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ON THE MAIN CHARACTERISTICS OF COMPENSATION CLAIMS ARISING FROM THE WIDESPREAD DESTRUCTION OF RESIDENTIAL PROPERTY IN THE AFTERMATH OF THE KOSOVO* CONFLICT[2]

Abstract

The violence which spread through Kosovo in the first months after the arrival of the UN and NATO troops left many Serbs, Roma and members of other minority communities without homes. Their houses were set on fire, demolished and looted. In the following years almost nothing was done to enable their return. The reconstruction projects were scarce, while the extra-judicial property restitution mechanisms had no mandate to deal with the destroyed property. Left with no other remedy, between 2004 and 2005, the owners of demolished property lodged a great number of compensation claims before the courts in Kosovo. The plaintiffs sought damages from UNMIK, KFOR and the local institutions established after June 1999. Despite the fact that the compensation claims had become well known for the controversial decision of UNMIK to order stay of proceedings in these cases, as well for the complex legal issues they posed, so far there have been no official accounts of their basic characteristics. The author aims to fill that lacuna by presenting results of the research conducted on the copies of the compensation claims lawsuits archived in the Court Liaison Office in Gračanica/Graçanicë.

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

[2] This paper is second in the series of papers analysing the compensation claims lodged before the courts in Kosovo in relation to the widespread destruction of residential property in Kosovo after the conflict. The first paper, which deals with the legal destiny of these claims, was published in *Strani pravni život* no. 3/2014, Institute of Comparative Law (ICL), Belgrade, pp. 185 – 2006, available at: *http://www.comparativelaw.info/spz20143.pdf*) As was the case with the previous paper, the present study is based on the results of a comprehensive research on the violations of property rights of internally displaced persons in Kosovo, which was conducted within the EU-funded Project "Further support to refugees and IDPs in Serbia" (EuropeAid/129208/C/SER/RS; implemented by Diadikasia Business Consultants S.A. in consortium with Hilfsverk Austria International, ICMPD and Group 484).

Key words: *compensation claims, pecuniary damage, post-conflict property restitution, Kosovo, UNMIK*

1. Introduction

Between 2004 and 2005 the courts in Kosovo received a large number of lawsuits lodged by Serbs and members of other minority communities in relation to the widespread demolition of their homes and other property, which occurred in the aftermath of the conflict.[3] The lawsuits' subject matter was compensation for pecuniary damages caused by the acts of destruction and/or damaging of the immovable and movable property belonging to private persons, which were committed by unidentified groups and individuals. On the basis of the principle of objective responsibility, guaranteed by the laws in force at the time, the compensation was claimed from the authorities established in Kosovo after June 1999: the United Nations Mission in Kosovo (UNMIK), Kosovo Force (KFOR), Provisional Institutions of Self-Governance in Kosovo (PISG) and local municipalities. Due to the volatile security situation and the fact that the claimants were predominantly displaced persons, many claims were lodged with the assistance of domestic and international organizations and national/local authorities.[4]

Although by the end of 2004 it became clear that thousands and thousands of the compensation claims reached the Kosovo courts, UNMIK had never come up with a strategy on how to deal with them. The lack of strategy was coupled with the lack of reliable data.[5] The "veil of mystery" has been surrounding both the compensation claims lawsuits and the so initiated proceedings. Apart from the well-known fact that the proceedings were stayed for several years, there are no official reports on whether, when

[3] Without an intention to understate the importance of the question of compensation for damages inflicted on private properties while the authorities of the Republic of Serbia were present in Kosovo, this article deals exclusively with the compensation claims lodged in relation to the destruction of property that took place after 10th of June 1999.

[4] There is anecdotal evidence that great number of claims was filled before the courts with the assistance of the Coordination Centre for Kosovo and Metohija, the former body of the Government of Serbia dealing with the matters related to Kosovo until 2007.

[5] It is unknown whether UNMIK and other responsible international and local authorities have ever collected these data. The Housing and Property Directorate (HPD) alone confirmed almost 11,000 of the compensation cases. *See e.g.* HPD/CC, "Final Report of the Housing and Property Claims Commission", 2007, 79, available at *http://www.hpdkosovo.org/pdf/HPCC-Final_Report.pdf* , 11.01. 2013. There are also sources that refer to 20.000 cases filed. *See e.g.* Report of the COE Commissioner for Human Rights' Special Mission to Kosovo of 2 July 2009, para. 174. The Government of Serbia holds a similar view.

and in which way the courts have adjudicated these claims.[6]

The cases initiated by the compensation claim lawsuits are important for broader understanding of the peacebuilding activities undertaken in Kosovo. Although the international human rights law establishes a duty of the responsible authorities to provide conditions for the post-conflict property restitution, no mechanism has been created that would enable monetary or other compensation for the destroyed property. On the other hand, the reconstruction projects available to the owners of these properties have been extremely scarce.[7] That led to the situation where the only remedy left, at least in theory, was to address the ordinary judicial system.

