the first instance courts in the total number of analysed compensation cases.



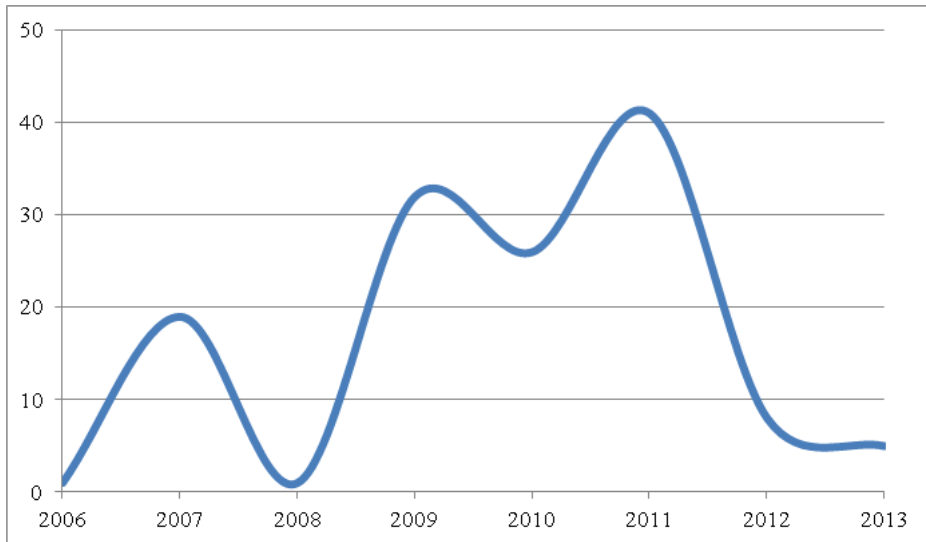
<sup>23</sup> For an in-depth analysis of the basic features of these types of lawsuits see: EU-funded project "Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid", "Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo\* - Part I", September 2013.

<sup>24</sup> *Ibidem*, p. 14.

<sup>25</sup> As determined by inspecting the date indicated in the court endorsement stamp.

The analysis also showed that the first instance courts were the most active between 2009 and 2011 – the majority of the first instance decisions were passed in 2011 (41 rulings), 2009 (32 rulings) and 2010 (26 rulings).

**Graph 3:** Trend in the number of claims determined by the final first instance decision over time



In most of the cases, the verdict was given in the form of a decision (in 101 cases), and in less than 1/3 of them in the form of judgment (32 cases). However, no matter which of these two forms was used, both types of verdicts were final *i.e.* capable of having *res iudicata* effect.

Without exception, all the first instance civil proceedings were concluded negatively for the plaintiff. This means that the first instance courts have issued in total 32 negative judgments and 101 negative decisions.

The research also shows that only six courts have passed judgments in the analysed compensation cases (court in Viti/Vitina, Malishevë/Mališevo, Pejë/Peć, Klinë/Klina, Prishtinë/Priština and in Skenderaj/Srbica). None of these courts have ruled on the merits *i.e.* the claims were dismissed for the procedural reasons. The claims against the Provisional Institutions of Self-Government (PISG) and the municipalities were found to be “ungrounded” because the respondents did not have the capacity to be sued (“the respondents do not have passive legitimacy”). When it comes to UNMIK and KFOR as respondents, the courts concluded that

these two legal entities were “outside of the jurisdiction of the courts in Kosovo” and that segment of the claim was declared inadmissible.

The qualitative analysis of the text of these judgments revealed that they closely resemble each other. Apart from the heading, the statement of facts and the signature of the judge, their main elements (legal ruling, facts upon which the judgment is based and the grounds for decision) contain very similar if not identical text no matter which court passed the judgment. It was also observed that the Municipal Court in Pejë/Peć and the Municipal Court in Skenderaj/Srbica have passed judgments by filling in the pre-designed forms. This can probably explain how these courts have managed to deliver a great number of judgments in a very short period of time. For instance, almost all of the analysed judgments issued by the Municipal Court in Skenderaj/Srbica date from 2009.

