
PROBLEMS OF INTERNALLY DISPLACED PERSONS
IN ACCESSING
PRO PERTY RIGHTS
IN 7 STORIES
www.praxis.org.ro

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ABOUT PRAXIS

Praxis is a domestic non-governmental organization which aims to protect, improve and promote human rights of refugees, internally displaced persons, returnees upon readmission agreements from Western Europe and members of minorities (Roma, Ashkali and Egyptian). It was established in June 2004, as a continuation of the Norwegian Refugee Council's (NRC) Civil Rights Project, which NRC conducted in Serbia from 1997.

Praxis has continued to protect the rights of target groups through legal remedies, by promoting values of civil society and raising public awareness about the problems they face. While working on individual cases, Praxis also advocates for removal of administrative and systemic obstacles which impede the target groups to enjoy their human rights.

PROBLEMS OF INTERNALLY DISPLACED PERSONS IN ACCESSING

UNHCR
The UN Refugee Agency

September 2009

Royal
Norwegian
Ministry
of Foreign Affairs

CONTENTS

INTRODUCTION

The right to peaceful enjoyment of property is one of the basic human rights, particularly significant to internally displaced persons (IDPs), since exercise of that right is an important precondition for sustainable return of displaced persons to places of their permanent residence or, on the other hand, for taking up permanent residence in places in which they sought refuge.

Internally displaced persons cannot be illegally deprived of their property rights and their property left behind in the place of permanent residence should be protected against destruction and arbitrary and illegal appropriation, occupation or use. [1]

An independent and impartial body should decide about the requests of internally displaced persons for repossession of property (housing, commercial property and land) which they have been deprived of arbitrarily and illegally. In addition, internally displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. [2]

Ten years after the conflict in Kosovo, many internally displaced persons are still facing problems in exercising their property rights, despite the above-mentioned international principles and the fact that the international community had established independent bodies and a separate legal framework for protection of property rights in Kosovo.

In November 1999, under the auspices of the UN Mission in Kosovo (UNMIK), the Housing an Property Directorate and the Housing and Property Claims Commission were established[3] and given the mandate to resolve property claims in Kosovo, until the Special

[1] Principle 21 of the UN Guiding Principles on Internal Displacement
[2] The Pinheiro Principles, Principle 2 and Principle 10
[3] UNMIK Regulation 1999/23

Representative of the UN Secretary General considers that the local authority institutions are able to perform duties assigned to the above-mentioned bodies. The Housing and Property Claims Commission, as an independent quasi-judicial body, had the jurisdiction to resolve property disputes relating to possession right over the housing property.[4]

In March 2006, the Kosovo Property Agency (KPA)[5] continued the work of the Housing and Property Directorate. The mandate of KPA and the Kosovo Property Claims Commission (KPCC) was extended to resolving disputes relating to ownership right over immovable property, including not only housing property, but also the commercial property and land.

The majority of property claims were submitted to the Housing and Property Directorate (HPA) and the KPA by non-Albanians, internally displaced persons temporarily residing in Serbia.

Through seven cases described in this publication, in which Praxis was providing legal assistance to its clients, we would like to show the shortcomings of the property restitution mechanism and difficulties and obstacles in IDPs' accessing property rights in Kosovo.

[4] The procedure before those bodies was regulated by UNMIK Regulation 2000/60.
[5] KPA was established by UNIK Regulation 2006/10, which was later superseded by UNMIK Regulation 2006/50. The Regulation 2006/50 lost its legal force on 31st December 2008, so the procedure before the KPA is now regulated by the Law No. 03/L-079 of the Kosovo Assembly.

INFRINGEMENT OF THE PRINCIPLE OF EQUALITY OF ARMS

European Convention on Human Rights and Fundamental Freedoms proclaims the right to a fair trial.[6] According to the European Court of Human Rights, the principle of equality of arms represents one of the elements of the right to a fair trial[7]. This principle implies that each party in the procedure must be afforded an opportunity to present his evidence, to have the same access to submissions and evidence of the opposite party and to present his opinion about the arguments and evidence of the opposite party.

In the procedure before the HPD, the principle of equality of arms was often infringed, since the HPD only delivered to property claimant short notice about the existence of the claim of the opposite party, instead of delivering the claim itself and evidence of the opposite party. Thus, the property claimant could not successfully contest the claims of the opposite party, nor efficiently protect his rights.

The KPA continued in the same manner to infringe the principle of equality of arms. Unlike the HPD, in addition to the notice about the existence of the claim of the opposite party, the KPA also delivers a list of evidence of the opposite party, but without a clearer specification of the type of evidence in question or the facts that are based on that evidence, and without copies of evidence itself.

[6] Article 6 of the European Convention on Human Rights and Fundamental Freedoms

[7] See cases *Niderost-Huber v. Switzerland* (18 February 1997), *Lobo Machado v. Portugal* (18 February 1997), *Ruiz-Mateoz v. Spain* (23 June 1993) – http://www.echr.coe.int/ECHR/EN/hudoc

INFRINGEMENT OF THE RIGHT TO A REASONED DECISION

Right to a reasoned decision also represents one of the important components of the right to a fair trial[8], which must be respected not only by courts, but all bodies competent to decide upon property rights.

The Housing and Property Claims Commission (HPCC) brought decisions with incomplete and unclear statement of reasons, in which it was not stated what evidence were taken as relevant and why, nor were stated evidence which were not accepted. Reasoning of decisions resembled empty statements, and the claimants were not able to successfully contest the decision of the HPCC.

KPCC has not yet been deciding upon cases in which Praxis' clients, internally displaced persons in Serbia, were one of the parties in the dispute. Taking into consideration that the procedure before KPA has the same shortcomings in the key elements as the former procedure before the HPD, there are enough reasons to question whether the KPCC decisions will be well reasoned.

[8] See cases *Van de Hurk v. the Netherlands* (19 April 1994), *Hiro Balani v. Spain* (9 December 1994), *Ruiz Torija v. Spain* (9 December 1994) – http://www.echr.coe.int/ECHR/EN/hudoc

INFRINGEMENT OF PRINCIPLE OF LEGAL CERTAINTY

The principle of legal certainty represents one of the principles on which the rule of law is based. In accordance with this principle, the laws and decisions of the relevant bodies based on those laws must be clear, final and binding.

Final decisions of the HPCC are binding and enforceable and cannot be subject to review by any other judicial or administrative authority in Kosovo.[9] In practice, however, by its decisions, the HPCC infringed this principle in a number of cases.

In case one of the parties in the dispute (usually the illegal occupant) thought that the property right, first granted to him/her, had been lost due to discrimination[10], the HPCC referred that party to protect his/her rights before a court in Kosovo, even though it had already brought a final decision in favour of the opposite party. Namely, the claimant for repossession of illegally occupied property was recognized his/her possession right through a final decision and the claim of the opposite party rejected due to lack of relevant evidence. However, at the same time, the opposite party was given the possibility to contest the HPCC decision before court. The procedure before court had to be initiated within 60 days, and the property right holder was prohibited from disposing of his/her property until the final decision was brought.

For the time being, it is uncertain whether the KPA and the KPCC will have the same practice, which infringes the principle of legal certainty.

[9] Section 2.7 of the UNMIK Regulation 1999/23

[10] Section 2.2 of the UNMIK Regulation 2000/60 prescribes: "Any person whose property right was lost between 23 March 1989 and 24 March 1999 as a result of discrimination has a right to restitution in accordance with the present regulation. Restitution may take the form of restoration of the property right or compensation."

SHORT DEADLINE FOR SUBMITTING CLAIMS FOR PROPERTY REPOSSESSION

The Housing and Property Directorate started receiving property repossession claims in Kosovo in mid-2000, and only in January 2002 did the HPD open its offices in Belgrade, Nis and Kraljevo – which considerably facilitated IDP's access to that institution. The deadline for submission of property claims to the HPD expired in July 2003, only a year and a half after opening HPD offices in Serbia. The Kosovo Property Agency received claims in its offices in Serbia for nearly two years, from July 2006 to December 2007.

There is a serious concern that a certain number of IDPs in Serbia did not submit the claims within the given deadline for justified reasons. First of all, many of them were not acquainted with the final deadline for submitting claims, since information about it was not timely and completely available to the displaced living in collective centres and settlements far away from town centres, including particularly vulnerable categories of the displaced, the poor, the elderly and ill persons, self-supporting mothers, members of minorities and persons without documents. These persons are left with the possibility to address Kosovo courts for protection of their property rights.