This paper was written with the aim of saving the compensation claims from the oblivion and bringing them back to the attention of the stakeholders through a set of statistical data on their number and basic features. The data were collected during the field research conducted in the archive of the Court Liaison Office in Gračanica/Graçanicë[8] in June and August 2013.[9] The field research was undertaken with two main objectives. The first one was to determine the total number of compensation claims stored in the Court Liaison Office archive in order to test the generally held presupposition that these claims were filled in great numbers. The second one was to identify their basic characteristics.

The paper is divided into two parts. In the first part the author gives a short account of the facts so far known about the compensation claims, explains the method used during the research and provides a brief description of the Court Liaison Office archive. Following that the research findings are presented in relation to eight specific research sub-questions aimed at determining the basic features of the compensation claims. In the conclusion these findings are summarised and placed in the broader context of the post-conflict property restitution in Kosovo.

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[6] *See* Milica V. Matijević, "The Judicial Proceedings on Compensation Claims Arising from the Widespread Destruction of Residential Property in the Aftermath of the Kosovo Conflict", *Strani pravni život* 3/2014, Institute of Comparative Law, 187-206, *http://www.comparativelaw.info/spz20143.pdf* , 1.11.2016.

[7] Another problematic aspect of the reconstruction projects was that they were by definition tied with the return projects *i.e.* open only to the owners who expressed an undoubted intention to return permanently to their place of origin.

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

[9] The field research was conducted within the EU-funded Project "Further support to refugees and IDPs in Serbia" (EuropeAid/129208/C/SER/RS), implemented by Diadikasia Business Consultants S.A. in consortium with Hilfsverk Austria International, ICMPD and Group 484.

2. A brief history of the compensation claims

On 24 June 1999 the UN Security Council Resolution 1244 was signed and the conflict in Kosovo was officially over. NATO-led Kosovo Force (KFOR) entered the province in parallel to the withdrawal of the Yugoslav army and the Serbian police. It took several months before the UN Mission in Kosovo (UNMIK) deployed the adequate number of peacekeepers to guard the law and order. This lack of law enforcement forces created conditions for a new wave of violence in which "the victim became the perpetrator". In months that followed, brutal attacks against Serbs, Roma and other minority communities spread throughout Kosovo coupled with the destruction of their residential property.[10] The new images of burnt households added to the desolation emanating from the ruins left by the conflict. As in many other war zones around the globe, the destruction of homes became a powerful tool "to displace members of unwanted minorities and make their return difficult."[11]

Soon after its arrival in the province, UNMIK had established an extra-judicial mechanism for the claims over the immovable residential property,[12]yet this mechanism was of no significance in the cases of damaged and destroyed property. Until 2004, the Housing and Property Directorate/Claims Commission (HPD/CC) was merely informing the claimants about its lack of competence and was advising them to fill the claims before the local courts. In 2004 this practice was slightly changed and those who afterwards submitted claims to the HPD/CC were served with the so-called "category C declaratory orders" – an official document confirming the claimant's right onto the property at the time of its destruction.[13]

[10] *See e.g.* Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo [S/1999/779] of 12 July 1999, para. 5; Human Rights Watch, "Abuses against Serbs and Roma in the New Kosovo", August 1999, Volume 11, No. 10, available at: *http://www.hrw.org/reports/1999/kosov2/*, 1.11.2016;

[11] Walter Kälin, *Internal Displacement and the Protection of Property*, vol. 1, Swiss Human Rights Book, 2006, 176.

[12] See UNMIK Regulation No. 1999/23 On the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission of 15 November 1999; UNMIK Regulation No. 2000/60 On Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission of 31 October 2000; UNMIK Regulation No. 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property of 16 October 2006.

[13] Claims related to the destroyed properties amounted to more than 1/3 of the total number of claims submitted to this body. In: Bjorn Vagle, Fernando de Medina, "An Evaluation of the Housing and Property Directorate in Kosovo", Nordem Report 12/2006, 40, 80. See also, Margaret Cordial, Knut Rosandhaug, *Post-conflict property restitution: the approach in Kosovo and lessons learned for future international practice*, Martinus Nijhoff 2008, 88-90.

It is unknown when exactly had the owners of the damaged/destroyed real estates started submitting lawsuits, yet in 2004 the judicial authorities in Kosovo became faced with the massive influx of these claims. Apart from their numerousness, the proceedings in compensation claims have become known as a notorious example of the denial of access to court. Namely, the adjudication of these cases was on several occasions stopped by the order of the international or local executive authorities.

