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ROUGH JUSTICE

An Ethnography of Property Restitution and the Law in Post-War Kosovo

Agathe C. Mora

PhD in Social Anthropology
University of Edinburgh
2018
For Jon and Emile
Declaration of own work

I hereby declare that this thesis was composed by myself, and that the work contained within is entirely my own, except where stated otherwise by reference or acknowledgment. No part of this thesis has been submitted for any other degree or professional qualification.

Edinburgh, 1 June 2018

Agathe C. Mora
Abstract

This thesis is an ethnography of the practice of property restitution in post-war Kosovo. The site of the largest European Union rule of law mission (EULEX) outside its member states, Kosovo is a paradigmatic case of liberal interventionism and state building under the banner of human rights.

The thesis is based on 14 months (May 2012 to July 2013) of multi-sited, ethnographic fieldwork in and around the Kosovo Property Agency (KPA), the administrative, mass claims mechanism put in place by the UN to adjudicate war-related property claims between 2006 and 2016. Working with claimants and respondents, administrative clerks, national and international lawyers, commissioners and Supreme Court judges, this study presents novel insights into the everyday workings of the law from within an institution that remained largely closed to the public eye.

I investigate the ways in which property, and property rights were reconfigured in post-war Kosovo through the processing of claims at the KPA. To understand how restitution worked, I probe the practices of technical-legal knowledge production by examining key moments of mass claims adjudication: the reframing of grievances in the language of the law, the making of institutional, legal knowledge, the legal analysis of files, and the implementation of decisions.

Through this, I look at the consequences of the juridification of normative ideals (human rights and the rule of law) on the restitution process, its protagonists, and the law itself. My ethnographic material suggests rethinking the value of binary analyses of victims and perpetrators, the universal and the vernacularised, ‘law of the books’ and ‘law in action’, the extraordinary and the ordinary, and traces the everyday production of ‘rough justice’.

Building on current debates in anthropology of law on the bureaucratisation of human rights, transitional justice, and legal practice, my research reveals the tensions between the ideals of human rights that underpin the process of property restitution and the legal and political realities of transition.
In all societies, [...], human handiwork tends to take on a life of its own. Human beings forget that the world is not simply given; it is also made and made over in everything they do. Speaking of our proclivity for reification (Vergegenständlichung), Marx observed that ‘the process disappears in the product’. A gap opens up between our activity of shaping the world and the end products of that activity, and we tend to disown the part we play in making the world what it is. Practical knowledge gives way to a purely theoretical knowledge, which tends to lose touch with the immediacies of lived experience. As I see it, one of the tasks of anthropology is to close this gap, exploring the practical and social underpinnings of abstract forms of understanding, disclosing the subject behind the act, and the vital activity that lies behind the fixed and seemingly final form of things.


Property restitution is [...] a struggle of certain groups and persons to tie property down against others who would keep its edges flexible, uncertain, amorphous. It is a struggle of particularization against abstraction, of specific clods of earth against aggregate figures on paper, and of particular individuals and families, reasserting thereby their specificity against a collectivist order that had sought to efface it. The story of property restitution is a story of forming (or failing to form) potentially new kinds of social identities based on property and possessing.

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# Glossary of acronyms

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CIPR</td>
<td>Certificate of Immovable Property Rights</td>
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<td>CPT</td>
<td>Case Processing Team</td>
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<tr>
<td>CRPC</td>
<td>Bosnian Commission for Real Property Claims of Displaced Persons and Refugees</td>
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<td>CRPK</td>
<td>Civil Rights Programme/Kosovo</td>
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<tr>
<td>DP</td>
<td>Displaced Person</td>
</tr>
<tr>
<td>DTI</td>
<td>Department for Trade and Industry</td>
</tr>
<tr>
<td>EAR</td>
<td>European Agency for Reconstruction</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention on the Protection of Human Rights and Fundamental Freedoms</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EULEX</td>
<td>European Union Rule of Law Mission in Kosovo</td>
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<tr>
<td>FDM</td>
<td>File and Data management Unit</td>
</tr>
<tr>
<td>FHM</td>
<td>Family Household Member</td>
</tr>
<tr>
<td>FYROM</td>
<td>Former Yugoslav Republic of Macedonia</td>
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<tr>
<td>GPS</td>
<td>Global Positioning System</td>
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<td>HPCC</td>
<td>Housing and Property Claims Commission</td>
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<td>HPD</td>
<td>Housing and Property Directorate</td>
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<td>HQ</td>
<td>Head Quarters</td>
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<td>ICO</td>
<td>International Civilian Representative</td>
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<td>Acronym</td>
<td>Full Form</td>
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<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<td>KCA</td>
<td>Kosovo Cadastre Agency</td>
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<tr>
<td>KPA</td>
<td>Kosovo Property Agency</td>
</tr>
<tr>
<td>KPCC</td>
<td>Kosovo Property Claims Commission</td>
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<tr>
<td>KPCVA</td>
<td>Kosovo Property Comparison and Verification Agency</td>
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<td>KTA</td>
<td>Kosovo Trust Agency</td>
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<tr>
<td>MCO</td>
<td>Municipal Cadastral Office</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<tr>
<td>NGO</td>
<td>Non Governmental Organisation</td>
</tr>
<tr>
<td>NORDEM</td>
<td>Norwegian Resource Bank for Democracy and Human Rights</td>
</tr>
<tr>
<td>OLA</td>
<td>UNMIK’s New York based Office of Legal Affairs</td>
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<tr>
<td>OSCE</td>
<td>Organisation for Security and Cooperation in Europe</td>
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<tr>
<td>PAK</td>
<td>Privatization Agency of Kosovo</td>
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<td>PL</td>
<td>Possession List</td>
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<td>PoA</td>
<td>Power of Attorney</td>
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<tr>
<td>POE</td>
<td>Publically Owned Enterprise</td>
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<tr>
<td>PRH</td>
<td>Property Right Holder</td>
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<tr>
<td>PVAC</td>
<td>Property Verification and Adjudication Commission</td>
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<td>RO</td>
<td>KPA regional office</td>
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<tr>
<td>SAA</td>
<td>Stabilisation and Association Agreement</td>
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<tr>
<td>SATRC</td>
<td>South African Truth and Reconciliation Commission</td>
</tr>
<tr>
<td>SC</td>
<td>Supreme Court KPA Appeals Panel</td>
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<tr>
<td>SDC</td>
<td>Swiss Development Cooperation</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
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<tr>
<td>SOE</td>
<td>Socially Owned Enterprise</td>
</tr>
<tr>
<td>SOP</td>
<td>Standard Operation Procedures</td>
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<tr>
<td>SRSR</td>
<td>Special Representative of the Secretary-General</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
</tr>
<tr>
<td>UNV</td>
<td>UN Volunteers</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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A note on place names

In Kosovo, all places have Albanian and Serbian names. In this thesis, I use the conventional English translation, except when quoting from interviews, where I use the terminology chosen by my informants. The maps show Albanian and Serbian place names, or the English translation when it corresponds to both versions.
Fig. 1: Western Balkans centred on Kosovo, by Jon Schubert, 2018
Fig. 2: Kosovo, its regions and KPA regional offices, by Jon Schubert, 2018
Fig. 3: Central Pristina, by Jon Schubert, 2018
INTRODUCTION

The Kosovo Property Agency (KPA) was the quasi-judicial, mass claims mechanism for the resolution of war-related, private immovable property claims of residential, commercial and agricultural nature. It was created by the United Nations Interim Administration Mission in Kosovo (UNMIK) in 2006, seven years after the Kosovo War. It was transformed into an independent, Kosovan institution in 2008 and ceased to exist in 2016. 96 per cent of KPA claimants were displaced Kosovo Serbs who had been forced to leave Kosovo in 1999. KPA lawyers, the judges of the Supreme Court KPA Appeals Panel (hereafter, SC) and parties all agreed: the KPA and its adjudicatory commission, the Kosovo Property Claims Commission (KPCC), processed documents to adjudicate claims and issue decisions. It managed paper to produce more paper. The rest was out of the KPA’s hands.

My lawyer informants knew of no changes to the cadastral records that were done on the basis of the institution’s decisions. Evictions of ‘illegal occupants’, one of KPA’s sole tangible implementation mechanisms, had only short-term effects because the national judiciary did not enforce the prohibition of illegal occupation. Illegal third-party constructions that should have been destroyed by the institution were left untouched, although a Constitutional Court judgement had ordered the KPA to go through with the destruction. More strikingly still, the number of Kosovo Serbian displaced persons (DPs) returning to Kosovo was decreasing each year. Claimants complained that compensation, a preferred remedy, was outside the mandate of the institution, and that sales of claimed properties were not made easier with a KPCC decision in hand.

A Kosovo Albanian police officer I had met in the KPA regional office (RO) in Peja, Western Kosovo, and who was often working with the KPA during evictions, summarised the problem. He had come to the RO to fill in the ‘notice of participation’, by which he would become the responding party (‘respondent’ in KPA jargon) to the KPA claim lodged about the plot of land on which he had recently built his house. The police officer had bought the plot in good faith ten years
back, and had found out through the KPA notification process that the ownership of the plot was being claimed by a Kosovo Serb displaced by the war in 1999, and now living in Serbia. The officer emphasised that he had valid documents from Kosovan institutions to prove his legal rights to the plot, and that the Kosovo Serbian claimant’s property documents had no doubt been fabricated by Serbia. The KPA regional officer told him that bringing his property documents to the KPA was the right thing to do and that a decision would follow.

A little worked up, the policeman retorted: ‘But what is a piece of paper good for here? As if a piece of paper could destroy my house and move my plot of land to Serbia!’ Further investigation would later reveal that the sale intermediary was the holder of a fake Power of Attorney (PoA). He had taken the sale money and disappeared. In this case, both the Kosovo Serbian and Kosovo Albanian parties had legal rights to the property claimed. However, apart from receiving a decision, as the policeman intimated, nothing changed.

How and why did the property restitution process, which operated without apparent ‘impact’, proceed the way it had? I answer this question through ethnographic work, a situated account of the ‘structured field of knowledge and action’ of a legal institution (Wilson 2017: 268). The goal of this thesis is to understand how the institution learned what it claimed to know, what it chose to remember, and the effects of such legal knowledge production on the idioms of property and property rights, the protagonists of property restitution, the larger socio-political terrain, and the law itself.

