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MISSION IN KOSOVO

Department of Human Rights and Rule of Law

EXPROPRIATIONS IN KOSOVO

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Executive summary

Expropriation is a necessary tool for any democratic government in order to gain access to and use property in the common interest. The procedure of expropriation is an essential instrument of the state and enables it to legally deprive individuals of their possessions when it is in the common interest. In Kosovo, expropriation is primarily regulated by the Law on Expropriation.¹ The law outlines a procedure, including remedies, to safeguard individuals from disproportionate interferences with the right to property, as required by Article 1, Protocol 1, European Convention for Human Rights (ECHR). These procedures consist of the conduct of preparatory works, determination of the common interest, a decision on expropriation, and a decision on compensation.

In its report on Property Rights in Kosovo (2002-2003), the Organization for Security and Co-operation in Europe, Mission in Kosovo (OSCE), assessed various shortcomings related to expropriations in Kosovo and issued a set of recommendations to both the United Nations Mission in Kosovo (UNMIK), and the Provisional Institutions of Self-Government (PISG), to address the identified concerns. The recommendations were broadly directed to ensure compliance by local and international authorities with the Law on Expropriation and applicable international human rights standards. In 2005, the Parliamentary Assembly of the Council of Europe (CoE) echoed the concerns and urged UNMIK to improve existing procedures for the expropriation of property.²

Three years after OSCE's report, the situation in Kosovo has changed considerably. A Ministry of Local Government Administration has been created. New legislation on expropriation is being drafted. The Kosovo Standards Implementation Plan (KSIP) and the European Partnership Action Plan (EPAP) reflect the need for effective protection of property rights in urban management activities.

However, despite improvements, the municipalities and other government authorities still either inappropriately apply or avoid the procedure resulting in unlawful interference with property rights without an effective remedy. Furthermore, such actions may constitute violations of due process, and, in cases involving minority community members, possible discrimination. The OSCE is concerned about:

1. the failure of the local authorities to expropriate appropriately for the conduct of public works;
2. the inadequate determination of the nature of the common interest, as well as lack of appropriate identification of and notification to affected property right holders (particularly displaced persons) and provision of adequate compensation; and

¹ Law on Expropriation, (Official Gazette of SAPK, No. 21/78), as amended by the Law on Amendments and Supplements to the Law on Expropriation, (Official Gazette of SAPK, No. 46/86).

² Council of Europe Parliamentary Assembly Resolution 1417 (2005), Protection of Human Rights in Kosovo.

3. the lack of effective remedies, as well as the conduct of unlawful expropriations by parallel administrative structures.

Moreover, municipalities still lack respect for the applicable legislation on the transfer and use of socially owned property.

Reasons for such problems include gaps in the legislation, lack of available immovable property rights records, inadequate technical capacities in the municipalities, need for expediency in building infrastructure, and parallel administrative structures. However, these explanations do not justify failure to apply the law or respect property rights.

While the OSCE acknowledges the difficulties of re-establishing normal urban land administration activities in Kosovo, it urges all relevant stakeholders to take immediate steps to protect individual rights. The future implementation of newly approved urban and spatial plans and the drafting of related legislation by the Kosovo Assembly should provide the government of Kosovo with opportunities to redress the situation and take steps to ensure compliance with human rights standards.

Recommendations

I. To the Ministry of Local Government Administration (MLGA)

1. Provide legal advice to the municipalities to help ensure that property rights are protected when expropriations take place. Such guidance shall be in accordance with the following principles: uniformity of the procedure of expropriation in every municipality; mandatory compensation; transparency of the procedure; adequate notice and access to legal remedies for affected property right holders.
2. Provide guidance to the municipalities on how to redress situations where possessions were unlawfully deprived. This should include guidance on compensation procedures taking into account the specifics of the municipal situation (finances, availability of land, etc).
3. Guide the municipalities on practices which are not permitted by the current framework and should not be undertaken, including unsubstantiated determinations of the common interest, circumvention of the procedures through irregular individual donations and/or purchases, and lack of identification and notification of the property right holders.
4. Advise the municipalities on how to provide timely information to displaced property right holders and minority community members on expropriations affecting their property to ensure access to legal remedies.
5. Advise the municipalities on the applicable law regarding the use of socially owned land for public purposes, the authority of the Kosovo Trust Agency (KTA), and UNMIK's reserved powers over public, state and socially owned property.

II. To the municipalities

1. Ensure that every stage of the procedure foreseen in the Law on Expropriation is complied with to ensure the protection of individuals' rights to property.
2. Comply with the legal framework related to land use, particularly UNMIK Regulations regarding the use of socially owned land by municipalities.
3. Ensure that public and individual interests are adequately balanced and that this balance is reflected in the decision on the common interest, which should also be based on the legally required public consultations during the urban and spatial planning development process.

4. Ensure the timely implementation of spatial and urban plans to avoid disproportionate interference with the peaceful enjoyment of possessions due to delays in conducting expropriations.
5. Identify and discuss compensation terms with all affected property right holders in every expropriation, as required by the Law on Expropriation. In case such identification is not possible, steps should be taken to ensure that compensation is reserved for the absent property right holders.

III. To the Kosovo Assembly Committee on Economy, Trade and Industry

1. Finalise the revision of the draft Law on Expropriation to ensure it contains adequate and effective safeguards for the right to property and related human rights, such as effective remedies, adequate notice, transparent procedures and adequate compensation.

IV. To the PISG of Kosovo

1. Assess possible legal reform or other measures to ensure adequate notification, publicity, representation, and access to remedies by displaced persons and minority community members in administrative proceedings.

V. To KFOR

1. Co-ordinate with local authorities when initiating projects concerning infrastructure to ensure that municipalities follow required expropriation procedures

VI. To UNMIK

1. Assess the expropriation decisions taken by municipalities in Kosovo since the establishment of UNMIK in order to intervene using reserved powers when necessary to protect property rights.

VII. To international donors

1. Ensure that municipalities follow expropriation procedures when required for the implementation of donor funded projects.

1. Introduction

The OSCE is concerned that repeated and consistent failures by municipal and central level authorities to adequately implement expropriation procedures are leading to violations of the right to property and related human rights.

Of particular concern are:

1. the failure to apply expropriation procedures when taking possession of private properties;
2. the inadequate application of the procedures foreseen in the Law on Expropriation including the obligation to compensate the rightful owners;
3. the lack of effective remedies;
4. the lack of adequate identification and notification of property right holders (particularly displaced persons);
5. the implementation of inadequate expropriation procedures by parallel structures in the northern municipalities of Kosovo; and,
6. the non-compliance with applicable legislation on the use of socially owned property.

According to Article 1, Protocol 1 of the European Convention for Human Rights (ECHR), no one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and by the general principles of international law.³ Through its case law, the European Court of Human Rights (ECtHR) has interpreted the conditions necessary to ensure that the deprivation of possessions is legal, legitimate and necessary and that the individual affected is adequately compensated.⁴

The OSCE assessed the conduct of expropriations in Kosovo in its report on *Property Rights in Kosovo (2002-2003)*.⁵ As reflected in that report, the Law on Expropriation provides safeguards against undue interference with property rights. The law requires that the ‘common interest’ be determined publicly prior to expropriation, and that the property right holder be identified, contacted and receive adequate compensation to offset the interference. The law also provides for procedural remedies when the interference is thought to be disproportionate, or unlawful.