On 26 August 2004 the Director of UNMIK Department of Justice (UNMIK DoJ) introduced an official stay of all proceedings initiated in relation to the destroyed/damaged immovable property. In a circular notification sent to the presidents of the courts, he requested stay of the proceedings "until such time as we have jointly determined how best to effect the processing of these cases."[14] The letter referred to "huge influx of claims" that posed problems to the courts' functioning[15] and to the necessity to design proper strategy given that "many claimants will require escorts in order to travel to the courts".[16] Although UNMIK had never developed the strategy for dealing with the compensation claims, shortly before it was replaced by the EU Mission in Kosovo (EULEX) at the end of 2008,[17] the head of UNMIK DoJ advised the local courts to continue with processing the cases "which had not been scheduled according to the 26 August 2004 DoJ request".[18]

While examining these matters, the Human Rights Review Panel (HRAP), a body established to investigate the human rights violations allegedly committed by UNMIK, found in a number of cases that the UNMIK's interference breached the plaintiffs' right of access to courts:

> "The Panel finds that UNMIK did not manage to achieve a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The four years of

[14] UNMIK Department of Justice Letter of 26 August 2004.

[15] According to CoE Commissioner for Human Rights from 2009, at that time they represented "half of the backlog in the civil court system", in: Report from the CoE Commissioner for Human Rights' Special Mission to Kosovo, 2 July 2009, para. 174.

[16] UNMIK Department of Justice Letter of 26 August 2004. The stay was only partly lifted on 15 November 2005, when UNMIK DoJ issued another instruction that called on the courts to begin processing compensation claims for damages caused by identified natural persons after October 2000. In practice, this only enabled the courts to process the claims arising from the March 2004 riots.

[17] On 9 December 2008, UNMIK's responsibility with regard to the judiciary in Kosovo ended with the European Union Rule of Law Mission in Kosovo (EULEX) assuming full operational control in the area of the rule of law, following the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44).

[18] *Milogorić and Others against UNMIK*, cases no. 38/08, 58/08, 61/08, 63/08 and 69/08, para. 8.

> uncertainty experienced by the complainants over whether and when their cases would be processed by the courts was intensified during the relevant time by the fact that the August 2004 letter contained no time-frame to enable anyone to reasonably anticipate when the courts would start processing the cases, if at all. As noted already, no new legislation was adopted in the meantime nor were any mechanisms provided to assist the courts to enable the complainants to have their claims determined. In sum, instead of ensuring access to justice to vulnerable minority plaintiffs, UNMIK in fact denied them this access."[19]

In the succeeding years the adjudication of the compensation claims followed two directions. Certain number of courts started processing the claims and rejecting them on the ground of the lack of passive legitimacy of defendant(s). These courts assumed the position that UNMIK and KFOR could not be sued because of their legal immunity[20], while the local authorities could not be held liable for the acts occurring before they had assumed responsibility for governing Kosovo.

Other courts had taken a completely different approach by resorting to a 180-day stay of proceedings throughout 2009 and 2010. These decisions were based on the 2008 Law on Public Financial Management and Accountability, which stipulated that the Ministry of Justice and the Ministry of Economy and Finance should be notified about any compensation claim against any public authority in Kosovo before their processing.[21] In 2010 the Law on Amendments on the Law of Public Financial Management and Accountability was passed, which effectively suspended the proceedings in the compensation cases for up to 18 months or until Kosovo's Ministry of Justice notifies the court in writing that it assumed representation on behalf of the government or public authority.[22] Reportedly, it was not before 2011 that this group of courts started processing the claims without restrictions.[23] According to the available information, so far most of the compensation claims adjudicated by the courts were rejected on the grounds of the lack of the defendants' passive legitimacy. It was also observed that significant

[19] *Milogorić and Others against UNMIK*, cases no. 38/08, 58/08, 61/08, 63/08 and 69/08, para. 43.
[20] *See e.g.* UNMIK Regulation No. 2000/47 On the Status, Privileges and Immunities of UNMIK, KFOR and their Personnel in Kosovo, of 18 August 2000.
[21] Articles 67 and 68 of the Law on Public Financial Management and Accountability, No. 03/L-048, of 13 March 2008.
[22] Article 25 (amending Article 68.2) of the Law on Amendment to the Law on Public Financial Management and Accountability No. 03-L-221, of July 2010.
[23] *See* Milica V. Matijević, "The Judicial Proceedings on Compensation Claims Arising from the Widespread Destruction of Residential Property in the Aftermath of the Kosovo Conflict", *Strani pravni život*, 3/2014, Institute of Comparative Law, 187-206.

number of courts has ordered the unsuccessful claimants to pay court fees arising from the judicial proceedings.[24]

3. Methodology and purpose of the research

The paper presents data obtained through the analysis of the copies of lawsuits archived in the Court Liaison Office in Gračanica/Graçanicë. The field research took place on 10 - 14 of June and 5 - 9 of August 2013.