The introduction lays the foundations for this analysis. It begins by staking out the conceptual perimeters and situating the KPA within a history of Kosovo’s tumultuous property regime changes, post-war ‘transition’, and the transitional apparatus. It then proceeds to a discussion of the methods and ethical challenges of doing ethnography in and around the KPA, and it concludes with an overview of the chapters of the thesis.
On rough justice

‘Rough justice’ in the title of this thesis is an emic analytic drawn out from my conversations with the SC judges I worked with. A form of transitional justice, rough justice emphasises the procedural qualities over the substantive aspects of the concept of justice — otherwise a fuzzy term that eludes definition. The conception of justice associated with the current phase of transitional justice, of which the truth and reconciliation commissions and international criminal courts are prime examples, has moved away from ideals of restorative justice and national reconciliation. Nowadays, transitional justice mainly focuses on the strengthening of state bureaucracies through the fostering of liberal constitutionalism, rule of law, and human rights (Anders and Zenker 2014: 404; Wilson 2001).

Such a discursive category of justice is first and foremost embedded in the procedures themselves. Justice is equated with a formal understanding of the rule of law, with fairness and equitability, as an institutionalised and increasingly hegemonic ‘rationale’ for social action (Clarke and Goodale 2010: 11). This conception of justice is performed through the workings of transitional rule of law institutions such as the KPA, more than through the impact such projects might have on citizens’ conceptions of justice, which are always multiple (Eltringham 2014).

As I elaborate in chapter six, the SC judges saw in rough justice a source of legitimation for the restitution of property rights undertaken by the KPA. Rough justice defined what was procedurally reasonable considering the circumstances of transition, while allowing diverging interpretations of ‘reasonable’ to meet halfway. Rough justice, in their understanding, outlined and legitimated the procedural rationale, even if this rationale and its effects remained contested. Far from being a matter of bad implementation or bad cooperation between institutions, rough justice was contained in the law; the law itself dictated the framework of knowledge and the limits of action.

Rough justice implies that ‘full’ justice cannot be achieved, that there is a gap between the ideal of procedural justice and legal practice. In the anthropology of law, the gap between ideology and practice has variously been understood as the result of failure to take into account a plural understanding of justice (Goodale and Merry 2007; Clarke and Goodale 2010), or as an issue of scale (Merry 2006b). It has also
been analysed as a necessary consequence of legalism: law is not about justice (Dembour and Kelly 2007). Lawyers, in this discussion, are often seen bridging the gap. They seem, however, to embody either idealised or failed justice. They impersonate an idealised vision of justice through cause lawyering (Sarat and Scheingold 1998), or through their work as translators (Merry 2006b) in making sense of the ‘global’ in the ‘local’. Yet lawyers also represent failure in that their own career-oriented agenda is not always geared towards the best interest of their clients: ‘the market-orientated conception of the profession sees lawyers as essentially a self-serving monopoly’ (Lee 2017: 9; Scheingold 1999; Halliday and Karpik 1997).

This problematic gap is ubiquitous in the anthropological literature on bureaucracy and institutions as well, which never live up to the lofty ideals (transparency, efficiency, accessibility, responsiveness) they profess to work towards (Herzfeld 1993; Graeber 2015; Niezen and Sapignoli 2017). In the anthropology of the state, the ‘vexedness of implementation’ is often understood as a problem of institutional weakness or subaltern resistance (Mathur 2016: 15; Gupta 2012). The anthropology of development has shown that projects rarely turn out the way they were intended, opening up avenues for local re-appropriation, negotiations of citizen rights, etc. (Ferguson 1994; Mosse 2005; Murray Li 2007). The anthropology of human rights, in turn, has traced the gap between institutional practice and the implementation of ideological goals, or the ‘policy-practice problematic’ (Hoag 2011: 81), to disillusionment and disenchantment. Human rights, in this perspective, have lost their substance, their potential for social action (Douzinas 2000). At best, they are vehicles for cynical contestations of citizenship (Allen 2013), and at worst, the implementation of ‘soft law frameworks’ are co-constitutive of ‘the emergence of new illegalities’ (Sandvik 2011: 15).

Important as these critiques of ideology and of the violence of its (non-) implementation are, they obscure the ways in which institutions actually function (Mathur 2016: 17). While ‘justice’ evokes an ideal, ‘rough’ is more than just its imperfect implementation. ‘Rough’ also implies malleable material, unfinished but full of potential, which requires craftsmanship to achieve its intended form and function. The inherent contradictions of rough justice can serve as a red thread to
think through ‘how law knows’. It pushes us to think beyond analytical binaries such as law vs. justice; global vs. local; black letter law vs. law in action; institution vs. its bureaucrats/lawyers; transition vs. normality; the political vs. the technical; success vs. failure.

Rather than focusing on the gap between ‘rough’ and ‘justice’ as a failure of implementation, a doomed endeavour, or a state of exception conditioned by ‘transition’, this thesis looks at the ‘bricolaging’ (Lévi-Strauss 1962) that takes place in the interstices between legal ideology and legal practice (see chapter four). These interstices are made up of social relations, as well as the constraints and possibilities that require and engender creativity. Law, in this understanding, is best defined as a plethora of heterogeneous ‘raw materials’ (McBarnet 1983) of which lawyers make use in their everyday practice.

Focusing on everyday bureaucratic practices opens up analytical perspectives that go beyond the shortcomings of implementation (Mathur 2016; Hetherington 2011; Hull 2012b; Feldman 2008). I do so by looking at the procedures of legal knowledge production to understand how the institution dealt with factual uncertainty, followed due process, constructed evidence, and took decisions amidst the moral dilemmas of lawyers and a fraught political environment.

I conceive of legal knowledge production as a network ‘of people and of things in which legality is not a field to be studied independently, but is instead a way in which the world is assembled, an attribute that is attached to events, people, documents and other objects when they become part of the decision-making process’ (Levi and Valverde 2008: 806). I follow in the footsteps of anthropologists of law who, at least since the 1970s and Laura Nader’s injunction to ‘study up’ (Nader 1972) have been interested in the making of law (Latour 2002; Valverde et al. 2005; Good 2007; Kelly 2012), and ‘how law knows’ in international institutions and settings (Riles 2000; Clarke and Goodale 2010; Wilson 2011; Eltringham 2013; Anders 2014; Merry 2016).

In this framework, I pay special attention to the work of paper and documents as technology and ‘mediators’ (Latour 2005: 39; Hull 2012a: 253); their form and content and their performative and affective dimensions. As the policeman pithily summed up in the opening vignette, what the institution produced was paper. This
epitomises the aporia of bureaucracy: bureaucratic systems auto-generate bureaucratic procedures, reproducing themselves endlessly through the accumulation of paper. The bureaucratic process exists to put in place a second process that would allow a third to continue the bureaucratic reproduction (Power 1997; Shore and Wright 2000; Strathern 2000; Cowan and Billaud 2015). As one of my lawyer informants quipped, ‘there will need to be a new mandate after the new mandate to correct the mistakes we will make’.

The outcome of the process was the number of decisions printed on paper. These decisions became an aim in themselves — both for parties and for the institution. Property rights and the properties claimed were *paperised* through the legal process. As I develop in chapter two, the substance of loss-as-property shifted from earth to paper: the decisions came to embody and materialise property, itself generating new forms of social action and highlighting the importance of paper in articulating political and legal subjectivities. The institution produced no more than decisions as paper: a source of relative disenchantment for the legal professionals involved and of cynicism for the Kosovo Albanian parties. Yet, paper also represents hope, albeit *paperised* hope, the beginning of something rather than the end.

Unpacking the modalities through which rough justice is produced is thus an anthropological key to the network of legal knowledge production from ‘inside out’ (Riles 2000). The thesis charts the production of rough justice under conditions of ‘transition’ by attending to the structural and ideological contingencies and daily practice of law. It establishes the argument that the ideological, structural and epistemological conditions of the legal process have consequences for the kind of knowledge and impact the institution produced. Rough justice is as much embedded in the internal legal procedures and everyday lawyering as it is in the socio-political structures of transitional state building.
Situating Kosovo’s post-conflict ‘transition’

Rough justice took place in a very specific ideological and historical context, that of post-conflict ‘transition’. The recent history of Kosovo has been marked by a succession of regimes, and accordingly, property regime changes which culminated in ‘multilayered and overlapping transitions’ (Subotić 2015: 410). As Subotić explains, in terms of how societies deal with legacies of past violence, a major specificity of the East European post-conflict context compared to other examples such as South America and South Africa is its multiple layers of transitions taking place more or less simultaneously: ‘from weak institutions to stateness, from a centrally planned economy to some version of the free market, and from authoritarianism to some type of democracy’, as well as ‘from peace to war to unstable peace (Balkans, Caucasus)’, and ‘from multiethnic federal to ethnic nation-states (Yugoslavia, Czechoslovakia, the Soviet Union)’ (ibid). In the case of Kosovo and from the perspective of transitology in the analysis of such transformations, the conflict of 1998-99 represents the watershed after which the moment of ‘transition’ begins.

The framing of the thesis argument therefore privileges a ‘post-conflict’ over a ‘post-socialist’, or a ‘post-communist’ lens because post-socialist and post-communist transformations are integral elements of my analysis of the ‘post-conflict’ transition, and were arguably in themselves drivers of the conflict. Moreover, my focus is on the role of the international community and of UNMIK and EULEX in shaping the post-conflict transition rather than on a longer analysis of the restructuring of economy and society, and this engagement was, from the perspective of the international community, very much framed in a post-conflict logic.

Much as in post-Apartheid South Africa, “transition” had a performative dimension with practical consequences’ (von Schnitzler 2016: 18). The way this transition was conceived and put into practice can help us understand which ‘transitional justice’ instruments were considered suitable (Arthur 2009: 326). While I unearth the genealogy of property rights as human rights and its effects on the KPA mandate in greater detail in chapter one, the following overview of the successive property regime changes can give an indication of the complexity of the legal and socio-political environment in which property restitution took place. Though
Kosovo’s post-conflict transition happened ten years later than South Africa’s and in a very different context, it was still a moment of liberal triumphalism, a new world order yet unquestioned by the later ‘war on terror’, and which had overcome the bipolarity of the cold war. Bolstered by ten years of transition experience, the global machinery of transition expertise shaped the possible futures and political and legal institutions of a ‘liberated’ Kosovo.