Since June 1999, there have been many expropriations in Kosovo that have violated property rights. The OSCE and other international bodies, such as the Council of Europe Parliamentary Assembly (CEPA), have repeatedly stressed that the procedures

³ Article 17 of the Universal Declaration of Human Rights provides that: (1) “Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property”, see also Article 17 of the Charter of Fundamental Rights of the European Union.

⁴ See for example *Marckx v. Belgium*, 13 June 1979, *Loizidou v Turkey*, judgment of 18 December 1996, Reports 1996-VI, paragraph 63, *Hentrich v. France*, judgment of 22 September 1994, Series A No. 296-A, p. 19, paragraph 42., and *Spörrong and Lonroth v. Sweden*, judgment of 23 September 1982, Series A. No 152, pp. 24-25, paragraph 63, *Papamichalopoulos and Others v Greece*, judgment 24 June 1993, Series A No. 260-B, pp. 69-70, paragraph 41-46 and Bosnia and Herzegovina Human Rights Chamber case law (for example, *Kevešević v the Federation of Bosnia and Herzegovina*).

⁵ See Chapter IV, OSCE Mission in Kosovo, Property Rights in Kosovo (2002-2003).

set out in the Law on Expropriation must be strictly followed, with compensation respecting real property values.⁶ Thus, after a joint report of the Office of the Prime Minister and the Minister of Environment and Spatial Planning, issued in February 2006, which listed up to 401 individual cases of expropriations, the OSCE gathered information to produce the current report.⁷

This assessment has been performed in co-operation with municipal authorities throughout Kosovo. The OSCE gathered information on expropriations that have been taking place in various municipalities since the establishment of UNMIK. The assessment sought to identify the common interest underlying the decision on expropriation and whether the main procedural steps foreseen by the law were taken.

The scope of this report does not allow an exhaustive analysis of all practices regarding expropriation procedure in the municipalities. The OSCE has only selected the most significant cases Kosovo-wide, to serve as examples where actions show inconsistent use of the legally binding expropriation procedure. The report shows that basic requirements for property rights protection are often not respected in the municipalities. Some fail to initiate an expropriation procedure and simply perform construction of public buildings or infrastructures notwithstanding the existence of private property rights on the affected lands. In other cases, the implementation of the Law on Expropriation has been incomplete, inadequate and potentially discriminatory and/or lacking effective remedies.

2. Legal background

The Law on Expropriation requires four stages which the government authority, normally the municipality, must follow.

1. *Preparatory Work (if necessary)*: Before submitting a proposal for the determination of the common interest or expropriation, the municipality may need to carry out preparatory work on the land to determine whether the land is suitable for development.⁸ The permission for such work is obtained by submitting a proposal to the municipal body competent for legal property issues. If appropriate, the competent municipal body issues permission, including a time limit in which to complete the works, and requires the payment of compensation.⁹
2. *Determination of Common Interest*: Once any preparatory work is complete and prior to any proposal for expropriation, a decision, or “Determination of Common Interest”, must be made on whether or not the plans for the property are in the common interest. Real property may be expropriated “when necessary for the construction of economic housing, communal, health, and

⁶ Council of Europe Parliamentary Assembly, Resolution 1417 (2005), Section 5, VII, a, b and c.

⁷ The report was presented to the Property Rights Standard Implementation Group on the 6 February 2006.

⁸ Article 7, Law on Expropriation, (Official Gazette Socialist Autonomous Province of Kosovo, 46/86).

⁹ Article 11, Law on Expropriation.

other objects in the common interest.”¹⁰ The common interest is usually determined by the urban plan. If there is not an urban plan, the municipal assembly decides.

3. *Decision on Expropriation*: If a proposal is deemed to be in the common interest, and all the preparatory work has shown that the land is suitable for the intended development, then a proposal for expropriation is submitted to the competent municipal authority. This proposal must be submitted within two years of the “Determination of Common Interest”¹¹ for approval and the issuance of a Decision on Expropriation. The municipal body for legal and property affairs must consult with the affected property right holder before issuing the decision.¹²
4. *Decision on Compensation*: The Law on Expropriation establishes how much compensation should be paid and by whom for the expropriation of real property. The proposal for expropriation needs to demonstrate availability of means to compensate. By agreement of the parties, compensation may also be determined in granting property rights over immovable property.¹³ In case of disagreement on the compensation, the decision will be taken by the competent Municipal Court.

The Law on Expropriation and other applicable legislation also provide for a range of mechanisms to remedy situations where decisions may have unlawfully interfered with the property rights of individuals.¹⁴

The UNMIK Office of The Legal Adviser has stated that expropriation of immovable property is a function having sovereign attributes, and that for the duration of UNMIK’s interim administration, this function can only be exercised under the authority of the SRSG.¹⁵ The Legal Adviser further determined that where privately owned land is required to be allocated for a public purpose, the SRSG will intervene in a manner appropriate to the circumstances, exercising his authority pursuant to UN Security Council Resolution 1244 (1999).

However, since 15 June 1999 there have been numerous expropriations and UNMIK has not consistently reacted in accordance with its powers. Instead, the Law on Expropriation has been the legal basis to which municipalities have referred while conducting an expropriation.¹⁶

¹⁰ Article 2, Law on Expropriation.

¹¹ Article 12, Law on Expropriation.

¹² Article 13 and 15, Law on Expropriation.

¹³ Article 2(a) , Law on Expropriation.

¹⁴ Such as the UNMIK Regulation 2006/33 On the Promulgation of the Law on Administrative Procedure adopted by the Assembly of Kosovo, or the UNMIK Regulation 2004/4 On the Promulgation of the Law on Cadastre adopted by the Assembly of Kosovo.

¹⁵ Memo from the UNMIK Office of the Legal Adviser to the Minister of Environment and Spatial Planning, 1 November 2005.

¹⁶ See Section 48.3 of UNMIK Regulation 2000/45, ‘Powers and Duties of the Municipal Administrator. The Municipal Administrator shall have the right to suspend and refer to the Special Representative of the Secretary-General any decision he considers to be in conflict with United Nations Security Council resolution 1244 or the applicable law’.

3. Failure to expropriate

The OSCE has observed several cases where municipalities have initiated and/or completed public works without adhering to the expropriation procedures.¹⁷ Municipal authorities often disregard legal requirements by taking possession or using private lands without ensuring that the municipal assembly adopt a determination of common interest and that relevant competent bodies take adequate administrative acts so that property right holders may file an appeal against them. Furthermore, by delaying the implementation of spatial and urban plans, the municipalities often prevent individuals from using their real estate for an indefinite time. Thus, the municipalities frequently fail to provide affected property right holders with legal redress against their actions. The OSCE has noted practices that apparently seek to redress obvious violations of property right holders through *post facto* administrative acts. However, the payment of an adequate and proportionate compensation, including interest for the delays, is the sole acceptable remedy. In addition, the OSCE has observed instances when other stakeholders such as KFOR or donors have failed to ensure that their counterparts in the municipal governments adequately implement expropriation procedures when conducting public works on their behalf.