HINDERED OR IMPOSSIBLE ENFORCEMENT OF DECISIONS ON PROPERTY REPOSSESSION

The mandate of the Kosovo Property Agency also entails enforcing the remaining decisions of the Housing and Property Directorate. When a person whose possession right over the illegally occupied property in question was recognized by the Housing and Property Claims Commission addresses the KPA with a request for eviction of the illegal occupant – the KPA performs the eviction in presence of the Police. In case of reoccupation of the property in question, the KPA is no longer competent to perform the eviction, but it refers the property right holder to Kosovo Police. The Police often refuse to act upon the request of the property right holder for eviction of the illegal occupant, but refer the right holder to report the criminal offence of the illegal occupant, so that, perhaps, criminal proceedings could be initiated against him/her.[11]

In addition, the KPA does not allow the property right holder or his proxy to be present during the eviction of the illegal occupant, but vests the property in the right holder by handing over the keys to the housing property to him/her in its offices, after the eviction of the illegal occupant. Even though the UNMIK Regulation 2006/50 does not exclude the presence of the right holder[12], the KPA justifies such act by safety reasons, referring to the "standard rules of procedure". Thus, the right holder cannot be absolutely certain whether the KPA had truly executed the eviction of the illegal occupant.

There are other shortcomings in the process of enforcement of decisions as well. In case one party was recognized the possession right over the property in question, since it had first lost it due to discrimination, the other party is entitled to compensation in case

[11] By reoccupying other's property, one commits the following criminal offences: removing or damaging of official stamps or marks as prescribed by the Article 322, infringing inviolability of residences as prescribed by the Article 166 and unlawful occupation of real property as prescribed by Article 259 of the Criminal Code of Kosovo.
[12] Section 16.5 of the UNMIK Regulation 2006/50

he/she had at one time purchased the apartment in question. The compensation amount should be determined by the HPD in accordance with the fixed mathematical formula (purchase price, market value of and potential improvements in the apartment are taken into consideration). Once the compensation amount has been determined, the party whose possession right was recognized on the grounds of discrimination should pay that amount to the HPD, who then pays it to the party who purchased the apartment. If the payment is not made within 120 days after the Commission has brought the decision on the right to restitution, the right over the property in question belongs to the party who purchased the apartment at one time. The mathematical formula for calculating the compensation amount has not been determined up to now, even though the project for determining the formula was given to an independent consultant "Bearing Point" back in 2004. The draft law for determining the compensation amount was supposed to be prepared on the grounds of the research of the "Bearing Point".[13]

As a consequence of all the above-mentioned, internally displaced persons, whose claims for property repossession were rejected because the opposite party lost his/her property right at one time due to discrimination, were punished and paid the price for something for what they had not been personally responsible.

[13] Source of Information: Kosovo Property Agency

ACCESS TO MECHANISM FOR PROTECTION OF PROPERTY RIGHTS HINDERED-CLOSURE OF THE KPA OFFICES IN SERBIA

By the decision of the Government of the Republic of Serbia, in June 2008, the work of the Kosovo Property Agency in Serbia was suspended.

The closure of the KPA offices in Serbia caused problems for internally displaced persons, especially the poor, elderly and ill persons. The communication with the KPA was rendered more difficult, since its offices are open only in Kosovo. KPA decisions are taken over in its offices, either personally or through a proxy. Yet, many IDPs are not able to travel to Kosovo or engage a proxy.

Besides, a significant problem is also the impossibility of verification of evidence in Serbia. After the closure of KPA offices in Serbia, KPA officers are deprived of access to archives. Impossibility of verification of evidence has crucial influence on disputable claims, which will not be decided upon until further notice.

HINDERED OR IMPOSSIBLE ACCESS TO COURTS AND INSTITUTIONS IN KOSOVO

Persons interested in submitting claims for property repossession were due to enclose in their claims evidence that they had obtained themselves. Neither did the HPD, nor does the KPA have the obligation to ex officio collect evidence that the parties point to when submitting claims or at later stage of the procedure. The problem lies in the fact that the documents that are in the archives of Kosovo institutions are not available to IDPs in Serbia proper for safety and financial reasons. Impossibility to submit relevant evidence, which, on the other hand, the KPA would be able to have an insight into by using its own authorities, makes it hardly possible to prove one's property right.

Verification of evidence is an integral part of the procedure before the Kosovo Property Claims Commission, which implies establishing authenticity and relevance of documents submitted as evidence. KPA officers compare documents enclosed in the claim with a copy of the same documents found in the archives in Serbia or Kosovo. The verification procedure is usually related to establishing authenticity of a contract on lease, use or purchase of housing property. In case the enclosed contract is identical to the copy in the court archive, its authenticity is established. Verification of documents in archives in Serbia, dislocated from Kosovo, is not accepted as valid unless the archive provides an actual copy of the original document to the KPA. Verification based merely on the data in the court registration book in Serbia, also dislocated from Kosovo, is not sufficient according to KPA's verification procedure.

Protection of property rights which were not within the jurisdiction of the HPD or KPA could only be sought before Kosovo courts. However, IDPs encountered numerous obstacles when instigating and conducting procedures before courts in Kosovo. Some of the more significant obstacles are: no postal delivery between Serbia and Kosovo, slow delivery of court writs, delay in registering cases, long time to schedule hearings, non-delivery of writs in a language which they understand, slow verification of authenticity of powers of attorney, non-acceptance of documents issued by public registries in Serbia, non-recognition of and unequal respect for decisions of courts in Serbia and, in a number of cases, no respect for principles of independence and impartiality of court – which all lead to unjustified delay of procedures, inefficient court protection and human rights violation and discrimination of internally displaced persons.

PRAXIS ACTIVITIES IN THE FIELD OF PROTECTION OF PROPERTY RIGHTS IN KOSOVO

Praxis provides legal assistance, information and counselling to internally displaced persons in the field of, among other legal issues, property rights in Kosovo. Until 2006, Praxis had been engaging lawyers for representing clients in property cases before Kosovo courts for several years.

In January 2007, by submitting written comments as an intervening third party, Praxis took part in the case *Gajic v. Germany* before the European Court of Human Rights. Gajic case concerns unauthorised use of the apartment, without compensation, in the period from June 1999 till July 2004 by the German continent of KFOR. Praxis attempted to point to responsibility of Germany in the case and contest claims of the German Government that the responsibility does not lie with Germany but the United Nations or NATO. In August 2007, the European Court of Human Rights declared the application inadmissible, declaring itself incompetent *ratione personae* to review the acts of Germany carried out on behalf of the UN. The Court also found the application inadmissible since it was premature and not all available legal remedies were exhausted.

On behalf of its clients, Praxis submitted complaints to the Human Rights Advisory Panel[14] for violation of their rights by UNMIK. In addition, in certain cases, Praxis launched appeals to relevant international stakeholders in order to draw attention to violations of rights of its clients.

Numerous actions were also taken in the field of advocating for protection of property rights in Kosovo and removal of obstacles in accessing those rights.

[14] Human Rights Advisory Panel was established by UNMIK Regulation 2006/12. In accordance with the Section 1.2 of the Regulation, the Panel examines complaints of any person or a group of persons who claim to have been victims of human rights violations by UNMIK in the manner stated in international instruments.

In December 2007, Praxis launched an appeal to the Special Representative of the UN Secretary General for Kosovo for extending the deadline for submission of property claims to the Kosovo Property Agency. Even though the SRSG stated in its response to the appeal that the extension of the deadline would be considered, it has never happened.

In February 2009, Praxis launched an appeal to the Ministry for Kosovo and Metohija for reopening of KPA offices in Serbia. The appeal was supported by numerous non-governmental organizations. The aim of the appeal was to once again point to the Government of the Republic of Serbia to IDPs' problems in accessing property rights in Kosovo, which occurred when the Government brought the decision to suspend the work of the Kosovo Property Agency in Serbia. Neither the Government nor the Ministry for Kosovo and Metohija responded to the appeal.

In addition to the above-mentioned, Praxis actively participated at conferences and seminars in Serbia and Kosovo, relating to the problems in accessing property rights in Kosovo.

Praxis has also been undertaking advocacy activities through drafting reports on the subject.

In May 2006, Praxis submitted the Thematic Shadow Report on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo to the Committee of Ministers of the Council of Europe and to the Advisory Committee on the Imple-

mentation of the Framework Convention for the Protection of National Minorities.[15] Special attention was drawn to lack of mechanism for protection of property rights in Kosovo, inadequate translation of official documents from English and Albanian to Serbian in Kosovo and violations of the provisions of the Framework Convention.

At the end of June 2006, Praxis submitted a report[16] to the UN Human Rights Committee in which it gave its comments about protection of rights guaranteed by the International Covenant on Civil and Political Rights which is provided by UNMIK, with special reference to rights to immovable property in Kosovo. The report emphasizes all the shortcomings of the procedure before the HPD and KPA, points to violations of the provisions of the International Covenant on Civil and Political Rights and offers recommendations for undertaking certain measures in the field of protection of property rights in Kosovo.

On the occasion of adopting the Concluding Observations of the Human Rights Committee in Kosovo, in September 2006 Praxis submitted Recommendations to OHCHR Belgrade[17] with regard to access and protection of property rights in Kosovo, access to archives of Kosovo institutions, recognition of documents from Serbia by Kosovo institutions and availability of official documents in Kosovo in languages of national minorities.

