

CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



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Submission

Property Return and Restitution: Kosovo

Prepared for Review of Covenant Law Issues in Kosovo by the
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1. Introduction

Ongoing efforts to build a new cadastral registry in Kosovo, as well as related processes of property formalisation and property adjudication, are resulting in the eradication of the record of pre-1999 settlement of Roma and others regarded as “Gypsies” in Kosovo. The property system is thereby being used as a means of finalizing and cementing the ethnic cleansing carried out in the period since 1999.

COHRE is aware of a number of human rights concerns in Kosovo which should engage the Committee’s attention, in particular widespread discrimination against Roma, Ashkalis, Egyptians and others regarded as “Gypsies”, as well as discrimination against ethnic Serbs and other vulnerable minorities. This submission is limited to matters related to the failure to date of property restitution to reverse the ethnic cleansing beginning in 1999, and particular the failure of the property restitution system as concerns Roma, Ashkalis, Egyptians and others regarded as “Gypsies”.

2. Pre-Conflict/Conflict

Roma and others regarded as “Gypsies” have lived throughout southeastern Europe for many hundreds of years, arriving in a series of migration waves from India, beginning in the late Byzantine period. Roma/Gypsies have occupied a pariah status in southeastern Europe since at least the period of early Ottoman rule,¹ and very likely since the Byzantine period. During late Yugoslavia, and especially since the 1970s, efforts were made to overcome this pariah status and Kosovo became the centre of a “Roma revival”, including Romani-language broadcasting and formal recognition of Roma under the Yugoslav Constitution and the Constitutions of the individual former Yugoslav republics. As the conflict between Serbs and Albanians intensified in the late 1980s, and particularly following purges of ethnic Albanians from key positions in 1989, Roma were widely perceived (by ethnic Albanians) to benefit, as a handful of Romani intelligentsia took up positions in the administration, job previously held by ethnic Albanians. These and other developments were to condition a view by ethnic Albanians that Roma were, as a group, loyal to the Belgrade government. The period 1989-1999 has been characterised by a number of Roma from Kosovo as a time of being “between two fires” – forced to choose loyalties in a conflict over which Roma had no ownership and little interest.²

3. Ethnic Cleansing

Beginning in June 1999, following the end of the NATO bombing of the former Yugoslavia and the establishment of United Nations administration over Kosovo, Roma, Ashkalis,³ Egyptians⁴ and others regarded as “Gypsies” (“RAE”) were violently expelled from their homes in Kosovo by means including killings; targeted “disappearances” in which in many cases the persons concerned remain missing and are presumed dead; threats of killings; rape – including gang rape in the presence of family members; mass arson; wholesale destruction of houses, whole neighbourhoods and/or community infrastructure; wholesale appropriation of property; and general threats of violence carried out in the context of ethnic cleansing.⁵

¹ On Roma in the Ottoman Empire, see Marushiakova, Elena and Popov, Vesselin, *The Gypsies in the Ottoman Empire*, Hatfield: University of Hertfordshire Press, 2001.

² See Galjus, Orhan, “The Last Yugoslavs” in Roma Rights 2/1999: Roma and the Kosovo Conflict, available at: <http://www.errc.org/cikk.php?cikk=804>

³ The Ashkalis have previously been a sub-group of predominantly rural, predominantly Albanian-speaking persons regarded as “Gypsies”, originating from a particular series of extended families. In the period since 1999, and likely primarily as a result of seeking to press a collective claim to belonging in the new, Albanian-dominated Kosovo, Ashkalis have sought and gained recognition as a separate ethnic group, distinct from Roma. This has not sheltered them from attack; indications are that levels of violence are higher against Ashkalis and Egyptians than against Roma in Kosovo.