In Kosovo and Eastern Europe the term ‘transition’ was favoured above ‘development’ (Knudsen 2010: 20). The logic of the processes, however, was rather similar. Fostering the establishment of stable market liberal democracies was seen as the best guarantee against ‘cross-border instability, including refugee flows, terrorism and criminal networks’ (Knudsen 2010: 20-21). Under this header of building stable institutions, transitional justice in Kosovo (as elsewhere in the Western Balkans) is better understood as a paradigm of the rule of law (Di Lellio and McCurn 2013: 136; Teitel 2003: 51; Subotić 2012: 107). Rather than a social reconciliation process, pursuing ‘justice’ shifted from being a moral obligation to a technical tool of peace and state building (Subotić 2012: 116; Vinjamuri 2010). Employing the language of the legal-technical makes these state building goals appear self-evident and commonsensical, obscuring the political interests, value judgements and power inequalities that lay behind them (Niezen and Sapignoli 2017: 11; Shore et al. 2011).

Framing property rights as human rights in the restitution process implied a very specific conception of state-citizen relations that was not primarily grounded in an alternative reading of the historical contingency of social relations through property as other property restitution projects have suggested, at least theoretically (In the case of South Africa, Zenker 2014; Fay and James 2008; for Romania, Verdery 2003). Rather, it was premised on the liberal ethos of equal property rights for all in a liberal democratic and multi-ethnic polity — a vision of nationhood and political order that was, through its invocation of minority rights, contradictorily contingent on the assertion of ‘group rights, of ethnic sovereignty, or primordial cultural connection’ (Comaroff 1998: 346; in Fay and James 2008: 2; see also Mamdani 1996). This ideal future had no realistic alternative, foreclosing any other
possibilities of what property restitution could have meant for an independent Kosovo.

**Property in transition: a brief history of property regimes**

Property restitution, in this context, meant the restitution of previously legally acquired rights that would have remained valid had the population of Kosovo not experienced war-related displacement, and thus a return to the *status quo ante*. The legality of property rights was analysed on the basis of a narrow, hierarchical understanding of property entitlements, which saw previous private ownership as trumping other forms of property rights. Rights emanating from very different political-historical moments and legal logics were juxtaposed and evaluated against one another in a temporal vacuum of legal technicality. This points to the paradox of transition: while purporting a clean slate and a neutral, technical break from the messy past to achieve an ideal better future, the ideological blinkers of liberal transitology led to new uncertainties and inequalities in the name of human rights.

Like in other post-socialist settings, the rights-based approach to property restitution to former owners failed to take into account ‘the multiple overarching entitlements and nodes of social control that characterize the lived experience of socialist and post-socialist agrarian communities’ (Shipton and Rodima-Taylor 2015: 234; Humphrey 1983). Acquiring rights through such property restitution programmes often did not produce effective ownership (Verdery 2003: 4), let alone effective possession of the restituted object. Considering property (and private property in particular) as an exclusive ‘bundle of rights’, as legal processes generally do, produces a truncated picture, which abstracts away underlying socio-political and historical relations. Legalism and its legal-technical mode of extracting and reconfiguring knowledge about the world ‘naturalises’ property-making (Verdery 2003: 4) and obscures the social and political relations that have led to its legalisation.

Property law in contemporary Kosovo is shaped by a succession of layered property regimes. Under the Ottoman Empire, the territory of modern day Kosovo was part of
the vilajet (Ottoman administrative region) of Kosovo and ruled by Ottoman laws and administrative regulations. Accordingly, property ownership was governed by the tapi system (certificates of allotment, tapija in Albanian), with cadastral records based on population and tax records. As there was no survey of the land, the tapija recorded the owner and their property and residence, a narrative description of the allotment and its boundaries, together with the names of the owners of the neighbouring plots. After the defeat of the Ottoman Empire in the 1912-13 Balkan Wars, the countries that took over the territories of the former Kosovo vilajet (Montenegro for the western municipalities and the Kingdom of Serbia for the east) incorporated the tapija system for these districts. They also started a first population census and land survey (Stanfield et al. 2004: 1).

Fig. 4: Tapija documents. Photo by Leart Zogjani, 2013

Following the First World War, the demise of the Ottoman Empire and the formation of the Kingdom of Serbs, Croats, and Slovenes (1918), Kosovo — the ‘sacred heartland’ of the Serbian Orthodox Church that Serbia had lost to the Ottomans in a succession of battles between 1389 and 1690 (Judah 2008: 21, 33) — was seen as having been ‘liberated’ from its ‘invaders’. These were not only the Turks, in the
Serbian narrative, but also Albanians, who at that time made up about 62 per cent of the population, and who claimed to have been the native population of these lands since the early ages of the mythical Illyrians and Dardanians (Janssens 2015: 50-51). The liberation of Kosovo brought about the large-scale migration of Turks and Albanians to present-day Turkey, and a process of colonisation by Serbian and Montenegrin colonists.

The remaining Albanians, who claimed ownership through inherited but unrecognised tapija deeds, were discriminated against (by the repression of their language, for example) and marginalised (Malcolm 2002: 285; Stanfield et al. 2004: 2). A 1920 ‘Decree on the colonisation of the new southern lands’ established that vacant state land, uncultivated communal land and land confiscated under ‘provisional measures’ in 1919, could be taken over by the colonists (Malcolm 2002: 280). A land reform in the 1930s further contributed to the reclassification of hitherto Albanian lands as state lands, which were then distributed to Serbian and Montenegrin settlers (Judah 2008: 45).

The end of the Second World War and the establishment of the Socialist Federal Republic of Yugoslavia (SFRY) with Josip Broz Tito at its head marked the next caesura. Kosovo was integrated into the SFRY in 1946: not as one of its six constituent ‘nations’, but as the autonomous region of Kosovo-Metohija, a ‘constituent part’ of the federal state of Serbia. A similar status was given to the ‘autonomous province’ of Vojvodina, in northern Serbia, where Hungarian speakers made up a sizeable part of the population (Malcolm 2002: 315-316; Cordial and Rosandhaug 2008: 15). In 1948, Tito broke with Stalin and the Eastern Bloc, making Yugoslavia an independent state. In 1961, Yugoslavia became a founding member of the Non-Aligned Movement, and remained so until its dissolution on 28 April 1992.

While an unknown number of Albanians moved from Albania to Kosovo right after the Second World War (Judah 2008: 52), a general climate of hostility and suspicion led to substantial emigration of Albanians and Muslim Slavs (‘Turks’) between 1945 and 1966 (Malcolm 2002: 322). 1946 saw the nationalisation of major private enterprises in the mining, transportation, printing, building, banking and insurance sectors. In 1958, houses comprising three or more apartments, as well as
buildings located on land designated for urban planning, were also nationalised (KPA 2011).

Mounting dissatisfaction among the Albanian population over the curtailing of Kosovo’s autonomy and their social and cultural rights in the mid- to late 1960s led to a gradual improvement of their situation. This included wide-ranging autonomy rights, changing the name Kosovo-Metohija back to Kosovo, and the upgrading of existing higher education institutions into a full University of Pristina, with teaching in Albanian (Malcolm 2002: 324-326). The new assertiveness and recognition of Kosovo Albanians culminated in the 1974 Yugoslav constitution, which gave the autonomous provinces of Kosovo and Vojvodina almost the same rights as the constituent republics. During that ‘golden age’ attributed to Tito’s rule, the higher levels of education and improved access to jobs, as well as rights to their own banking system, police, parliament and government, put Albanians in control of the province. This went hand in hand with the modernisation of infrastructures and the growth of a modest middle class (Judah 2008: 56-57). Nonetheless, Kosovo remained one of Yugoslavia’s poorest and most underdeveloped regions.

The SFRY Constitution of 1974 introduced the concept of social ownership. In theory, social ownership meant that ‘society as a whole had vested ownership rights while natural persons or legal entities [were] users only’ (Stanfield and Tullumi 2006: 4). Land parcels were nationalised and transformed into socially owned enterprises (SOEs) under the socialist ideal that property should be commonly held and managed by the collective, that is that ‘everything is owned by the workers, who contribute to the betterment of society’ (Wolf Theiss 2009: 4). These were mainly ‘agricultural cooperatives and other forms of socially owned enterprises for economic production’, with custody for the entity normally entrusted to the municipality, and citizens given non-transferable user rights (USAID 2016: 23). A subcategory of SOEs were the Publicly Owned Enterprises (POEs) that were public-interest infrastructure operators, including energy, post and telecommunications, waste management, railways, and public broadcasting (Wolf Theiss 2009: 4).

However, only nine per cent of agricultural lands was actually transformed into SOEs, with over 90 per cent still held privately, despite the shift to socialism (Stanfield et al. 2004: 4). Private land holders were listed as possessors in the
Possession Lists (PL). Over time, possession became quasi synonymous with ownership. It included ‘the right to exclude others from use; the right to enjoy; and the right to sell, give or [bequeath] the property’ (Stanfield and Tullumi 2006: 4).

Residential property ‘fell into two primary categories, private single family homes which were located mainly on the outskirts of towns and in rural areas, and socially owned apartments’ (Cordial and Rosandhaug 2008: 17). Following the SFRY law on Basic Property Relation of 1980, people in urban areas could own houses and buildings, but were only granted user/occupancy rights to the land (Stanfield and Tullumi 2006: 3). Socially owned apartments, the main form of housing, were constructed and managed by POEs and SOEs and distributed to their employees, who contributed to the upkeep with obligatory salary contributions of up to ten per cent. Despite not owning their homes, the employees were given permanent occupancy rights to them. They could be inherited by surviving family or swapped for another apartment with the respective occupancy right holder, but not be sublet, sold, or supplemented with a second residential property (ibid17-18).

There were also changes of a more technical nature that influenced the property regime. As Enver, an experienced lawyer for the CPT contested team explained,

Before the war, the cadastre was a descriptive cadastre. It is only after World War II that we established a modern cadastre based on aerial orthophotos.¹ Before these aerial photos were taken, the administration told people to put up some white signals such as pieces of linen or rocks on the land’s boundaries so that the geodesic analysts could define the boundaries on the pictures. Then these signals were used to delimitate the parcels. When orthophotos were taken, commissions were established. Geodesy officers and citizens from the region/village went to each property and interviewed the owners to find out who the properties belonged to. Owners were identified and the parcel number was given to them. The last photos of the land were taken in 1968. No aerial photos were taken of cities. The buildings in towns were

¹ An orthophoto is a uniform-scale photograph, i.e. a photographic map.
physically recorded with tacheometric recordings.² In Ferizaj [where Enver worked as a cadastral director for many years], this happened in 1955.

According to Enver, *tapija* were still issued after the Second World War to individuals — especially for agricultural lands — if the owners of the adjacent parcels went to the cadastral office and stated that the parcel belonged to that person, and if they did not claim legal rights to the parcel in question. These new-type *tapija* were only issued when owners needed them for a mortgage request. However, owing to the changed property regime, this did not represent actual ownership, but rather possession, or permanent user rights.