As already noted, the first objective of the research was to determine the number of the compensation claims archived in this public institution. The second one was to investigate what are their basic features by analysing a representative sample of the compensation claims in relation to the following questions:

1. Does the lawsuit contain the endorsement stamp? If so, does the endorsement stamp contain the date of the court registration and the court file number?
2. In which year was the lawsuit registered in the court?
3. Where is the domicile of the plaintiff?
4. Who is the defendant?
5. On what legal ground was the compensation claim based?
6. Does the lawsuit contain the court fees waver?
7. Was the lawsuit submitted personally by the plaintiff or by his/her representative? Does the lawsuit contain the contact details of the plaintiff/representative?
8. What type of evidence was provided with the lawsuit?

The questions were chosen with regards to their relevance to the overall thematic objective of the research, *i.e.* to provide elements for a comprehensive analysis of the restitution process carried on in Kosovo after the 1999 conflict. For instance, the data about the plaintiff's domicile were collected and analysed to enable a further understanding of the relationship between the conflict-related demolition of residential property, forced displacement and access to the reconstruction projects in Kosovo. To know the percentage of lawsuits with the court fees waiver can be useful *vis-à-vis* the practice of many courts in Kosovo to order payment of court fees in the conflict-related compensation cases. The part of the research that deals with the quantity and type of evidence submitted with the lawsuits allows a closer look at the amount of resources invested in these claims and could answer the question of their authenticity.

[24] *Ibid.*

3.1. The Court Liaison Office in Gračanica/Graçanicë

In 2003 the UNMIK Department of Justice established the Court Liaison Office in Gračanica/Graçanicë in order to facilitate access to courts of the minority communities impeded by the volatile security situation and other obstacles.[25] Its task was to enhance access to justice of the minority communities by accompanying their members to courts, filling in documents on their behalf and providing them with other types of support during the judicial proceedings.[26] The Court Liaison Office played very important role in facilitating filling in of the compensation claims. Due to the adverse security situation a claimant would usually bring the lawsuit to the Court Liaison Office whose staff would then pass it to the court.

Each compensation claim lawsuit that was in this way submitted to the court was drawn up in five copies: two copies were retained by the court after being certified; two were handed back to the plaintiff; one was stored in the Court Liaison Office's archive.[27] The copies kept by the Court Liaison Office were assigned a registration number and a note on the year of submission. Together with the copies of evidence submitted by the plaintiff, they were then placed in the office folders and classified according to the seat of municipal court before which the lawsuits were lodged. The folders were labelled according to the range of registration numbers of the lawsuits stored in them.[28]

3.2. Sampling

The total number of lawsuits for compensation of damages inflicted on residential property in the aftermath of 1999 conflict contained in the archive was determined though an examination of all the copies of the lawsuits found therein. Due to limited resources, the part of the research investigating the main characteristics of the lawsuits was conducted on a sample. The sample comprised **769 lawsuits** randomly selected from the pool of all the archived lawsuits for compensation of damages related to the 1999 conflict. As it will be shown later, the sample presents **4.29%** of the total number of the compensation claims lawsuits stored in the archive.

[25] Yearbook of the United Nations, v. 57, United Nations publications, 425. Shortly after, the Court Liaison Office got a number of sub-offices in areas with significant presence of the minority communities.

[26] UNMIK, Pillar I Presentation Paper, June 2004, 18.

[27] Interview with Trifun Jovanović, Head of the Court Liaison Office in Gračanica/Graçanicë, held on 10 June 2013 in Gračanica/Graçanicë (record of the interview on file with author).

[28] The only exception concerns the lawsuits lodged by the Serbian Orthodox Church, which are kept in a separate archive. The examination of the archive also showed that it does not contain any case files registered by the Municipal Court in Leposavić/Leposaviq.

For the purpose of taking the representative sample, all the case files were divided into 3 categories depending on the seat of the municipal court to which the lawsuits were submitted. This classification is based on the systematization used by the Court Liaison Office, which reflects the network of municipal courts in place in Kosovo until January 2013.[29]

The first group covers the courts in which a small number of the compensation claim lawsuits registered. Given their small number, all the lawsuits from this group were included in the sample.

Seat of the municipal court	Total number of compensation claims	Number of analysed claims	Percentage of analysed claims in the total number of compensation claims
Kaçanik/Kačanik	43	43	100%
Dragash/Dragaš	22	22	100%
Zubin Potok	16	16	100%
Gllogovc/Glogovac	13	13	100%
Shtërpcë/Štrpce	9	9	100%
Malishevë/Mališevo	6	6	100%

The second group encompasses the compensation claim lawsuits registered before the municipal courts, where the number of archived lawsuits was superior to 100 and inferior to 1000 lawsuits per court. From this group 30 randomly selected copies of lawsuits were included in the sample.