Through this publication, Praxis would like to, once again, point to the necessity of solving the problems in accessing property rights in Kosovo systemically, in compliance with international standards and human rights protection principles.

[15] See the report at Praxis web site: www.praxis.org.rs
[16] *Ibid.*
[17] *Ib.*

DISPUTABLE POSSESSION RIGHT STRONGER THAN INDISPUTABLE OWNERSHIP RIGHT

Through its final decision, the Housing and Property Claims Commission (HPCC) confirmed the illegal occupant's obviously disputable possession right. It wrongly estimated that the illegal occupant lost his possession right due to discrimination, and not because his right to use the state apartment terminated when his service ended. Finally, through its decision, the HPCC gave the illegal occupant the possibility to even acquire the ownership right.

When deciding on conflicting claims for repossession of the apartment, the HPCC found the illegal occupant's claim *valid*, and also found that the claim of the owner *fulfilled all conditions of a valid claim.*

The illegal occupant would have the *right to repossession of the apartment, and become the owner,* provided that he paid a certain amount of money which would subsequently be determined. The owner of the apartment would receive a *compensation for the lost ownership right* from that amount.

In case the illegal occupant failed to pay the amount for whatever reason, the owner of the apartment would have the right to repossession of the apartment in question.

Thus, the HPCC gave priority to the holder of the disputable *possession right* over the holder of the indisputable *ownership right.*

In deciding upon the owner's property claim, KPA violated the principle of equality of arms, one of the elements of a fair trial, by not presenting to the owner the arguments and evidence of the opposite party, so that the owner could have the possibility to comment on those evidence and arguments and provide her evidence.

Radmila is the owner of the apartment in the Goleska Street, Pristina, in which she lived with her husband and three children until 1999, when she fled Kosovo. She has been living with her family in a rented apartment in Serbia as an internally displaced person ever since.

Radmila acquired the tenancy right over the above-mentioned apartment in 1991, after she and her husband renounced the apartment in which they had been living until that moment, in accordance with the provisions of the law in effect at that time. In 1993, Radmila purchased the apartment in question.

In 1999, Radmila's apartment was illegally occupied by Halil Fejzulahu, former member of the Provincial Government of the Socialist Autonomous Province (SAP) of Kosovo.

In 1966, Halil Fajzelahu acquired the tenancy right over an apartment in the centre of Belgrade, which he was given as a state officer, on the grounds of a decision of the Republic Parliament of the Socialist Republic of Serbia. He lived in this apartment with his family, and in 1992 he purchased it, by concluding a contract on purchase with the Republic of Serbia.

In addition to this apartment in Belgrade, in 1975 Fejzulahu was also given a state apartment to use during the service, i.e. the apartment in question in Goleska Street in Pristina. He was given this apartment *to use during the period of his service* in Kosovo as a Provincial State Officer.

In accordance with the regulations at the time, Fejzulahu lost his right to use the state apartment when he retired in 1984, since his services ended and he no longer had the need to use the apartment in Pristina for official purposes. He was moved out from the state apartment in 1989 on the grounds of a decision of the Executive Council of the SAP Kosovo, which at one time gave him the state apartment to use during the service.

THE OWNER OF THE APARTMENT'S POSSESSION RIGHT IS CONFIRMED, THE ILLEGAL OCCUPANT ORDERED TO MOVE OUT

In 2002, Radmila submitted a claim for repossession of her apartment in Goleska Street, Pristina, to the Housing and Property Directorate (HPD). In 2005, the Housing and Property Claims Commission (HPCC) brought a first instance decision upon Radmila's claim and the connected claim submitted by the illegal occupant.

In his claim, Halil Fejzulahu asserted that he had the possession right over the apartment in question, which he was given to use during the service, since he had lost possession in 1989 due to discrimination.

HPCC first instance decision confirmed Radmila's possession right over the apartment in question and rejected Fejzulahu's claim as groundless, since he did not have the tenancy right over the apartment, but the right to use the apartment during the service. The right to use the state apartments was explicitly excluded from the definition of tenancy right.

Fejzulahu submitted a request for reconsideration of that decision. In his request, he for the first time enclosed a copy of a contract on use of the apartment, concluded with the Housing Company in July 1975, with the intention to prove that he acquired the tenancy right over the state apartment. In his request, Fejzulahu claimed that the fact that the apartment was first given to him to use during the service was irrelevant.

In her reply to the reconsideration request, Radmila emphasised that, in accordance with the regulations in effect, the right to use the apartment during the service was not basis for acquiring

tenancy right. She claimed that Fejzulahu could not have been the tenancy right holder over two apartments at the same time, taking into consideration that he had an apartment in Belgrade where he had registered permanent residence, and that the apartment in question was given to him to use during the service exclusively.

Holders of the right to use a state apartment during service, as well as the holders of tenancy rights, were obliged to conclude a contract on use of the apartment with the Housing Company. This obligation was always stated in the decisions of the grantor of the apartment for use, which were the basis for acquiring the right to use the apartment. The contract on use of the apartment was concluded on the same form with all holders of the right to use (it was the same template), and it was concluded primarily because it served as basis for payment of compensation for the use of the apartment and the costs of service of the public utility companies. By concluding the contract on use of an apartment with the Housing Company, one entered into possession of the apartment.

Each contract on use of an apartment contained a decision of the grantor of the apartment for use, which was basis for acquiring right to use the apartment, whether it was the tenancy right or right to use the apartment during service.

Fejzulahu's contract on use of the apartment, concluded with the Housing Company in July 1975, contains the decision of the Executive Council of the SAP Kosovo, the grantor of the apartment for use, by which Fejzulahu was given the apartment to use exclusively during the service. The same decision also states Fejzulahu's obligation to conclude a contract on use of the apartment with the Housing Company.

FINAL DECISION CONFIRMS POSSESSION RIGHT OF THE ILLEGAL OCCUPANT, AND GIVES THE OWNER THE RIGHT TO COMPENSATION

In 2006, the Housing and Property Claims Commission brought a second instance decision, stating that Fejzulahu's claim was valid, and that Radmila's claim *fulfilled all conditions of a valid claim*.

In its reasoning of the decision, the HPCC stated that it was irrelevant that the apartment in question had first been given to Fejzulahu to use during the service, since he had been allowed to conclude a contract on use of the apartment, and thus, the apartment in question lost the status of the apartment to use during service. Finally, the HPCC concluded that the loss of the tenancy right did not occur because of the fact that Fejzulahu already had tenancy right over another apartment, but as a result of *discrimination*.

The HPCC stated in its decision that Radmila had the possibility to challenge the illegal occupant's disputable tenancy right over the apartment in question in procedures before Kosovo courts, since the apartment was given to him for use during the service and because he had tenancy right over the apartment in Belgrade at the same time.

That final HPCC decision *granted Fejzulahu the right to repossession of the apartment*. However, *in order to enjoy his right to repossession of the apartment*, Fejzulahu had to pay to the Housing and Property Directorate the amount which would be subsequently determined by the HPD, within 120 days from the moment he was informed about the Commission's decision on the right to restitution. With this amount fully paid, Fejzulahu would become the owner of the apartment, and from these funds Radmila would receive compensation for the lost ownership right over the apartment, in the amount she had previously paid for the purchase of the apartment,

increased for a certain percentage of the market price of the apartment. In the meantime, Fejzulahu was allowed to use the apartment without any impediments. However, in case the illegal occupant failed to pay the amount for whatever reason, Radmila would have the right to repossession of the apartment in question.

Second instance decisions of the Housing and Property Claims Commission are final, i.e. are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.[18] For that reason, Radmila does not have any legal remedy for protection of her ownership right over the apartment.

HUMAN RIGHTS ADVISORY PANEL REJECTS THE COMPLAINT OF THE OWNER OF THE APARTMENT AS INADMISSIBLE

In 2007, Radmila addressed Praxis. A complaint was submitted to the Human Rights Advisory Panel (HRAP) in Kosovo for violation of her human rights to property, fair trial, respect for private and family life, as well as the right to efficient legal remedy.

HRAP was founded in Pristina in March 2006[19], started working in mid-November 2007, and only in May 2008 did it start bringing the decisions regarding admissibility of the complaints.

Conclusions and recommendations of the HRAP have exclusively the advisory role, and the Panel will declare a complaint admissible and take it into consideration only if it establishes that all legal remedies in Kosovo have been exhausted and in case no more than 6 months have passed since the final decision was brought. This institution has the mandate to examine alleged violations of human rights by UNMIK on the territory of Kosovo.

[18] UNMIK Regulation 1999/23, Section 2.7
[19] UNMIK Regulation 2006/12

In June 2008, the Panel brought a decision declaring Radmila's complaint inadmissible. In this case the complaint was submitted to the Panel in September 2007, a year and a month after the deadline for the submission of complaints had expired, but, anyhow, before the Panel even started working. The complaint was found inadmissible, since it was submitted after more than six months from bringing the final HPCC decision. In this particular case, the complainant should have submitted the compliant not later than August 2006, i.e. a year and 3 months before the Panel even started working.