Kosovo did not legislate to define ownership and introduce systematic recording of land rights in the transition from *tapija* to cadastre records, as in Croatia and other parts of Yugoslavia. No Land Book was ever created in Kosovo (Stanfield and Tullumi 2006: 3). Instead, Possession Lists, showing the properties held by a single party, were the main official records of user rights. PLs were held by Municipal Cadastral Offices (MCOs). The MCOs also maintained cadastral maps that delineated land parcels, each with an identification number referenced in the PLs (Stanfield and Tullumi 2006: 3). The maps showed only land parcels and did not include apartments and buildings located in urban centres (Stanfield and Tullumi 2006: 3). Sales were permitted, but transfer taxes were so high (around 30 per cent of the purchase price), that sales were often not registered. Also, people avoided or delayed processing inheritance (Stanfield and Tullumi 2006: 5). A gap between official records and the actual situation was already visible, and it would only widen with the prohibition of Serb-Albanian sales in the 1990s and the dislocation to Serbia of a great part of the cadastre information.

After Tito’s death in 1980, the dynamics changed again quickly, with protests over poor economic conditions in Kosovo swiftly escalating (Janssens 2015: 55). Tito had managed to paper over the economic deficiencies of Yugoslavia and keep centrifugal forces in check; now the economic inequalities between Yugoslavia’s

² Tacheometry is a method of surveying in which horizontal distances and vertical elevations are determined from subtended intervals and vertical angles observed with an instrument (the tacheometer).
constituent republics became more apparent. The general decline of Communist economies and demands for freedom across the Eastern Bloc resonated in Yugoslavia, and made Yugoslav citizens more willing to demand their rights openly. A student protest against authorities in Pristina in 1981 was followed two weeks later by more nationalist shouts at the Pristina leg of the pan-Yugoslav ‘Youth relay-race’, as students chanted ‘Kosovo — Republic!’ and ‘Unification with Albania’ (Malcolm 2002: 334-335). While the university leadership promised to improve conditions for students, authorities reacted nervously, arresting student leaders and, eventually, imposing a state of emergency in Kosovo. This gave rise to more heated accusations and counter-accusations of trying to make Kosovo more homogeneously Albanian or Serbian, respectively. Throughout the 1980s, incidents of violence between the communities were played up by both sides as evidence of their people’s martyrdom (Malcolm 2002: 335-339). An infamous ‘memorandum’ of the Serbian Academy of Sciences published in 1986, stated that Serbs were suffering a ‘physical, political, and cultural genocide’ in Kosovo (Janssens 2015: 55).

This downward spiral accelerated when Slobodan Milošević, then the head of the Serbian Communist Party, came to Kosovo in April 1987 to listen to the grievances of Kosovo Serbs at Kosovo Polje/Fushë Kosova, the mythical field of blackbirds where the Ottomans had defeated the Serbs in 1389. There, he seized upon the apparently staged beating of Serb protesters by local (Kosovo Albanian) police, to state ‘no one should dare to beat you!’ and embrace the cause of Greater Serbian nationalism, upon which he built his subsequent career as a politician (Malcolm 2002: 341-342). After being elected Serbian president, Milošević manoeuvred to revoke Kosovo’s autonomy (by threatening the deputies of its provincial parliament) and increase Serbian dominance over Yugoslavia. This strengthened nationalist tendencies in the other republics, especially Croatia and Slovenia, which declared independence in June 1991. While the independence of Slovenia was accepted after a ten-day war, the war in Croatia, home to a sizeable Serbian community in the Krajina region, broke out in earnest; shortly afterwards, in 1992, war erupted in Bosnia-Hercegovina as well. There, the failure of UN troops to protect Bosnian civilians during the Srebrenica massacre became one of the key factors influencing international intervention in Kosovo (Judah 2008: 67-68).
While international attention was focused on the war in Croatia and Bosnia, Albanian members of the provincial assembly met in secret to vote on a new status and declare Kosovo an independent republic, with Ibrahim Rugova as its first elected if unrecognised president. With mounting oppression of the Albanian population, the unrecognised government established a parallel, underground system of teaching in Albanian and organising civil resistance, financed by the diaspora. Ultimately, however, the parallel institutions were unable to protect the population and assert the rights of Albanians. This resulted in the resurgence of the Kosovo Liberation Army (KLA, or UÇK in Albanian, formed clandestinely in 1993 and carrying out organised attacks from 1997 onwards) and a further escalation of violence that eventually led to Serbia’s declaration of war in 1998 (Kienzler 2010: 6-7; Del Ponte 2008: 274-275).

In terms of property regime, the 1990s were not only marked by the systematic discrimination against Kosovo Albanians, but also by a shift from a socialist to a capitalist free-market system. ‘Special measures’ introduced in 1990 resulted in the dismissal of many Albanians from SOEs, and the subsequent loss of their occupancy rights in socially owned apartments, which were then mainly reoccupied by Serbs. When occupancy rights were transformed into ownership rights during the privatisation process, these Serbs were able to benefit from their new ownership. A ‘Law on Changes and Supplements on the Limitations of Real-Estate Transactions’ enacted in 1991 stipulated that every ‘contract for the purchase, lease and sale of real estate in Kosovo’ had to be authorised by the Directorate of Property Rights Affairs of the Ministry of Finance of the Republic of Serbia. They could refuse the transaction if it had an effect ‘on the national structure of the population’. This effectively barred any sales from Kosovo Serbs to Kosovo Albanians (Cordial and Rosandhaug 2008: 19). Many sellers — both Albanians and Serbs who wanted to leave the province — resorted to informal property transactions that were never recorded in the cadastre (Cordial and Rosandhaug 2008: 19). The 1991 ‘Law on the conditions, ways and procedures of granting farming land to citizens who wish to work and live in the territory of the Autonomous Province of Kosovo and Metohija’ was also discriminatory towards Kosovo Albanians (Stanfield et al. 2004: 22).

In addition, ‘many of the property maps, cadastral books, possession lists, and transactions [sic] document archives, which comprised the “authoritative”
identification about who had what rights to what land and buildings in Kosovo, were removed to Serbia’ from local government offices in the run-up to and during the war (Stanfield et al. 2004: 5). This meant that when the open war started in 1998, there was already a great deal of legal uncertainty regarding property rights in Kosovo.

In the run-up to the open declaration of war, Serbian militias and the Serbian police were already carrying out punitive counterinsurgency operations against KLA units and suspected sympathisers. After open war broke out in February 1998, this intensified, such that by August 1998, an estimated 200,000 Kosovo Albanians had been displaced from their homes (Judah 2008: 82). In February 1999, a meeting between the warring parties under international supervision was called to put a stop to the displacements and killings and find a negotiated solution. When Serbia refused to sign the agreement after two weeks of consultation, the North Atlantic Treaty Organisation (NATO) initiated its 78-day aerial bombing campaign against strategic targets in Serbia (Judah 2008: 85-87; Janssens 2015: 62-63) — a decision that was not endorsed by the UN Security Council but that was nevertheless considered a ‘humanitarian intervention’ to avoid a repetition of the failure of international peacekeeping troops to protect civilians in Srebrenica in 1992, and in Rwanda in 1994.

While up to 300,000 Kosovo Albanians were displaced by the conflict, the withdrawal of Serbian forces following KLA advances under the umbrella of the bombing campaign resulted in the mass expulsion and flight of Kosovo Serbs. Returning Kosovo Albanians occupied the houses from which the former had been expelled, and sometimes also returned to socially owned apartments they had lost under the discriminatory laws of the early 1990s (see also chapter one).

When NATO intervened to put an end to the violence against, and mass displacement of Kosovo Albanian civilians at the hands of Serbian paramilitaries and the army of the Federal Republic of Yugoslavia (then comprised of Serbia and Montenegro), it marked a shift in the doctrine of liberal interventionism from the right to intervene to the responsibility to protect (Pandolfi and Rousseau 2016: 20). In this perspective, the Kosovo war was a ‘just’ war to protect human rights.
When Serbia gave in after 78 days of bombing, the UN Security Council passed Resolution 1244, which stipulated the withdrawal of Serbian forces and the establishment of a NATO-led international peacekeeping force (KFOR) and a UN civilian administration, the United Nations Interim Administration Mission in Kosovo (UNMIK). Before KFOR gained full control, however, the KLA established itself in many localities, leading to the terrorising, intimidation, and displacement of Kosovo Serbs, other minorities (Roma, Ashkali, Egyptian and Gorani), as well as Kosovo Albanians whose political allegiances were suspect (Tawil 2009: 11-13). During these early days, the KLA also distributed, rented out, or sold properties to loyalists and returnees, often ‘on the basis of fraudulent title or through fraudulent powers of attorney’ (Tawil 2009: 13; Das 2004). Businesses and agricultural properties formerly belonging to Serbs or to the state were also seized and redistributed.

Serbian government officials and international organisations often cite the number of Kosovo Serbs having been displaced by the war as 200,000. A more sober assessment indicates that of the 194,000 Serbs registered in Kosovo in a 1991 census, many had already left in the 1990s because of the dire economic and security situation. A 2003 report counted 129,474 Serbs living in Kosovo, which means that probably about 70,000 Serbs were displaced by the war (Warrander and Knaus 2010: 26), fleeing mainly to Serbia but also to neighbouring Montenegro and Macedonia, as well as countries further afield.

In 2000, UNMIK estimated that official records of privately held land rights corresponded to actual possession for only 30 per cent of occupied land (UNMIK/PISG 5). This increased to about 55 per cent in 2001 (Stanfield and Tullumi 2006: 5). As a result of the conflict, an estimated 300,000 homes were damaged or destroyed and as many as 75,000 properties were abandoned (UN 2000). A first property restitution mechanism focusing solely on housing, the Housing and Property Directorate (HPD), was set up to handle 29,000 housing claims (see chapter one).

Dealing with the aftermath of mass displacement but also with the ‘absence’ of any functioning government structures, UNMIK set out to rebuild Kosovo. Two concomitant forms of intervention define the post-war period: military intervention
and humanitarian action legitimated by the ‘emergency formula’ deployed side-by-side with ‘good governance’ measures aimed at building a democratic, secure, multi-ethnic and rule of law abiding polity (Pandolfi 2010: 156). UNMIK legislation recognised the existence of socially owned property, without clarifying how such rights were to be asserted without socialist institutions (USAID 2016: 23-24). Given the thorny issue of Kosovo’s future status, the guiding principle was ‘standards before status’, including the establishment of the rule of law and functioning democratic institutions, the respect of human rights and minority rights, and a working economy (see chapter one). But after a series of serious incidents of inter-communal violence in March 2004, it became clear that solving the issue of status was urgent. This paved the way for Kosovo’s ‘internationally supervised’ independence (Judah 2008: 109-111).

