

A close-up photograph of a silver metal padlock attached to a rusty chain-link fence. The padlock is the central focus, with its shackle looped through the fence. The background is a blurred, warm-toned scene, possibly a sunset or sunrise, with light rays filtering through. The overall mood is one of restriction and hope.

# PROPERTY RIGHTS MASS-CLAIM MECHANISM: Kosovo experience

June 2020



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# TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	2
EXECUTIVE SUMMARY .....	3
<b>1. INTRODUCTION.....</b>	<b>5</b>
1.1 <i>The establishment of mass-claim mechanisms.....</i>	5
1.2 <i>The scope of the report.....</i>	9
1.3 <i>Methodology .....</i>	10
<b>2. INTERNATIONAL AND DOMESTIC LEGAL AND POLICY FRAMEWORK .....</b>	<b>11</b>
<b>3. SITUATION ANALYSIS.....</b>	<b>13</b>
3.1 <i>Illegal occupation and eviction .....</i>	13
3.2 <i>Physical notification of properties .....</i>	18
3.3 <i>Administration/rental scheme.....</i>	20
3.4 <i>Demolition .....</i>	23
3.5 <i>Parallel review of cases by courts .....</i>	25
3.6 <i>A and C claims .....</i>	26
3.7 <i>Financial and staffing challenges.....</i>	29
<b>4. CONCLUSIONS.....</b>	<b>33</b>

# LIST OF ABBREVIATIONS

<b>CCK</b>	Criminal Code of Kosovo
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>DP</b>	Displaced Person
<b>ECHR</b>	European Convention on Human Rights
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo
<b>EUSR</b>	European Union Special Representative in Kosovo
<b>HPCC</b>	Housing and Property Claims Commission
<b>HPD</b>	Housing and Property Directorate
<b>HRW</b>	Human Rights Watch
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>KCA</b>	Kosovo Cadastral Agency
<b>KP</b>	Kosovo Police
<b>KPA</b>	Kosovo Property Agency
<b>KPCC</b>	Kosovo Property Claims Commission
<b>KPCVA</b>	Kosovo Property Comparison and Verification Agency
<b>MoU</b>	Memorandum of Understanding
<b>MP</b>	Member of Parliament
<b>OIK</b>	Ombudsperson Institution in Kosovo
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PCC</b>	Property Claims Commission
<b>PISG</b>	Provisional Institutions of Self Government
<b>PVAC</b>	Property Verification and Adjudication Commission
<b>SAA</b>	Stabilisation and Association Agreement
<b>SRSG</b>	Special Representative of the Secretary-General of the United Nations
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNGA</b>	United Nations General Assembly
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>UNSCR</b>	United Nations Security Council Resolution





# 1. INTRODUCTION

Due to conflicts, wars and unrest, every year millions of people are forced to flee for refuge, leaving behind their homes, lands, and properties. UNHCR's annual Global Trends report shows that, in 2018, an average of one person around the world was displaced every two seconds. This amounts to over 70 million people, with developing countries being the most affected.<sup>3</sup>

Although the conflict in Kosovo ended two decades ago, many property disputes remain unresolved today. This greatly affects the human rights of all communities, especially those who live in displacement. In fact, the insufficient protection of property rights of displaced persons presents one of the main obstacles in their return process. Therefore, responsible authorities must undertake meaningful steps to ensure property rights are protected in a way that is conducive to return.<sup>4</sup>

Addressing the issue of unresolved conflict-related property claims is a necessary prerequisite to achieve and maintain the stability of every post-conflict society, including Kosovo, which is why the Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) continues to pay utmost importance to this topic. Providing remedies for these specific categories of property claims contributes not only to the protection and advancement of human rights of affected parties, but it also influences the reconciliation process within the society.

Thus, as a follow-up of the 2011 report "*Challenges in the Resolution of Conflict-related Property Claims in Kosovo*"<sup>5</sup>, this report analyses challenges the Housing and Property Directorate (HPD), Kosovo Property Agency (KPA), as well as the current Kosovo Property Comparison and Verification Agency (KPCVA) faced in their endeavors, results they achieved and gaps that still persist.

## 1.1 The establishment of mass-claim mechanisms

According to the UN Security Council Resolution 1244 from 1999, the United Nations Interim Administration Mission in Kosovo (UNMIK) was given the responsibility to ensure "*an unimpeded return of all refugees and displaced persons to their homes in Kosovo*"<sup>6</sup> until the local institutions are capable of taking over such responsibility. Therefore, to address the issue of unresolved property disputes concerning the loss

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<sup>3</sup> UNHCR Global Trends Report, Forced Displacement in 2018, 19 June 2019, p. 2. Available at [https://reliefweb.int/sites/reliefweb.int/files/resources/5d08d7ee7\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/5d08d7ee7_0.pdf), accessed on 24 June 2019.

<sup>4</sup> UNHCR Regional Office in South Eastern Europe, Displaced Persons from Kosovo in the Region – A Re-assessment of Interest to Return, 2017, p. 12. Available at [https://www.unhcr.org/see/wp-content/uploads/sites/57/2018/11/UNHCR\\_KOS\\_Needs-Assessment-Report\\_NA\\_English-1.pdf](https://www.unhcr.org/see/wp-content/uploads/sites/57/2018/11/UNHCR_KOS_Needs-Assessment-Report_NA_English-1.pdf), accessed on 24 June 2019.

<sup>5</sup> Organization for Security and Co-operation in Europe, Mission in Kosovo, Challenges in the Resolution of Conflict-related Property Claims in Kosovo, June 2011. Available at <https://www.osce.org/kosovo/80435?download=true>, accessed on 1 July 2019.

<sup>6</sup> UN Security Council Resolution 1244, S/RES/1244, 10 June 1999. Available at [https://peacemaker.un.org/sites/peacemaker.un.org/files/990610\\_SCR1244%281999%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf), accessed on 20 November 2019.

the HPD and the Housing and Property Claims Commission (HPCC) were both established by UNMIK Regulation 1999/23 in November 1999.<sup>7</sup>

While the HPD was tasked with the overall administrative management of submitted claims,<sup>8</sup> the HPCC, as a quasi-judicial body, was mandated with the right to settle private non-commercial disputes concerning residential properties. Decisions of the HPCC on claims were binding and enforceable and were not subject to review by any other judicial or administrative authority in Kosovo.<sup>9</sup> Having implemented 28,716 residential property claims (amounting to 98.75 per cent of the total number of claims) despite numerous obstacles, this mechanism mostly managed to fulfill its mandate.<sup>10</sup>

The HPCC exercised exclusive jurisdiction over three types of residential property claims:

1. **Category A claims (discrimination):** claims submitted by individuals who lost their ownership, possession, or occupancy rights over residential real property<sup>11</sup> in the aftermath of 23 March 1989<sup>12</sup>, as per the legislation which was found to be discriminatory either in its application or intent.<sup>13</sup>
2. **Category B claims (informal transactions):** claims submitted by individuals who, in the aftermath of 23 March 1989, performed informal transactions of residential real property on the grounds of the free will of the parties.<sup>14</sup>
3. **Category C claims (illegal occupation):** claims submitted by individuals who were exercising ownership, possession or occupancy rights before 24 March 1999<sup>15</sup>,

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<sup>7</sup> 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).

<sup>8</sup> Claims collection and processing as well as the implementation of HPCC decisions.

<sup>9</sup> The UNMIK Regulation 2000/60 did, however, contain a review procedure by allowing the claimant or any interested party to file a request for reconsideration of a decision. For more information see section 2.7 of UNMIK Regulation 1999/23 and section 14 of UNMIK Regulation 2000/60.

<sup>10</sup> Some 5,080 claimants opted for repossession of their property while 3,419 requested the HPD to place their property under its administration. Another 2,207 requested closure of their claim on receiving their HPCC decision. For further details see the Final Report 2007, Housing and Property Claims Commission, Chapter 8 (Service and Implementation of HPCC Decisions), Statistics on Implementation, p. 72. Available at [http://www.kpaonline.org/hpd/pdf/HPCC-Final\\_Report.pdf](http://www.kpaonline.org/hpd/pdf/HPCC-Final_Report.pdf), accessed on 28 March 2019.

<sup>11</sup> The property rights with regards to the Category A claims refer to socially owned apartments. Due to the discriminatory legislation invoked by authorities between 23 March 1989 and 24 March 1999, many Kosovo Albanians were dismissed from their posts and therefore lost occupancy rights over their properties. This is due to the fact that occupancy rights were linked to actual employment. As a result, 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 holders as per the standardized privatization process enacted at that period of time. The discrimination of the right to property was determined by UNMIK Regulation No. 1999/23, Section 1, para. 1.2 (a), 15 November 1999. Available at <http://www.kpaonline.org/frameworkPDFs/01RE1999-23.pdf>, Accessed 19 March 2020.

<sup>12</sup> On 23 March 1989, the Assembly of Kosovo voted constitutional changes, later approved by the Assembly of Serbia, with regard to its autonomy, as defined in Constitution of Yugoslavia of 1974.

<sup>13</sup> The HPCC's initial role was to understand whether the above-mentioned claimant's rights were valid at the time and if determined so, whether those rights were revoked as a consequence of the application of discriminatory measures. For further details see the Final Report 2007, Housing and Property Claims Commission, Chapter 2, pp. 18–20. Available at <https://pca-cpa.org/wp-content/uploads/sites/175/2016/01/HPCC-Final-Report-2007.pdf>, accessed on 25 July 2018.

<sup>14</sup> The HPCC aimed to establish the exact title of parties who entered into an informal transaction, i.e. to determine whether the claimant had acquired an ownership right over property through an informal transaction. In such cases, the HPCC instructed the registration of the established right in the respective cadastral record. The informal transactions in this sense are the transactions which occurred between the parties despite the then existing 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). This Law restricted such informal transactions since it found them to be endangering the "national structure of the population". It was repealed by the UNMIK Regulation No. 1999/10, which entered into force on 13 October 1999.

<sup>15</sup> On 24 March 1999, the North Atlantic Treaty Organization initiated 'Operation Allied Force', bombing Federal Republic of Yugoslavia, during the Kosovo conflict. Thus, considered this date, as when the parties in Kosovo may have lost their

and who due to the illegal occupation of their property ceased to enjoy such rights.<sup>16</sup> This amounts to approximately 93 per cent<sup>17</sup> of the total number of received claims of the owners who have been deprived of their property rights.

Having realized that there was also a significant number of agricultural and commercial property disputes not addressed within the HPD mandate,<sup>18</sup> the international community's efforts in resolving these property disputes started in the next phase. The UNMIK established the KPA in 2006, which was, in addition to claims concerning residential properties, also mandated to receive, register, and assist courts in tackling claims pertaining to agricultural and commercial properties.<sup>19</sup> The KPA replaced the HPD and maintained its field presence<sup>20</sup> and organizational structure,<sup>21</sup> while Kosovo Property Claims Commission<sup>22</sup> (KPCC) issued decisions were subject to review only by the Supreme Court of Kosovo Appeals Panel for KPA-related matters, and not by regular courts.<sup>23</sup>

In 2011, as a result of the Prishtinë/Priština and Belgrade dialogue facilitated by the European Union in Brussels, the parties reached an agreement<sup>24</sup> for Belgrade to return the cadastral records of Kosovo.<sup>25</sup> In 2016, the KPCVA was established, inheriting part of the KPA and HPD mandate.

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property rights. This determination is recognized through UNMIK Regulation No. 1999/23, Section 1, para. 1.2 (c), 15 November 1999. Available at <http://www.kpaonline.org/framesworkPDFs/01RE1999-23.pdf>, accessed 19 March 2020.

<sup>16</sup> While deciding upon category C claims, the HPCC sought solely to determine the possession rights over the claimed property, apart from the cases where there were competing claims from category A over the same property. The majority of category C claims were submitted by the displaced members of the Kosovo Serb community.

<sup>17</sup> For further details, see the Final Report 2007, Housing and Property Claims Commission, Chapter 5 (Collection and Registration of Claims), Statistics on Number of Claims Received, pp. 40. Available at [http://www.kpaonline.org/hpd/pdf/HPCC-Final\\_Report.pdf](http://www.kpaonline.org/hpd/pdf/HPCC-Final_Report.pdf), accessed on 21 August 2019.

<sup>18</sup> United Nations Security Council, A Comprehensive Review of the Situation in Kosovo by the Special Envoy of the UN Secretary General in Kosovo, Ambassador Kai Eide, S/2005/635, 7 October 2005. <http://www.unosek.org/docref/KaiEidereport.pdf>, accessed on 11 April 2019.

<sup>19</sup> These were claims related to the conflict including circumstances directly related to or resulting from it, between 27 February 1998 and 20 June 1999.

<sup>20</sup> The field presence was comprised of field offices throughout Kosovo, and in Podgorica, Skopje, Belgrade, Kragujevac and Niš.