Seat of the municipal court	Total number of compensation claims	Number of analysed claims	Percentage of analysed claims in the total number of compensation claims
Vushtrri/Vučitrn	757	30	4%
Gjakovë/Đakovica	687	30	4.3%
Gjilan/Gnjilane	552	30	5.4%
Suharekë/Suva Reka	538	30	5.5%
Viti/Vitina	464	30	6.4%
Podujevë/Podujevo	376	30	8%
K. Mitrovica/Mitrovicë	362	30	8.2%
Deçan/Dečane	349	30	8.6%
Lipjan/Lipljan	224	30	13.4%
Skenderaj/Srbica	266	30	11.2%
Kamenicë/Kamenica	191	30	15.7%
Rahovec/Orahovac	122	30	24.6%

[29] Law on Courts No. 03/L-199, adopted on 22 July 2010 and entered into force on 1 January 2013.

The third group covers the courts that received more than 1000 compensation claim lawsuits. Here, 50 lawsuits were randomly drawn from the case-files registered for each of these courts and included in the sample.

Seat of the municipal court	Total number of compensation claims	Number of analysed claims	Percentage of analysed claims in the total number of compensation claims
Prishtinë/Priština	3234	50	1.5%
Pejë/Peć	2741	50	1.8%
Ferizaj/Uroševac	2254	50	2.2%
Prizren	2002	50	2.5%
Istog/Istok	1764	50	2.8%
Klinë/Klina	920	50	5.4%

4. Statistical analysis

4.1. Number of the compensation claims

As explained in the previous chapter, the total number of lawsuits for compensation of damages inflicted on properties in the aftermath of 1999 conflict that is contained in the archive was determined by analysing all the lawsuits that were found therein. The researcher has firstly examined the content of the archive and established its general features, which can be presented as follows:

- The total number of folders contained in the archive: 278
- The total number of lawsuits as indicated on the folders: 19067
- The total number of lawsuits missing from the folders: 736
- The total number of lawsuits other than the compensation claims lawsuits: 422
- The total number of the compensation claims lawsuits: 17 912

The number of compensation claims lawsuits was calculated in the following way: the sum of the total number of lawsuits missing from the folders (736) and of the total number of lawsuits other than the compensation claim lawsuits (422) was subtracted from total number of the lawsuits as indicated on the folders (19067).

4.2. Court endorsement stamp, date of lawsuit's receipt and the court case file number

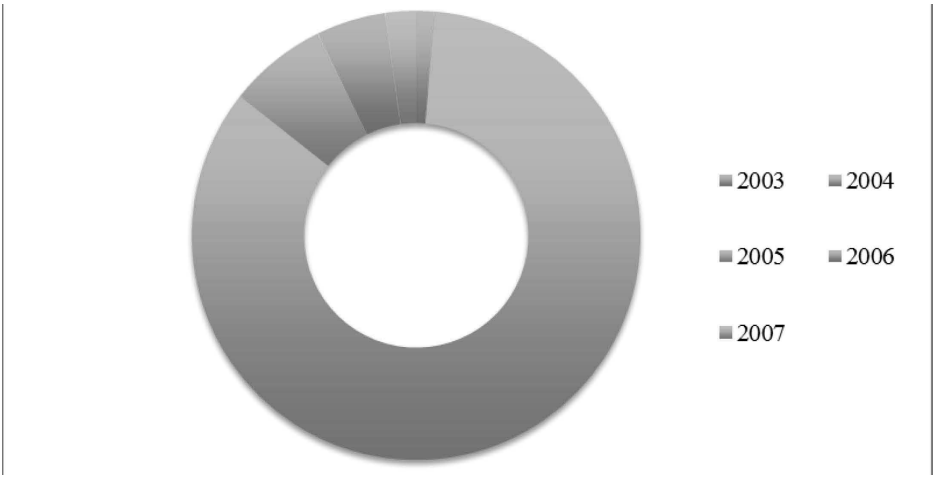
The first to be analysed was the court endorsement stamp and its elements, *i.e.* the date when lawsuit was received by the court and the court case file number. The statistical analysis of the sample was firstly directed at establishing the number of lawsuits which do/do not have a court endorsement stamp. Then, the endorsement stamp imprints were analysed in order to determine frequency of the lawsuits with the indicated receipt date. The last step undertaken with regard to the court endorsement stamp was to find out the number of lawsuits to which the courts have assigned the court case file number upon their receipt.

The results of the analysis are as follows:

- Almost all analysed lawsuits have the endorsement stamp imprints (98.3%). The low quality of the copies of original lawsuits could explain the figure of 1.6 % of the copies without the endorsement stamp imprints.
- Almost all endorsement stamp imprints have the date of receipt (98.5%).
- The analysed lawsuits as a rule do not have the court case file number (94.2%). An exception to this are the lawsuits registered before the Municipal Courts in Skenderaj/Srbica and in Pristina. The data show that the Municipal Court in Skenderaj/Srbica received a small number of the compensation claims (122 claims in total) and that 27 out of 30 lawsuits registered before this court and included in the sample contain a court case file number. Concerning the lawsuits with the court case file number that were submitted before Pristina's Municipal Court, they represent a tiny portion of the total number of lawsuits registered before this court and included in the sample (17 out of 50 lawsuits).