The Ahtisaari Plan, named after the former Finnish president, Martti Ahtisaari, who was involved as a mediator after the NATO-bombing, was endorsed by the EU and its member states but vetoed by Russia on the UN Security Council. The Ahtisaari Plan prescribed the withdrawal of UNMIK and the creation of a ‘technical’ mission to support Kosovo’s government and institutions. The mandate of this EU mission, the European Union Rule of Law Mission in Kosovo (EULEX), accompanied by a smaller International Civilian Office (ICO), was to ‘monitor, mentor and advise on all areas related to the rule of law in Kosovo. It shall have the right to investigate and prosecute independently sensitive crimes, such as organised crime, inter-ethnic crime, financial crime, and war crimes’ (Judah 2008: 114).

The mission was approved the day before Kosovo’s declaration of independence on 17 February 2008. Independence was recognised by most EU states. In June 2008, Kosovo adopted its constitution, based largely on the provisions of the Ahtisaari Plan (Wolf Theiss 2009: 1). Independent Kosovo inherited a flawed, ambiguous property regime. It was capitalist in effect, but still very much based on socialist concepts from a black letter law perspective. The 2008 constitution transformed socially owned property into state owned property, thus abolishing the category of socially owned property. A 2012 constitutional amendment then deleted the 2008 provision (USAID 2016: 24). Was the category of socially owned property reinstated, or was it a simple omission not to include the 2008 provision? The
constitution is also inconsistent in its definition of ‘state’ and ‘public’ property, referring to the terms interchangeably in some places, and interpreting them distinctly in others. The constitution fails to specify how these types of property should be managed, and whether and how they could be transferred to third parties. The status of properties owned by the former SFRY is in limbo too (USAID 2016: 25). Likewise, applicable property laws are full of gaps and contradictions. They include the pre-1989 Yugoslav socialist legislation, the non-discriminatory laws of the decade between 1989 and 1999, and UNMIK regulations and laws passed by the Kosovo Assembly after 2008 (often a sloppy copy-paste of former UNMIK regulations).

From the perspective of the UN and, from 2008 onwards, the EU and EULEX, Kosovo was transitioning not only from ‘war’ to ‘peace’ but also from allegedly ‘nothing’ — no infrastructure, no functioning institutions, no homogeneous legal framework — to ‘rule of law’. In that logic, establishing the rule of law and the protection of human rights were seen as the best tools for, and ultimate goals of, such a transition. Seeing that a long-term, political solution to the question of Kosovo’s sovereignty appears increasingly unattainable, the political goals of transition have been couched in technical terms by the rule of law experts of first the UN and then the EU.

The Kosovo Property Agency within the architecture of post-war, transitional state building

Within the architecture of internationally supervised independence, resolving property disputes was seen as a key means to alleviate the humanitarian emergency of mass displacement. Re-establishing property rights was also seen as a central precondition to kick starting economic development, and ensuring Kosovo’s future as a multi-ethnic, democratic and EU-compatible state. It is in this context that the KPA mandate for the resolution of war-related property claims was drawn up, as the second restitution mandate put in place after the war (the first being the HPD).

Following intervention under the new doctrine of ‘responsibility to protect’, there was in the implementation of transition a strong emphasis on minority rights: Serbian claimants were to benefit first and foremost from the second restitution
mandate. The first mandate, the HPD, focused on housing and occupancy rights. The mandate of the second restitution mechanism, the KPA, was to resolve ownership and user rights claims — subject to the right of appeal to the Supreme Court of Kosovo — for private immovable residential, commercial and agricultural property, and involving circumstances directly related to the armed conflict that took place between 27 February 1998 and 20 June 1999. People could approach the KPA to submit claims in the period between 5 April 2006 and 3 December 2007. During the claim intake, 38,335 claims were submitted, though some claims were separated for technical reasons leading to a total of 42,749 claims processed. 88.1 per cent of claims were agricultural land, 9.7 per cent were residential property and 2.2 were commercial. In 98.8 per cent of cases, claimants sought ownership rights, and user rights in the remaining 1.2 per cent of claims (KPA 2016: 143).

The KPA was set up as an independent, administrative, quasi-judicial and mass claim institution ‘with a clear mandate and a division of roles between its three main bodies, namely the Executive Secretariat, the Kosovo Property Claims Commission (KPCC) and the Supervisory Board’ (KPA 2012: 9). In the thesis, I use the appellation KPA to refer to the executive secretariat but also to the agency as a whole and thus comprising the KPCC, following my informants’ terminology. I refer to the KPCC when specifically addressing the adjudication process and the decisions. To emphasise the shared responsibility in the legal processing of claims, I sometimes use the appellation ‘KPA/KPCC’. Claims were processed by the executive secretariat (the KPA) before being adjudicated by the KPCC. The KPCC, the quasi-judicial, adjudicatory branch of the institution had the power to issue legally binding decisions on claims falling under the agency’s remit. Those decisions could be appealed at the KPA Appeals panel of the Supreme Court of Kosovo (SC).

In 2008, UNMIK regulation 2006/50 delimiting the mandate of the institution was incorporated into Kosovo law according to Article 142 of the Constitution. Interestingly, the second annex, mainly covering cooperation between the KPA and other government bodies (non-cooperation having proved a major issue for the agency) was left out when the regulation was adopted into law. The Institution was situated in the interstices of the national and the international. The KPA was

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3 See Section 3, Reg 2006/50
constitutitionally conceived as an independent and temporary agency operating under Kosovan law, but it acted separately from the Kosovo judicial system.

The constitution did not confer the agency the status of an international judicial body, nor did it put it under the authority of EULEX. In fact, EULEX’s links to the KPA were limited to the funding of the KPCC support office and of the SC. The operating budget of the agency was partially funded by the national budget of the republic of Kosovo, but its largest part came from several donor countries (Switzerland, Norway, Germany, etc.). Those donations were generally not long-term. Like the International Criminal Tribunal for the former Yugoslavia (ICTY) or other UN bodies, the KPA possessed limited coercive capacity because it was independent from the national institutional framework (Wilson 2017: 270). Funding shortages and the very limited political support the agency received from the Governments of Kosovo and of Serbia also hampered its investigative and adjudicatory functions. As an example of the effects of the juridification of politics of transitional state building, the centrality and political sensitivity of its mandate ultimately relegated the KPA to a peripheral position in the constellation of international and national transitional institutions, with a strictly circumscribed legal mandate, and very little financial and political means to operate.

As an administrative, quasi-judicial agency, the KPCC decision-making process was non-adversarial. The KPA/KPCC reviewed and decided on the property rights claimed by claimants, but it did not decide on the competing interests of litigants. Although the KPA also processed contested claims (i.e. multi-party claims), most of the claims processed were single-party claims that re-confirmed existing property rights. As a general rule, no hearings were held; the procedure was almost solely based on documents. Its modalities of due process were unique to the KPA. The agency operated a reverse burden of proof and claim investigation was inquisitorial (see chapters three and four). The KPA had the authority to request and compare documents from other government and judicial bodies and public entities to conduct its review of claims in Kosovo and in Serbia (i.e., the KPA ‘verification’ procedure). Its rules of procedure and evidence were drawn from a mix of Continental civil law and common law, but the KPCC was bound by precedent, as in a case-law system. The KPCC either granted, dismissed, or refused claims, or
overturned already adjudicated claims. In addition to granting a claim, the KPCC could issue a repossession order which led to the eviction of illegal occupants by the KPA, whether the claim granted was contested or uncontested (many formally uncontested properties were in fact in use by unknown occupants). The KPCC could also order the demolition and seizure of illegal structures built on successfully claimed properties — orders which were never put into practice. The KPCC also referred a very small number of claims (23) it had dismissed to a ‘local’ court.

\[
\begin{array}{|c|c|c|}
\hline
\text{Decisions by groups} & \text{Number} & \% \\
\hline
\text{Granted by KPCC} & 34496 & 80.69\% \\
\text{Dismissed by KPCC} & 5279 & 12.35\% \\
\text{Refused by KPCC} & 2051 & 4.80\% \\
\text{Dismissed by KPCC, referred to Local Court} & 23 & 0.05\% \\
\text{Dismissed by ES} & 267 & 0.62\% \\
\text{Withdrawn by Claimant} & 633 & 1.48\% \\
\text{Total} & 42749 & 100.00\% \\
\hline
\end{array}
\]

Fig. 5: Decisions by groups, KPA annual report 2016, p. 148

Under the increasing ‘managerialism’ (Mazower 2009: 11) and juridification of transitional justice as a tool of ‘good governance’, the KPA was organised as a mass claim procedure. To ‘streamline’ the process and allow the ‘quick’ and ‘efficient’ resolution of claims, it used data processing technologies, and KPCC decisions were issued in batches of claims of similar legal scenarios. The KPCC Chairperson signed ‘cover decisions’ for specific batches of claims (see Appendix 1), thereby approving all individual decisions identified in each cover decision. An individual decision was then issued for each claim indicating the claim’s details and the order approved by the KPCC in the cover decision.
DECISION

ORDER

(1) In each of the 54 (fifty-four) claims identified in parts A and B of the attached Schedule, the Commission decides that the claimant has established ownership of the claimant or the property right holder, as the case may be, over the claimed property.

(2) In each of the 54 (fifty-four) claims referred to in paragraph (1) above, the Commission orders that:

(a) The claimant or the property right holder, as the case may be, be given possession of the claimed property;

(b) The respondent and any other person occupying the property vacate the same within 30 (thirty) days of the delivery of this order, and

(c) Should the respondent or any other person occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property.

(3) In each of the claims identified in the relevant columns of parts A and B of the attached Schedule, the Commission additionally decides that the claim be dismissed to the extent the claimant seeks compensation for physical damage to, or for loss of use of, the claimed property; and

(4) In cases in which there is more than one owner, the above decisions and orders do not affect the rights of any respective co-owners.

Fig. 6: First page of a KPCC cover decision. Author’s archive
Though this thesis focuses on the KPA restitution process, the KPA was one among several transitional justice projects put in place by the international community. These were all juridical instruments rather than social and political processes. The ICTY, which ceased to exist in December 2016, is probably the most visible of those. In addition, UNMIK bolstered the national judiciary with foreign legal experts to prosecute both civil and criminal cases. It also put in place the Kosovo Trust Agency, later renamed the Kosovo Privatisation Agency, which has jurisdiction over the privatisation of socially owned property. EULEX appointed mixed panels of international and national judges to investigate, prosecute and adjudicate, among others, war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes (UNDP 2012: 34).