<sup>21</sup> It therefore, consisted of Executive Secretariat, Supervisory Board, and Kosovo Property Claims Commission (KPCC). 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).

<sup>22</sup> The Kosovo Property Claims Commission (KPCC) is the quasi-judicial decision-making body within the Kosovo Property Agency (KPA) which was established pursuant to UNMIK Regulations 2006/10. According to it, the mandate of the KPCC was to resolve conflict-related ownership and use rights claims with respect to private immovable property involving circumstances directly related to or resulting from the conflict that occurred between 27 February 1998 and 20 June 1999 where the claimant is not now able to exercise such property rights. Claims involving property disputes unrelated to the 1998-1999 conflict fell outside of the mandate of the KPCC and were subject to the consideration of the local court system. Similarly, claims not involving private immovable property fall outside of the KPCC mandate. The KPCC was authorized to confirm ownership and use rights claimed by parties, make orders for possession of the property, including eviction orders in relation to unlawful occupants, and grant, refuse or dismiss claims.

<sup>23</sup> The mandate of the KPA was clarified by the 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). According to the same Law, the authority of the UN Special Representative of the Secretary General was replaced with the European Union Special Representative/International Civilian Representative, which was rejected by the government in Serbia. As a consequence, the KPA offices in Belgrade, Kragujevac and Niš were closed, greatly affecting large number of claimants residing in these areas. This was resolved after the negotiations between the KPA representatives and UNHCR Prishtinë/Priština-based office, and UNHCR Belgrade-based office and the Serbian government, after which it was agreed that UNHCR property offices would open to carry out functions previously envisaged for the KPA.

<sup>24</sup> "Operational conclusion of the tri-partite implementation group on cadastral records", 20 October 2011.

<sup>25</sup> Until the time of the drafting of this report (December 2019), the comparison and verification still did not happen, as the cadastral records to date have not been returned to Prishtinë/Priština.

The Law on the KPCVA<sup>26</sup> entered into force only in November 2016, as its adoption by the Assembly of Kosovo (Assembly) in June 2016 was contested by the political party *Srpska Lista*. The party claimed that the Assembly has violated voting procedures during the approval process. Thus, the *Srpska Lista* challenged the procedure of the Assembly at the Constitutional Court on 17 June 2016. However, the Court ruled the case as inadmissible on 25 October 2016, and instructed that procedures are to continue to allow for the Law on the KPCVA to enter into force.<sup>27</sup>

According to Article 4 of the Law on the KPCVA (*Functions and responsibilities of KPCVA*), para 2.1,<sup>28</sup> the Law has introduced KPCVA's responsibilities to receive, compare, and through the Property Verification and Adjudication Commission (PVAC), resolve discrepancies between the pre-June 1999 and the newly established Kosovo cadastral registry records relating to private property, private commercial property and private property of religious communities, where two sets of the cadastral data, those before 1999 and after 2003, diverge from each other.

The KPCVA also succeeded responsibilities previously belonging to KPA and respectively, the HPD. The Law provided KPCVA executive authority over the implementation of KPA, HPD, HPCC, Property Verification and Adjudication Commission (PVAC), Property Claims Commission (PCC) decisions, judgments of the Supreme Court Appeals Panel for KPA-related matters, including administration of property on the request of successful claimants, implementing voluntary rental schemes for properties under its administration,<sup>29</sup> demolition of illegal structures built on displaced persons' properties, and the eviction of illegal occupants. In addition, all KPA competencies, including its budget, physical assets, and contractual liabilities were also transferred to the KPCVA.

Therefore, taking into account its extensive mandate, the KPCVA plays a vital role in the protection of property rights of vulnerable communities, especially those living in displacement. The mechanisms are crucial in the adjudication and enforcement of a high volume of property claims, which would have otherwise overburdened the regular court system in Kosovo.

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<sup>26</sup> Law No. 05/L-010 on the Kosovo Property Comparison and verification Agency, 28 November 2016.

<sup>27</sup> Constitutional review of the Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency, [http://gjk-ks.org/wp-content/uploads/vendimet/KO94-16\\_ANG.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/KO94-16_ANG.pdf) accessed 28 June 2019.

<sup>28</sup> Article 4 para. 2.1. of Law No. 05/L-010 on the Kosovo Property Comparison and Verification Agency, 28 November 2016.

<sup>29</sup> Ibid. Article 4 para. 2.2, 2.3, 2.4 and 2.5.

## 1.2 The scope of the report

This report represents an analysis of a twenty-year period of the functioning of the property dispute resolution mass-claim mechanisms that were vested with exclusive jurisdiction to receive and adjudicate conflict-related property claims over residential, agricultural and commercial property. More precisely, the mechanisms discussed are HPD (1999–2006), KPA (2006–2016), and KPCVA (established in 2016), as three consecutive agencies that were mandated to deal with the resolution of such claims. Taking into account that KPCVA is still a functioning mechanism, the report assesses its work from the time of its establishment until December 2019. It examines in detail their actual performance, milestones and shortcomings, and reflects upon the current state of affairs with regards to the resolution of conflict-related property claims in Kosovo *vis-à-vis* the mandate assigned to these mechanisms, as well as the other factors that influenced their results.

The report firstly elaborates on the international and domestic legal and policy frameworks, which form the basis for understanding the complex circumstances pertaining to conflict-related property claims in Kosovo. Secondly, it provides a brief overview of the establishment of the mechanisms, their role and progress, as well as obligations and responsibilities; achievements and identified failures.

Chapter 3 (*Situation analysis*) provides an in-depth analysis of the following issues:

- illegal occupation and eviction;
- notification;
- administration/rental scheme;
- demolition;
- parallel review of cases by courts;
- A and C claims, and
- financial and staffing aspects.

This chapter will discuss the number of illegal occupation and eviction, as well as the situation relating to the envisaged remedies. It will examine physical notifications based on the exact number distributed and the challenges which continuously occurred when it comes to timely and effective notifications. Further, the report refers to the number of properties under administration or rental scheme, therefore exhibiting its fluctuation throughout the years. The chapter on the demolition of illegal constructions in claimants' properties examines the major obstacles and reasons why both KPA and KPCVA were unable to carry out this responsibility. In addition, the number of cases submitted in parallel to the regular courts is also included, as well as the data gathered on A (discriminatory loss of occupancy right pre-1989) and C (ownership rights or possession rights acquired post-1989) categories of claims, including the number of occurred cases and reasons for failure to resolve them. Lastly, the report also outlines a number of encountered financial and staffing challenges that affected the work of mass claim mechanisms.

In its final chapter, the report provides a number of conclusions based on the findings indicated in the main part, as well as recommendations addressed to the present-day stakeholders involved in cases pertaining to conflict-related property rights in Kosovo.

### 1.3 Methodology

This report employs both qualitative and quantitative data. Interviews with nine relevant stakeholders in the field of property rights in Kosovo<sup>30</sup> were conducted in a period between August and December 2018. This served as a source of qualitative data primarily used in *Chapter 3 (Situation analysis)*.<sup>31</sup> Furthermore, the OSCE regularly exchanged information with regards to property rights-related issues with all institutions whose representatives have been interviewed for the purposes of this report. Taking this into account, the conducted interviews were a result of existing co-operation, while all the interviewees have been involved in and well-acquainted with the work of all three considered mass-claim mechanisms.

In addition, the most significant sources of quantitative data are the HPD final reports, ten annual reports published by the KPA, as well as KPCVA annual reports. Finally, the data collected through OSCE field monitoring and continuous exchange of information with relevant stakeholders were used to triangulate the findings in this report.

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<sup>30</sup> To gather on-site information, the OSCE approached representatives of the following institutions: KPCVA, UNHCR, European Union (EU) Legal Aid Project in Serbia, a member of Oversight Board of the KPCVA (EU Special Representative), Constitutional Court, Kosovo Judicial Council, Ombudsperson Institution in Kosovo, Ministry of Justice, as well as the “Social Housing and Property Rights” NGO, focusing on property rights of displaced persons and non-majority communities. The interview questions aimed at finding out the interviewees’ standpoint with regards to the implementation of the mandate of conflict-related property claims mechanisms. They were particularly focused on determining how successful the mechanisms were in overcoming challenges they faced, i.e. how successful was the administration of properties and rental scheme; how did the parallel review of cases by regular courts affect mechanisms’ work; how did they deal with re- eviction of the illegal occupants, and to what extent were they successful in notification of the claimants and carrying out demolitions.

<sup>31</sup> The OSCE maintains a good co-operation with all listed stakeholders; therefore, there was no methodological challenge when accessing the required data.

## 2. INTERNATIONAL AND DOMESTIC LEGAL AND POLICY FRAMEWORK

International human rights instruments make particular emphasis on the protection of property rights. Article 17 of the Universal Declaration of Human Rights (UDHR), the first document which sets out fundamental human rights to be universally protected, states that “Everyone has the right to own property alone as well as in association with others”, and that “no one shall be arbitrarily deprived of his property.”<sup>32</sup>

Moreover, the right to property has been recognized by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>33</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>34</sup>.

Property rights are stipulated only in the First Protocol of the European Convention on Human Rights (ECHR) instead of the Convention itself.<sup>35</sup> However, property rights are among the most frequently violated rights at the international level. In 2018, for instance, 8.59 per cent of all judgments in which the European Court of Human Rights (ECtHR) adjudicated found a violation of the ECHR property right provision, while for the 1959–2018 period, this amounts to 11.59 per cent.<sup>36</sup> Furthermore, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) represent one of the most crucial international standards outlining the rights of refugees and displaced persons to return to their original homes and lands.<sup>37</sup> Endorsed in 2005, they are a result of almost decade-long negotiations to produce a document providing practical and consolidated directions on how to tackle sensitive issues related to housing, land and property restitution through a uni-

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<sup>32</sup> Article 17 (1) and Article 17 (2) of the UN General Assembly, “Universal Declaration of Human Rights,” 217 (III) A (Paris, 1948). Available at <http://www.un.org/en/universal-declaration-human-rights/>, accessed on 23 July 2018.

<sup>33</sup> Article 5 (d)(v) of the UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. Available at <https://www.coe.int/en/web/compass/148>, accessed on 23 July 2018.

<sup>34</sup> Article 16 (h) of the UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Available at <http://www.un.org/women-watch/daw/cedaw/cedaw.htm>, accessed 23 July 2018.

<sup>35</sup> “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” Council of Europe, Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952, ETS 9. Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf), accessed on 23 July 2018.

<sup>36</sup> Council of Europe, The European Court of Human Rights in Facts and Figures, 2018, p. 7. Available at [https://www.echr.coe.int/Documents/Facts\\_Figures\\_2018\\_ENG.pdf](https://www.echr.coe.int/Documents/Facts_Figures_2018_ENG.pdf), accessed on 23 June 2019. See also European Court of Human Rights, Overview 1959-2018, March 2019. Available at [https://www.echr.coe.int/Documents/Overview\\_19592018\\_ENG.pdf](https://www.echr.coe.int/Documents/Overview_19592018_ENG.pdf), accessed on 23 June 2019.

<sup>37</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons, 28 June 2005, E/CN.4/Sub.2/2005/17. Available at <https://2001-2009.state.gov/documents/organization/99774.pdf>, accessed on 20 June 2019.

versal approach. The Pinheiro Principles also stipulate the obligations of the authorities towards displaced persons, including the need for adequate measures to promote returns and available effective remedies against human rights violations. These are also reflected in the United Nations Guiding Principles on Internal Displacement.<sup>38</sup>

With regards to the Kosovo legal framework pertaining to private property rights, at the end of the 1999 conflict, UNMIK committed to assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo under Article 11(k) of the UN Security Council Resolution 1244.<sup>39</sup> Further, Article 156 of the Constitution clearly states that:

“Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.”<sup>40</sup>

Moreover, the Kosovo Strategy on Property Rights, approved by the government in 2017, provides a strategic vision for strengthening and securing property rights for all, recognizing in particular *“the challenges faced by women, displaced persons (DPs) and members of non-majority communities to fully exercise in practice their rights to property and proposes specific measures to address these challenges.”*<sup>41</sup> In addition, Law on Property and Other Real Rights,<sup>42</sup> is the primary law determining the property rights and obligations while the Law on Immovable Property Tax,<sup>43</sup> and Law on Allocation for Use and Exchange of Municipal Immovable Property,<sup>44</sup> also contain provisions addressing the issue of property rights. Furthermore, the Law on Enforcement Procedure<sup>45</sup> is another key instrument that enables enforcement of the decisions, including property rights related decisions.

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<sup>38</sup> UN High Commissioner for Refugees (UNHCR), Guiding Principles on Internal Displacement, 22 July 1998, ADM 1.1, PRL 12.1, PR00/98/109. Available at <http://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>, accessed on 24 July 2017.

<sup>39</sup> Article 11 (k), UN Security Council, Security Council resolution 1244, 1999 (on the deployment of international civil and security presences in Kosovo), 10 June 1999, S/RES/1244 (1999). Available at <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>, accessed on 24 July 2018.