4.3. Year of submission

The year of submission of the analysed lawsuits was determined on the basis of the date indicated in the court endorsement stamp. As **Graph 1** shows, the greatest number of claims reached the courts in 2004 (84.1%), certain number of them in 2005 (7.1%) and a tiny percentage was filled in 2003, 2007 and 2008 successively (in total 3.7%).



4.4. Basic characteristics of the plaintiff

This part of the analysis examines whether the plaintiff was a natural or legal person and where was his/her residence at the moment of the submission of the lawsuit. The data on the domicile of the plaintiff were then used as an indicator of the plaintiff's status *i.e.* whether the plaintiff was an internally displaced person (IDP) or the so-called "internally-internally displaced person" (IIDP)[30] at the time when the lawsuit was submitted. Namely, when the plaintiff's *temporary address* was in Serbia proper or in Kosovo that was taken as an indicator that he/she had an IDP or IIDP status, respectively. It should be noted that due to the limited resources available for the research, this data was taken only for one plaintiff per lawsuit,[31] although in many cases more than one plaintiff lodged the lawsuit. The results obtained in this way are as follows:

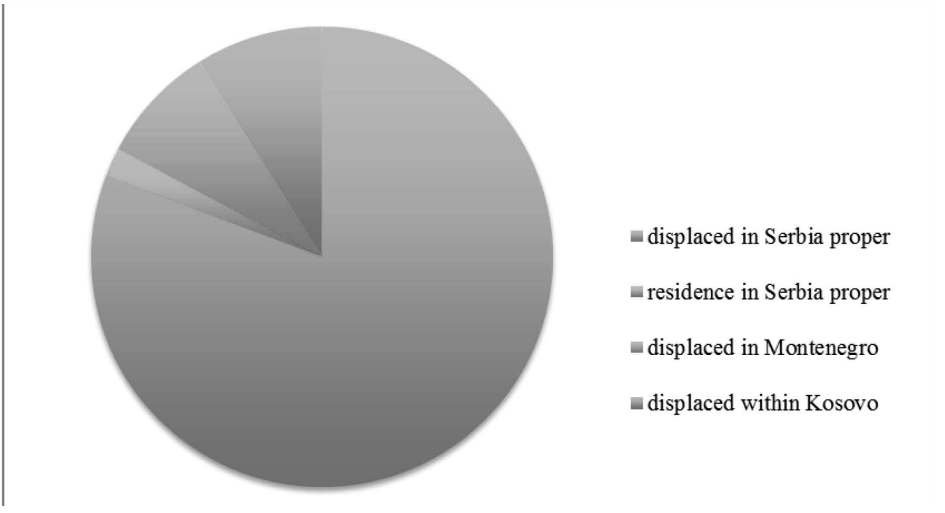
- All plaintiffs in the analysed lawsuits were natural persons;
- The greatest majority of plaintiffs had temporary residence in Serbia proper at the time of the lawsuit's submission (78.8%), which was taken as an indicator that 78.8% of plaintiffs were internally displaced persons (IDPs);
- In total 8.7% of plaintiffs were categorized as IIDPs because they provided only a temporary address in Kosovo that was different from

[30] Internally-internally displaced persons are persons who were forced to leave their homes in 1999 and 2004, but remained displaced within the boundaries of Kosovo. According to the last UNHCR assessment, in 2013 there were approximately 18,000 internally-internally displaced persons (IIDPs) in Kosovo (UNHCR, 2013 UNHCR Country Operations Profile – Serbia (and Kosovo: SC Res. 1244)), *http://www.unhcr.org/pages/49e48d9f6.html*, 19.11.2013.

[31] More specifically, the data were taken for the first plaintiff indicated in the lawsuit.

their pre-conflict address;
- Certain portion of plaintiffs (8.1%) was displaced in Montenegro at the time of the submission of the compensation claim.[32]
- Only one plaintiff had temporary residence abroad and no plaintiff from the analysed lawsuits was permanently settled abroad.

Graph 2 shows which portion of plaintiffs had residence in Serbia proper, Kosovo or Montenegro, respectively, and how many of them, in comparison to the total number of plaintiffs from the sample, could be considered to belong to the category of displaced persons.