When it comes to the final negative decisions, the courts have struck out compensation claims for four principal reasons: 1) “the lawsuit is not permitted by law”, 2) the plaintiff failed to pay the court fee for filing a civil lawsuit, 3) the plaintiff failed to attend the main hearing, 4) the lawsuit is not within the court’s subject-matter jurisdiction.

The greatest number of lawsuits was struck out because “the lawsuit is not permitted by law” (57 final decisions). These decisions were in many cases brought through some kind of “summarized procedure” *i.e.* without the court holding a hearing. As it is the case with most of the analysed judgments, the courts have often used templates when preparing these decisions and many of them were issued in a very short period of time. This was especially observed in relation to the cases pursued before the Municipal Court in Prishtinë/Priština.

In a significant number of the decisions (24 decisions), all of which were issued by the Municipal Court in Vushtrri/Vučitrn,<sup>26</sup> the claims were struck out because the plaintiff failed to pay the court fee for initiating a civil action. As the court in question did not have the possibility to deliver to IDP plaintiffs the order to pay court fees because of the lack of postal services, it used a legal presumption envisioned by the applicable law, that the service of documents is effectuated a week after they were placed at the court’s notice board. Subsequently the court has considered the lawsuit to be withdrawn because the plaintiff did not pay the fees and has struck out the claim. The court in Vushtrri/Vučitrn used the same method

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<sup>26</sup> Now a branch office of the Basic Court in K. Mitrovica/ Mitrovicë.

to make sure that these decisions become final. Namely, after ruling to strike out the claim the court was issuing another decision stating that service of the final decision is to be effectuated by its posting on the notice board of the court. Another 3 analysed compensation claims were struck out for the similar reasons before the court in Istog/Istok. Although neither this court could send the documents to the plaintiff, the court has struck out claims because the “plaintiff failed to attend the main hearing”.

In 17 other cases, the Municipal courts in Prizren (1 case), Rahovec/Orahovac (1 case), Pejë/Peć (2 cases), Gjakovë/Đakovica (1 case), Istog/Istok (2 cases), Prishtinë/Priština (1 case), Ferizaj/Uroševac (3 cases) and in Skenderaj/Srbica (6 cases) have dismissed the claim as being outside their subject-matter jurisdiction. In the same decisions these courts ordered the claim to be transferred to the Kosovo Property Agency (KPA).<sup>27</sup>

### 3.2.2. Stay of proceedings

The examination of the case files also showed that the stay of proceedings ordered by UNMIK DoJ in 2004 was not the only situation in which the trials in the compensation cases were suspended. It was found that in 15 analysed cases the first instance courts have ordered stay of proceedings for other reasons.

Most of the decisions to stay proceedings (10) were issued when one or both parties to the proceedings did not attend the main hearing. An interesting feature of these decisions is that they *in fact* could lead to the negative conclusion of the proceedings because they included the following warning:

“The proceedings will be stayed until one of the parties submits a motion for the continuation of proceedings. [...] If none of the parties submits the motion for the continuation of proceedings within six months from the day when the stay of proceedings commenced, the court would hold that the lawsuit was withdrawn”.

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<sup>27</sup> The Kosovo Property Agency (KPA) is an independent agency mandated to resolve the conflict-related ownership claims and right of use claims in respect of private immovable property, including agricultural and commercial property, resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. This quasi-judicial body has no competencies in the cases of damaged and destroyed property.

The chance of a compensation claim being considered withdrawn after these six months was very high since the service of the decisions on stay of proceedings was actually effectuated by their posting on a court's notice board.