<sup>40</sup> Article 156 (Refugees and Internally Displaced Persons), Kosovo Constitution, 15 June 2008.

<sup>41</sup> “Kosovo National Strategy on Property Rights”, Ministry of Justice, December 2016, p. 7. Available at [http://kryeministri-ks.net/repository/docs/National\\_Strategy\\_and\\_Annexes\\_ENG.pdf](http://kryeministri-ks.net/repository/docs/National_Strategy_and_Annexes_ENG.pdf). Accessed 16 May 2019.

<sup>42</sup> Law No. 2009/03-L-154 on Property and Other Real Rights, 25 June 2009. Available at [https://www.kuvendikosoves.org/common/docs/liqjet/2009\\_03-L-154\\_en.pdf](https://www.kuvendikosoves.org/common/docs/liqjet/2009_03-L-154_en.pdf), accessed on 3 April 2019.

<sup>43</sup> Law No.06/L-005 on Immovable Property Tax, adopted on 15 February 2018. Available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=15984>, accessed on 9 April 2019.

<sup>44</sup> Law No.06/L-092 on Allocation for Use and Exchange of Municipal Immovable Property, adopted 7 March 2019. Available at <https://mapl.rks-gov.net/wp-content/uploads/2017/10/LAW-NO-6.pdf>, accessed on 3 April 2019.

<sup>45</sup> Law No. 04/L-139 on Enforcement Procedure, 3 January 2013. Available at <https://www.kuvendikosoves.org/common/docs/liqjet/Law%20on%20enforcement%20procedure.pdf>, accessed on 3 April 2019.

# 3. SITUATION ANALYSIS

## 3.1 Illegal occupation and eviction

Illegal occupation and re-occupation of properties remained a constant challenge throughout the implementation of property re-possession process. The major obstacle was inevitably linked to the fact that the mandates of the HPD, KPA and KPCVA allowed for eviction of the illegally re-occupied property only twice, while the re-occupation often took place multiple times within the same properties. Throughout its mandate, the HPD performed in total 2,168<sup>46</sup> evictions across Kosovo (Figure 1). Nevertheless, the number of re-occupied properties eventually dropped,<sup>47</sup> in particular after the signing of a first Memorandum of Understanding (MoU) between the Kosovo Police (KP) and the KPA in October 2009.<sup>48</sup> This MoU outlined the preliminary obligations and procedures to be followed with regards to KP's assistance in executing evictions, upon a request submitted by the KPA.<sup>49</sup> In addition, the illegal occupation of real property constitutes a criminal offence as per the Criminal Code of Kosovo (CCK)<sup>50</sup>. According to the KPA report of 2013, an agreement on handling such cases was reached on 23 August 2012 between the KP and the prosecutors. According to this new arrangement, serial re-occupants should be arrested and penalized through the court system in accordance with the Criminal Code. It was believed that arrest and detention are more effective in preventing serial re-occupation cases instead of absorbing valuable resources of KPA and KP to evict the same illegal occupant at the same property repeatedly.<sup>51</sup>



Figure 1: HPD-performed Evictions

<sup>46</sup> HPD Statistics, 2005. Available at <http://www.kpaonline.org/hpd/pdf/Statistics%20Annual%20English.pdf>, accessed on 1 July 2019.

<sup>47</sup> Based on HPD and KPA annual reports from 2000 until 2018.

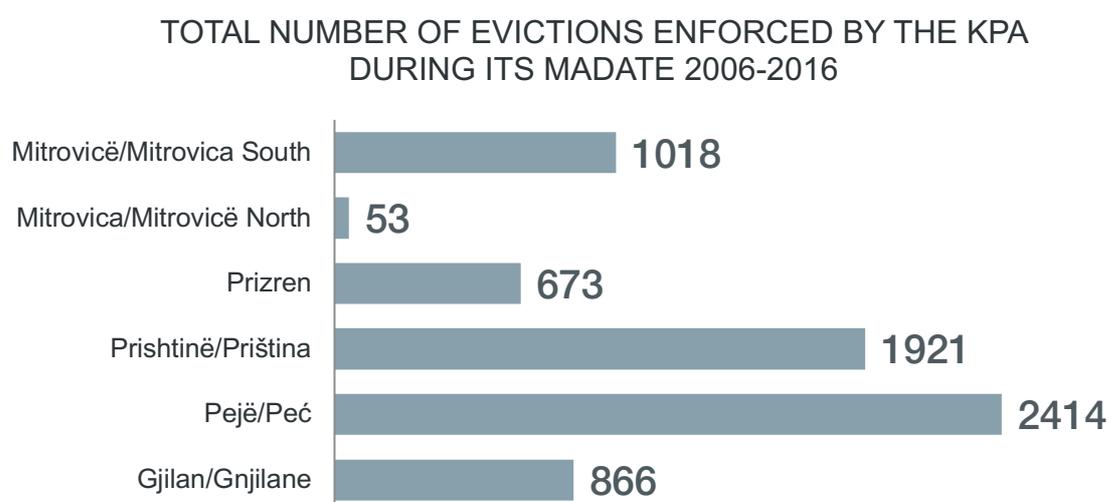
<sup>48</sup> The MoU outlines the obligations and procedures with regard to the execution of evictions.

<sup>49</sup> KPA signed MoU with Kosovo Police, 19 October 2009. For more information please see <http://www.kpaonline.org/detail-Rel.asp?ID=50>.

<sup>50</sup> Article 332 of the Criminal Code of Kosovo 22 June 2012. The same was reiterated by the new CCK No. 06/L-074, Article 320, 14 January 2019.

<sup>51</sup> KPA Annual Report from 2013, p. 27. Available at <http://www.kpaonline.org/PDFs/AR2013.pdf>, accessed on 1 July 2019.

As the data in Figure 2 show, at the end of its mandate in 2016, the KPA managed to enforce 6,948 evictions, while 2,043 were cancelled due to a variety of reasons.<sup>52</sup> In some cases, for instance, the evictions were scheduled as a result of missing payment by a tenant temporarily residing in a property under the administration/rental scheme. As the payment for the rent eventually was made, the eviction was cancelled. In addition, in the cases of illegally occupied property, the illegal occupant would often voluntarily leave the property, making the scheduled eviction unnecessary and therefore cancelled. Also, there are an additional 387 cases pending evictions that involved criminal charges<sup>53</sup> due to the unlawful occupation of the immovable property. They were sent to the respective prosecutor's office for further processing.



*Figure 2: Number of evictions enforced by KPA 2006-2016*

Furthermore, political circumstances affected the work of the mechanisms, particularly in the northern municipalities of Kosovo. The eviction process supported by the KP in this area was hindered in January 2010, due to the general political circumstances creating security concerns. However, the KPA, until August 2011, proceeded with evictions completely independently. In certain sensitive cases, the procedure was supported by the European Union Rule of Law Mission in Kosovo (EULEX). From August 2011 to March 2014, no evictions were executed due to security reasons. After March 2014, evictions in the northern municipalities recommenced until the end of 2016. During this period, only 13 evictions were carried out.<sup>54</sup> This included cases in which security risks were not assessed as high by the Agency and the KP. As demonstrated in Figure 3, this has left the KPA with 640 pending cases at the time of its closure.<sup>55</sup>

<sup>52</sup> Chapter 5.6.3. "Eviction activities" of the KPCVA Annual Report from 2016, p. 159. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 2 October 2019.

<sup>53</sup> Such cases included illegal repossession, unlawful occupation, non-payment of rent, and refusal to enter rental agreements. Please see Chapter 5.6.3. "Eviction activities" of the KPCVA Annual Report from 2016, pp. 159. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

<sup>54</sup> Please see Chapter 5.6.3. "Eviction activities" of the KPCVA Annual Report from 2016, pp. 159.

<sup>55</sup> Ibid. pp. 158-159. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

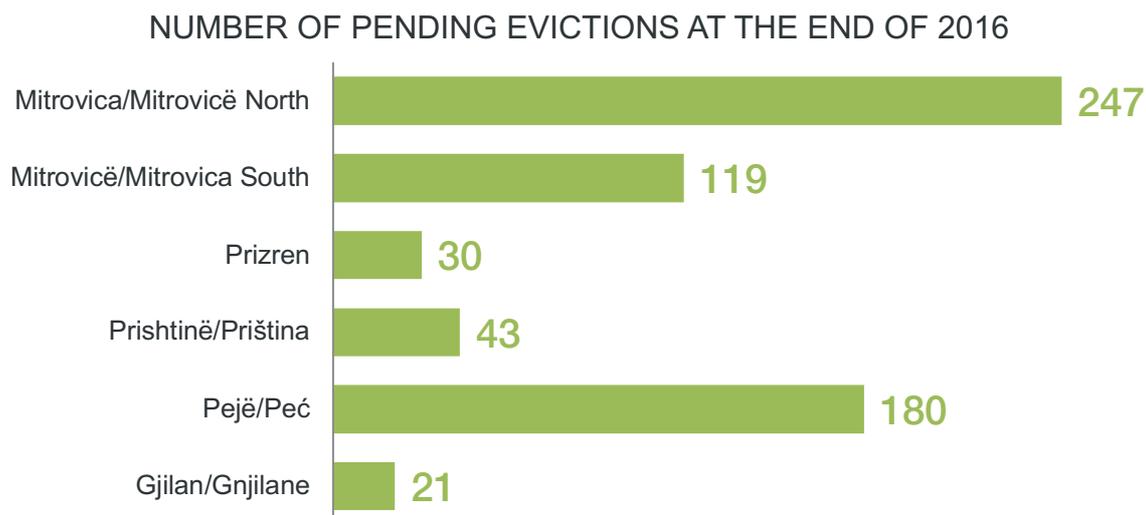


Figure 3: Number of pending evictions in 2016

The reasons for the remaining number of pending evictions at the end of KPA’s mandate were as follows:<sup>56</sup>

**BREAKDOWN OF CAUSES OF KPA PENDING EVICTIONS AT THE END OF 2016**

	Re-possession	Illegal occupation	Non-payment of rent	Refusal to enter into rental agreement	Waiting for eviction by KP
<b>Gjilan/Gnjilane</b>	0	3	1	0	17
<b>Pejë/Peć</b>	1	53	18	0	108
<b>Prishtinë/Priština</b>	1	8	0	0	34
<b>Prizren</b>	1	0	0	0	29
<b>Mitrovicë/Mitrovica South</b>	2	15	60	28	14
<b>Mitrovica/Mitrovicë North</b>	12	1	58	3	173

Figure 4: Number of pending evictions in 2016

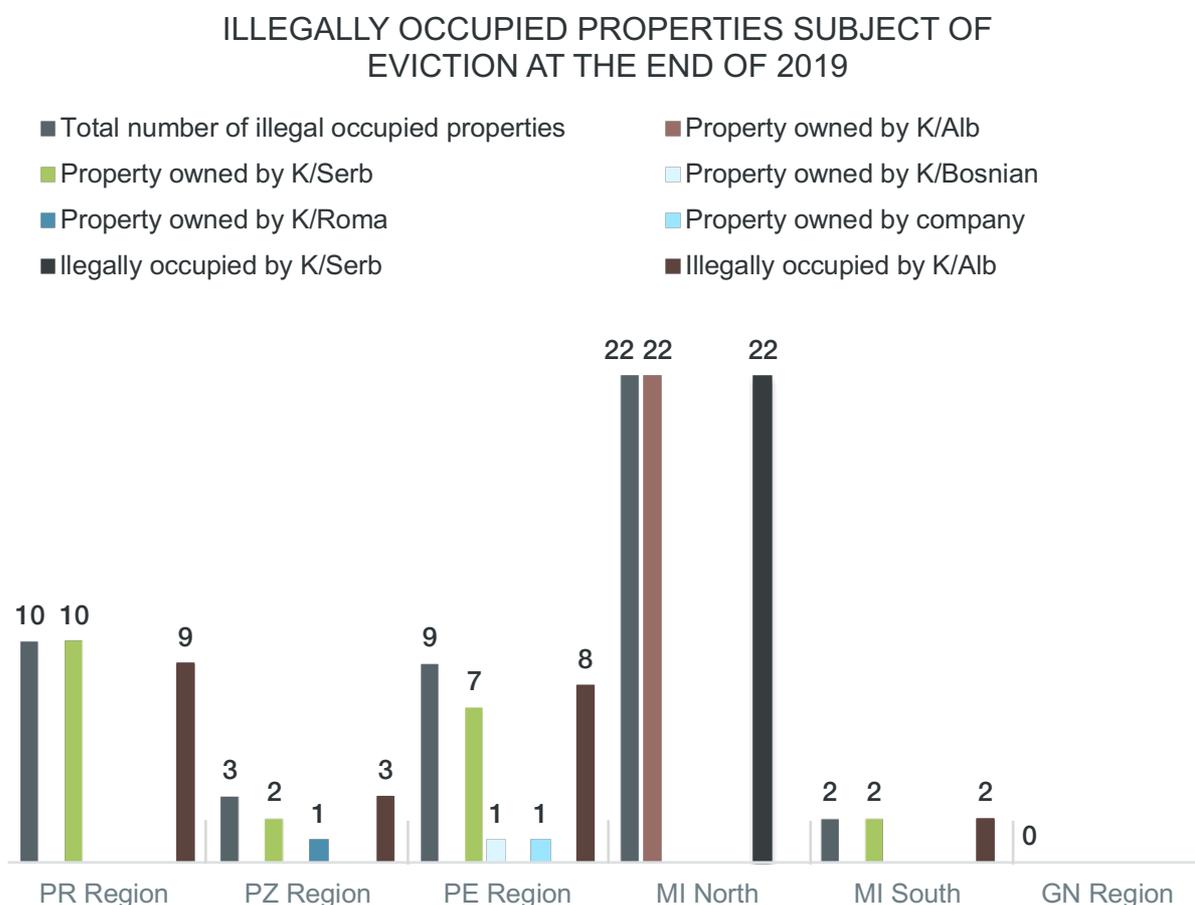
The execution of all planned evictions is also a challenge confronting KPCVA. The official data demonstrates that during 2018, the KPCVA had scheduled 906 evictions. While 321 of them were enforced and properties vacated, 86 evictions have been canceled and 83 evictions remained pending at the end of 2018.<sup>57</sup>

<sup>56</sup> Ibid. p. 159.