THE OWNER SUBMITS A CLAIM FOR DETERMINING OWNERSHIP RIGHT

In 2007, Radmila submitted a claim to the Kosovo Property Agency (KPA)[20] for determining ownership right and repossession of the apartment.[21] In addition to previously submitted evidence, she enclosed in the claim two more documents as new evidence, which she obtained after the final HPCC decision had been brought. One document showed when Fejzulahu had acquired the tenancy right in Belgrade and when he had purchased that apartment. The other document showed the date of Fejzulahu's retirement, then the fact that he had been receiving pension in Serbia for 23 years, as well as the data that he had registered permanent residence at the address of the above-mentioned apartment in Belgrade.

At the official web site of the KPA it has been published that in September 2008 KPA conducted a reply interview regarding Radmila's claim with a certain person who (most probably) claimed before KPA that he/she had legal interest in the apartment in question. However, KPA did not find it appropriate to inform Radmila about it, nor did it deliver to her a copy of the reply with potentially enclosed evidence, so that she could give her reply

[20] KPA was founded in March 2006 by UNMIK Regulation 2006/10. UNMIK Regulation 2006/50, as of 16th October 2006, regulates the procedure before the KPA.
[21] Claim No. KPA47114

and submit new evidence.

At the end of July 2009, as Radmila's legal representative, Praxis submitted a request to the KPA, asking the KPA to finally deliver to Radmila the reply of the opposite party to her claim, with potentially enclosed evidence.

THE OWNER SUBMITS A CLAIM FOR ISSUANCE OF ORDER OF REPOSSESSION OF THE APARTMENT

According to information Radmila possesses, Fejzulahu passed away on 7th March 2007. His daughter, Kacusa Jasari[22], who lives in Radmila's building in Pristina, in an apartment opposite from Radmila's, holds the keys of Radmila's apartment.

Fejzulahu died before the above-mentioned condition, set by the HPCC in its final decision from 2006, was fulfilled. During the lifetime of Fejzulahu, the Housing and Property Directorate, i.e. the Kosovo Property Agency which continued the work of the HPD, did not establish the amount that Fejzulahu should have paid.

Since he did not pay this amount, he did not exercise *the right to repossession of the apartment,* nor did he become the owner of the apartment. The right to repossession of property and acquisition of ownership by fulfilment of the above-mentioned condition was given exclusively to Fejzulahu. This right cannot be assigned to members of his family household, since in the disputable contract on use of the apartment no member of the family household with whom Fejzulahu would use the apartment was stated.

When a tenancy rights holder stops using an apartment permanently because of death, a member of his family household becomes the holder of the tenancy right, provided that he/she is stated in the contract on use of the apartment and that he/she had registered permanent residence at the address of the apartment, as well as that he/she did not solve his/her housing issue.

At the end of July 2009, as Radmila's legal representative, Praxis submitted a request to the KPA for issuance of order of repossession of the apartment on the grounds of the final HPCC decision as of 2006.

At the beginning of September, the Kosovo Property Agency sent to Praxis a letter in which it informed Radmila that the second instance HPCC decision from 2006 was final, enforceable and binding, and that, for that reason, the KPA refused to act upon Radmila's request for issuance of order of repossession of the apartment.

The KPA thus refused to enforce the final and binding HPCC decision, even though it is within its mandate.

[22] Kacusa Jasari is a member of the Kosovo Parliament, and a former President of the Communist Party of Kosovo.

KOSOVO PROPERTY AGENCY VIOLATES THE OWNER'S RIGHT TO A FAIR TRIAL

In mid-August 2009, in KPA Office in Gracanica, Radmila was delivered a letter informing her that a third person, the very Kacusa Jasari, contested Radmila's right over the apartment in question in her counterclaim.

KPA enclosed in the letter a copy of the counterclaim of Kacusa Jasari and stated that in its counterclaim the opposite party had given information about the property in question, explained the legal basis for contesting Radmila's property right and submitted evidence of her claim. The KPA gave Radmila 30-day deadline to give her reply to the letter.

However, with regard to information about Kacusa Jasari's right to the property in question, the counterclaim only stated the contention of Kacusa Jasari that the property right holder was not

Radmila but herself, not stating legal basis of her alleged property right.

With regard to the documents that Kacusa Jasari submitted as proof of her alleged property right, the KPA delivered to Radmila only a short list with the following, unclear data: *ID card, 17 February 2004, statement, 21 February 2008, other, 4 May 2006, and other, 26 September 2007.*

As per its usual practice, the KPA did not deliver to Radmila copies of the above-mentioned documents so that she could have knowledge of evidence of the opposite party and the possibility to comment on those evidence and arguments. Thus, the principle of equality of arms, which the European Court of Human Rights considers one of the elements of a fair trial, was violated[23].

Shortly afterwards, on behalf of Radmila, Praxis sent a reply to the above-mentioned letter of the Kosovo Property Agency, contesting again the right of the opposite party and requesting that Radmila's ownership right over the apartment in question be acknowledged and she enter into possession of it. All relevant evidence were submitted with the reply. Furthermore, once again Praxis requested that KPA deliver the evidence and arguments of the opposite party.

Radmila hopes that she will soon be able to finally return home.

[23] European Convention on Human Rights, Article 6, Paragraph 1

CASE SLAVKO

ENTERING INTO POSSESSION LASTED FOR THREE YEARS

Kosovo Property Agency (KPA) does not allow the rights holder, or his legal representative, to be present during the forced eviction of the illegal occupant. The KPA does not vest the rights holder's property in him/her by delivering the keys in front of the evicted house, but in one of its offices, stating protection of safety as a reason for such practice, even though the safety issue remains open even after the rights holder enters into possession of his property.

The presence of the rights holder during the forced eviction and taking over of the keys on the spot is essential, since if absent, the rights holder will not enter into possession of his property in true sense of the word, he cannot be certain whether the illegal occupant was truly evicted from his property, and does not have the opportunity to move in immediately and prevent re-occupation of his property.

In Slavko's case, the KPA made an exception, with the aim to finally draw the case to a close, allowing Praxis, as Slavko's legal representative, to be present during the eviction and taking over of the keys of the house.

Slavko has been living in Belgrade since 1999 as an internally displaced person from Kosovo. House and land of his family (consisting of more than 30 members) in the village Rudice, Municipality of Klina, Kosovo, covering the area of 4 hectares and 700 m² by the river Beli Drim, had been illegally occupied for almost ten years by the family Ahmetaj from Pec.

ATTEMPTS TO EVICT THE ILLEGAL OCCUPANT – STANDARD PRACTICE

In 2006, Slavko received a final decision of the Housing and Property Directorate (HPD), i.e. Housing and Property Claims Commission (HPCC), by which his right to the property in question was confirmed and the eviction order issued, under the threat of forced eviction.

Upon his request, the KPA, who continued the work of the HPD, scheduled the eviction of the illegal occupant from Slavko's house three times.

The first time, a day before the arranged date for taking over the keys of the house, accompanied by a friend, Slavko visited his property and established that the occupant was still there with his family. For that reason, Slavko did not want to take over the keys from the KPA in their office in Pec. The eviction was scheduled twice more. Slavko visited his property again both times, but the illegal occupant was still in the house.

On the other hand, the KPA claimed that it had performed the forced eviction of all persons and things three times, that the house had been sealed every time, but that Slavko constantly refused to take over the certificate on eviction and the keys of the house. For all the above-mentioned, the question of criminal responsibility of the illegal occupant can be posed, the illegal occupant who, in order to re-occupy the sealed house three times in the period of four months in 2007, removed the official seal placed by the authorized officer with the aim to protect the facility. Thus, the illegal occupant committed a criminal offence of *removing or damaging of official stamps or marks*[24] several times, for which the punishment of imprisonment of three months to three years is prescribed, without the possibility to replace imprisonment with a fine.

[24] Article 322 of the Provisional Criminal Code of Kosovo, UNMIK/REG/2003/25 as of 6th July 2003, which came into effect on 6th April 2004; Law No. 03/L-002 on Supplementation and Amendment of the Provisional Criminal Code of Kosovo, adopted on 16th March 2008, brought the change only in the name of the law, but not in respect to its content.

Since the illegal occupant continued to live in Slavko's house for the next two years, it is obvious that he was not prosecuted for committing the above-mentioned criminal offence several times. Therefore, the question of professionalism, efficiency, independence and impartiality of the Police and judicial bodies in Kosovo can be posed, thus the question of existence of the rule of law as well.

After Slavko submitted a complaint through Praxis as its legal representative to the Human Rights Advisory Panel in Pristina, in its reply from January 2009, the KPA expressed willingness to "make an exception and perform the eviction again", provided that Slavko accepted their standard practice, i.e. not to be present during the eviction out of safety reasons.

Slavko accepted not to be present during the eviction of the illegal occupant, on condition that a representative of an international organization whom he would trust or a representative of Praxis was present. In addition, he requested that the keys of the house were given to him immediately after the eviction, near his house and in the presence of a representative of an international organization or Praxis.