3.1 Expropriations after initiation of public works

In some municipalities, the authorities have taken possession of land and started construction before initiating the expropriation procedure. For example, on 19 July 2006, the construction of a road linking Mitrovicë/Mitrovica to Podujevë/Podujevo was officially inaugurated in Kërpimeh/Krpimej village. Although the work affected 37 private plots, no expropriation procedure was initiated.¹⁸ Instead, the Director of Cadastre, Geodesy and Property presented and discussed the project with all respective residents, collecting signatures to ensure their ‘support’ for the project.

In Dragash/Dragaš, seven private properties were used in 2000 by local self-appointed authorities to construct a memorial site for killed members from the so called Kosovo Liberation Army¹⁹ and to enlarge one part of the road of the village Zapluxhe/Zaplužje. In 2002, the newly elected municipal authorities initiated a procedure to expropriate *ex post facto*. Subsequently, the Municipality initiated a compensation procedure for the property right holders (all of which belong to the

¹⁷ Lipjan/Lipljan, Obiliq/Obilić, Podujevë/Podujevo, Dragash/Dragaš, Istog/Istok, Shtime/Štimlje, Suharekë/Suva Reka

¹⁸ In June 2006 Podujevë/Podujevo Municipal Assembly discussed and supported the construction of the 8,3 km road affecting 37 private properties as well as socially owned land. In a meeting with the OSCE, the Municipal Assembly President assured that the common interest would be defined in the following Municipal Assembly meeting.

¹⁹ Immediately after the entry of KFOR in Kosovo, certain groups assumed the control of local government structures on their own initiative. Decision 05 Nr. 353-84, to build the Memorial, 3 August 1999.

Gorani and Bosniak communities in Kosovo).²⁰ The Municipal Court issued a decision to fix the compensation and ordered payment before 31 March 2005.²¹ On 3 June 2005, the Municipal Assembly adopted a formal determination of the common interest. Even though the steps taken by authorities did show willingness to redress an unlawful *de facto* situation, following required expropriation procedures “after the fact” of expropriation is not foreseen by the Law on Expropriation.²² The law only foresees that if the beneficiary of the expropriation interfered with possession of real estate before the decision enters into force, the expropriation beneficiary must compensate the owner for the damage caused.²³ On 11 November 2005, the properties were re-registered as socially owned property in the name of the Municipality.²⁴

In Shtime/Štimlje, a water reservoir was constructed in 2000 without identifying the affected property right holders. To this day, no compensation has been granted due to the alleged lack of budget and it was not until June 2006 that the Municipality was able to identify the exact number and names of all concerned property right holders.

The OSCE has observed only one new instance since 2003 of expropriation after the initiation of public works.²⁵ The reduction in numbers of observed cases suggests that, despite isolated incidents, the main issue today is providing remedies for those affected by old cases which arose in the first years after the conflict.²⁶

In all, the immediate post-conflict situation may explain to a certain extent initial procedural failures and haste to initiate construction works in the interest of the community. However, the post conflict difficulties do not justify weak efforts to redress the situation during the following years, delays in the identification of owners, and failure to pay adequate compensation.²⁷

²⁰ Request from the War Veteran Association (WVA), 11 July 2002; Decision on Common interest, 01 Nr.06-31/2, 3 June 2005; Decision of approval for the transfer of the land to the municipality, 07-951-126/05, 23 December 2005.

²¹ Dragash/Dragaš Municipal Court Decision Nr. 94/04, 27 September 2004.

²² Article 211 of the Socialist Federal Republic of Yugoslavia Constitution: ‘Retroactive application of particular provisions of a law may only be provided by this particular law, if this is required by the general interest’.

²³ Article 20 paragraph 6, Law on Expropriation.

²⁴ Decision No.07-951-126/05; Decision No. 07-951-127/05, Decision No. 07-951-128/05; Decision No. 07-951-129/05, 11 November 2005 issued by the Dragash/Dragaš Municipality.

²⁵ The construction of the road linking Mitrovicë/Mitrovica to Podujevë/Podujevo.

²⁶ As an additional typical example of a older case which has resulted in attempts to use non-standard compensation mechanisms, in Novoberdë/Novo Brdo in 2002, the Municipality initiated the construction of a sewage and water system without contacting all property right holders. One of the property right holders living abroad got compensation through the private contractor, (even though this is not foreseen by the expropriation procedure). The contractor, thus, requested compensation from the Municipality through mechanisms which are not foreseen by the law. Based on the information received by OSCE other property right holders did not make any type of request and therefore were not compensated.

²⁷ In *Jahn and others v. Germany*, 22 January 2004, the ECtHR recognized that the measures taken by the German public authorities pursued a legitimate aim (to remedy the injustices of a former land law from 1990), but noted that even if the circumstances pertaining to the German reunification had to be regarded as exceptional, the lack of any compensation for the States’ taking of the applicants’ property upset the fair balance which has to be struck between the protection of property and the requirement of the general interest.

3.2 Delays in implementing expropriations sought by central authorities or foreseen in urban plans

The OSCE has observed that delays in implementing expropriations have affected individual rights to property. In the cases observed in Lipjan/Lipljan and Obiliq/Obilić, construction started before expropriation procedures were undertaken. Moreover, in Pejë/Peć, the failure to implement an expropriation had a negative impact on the owners' rights to use and dispose of their properties.

In Lipjan/Lipljan Municipality for example, the construction of the road Komoran/Komorane-Carraleve/Crnoljevo began in March 2004 without any formal decision issued by the municipal authorities. Following a complaint by a group of affected property right holders from the village of Resinoc/Rusinovc, the Ombudsperson Institution Kosovo (OIK) requested that on 26 July 2005 the Ministry of Environment and Spatial Planning (MESP) find urgent interim measures. Likewise, Shtime/Štimlje Municipality received individual complaints and requests for compensation from individuals also affected by the project in this Municipality. In response, the MESP referred the OIK to the Ministry of Transport and Telecommunications (MTT), who informed the OIK of the signing of a Memorandum of Understanding (MoU) between the municipalities of Kosovo regarding road infrastructure. According to the MoU, all municipalities are obliged to "resolve any issues of legal ownership" in their territory.²⁸ The MTT complained about the delays on the part of the municipalities to intervene and stop the works before launching an expropriation procedure. Recently, the municipalities of Shtime/Štimlje and Lipjan/Lipljan have set up special commissions to determine who should rightfully be compensated for the expropriations. The construction of the road is ongoing.²⁹

In the Municipality of Obiliq/Obilić the OSCE monitored a similar case where a road was constructed in 2003 in the village of Sibovc/Sibovac. No expropriation procedure was initiated nor was any administrative decision adopted by the Municipality. None of the owners were contacted before the planning and construction of the road, but only after the road was completed did the Municipality contact the owners to negotiate compensation.