<sup>57</sup> KPCVA annual report 2018. Available at [http://kpcva.org/pdf/Raporti\\_2018.pdf](http://kpcva.org/pdf/Raporti_2018.pdf), p. 129, accessed on 19 March 2020.

This, however, shows that KPCVA has been more successful in carrying out this responsibility than its predecessor.

The Figure 5 reflects the number of pending evictions at the end of 2019.



*Figure 5: Occupied properties divided by region and ethnic background of successful claimants and illegal occupants*

As showed above, the total number of illegally occupied properties subject to eviction is 46. Mitrovicë/Mitrovica region, with 24 cases, has the highest number of illegally occupied properties subject to eviction. Whereas, 22 properties belonging to Kosovo Albanians in Mitrovica/Mitrovicë North are occupied by Kosovo Serbs, while two properties belonging to Kosovo Serbs in Mitrovicë/Mitrovica South are illegally occupied by Kosovo Albanians. In Prishtinë/Priština region, of ten illegally occupied properties belonging to Kosovo Serbs, nine are occupied by Kosovo Albanians and one by an unknown occupant. Further, in Pejë/Peć region of nine properties illegally occupied subject to eviction, seven belong to Kosovo Serbs, one to a Kosovo Bosniak and one to a private company. Eight of these properties are occupied by Kosovo Albanians, and one by an unknown occupant. In Prizren region of three properties subject of evictions, two belonging to Kosovo Serbs and one to a Kosovo Roma, are illegally occupied by Kosovo Albanians. Only in Gjilan/Gnjilane region there are no illegally occupied properties or any scheduled evictions.

Even though, the KPCVA has been more successful in carrying out this responsibility than its predecessor, the efficiency of the process is affected by the pending adoption of the amendments to the Law on KPCVA, which would allow the KPCVA to conduct multiple evictions. However, despite the fact that the amendments to the Law were approved by the government and sent to the Assembly for promulgation on 6 September 2018, it has been pending with the Assembly ever since. The political instability and the frequent lack of the quorum in the Assembly has delayed promulgation of the amendment of the Law. As a consequence, when it comes to conducting multiple evictions, the KPCVA remains tied with the legal framework currently in force.

Furthermore, the Ombudsperson Institution in Kosovo (OiK) also observed situations (e.g. *the case of Nadežda Jovanović*) in which the KPA failed to promptly inform the police of illegal occupation of the property, therefore additionally contributing to the delay of the property re-possession process. As pointed out in OiK's *report on violation of right to property, right to equality before the law and on the length of the proceeding in execution of the decision of the Constitutional Court from 2015*,<sup>58</sup> due to the slow reaction at the level of the prosecution and the judiciary, case resolution processes were also prolonged.<sup>59</sup> In addition, the OiK observed that Supreme and Constitutional Courts' decisions often failed to be executed. This results in the rights of complainants "on peaceful enjoyment and availability of property, in accordance with Article 1 of Protocol 1 of the ECHR" being violated.<sup>60</sup> The OiK's report observed that "the constitutional and legal protection of property rights has no meaning if it is not protected in practice as well," which is why the enforcement of existing instruments for the protection of property rights remains crucial.

With respect to illegal re-occupation cases where subsequent court decisions ordered the use of private enforcement agents to execute evictions, the Law on Enforcement Procedure<sup>61</sup> places an additional burden, both in terms of time and money, to displaced persons. Article 13 (the costs of enforcement), para 1, states that "the procedural expenses regarding the determination and commission of enforcement shall be paid by the creditor in advance."

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<sup>58</sup> For more information please see the 2015 Annual Report, Ombudsperson Institution in Kosovo, 2.10 Complaint no. 435/2013 Nadežda Jovanović against KPA related to the execution of Supreme Court Decision KI 187/13, pp. 83-84; as well as Ombudsperson Institution, A compilation of reports addressed to relevant authorities during 2016, Prishtinë/Priština, 2017, pp. 140-141. Available at [www.theioi.org/downloads/144hi/kosovo\\_om\\_annual-report\\_2016\\_en-1.pdf](http://www.theioi.org/downloads/144hi/kosovo_om_annual-report_2016_en-1.pdf), accessed on 20 June 2019.

<sup>59</sup> Interview with the representatives of the Ombudsperson Institution in Kosovo (Ms. Suzana Gashi), on 31 August 2018.

<sup>60</sup> 2015 Annual Report, Ombudsperson Institution in Kosovo, 2.10 Complaint no. 435/2013 Nadežda Jovanović against PAK related to the execution of Supreme Court Decision KI 187/13, pp. 83-84. Available at [http://www.eoi.at/d/EOI%20-%20Jahresberichte/Kosovo/Kos-English\\_Annual\\_Report\\_2015\\_351292.pdf](http://www.eoi.at/d/EOI%20-%20Jahresberichte/Kosovo/Kos-English_Annual_Report_2015_351292.pdf), accessed on 1 July 2019.

<sup>61</sup> Law No. 04/L-139 on Enforcement Procedure, 3 January 2013. Available at <https://www.kuvendikosoves.org/com-mon/docs/liqjet/Law%20on%20enforcement%20procedure.pdf>, accessed on 19 June 2019.

This practically implies that the costs of eviction should be borne by the claimant, and later reimbursed as per the same Article.<sup>62</sup> However, in accordance with the Pinheiro Principle 13.2,<sup>63</sup> such costs should not be imposed on displaced persons, as they may constitute a financial barrier. The Pinheiro Principles foresee a “free of charge” appeals process, and in accordance with this, the private bailiff costs should not be borne by displaced persons who are in precarious economic conditions.

Therefore, this highlights the importance of aligning the Kosovo legal framework with the international standards on protection of property rights. Only upon their complete harmonization, supported by the prompt action from the prosecution and courts, and followed by the enforcement of their decisions, it is possible to create an adequate environment for the thorough implementation of property rights for all.

### 3.2 Physical notification of properties

Another significant obstacle for the mechanism to fulfil its duty was regarding the physical notification of properties—a crucial step in which parties with a legal interest in the claimed property were notified of the claim, and provided with an opportunity to participate in the proceedings. In the case of HPD, the provisions in UNMIK Regulation 2000/60 addressed and regulated the participation of parties in the process to ensure that its procedures met the standard of due process.<sup>64</sup> The HPD was required to undertake all reasonable efforts to notify the occupant of the claimed property and any other party with a legal interest in the property about the filing of the claim, and their right to participate in the proceedings.<sup>65</sup>

Furthermore, the process of physical notification of properties by the KPA was to be based on the data of the cadastral records to identify the location of the claimed properties. However, only after 13 July 2009 when the KPA and the Kosovo Cadastral Agency (KCA) concluded an MoU, KPA was able to access property addresses.<sup>66</sup> A comparison of KPA’s data used in the notification process as received by the claimants with the official cadastral records showed that a significant number of addresses indicated in the “notices of claim forms”<sup>67</sup> did not correspond to the location of the plots recorded in the official cadastral records. Therefore, due to these detected discrepancies, the KPA was obliged to reissue a total of 31,544<sup>68</sup> notices, causing major delays in the resolution of the claims. In fact, figure 6 below shows that 73.79 per cent of the total number of cases required re-notification.

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<sup>62</sup> Article 4 (2) of the Law No. 04/L-139 on Enforcement Procedure, 3 January 2013: “debtor shall reimburse the creditor the procedural expenses and all other expenses incurred during enforcement procedure”.

<sup>63</sup> Principle 13.2 states that parties: Should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge, and are age and gender sensitive. States should adopt positive measures to ensure that women are able to participate on a fully equal basis in this process.

<sup>64</sup> Final Report of the Housing and Property Claims Commission, 2007, p. 41. Available at [www.kpaonline.org/hpd/pdf/HPCC-Final\\_Report.pdf](http://www.kpaonline.org/hpd/pdf/HPCC-Final_Report.pdf), accessed on 8 April 2019.

<sup>65</sup> This obligation also included notifying interested parties on the periods when the respective agency collected claims, when the claim was in the decision-making process, upon completion of the adjudication process, as well as when the process was in the delivery phase of KPCCC and Supreme Court Decisions. See section 9.1 of UNMIK Regulation 2000/60.

<sup>66</sup> Prior to the MoU, KPA officials had a limited access to the KCA records.

<sup>67</sup> Signposts stating the details of the claim and the nature of property right being claimed over the property.

<sup>68</sup> Interview with the representative of KPCVA (Ms. Florije Kika, Acting Deputy Director), 3 August 2018.

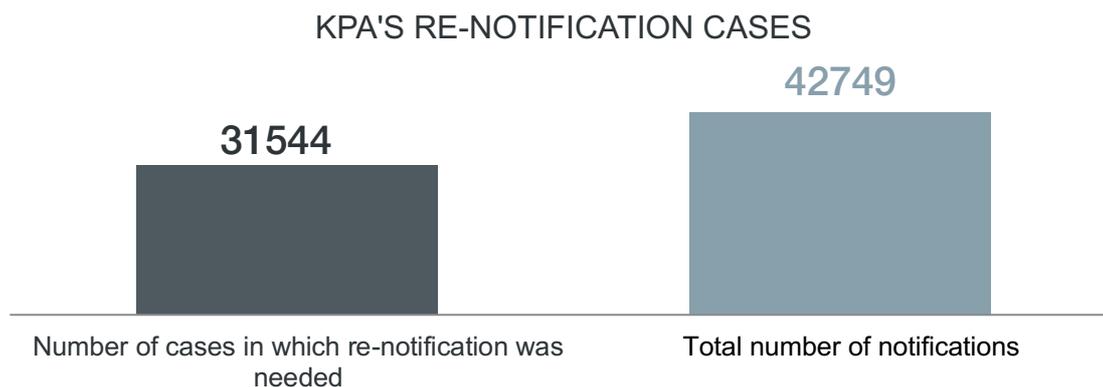


Figure 6: KPA's re-notification cases

Other obstacles included incomplete documentation provided by the claimants who were unable to obtain the necessary documents in Kosovo. As a consequence, such cases could not be reviewed or adjudicated, which further delayed their resolution. Difficulties also stemmed from the closure of the KPA offices in Serbia in June 2008, which were in charge of delivering decisions to the displaced claimants in Serbia, as well as sharing all claim-related information. Despite the fact that this issue was later solved with an MoU signed with the UNHCR in Prishtinë/Priština for Property Offices under the UNHCR umbrella in Serbia to support the KPA in carrying out this duty,<sup>69</sup> a subsequent closure of these offices further suspended the notification processes. Hence, it became challenging to notify claimants residing outside Kosovo, in particular regarding cases of notification pertaining to the outcome of completed proceedings.

Despite the challenges mentioned above, at the time of its closure, the KPA performed physical notification of properties in all 42,749<sup>70</sup> cases it dealt with (figure 7). Consequently, there was no need for this responsibility to constitute a part of the KPCVA mandate.