In regard to Slavko's case, Praxis sent an Appeal for Urgent Action to UNHCR and OSCE, requesting the two organizations to send their representatives to be present during the eviction of the illegal occupant and delivery of the keys to Slavko. A copy of the Appeal was forwarded to UNDP, KPA, Human Rights Advisory Panel in Kosovo, as well as non-governmental organizations and IDP associations in Serbia.

UNHCR Pristina refused to be present during the eviction, while the OSCE Mission in Kosovo did not even respond

to the Appeal.

ATTEMPTS TO RETURN TO KOSOVO WITHIN A UNDP PROJECT

Slavko was registered for return in his village Rudice within the UNDP project *Return and Reintegration of Internally Displaced Persons,* which involves reconstruction of returnees' houses. He was supposed to return to his village in May 2009, along with the representatives of ten other families, in order to supervise the reconstruction of his house.

During the preparations for return within the Project, at a meeting of the Municipal Working Group (MWG) in Klina at the end of April 2009, Slavko was told that, in case he failed to evict the illegal occupant, he would be excluded from the UNDP Project. Furthermore, the Municipal Coordinator for UNDP projects in the Municipality of Klina suggested to Slavko to give to the illegal occupant and his family, as socially vulnerable, 500 m² of his land on which a house for them would be built and thus their housing issue resolved. In return, the illegal occupant would finally move out from Slavko's house. Slavko firmly rejected such proposal. According to Slavko, the above-mentioned Municipal Coordinator and a representative of the UNDP pressured him to accept the proposal. They informed him that they had visited his land, in order to choose the most adequate location for solving the housing issue of the Ahmetaj family.

At the beginning of May 2009, representatives of the above-mentioned ten families returned to the village, as planned within the UNDP project. Slavko was not able to return since only his property was illegally occupied, while the property of other families was either damaged or destroyed, but not occupied.

EVICTION OF THE ILLEGAL OCCUPANT IN THE PRESENCE OF THE LEGAL REPRESENTATIVE –EXCEPTION FROM THE STANDARD PRACTICE

As Slavko's legal representative, Praxis requested KPA to allow its representative to be present during the eviction of the illegal occupant.

Even though KPA does not allow the rights holder, or his legal representative, to be present during the eviction for safety reasons, this time KPA made an exception with the aim to finally solve Slavko's case.

At the end of June 2009, KPA performed forced eviction of the illegal occupant from Slavko's house, vested his property in him by delivering him the keys near the evicted facility and issued a certificate that the eviction had been performed and the property sealed. A representative of Praxis was present during the forced eviction and taking over of the keys.

Slavko now hopes that he will be included in the UNDP Project again and that he will soon return to Kosovo.

THE COURT LEGALIZED THE CHANGE OF OWNERSHIP WHICH OCCURRED BY COMMITTING A CRIMINAL ACT

The Municipal Court in Klina allowed judicial settlement, by which the claim for declaring a purchase contract null and void was withdrawn, even though the submitted evidence clearly indicated that the purchase contract had been concluded on the grounds of a forged power of attorney.

Acting upon the claim for declaring the purchase contract null and void, the Court in Klina should not have allowed the parties in the procedure to dispose with the statement of claim if it is opposite to binding regulations, law and order and the rules of ethics.

The Court should have taken into consideration all the offered evidence, and it could have presented *ex officio* the evidence the parties had not enclosed. The Court was obliged to determine whether there had been forbidden disposal of the statement of claim, and then prevent such disposal.

The Court should not have allowed judicial settlement by which the claim had been withdrawn, but it had to bring a decision declaring the purchase contract null and void and ordering deletion from the register of all changes made on the grounds of that purchase contract.

After that, the parties could have regulated their contractual relations by concluding the purchase contract which would be valid basis for registration.

Through its actions throughout the entire procedure, and especially by taking part in preparing and concluding the judicial settlement, the Court helped the forger in pressuring Vujadin to finally yield and accept the forger's offer.

[25] The names of persons in this story are invented.

Vujadin was the owner of a house in Klina, Kosovo, in which he lived with his wife and two children until 1999 when he fled Kosovo. He has been living with his family in Kraljevo in a rented apartment as an internally displaced person ever since.

In 2003, Vujadin submitted a claim for repossession of his house in Klina to the Housing and Property Directorate (HPD).

Shortly after submitting the claim, Vujadin was informed by his neighbours that an unknown person was doing large construction works on his house; that he had taken the roof off and was building a loft, as well as that he had allegedly bought Vujadin's house.

Vujadin addressed the Norwegian Refugee Council (NRC)[26] for assistance. Through NRC' legal project in Kosovo, information was obtained from the Kosovo Cadastre Agency (KCA) that there had been change of ownership over the house in question. In addition, NRC obtained the court number of the verified purchase contract, on the grounds of which the change of ownership was registered.

In its standard practice, the Kosovo Cadastre Agency refuses to give data or issue excerpt from real estate registry to persons who are not registered as right holders over the real estate in question. Since the real estate registry is a public book which exists precisely to provide legal security in the real estate market, KCA should issue to each interested person the excerpt from the registry on only one condition – that the person pay a fee.

A copy of the disputable purchase contract concluded between some E, alleged Vujadin's proxy, and some H, the buyer of Vujadin's house, was also obtained. The contract was verified in

[26] Norwegian Refugee Council had been providing free legal aid to the displaced persons in Serbia and in the region from 1997 to 2004. In 2004, Praxis took over the legal project of the NRC in Serbia, as well as all cases that had not been completed until that moment.

December 2002 before the Municipal Court in Klina. Vujadin allegedly verified a general power of attorney before the Basic Court in Bar, authorising E to sell his house, receive the agreed selling amount and register the change of ownership.

Only later did Vujadin find out that, after this transaction, E bought the same house from H.

SUIT FOR DECLARING THE DOCUMENTS NULL AND VOID INITIATED BEFORE THE BASIC COURT IN BAR

After the necessary evidence had been obtained, in August 2004, a suit for declaring the power of attorney null and void was initiated before the Basic Court in Bar. The power of attorney had previously been verified before the same Court in 2002. The Court appointed a temporary representative to the defendant E, since his address in Kosovo was unknown.

The final decision in the procedure before the Court in Bar was brought in March 2005. In its decision the Court established that the power of attorney verified before this Court in 2002 was forged.

Having learnt about the decision, E submitted a request for a new trial, referring to the fact that he had not been able to take part in the proceedings. However, E did not appear at the hearings in the new procedure either.

SUIT FOR DECLARING THE PURCHASE CONTRACT NULL AND VOID INITIATED BEFORE THE MUNICIPAL COURT IN KLINA

In May 2005, a suit for declaring the purchase contract null and void was initiated before the Municipal Court in Klina, before which the contract had previously been verified in 2002. The final decision of the Basic Court in Bar was enclosed as a piece of evidence.

Praxis reported the unjustified procrastination of the court procedure in this case to the Judicial Inspection Unit of the UNMIK Department of Justice in Pristina. OSCE Mission in Kosovo was also informed about it and their representatives started following the hearing.

THE HOUSING AND PROPERTY CLAIMS COMMISSION BRINGS FIRST INSTANCE DECISION

In March 2005, the Housing and Property Claims Commission (HPCC) brought a first instance decision confirming Vujadin's possession right over the house in question, and ordering the person who occupied the property to vacate the house under threat of forced eviction.

CRIMINAL OFFENCE REPORTED TO THE INTERNATIONAL PUBLIC PROSECUTOR

In July 2006, information about criminal offence committed by E was reported to the International Public Prosecutor for the Municipality of Pec.

A year and a half later, an investigation was launched in regard to the above information. In the decision on initiating the investigation against E, the International Public Prosecutor stated that there was reasonable doubt that E, in cooperation with other persons, committed the following offences which are prosecuted *ex officio: legalisation of false content*[27] and *falsifying documents*[28]. Committing these offences made possible the selling of Vujadin's house.

The decision on initiating the investigation was delivered as a piece of evidence in the procedure for declaring the purchase contract null and void, conducted before the Municipal Court in Klina.

[27] Provisional Criminal Code of Kosovo, Article 334, Paragraphs 1 and 2, UNMIK/REG/2003/25
[28] Provisional Criminal ode of Kosovo, Article 332, Paragrah 3 and Article 333, Paragraph 3, UNMIK/REG/2003/25

THE HOUSING AND PROPERTY CLAIMS COMMISSION BRINGS DECISION

In December 2005, E submitted a reconsideration request against the HPCC first instance decision.

Vujadin learnt about this six months later, and submitted to the HPCC its reply with all evidence that were enclosed in the claim for declaring the purchase contract null and void before the Municipal Court in Klina.

The HPCC delayed bringing the final decision, constantly requesting Vujadin to submit evidence he had already submitted, claiming that they were missing from the case file.