Apart from the specifics related to the immediate post conflict situation, the non-implementation of urban plans may also lead to disproportionate interferences with the peaceful enjoyment of possessions.³⁰ In the urban centre of Pejë/Peć, a private property right holder has been denied a building permit by the Municipality for several years, based on the 1983 General Urban Plan's directions to develop a public green area and a river front promenade in the place (and presumably expropriating

²⁸ Letter to the OIK from the Ministry of Transport and Telecommunications, 1 December 2005. Ref. MTPT-483.

²⁹ Some similar cases have been reported in Prizren and Pejë/Peć with roads being constructed on the initiative of KFOR without consultation and/or intervention of the Municipality.

³⁰ See *Sporrong and Lönnroth v. Sweden*, paragraph 60.

relevant private parcels).³¹ The draft 2006 Urban Development Plan confirms the intention of the 23 year old plan, which has not been implemented. The measure has discouraged potential buyers of the property and placed an excessive burden on the property right holders affected. The delays in implementing the relevant expropriations and the lack of available remedies may leave individual property rights precarious as the right to dispose of these properties at reasonable market prices is affected. The same situation affects the neighbourhood's displaced Kosovo Serbs, whose situation is compounded by lack of physical access to the Municipality. One of the displaced persons is currently attempting to address the complications stemming from this situation through the Municipal Community Office. A similar complaint has been identified in Prishtinë/Priština Municipality, where individuals whose property falls under areas where the Urban Regulatory Plans have not been adopted are not being issued construction permits.³²

3.3 De facto expropriation and failure to ensure property rights protection in cases of urgent measures

In certain circumstances, the public interest requires the implementation of urgent measures, particularly as it pertains to public order, safety and security. In this context, for example, KFOR may need to ensure that infrastructure works such as roads are timely constructed. The OSCE has identified areas of concern related to the implementation of emergency procedures which have led to violations of the right to property. The use of private properties by public bodies may be deemed as *de facto* expropriation as defined by European case law.³³

In Mitrovicë/Mitrovia, in 2003, French KFOR requested that the Municipality grant access to lands necessary for the building of a circular road bypassing the town and connecting the main road to Skenderaj/Srbica with its base. In November 2003 the Municipal Assembly adopted a determination of the common interest.³⁴ The urgency of the works led the Municipal Assembly of Mitrovicë/Mitrovia to request the central government to authorise it and to take immediate possession of the private lands before the decision to expropriate became final. The government issued a decision in this direction; however the decision lacked a confirmation on the urgency of the procedure, as required by the Law on Expropriation.³⁵ Moreover, the fact that

³¹ On 3 October 2002, the Municipality denied a construction permit to the owner (Nr. 05-350/6577). After the owner's complaint, The Department of Urbanism issued a notification referring to the 1983 General Urban Plan. On 9 July 2003, the owner lodged a complaint with the CEO, who rejected it stating the decision of Urbanism was a notification and not subject to review (Nr. 03-350/7813, 24 July 2003). The owner recently took her case to the Ombudsperson who registered it as a complaint case on 12 June 2006.

³² Response of the Acting UNMIK Municipal Representative of Prishtinë/Priština to a private individual in July 2006. The A/UNMIK MR stated that once the Regulatory Plan is finalized the Municipality would inform the individual about the destination of his immovable property in relation with his request.

³³ See *Papamichalopoulos and others v. Greece* judgment of 24 June 1993, series A no. 260-B.

³⁴ Nr. 344-34/01, "Construction of the circular road is determined as of common interest and full expropriation can be done", no further elaboration. See below for the identification and contacts with property right holders.

³⁵ Article 20, Law on Expropriation.

two years had passed between the request from KFOR and the final governmental decision brings into question the qualification of the process as an emergency procedure.³⁶

In Prizren in 2000, German KFOR constructed a transit road without any prior notification or compensation to private owners. After unsuccessful meetings with KFOR one of the owners submitted a request on 5 March 2003 to the Board of Directors in Prizren Municipality for restitution of the property. On 10 March 2003, the Chief Executive Officer stated that with regard to the applicant's case, the transit road was constructed based on the initiative of German KFOR. Consequently, the Prizren Municipality did not initiate any expropriation procedure. Discussions have been ongoing since then.³⁷ On 17 November 2005, the UNMIK Regional Representative communicated to the OIK that the Municipality of Prizren had advised the owner to lodge a lawsuit with the competent court against German KFOR.³⁸ The case is currently pending, more than six years after the individual has been deprived of his property. However, according to UNMIK Regulations, KFOR, its property, funds and assets are immune from any legal process in Kosovo.³⁹

4. Inadequate implementation of the law on expropriation.

Although municipalities have generally referred to the Law on Expropriation when issuing related decisions, they have often inadequately applied its provisions. The problems include lack of justification of the common interest, failure to follow procedural requirements, and failure to contact and adequately compensate the property right holders.

4.1 Lack of appropriate determination of the common interest and failure to follow procedural requirements

The deprivation of possessions is justified when the common interest outweighs that of the individual. According to the ECtHR case law, national authorities have wide discretion when it comes to determining the public interest. However, when undertaking expropriations, national authorities must strike a fair balance between the individual and the common interest, and follow the law. Such a balance may be

³⁶ The Decision of the Prime Minister of Kosovo, No. 3/148, was issued on the 24 May 2005.

³⁷ The applicant has submitted several requests to German KFOR and local authorities. On 30 December 2004, Ombudsperson Institution in Kosovo has sent a letter to SRSG requesting him to use his authority, in order to ensure that the cadastral parcel would be declared an expropriated land by Prizren Municipality. Due to the lack of response on 16 May 2005 OIK sent a reminder letter to SRSG and on 10 October 2005 IOK sent the second reminder letter.

³⁸ Decision No. 03/3, 31 August 2005. The applicant has submitted several requests to German KFOR and local authorities. On 30 December 2004, Ombudsperson Institution in Kosovo has sent a letter to SRSG requesting him to use his authority, in order to ensure that the cadastral parcel would be declared an expropriated land by Prizren Municipality. Due to the lack of response the OIK sent reminder letters to SRSG, on 16 May 2005 and 10 October 2005.

³⁹ Section 2, UNMIK Regulation 2000/47 On the Status, Privileges and Immunities of KFOR, UNMIK and their Personnel in Kosovo.

assessed in a reasoned explanation of what is considered the common interest. This approach is often absent in the municipal decisions examined by the OSCE.

The determination of the common interest is the first basic requirement to justify the deprivation of private property rights. The common interest is formalised through a Municipal Assembly decision. As an administrative decision, it is subject to appeal. The assessment conducted by the OSCE shows shortcomings, as the common interest is either not properly justified or not defined through a public decision or act.

The OSCE considers that the determination of the common interest is in most cases a conclusory and unreasoned exercise which fails to balance the interests. Decisions adopted in Gjilan/Gnjilane⁴⁰, Mitrovicë/Mitrovica⁴¹, Skenderaj/Srbica⁴², and Malishevë/Mališevo⁴³ serve as examples. In these municipalities the common interest is taken for granted so long as the justification falls within the list of objectives of common interest defined by the law.⁴⁴ However this is not enough, as a reasoned justification is missing.