4.5. Basic characteristics of defendant(s)

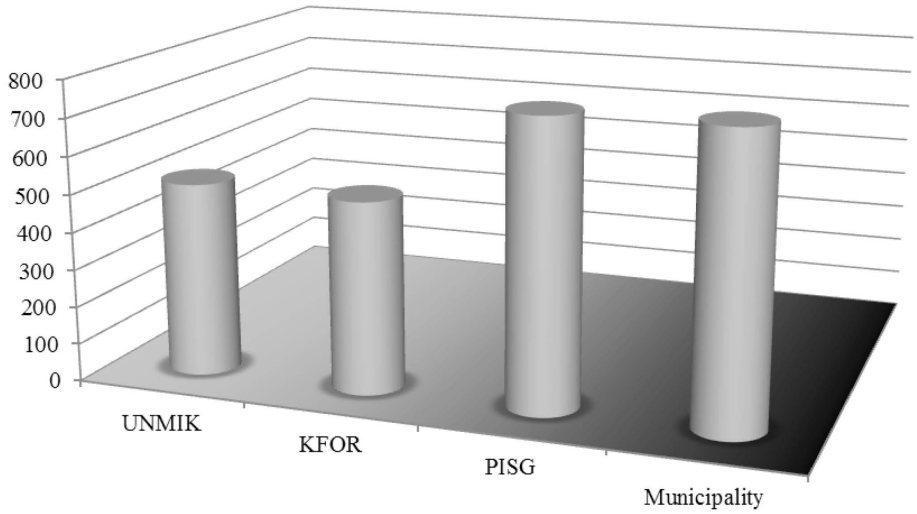
One of the distinctive features of the claims under consideration is that the plaintiffs demanded compensation from the international and/or local institutions established after the conflict. The goal of the research was to determine who exactly were the defendant(s) and how frequently these different institutions were named as defendants in the analysed lawsuits.

The plaintiffs were requesting compensation for damages primarily from the local institutions. Namely, in almost all analysed cases the plaintiffs sued the municipalities (99.86%) and the central level institutions, referred to as "the Kosovo Government" or as "the Provisional Institutions of Self-Governance" (99%). UNMIK and KFOR were defendants in 67.1% and 66.3% of analysed lawsuits, respectively. In an insignificant number of cases the claim was lodged against identified

[32] The State Union of Serbia and Montenegro came to an end in 2006, after the referendum on independence held in Montenegro on 21 May 2006.

natural persons (1.3%) and the Housing and Property Directorate (HPD), but even in these lawsuits the main defendants were always the executive authorities referred to above.

Graph 3 presents the number of lawsuits grouped according to the entitv that was in the role of defendant.



4.6. Legal basis of the compensation claims

The analysis shows that plaintiffs based their claims on several different legal acts. Certain of these legal acts served to establish the responsibility of the defendant(s), while others were used to invoke direct applicability of the European Convention on Human Rights (ECHR). The following figures illustrate how plaintiffs combined different normative frameworks applicable at the time in Kosovo:

- In total, 94% of the complainants referred to the European Convention on Human Rights Article 1, Protocol 1, as a legal foundation of their claims.
- Almost all complainants (98.8%) based their claims on the principle of objective responsibility of public authorities, as provided in Section 180(1) of the Civil Obligations Act from 1978 (Zakon o obligacionim odnosima).[33]
- More than half of the plaintiffs (403 lawsuits) invoked the provisions of UNMIK Regulation No. 1999/24.[34]

[33] The law was applicable in Kosovo at the time of the submission of the lawsuits by virtue of UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo, of 12 December 1999.
[34] UNMIK Regulation No. 1999/24 On the Law Applicable in Kosovo, of 12 December 1999.

- UN Security Council Resolution 1244[35] was cited in 391 lawsuits.
- In 386 lawsuits the plaintiffs invoked the Military Technical Agreement between KFOR and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, known as the "Kumanovo Agreement".[36]
- A significant number of plaintiffs (38,3%) also referred to the Constitutional Framework for the Provisional Self-Governance in Kosovo.[37]

4.7. Court fees waiver

As observed in practice, in certain number of cases the courts asked plaintiffs to pay court fees after rejecting their claims.[38] This observation led the researcher to the question of whether the plaintiffs had asked the court to submit their lawsuit *in forma pauperis*. The results of the analysis show that in 97% of the lawsuits the plaintiffs invoked the right to be exempted from the payment of court fees *i.e.* that only a tiny minority of analysed lawsuits (3%) did not contain a court fee waiver.

4.8. Evidence

The case-files included in the sample were analysed in its entirety in order to determine whether the plaintiffs had submitted the evidence together with the lawsuit. An important objective of this part of the research was also to learn what were the main types of evidence submitted with the initial pleadings.

The result of the analysis shows that 676 compensation claims (87.9% of the sample) contained at least one piece of evidence, *i.e.* that in only 12.1% of the analysed cases no evidence was found.

The total number of evidence items attached to the lawsuits was not determined given that the main objective of the research was to identify which percentage of the lawsuits contained the evidence and

[35] UN Security Council Resolution 1244 (1999) [on the deployment of international civil and security presences in Kosovo], 10 June 1999, S/RES/1244 (1999).

[36] The Agreement was concluded on 9 June 1999 in Kumanovo (Macedonia).

[37] UNMIK Regulation No. 2001/9 On Constitutional Framework for the Provisional Self-Governance in Kosovo, of 15 May 2001.