⁴ The Egyptians of the former Yugoslavia first officially appeared in the 1990 Yugoslav census, when several thousands of persons in “Gypsy” neighborhoods in particular areas of Macedonia and Kosovo declared themselves to be Egyptians. At the same time, efforts were made to secure recognition by the Egyptian embassy in Belgrade. Yugoslav Egyptians reject an Indian origin and claim to be descended from Copts settled in the Balkans in the 4th century. Similar groups exist in Albania. Some anthropologists posit that a myth of Egyptian origins is a durable remnant of previous Gypsy identities in the Balkans, the Indic origins of Roma dating only from the late 18th century and recognised on the basis of linguistic evidence (i.e. the very evident Indic origins of the Romani language). Claims to being Egyptians have not protected Egyptians from serial acts of ethnic cleansing as “Gypsies”, carried out by ethnic Albanians in the period since 1999.

⁵ See European Roma Rights Centre (ERRC), “Written Comments of the European Roma Rights Centre Concerning Kosovo, for Consideration by the United Nations Human Rights Committee, on the Occasion of Review of the Country Report of Task Forces On UNMIK”, 20 February 2006; as well as Cahn, Claude, “Birth of a Nation: Kosovo and the Persecution of Pariah Minorities”, German Law Journal Vol. 8 No. 1 - 1 January 2007.

The first indication of the ethnic cleansing – the single biggest catastrophe to befall the Romani community since World War II -- came on 5 June 1999, when a group of ethnic Albanian refugees from Kosovo in a refugee camp in Skopje, Macedonia, set upon a number of Roma in the camp and made a concerted effort to beat them to death, before camp authorities intervened. The expulsion of tens of thousands of RAE individuals from their homes began in the following weeks. In the period since that date, and in particular until 2002, as well as in organized pogroms in March 2004, violent attacks and other forms of abuse have taken place in localities including Brekovac/Brekovec, Burim/Jović, Crkvena Vodica, Dashefc/Doševac, Djakovica/Gjakovë, Dosevac/Dashevc, Ferizaj/Uroševac, Fushe Kosove/Kosovo Polje, Gjakovë/Djakovica, Gjilan/Gnjilane, Gllavicë/Glavica, Gnjilane/Gjilan, Gorna Brnjica, Hallac i Vogel/Mali Alas, Istok, Janjevo, Kačanik/Kaçanik, Kosovo Polje/Fushë Kosovë, Obiliq/Obilić, Klinë/Klina, Kosovska Kamenica, Kosovka Mitrovica/Mitrovica, Lipjan/Lipljane, Mitrovicë/Mitrovica, Obiliq/Obilić, Ogoshtë/Ogošte, Orahovac/Rahovec, Pejë/Pec, Plemetina, Podujevo, Priluzhje, Priština/Prishtinë, Prizren/Prizren, Rrahovec/Orahovac, Shtime/Štimlje, Srbica/Skenderaj, Suharekë/Suva Reka, Uroševac/Ferizaj, Velika Kruša, Viti/Vitina, Vushtrri/Vučitrn, Žitkovac/Zhikoc, and Zvezdara. Harassment continues sporadically to the present day.⁶

As is well-known,⁷ these events followed years of repression in Kosovo by Yugoslav authorities, and were immediately preceded by several years of effective civil war between a guerrilla movement known as the “Kosovo Liberation Army” (KLA) and Yugoslav forces. During this conflict, and in particular during the “Operation Horseshoe”, the military action by Yugoslav forces leading to the displacement of several hundred thousand Kosovars in the period February-June 1999, Roma were forced to undertake work assisting the Yugoslav military, including the forced requisition of foodstuffs and hardware from Kosovo shops, as well as the burial of persons killed by the Yugoslav military and/or paramilitaries. Traditions of forced labour of Roma by the military are centuries old in the Balkans, and probably date to the period of Byzantine rule. Indeed, a number of serious abuses of Roma took place in the period 1998-June 1999, particularly by KLA, on persons perceived to be collaborating with Yugoslav authorities.⁸ However, the scale and intensity of these attacks pales compared with the mass acts undertaken beginning in June 1999.