Following a series of interventions with the Director of the Housing and Property Directorate, and submitting the same evidence again on procedures conducted before the court bodies of Kosovo and Montenegro, the final decision confirming Vujadin's possession right was brought in March 2007. In its explanation of the decision, the HPCC states that it had conducted its own investigation, including oral hearing of the parties, after which it established that E had not proved his property right.

Even though the aforementioned decision confirmed Vujadin's possession right, after which his property was vested in him in June 2007, according to the real estate registry the owner of his house was still someone else.

Only the decision of the Municipal Court in Klina, declaring the purchase contract null and void, would be the basis for deleting the entry in the real estate registry which was performed on the grounds of the forged documents. Afterwards, Vujadin would formally become the owner of the house.

JUDICIAL SETTLEMENT REACHED BEFORE THE MUNICIPAL COURT IN KLINA

However, after three years of trial and more than 10 hearings, Vujadin was offered judicial settlement.

E offered to pay a certain amount to Vujadin. In return Vujadin was requested to withdraw the suit for declaring the purchase contract null and void, sign the statement by which he would withdraw from the procedure before the Court in Bar and declare that he would withdraw the statement on the criminal offence of E.

Tired and exhausted by various proceedings that lasted for more than five years, and at the same time fearing constant threats and pressure, Vujadin accepted the forger's offer, even though it was much lower than the true value of his property.

In December 2008, Vujadin surrendered. He signed the settlement, by which the procedure for declaring the purchase contract null and void before the Municipal Court in Klina ended. Only three days after that, he received the decision of the Basic Court in Bar terminating the procedure before this Court for declaring the power of attorney null and void.

It remains uncertain whether the criminal procedure initiated against E in December 2007 before the Municipal Court in Klina is still in process. Taking into consideration that those are criminal offences prosecuted *ex officio*, according to the law Vujadin's statement given in the settlement, by which he withdrew the charges against E, should not have influence over the criminal proceedings.

ILLEGAL OCCUPANT GIVEN THE PRIVILEGE TO CONTEST THE FINAL DECISION OF THE COMPETENT BODY BEFORE COURT

In its final decision, the Housing and Property Claims Commission (HPCC) confirmed the owner's right to repossession of the apartment, but, at the same time, without any explanation, gave the illegal occupant the possibility to contest the owner's property right over the apartment in question in a court procedure by proving that, at one time, she had acquired the tenancy right illegally. The HPCC brought this decision despite the fact that its final decisions cannot be subject to review by any other judicial or administrative authority in Kosovo[29].

The HPCC ordered restraint on disposal of the apartment in question, which would become invalid in case the illegal occupant did not initiate the court proceedings within the prescribed deadline. However, it did not prescribe the obligation of the Kosovo Property Agency (KPA)[30] to abolish the restraint on disposal of the apartment itself, if the court proceedings were not initiated within the prescribed deadline. Furthermore, the KPA does not have the obligation to inform the party whose possession right was confirmed through the final HPCC decision whether the proceedings had been initiated, i.e. whether the restraint is still valid.

By giving the illegal occupant the possibility to initiate court proceedings, which could last for years, and issuing the restraint order on prohibiting the owner to dispose of her apartment during that time, the HPCC actually decided in favour of the illegal occupant.

Access to courts and other institutions in Kosovo is quite hindered for internally displaced persons residing in Serbia, and such practice of KPA makes their position even more difficult.

In order to exercise their property rights before Kosovo courts, these persons often depend on free legal assistance, including in-court representation, which can be provided only through a small number of legal projects of non-governmental organizations.

[29] UNMIK Regulation 1999/23, Article 2.7 "Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo".

After 21 years of working in a company, in 1992 Slavica acquired the tenancy right over a one-room apartment in Urosevac. She bought the apartment the next year and was living in it with her husband and two children until 1999 when they fled Kosovo. They have been living in Serbia as internally displaced persons ever since. Slavica's apartment has been illegally occupied by Ramadan Kameri and his family.

Now retired, Slavica lives with her husband, her mother, daughter, son and his family in a rented, old house near Kraljevo.

FIRST INSTANCE HPCC DECISION CONFIRMS THE ILLEGAL OCCUPANT'S POSSESSION RIGHT, AND THE OWNER IS GIVEN THE RIGHT TO COMPENSATION

In 2001, Slavica addressed the Norwegian Refugee Council's[31] legal office for assistance and submitted a claim for repossession of property to the Housing and Property Directorate (HPD).

In April 2005, the HPCC brought a first instance decision upon Slavica's claim and the connected claim submitted by the illegal occupant.

In its first instance decision, the HPCC concluded that Kameri had a valid tenancy right, which was cancelled due to discrimination, and confirmed Kameri's *right to repossession of the apartment*.

Slavica was not able to see the evidence on the grounds of which the HPCC brought such decision, nor has the HPCC explained in its decision the grounds for discrimination or the evidence that Kameri had enclosed.

FINAL HPCC DECISION CONFIRMS THE OWNER OF THE APARTMENT'S POSSESSION RIGHT, BUT GIVES THE ILLEGAL OCCUPANT THE POSSIBILITY TO CONTEST THAT RIGHT BEFORE COURT

With Praxis assistance, in August 2005, Slavica submitted a request for

[30] Kosovo Property Agency was established on 4th March 2006 by UNMIK Regulation 2006/10, and it continued the work of the Housing and Property Directorate (HPD).

[31] The Norwegian Refugee Council provided free legal assistance to displaced persons in Serbia and in the region from 1997-2004. In 2004, Praxis took over the legal project of the Norwegian Refugee Council in Serbia, as well as all its cases that were active at the time.

reconsideration of the HPCC first instance decision.

In December 2006, the HPCC brought the final decision which *confirmed Slavica's possession right*. The illegal occupant was ordered to vacate the apartment, under threat of forced eviction, and his claim for repossession of the apartment was rejected as groundless.

In the second instance procedure, Slavica managed to prove that Kameri had not been a victim of discrimination and that the apartment in question had been given to him to use only temporarily until the solidarity apartment was built, which Kameri was later granted. Slavica managed to do this because she saved and took to Serbia with her entire documentation related to the apartment, which she later submitted to the HPCC as evidence. Unlike Slavica, many IDPs lost their property rights precisely because they did not save relevant documents.

Even though the HPCC second instance decision is final, i.e. binding and enforceable, without any explanation, the HPCC gave Kameri the possibility to initiate proceedings before a competent court where he would prove that Slavica had *acquired the possession right over the apartment in question illegally.* The HPCC prescribed a 60-day deadline within which Kameri could initiate the court proceedings and ordered restraint on disposal of the apartment in question during that time. In case Kameri did not initiate the proceedings within the prescribed deadline, the restraint would become invalid.

By giving the illegal occupant the possibility to initiate court proceedings, which could last for years, and issuing the restraint order on prohibiting the owner to dispose of her apartment during that time, the HPCC actually decided in favour of the illegal occupant.

The KPA does not have the obligation to abolish its own restraint on disposal of property in case the court proceedings are not initiated within the prescribed deadline. Besides, the procedure does not impose the obligation on KPA to inform the party whose possession right had been confirmed through the final HPCC decision whether the proceedings was initiated, i.e. whether the restraint on disposal of property is still valid.

Slavica addressed the KPA several time in an attempt to obtain information whether Kameri had initiated the court proceedings, but was informed that KPA was not obliged to give such information, that the case was closed and that Slavica had to obtain information herself.

In October 2008, Praxis managed to obtain information that the court proceedings had been initiated in 2007 before the Municipal Court in Urosevac, by Kameri filing a lawsuit against the HPD, the company which gave the apartment to Slavica and against Slavica herself.

Not even two years after initiating the court proceedings has Slavica been delivered the suit, even though her address in Serbia was available to the Court[32] all that time. In the meantime, Slavica is still not allowed to dispose of her apartment.

THE OWNER PLACES THE APARTMENT UNDER THE ADMINISTRATION OF THE KOSOVO PROPERTY AGENCY, BUT DOES NOT RECEIVE THE RENT FOR USAGE OF THE APARTMENT

Upon receiving the final HPCC decision, in May 2007 Slavica submitted a request to KPA for placing her apartment under the administration of KPA.

Thus, the KPA gained the right to give Slavica's apartment for temporary use to a person who fulfilled criteria for

[32] At the end of 2006, Praxis stopped providing free in-court representation in Kosovo. Slavica will be provided free in-court representation through a project of another non-governmental organization.

humanitarian accommodation, but also the obligation to make reasonable efforts to minimize the risk of damage to the apartment. At the same time, Slavica kept the right to request from KPA, at any time, to perform one eviction of the person occupying the apartment, when she decided to utilize it in some other way.

In October 2007, Slavica signed the agreement by which her apartment was included in the *KPA Rental Scheme*, which meant that she would be receiving the rent from the person using the apartment, only *if and when* that person paid the rent to KPA.

The Kameri family have been living in Slavica's apartment all this time, but she has never received any rent from the KPA, even though, in such case, the KPA has the obligation to evict the person who does not pay the rent and give the apartment to another person who will fulfil its obligation regularly.