[38] Information based on the observations of the lawyers engaged at the EU-funded Legal Aid Project "Further support to refugees and IDPs in Serbia" (EuropeAid/129208/C/SER/RS) (records of interviews on file with author). This observation was subsequently upheld by the research on the judicial proceedings in the compensation cases, the results of which were presented and analysed in Milica V. Matijević, "The Judicial Proceedings on Compensation Claims Arising from the Widespread Destruction of Residential Property in the Aftermath of the Kosovo Conflict", *Strani pravni život*, 3/2014, Institute of Comparative Law, 187-206.

which types of evidence was used. Namely, for each compensation claim only one piece of evidence of the same type was analysed. For instance, if a lawsuit contained copies of five different possession lists for five different immovable properties, only one copy of a possession list was included in the total number of analysed evidence. In this way the research identified 2199 pieces of different types of evidence attached to 769 analysed compensation claims. This signifies that there was in average 3.25 *different* pieces of evidence per lawsuit. In reality, the number of items intended to serve as evidence is several times higher since many lawsuits contained more than one piece of evidence of the same type that were not included in the analysis.

The types of evidence used by the plaintiffs could be classified according to the types of claims the given peace of evidence was intended to support. Roughly speaking, the plaintiffs used evidence in order to substantiate two different types of claims: a) the compensation claim itself (*e.g.* copies of possession lists) or b) the court fees waver (*e.g.* copies of the Red Cross certificates). The copies of possession lists were the most typical type of evidence from the first group, while the copies of IDP and ID cards were the most usual types of evidence used by the plaintiffs to support the court fee wavers.

4.9. Signature and contact details

The last part of the research was concerned with the issue of the authenticity of the analysed compensation claims lawsuits. Its goal was to determine the number of lawsuits signed by the plaintiffs in comparison to the number of those signed by the representatives of the plaintiffs. Another question the researcher looked into is whether the plaintiff or his/her representative provided his/her contact details.

Although many of the analysed lawsuits exhibit features which indicate that they were written through the use of templates the results of the analysis in fact demonstrate that they are authentic documents. Namely, it was found that 95.5% of the analysed lawsuits were signed by the plaintiff and that 96.6% of them contained contact details of either plaintiff or of his/her representative.

5. Conclusion

The compensation claims analysed in this paper epitomize the lingering issue of post-conflict property restitution in Kosovo. The initiated judicial proceedings were stayed for several years. It is unknown how many of these cases have been concluded so far but the claims that

were processed by the courts were by rule rejected. Only a tiny number of reconstruction projects undertaken in Kosovo was open to the members of minority communities. Finally, no mechanism for the monetary compensation of the damages suffered by the owners of the destroyed property was ever developed.

The paper shows that at least 17912 compensation claims were submitted before the courts in Kosovo in relation to the damages sustained by Serbs and members of other minority communities during the wave of violence that took place after the conflict. The analysis of their basic elements points out that these claims were the result of genuine attempt of the property owners to obtain redress.

The author believes that better understanding of the way the justice system responded to the compensation claims is necessary for a comprehensive evaluation of what was done and what remains to be done in the sphere of post-conflict property restitution in Kosovo.

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O OSNOVNIM KARAKTERISTIKAMA TUŽBI ZA NAKNADU ŠTETE NASTALE USLED MASOVNOG UNIŠTAVANjA STAMBENE IMOVINE PO OKONČANjU ORUŽANIH SUKOBA NA KOSOVU I METOHIJI

Rezime

Nakon potpisivanja Rezolucije 1244 Saveta bezbednosti Ujedinjenih nacija i povlačenja srpske vojske, na Kosovu i Metohiji dolazi do proterivanja Srba i pripadnika drugih manjinskih zajednica, te do masovnog uništavanja i pljačkanja njihove imovine. Uvidevši da je malo verovatno da će njihove kuće biti obnovljene ili da će šteta koju su pretrpeli biti nadoknađena, tokom 2004. i 2005. godine vlasnici porušenih nepokretnosti se u velikom broju obraćaju lokalnim sudovima. Našavši se u ulozi tužioca ova, mahom interno raseljena lica, naknadu štete traže od UNMIK-a, KFOR-a i lokalnih institucija uspostavljenih nakon juna 1999. godine. Malo se toga zna o ovim tužbenim

zahtevima i njima iniciranim sudskim postupcima. Ono što je izvesno je da su postupci u nekoliko navrata obustavljani na zahtev izvršnih vlasti, te da su poslednjih godina mnoge tužbe odbačene po osnovu nedostatka pasivne legitimacije tuženih. Autorka nastoji da popuni ovu prazninu predstavljajući statističke podatke prikupljene sa ciljem da se utvrdi brojnost tužbi za naknadu štete nastale nakon sukoba, kao i njihove osnovne karakteristike.

Ključne reči: tužbe za naknadu štete, materijalna šteta, restitucija, Kosovo, UNMIK.