Today, approximately 35,000-40,000 Roma, Ashkalis and Egyptians currently live in Kosovo. An estimated 70,000-100,000 live outside the borders of Kosovo; the largest numbers can be found in Serbia and in Germany; smaller Kosovo Romani refugee communities exist in Bosnia and Herzegovina, Macedonia, Montenegro, Hungary, Italy, Switzerland, Spain, France, the United States,

⁶ See ERRC, *Op cit.*, and Cahn, *Op cit.*

⁷ For a comprehensive overview of the Kosovo conflict, see Judah, Tim, *Kosovo: War and Revenge*, New Haven: Yale University Press, 2000.

⁸ For example, the International Criminal Tribunal for the Former Yugoslavia indictment of Ramush Haradinaj and others includes the following: “In August 1998, at the ‘Black Eagles’ unit headquarters at Rznice, Idriz Balaj detained as prisoners Zenun Gashi, a former policeman, Misin Berisha and his son, Sali Berisha, all of Roma ethnicity. Zenun Gashi was last seen in the village of Kosuric/Kosuric, municipality of Pec/Peja. On the day of his abduction, he was observed to have been badly beaten in a car with three KLA soldiers, in the neighbouring village of Barane/Baran. While detained, Sali Berisha’s nose was cut off, in the presence of Idriz Balaj and of two other KLA soldiers. Idriz Balaj cut each of the three men on their necks, arms and thighs, rubbed salt into the cuts and sewed them up with a needle. Idriz Balaj then wrapped Zenun Gashi, Misin Berisha and Sali Berisha in barbed wire and used an implement to drive the barbs of the wire into their flesh. Idriz Balaj also stabbed Zenun Gashi in the eye. The three men were then tied behind Idriz Balaj’s vehicle and dragged away in the direction of Lake Radonjic/Radonjic. They have not been seen alive since this day and are presumed to have been killed.” (Prosecutor v. Haradinaj, Balaj, & Brahimaj, Case No. IT-04-84-I, Indictment Decision, ¶ 64 (4 March 2005)).

Great Britain, Canada, Australia and elsewhere. Despite nine years of international governance – and to the frustration of a number of countries seeking to expel Romani refugees – conditions have not yet been established for the reversal of the ethnic cleansing. Force expulsions of Roma are however nevertheless ongoing.⁹

4. “Mahallas”

Pre-conflict, many Roma lived in urban and rural slum settlements known as “mahalla”, characterised by a lack of infrastructure, variable quality housing, and irregular tenure status. In the context of the diverse ethnic settlement patterns of the Balkans, “mahalla” are semi-autonomous Roma/Gypsy enclaves found throughout the former Ottoman space, including in Kosovo. The pariah status of Roma in the Balkans, as throughout Europe, is reflected in the relative exclusion of “mahalla” from municipal services and urban infrastructure. In ownership/property terms, a “mahalla” is frequently located on municipal or “socially owned”¹⁰ land, or on land of no clear ownership. Structures built on the land may lack formal title or planning permission. However, they may be in principle entitled to property recognition as a result of adverse possession rules¹¹ or for other reasons. Also, houses may have changed hands by contract on one or many occasions.

During the summer months of 1999, many “mahalla” were destroyed and/or their inhabitants violently expelled. These included huge Romani settlements with many thousands of inhabitants such as Moravska in Pristina and Mahalla in Mitrovica, as well as a number smaller rural settlements. Some “mahalla”, such as the very old Terzi Mahalla in Prizren, enjoyed KFOR and/or local elite protection and as a result were not destroyed. Such mahalla became shelters for Roma fleeing other areas of Kosovo during the ethnic cleansing.

There has not been an accurate census of pre-conflict mahalla or of people living in them. However, a survey of pre-conflict settlements based on interviews with displaced persons in certain locations was carried out and subsequently published in 2000.¹²

5. Legal Framework

The rights of displaced persons’ and refugees to return home and to housing and property restitution are embedded in Covenant law. These rights have been particularly articulated in the “principles on housing and property restitution for refugees and displaced persons”, also known as the “Pinheiro Principles”, adopted in August 2005 and derived from the relevant existing international human rights law.¹³ As set out in the Pinheiro Principles refugees and displaced persons “have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land/or property that is factually impossible to restore as determined by an independent, impartial tribunal”. In addition, “all refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual

⁹ See for example, “Kranker Frau droht Abschiebung”, *Mitteldeutsche Zeitung*, 30 March 2008.