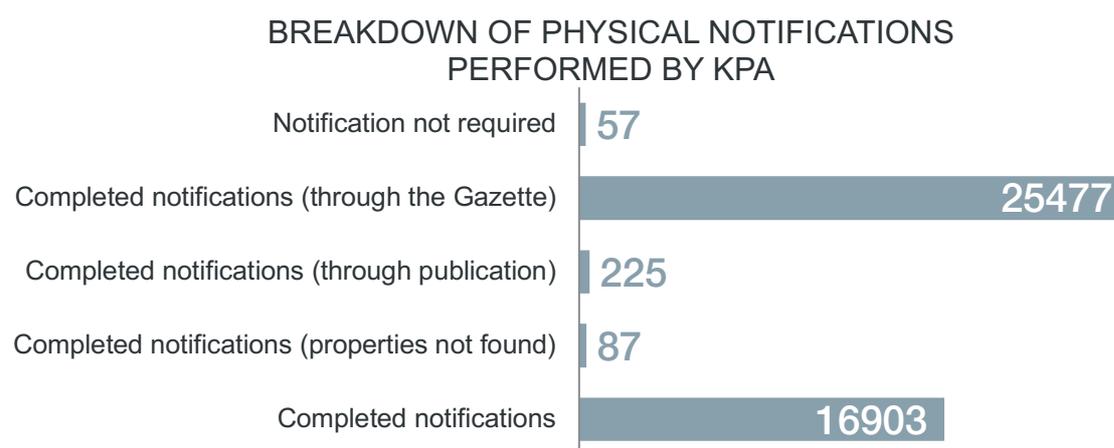


Figure 7: KPA's physical notifications

<sup>69</sup> Interview with the representative of UNHCR (Ms. Milena Tasevska), 2 August 2018.

<sup>70</sup> There were 16,903 completed notifications, 87 completed notifications (properties unfound), 225 completed notifications through publication, 25,477 completed notifications through publication in the gazette, while in 57 cases notification was not required. There is no available data pertaining to the HPD-performed notifications. Please see Chapter 5.2 of the KPA/KPCVA Annual Report from 2016, pp. 147.

Nevertheless, despite the fact that all parties with legal interest were notified at the time of KPA's closure, delays caused by the need of re-notification in a vast number of cases, as well as other above-mentioned obstacles that KPA faced, significantly affected its performance in the early stages of its operation.

### 3.3 Administration/Rental Scheme

To ensure legal and physical protection of properties placed under administration, as well as to provide an income source for the successful claimants, Section 1.1(b) of UNMIK Regulation 1999/23 prescribed for a rental scheme to be established for properties under administration. However, due to the politically sensitive nature of the matter, the rental scheme was approved by the Special Representative of the Secretary-General of the United Nations (SRSG) only in April 2006. Despite the fact that the rental scheme was proposed throughout the HPD's years of operations, its implementation was also conditioned by the explicit consent of the then Provisional Institutions of Self Government (PISG), which was granted in August 2006.<sup>71</sup> As a consequence, the scheme became operational only in October 2006. In addition, the Law by which the KPA was established had also mandated it to take new properties under its administration, as well as to continue the implementation of the existing rental scheme.<sup>72</sup>

According to the scheme, each property placed under KPA's administration was also eligible for renting upon the claimant's consent and the KPA's assessment that its condition is suitable for rent. The tenants were obliged to pay a monthly rent to the successful claimant through the KPA. In this way, the displaced property rights holder managed to gain more time to decide whether they prefer to keep the property or not, while at the same time they were released from the pressure to sell their properties or the risk of further damage to their properties. Therefore, the administration of property was only intended as an interim measure until the claimant was granted final remedy (i.e. eviction) to take possession of their property, placing their property in a rental scheme, and/or offering the property for sale through an auction.<sup>73</sup> The KPA was entitled to retain ten percent of the rental amount to cover administrative costs.

The rental scheme was implemented in the majority of municipalities. However, some challenges have occurred. For instance, whilst the implementation of the rental scheme Kosovo-wide was satisfactory, the KPA faced issues regarding implementation in northern municipalities. As noted in the OiK Report from 2015,<sup>74</sup> a number of complaints were received<sup>75</sup> from owners regarding the non-payment of rent by the

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<sup>71</sup> Final Report of the Housing and Property Claims Commission, 2007, p. 69. Available at [www.kpaonline.org/hpd/pdf/HPCC-Final\\_Report.pdf](http://www.kpaonline.org/hpd/pdf/HPCC-Final_Report.pdf), and accessed on 3 April 2019.

<sup>72</sup> UNMIK Regulations 1999/23 and 2000/60 authorized the HPD to place property under its temporary administration.

<sup>73</sup> Kosovo National Strategy on Property Rights, Ministry of Justice, December 2016, p. 31. Available at [http://krveministries.net/repository/docs/National\\_Strategy\\_and\\_Annexes\\_ENG.pdf](http://krveministries.net/repository/docs/National_Strategy_and_Annexes_ENG.pdf)

<sup>74</sup> Interview with the representatives of the Ombudsperson Institution in Kosovo (Ms. Suzana Gashi), on 31 August 2018.

<sup>75</sup> Cases A No. 48/2012 Xhevdet Kalludra; A No.176/2012 Mexhit Baliija; A No.125/2013 Abdylqerim Mripa; A No. 36/2015 Hajrullah Bahtiri; A No.49/2015 Muhamed Sherifi against the KPA, OiK Annual Report (2015), p. 75.

tenants. As the KPA was also unable to evict them, they became illegal occupants.<sup>76</sup> The execution of the administration/rental scheme was particularly hampered in the period prior to the signing of the MoU with Kosovo Police in 2009, due to the reluctance of police to assist KPA in evicting tenants who failed to pay the rent.

According to the Final Report of the HPCC, 2,435 property right holders had opted to include their property in the rental scheme in June 2007, while the scheme was available to all properties under administration. On the other hand, in the final stage of KPA’s mandate, in 2016, there were a total of 12,823 properties under its administration. As presented in figure 8 below, a total of 1,158 (9.03%) properties were rented, while 3,195 (24.92%) were estimated as rentable. The remaining 8470 (66.05%) properties were not rentable due to their location, poor conditions, or the lack of consent by the property right holders.

PROPERTIES UNDER KPA'S ADMINISTRATION SCHEME  
(2006 - 2016)

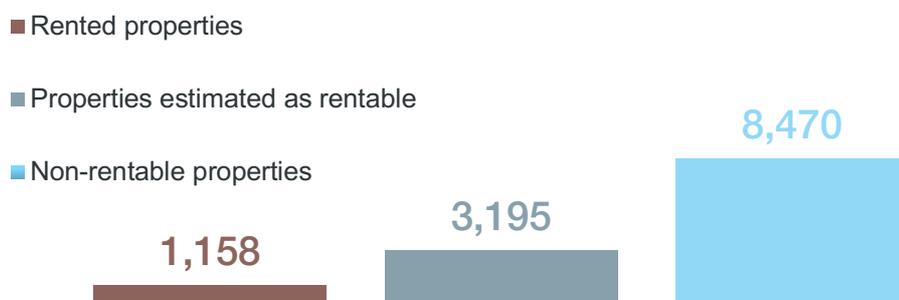


Figure 8: KPA's administration cases

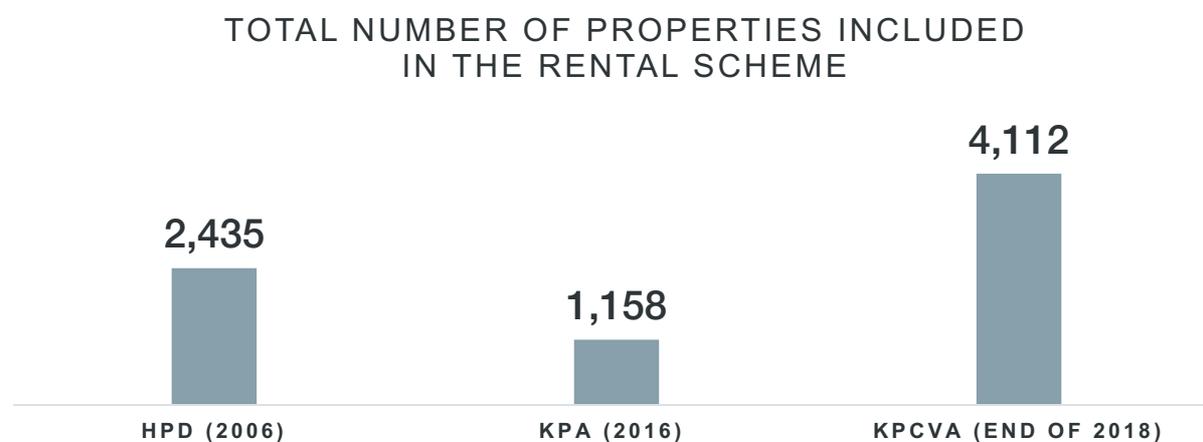
Upon the establishment of the KPCVA and pursuant to Article 21, para 7 of the Law on KPCVA, the property administration/rental scheme was terminated. The Law envisaged the administration of the remaining properties and implementation of the rental scheme to end no later than 18 months from the date this Law entered into force. Consequently, this deadline expired in May 2018, and KPCVA “suspended”<sup>77</sup> the operation of this programme. According to the latest available Annual Report of the KPCVA from 2018, a total of 4,112 properties were included in the voluntary rental scheme, while 8,342 properties have been identified as unsuitable to be included in the scheme due to their location, poor conditions or due to property right holders’ refusal to give their consent for inclusion of properties in the scheme. Lastly, at the end of 2018, a total of 4,112 properties have been included in the voluntary rental scheme and 12,454 properties have been taken under the KPCVA’s administration.<sup>78</sup> Figure 9 below demonstrates the fluctuation of the number of properties included in the rental

<sup>76</sup> According to the Law on KPA, in case the tenant would stop fulfilling their financial obligations with regards to the rent, the respective KPA regional office would send an eviction order to the occupant notifying them that within the thirty-day period the occupant is obliged to either pay the rental amount or abandon the property. In case no rental payment was made and the occupant has not voluntarily vacated the property, the KPA regional office issued an ultimate warning explaining that, should the rent not be paid within five days, the occupant is obliged to vacate the premises. Otherwise, they would face the eviction. For more information, please see Kosovo Property Agency, Annual Report 2009, Chapter 6, p. 23.

<sup>77</sup> KPCVA notice board: <http://www.kpcva.org/Default.aspx>, accessed 20 November 2019.

<sup>78</sup> KPCVA Annual Report for 2018, p. 128. Available at [http://www.kpcva.org/pdf/Raporti\\_2018.pdf](http://www.kpcva.org/pdf/Raporti_2018.pdf), accessed on 19 November 2019.

scheme – at the end of the HPD’s mandate, at the time of KPA’s closure, as well as by the end of 2018, according to the currently available data.



*Figure 9: Rental scheme cases*

The rental scheme reasonably provided legal and physical protection for residential properties under administration and ensured a minimum income source from rent for displaced property right holders, who otherwise might feel that they have no option but to sell their homes. The OiK issued a Recommendation<sup>79</sup> on continuing the implementation of this remedy by KPCVA as the abrupt termination of the administration scheme upon expiry of the 18-month deadline would result in serious financial implications for immovable property owners from non-majority communities and displaced immovable property owners who rely on the rental scheme. In addition, there was also the concrete risk that a vacuum would be created when it comes to monitoring and tracking properties and keeping displaced persons informed. Moreover, the 18-month timeframe started elapsing upon entry into force of the Law on the KPCVA, but important operational measures, such as notifications to displaced persons were yet to be put in place. This is why the OiK considered that the KPCVA would not be in the position to finalize its work on the administration of properties within the 18-month deadline. Consequently, the government initiated the amendment to the Law which would provide KPCVA not only with the right to conduct multiple evictions (compared to the maximum of two evictions allowed by the current Law), as outlined in the *3.1 Illegal Occupation and Eviction* subchapter of the report, but also to allow for a continuation of administration of properties for an undetermined period of time.

Henceforth, this remains the main obstacle when it comes to KPCVA’s implementation of administration and rental scheme, as its continuation is legally pre-conditioned by the amendment of the new Law.

<sup>79</sup> Kosovo Ombudsperson report No. 551/2017 “Revocation of certain competencies of Kosovo Property Comparison and Verification Agency according to Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency”, 2017. Available at [https://oik-rks.org/wp-content/uploads/old\\_doc/ANG--17-10-2017\\_Raporti\\_per\\_AKKVP\(1\)-1\\_922339.pdf](https://oik-rks.org/wp-content/uploads/old_doc/ANG--17-10-2017_Raporti_per_AKKVP(1)-1_922339.pdf) accessed on 16 May 2019.

### 3.4 Demolition

Demolition was envisaged as a new instrument for the KPA and a legal remedy to ensure repossession of claimants' property in cases of illegal construction on disputed land.<sup>80</sup> It was foreseen to be enforced in situations where the mediation would not result in a successful resolution of the case. However, not many claimants' have used this legal remedy since they perceived it as only delaying the restitution process. The data gained through KPA's annual reports, as well as through the interviews with relevant institutions, showed that no case of demolition has occurred so far.<sup>81</sup>

One of the arguments emphasized was that there was not sufficient funding to enforce this instrument.<sup>82</sup> For instance, there were decisions<sup>83</sup> in which the KPCC had reasoned that the applicant was recognized as having the right of possession of the immovable property on which a house was illegally constructed. The KPA, however, claimed that the demolition at that stage was impossible due to the lack of financial means to hire a demolition company, and has consequently requested funds from the Kosovo budget. As the government did not provide a positive response, the KPA offered the remedy of mediation instead, which the applicant refused, referring the case to the Constitutional Court in 2014.<sup>84</sup> The effective use of demolition was hampered by a lack of designated funds, which severely delayed the property restitution process.