In 2015, the constitution of Kosovo was amended to allow for the creation of the Kosovo Specialist Chambers and Specialist Prosecutor’s Office. The court, operating under Kosovan law but based in The Hague, was set up under international pressure to investigate allegations of war

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4 There were also regional, informal and organised NGO initiatives for ‘dealing with the past’, including wartime sexual violence (Di Lellio and McCurn 2013), official commissions for investigating missing persons and other UNDP, OSCE and development cooperation projects to promote reconciliation.
crimes by the Kosovo Liberation Army against Kosovo Serbs, including allegations of organ harvesting (see chapter six).

**An entry into the field à la Nigel Barley**

_Most research starts off with a vague apprehension of interest in a certain area of study and rare indeed is the man [or woman] who knows what his [her] thesis is about before [s]he has written it._

Nigel Barley, 1986. The Innocent Anthropologist: Notes from a Mud Hut, p. 12

_“The field” is a clearing whose deceptive transparency obscures the complex processes that go into constructing it. In fact, it is a highly overdetermined setting for the discovery of difference._


Serendipity and unforeseen circumstances, some doors opening and other closing are the inevitable backdrop of fieldwork and of the practice of ethnography more generally. I chose to do fieldwork in Kosovo rather late in my first year of doctoral studies. I had read about European involvement in the rule of law sector and thought there might well be a good research project in there. But was there a transitional justice project I could study that focused on property? Kosovo and the KPA opened themselves to me through the intermediary of Gezim Krasniqi, one of the very few academics working on Kosovo in Edinburgh in 2011. By chance, Gezim’s brother worked at the KPA. A couple of emails and a few thousand words of research proposal later, and I was on my way to Pristina. I had no idea if I was going to get access to the property restitution mechanism, in what capacity I was to interact with its staff, or whether I was going to find my bearings in this completely new social environment.

Despite my fieldwork preparations, I ended up in a Nigel Barley-type of situation: everything, from the Albanian men with spherical white hats in the waiting room at Basel airport, to the intonation of the Albanian language (Pristina is about 98 per cent Albanian), and the eclectic architectural mix of Pristina — socialist brutalism interspersed with old Turkish and Austro-Hungarian buildings, leavened
with very recent and hastily constructed glass-panelled metal-and-concrete multi-storey blocks — seemed exotic and ‘Other’. I learned to play the ‘naïve young woman’ card to my advantage: I didn’t know much, so I needed a lot of explaining. This was taken to its extreme when, more than six months into my fieldwork, the Deputy Director of the KPA asked whether I knew who Josip Broz Tito was, and seemed surprised when I said I did! My background as an anthropologist was not intimidating to the legal professionals I was to meet; many of my informants thought that as an anthropology student, I must have spent most of my university studies measuring skulls and digging up mass graves.

Three days after our arrival in Pristina mid-May 2012, I had a functioning SIM card and a rental agreement for a furnished flat in the centre of town. After having visited sixteen apartments in one day, my husband and I opted for a comfy Ikea-styled one-bedroom flat less than ten minutes walk away from the KPA. Our landlords, who lived in Germany for most of the year, must have had a thing for red (perhaps unsurprisingly as it is also the colour of the Albanian flag): the entire furniture, walls and carpets, had been selected in shades of red.

Pristina is a small, easily walkable and vibrant city. Despite low wages and high unemployment, its multitude of cafés and restaurants seemed to always be full of fashionable young people (about 53 per cent of Kosovo’s population is under 25). I spent my first two weeks visiting the sights and museums: the ethnographic museum in the old town, with its reified depiction of Albanian traditions, and the National Museum in its Austro-Hungarian villa and its photographs of the Kosovo Liberation Army’s war achievements on Mother Theresa boulevard; the parliament, a couple of blocks away from our new home and its pictures of disappeared persons attached to its fences; the Newborn monument on Police Avenue, symbol of Kosovo’s independence; the 1960s futuristic architecture of the library of the University of Pristina (see the map of central Pristina, page viii).

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5 Due to its unresolved international status, Kosovo doesn’t own its own international prefix. Thanks to agreements with Slovenia and Monaco – both countries renting shares of their networks to Kosovo – one can choose between IPKO (a private venture), using the Slovenian prefix; or VALA (a subsidiary of the national telecom company) which makes use of the Monegasque’s +377. We opted for the latter (later realising that it was in fact much more expensive!).
Fig. 8: Newborn monument. Photo by Jon Schubert, 2012

I also started sending emails around, initiating contacts with Michael, the then director of the KPA, but also with property lawyers, the Swiss Development Cooperation (a major KPA donor) and NGOs working on post-war state building issues (such as LOGOS, the Swiss-Kosovo Local Governance and Decentralisation Support, the Civil Rights Programme Kosovo, CRPK, and IOM). I had a few preliminary interviews, which gave me a first glimpse of the complex Kosovan legal regime and the constellation of property institutions. They also gave me a sense of how to gain access to the KPA and EULEX, and more generally of how to move about as a young female researcher in the city and the rule of law sector.

I had a couple of awkward encounters with men in the streets. A teenage boy passed me and said, in approximate English, ‘you have good arse’. I had to get used to men staring, and later in the fieldwork, I had to fend off sexual propositions by a couple of (married or engaged) KPA colleagues. I used the ‘cultural’ card more than once: ‘In my country’, I told them, ‘women and men don’t kiss as a greeting, even if they know each other. In fact, they never touch in public’ (an obvious lie for anyone who has ever been to Belgium). Generally, being married and accompanied by my husband in the field afforded me social status and protection that I might otherwise not have had. This paternalistic positioning was counter-balanced by some of my informants referring to my husband as ‘Mister Agathe’s husband’.
I was told repeatedly in those preliminary interviews to avoid asking about privatisation, a topic that was considered too political and controversial, and to stay away from any corruption investigations in the booming yet anarchic property market of Pristina, which have seen a spate of mafia-style killings. I was also told by Albanian lawyers ‘not to believe a word that Serbs will tell you, and read Albanian books instead’, and by an international EULEX employee that ‘Albanians are known for myth-making’ — an early indicator of the challenges that I would encounter when researching issues of post-conflict state building in an environment marked by strong nationalist polarisation.

To understand what legal actors did, and what they said they did within the ‘apparatus’ of property restitution, I set out to become a bureaucrat myself. Kimberley Coles, who worked as an employee in the Election Department in Bosnia-Herzegovina, notes that becoming an active part of the bureaucratic machine ‘may be one of the best ways to understand and examine modernity’s forms, especially bureaucratic ones’ (Coles 2007: 25; Riles 2006b: 17). The access I gained as research intern to the KPA and the SC was unprecedented. I am the only researcher who has ever been given insider access to both institutions outside of a commissioned audit for the KPA.

My ethnographic method was both ‘multi-sited’ (Marcus 1995), and ‘nonlocal’ (Feldman 2011: 33). I proceeded by attending to the study of ‘location-specific practices’ (ibid) and the ‘associations and connections among sites’ (Marcus 1995: 96) and of ‘the discourses that enable, organise and effectively integrate so many disparate policy practices beyond the locality’ (Feldman 2011: 33). Property restitution is a heterogeneous apparatus in that it incorporates ‘discourses, institutions, architectural arrangements, policy decisions, laws, administrative measures, scientific statements, moral and philosophic propositions’ (Rabinow 2003: 51 citing Foucault; in Feldman 2011: 32).

This research adds to a growing literature in anthropology of law, interested in unravelling the tenets of legal knowledge production and of legal practice in the everyday beyond the ‘local’ (e.g, Merry 1997; Eltringham 2004; Goodale and Merry

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6 Although such positioning also raises particular ethical and methodological challenges, see the discussion on page 38.
My work disentangles the different building blocks of the property restitution apparatus equally by way of ‘observant participation’ (Wacquant 2004), and of the investigation of ‘the discourses that enable the emergence of such a construct as the apparatus’, which may not be readily accessible through empirical observation (Feldman 2011: 45).

Observant participation in offices of the KPA at HQ, in its regional offices in Kosovo and in Serbia, in offices of the KPCC and of the SC, was complemented by interviews and the analysis of legal texts and documents, media and social media analysis, and archival work. This way, fieldwork and the ‘field’ accompanied me throughout the research. I conducted semi-structured interviews with the KPCC national commissioner as well as one of the two international KPCC commissioners, the three SC judges, and three other EULEX judges working for the Privatisation Special Chamber and for various civil courts. I also conducted multiple interviews with the EULEX property coordinator, the former Kosovo Ombudsperson, the consultants who had conducted KPA evaluations for the SDC, and various NGO employees working for property restitution-related projects in Pristina and in Belgrade. On top of that, I interviewed 35 KPA claimants and respondents and visited a dozen claimed properties. Thanks to the services of a EULEX translator, I was also able to observe property-related court proceedings at the Basic Court of Pristina.

Inside the Kosovo Property Agency

Following the submission of my research proposal to the Executive Director, in which I suggested ‘to shed light on the intricate legal, social, cultural and economic dimensions surrounding immovable property disputes directly emanating from the 1998-99 war in Kosovo’, I received confirmation by early June 2012 that my research at the KPA would be possible. I started working as an unpaid research intern ten days later. On 11 June, I signed a 6-month Internship Agreement, which was later renewed for another six months. Among other things, including
confidentiality and schedule to which I will come back later, the contract stipulated that I was to be placed

in different units throughout the Agency and her day to day activities will be supervised by the head of the unit she is assigned to as specified in the work plan. Overall supervision will be undertaken by the KPA Executive Director.

Michael, the Executive director who gave me this access, was a reserved and fast-talking Welshman in his forties who had previously worked for the Kosovo Privatisation Agency⁷ but who was originally trained as a chemist. Designed by Michael, my schedule for the next six months aimed at giving me the chance to follow the claims processing trail from beginning to end, which is what I did. His intention was to grant me direct access to every unit directly involved in the processing of claims. I spent one week to a few months (for the CPT and KPCC) in each unit. I started on the ground floor with the information unit, to which the notification unit formally belonged, and climbed my way up the building, unit by unit. As will become clear in the subsequent chapters, this access to the entire processing chain was instrumental in shaping my understanding of the KPA process as a whole. I will briefly describe my day-to-day interactions with units so as to provide the reader with an overview of my work as a research intern.