Other courts had taken a completely different approach by resorting to a 180-day stay of proceedings. These decisions were based on the 2008 Law on Public Financial Management and Accountability, which ordered that the Ministry of Justice and the Ministry of Economy and Finance be informed about any unresolved compensation claim against a public authority in Kosovo before processing it.<sup>28</sup> In 2010 Law on Amendments on the Law of Public Financial Management and Accountability was passed, which effectively suspended the processing of the compensation claims for up to 18 months or until Kosovo's Ministry of Justice notifies the court in writing that it assumed representation on behalf of the Government or other public authority.<sup>29</sup>

### **3.2.3. Other documents issued by the first instance courts**

Besides the final rulings, other types of documents issued by the courts in the course of civil proceedings were also found in the case files (in total 215 documents). These documents were mostly issued during the preparation of main hearing or in relation to the payment of courts fees and can be classified as follows: a) notice of court hearing (38), municipalities' response to claim (43), Government's response to claim (38), order to pay court fees (45), warning notice for the payment of courts fees (35), other documents (16).

The low number of hearing notices could indicate that in the great majority of cases the courts decided the claim without holding a hearing or that the service of these documents was effectuated by posting them on the courts' notice boards. Furthermore, a notable feature of the written responses to the claims submitted by municipalities and the Government of Kosovo was that they almost always contained the same text i.e. were prepared by using templates. Apart from the plaintiff's name and the court file number, these responses were identical in most of the cases.

<sup>28</sup> See articles 67 and 68 of the Law on Public Financial Management and Accountability, No. 03/L-048 of 13 March 2008.

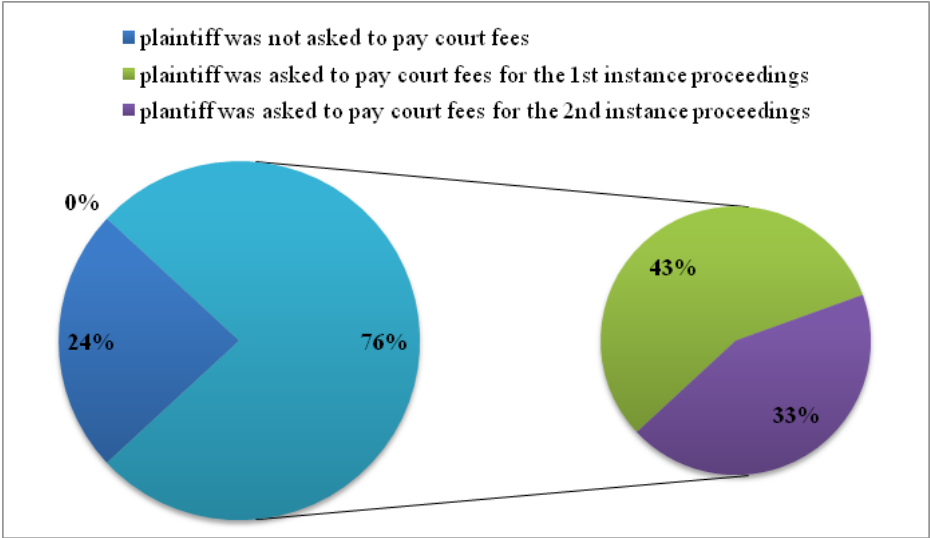
<sup>29</sup> Article 25 (amending Article 68.2) of Law on Amendment to the Law on Public Financial Management and Accountability No. 03-L-221 of July 2010.

### 3.2.4. Court fees

As it ensues from the previous chapter, the orders to pay court taxes and the warnings on the payment of court taxes were identified in a significant number of cases. It was also found that a number of claims were struck out because the plaintiff did not pay the court fee for lodging lawsuit. These findings largely coincide with the conclusions reached after the examination of the compensation cases in relation to the court fees.

As presented in the following graph, the plaintiff was ordered to pay court fees in 110 cases which makes 76% of the compensation cases processed by the court. This figure encompasses the first instance proceedings in which the plaintiff was asked to pay fees (62 cases), as well the cases in which the plaintiff was asked to pay court fee for lodging the appeal on the first instance decision (48 cases).