Slavica's neighbour, who had been living in the apartment next to hers, informed Slavica that she had sold her apartment to Kameri and that she had personally seen that Kameri had broken down the wall between the two apartments and that the Kameris were using them as one apartment.

At the beginning of 2009, through a phone conversation, Kameri offered to Slavica to purchase her apartment at unacceptably low price. When Slavica rejected this offer, Kameri threatened that no one would dear buy the apartment as long as he lived.

THE OWNER SUBMITS TO KPA A REQUEST FOR RENT PAYMENT

At the beginning of August 2009, on behalf of Slavica, Praxis submitted a request to KPA for granting a temporary

permission to use Slavica's apartment to a person who would pay the rent regularly, so that Slavica could finally start receiving the rent. It was also requested that KPA prevent further damaging and taking possession of the apartment illegally, as well as order Kameri to restore the apartment into its previous state.

The reply of the KPA is still expected.

In the meantime, Slavica, who lives with her family in Serbia as an IDP, in very harsh living conditions, and with unresolved housing issue, is additionally burdened by the obligation to participate in a long court procedure.

During that time, and upon the final HPCC decision brought in Slavica's favour, the Kameris enjoy the privilege to continue to use someone else's apartment illegally and without paying the rent, with the obvious intention to take possession of it.

REVIEW OF A FINAL DECISION THAT CANNOT BE REVIEWED

The Housing and Property Claims Commission (HPCC) established that the illegal occupant had submitted forged documents as evidence of his possession right over the apartment and, thus, the HPCC did not have legal basis to decide in his favour. For that reason, in both its first instance decision and its final decisions, the HPCC confirmed the possession right over the apartment to the opposite party, and ordered the illegal occupant to vacate the apartment.

Despite the above-mentioned, a manner was found to overturn the final decision in favour of the illegal occupant.

Without any explanation and legal basis, the HPCC gave the illegal occupant the possibility to contest its final decision before court, and ordered restraint on disposal of the apartment in question to the opposite party, whose possession right the HPCC confirmed.

By bringing such decision, the HPCC acted contrary to the regulation prescribing that the HPCC final decisions are legally binding and enforceable and that they are not subject to to review by any other judicial or administrative authority in Kosovo.

Gorica had tenancy right over the apartment in Pristina in which she lived with her husband and three sons. Since 1999, they have been living in a rented apartment in Serbia as internally displaced persons.

THE HOUSING AND PROPERTY CLAIMS COMMISSION BRINGS FIRST INSTANCE DECISION

In 2000, Gorica submitted a claim for repossession of the apartment in Pristina to the Housing and Property Directorate (HPD). A claim for repossession of the same apartment was also submitted by the illegal occupant Muhamet Salja[33], who claimed that, at one time, he had lost the possession right over that apartment as a result of discrimination.

In December 2003, the HPCC brought the first instance decision upon both claims. Gorica did not receive this decision until November 2004, a year after it had been brought, even though she had not changed her address in Serbia in the meantime.

In its first instance decision, the HPCC confirmed Gorica's possession right and rejected Salja's claim. The illegal occupant of the apartment in question was ordered to move out, under threat of forced eviction. In explanation of its decision, the HPCC stated that Gorica had proven her possession right. On the other hand, according to the HPCC, Salja did not prove that he had had legal possession right over the apartment in question, *since he did not conclude a contract on use or lease of the apartment.*

THE HOUSING AND PROPERTY CLAIMS COMMISSION BRINGS FINAL DECISION

In December 2004, Salja submitted a request for reconsideration of the first instance decision to the Housing and Property Claims Commission. Salja's request (without the evidence enclosed) was delivered to Gorica for comment after more than a year, even though the HPD knew Gorica's address all that time.

In July 2006, the HPCC brought the final decision *rejecting the request* of

[33] Former Judge of the District Commercial Court in Pristina

Muhamet Salja *as groundless*, since he did not prove in the second instance procedure that he had legal possession right over the apartment in question.

With the reconsideration request, for the first time Salja delivered to the HPCC a contract on use of the apartment which he had allegedly concluded with the Public Housing Company in November 1989, as well as certificates on alleged usage of electricity, water and garbage collection service in the period in which he claimed to have been using the apartment, but he did not deliver the receipts on paid public utility services. All the afore-mentioned certificates were issued in 2002.

The HPCC estimated that the offered evidence were not authentic and rejected them as such, thus rejecting Salja's request as groundless.

Even though the second instance decision of the HPCC is final, i.e. legally binding and enforceable[34], the HPCC gave Salja the possibility to initiate proceedings before a competent court where he would prove that Gorica had *acquired the possession right over the apartment in question illegally.* The HPCC gave Salja this possibility without any explanation, even though it had previously established that he had used forged evidence in the procedure before the HPCC, for which it rejected his request as groundless.

The HPCC gave Salja a 60-day deadline to inform the court of "his intention to initiate the court proceedings" and ordered the restraint on disposal of the apartment in question within the stated deadline.

On the other hand, in the same HPCC decision, Gorica's *possession right was confirmed* and the illegal occupant of her apartment ordered to vacate the apart

[34] UNMIK Regulation 1999/23, Article 2.7 "Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo".

ment, under threat of forced eviction.

In October 2006, the HPD evicted the illegal occupant and delivered to Gorica the keys of the apartment. Gorica did not move into her apartment out of fear for her safety and the safety of her family.

THE ILLEGAL OCCUPANT FILES A LAWSUIT REQUESTING THE COURT TO DECLARE THE FINAL HPCC DECISION OF NO FORCE

In September 2006, Salja filed a lawsuit against Gorica before the Municipal Court in Pristina for determining the right to use the apartment, requesting at the same time temporary restraining order prohibiting the disposal of the apartment. The Court brought a decision prescribing the restraining order.

In his lawsuit, Salja requested the Court to bring the decision by which the final HPCC decision would be declared of no force, the decision which granted Gorica the apartment in 1993 declared null and void, and which would establish that he had the right to use the apartment in question.

In the procedure before the HPCC, Salja claimed that he had concluded the contract on use of the apartment and used it as key evidence of his possession right. However, the HPCC established that the contract had been forged, so Salja did not use it as evidence in the court procedure. For that reason, in his lawsuit, Salja claimed that *he had not been allowed to conclude the contract* on use of the apartment in question as a result of discrimination.

In a long, confusing, often incomprehensible and politically-coloured explanation of the statement of claim, Salja stated numerous legal sources and examples from court practice, cited other HPCC decisions, but did not explain or prove in what way Gorica had illegally

acquired the possession right over the apartment in question.

Gorica did not live to see her property issue solved. She passed away at the end of January 2008, at the age of thirty-nine, and her sons continued the procedure before court with assistance of a lawyer whose services they are covering themselves.

THE POLICE REFUSE TO CARRY OUT THEIR DUTY AND EVICT THE ILLEGAL OCCUPANT

Even though it is within its jurisdiction, the Kosovo Police refused many times to evict the illegal occupant who had entered the apartment without any legal basis by breaking the seal placed by the competent body.

When the Police agreed to perform the eviction, it allowed the illegal occupant to move away from the apartment carrying only two plastic bags, instead of evicting him by vacating the apartment of all persons and things. Thus, the Police tacitly approved reoccupation of the apartment by the illegal occupant after their departure from the scene.

The Police rejected another request for eviction from the owner, that time claiming that the eviction of the illegal occupant was only possible upon a court order, and at the same time counselling the owner that it was more important *to save his head rather than recover the apartment.*

In 1993, Jordan acquired the tenancy right over and later purchased the apartment in Gnjilane, in which he lived with his wife and three children until 1999.

For ten years now, the family have been living in a collective centre in Negotin, five of them in a single room.

THE OWNER OF THE APARTMENT'S POSSESSION RIGHT CONFIRMED

In October 2004, the Housing and Property Claims Commission (HPCC) brought a decision confirming Jordan's possession right over the apartment.

Jordan requested the Housing and Property Directorate (HPD), as well as the Kosovo Property Agency (KPA)[35] to vest his apartment in him. He received the keys of the apartment in July 2008, but he dared not enter the apartment because he had information that the apartment was occupied.

The KPA staff informed Jordan that they had sealed the apartment, and, should that happen, it would be within the jurisdiction of the Police to evict the illegal occupant or any other person who broke the seal and entered the apartment illegally.

After that, Jordan found out that his apartment was occupied by a man known after his nickname - Kumanovac, who was allegedly former commander of the Kosovo Liberation Army.

It was very important for Jordan that the eviction of the illegal occupant be performed as soon as possible, because he had found a person interested in buying his apartment, provided that the apartment was vacant. For that reason, he addressed the Police in Gnjilane several times with the request for eviction of the illegal occupant, but his request was rejected every time and he was instructed to request the eviction from the Kosovo Property Agency.

THE POLICE ALLEGEDLY EVICT THE ILLEGAL OCCUPANT

Since he could not solve his problem with the assistance of the Police in Gnjilane, Jordan addressed the Ministry of Interior in Pristina, and after their intervention, the Police in Gnjilane agreed to perform the eviction of the illegal occupant.