¹⁰ For example on the property of a factory or former collective farm.

¹¹ Black’s Law Dictionary defines adverse possession as “The doctrine by which title to real property is acquired as a result of such use or enjoyment over a specified period of time.”

¹² See Gesellschaft für bedrohte Völker (GfbV), “Unter den Augen der KFOR: Der Exodus der Roma, Aschkali und Kosovo-Ägypter”, Goettingen, 2000.

¹³ UN Sub-Commission on the Promotion and Protection of Human Rights, “Principles on Housing and Property Restitution for Refugees and Displaced Persons”, E/CN.4/Sub.2/2005/17, adopted 11 August 2005.

residence, in safety and dignity (...). At issue in the “Pinheiro Principles”, and relevant for the factual matters in this submission, are the following bands of fundamental human rights: (i) housing and property restitution; (ii) protection from displacement; (iii) peaceful enjoyment of possessions; (iv) adequate housing; (v) respect for home and privacy; (vi) freedom of movement; and (vii) voluntary return in safety and dignity. The foregoing would need to be undertaken on a non-discriminatory basis.

6. Property Restitution in Kosovo¹⁴

The international governance structures established by UN Security Council Resolution 1244 establishing the United Nations Interim Administration Mission in Kosovo (UNMIK) have put in place a procedure for assessing property disputes. Before it was transformed in March 2006, the Housing and Property Directorate/Housing and Property Claims Commission (HPD/HPCC) adjudicated 29,160 residential property claims (100 percent of its caseload). 5,082 of these decisions resulted in a request for repossession of the successful claimant. Others have involved: (i) Destroyed property: 10,138 of the HPD/HPCC claims have found the property to be destroyed.¹⁵ The HPD/HPCC offered no remedy or compensation for destroyed property, only a declaratory statement by the HPCC confirming lawful possession; (ii) 2147 withdrawn claims, settled separately; (iii) around 5,000 properties are “under administration” (3,533 upon the request of a successful claimant and the rest as a result of an ex officio inventory by the HPD). In these cases, the occupant receives a temporary permit to remain in the property. A rental scheme is being implemented to ensure a regular income to the displaced property right holder. The HPD/HPCC has been transformed into a Kosovo Property Agency with an expanded mandate. The KPA covers all claims on private immovable property which are related to the conflict (including agricultural and commercial property). As of mid-2007, and since its establishment in March 2006, the KPA had received 20,887 claims.¹⁶

As of May 2007, there were also reportedly around 20,000 compensation claims before Kosovo courts arising from the destruction of property in 1999 and 2000. These have been suspended by the UNMIK Department of Justice. A majority of these cases are claims against UNMIK, PISG or KFOR, predominantly by Kosovo Serb displaced persons. Levels or extent of participation of Roma, Ashkalis and/or Egyptians in these procedures is not known. These claims were encouraged by Serbian political leaders, and most of them were brought under one article of the former Yugoslav law on contracts and torts making the local authorities liable for loss due to terrorist acts, street demonstrations or public events.¹⁷

7. Informal Settlement Development Policy

Under international pressure, the period from 2003 has seen an increase in the engagement of the government institutions in Kosovo to regularise “mahallas”, in policy terms called “informal settlements”. These issues have been included in Kosovo’s European engagements. European Council Decision 2006/56/EC of 30 January 2006 on the principles, priorities and conditions

¹⁴ COHRE interviews, Kosovo, May 2007.

¹⁵ See: www.hpdkosovo.org.

¹⁶ See www.kpaonline.org

¹⁷ For more information see reports of UNMIK to the Secretary General on Technical Assessments of Standards Implementation, publicly available at www.un.org.

contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC, sets out, among key priorities with respect to Kosovo, “Regularise informal settlements. Find sustainable repatriation solutions for the integration of Roma minority communities that are living in hazardous living conditions in camps and for internally displaced persons groups living in informal centers”.