**Graph 4:** Percentage of cases in which the plaintiff was asked to pay court fees



A notable aspect of the issue of court fees is that different courts had different approach to the questions of whether the plaintiffs should pay court fees in the compensation cases and in which phase of the first instance proceedings the court fees should be paid. As observed, 8 out of 25 Kosovo first instance courts were asking the plaintiff to pay court fees. Majority of the court orders (84%) came from only three courts –

the courts in Prishtinë/Priština (30%), in Skenderaj/Srbica (19%) and in Vushtrri/Vučitrn (35%).

The analysis shows that in about 60% of the analysed cases (98 cases) courts did not take any action in relation to the payment of court fees for the first instance proceedings. This could be partly explained by the fact that until several years ago, in practice, courts were not insisting on the payment of court fees at the moment of the lawsuit's submission.<sup>30</sup> Another explanation could also be that the greatest number of compensation claims was struck out for the procedural reasons.

Despite such divergent practice all the courts responded in the same way to the court fee wavers. Namely, the analysis shows that 99% of the analysed lawsuits contained a request for the exemption from the payment of court fees.<sup>31</sup> Yet, in neither one analysed case has the first instance court decided about the plaintiff's request for the exemption from the payment of court fees.

The courts have ordered payment of court fees in different phases of the proceedings. The payment of a court fee for filing a lawsuit was set as a requirement for the adjudication of a claim in 24 cases. In 33 cases the plaintiffs were asked to pay court fees in the final decision while in 5 cases the courts ordered payment of court fees after the final decision was passed.

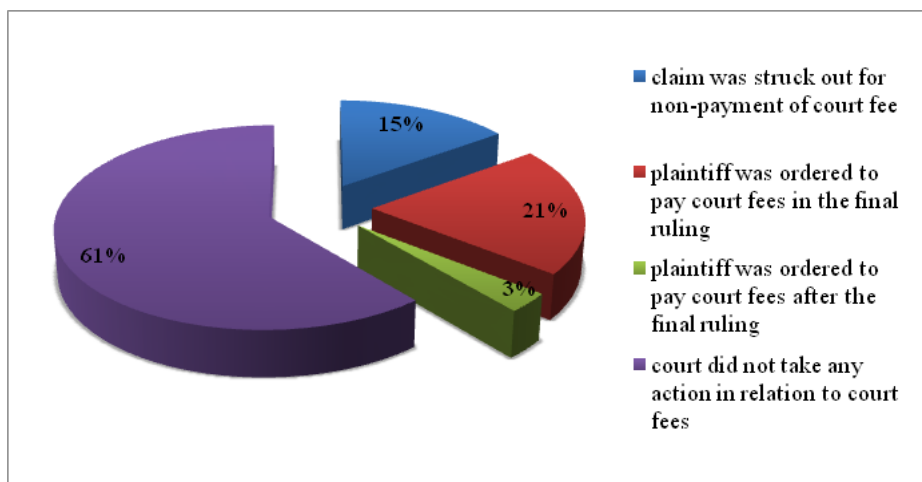
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<sup>30</sup> According to the author's observations, before the issuance of Administrative Instruction No. 2008/02 on Unification of Court Fees of November 2008, the courts were not conditioning the registration and adjudication of a lawsuit by the prior payment of court fees.

<sup>31</sup> These findings are in line with the results of the analysis conducted on the claims archived in the Court Liaison Office, where it was found that 97% of these lawsuits included a court fee waver. See: EU-funded project "Support to the Implementation of the Strategies for IDPs, Refugees and Returnees – Legal Aid", "Shedding Light on Compensation Claims for the Property Damaged or Destroyed in the Aftermath of the Conflict in Kosovo\* - Part I", September 2013, p. 18.