The KPA, as a mass claims institution, was characterised by a high level of computerisation and routinisation of claims processing, and compartmentalisation of tasks between the different units. Because my research was governed by a KPA internship contract signed directly by the Executive Director, units welcomed me and taught me their work as if I were to become a full member of their team, with the exception of the CPT and KPCC. There, I had to build quite a different work relationship with my colleagues as I lacked the primary requirement to become a full staff member: an LLM in law (I will come back to this later in this section). Just like any new employee starting to work at the KPA (and this applied to the CPT and KPCC as well), I received a purely technical, computer-based training in order to

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⁷ Which was called the Kosovo Trust Agency (KTA) when he worked there.
learn how to use the computer applications specific to each unit (see also chapter five).

Fig. 9: KPA claims processing chain and support units

I was given an old Dell laptop, a desk and a chair, all of which were moved by the helpful staff of the procurement unit each time I changed offices. I would start by reading the material given to me by the head of unit, mostly the Standard Operation Procedures (SOP) and internal guidelines. My approach was then to ask staff members to walk me through their routines and explain their reasoning as I was looking at their computer screen.

Here is an example of such an interaction from my week spent with the file and data management unit. The dusty, crumbling room occupied by the archivists’ team was overflowing with documents. Files were strewn across the floor, and precarious towers of papers waiting to be filed threatened to collapse on the unsuspecting intruder. Saranda’s task that day was to ‘separate claims’ (i.e., divide a
claim into two or more new claims). This is how she explained the process to me, while walking me through the steps to be followed on her computer screen:

In mother claim file: insert pages. Go to Y Drive separation. Insert the memo in the mother claim. Print all documents until the notification report. Change data in claim intake according to request from verification, notification or CPT. Then: create physically a new claim and inform by email the different units concerned about the division.

Fig. 10: File and Data Management, photo by Leart Zogjani, 2016

After this brief one or two-day introduction, I would be given access to the unit’s computer applications and tasked with some routine task that I could perform under the supervision of the unit members. One became a KPA professional by learning the language of inter- and intra-unit cooperation; a language based on acronyms, application-centred logic and quantitative output. Each unit had a specialist outlook on the files’ database, looking only for the information they needed to perform their tasks and avoiding conflictual discussions with other teams by keeping their queries
purely technical, or by simply not asking units higher up in the processing hierarchy why they were asked to do one thing or another.

Working on electronic databases, I heard Matthew Hull explain in a Podcast interview for *AnthroTalking*, requires a highly interactive relational dynamic to information because ‘the narratives embedded in the data structure are very thin’ (30 September 2015).\(^8\) Because databases are so interactive and so easily accessible in multiple ways, the role of the ethnographer is ‘to figure out how people actually draw particulars together from these vast amounts of data and create particular stories for particular ends’ (ibid). To continue with the above example, separating claims necessitated a close cooperation among the staff of the CPT and the notification, verification and file and data management units to update the database. Rather than going into the legal details of why claims needed separating (an issue of ensuring that each claim be limited to one claimant and to one type of property only, but also a way of increasing one’s daily processing output), I will focus on the consequences of compartmentalisation instead. I was with verification at the time, adding the information related to verification that was necessary for the separation protocol. One claim, however, did not seem to need separating.

Against the advice of my verification colleague who said it wouldn’t help her do her job, I approached the notification and CPT officers who were logged as the those who had worked on that specific claim in the database, to ask why the claim needed separating. Agron from notification was helpful as always. In his late thirties, he was one of the two HQ cadastre specialists and had a technical secondary degree in geodesic science and previous work experience with the Kosovo Cadastre Agency and HPD. He agreed with my reading of the claim and laughed when I said I wanted to go talk to the CPT: ‘You know what people say about notification and CPT?’ he asked me rhetorically. ‘Notification is the catastrophe unit and CPT is the complication unit. Go, but you might not have all the facts here’.

The CPT officer, as my colleagues expected, was not pleased when I came to inquire about what I perceived as a mistake on his part. Because I was attached to verification at the time, I was considered unworthy of asking legal questions. I was...
quickly put back in my place when the CPT officer pulled out a Serbian court decision that had not been part of the file as it appeared on the verification screen, and which the CPT officer used as evidence to request separation (see chapter three for an explanation of how this might have happened). ‘It’s a factory, here. I treat the claim and decide what to do’, he said, irritated. I apologised and went back to verification, a little ashamed of my boundary-breaking initiative. As Iver Neumann showed in his analysis of speech writing at the Norwegian Ministry of Foreign Affairs, bureaucratic inertia is produced by how the process works (Neumann 2007: 184): ‘Avoiding doing anything wrong […] seems to be the main thing’ (ibid 187).

I was not going to save the system from itself because it did not need saving, I learned. In order to blend in and understand how the system worked, how stories were created and for what ends, as Matthew Hull would put it, I had to surrender to the production mechanic. A major practical dilemma posed by my double status as quasi-insider and ethnographer of the organisation, was that I had to strike a fine balance between my quest for knowledge of the system as a whole, and respecting the system’s equilibrium, and thus the doctrines of compartmentalisation and mass production, i.e., taking these as obvious and given.

My verification colleague laughed when I told her of the encounter: ‘here you have to produce. The number of claims you process counts more than anything else’. Case processing was, like a post-Fordist mass-production chain, highly structured with a pyramidal power structure and integrated computer technologies to increase the turnover (Wilf 2016: 732). It operated in two epistemological phases: a first phase of assembling the file by establishing as many trustworthy facts about the case as possible, and a second phase of legal disassembling of the file’s elements to perform legal reasoning, which I describe in chapter four.

Bureaucrats ran the first phase in the literal sense of bureaucracy, a term deriving from the French bureau, ‘office’, and the ancient Greek -kratos, ‘rule of’, or ‘rule by writing’ (Hull 2012a: 252): their work was dictated by the location of their desk in the building (i.e. the prestige of their unit in the processing hierarchy), and the software content of their computer (as a means of knowledge production through writing). The compartmentalisation and routinisation of claim processing dictated the division of labour. One’s work function and institutional habitus could be learned in-
house rather than through educational training. ‘Team and knowledge’ rather than profession or occupation have become the ‘primary locus of class and self-identification in the corporate workplace’ (Cassey 1995: 109; see also Neumann 2007).

The second phase, legal analysis, was guided by the same bureaucratic principles; officers with a degree in law who had previously worked for other units were sometime transferred to the CPT, so the two phases were epistemologically interlinked. The difference, however, was in the feeling of entering a distinct professional field when stepping into the CPT’s offices: the legal field (Bourdieu 1987).

The KPA and KPCC staff

The staff of each unit would take their coffee break at a nearby café every morning at 9.30 am, to which I was invited. It provided me with rich opportunities to discuss work and life more generally in a less formal setting. As an example of hierarchical relations among staff, it was common for nationals and internationals to congregate separately, and it became more difficult for me to spend time with the national staff in mixed units, as I was expected to remain with the internationals.

In 2012, the agency had 16 international and 264 national staff members in total, across its offices (KPA 2012: 26). Over lunch and coffee breaks, I did biographical interviews with at least one officer from each KPA unit at HQ and regional level, including in Mitrovica North, Belgrade, Nis and Kragujevac. I also recorded the life histories of about half of the national lawyers from the uncontested team, all the national lawyers of the contested team, three coordinators, and three senior legal officers (in effect, administrative support staff) of the contested team.

At the time of fieldwork, the CPT national lawyers were all Kosovo Albanians (see chapter five). The youngest were fresh out of the University of Pristina law school (one had done her Masters degree on property restitution in Scandinavia). The oldest had studied law at the same University in the 1970s and practiced law in Serbian language for most of their career. Previous work experience among national CPT staff varied. Some had worked as lawyers for former state-
owned companies, others had worked for a municipality or for other government agencies such as the Kosovo Privatisation Agency. The salary at the KPA was higher than in government administration, which allowed the institution to be selective. But the cyclical lack of funding, especially by the end of the mandate, meant that turnover was relatively high and that long-term staff members started leaving the KPA from late 2013 onwards.

An important aspect of the institutional setting was the distribution of national and international staff among units at HQ. Internationals filled ‘coordinator’ functions for the Case Processing Teams (CPT), the office of the KPCC and the implementation unit (evictions were coordinated by two international officers). The coordinator of the regional offices at HQ was an international, too. All other units were staffed by nationals, in their large majority Kosovo Albanians. 186 out of 264 national employees were paid with donor funding (through an agreement with UNHCR for the 12 KPA staff in Serbia), and 72 were Kosovo civil servants (KPA 2012: 26).

The internationals were employed at the KPA under a bewildering variety of contracts. In 2012-13, The KPCC coordinator and the KPCC head of unit (both German lawyers) were employed by EULEX on a secondment from their home countries. EULEX-seconded staff were by far the best paid among internationals, one of them rumoured to earn over 8,000 Euros a month. EULEX also employed the six national staff attached to the KPCC. The two international commissioners of the KPCC (from Germany and Finland respectively) were appointed by EULEX, while the ICO appointed the KPA Executive Director and the national commissioner (ibid).

The regional coordinator and the two eviction coordinators were ex military-personnel from Bulgaria and France, and were employed via an agreement between UNDP and the KPA, as was Dorothy, an English coordinator for the CPT who also helped Michael with board-matters and report writing. The three CPT coordinators working for the ‘contested’ team, including Magnus, the head coordinator, were hired by the Norwegian government through the Norwegian Resource Bank for Democracy and Human Rights (NORDEM). All in their early to late thirties, they had a background in immigration law and were former government functionaries.
Finally, the last three coordinators of the ‘uncontested’ team were there as UN Volunteers (UNV) from Peru, India and Canada. Their goal was to gain experience working for the UN, and they received a stipend rather than a salary, which in Kosovo was still more than sufficient. As UNVs, they were also expected to do some volunteer work in their host community, which for two of them meant working at and fund-raising for a dog shelter. One cause célèbre, incidentally, was a complicated and costly scheme to rescue a very large, terminally ill, half-blind street dog and fly her out to Canada to afford her a last couple of ‘dignified’ years — the dog had to be driven to Vienna as Adem Jashari airport in Pristina was not equipped to handle such a large animal.

Fig. 11: A snapshot of the author’s Facebook page, 2013

Beyond volunteering, pastime activities for internationals included eating and drinking out, attending ‘Human Rights’ and ‘HIV’ Happy Hours, and doing sports. I participated in these but, as this is not an ethnography of legal professionals per se, I know little about the lives of national and international staff outside working hours. Another limitation turned into a fruitful negotiation of confidentiality was my very limited knowledge of Serbian, Albanian, Spanish and Norwegian. This allowed my local and international informants to ‘retreat’ to the safety of their mother tongue
when they did not want me to understand. This happened quite often during the informal coffee break chats, and I chose never to insist on trying to find out what their conversation was about.