Nevertheless, insufficient funds could hardly justify the lack of demolition carried out as illegal constructions present a clear violation of claimants' property rights.<sup>85</sup> Furthermore, delays in processes for restitution of property rights are also a subject of critique by ECtHR case law. For instance, in *Hornsby v. Greece*<sup>86</sup> it is clearly underlined that the execution of a decision is an integral part of the right to a fair trial, and that "the effective legal remedy should not remain only in paper, but is also to be implemented in practice".

<sup>80</sup> This remedy was not provided by the HPD. Please see Law on amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, 15 June 2008.

<sup>81</sup> There is a well-known case of Ms. Nadežda Jovanović, who submitted a complaint to the OiK regarding the non-execution of the KPA Decision, as well as non-implementation of respective the Constitutional Court decision. In response, the OiK urged the competent authorities to allocate the financial means for this purpose, and it issued a report on the violation of the right to property, right to equality before the law and on the length of the proceeding in execution of the decision of the Constitutional Court on 25 March 2015. However, the implementation of recommendations is still pending. In addition, the OiK has recommended to the KPA to undertake all necessary measures to ensure the execution of the decision of the Constitutional Court KI 187/13 from 16 April 2014, in order to protect without further delay Ms. Jovanović's right to property.

<sup>82</sup> Interview with the representative of KPCVA.

<sup>83</sup> For instance: Constitutional review regarding non-execution of the Decision GSK-KPA-A-001/12 of the Appellate Panel of the Supreme Court, of 8 May 2012, and of the Decision of Kosovo Property Claims Commission no. KPCC/D/A/114/2011, of 22 June 2011, Case No. KI 187/13. For more information, please see <http://gjk-ks.org/en/decision/constitutional-review-regarding-non-execution-of-the-decision-gsk-kpa-a-00112-of-the-appellate-panel-of-the-supreme-court-of-8-may-2012-and-of-the-decision-of-kosovo-property-claims-commission-no/>.

<sup>84</sup> The applicant, Ms. Jovanović, challenged the non-execution of the Decision GSK-AKP-001/12, of 8 May 2012, of the Appellate Panel of the Supreme Court and of the Decision no. KPCC/D/A/ 114/2011, of 22 June 2011, of the KPCC Decision. The subject matter of this Referral was the constitutional review regarding non execution of the Decision GSK-AKP-001/12, of 8 May 2012, of the Appellate Panel and of the KPCC Decision no. KPCC/D/A/114/2011, of 22 June 2011 in the Applicant's case no. 16008, filed with the Kosovo Property Agency on 23 August 2005. For more information please see: Constitutional Case No. KI187/13 (16 April 2014, Ref. no.: AGJ 565/14) Constitutional review regarding on-execution of the Decision GSK-KPA-A-001/12 of the Appellate Panel of the Supreme Court, of 8 May 2012, and of the Decision of Kosovo Property Claims Commission no. KPCC/D/A/114/2011, of 22 June 2011. Available at [http://gjk-ks.org/wp-content/uploads/vendimet/gjkk\\_ki\\_187\\_13\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_187_13_ang.pdf).

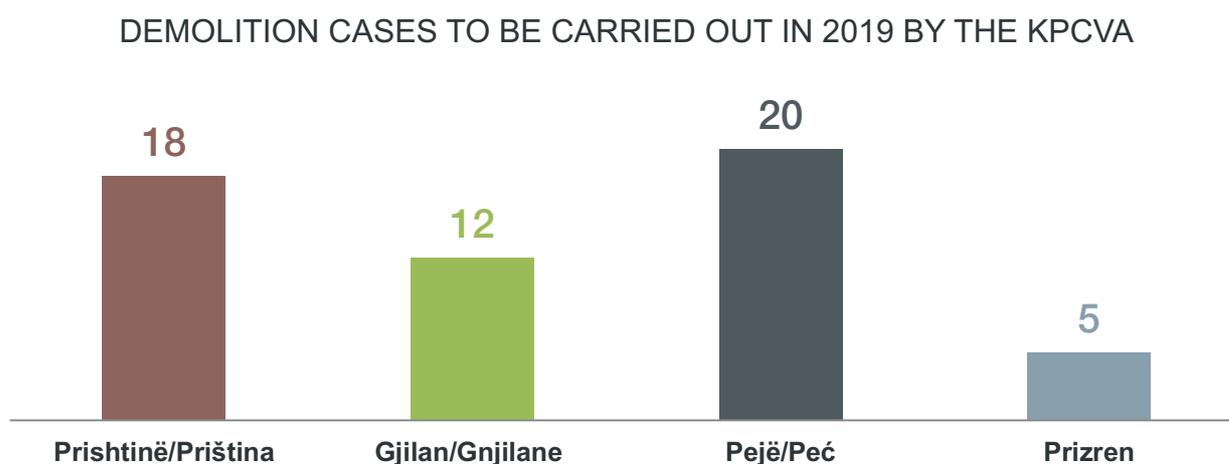
<sup>85</sup> Interview with representatives of Constitutional Court of Kosovo (Ms. Venera Kabashi, Mr. Sevdail Kastrati) on 7 August 2018, and European Union Special Representative in Kosovo (Ms. Katarina Grbeša) on 1 August 2018.

<sup>86</sup> *Hornsby v Greece*, App no 18357/91; ECHR 1997-II, 19 March 1997, available at <http://opil.ouplaw.com/view/10.1093/law:ihrl/3183echr04.case.1/law-ihrl-3183echr04#>.

In addition, the Constitutional Court of Kosovo also ruled that the non-execution of the KPCC decisions by the KPA and the failure of competent authorities to ensure efficient mechanisms for execution of final decisions contradicts the principle of the rule of law and therefore constitutes a violation of the fundamental human rights guaranteed by the Constitution.<sup>87</sup> This represents not only an unreasonable delay in the procedure, but also a failure of the system to protect the acquired property-related rights, and cannot be justified by the lack of financial means.

The delay in drafting the KPCVA Administrative Instruction (AI) to regulate the rules and procedures of demolition presents another obstacle in the realization of property rights of affected parties. While the constraints due to limited resources could be understood, there are other obligations of immediate effect, such as the adoption of the AI, that have no financial impact. Thus, finalizing it would mean not only developing required policies and legislation to implement KPCVA's responsibilities towards successful claimants to demolish illegal constructions on their properties, but it would also demonstrate institutions' readiness and commitment to deal with such cases despite the encountered financial challenges. Considering the fact that demolition was envisaged as a legal remedy already in 2006, KPA's reluctance to initiate the process of drafting respective AI greatly delayed the beginning of the implementation of this remedy, therefore directly affecting property rights of affected parties.

Finally, in January 2019, the KPCVA selected a company that will enforce a total of 55 decisions on the demolition of illegally built structures on displaced persons' properties. However, the KPCVA management explained that, due to the limited budget which is allocated for this purpose (30,000 EUR) by the government, it will be feasible to demolish only one or two constructions during 2019. As demonstrated in Figure 10, the majority of demolitions to be carried out are in Pejë/Peć region (20), followed by Prishtinë/Priština (18), Gjilan/Gnjilane (12), and Prizren (5)<sup>88</sup>.



*Figure 10: KPCVA-planned demolitions*

<sup>87</sup> Constitutional Case No. KI187/13 (16 April 2014, Ref. no.: AGJ 565/14) Constitutional review regarding on-execution of the Decision GSK-KPA-A-001/12 of the Appellate Panel of the Supreme Court, of 8 May 2012, and of the Decision of Kosovo Property Claims Commission no. KPCC/D/A/114/2011, of 22 June 2011. Available at [http://gjk-ks.org/wp-content/uploads/vendimet/gjkk\\_ki\\_187\\_13\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_187_13_ang.pdf).

<sup>88</sup> Information provided by the KPCVA management in May 2019 and still valid in August 2019.

Therefore, carrying out demolition in these cases remains an important obligation to be fulfilled by KPCVA in a timely manner, not only to ensure successful claimants' access to their property rights, but also because the enforcement of final decisions pertaining to property restitution is an indicator of the effectiveness of the rule of law in a democratic society. In any case, the lack of AI on demolition procedures as well as financial support requires more decisive action by the government to tackle this issue in an effective manner.

### 3.5 Parallel review of cases by courts

The relationship between the mechanisms and the regular Kosovo courts system also faced certain issues, mostly pertaining to conflicting decisions and the cases of non-implementation of the Constitutional Court's judgements.

As outlined, the HPCC decisions, despite having a binding nature, did not constitute the final resolution of all legal issues attached to a certain property dispute. Henceforth, courts retained their jurisdiction *"to adjudicate any legal issues not decided by the HPCC,"*<sup>89</sup> and the mechanisms regularly co-operated and transferred particular cases to them. This included claims for disputed purchase prices or compensation of damages or secondary requests filled along with the initial claim.

On the other hand, the mandates of the HPD, KPA and KPCVA entitled them to exclusive jurisdiction over unresolved conflict-related property claims.<sup>90</sup> In practice, this means that the KPCC-issued decisions were subject to review only by the Supreme Court of Kosovo and not regular courts, which constituted an exception to the standard practice.<sup>91</sup> A total of 1,293 (3.09%) appeals were brought to the Supreme Court of Kosovo from a total of 41,849 KPCC decisions.<sup>92</sup> Subsequently, 210 of these appeals were granted, whereas 663 cases appeals were refused and confirming the original KPCC decision.<sup>93</sup> The Executive Secretariat was then mandated to implement the appeal decisions.

However, even though the jurisdiction between the regular courts and mass claims mechanisms for the resolution of conflict-related property claims was clearly outlined by the respective legal framework, due to lack of co-ordination, the regular courts also initiated procedures for the same claims which in fact fell under the KPA's jurisdiction.<sup>94</sup> This resulted in parallel judgments that left parties without effective resolution

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<sup>89</sup> UNMIK Regulation 1999/23, Section 2.5 available at <https://pca-cpa.org/wp-content/uploads/sites/6/2016/01/UNMIK-Regulation-1999-23.pdf>, accessed on 5 June 2019.

<sup>90</sup> UNMIK Regulation 2006/50, Available at [http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006\\_50.pdf](http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_50.pdf), accessed on 1 July 2019.

<sup>91</sup> The legal deadline for receiving claims expired on 3 December 2007. From this date, the KPA stopped receiving new claims (though it continued to proceed with pending claims), while all property claims filed after December 2007 fell under the jurisdiction of the Kosovo courts.

<sup>92</sup> The total number of cases reviewed by the KPA was 42,749. For more information please refer to KPCVA Annual Report from 2016, pp. 149. Available at: [http://kpcva.org/pdf/Raporti\\_2016.pdf](http://kpcva.org/pdf/Raporti_2016.pdf) accessed on 12 February 2020.

<sup>93</sup> This data is up to 31 December 2016.

<sup>94</sup> Organization for Security and Co-operation in Europe, Mission in Kosovo, Challenges in the Resolution of Conflict-related Property Claims in Kosovo, June 2011. Available at <https://www.osce.org/kosovo/80435?download=true>, accessed on 1 July 2019.

of their claims. Even though the KPA decisions were final and the court judgements had no legal effect due to the lack of competence, such parallel reviews of KPA cases by regular courts created legal uncertainty for the claimants. This delayed the finalization of the process for addressing claims.<sup>95</sup>

Another aspect of KPA's and KPCVA's mandate is directed towards the implementation of judgements brought by the Constitutional Court of Kosovo, concerning issues related to compensation schemes and illegal structures. Nevertheless, five<sup>96</sup> decisions were left unenforced. Even though the Constitutional Court requested immediate enforcement of these decisions, the KPCVA claimed that due to the lack of financial resources and legal clarity, it is unable to proceed with their implementation.

Thus, not only has the lack of enforcement of judgements brought by the Constitutional Court violated the property rights of affected parties, but competing claims filed to HPD, KPA and the regular courts resulted in a very complicated and often ineffective method of vindicating property rights, as conflicting judgments leave parties without a true resolution of their claims and undermine the rule of law. On a different note, delays in the appointment of judges in the Supreme Court Appellate Panel and of the Commissioners in the PCC; as well as often vacant posts of the Supervisory Board members from the international community in Kosovo also affected the regular work of the mechanisms.