**Graph 5:** Percentage of cases in which the plaintiff was ordered to pay court fees with regard the phase of the first instance proceedings



The results of the research show that the amounts indicated on the orders and warnings for the payment of court fees varied from court to court and depending on whether the fees were charged separately for each legal action or altogether at the end of the proceedings. For instance, the lowest amount charged at the end of the trial was 128 EUR and the highest 1030 EUR.<sup>32</sup> It was also observed that the respondents did not claim recovery of their legal costs in any of the analysed cases.

### 3.3. Appellate proceedings

Most of the final verdicts in the analysed compensation cases were appealed. Yet, although a high number of appeals were identified only a tiny portion of the appellate proceedings was completed by the time of research.

#### 3.3.1. Proceedings before the second instance courts

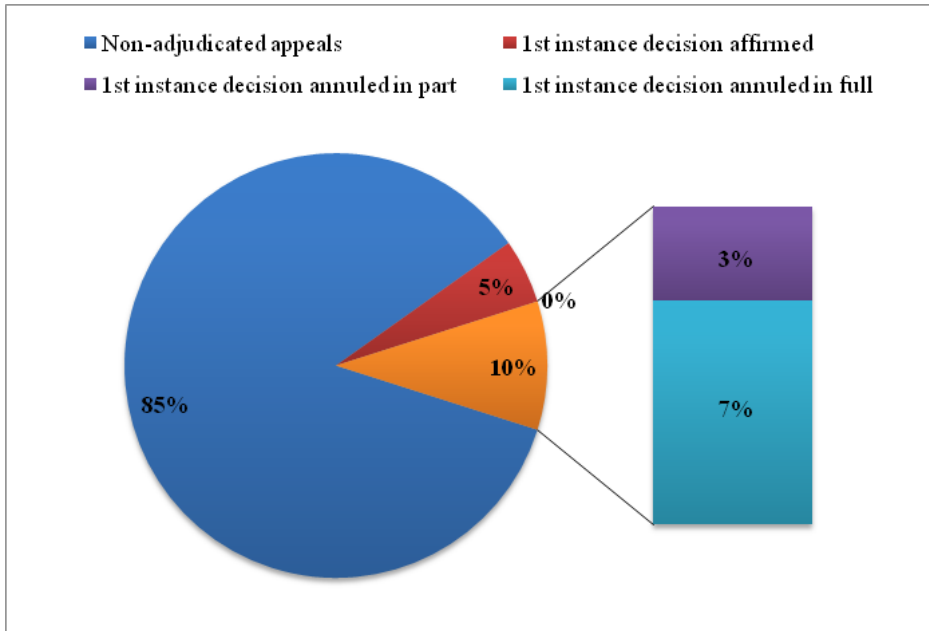
Majority of claims determined at the first instance level reached the appellate courts. This is not surprising since all the trials concluded by the

<sup>32</sup> The only similarity between the courts in this respect was the fee for appeal, which was always charged in the amount of 30 EUR.

municipal/basic courts were unfavourable for the plaintiff. The research looked in the appeals of the final verdict and the appeals of the decisions to stay proceedings.

According to the findings so far only 15 appeals were adjudicated. The appeal was dismissed in 5 cases and in 10 cases the appeal was successful or partially successful and appealed decision remanded back to the trial court.

**Graph 6:** Overview of the appellate proceedings by their outcome



Over half of the appeals were lodged before the second instance court in Prishtinë/Priština (in 52 cases). A part of the explanation for this might lay in the fact that after the 2013 justice system reform this court became the appellate court for the whole Kosovo. As already mentioned, in many cases the appellant was asked to pay court fees. Surprisingly, the appellants were asked to pay fee even in those cases in which the appeal was lodged in relation to the trial court's omission to rule on the court fee waiver.