Moreover, the OSCE has identified instances where municipal bodies have chosen to ignore expropriation procedures. In Novobërdë/Novo Brdo, the Director of Reconstruction stated to the OSCE that there is no central or local regulation on expropriation. Moreover, he stated that the Municipality had sought advice from the Ministry of Public Services (MPS). The MPS referred the officials to the Kosovo Cadastre Agency. In addition, the Novobërdë/Novo Brdo Director of Urbanism stated that before resorting to expropriation, the Municipality would follow an *ad hoc* process:

- 1) buy the land from the landowner;
- 2) provide the landowner with an alternative plot of land in the Municipality; or
- 3) if an apartment building was constructed on the property of a landowner, the Municipality would offer a substitute housing unit to that landowner.⁴⁵

In one case from Rahovec/Orahovac, the determination of the common interest had been avoided by the Municipality who persuaded the affected property right holders to donate their possessions to the Municipality. In its records, the Municipality justifies the practice due to its lack of financial resources to compensate affected property right holders.⁴⁶ In a number of cases monitored in Prizren, the Municipal Assembly failed to justify the common interest.⁴⁷ In one of them, the common interest was justified following an unreasoned proposal of the municipal public lawyer.

⁴⁰ Municipal decisions lack appropriate justifications. Among those are municipal decisions Nr. 012448/020, 21/03/2002, Nr. 013792/020, 29/04/2004, Nr. 021973 17 November 2004.

⁴¹ Municipal Assembly Decision Nr.344-34/01, 6 November 2003.

⁴² Municipal Assembly Decision Nr. 463-319, 19 May 2004.

⁴³ Decision of 2 June 2004. This decision mentions the general social interest but contains no further reasoning.

⁴⁴ Article 2, Law on Expropriation.

⁴⁵ Interview with municipal official Novobërdë/Novo Brdo, April 2006.

⁴⁶ Orahovac/Rahovec Directorate of Cadastre and Geodesy Minutes, 15 September 2004.

⁴⁷ Prizren Municipal Assembly decision on determination of common interest Nr. 01/011-22 of 1 April 2004; Municipal Assembly decision related to “Gryka e Lumbardhit” area Nr. 01/011-4 of 29 January 2004.

Namely, the decisions contain statements such as “*the Municipal Assembly confirms that it is of common interest to widen the ring road*” or “*it is of common interest to adjust part of river*”.⁴⁸

Such a process is not in compliance with the Law which clearly provides that the proposal for expropriation may be submitted (...) only after the common interest is determined.⁴⁹ In addition, all residents must be informed of the common interest and informed on their right to initiate an administrative review. In contrast, best practises have been reported in Gjakovë/Đakovica and Kamenicë/Kamenica where in several cases determinations of common interest have been thoroughly reasoned.⁵⁰

4.2 Failure to identify and contact the property right holders, and indirect discrimination

Pursuant to the ECtHR, the deprivation of possessions must be legitimate, lawful and necessary. The requirement of lawfulness means that rules of domestic law must be sufficiently accessible, precise and foreseeable.⁵¹ Owners shall have the right to be informed of expropriation pertaining to their property, as well as their right to effective legal remedies, and the terms of compensation for the taking of their possessions.⁵²

According to the law, the competent body that issues the Decision on Expropriation (i.e. the Directorate for Legal-Property Affairs) must consult the owner before issuing the decision.⁵³ The problems observed in the municipalities include failure to identify and/or contact property right holders, errors in identification, and implementation of inadequate procedures (such as the appointment of temporary representatives).

In these conditions, the indiscriminate application of an apparently neutral provision may result in a form of indirect discrimination. This situation places the involved displaced persons at a particular disadvantage compared with other persons, particularly in respect to the exercise of the right to be properly informed of any administrative action that is taken against their property. Moreover, this has a negative

⁴⁸ See Proposal for Determining the Common Interest Nr. 244/04, 31 August 2004.

⁴⁹ Article 12.1 Law on Expropriation.

⁵⁰ For example, with regard to the construction of the school, the reasons provided were that many pupils have to travel a long distance to reach another school or face problems because no public transportation is provided. Another example is a decision related to a memorial park which contains a one page explanation on its historical importance.

⁵¹ *Belvedere Alberghiera S.r.l v. Italy*, 30 May 2000

⁵² For related ECtHR case law, see *James and others v. United Kingdom*, judgment of 21 February 1986, Series A no.98 and *Hentrich v. France*, judgment of 22 September 1994, Series A No. 296-A; *Loizidou v Turkey*, judgment of 18 December 1996, Reports 1996-VI, paragraph 63, *Hentrich v. France*, judgment of 22 September 1994, Series A No. 296-A, p. 19, paragraph 42., and *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A. No 152, pp. 24-25, paragraph 63., *Papamichalopoulos and Others v. Greece*, judgment 24 June 1993, Series A No. 260-B, pp. 69-70, paragraph 41-46.

⁵³ Article 15, paragraph 2, Law on Expropriation.

legal consequence on the right to an effective remedy.⁵⁴ The fact that a property right holder is displaced does not permit local authorities to ignore his rights, as the requirements of abandonment of property are not met when a property right holder has unwillingly left due to hostilities.⁵⁵

The capacity of municipalities to identify the property right holders is made difficult by the continuous displacement in Serbia proper of a number of cadastral and judicial property records originating in Kosovo, difficulties in the implementation of recent cadastral surveys, as well as numerous informal transfers of both residential, agricultural and commercial property.⁵⁶ As an example, in Fushë Kosovë/Kosovo Polje records are only available up to the year 1985. Consequently, it is difficult to track the changes that occurred after 1985. The same situation has been reported in Mitrovicë/Mitrovica.⁵⁷ Informal transactions further complicate the situation as reported in Gjilan/Gnjilane.⁵⁸

Thus, the municipalities tend to contact only those property right holders who are physically available. As a result, the identification of property right holders is often incorrect. For example, in Gjilan/Gnjilane, most of the appeals filed by individuals against the decision to expropriate lands are based on incorrect identification of the owners.⁵⁹

In Novoberdë/Novo Brdo, despite efforts to contact all owners, the Municipality continued the expropriation process and authorized construction. One owner returned to the Municipality for the purpose of receiving compensation for the land, and the construction company put the work on hold. After receiving an answer from municipal officials, who stated that compensation could not be given due to lack of procedures to do so, the individual reached an agreement with the construction company.⁶⁰

⁵⁴ Article 3 b, UNMIK Regulation 2004/32 On the Promulgation of the Anti-Discrimination Law Adopted by the Assembly of Kosovo.

⁵⁵ See *Kevešević v. Federation of Bosnia and Herzegovina* (merits), CH/97/46, 10 September 1998, paragraph 42). Also see *Pletilić et al. V. Republic Srpska*, CH/98/659, 10 September 1999, paragraph 166-7. See Principle 21 (3) UNHCR Guiding Principles on Internal Displacement. See also 'Principles on Housing and Property Restitution for Refugees and Displaced Persons' (Pinheiro Principles), E/CN.4/Sub.2/2005/17, 28 June 2005.