### 3.6 A and C claims

As outlined in the *Introduction*, the HPCC had exclusive jurisdiction specifically related to three categories of residential property claims referred to it by the HPD - to award monetary compensation to certain successful category A and C claims.<sup>97</sup> This is related to cases where both an "A" and a "C" were successful claimants for the same property. According to the HPCC decisions, the "A" claimant was awarded the right over the property, while the compensation has been decided in favor of the other party (the "C" claimant).<sup>98</sup> At the end of HPD's mandate, in 2006, some 258<sup>99</sup> claims were pending implementation.

In August 2005, the necessary legislation was drafted to implement the compensation scheme. Its approval came with the promulgation of UNMIK Regulation 2006/50 *on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property* in October 2006, which required the compensation scheme

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<sup>95</sup> Interviews with the representatives of the Constitutional Court of Kosovo (Mr. Sevdail Kastrati, Ms. Venera Kabashi) on 7 August 2018, and UNHCR (Ms. Milena Tasevska) on 2 August 2018.

<sup>96</sup> KI 132/15, KI 90/16, KI 65/15, KI 144/14 and KI 156/14, KI 187/13. Interview with the representative of the European Union Special Representative in Kosovo (Ms. Katarina Grbeša), on 1 August 2018.

<sup>97</sup> UNMIK Regulation 1999/23, Section 1.2(a)-(c), available at [http://www.unmikonline.org/regulations/1999/re99\\_23.pdf](http://www.unmikonline.org/regulations/1999/re99_23.pdf), accessed on 18 June 2019.

<sup>98</sup> Organization for Security and Co-operation in Europe, Mission in Kosovo, Department of Human Rights, Decentralization and Communities, Eight years after: Minority returns and housing and property restitution, June 2007, p. 27. Available at <https://www.osce.org/kosovo/26322>.

<sup>99</sup> Final Report 2007, Housing and Property Claims Commission, Chapter 8 (Service and Implementation of HPCC Decisions), Statistics on Implementation, pp. 73. Available at [http://www.kpaonline.org/hpd/pdf/HPCC-Final\\_Report.pdf](http://www.kpaonline.org/hpd/pdf/HPCC-Final_Report.pdf), accessed on 23 June 2019).

to be carried out under the auspices of the newly established KPA - Section 19 of the UNMIK Regulation prescribed that the compensation scheme shall be implemented *“in accordance with criteria and procedures adopted by the Kosovo Property Agency for the calculation of the amounts referred to in Section 4 of UNMIK Regulation 2000/60.”*<sup>100</sup> Hence, the KPA, and later the KPCVA, inherited the responsibility to implement the compensation scheme of A and C claims.

According to the data from 2016, the Constitutional Court has issued three<sup>101</sup> judgments concluding that the non-execution of HPCC decision in terms of compensation is contrary to the principles of the rule of law and constitutes a violation of fundamental human rights.<sup>102</sup> While some argued that the failure to implement decisions by the Constitutional Court was a consequence of lack of sufficient funding,<sup>103</sup> others noted that non-implementation was not only against the rule of law, and that the lack of financial means is not a valid justification for non-implementation.<sup>104</sup> In addition, some deemed that both KPA and Constitutional Court are to be held responsible since the Court also failed to act through means at its disposal.<sup>105</sup> For instance, according to the Rules of Procedure,<sup>106</sup> the Constitutional Court might specify in its decision the manner and time-limit for the enforcement of the decision of the Court. However, in three cases<sup>107</sup> the Court specified deadlines for the execution of its own decision, none of which was met. In addition, under the Rules of Procedure, Rule 66 provides for two measures to be taken following the expiration of the deadline for execution: (1) the Constitutional Court may issue a ruling in which it shall establish that its decision has not been enforced, which will be published in the Official Gazette, and/or (2) it shall inform the Chief Prosecutor of all the rulings that have not been implemented.<sup>108</sup> Nonetheless, in the above-mentioned cases, none of these mechanisms to tackle the issue of the non-enforcement of the decision have been utilized.<sup>109</sup>

Therefore, the necessary amount for this operation was never ensured, and the implementation of the scheme remains a significant issue to date. Both KPA and KPCVA requested financial support from the donors. For instance, during 2016 budget review, the KPCVA filed a request to all donors for an allocation of 3,200,000 EUR. However,

<sup>100</sup> Section 19 of UNMIK Regulation 1999/23. Available at [http://www.unmikonline.org/regulations/1999/re99\\_23.pdf](http://www.unmikonline.org/regulations/1999/re99_23.pdf), accessed on 1 July 2019.

<sup>101</sup> Case references KI144/14, KI156/14 and KI187/13.

<sup>102</sup> KPCVA Annual Report from 2016, pp. 164. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

<sup>103</sup> Interviews with the representatives of the Kosovo Judicial Council (Mr. Besnik Ramosaj, Mr. Shkëlzen Maliqi), on 3 September 2018, the Ombudsperson Institution in Kosovo (Ms. Suzana Gashi), on 31 August 2018. The Ombudsperson Institution in Kosovo also issued a report on 25 March 2015, tackling the issue of violation of right to property, right to equality before the law and on the length of the proceeding in execution of the decision of the Constitutional Court.

<sup>104</sup> Interviews with the representatives of the Constitutional Court (Mr. Sevdail Kastrati, Ms. Venera Kabashi), on 7 August 2018.

<sup>105</sup> Interview with the representative of the European Union Special Representative in Kosovo (Ms. Katarina Grbeša), on 1 August 2018.

<sup>106</sup> Rule 63 of Rules of Procedure of the Constitutional Court, 23 November 2011 (amended on 1 March 2015), available at [http://gjk-ks.org/wp-content/uploads/2017/11/gjkk\\_rregullore\\_e\\_punes\\_2015\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/2017/11/gjkk_rregullore_e_punes_2015_ang.pdf)

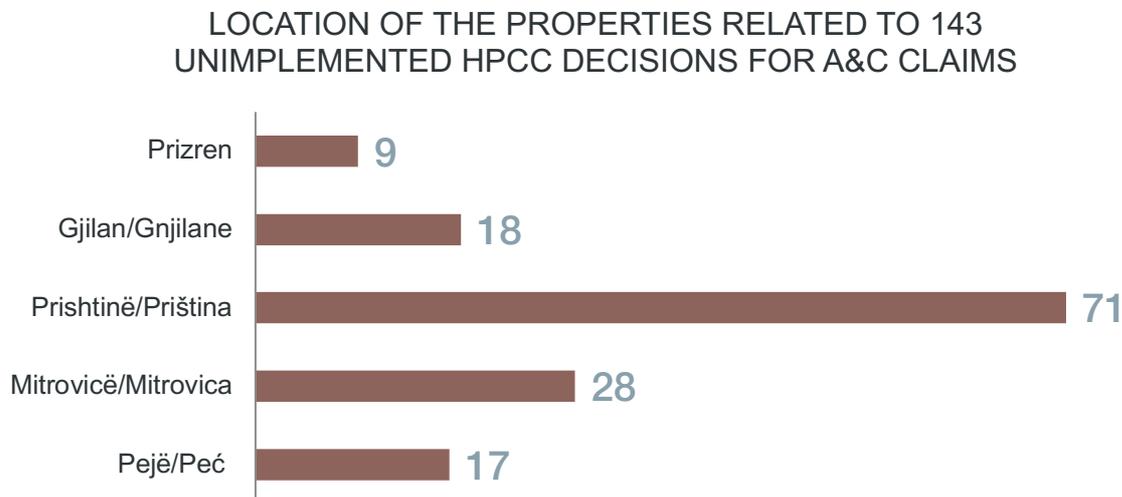
<sup>107</sup> Vilijamin Hajduković (KI 144/14) and Stanka Tuš (KI 156/14) - non-execution of initial decisions over 13 and 2 years respectively; Ljubiša Marić (KI 65/15) - non-execution of initial decision for almost 5 years; Nadežda Jovanović (KI 187/13) - non-execution of initial decision over 7 years.

<sup>108</sup> Rules of procedure of the Constitutional Court, available at [http://gjk-ks.org/wp-content/uploads/2018/06/rregullore\\_e\\_punes\\_gjkk\\_ang\\_2018.pdf](http://gjk-ks.org/wp-content/uploads/2018/06/rregullore_e_punes_gjkk_ang_2018.pdf), accessed on 16 May 2019.

<sup>109</sup> Interview with the representative of the European Union Special Representative in Kosovo (Ms. Katarina Grbeša), on 1 August 2018.

only the government supported it with 300,000 EUR in 2017,<sup>110</sup> while 143 of A and C case<sup>111</sup> decisions are still awaiting implementation.

Figure 11 below gives a regional breakdown of the pending cases in May 2019.<sup>112</sup>



*Figure 11: A&C claims regional breakdown*

Another reason for the incomplete implementation of the compensation scheme was the lack of respective AI until its adoption by the government in August 2018.<sup>113</sup> Not only has this caused further delays in the resolution of conflict-related property claims, but the non-enforcement of decisions related to A and C claims clearly presented a serious violation of the right to effective legal remedy.

Therefore, the current state of affairs with regards to the implementation of the compensation scheme can be perceived not only as KPA's and KPCVA's lacking assertiveness as the main responsible authorities to provide claimants with fair and effective remedies but also as the government's insufficient focus on these issues in order to fulfill its human rights obligations deriving from international law and as per the *Stabilization and Association Agreement*<sup>114</sup> (SAA) with the European Union (EU). International standards foresee the possibility of compensation in cases where restitution is not feasible. Even the ECtHR through its case law (i.e. *Doğan and Others*<sup>115</sup>) found that states have a duty to provide displaced persons with a secure access to their property, irrespective of whether the state itself was responsible for creating the circumstances that led to displacement or not. Moreover, according to the Constitutional

<sup>110</sup> The government allocated an additional 300,000 EUR in 2018 and 600,000 EUR in 2019.

<sup>111</sup> This number (258) represents the number of claimants. In some cases, there were multiple claimants for one property. Therefore, there was/is a total of 143 properties.

<sup>112</sup> Data provided by the KPCVA management in May 2019.

<sup>113</sup> Administrative Instruction No. 10/2018 on the Compensation Scheme Implementing Decisions of the Housing and Property Claims Commission was approved at the 60<sup>th</sup> meeting of the government of Kosovo, with the Decision No.01/60, 7 August 2018, accessed on 1 July 2019.

<sup>114</sup> Law No. 05/L-069 on Ratification of the Stabilization and Association Agreement between Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part, 1 December 2015. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11240>.

<sup>115</sup> ECtHR, Applications nos. 8803/02, 8804/02, 8805/02, Judgment of 29 June 2004. Available at <https://www.ref-world.org/pdfid/414d86ab4.pdf>, accessed on 1 July 2019.

Court judgments<sup>116</sup> mentioned in Chapter 3.5 of the report, *“the non-execution of HPCC decisions by KPA and the failure of the competent authorities... to provide effective mechanisms in terms of the execution of a final decision, is contrary to the principle of the rule of law...”*<sup>117</sup> Hence, it is clear that because of the delays and non-enforcement of decisions related to A and C claims, the successful claimants were unjustly deprived of their property rights, clearly guaranteed by Article 46 of the Constitution,<sup>118</sup> as well as by Article 1 of Protocol 1 of the ECHR.<sup>119</sup>

Thus, the enforcement of the 143 decisions issued relating to the HPD scheme for compensation remains an important obligation for the KPCVA, as the lack of implementation mechanisms is not a justifiable reason to deny applicants’ rights to enjoy their property.

### 3.7 Financial and staffing challenges

The mechanisms responsible for dealing with post-conflict property restitution in Kosovo continuously faced financial- and staffing-related challenges. HPD operated with around 250 employees, while the KPA’s staffing structure, at the end of its mandate, was comprised of a mixed team<sup>120</sup> of 243 individuals, with 2.43 per cent of international staff in leading positions and 97.57 per cent of local staff holding positions within different units and departments of the Agency. The KPCVA maintained a similar staffing structure, operating with 198 local staff and one international staff member at the end of 2018.<sup>121</sup>

The HPD’s funding throughout its entire period of operation was scarce and was secured through donor contributions. The statistics demonstrate that the total accumulated cost of the HPD/HPCC process amounted to 26.2 million USD, out of which operational costs utilized approximately 30 per cent of the overall budget, while the remaining 70 per cent was spent on salaries.<sup>122</sup>

On the other hand, although supported by the Kosovo budget and a number of international actors,<sup>123</sup> the KPA also continuously struggled to ensure financial stability since its establishment. It has, however, annually directed letters to all donors and government requesting additional funds to cover costs pertaining to the compensation

<sup>116</sup> Constitutional Court, Case references KI144/14, KI156/14 and KI187/13.