### 3.3.2. Proceedings before the Supreme Court of Kosovo

Very few cases (4 in total) were appealed before the Supreme Court of Kosovo as the court of last instance. In these cases the plaintiffs have filed petition for extraordinary review (“revizija”) claiming that a) the second instance court has violated the provisions of Civil Procedure Code, b) that the decision of the court is based on inaccurate and incomplete determination of the factual situation, and/or c) that the decision is based on an incorrect application of law. The Supreme Court of Kosovo has concluded three of these cases by dismissing the petition as ungrounded.

### 3.4. Proceedings before the Constitutional Court of Kosovo

So far, in only one compensation case supported through the Project’s legal aid scheme, the plaintiff sought protection of his rights before the Constitutional Court of Kosovo.<sup>33</sup> In the *case of Branko Radeč* (Case No. KI96/13), the applicant submitted the application for the constitutional review of the decision of the Kosovo Court of Appeal. The applicant alleged violation of a number of rights guaranteed by the Constitution of Kosovo, such as the right to fair trial, right to property, right to efficient legal remedy, right to home and the prohibition of discrimination. The facts of this case can be summarized as follows:

In 2004 the applicant filed a compensation claim before the Municipal Court in Vushtrri/Vučitrn against the Municipality of Vushtrri/Vučitrn and the Provisional Institutions of Self-Governance in Kosovo, seeking compensation for damaged property. In the complaint, the applicant alleged that *“after the arrival of KFOR in Kosovo, the buildings that are located in the mentioned plot have been completely destroyed and the immovable property was stolen and destroyed, the orchard, acacia plantation and the forest were cut down, and the agricultural land is used by unauthorized persons.”* The applicant also requested exemption from the payment of court fees by recalling his IDP status, loss of all his belongings as a consequence of the conflict and the fact that the payment of court fees would drastically affect his and his family’s subsistence. The Municipal Court in Vushtrri/Vučitrn had never ruled on the court fees waiver and in 2010 it decided to struck out the claim because of the plaintiff’s “failure

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<sup>33</sup> One more referral was submitted to the Constitutional Court of Kosovo in relation to the compensation claim, but after the completion of the research.

to pay the court fee for lodging a lawsuit”. As described above, in relation to other similar decisions of the same court, the court based the decision on the presumption that the claims was withdrawn because the fee was not paid after the court placed the warning for the payment of fee on its notification board. In practice, none of the documents issued by the court, including the warning, could be delivered to the IDP plaintiff for the lack of the functional postal services between Kosovo and the Serbia proper. Three years later the second instance court rejected the applicant’s appeal and confirmed the decision of the Municipal Court in Vushtrri/Vučitrn. The Court of Appeal rejected the appeal as ungrounded for the following reasons: a) the first instance court has undertaken at least two actions in order to notify the claimant about the court fees - in 2010 it notified the Office for International Cooperation of the Kosovo Ministry of Justice and later on it posted the warning on the payment of court fees at its notice board; b) the plaintiff did not submit any evidence to substantiate his court fee waver.

The Constitutional Court has rejected the referral in the *case of Branko Radeč* as inadmissible. In its decision it stated that the Municipal Court and the Court of Appeal “*followed the relevant rules and procedures and reasoned their decisions*” and that therefore, it cannot be concluded “*that the relevant proceedings were in any way unfair or tainted by arbitrariness*”.

#### 4. Conclusion

The restitution of property lost during the conflict is a duty of responsible authorities spelled in the international legal documents for the protection of displaced persons and is a direct consequence of a set of individual rights laid down in the core international human rights instruments. The UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (the so-called “Pinheiro Principles”), translate the right to property, freedom from arbitrary interference with one’s home and right to housing into a distinct right to restitution: “everyone who has been arbitrarily or unlawfully deprived of housing, land and/or property [should] be able to submit a claim for restitution and/or compensation to an independent and impartial body”.<sup>34</sup> The same right was spelled in the UN Guiding Principles on Internal Displacement, which establish the duty of competent authorities to assist IDPs to

<sup>34</sup> Principle 13.1. (E/CN.4/Sub.2/2005/17).

recover property and possessions they left behind.<sup>35</sup> Another important soft law instrument applicable to the post-conflict situations, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,<sup>36</sup> draws the right to restitution and compensation of property from the right to remedy for human rights violations. This legal document elaborates the right to post-conflict property restitution by linking it to the important international law principle that a victim of human rights violations should be restored as closely as possible to the conditions existing before the violations occurred.