In August 2008, several police officers, accompanied by Jordan, went to Jordan's apartment in order to inform the illegal occupant that he had three days deadline to move out from the apartment.

On that occasion, Kumanovac directed numerous threats at Jordan, including saying that he knew where Jordan and his family lived in Serbia and that he would find them over there, as well as that it was not Jordan's apartment any more. Following threats to Jordan, Kumanovac had a short verbal conflict with the Police in Albanian.

Three days later, the police officers and Jordan visited the apartment again, but the illegal occupant had not moved out. The police officers ordered him to move out immediately and, after a short quarrel in Albanian language, the illegal occupant left the apartment carrying only two plastic bags and entered another apartment on the same floor which was also illegally occupied by someone else.

Jordan changed the lock of his apartment immediately, but did not enter the apartment since the police officers advised him so, taking into consideration that the illegal occupant's personal belongings were still inside and that that could cause additional problems to Jordan. As they explained, the illegal occupant could later claim that his valuables had disappeared from the apartment and accuse Jordan of *theft*.

The Police did not do anything to truly evict the illegal occupant from the apartment, since the eviction implies vacating the apartment from all persons and things, and they thus tacitly approved reoccupation of the apartment by the

[35] The Kosovo Property Agency was established on 4th March 2006 by UNMIK Regulation 2006/10, and it continued the work of the Housing and Property Directorate.

illegal occupant after their departure from the scene.

ILLEGAL OCCUPANT RETURNS TO THE OWNER'S APARTMENT, THE POLICE DO NOT REACT

Several days later, Jordan addressed the Police again because he found out that Kumanovac had illegally occupied his apartment again.

Head of the Police for the Gnjilane District informed Jordan that the Police would report the criminal offence committed by Kumanovac to the Public Prosecutor referring to moving into the apartment again and threatening Jordan and the police officers during the eviction. She also stated that, *on the grounds of the Police report, court proceedings would be instigated against the illegal occupant and the Police would perform the next eviction on the grounds of a court order.* The Head of the Police told Jordan that he could leave, since the Police had taken over the case. Jordan left his contact telephone number and returned to Serbia.

In addition to rejecting Jordan's request for eviction of the illegal occupant, the Police also counselled him that it was more important *to save his head rather than recover the apartment.*

When Jordan inquired over the phone whether the Police had achieved anything, he received a negative reply, but was promised that he would be informed as soon as any actions were taken. However, even a year later, the Police did not inform Jordan about whether they had taken any action in the case.

THE OWNER REPORTS CRIMINAL OFFENCE COMMITTED BY THE ILLEGAL OCCUPANT

In July 2009, Jordan addressed Praxis for assistance. In mid-September, a request for eviction of the illegal occupant from

Jordan's apartment was submitted to the Police Station in Gnilane, but this time the request included vacating the apartment of all persons and things.

At the same time, Jordan reported several criminal offences of the illegal occupant, which are prescribed by the Criminal Code of Kosovo, to the Municipal Public Prosecutor in Gnjilane, such as: removing or damaging of official stamps or marks, infringing inviolability of residences, unlawful occupation of real property and threat.

The request for eviction of the illegal occupant and information about criminal offences were first sent to the competent bodies in Kosovo by mail, but they were returned to the sender undelivered. Therefore, the above-mentioned submissions had to be delivered to the competent body through Praxis partner organization in Kosovo.

Praxis also informed EULEX, OSCE and UNHCR in Kosovo about the aforementioned.

Jordan hopes that the illegal occupant will finally be evicted and that he will be able to sell his apartment and thus solve his family's housing issue in Serbia.

POSITIVE OUTCOME, BUT NOT AS A RESULT OF A FAIR PROCEDURE

In the process of deciding upon the claim, the Housing and Property Claims Commission breached the principle of equality of arms, considered as an element of a fair trial by the European Court of Human Rights[36].

The Commission did not make available the arguments and evidence of the opposite party to the property claimant so that he could comment on those arguments and evidence and present relevant evidence himself.

Besides, the Housing and Property Claims Commission brought a *decision without an explanation*. A decision containing explanation implies stating clear reasons for bringing such decision, explaining why some evidence were valued more or less than other evidence, as well as explaining why some evidence were accepted as valid and others not.

Right to a reasoned decision is, also, one of the elements of a fair trial.

Had the principle of equality of arms been respected, Zoran would have had the possibility to exercise his property right in the first instance procedure. Thus, he had to wait for five years.

The outcome of Zoran's case was positive exclusively because he had relevant information about the opposite party and managed to obtain relevant evidence within the given deadline. Such outcome was certainly not the result of a fair proceeding in deciding upon a property claim.

[36] European Convention on Human Rights, Article 6, Paragraph 1

Zoran is an internally displaced person from Pec. He has been living with his family in Belgrade since 1999. He was given an apartment in Pec to use by the Leather and Shoes Company in that town, in which he and his wife had been working for many years. He purchased the apartment in 1992.

After 1999, Zoran's apartment was illegally occupied by the family of Said Deva.

ILLEGAL OCCUPANT'S POSSESSION RIGHT CONFIRMED, THE OWNER GIVEN THE RIGHT TO COMPENSATION

In 2002, Zoran submitted a claim for repossession of his apartment in Pec to the Housing and Property Directorate.

In 2005, the Housing and Property Claims Commission brought a first instance decision upon Zoran's claim and a connected claim submitted by Gazmend Deva, son of Said Deva. Before bringing the decision, the Commission did not make available the arguments and evidence of the opposite party to Zoran so that he could comment on those arguments and evidence and provide relevant evidence himself.

The illegal occupant claimed that he was the holder of the possession right over the apartment, because his father Said Deva had, at one time, been given the apartment to use with his family, but had lost possession due to discrimination.

In its first instance decision, the Housing and Property Claims Commission established that Deva's claim was *valid,* and that Zoran's *claim fulfilled all conditions of a valid claim*. The Commission concluded that Deva *had proved* that he had had valid tenancy right, which had been revoked as a result of *discrimination*[37].

By this decision, Deva was *given the right to repossession of the apartment.*

[37] UNMIK, Regulation 2000/60, Article 2.2: "Any person whose property right was lost between 23 March 1989 and 24 March 1999 as a result of discrimination has a right to restitution in accordance with the present regulation. Restitution may take the form of restoration of the property right or compensation."

However, *in order to enjoy his right to repossession of the apartment,* Deva had to pay to the Directorate a certain amount of money which would be determined later, within 120 days from the moment he was informed about the Commission's decision on the right to restitution. Once this amount was paid, Deva would become the owner of the apartment, and a part of that amount would be paid to Zoran as compensation for the lost ownership right over the apartment.

The Deva family were allowed to use the apartment undisturbed in the meantime.

In accordance with its practice, the Housing and Property Claims Commission *did not give a comprehensive explanation of the above-mentioned decision,* i.e. did not state clear reasons behind the decision, apart from a simple statement that Deva's right had been revoked as a result of *discrimination.* Furthermore, the Commission did not state evidence on the grounds of which it established that Deva had been a victim of discrimination.

FINAL DECISION CONFIRMS THE OWNER'S POSSESSION RIGHT, ILLEGAL OCCUPANT ORDERED TO MOVE OUT

Upon receiving the first instance decision, Zoran addressed Praxis for legal assistance in preparing a request for reconsideration of the first instance decision, as well as in obtaining relevant evidence.

Within the given deadline, Praxis managed to obtain relevant evidence from the state archives and prepare a reasoned reconsideration request, but only owing to useful information Zoran had about the illegal occupant of his apartment.

In August 2005, the request for reconsideration of the first instance decision

was submitted. It was claimed that Deva's tenancy right was not revoked as a result of *discrimination.*

Evidence enclosed in the request showed that Said Deva worked in the Leather and Shoes Company in Pec as a production worker in the Shoe Factory, and that, in 1966, the Company gave him the apartment in question to use during employment in the Company. In the mid-Seventies, Said Deva left the Leather and Shoes Company and got employed in Belgrade as an officer of the Federal Government. As soon as 1977, the new employer gave Sadi Deva a three-room apartment in Novi Beograd to use with his family. In the period from 1978 to 1992, Deva worked as an advisor in the Embassy of the Socialist Federal Republic of Yugoslavia (SFRY) in Jakarta and Consul General of the SFRY in Zurich. Deva purchased the apartment in Belgrade from the Federal Government and, in 1993, he retired as the Government's officer.

The aforementioned evidence showed that Said Deva had lost his tenancy right over the apartment in question in Pec back in the Seventies on two grounds: when he stopped working in the Company and when he acquired the tenancy right over the apartment in Belgrade.

The Commission brought a final decision after two years. The decision confirmed Zoran's possession right over the apartment in Pec, and the illegal occupant was ordered to move out of the apartment.

Afterwards, Zoran sold his apartment and, thus, solved his housing issue in Serbia.