<sup>117</sup> Constitutional Court Judgement in Cases No. KI144/14, KI156/14, Constitutional review of non-execution of two decisions of Housing and property Claims Commission, namely Decision No. HPCC/REC/91/2007 of 19 January 2007, and Decision No. HPCC/REC/81/2006 of 11 December 2006, 4 August 2015. Available at [http://gjk-ks.org/wp-content/uploads/vendimet/gjk\\_ki\\_144\\_14\\_156\\_14\\_ang.pdf](http://gjk-ks.org/wp-content/uploads/vendimet/gjk_ki_144_14_156_14_ang.pdf), accessed on 19 May 2019.

<sup>118</sup> Article 46 (Protection of Property), Kosovo Constitution, 15 June 2008. Available at <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>, accessed on 1 July 2019.

<sup>119</sup> Article 1, Protocol 1 of the European Convention on Human Rights, available at <http://echr-online.info/right-to-property-article-1-of-protocol-1-to-the-echr/introduction/>.

<sup>120</sup> Chapter 4.6.1. “Review of the Agency employees” of the KPCVA Annual Report from 2016, pp. 138. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

<sup>121</sup> According to the data provided by the KPCVA management in May 2019.

<sup>122</sup> Margaret Cordial, Knut Røsandhaug, Post-Conflict Property Restitution: (2 Vols): The Approach in Kosovo and Lessons Learned for Future International Practice (Martinus Nijhoff Publishers, 1 September 2009), pp. 191–193.

<sup>123</sup> Belgium, Germany, Norway, Sweden, Switzerland, U.K., U.S., and EU.

scheme and demolition of illegal constructions. Nonetheless, funding from the government met only a part of the KPA's financial needs, such as wages of the staff, but not enough to cover the costs required for operations.<sup>124</sup> In 2016, 92.54 per cent of the KPA budget was provided from the Kosovo consolidated budget, whereas 7.46 per cent came from international donors. As illustrated in the table below, the total 2016 budget of the Agency amounted to 1,883,101 EUR, while the yearly costs were estimated to 3,435,952 EUR.<sup>125</sup>

2016	MONTHLY COSTS	YEARLY COSTS	REVISED BUDGET	COMMITTED
<b>Total KPA Budget in EUR</b>	<b>286,330</b>	<b>3,435,952</b>	<b>1,883,101</b>	<b>1,883,101</b>

Table 1: KPA budget for 2016

More specifically, financial assets provided by the Kosovo consolidated budget amounting to 1,742,697 EUR were allocated in the following manner: Wages and Salaries (1,175,404 EUR), Goods and Services (468,965 EUR), Utilities (79,718 EUR), and Capital Expenditures (18,611 EUR). Whereas, out of the total 140,403 EUR provided by international donors, 99,795 EUR was allocated for Wages and Salaries, while 40,608 EUR was allocated for Goods and Services.

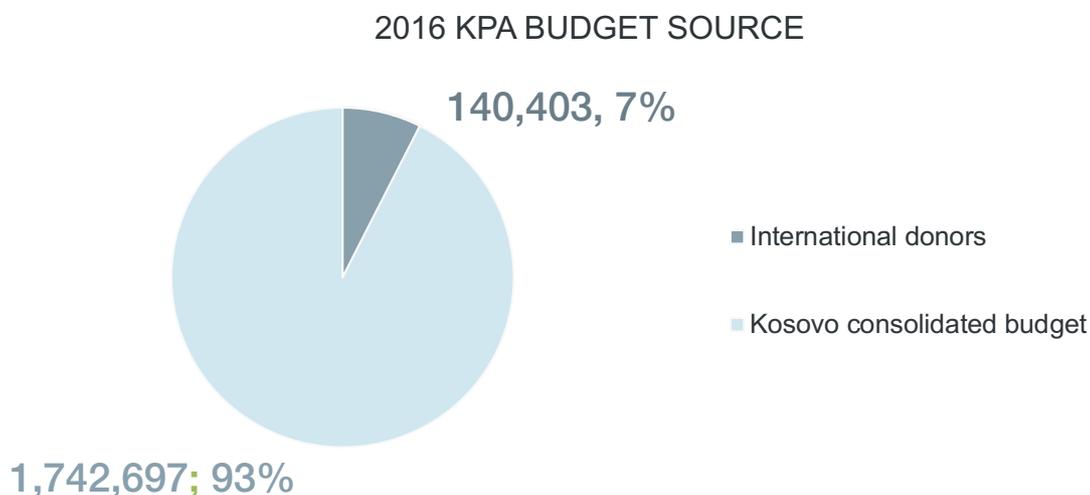


Figure 12: KPA budget source in 2016

This and the fact that the Agency was, due to other political reasons, not actually operational for some period of time, as argued by the senior management, hampered its abilities to retain the most qualified staff.<sup>126</sup> As a consequence, several cadastral and

<sup>124</sup> Interview with the representative of the European Union Special Representative in Kosovo (Ms. Katarina Grbeša) on 1 August 2018.

<sup>125</sup> See Kosovo Property Agency, Annual Report 2016, Chapter XI, pp. 177–179. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

<sup>126</sup> Chapter 6.12 "Financial sustainability", of the KPCVA Annual Report from 2016, pp. 163. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

property rights experts, as well as professionals in geodesy-related fields resigned from their duties.<sup>127</sup>

Furthermore, the KPCVA also unsuccessfully requested additional financial support from the government and international donors. Taking into account that it inherited the outstanding duties of its predecessor, in particular, the enforcement of 143 decisions under Section 4 of UNMIK Regulation 2000/60 relating to the HPD compensation scheme, the lack of funds remains a highly concerning obstacle for the KPCVA. At the time of drafting, the KPCVA struggles to secure the necessary amount to carry out appropriate compensation payments. The KPCVA-estimated financial needs for 2018 amounted to 5,900,395 EUR<sup>128</sup>. It has no regular funding from donors, while the amount of 2,729,373 EUR<sup>129</sup> was allocated to the KPCVA from the 2018 Kosovo Budget.<sup>130</sup> Thus, at the end of 2018, the KPCVA had an implementation rate of 96 per cent, as the final budget spent amounted to 2,611,936 EUR and was distributed as per the table below.

KPCVA 2018 BUDGET IMPLEMENTATION IN EUR

<b>1. Wages and Salaries</b>	<b>1,121,421</b>
<b>2. Goods and Services</b>	<b>1,163,645</b>
<b>3. Utilities</b>	<b>75,633</b>
<b>4. Capital Investments</b>	<b>368,673</b>
<b>TOTAL</b>	<b>2,729,373</b>

Table 2: KPCVA budget for 2018

In addition, delays in the adoption of the amendments of the Law on KPCVA<sup>131</sup> presented a serious challenge for the KPA staff, since it brought uncertainty regarding the sustainability of the institution. During the final year of the operation of the KPA the Agency failed to timely appoint two local Board members and the senior management, including the Director and Deputy Director.<sup>132</sup> This affects the overall functioning of the KPA, and the loss of key staff continued to challenge the KPCVA, further impeding the process of preparation of a substantial work plan and financial and exit strategies.

<sup>127</sup> Interview with the representative of the KPCVA (Ms. Florije Kika), on 3 August 2018.

<sup>128</sup> Therefore, the amount of shortfall in 2018 was 2,994,663 EUR. See Kosovo Property Comparison and Verification Agency, Annual Report 2018, Annex B and C, p. 150.

<sup>129</sup> Data provided by the KPCVA management in May 2019.

<sup>130</sup> Law No. 05/L-125 on the Budget for Year 2017. Available at <https://www.kuvendikosoves.org/common/docs/ligjet/05-L-125%20a.pdf>, accessed on 3 June 2019.

<sup>131</sup> Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency (KPCVA). Available at [http://www.kpaonline.org/frameworkPDFs/English/LAW\\_NO\\_05\\_L-010\\_ON\\_KOSOVO\\_PROPERTY\\_COMPARISON\\_AND\\_VERIFICATON\\_AGENCY.pdf](http://www.kpaonline.org/frameworkPDFs/English/LAW_NO_05_L-010_ON_KOSOVO_PROPERTY_COMPARISON_AND_VERIFICATON_AGENCY.pdf), accessed on 6 May 2019.

<sup>132</sup> Chapter 6.14 "Delays in adopting the Law on Kosovo Property Comparison and Verification Agency" of the KPCVA Annual Report from 2016, p. 164. Available at [http://www.kpaonline.org/PDFs/Raporti\\_2016.pdf](http://www.kpaonline.org/PDFs/Raporti_2016.pdf), accessed on 1 July 2019.

Hence, financial unsustainability greatly affected the work of the institutions responsible for dealing with post-conflict property restitution as it hampered their operation and led to the loss of qualified staff. Nevertheless, financial obstacles, even if justified, should under no circumstances burden the rightful property owners and affect their access to property rights. Taking into account that the responsibilities of mechanisms were clearly defined, it is obvious that none of them managed to completely implement their respective mandate, particularly with regards to the compensation scheme and demolition. Moreover, looking at the annual budget and its implementation, there seems to be an imbalance between the number of staff and the financial needs pertaining to the mechanism's operations. For instance, the mechanism's annual expenditures pertaining to wages of the staff amounts to around 1.12 million EUR, while the necessary amount to facilitate the implementation of the entire compensation scheme is around 1.5 million EUR. This ultimately raises the question of the actual need for a mechanism that can cover the costs of salaries of its employees only, while it implies the inability to ensure financial sustainability for its crucial operations.

## 4. CONCLUSION

Throughout nearly twenty years of conflict-related property claims mechanisms in Kosovo<sup>133</sup>, over 70,000 residential, commercial and agricultural claims, have been resolved. This number demonstrates not only the amount of workload but also confirms their status as the most relevant tool for the protection of property rights of non-majority communities and displaced persons. The mechanisms had the exclusive jurisdiction to review and adjudicate these cases, providing mediation between the parties, and contributing to conflict prevention.

However, these mechanisms clearly faced significant challenges in the implementation of their respective mandates. Lack of sufficient financial means remained a major obstacle. For instance, it severely affected performance in carrying out the compensation scheme of A and C claims and demolition of illegal constructions built on displaced persons' properties. Moreover, shortcomings regarding effective co-ordination and co-operation among Kosovo institutions, including courts, continue to persist. There are delays in appointments of judges in the Supreme Court Appellate Panel and of the Commissioners in the Property Claims Commission; from time to time, vacant posts of the Supervisory Board members from the international community in Kosovo have also influenced the effectiveness of resolution of property cases by the mechanisms. Deficiencies in the adequate implementation of existing legislation are at the core of the problem. One of the examples, as discussed before, was the legal inability to perform eviction more than twice, while cases of illegal occupation were multifold.

In addition, while bound by financial constraints in enforcing requests for demolition of illegal structures, the mechanisms delayed the drafting of legal acts that would provide grounds and details for such enforcement upon the availability of funds. All of this inevitably contributed to the delays in the resolution of property claims, affecting not only the work of the mechanisms but also often leaving claims of the affected parties without swift and effective remedies. Taking into account the fact that the KPCVA was not able to discharge its responsibilities as assigned by its mandate

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<sup>133</sup> Housing and Property Directorate, Kosovo Property Agency, and Kosovo Property Comparison and Verification Agency.

almost three years after its establishment, the question is often being raised whether such an agency is necessary, once all HPD and KPA cases are implemented.

Nevertheless, providing a fair and legitimate remedy for all parties whose property rights have been affected must remain a priority, which is why Kosovo institutions ought to provide strong support in tackling this issue. Looking closer at its main mandate, the KPCVA is bound to compare and verify cadastral records that were to be handed over to Prishtinë/Priština from Belgrade. Unfortunately, until the time of the drafting of this report,<sup>134</sup> the comparison and verification has not occurred.<sup>135</sup> Obviously, if there is no serious intention of the parties to abide by the Brussels Cadastral Agreement from 2011, the issue should be further addressed by the Kosovo government in consultations with the European Union.

Finally, as the restitution of properties lost as a result of the conflict is a priority intervention to strengthen and guarantee property rights of non-majority communities, it is of the utmost importance that the KPCVA continues addressing this issue. This, however, needs to be done in a timely and effective manner. While the local institutions need to allocate sufficient funds for its operations from the Kosovo budget, the international stakeholders should firmly support the KPCVA in the implementation of all duties and responsibilities. Thus, it is necessary to keep KPCVA's work high on the agenda of relevant local institutions and the international community present in Kosovo until the implementation of all HPD and KPA cases, as it has become clear that only with a properly functioning mechanism can property rights of the affected parties be ensured.

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<sup>134</sup> December 2019.

<sup>135</sup> There is a disagreement between Prishtinë/Priština and Belgrade on how and from whom these cadastral records should be reviewed. The agreement signed by the parties that Article 2 foresees a tripartite groups consisting of experts from two sides and chaired by the EU will monitor the work of a technical agency. The Agency established by the Kosovo government through Law No. 05/L-010 does not foresee any establishment of the tripartite group as stated in the agreement. However, the board of directors of the Agency is composed of three international members chaired by the EU.





# PROPERTY RIGHTS MASS-CLAIM MECHANISM: Kosovo experience

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