⁵⁶ A total of 740 informal transfers pertaining to residential property are being registered through the implementation of Housing and Property Claims Commission decisions on 'Category B' claims. On the other hand, different legal and institutional constraints are currently preventing the full implementation of land cadastral surveys as well as the registration of apartments in the Immovable Property Rights Register.

⁵⁷ In Mitrovicë/Mitrovica the available cadastral data is from 1983-1985.

⁵⁸ According to the legal officer from the Municipal Cadastre Office, properties may appear to belong to Kosovo Serbs but in fact they have been purchased informally by Kosovo Albanians.

⁵⁹ This is the case of the ongoing expropriation in the south ring road. Out of 20 appeals, six have been solved while for other 16 cases there is an ongoing court procedure.

⁶⁰ Agreement between individual and Gashi Ing. Company, 16 July 2003.

In Fushë Kosovë/Kosovo Polje in 2003, the Municipal Assembly initiated an expropriation to conduct works in the Sitnica riversides.⁶¹ The works started in Bresje, Vragoli/Vragolija and Kuzmin villages in 2005. However, not all the affected property right holders were informed.⁶² On 12 July 2005 the OIK requested urgent action from the Ministry of Environment and Spatial Planning to suspend the works pending further investigation.⁶³ Three owners initiated legal proceedings.⁶⁴ Regarding the other property right holders, a decision on compensation by the Municipality has not yet been reached.

In addition, there is no uniform procedure to ensure that displaced property right holders subject to expropriations are adequately informed. In Lipjan/Lipljan, local officials stated to the OSCE that when a property right holder subject to an expropriation is not found, they request the civil registration office to verify whether the person has been registered in Kosovo after 1999. If this is not the case, the Municipality appoints a temporary representative, in accordance with the pre-1989 law on administrative procedure.⁶⁵ The appointment of temporary representatives has been observed also in Gjakovë/Đakovica, Prizren, Skenderaj/Srbica, Vushtrri/Vučitrn and Lipjan/Lipljan. Of note, the Law on Administrative Procedure promulgated in 2006 does not contain similar provisions for the appointment of temporary representatives.⁶⁶ In Prizren, notice to affected property right holders, including displaced persons, are displayed on public boards. However, this procedure does not have sufficient safeguards to ensure adequate compensation and property rights protection.⁶⁷ Heads of Community Offices (HCOs), who could have a role in facilitating contact with minority community members, are not involved in the procedure.⁶⁸

4.3 Non-compliance with legal requirements to determine and provide adequate compensation

The law provides guidelines for determining the nature, amount and procedure for establishing compensation.⁶⁹ The proposal for expropriation must be accompanied by

⁶¹ On 14 November 2003 the Municipal Assembly of Fushë Kosovë/Kosovo Polje has brought a decision announcing the public interest for expropriation of 70.40 ha of land. This decision was signed by both UNMIK Representative and the Municipal President.

⁶² It should be highlighted that the affected property holders are from both Kosovo Albanian and Kosovo Serb community.

⁶³ OIK Provisional registration No. 1864/2005.

⁶⁴ Currently the municipality has completed the rounds of interviews with owners of the land from affected by the Sitnica works but no decisions have been made about compensation. The Municipality is currently facing three law suits from the affected property right holders.

⁶⁵ Article 55, Law on Administrative Procedure, (Official Gazette SFRY, No.47, August 15, 1986).

⁶⁶ UNMIK Regulation 2006/33, On the Promulgation of the Law on the Administrative Procedure adopted by the Assembly of Kosovo.

⁶⁷ The temporary representative is paid by the municipality, which may affect his/her independence. In addition, no rules nor procedural guarantees exist as per the conditions regarding the negotiations and payment of a compensation for displaced property right holders.

⁶⁸ As reported in Pejë/Peć, Suharekë/Suva Reka and Prishtinë/Priština.

⁶⁹ Article 29, Article 49. 1 and Article 39, Law on Expropriation.

evidence that the municipality conducting an expropriation has the means to compensate the owner. In case of disagreement on the compensation between the property right holders and the Municipality, the decision is reached by the competent Municipal Court.⁷⁰ In practice, the adequate provision of compensation does not occur. The OSCE has identified the following main concerns:

1. municipalities circumvent expropriation procedures by persuading property right holders to donate their possessions;
2. municipalities do not provide compensation;
3. municipalities do not determine nor pay the compensation in due time;
4. lack of transparency in the process to fix the compensation rate; and,
5. municipalities compensate in kind, in violation of the applicable law.

Regarding alleged “donations”, in a case from Istog/Istok, the affected owners donated their land through a written agreement, deemed as a substitute for the procedures foreseen in the law on expropriation.⁷¹ The Municipality placed transformers, widened roads, constructed bridges and other objects without following expropriation procedures.⁷² Thus, no compensation was granted.⁷³ Allegedly private property right holders agreed to have the streets passing by their lands widened without any compensation. Other cases of donations have been identified in Kamenicë/Kamenica, Štrpce/Shtërpçë, Orahovac/Rahovec⁷⁴, Suharekë/Suva Reka and Novoberdë/Novo Brdo.⁷⁵ The practices of perusing donations by property rights holders in order to avoid the expropriation procedure as foreseen by the law facilitates the misuse of power by municipal authorities and especially lack effective safeguards for the protection of the rights of the property right holders affected.⁷⁶

In certain instances, there is simply a failure to compensate. For example, in Pejë/Peć, several cases have been identified where the owner was not compensated. In addition, in all cases reported above, compensation was not granted initially. This also happened in Lipjan/Lipljan and Shtime/Štimlje.⁷⁷

Also, Suharekë/Suva Reka Municipality did not pay compensation to the affected property right holders for the construction of the road connecting Suharekë/Suva Reka

⁷⁰ Article 50.a, Article 52, Article 55.

⁷¹ A written agreement was made on 18 October 2004 between 40 property right holders and Istog/Istok Municipal Assembly.

⁷² No decision to determine the common interest has been adopted.

⁷³ In Istog/Istok the municipality deems only one case – the renovation of a bridge in Zabllaq/Zablacë as an expropriation case.

⁷⁴ In 2004 a Kosovo Albanian resident of Donja Bitinja/Biti e Poshtme donated part of his land to the Municipality for the construction of an elementary school. The donation was registered in a contract signed by the aforementioned person and the Municipality.

⁷⁵ Among ten property owners whose land has been used to build a sewage system only one was compensated. Allegedly, the rest just ‘agreed verbally’ for their land to be freely used.

⁷⁶ Article 11 of the Law on Transfer of Real Property (Official Gazette of SAPK, 45/81 and 29/86) allows property right holders to waive their rights to the benefit of the municipality.