The restitution of property or compensation of damages sustained as a consequence of conflict is *conditio sine qua non* for finding durable solutions for displaced population. The displaced persons should be compensated for their losses regardless of whether they have chosen to return, locally integrate or resettle. Furthermore, the IDPs do not lose the right to restitution or compensation once their displacement is over,<sup>37</sup> since this right is not an entitlement conditioned upon having the IDP status.

Yet, the results of the analysis presented in the paper show that 15 years after the conflict the property restitution in Kosovo is far from being completed. The proceedings started in less than 1/3 of the analysed compensation cases and in an even lower number of cases these proceedings were completed. All the analysed first instance proceedings were concluded negatively for the plaintiff. In most of the final decisions the court struck out the claim by assessing that “the lawsuit is not permitted by law”. The analysis also showed that so far a very tiny percentage of the appellate proceedings has been finalized, and that in none of the cases covered by the research the plaintiff was awarded compensation for the loss of property.

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<sup>35</sup> Article 29.2 of the Guiding Principles (E/CN.4/1998/53/Add.2).

<sup>36</sup> Resolution adopted by the United Nations General Assembly on 21 March 2006, A/RES/60/147.

<sup>37</sup> The Brookings-Bern Project on Internal Displacement & Georgetown University's Institute for the Study of International Migration, “When Displacement Ends - A Framework for Durable Solutions”, 2007, p. 15, available at: <http://www.brookings.edu/reports/2007/09/displacementends.aspx> (last accessed on 1 May 2014).

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## **СУДСКИ ПОСТУПЦИ ПО ТУЖБАМА ЗА НАКНАДУ ШТЕТЕ НАСТАЛЕ УСЛЕД МАСОВНОГ УНИШТАВАЊА СТАМБЕНЕ ИМОВИНЕ НАКОН ПРЕСТАНКА ОРУЖАНИХ СУКОБА НА КОСОВУ И МЕТОХИЈИ**

### Резиме

Талас насиља који је преплавио Косово и Метохију након доношења УН СБ Резолуције 1244 у јуну 1999. године имао је за последицу расељење припадника мањинских зајединца и масовно уништавање њихове стамбене имовине. По окончању сукоба није успостављен посебан правни механизам за обештећење оних који су претрпели штету. Током 2004. и 2005. власници уништених и оштећених непокретности почињу да траже заштиту својих права пред судовима, што доводи до подношења огромног броја захтева за накнаду штете. У раду се истражује судбина ових захтева кроз анализу групе случајева у којима су тужиоци расељена лица која поступке по тужбама за накнаду штете воде уз подршку пројекта за пружање правне помоћи финансираног од стране Европске уније. Циљ истраживања био је да се утврде главне карактеристике поступака који се по тужбама за накнаду штете воде пред првостепеним, другостепеним и трећестепеним судовима. Резултати истраживања указују на то да су судски поступци започети у мање од 1/3 анализираних случајева и да је још мањи број ових поступака правноснажно окончан. Ни у једном од пресуђених предмета суд није усвојио тужиочев захтев за накнаду штете. Иако је право на реституцију имовине изгубљене током сукоба уређено бројним међународним документима и представља *conditio sine qua non* за повратак расељених лица, у раду се закључује да ни 15 година по завршетку сукоба остварење овог права на Косову и Метохији није омогућено.

**Кључне речи:** Косово и Метохија након сукоба из 1999. године, интерно расељена лица, захтеви за накнаду штете настале након сукоба, стамбена имовина, судски поступци.