Accordingly, these matters are operationalised in Priority 31 of the Kosovo Action Plan for the Implementation of European Partnership 2006,¹⁸ which sets out ten specific actions for a range of institutions in Kosovo, including in particular the Ministry of Environment and Spatial Planning (MESP) (several departments), the Ministry of Local Governance Administration (MLGA), the Kosovo Assembly (AoK) and municipalities. A number of pilot initiatives are ongoing, led at the central level by the MESP, with the assistance of a number of agencies, most notably UN HABITAT. Pilot initiatives to date focus on settlements in Gjakove/Djakovica, Pec/Peja, Gjilan and Mitrovica. These matters are proceeding despite an inadequacy of data on informal settlements, either currently existing or pre-conflict. There are genuine concerns at the willingness of the government to continue with these reforms after the independence of Kosovo, declared in early 2008. There are also concerns at the capacity of central government in Kosovo to persuade local authorities to implement these central policies.

8. Modernising the Cadastral Registry

Ongoing efforts to regularise mahallas/informal settlements are proceeding parallel to efforts by Kosovo authorities to upgrade, improve and digitalise the cadastral registry. European Council Decision 2006/56/EC defines as a key priority: “Complete legislation and actions to safeguard property rights notably on ownership possession; occupancy and rights to residential and non-residential property including the legislative framework to regulate construction. Harmonise municipal regulations and establish a mechanism for the effective resolution of commercial and agriculture property disputes. Increase public awareness on consequences of illegal construction.” The cadastral registry in Kosovo has been the subject of high-level political engagement, since major parts of it were taken to Serbia by Yugoslav forces during the June 1999 withdrawal. Return of the cadastre is envisioned as part of the status settlement. However, since property records also exist at Kosovo’s administrative courts, efforts to build a comprehensive cadastre are also proceeding independent of status talks. An ongoing project, supported by the international community, is currently digitising the cadastral registry in Kosovo.¹⁹ A representative of the Kosovo Cadastral Agency – the central coordinating body for Kosovo’s cadastral registries – recently described these efforts as making a “new cadastre” in which “all citizens of Kosovo will have to come forward to re-register their property”.²⁰

¹⁸ UNMIK Office of European Integration and Office of the Prime Minister, Agency for European Integration, “Kosovo Action Plan for the Implementation of European Partnership 2006”, August 2006 (hereinafter “Kosovo EPAP 2006”).

¹⁹ See Kosovo Cadastral Agency, “WEBGIS KOSOVO, Terms of Reference, System Design and Work Plan”, available at: http://kca-ks.org/download/WebGIS_Terms_of_reference.pdf. See also Bjørn Vagle and Fernando De Medina-Rosales, “An Evaluation of the Housing and Property Directorate in Kosovo”, NORDEM Report 12/2006, available at: <http://www.humanrights.uio.no/forskning/publ/nr/2006/1206.pdf>.

²⁰ Information provided during meeting at OSCE Headquarters in Pristina, May 16, 2007.

9. Unmaking Ethnic Cleansing

Authorities in Kosovo overseeing property restitution have developed a number of innovative mechanisms, for example advancing the ability of administrators to secure the rights of expelled persons to their housing and property even in advance of their willingness or ability to return housing, property or land from which they have been forcibly expelled.²¹ These facts notwithstanding, nine years of international administration have failed to unmake the powers of ethnic cleansing which have forced tens of thousands of persons into exile or displaced internally on an ethnic basis, and made possible the seizure of their housing, land and property. Indeed, entire Romani settlements, some existing for several hundred years, have been entirely eradicated from existence, their inhabitants remaining in various states of displacement close to a decade after first being expelled. The current review by the Committee of Covenant issues in Kosovo provides an important opportunity to delineate the parameters for unmaking ethnic cleansing in Kosovo and for implementing genuine property restitution for all Kosovars, including its most excluded minorities.

²¹ See Organization for Security and Co-operation in Europe Mission in Kosovo, Department of Human Rights, Decentralization and Communities, "Eight years After: Minority Returns and Housing and Property Restitution in Kosovo, June 2007.