⁷⁷ In this Municipality, apart the construction of the road Komoran/Komoranë-Carralevë/Crnoljevo, another case has been identified where a water supply funded by the Red Cross shortly after the conflict was installed on lands without lawful owners being identified..

with the rural village of Mushtishtë/Mušutište. When the first proposal of a road construction was raised in 2000, the property right holders initially permitted the Municipality to take their land without compensation. Apparently the owners thought the infrastructure improvements would lead to an increase in the value of their property. Despite promises from the Municipality to compensate the property right holders at a later stage, this has not yet happened.

In some municipalities, payment of compensation has been severely delayed. In a case in Dragash/Dragaš, it took five years for the local authorities to finally pay the lawful owners. In Fushë Kosovë/Kosovo Polje, owners are still waiting for compensation following work begun on the Sitnica River in 2003.

The law requires municipalities to set compensation rates through an annual Municipal Assembly decision.⁷⁸ However, the municipal assemblies do not usually publicly vote on an annual decision for compensation rates, but rather appoint *ad hoc* commissions with insufficient guarantees of transparency and accountability. Such practice has been identified in Kaçanik/Kaçanik, Suharekë/Suva Reka, Fushë Kosovë/Kosovo Polje, Pejë/Peć.⁷⁹

Some municipalities have compensated in kind with socially owned parcels. This is in breach of the reserved powers of the UNMIK SRSG over public, state and socially owned property. The administration of public, state and socially owned property is a reserved competence of UNMIK.⁸⁰ The right to use a particular socially owned parcel is either registered in the name of a municipal body, in the name of a Socially Owned Enterprise (SOE) or a Publicly Owned Enterprise (POE). The municipalities have delegated authority to use socially owned land registered in the name of municipal bodies subject to certain conditions.⁸¹ In addition, the UNMIK Kosovo Trust Agency (KTA) has the authority to administer the assets (including land) of SOEs and POEs.⁸²

While municipalities can manage “municipal property”⁸³ on a day to day basis, the approval of UNMIK Department of Civil Administration (UNMIK DCA) is required when the terms of the land use exceeds ten years.⁸⁴ Moreover, if the land belongs to an SOE or a POE, the UNMIK DCA must co-ordinate the assessment of the request by the municipality with the Kosovo Trust Agency.(KTA) Land deemed by the KTA as “essential to the privatisation process” may not be allocated to the municipal

⁷⁸ Article 29, Law on Expropriation.

⁷⁹ In these municipalities, local officials visit inhabitants to discuss for which prices they would sell their property.

⁸⁰ Section 6.1 of UNMIK Regulation 2000/54 and Section 8.1 (q) of the Constitutional Framework for Provisional Self-Government in Kosovo.

⁸¹ See UNMIK Regulation No. 2005/13 On the Long-Term Allocation of Socially-Owned Immovable Property Managed by the Municipalities in Kosovo and UNMIK Regulation 2005/13 On the Long Term Allocation of Socially Owned Immovable Property Managed by Municipalities in Kosovo, Section 2.

⁸² See UNMIK Regulation 2002/12, as amended, on the Establishment of the Kosovo Trust Agency.

⁸³ Socially owned property registered in the name of a municipality, under the overall authority of UNMIK.

⁸⁴ Letter of UNMIK Office of the Legal Adviser to the Association of Kosovo Municipalities, 27 April 2004.

administration.⁸⁵ Moreover, the unlawful transfer and acquisition of social property is a criminal offence, punished with imprisonment of up to three years.⁸⁶

In some cases, such as in Fushë Kosovë/Kosovo Polje, the Municipality has ceased in their attempts to compensate in kind after consulting with the KTA. In other instances, the OSCE has monitored cases in which the authority of the KTA and that of UNMIK DCA are not respected. Compensation in kind with socially owned land, where the right of use is either registered in the name of the SOEs, POEs or municipal bodies, and without previous UNMIK or KTA approval has taken place in various instances. The most notorious case relates to the construction of a public building in the Gërmia park of Prishtinë/Priština, over a parcel allegedly under KTA authority. On the 18 July 2006, the Kosovo Assembly supported through a majority vote the continuation of the works in the park.

In seven projects involving expropriation procedures in Skenderaj/Srbica, the municipal authorities have compensated the owners by exchanging municipal land without receiving the consent of UNMIK.⁸⁷ A similar case has been reported in the Municipality of Prishtinë/Priština.⁸⁸ The OSCE has identified other cases of irregular use of socially owned land in this Municipality.⁸⁹

The municipal authorities mentioned above fail to respect the legal framework regulating the use of socially owned property. This in turn affects the rights of property right holders subject to expropriations, particularly in cases when socially owned parcels are provided as compensation in kind.

Overall, municipalities do not often comply with the requirement to determine and provide affected property right holders with adequate compensation. This is due to the outright lack of compensation, delays in payment, lack of transparency in fixing the rate, or lack of respect to UNMIK reserved powers over socially owned property. In addition, the practice of persuading property right holders to waive their right, prejudices property right protection.

⁸⁵ UNMIK Regulation 2006/5 on the Allocation of Land Assets currently under the Administrative Authority of the Kosovo Trust Agency to Municipal Administrations for Public Benefit Purposes.

⁸⁶ Article 259 C, UNMIK Regulation 2004/19, Amending the Provisional Criminal Code of Kosovo.

⁸⁷ See Skenderaj/Srbica Decision of Directorate of Cadastre, Geodesy and Ownership, Nr. 465-48-2/22-3 and 463-117-27, 23 March 2006; Determination of the Common Interest, Nr. 463-26, 26 March 2005 and Nr. 353-189, 23 March 2002; Decision on Expropriation, Nr. 465-420/2004.

⁸⁸ Municipal Assembly of Prishtinë/Priština, 01 Nr. 46-409, 26 March 2002.

⁸⁹ In a meeting with the OSCE on 10 April 2006, the Chief Executive Officer, stated that in cases where socially owned land under the municipality's authority was being allocated permanently, there was no need to request the approval of the Central Authority. The Municipality bases its decisions on a 'Municipal Regulation on the Conditions and Criteria on Giving Municipal Land for Construction of Permanent Objects for Small and Big Businesses', 29 December 2005.

5. Lack of effective remedies and activities of parallel administrative structures

The right to an effective remedy before a national authority for a human rights violation is enshrined in Article 13 of the ECHR. The ECtHR has stated that where an individual has an arguable claim as the victim of a violation, there should be a remedy to have the claim decided and if appropriate to obtain redress.⁹⁰ In expropriation cases in Kosovo, the remedies provided are not always effective due to inadequacies in the procedures followed or their circumvention. The activity of parallel administrative structures further erodes the ability of individuals to seek proper redress.

5.1 Lack of effective remedies.

In Kosovo, the law provides for the administrative and judicial review of municipal acts.⁹¹ Both the municipal determination on the common interest and the subsequent decision on expropriation are subject to review in compliance with the principles of independence, effectiveness and transparency.⁹² The municipal court decides on the levels of compensation in case of disagreement between the municipal authorities and individuals.⁹³

The problems identified by OSCE pertain to:

- a) inadequate and/or lack of provision of legal advice on remedies;
- b) lack of expropriation procedures; and,
- c) referral to non applicable remedial venues by parallel administrative structures.

Thus, the OSCE has observed inadequate provision of legal advice in expropriation procedures. For example, the thirty day deadline to appeal to the Chief Executive Officer established by Section 35 of UNMIK Regulation 2000/45 is on occasion shortened to 15 days.⁹⁴ In addition, it is not clear which is the body for second instance administrative review of appeals against expropriation decisions. While Section 35 of UNMIK Regulation 2000/45 refers to the 'Central Authority' as the competent second level administrative body to review complaints lodged against a municipal administrative decision, the municipalities lack guidance as to which body

⁹⁰ *Silver v. the United Kingdom*, ECtHR Judgment of 25 March 1983, paragraph 113.

⁹¹ The administrative review of municipal acts is foreseen in Section 35 of UNMIK Regulation 2000/45.

⁹² Article 17, Article 21 paragraph 2, 3,4 and Article 3d, Law on Expropriation.

⁹³ Article 50a, Article 52; Art 55 states that 'If an agreement on compensation cannot be reached within three months from the day when the decision on expropriation is final, the legal property affairs department is to deliver all acts to the municipal court to determine the compensation. The person may also apply directly to the court if the municipality does not act'. See also Article 138, Law on Non-Contested Procedure (Official Gazette of the Socialist Autonomous Province of Kosovo, 42/84).

⁹⁴ Pejë/Peć Decision on Expropriation, Nr. 03-400-2504/05. Mitrovicë/Mitrovica Executive Decision, 09-Nr. 465/46/05.

or Ministry acts as the central authority for second instance review of expropriation related decisions.⁹⁵ For example, in a case identified in Mitrovicë/Mitrovica Municipality, the Chief Executive Officer refers to the Ministry of Public Services as second instance review of his rejection of an appeal.⁹⁶ In a similar decision identified in Kamenicë/Kamenica, the Chief Executive Officer refers the complainant to the Legal Division of the Ministry of Environment and Spatial Planning.⁹⁷

The OSCE has also observed decisions that lack legal advice on available remedial venues, in contradiction with the applicable law. This is the case of a PISG of Kosovo decision of the 24 May 2005.⁹⁸ Moreover, some decisions even deny such possibility. In a case identified in Pejë/Peć, the administrative decision states that “this decision is final and there is no possibility for judicial or administrative review”.⁹⁹ In some cases, the decisions are issued by bodies not referred to in the Law on Expropriation, such as the Directorates of Geodesy, Cadastre and Ownership.¹⁰⁰ In this regard, the interaction between pre-1999 defined bodies such as the Department of Property and Legal Affairs and post 1999 bodies, such as the Municipal Cadastre Offices, create uncertainty regarding the remedies provided.¹⁰¹

In various cases, the lack of remedies arises from the fact that there is no formal expropriation. In Gjakovë/Đakovica, the construction by KFOR of a bridge allegedly followed an expropriation proposal of the Deputy Municipal President on behalf of the affected property right holders. The municipal public lawyer started the procedure of expropriation but was unable to offer any kind of compensation. The proposal was therefore rejected by the Directorate of Property and Judicial Affairs. KFOR built the bridge awaiting the outcome of the expropriation procedure.¹⁰² The affected property was never formally expropriated and thus did not have any possibility to challenge the decisions, thereby affecting his right to an effective remedy.

5.2 Expropriation by parallel administrative structures

The OSCE has also monitored instances in which parallel administrative structures conduct expropriations. These structures, mainly present in the municipalities of Zvečan/Zveçan, Zubin Potok and Leposavić/Leposaviq use a legal framework that differs from the one defined by UNMIK. This particularly affects the right to an

⁹⁵ See Property Rights in Kosovo (2002-2003) report, page 57.

⁹⁶ Executive Decision by the Mitrovicë/Mitrovica Chief Executive Officer, 02 Nr. 465-4, 30 June 2005.

⁹⁷ Decision of Chief Executive Officer of Kamenicë/Kamenica, Nr. 166, 15 March 2005.

⁹⁸ Skenderaj/Srbica Municipal Assembly Decision, Nr. 463-26, 3 March 2005 and Decision of the 27 March 2002. Prime Minister of Kosovo Decision, Nr. 344-34/01, 6 November 2003. See Article 206 (3) Law on Administrative Procedure, (Official Gazette SFRY, Nr. 47, August 15 1986).

⁹⁹ Decision of the Municipality of Pejë/Peć, 01-465-2002, 16 October 2002.

¹⁰⁰ Municipal Assembly of Gjakovë/Đakovica, Decision 465-19/1/2003, 19 December 2003; Skenderaj/Srbica Directorate of Geodesy, Cadastre and Ownership, Nr. 465-420/2004; Chief Executive Officer decision, Nr. 03-400-2504/05, 13 October 2005.

¹⁰¹ See UNMIK Regulation 2004/4, On the Promulgation of the Law on Cadastre Adopted by the Assembly of Kosovo.

¹⁰² The request for locating the bridge over "Ereniku" river was submitted by the Deputy Municipal Assembly President on behalf of the inhabitants of villages Raqa/Racë and Moglicë/Moglica. It was approved by the Board of Directors, the Policy and Finance Committee and the Municipal Assembly.

effective remedy, as individuals are referred to bodies which do not have authority over the territory of Kosovo, and which cannot provide adequate, independent and effective redress. For example, in a case in Zvečan/Zveçan, the Municipality informed the property right holders affected by an expropriation of the possibility to appeal the relevant decision to the Ministry of Finance of the Republic of Serbia.¹⁰³

Of concern are also the decisions identified in Zubin Potok Municipality, where the Municipality did not follow any expropriation procedure. Instead, the local government circumvented the expropriation procedure by purchasing land from the property right holders affected by the construction of a road, and then verifying these contracts in the non-recognised parallel court of Mitrovicë/Mitrovica.¹⁰⁴

In sum, in areas where parallel administrative structures operate, the implementation of the framework is inadequate, creates legal uncertainty and leaves individual rights unprotected.

6. Conclusion

The applicable law in Kosovo requires full respect for internationally and European recognized human rights standards. In addition, in line with the Kosovo Standards Implementation Plan, the newly established European Partnership Action Plan reflects the need for effective protection of property rights.

However, local authorities and other government authorities still either inappropriately apply or avoid the legal expropriation procedure. As a result, unlawful interference with individual property rights is a current practice. In many cases individuals do not have access to an effective remedy. Moreover, in cases involving minority community members, expropriations have discriminatory consequences, the lawful owners being most of the time unaware of the expropriation of their property.

Both the legal framework, a natural pre-requisite for establishing procedural safeguards, and its implementation by the Kosovo authorities need improvement in order to ensure property rights protection.

¹⁰³ See Decision of the Municipality of Zvečan/Zveçan Directorate Legal and Property Affairs, 03 Nr. 35-351/49-1, 15 November 2001.

¹⁰⁴ Zubin Potok, Contracts on transfer of real property, 20 March 2003, Nr. 01-464-40/42/43/44/47.