An anthropologist among lawyers

*Have you noticed how, when you talk to someone like a solicitor, after a while you stop sounding like yourself and end up sounding like them?*

Julian Barnes, The Sense of an Ending, p. 68

*Dive into the field, but dive prepared. Live and breathe among them... But then come back.*

Loïc Wacquant, Opening Lecture, APAD Conference 2013

First, a note on appellations. Throughout the thesis, I refer to the legal officers of the CPT as ‘lawyers’, sometimes as ‘legal professionals’ but never as ‘jurists’ for a simple reason: ‘lawyer’ was the term that legal officers of the CPT (both national and international) used to refer to their own professional capacity. The distinction made in law schools between jurists, people with a degree in law who did not pass the bar exam, and practising lawyers, carried no weight at the KPA. One needed not have passed one’s bar exam to work as a ‘lawyer’ at the KPA. ‘Lawyer’ was used in a broad sense to distinguish staff members who had studied law from all others.

After my first nine weeks of embedded research at the KPA, I progressed to the CPT. I first started working with the ‘uncontested team’, the team dealing with claims that had no responding party. Then I moved to the ‘contested team’, the team working on multi-party claims. The uncontested team was composed of four coordinators, nine national lawyers and a senior legal assistant. The contested team was composed of three coordinators, ten national lawyers and three senior legal assistants.
I immediately had the opportunity of actively participating in the drafting of the CPT’s summary legal analysis of claims. This was arduous, physical work, not least because of working conditions at the office — the eight-hour shift, cramped spaces, the sweat in summer and chill of air conditioners, the freezing temperatures in winter, the power outages and the permanent stress of meeting ambitious targets. I was imbibing knowledge through all my pores, and enjoying it.

In the uncontested office, my desk was placed next to the Canadian coordinator’s. She spent time explaining me the nuts and bolts of legal analysis by sharing her files, and enjoining me to ask questions as I deciphered them. My work with the other units had taught me how the KPA processing system worked. Here, I learned the legal reasons behind actions performed by other units, and the implications those actions had on the claims’ legal analysis.

I was not given access to the various CPT applications, and worked directly on the physical files. There was a lot going on in the office, and I tried to write it all down: the interactions between coordinators and national lawyers; the jokes and
gossip shared among the national staff and partially translated to me; the movement of files among lawyers and in and out of the office; the phone calls. Office space was sparse, which sometimes created tensions among staff members, and gave the impression that lawyers were fighting with their files for space (the files tended to win). This gave me invaluable access to everything that was happening in the office all at once.

After some time, the uncontested coordinators gave me files to control on my own for ‘quality checking’ after national lawyers had reviewed them. I would read the entire file, write down notes and compare them to the lawyer’s legal analysis, a draft of which had been printed out and added to the file for the coordinator to review. I would discuss my findings with the national lawyer in charge of that file when my findings didn’t match their interpretation, or when I had questions. We would then approach the coordinator together, to finalise the analysis. In effect, I had become an ‘in-betweener’, I had acquired a position between national and international lawyers; a presence they had agreed to indulge.

I was doing work that could be used by other staff members. This went well beyond participant observation as conventionally understood, and could best be described as ‘observant participation’ (Wacquant 2004: 6). I was in it ‘flesh and blood’ (Wacquant 2015): gaining the ‘cognitive, conative and affective building blocks’ (Wacquant 2015: 5; Wacquant 2014) of CPT habitus, acquiring ‘carnal know-how’ in the sense of both ‘intellectual understanding and dexterous handling’ by ‘acting in and upon’ knowledge (Wacquant 2015: 3). I had dived in.

But I never became, and never intended on becoming, a CPT lawyer. My researcher label stuck to my body, as did the irreconcilable limitations of my position: my professional subjectivity was ambivalent. I was an international for the national staff and a non-lawyer for the internationals. I found this especially complicated with coordinators, who, contrary to the national staff, resented being research informants.⁹ During our informal conversations outside the KPA, I felt uneasy taking notes or asking them too many work-related questions.

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⁹ They resented being research informants for at least two reasons. First, I am not a lawyer and some of them found I was, for this reason, wasting their time with my, in their view, uninformed questions. The other reason is that as an international myself, I was privy to certain conversations that they were
I had negotiated general access to the institution, and my role as researcher was undisputed. However, my active contribution and my access to the ‘back stage’ (Goffman 1959) were subject to my superior’s authority. While the cramped space and the pressure to produce had given me an impression of greater unity of purpose in uncontested, it proved a methodological challenge when I started working with the contested team. I was told there was no space for an additional desk in the contested office, which adjoined the uncontested office. Contested lawyers rejected the head of the contested team’s request to move their desks closer to one another to allow me to move in because they were concerned that less personal space might slow their work.

I ended up behind the door to the contested office. Magnus, a Norwegian who had been KPA registrar before joining the CPT as head of the contested team in 2010, gave me an introduction to their work. Compared to uncontested, they had formal teams of lawyers and coordinators. I was to be assigned to each of the three coordinators and do as I was told. I wasn’t allowed to talk to the national lawyers about cases without the express approval of their coordinator.

At first, it didn’t go well. I felt I was intruding on the contested lawyers’ work from behind the (mostly closed) door. I suggested following the same pattern of interactions as with uncontested, but sitting next to a lawyer for more than half an hour, even if I was only watching, was not an option. One coordinator in particular saw me as a potential risk to her authority and interpreted my will to help as overstepping my role. Coordinators accepted my help as long as it did not entail qualitative contributions to their work: the mere compilation of information such as indexing, formatting, etc. was all fine, but offers to do paralegal research in support of case processing were turned down. I felt comfortable within the bounds of my anthropological and ethical standards when offering my services as a paralegal (and not as a mere clerical assistant), but for the contested coordinators, I was transgressing what they perceived as the contractually agreed upon level of my participation.

One day, Magnus had had enough of ‘feeling compressed between [me] and the other lawyers’. A long and heated discussion ensued. When I asked what I could

wary of sharing with non-internationals; or they simply found their conversations and thoughts irrelevant for my research and thus didn’t see the point in me taking notes.
do to improve myself, he replied: ‘Off the top of my head, my recommendation is: be less eager. Some people have been here a long time and feel threatened by your enthusiasm’. After discussing the matter with Michael, the executive director, a solution was found. I was going to work exclusively with Magnus on claims processed by two older lawyers who wrote their analysis in Albanian. I was going to copy-edit and reformat the translation of their work according to Magnus’s template.

It was a demotion, but a useful one, as I became more acquainted with the linguistic finesses of legal analysis. I re-entered ‘back stage’ through the textual and became interested in the internal politics of formatting (see chapter five). Coincidentally, several people went on leave at the time, and I was able to sit at an absentee’s desk in the contested office for most of the time that remained. The pressure to fit in as much as possible, trying to become a lawyer when that was obviously impossible, was lifted. ‘Flesh and blood’ was exhausting, and I was quite happy to re-inhabit my researcher’s body and stop incarnating the persona of an over-enthusiastic and workaholic data cruncher 24/7. The most difficult part of doing such observant participatory ethnography is not to dive in, but to dive back out unscathed (which I am not sure I succeeded in doing).

This experience was a good preparation for my month with the KPCC. The KPCC staff begrudged my research and the access I was to gain to their daily work. This was mainly due to KPCC’s institutional affiliation with EULEX, which as far as I know has never admitted any researcher. To the former head of the KPCC support office, I had ‘entered EULEX through the back door’. My access had been discussed with the EULEX head of staff, who had suggested ‘mutual trust’, seeing as any more formal access would have been denied. The three commissioners of the KPCC were consulted as well. They would allow me to sit in the KPCC office as a favour to the KPA by way of my KPA internship contract.

My work at the KPCC was, as my direct boss there put it, ‘task-based’. I was only entitled to collect information directly related to my task, and was not to ‘make use of the database for general research’. Fortunately, this proved quite valuable. I had, among other things, the occasion to work on the draft law for the KPA’s successor institution, the KPCVA. I was also tasked with updating the jurisprudence, which ensured my being glued to my chair for most of three weeks, but also gave me
unexpected insider knowledge of the history of decision-making. I was able to help KPCC officers in the drafting of decisions through my knowledge of the jurisprudence. I was also allowed to sit in on the closed KPCC commission sessions, as well as observe the few interviews that the KPCC had with claimants and respondents for the most complicated cases.

The KPA from the outside

The daily schedule of eight hours in the office I followed for the first six months was extremely useful, especially at the beginning of the fieldwork, because it provided me with a clearly demarcated fieldwork site and straightforward research objectives. However, the strictness of the schedule as well as my double role as intern-researcher increased my workload, creating an imbalance between the high level of my participation and the scant time I had left to write about it. I decided, therefore, to take some distance from the KPA for the next eight months of fieldwork. The idea was to better balance my involvement at the KPA with other research commitments, to be freer in my movements and to gain additional perspectives on the practice of property restitution. I gained access to the SC through the deputy head of EULEX judges, Marc, a German Judge whom I first met at the Irish Pub on Police Avenue.

At the SC, where I spent over a month in total, I used my insider knowledge of the KPA system to discuss claims with the judges and their support staff (see chapter six). The SC had very little knowledge of how the KPA worked from the inside — the pressure to produce, the problems of getting access to documents, etc. Sharing what I knew was a way of making my research useful to them. I was enjoined to participate in the legal analysis of appeal cases. I was, however, not allowed to sit in on formal deliberations. I spent quite a lot of time reviewing appeals decisions, which informed my understanding of KPA’s relative exceptionality within the constellation of transitional institutions (chapter one and six).

Over the first six months of research, I had the chance to travel across Kosovo with Andrei, the KPA regional coordinator, and visit all Kosovo-based regional offices (RO) with him. I participated in the weekly ‘regional meetings’ at HQ, attended by the head of every unit directly in contact with ROs as well as all
heads of ROs. I also visited the UNHCR KPA offices in the Serbian towns of Belgrade, Niš and Kragujevac. I spent a couple of weeks in Belgrade. It was in ROs, usually situated in the centre of town, that I first interviewed KPA parties, and got a better sense of what it was like on the other side of the institutional divide.

I suspected that the Swiss Development Cooperation (SDC), one of KPA’s main funders, might be interested in funding a research project that would ‘give voice’ to claimants and respondents beyond claim files by looking at the role and practical implications of the KPA property restitution process on its ‘beneficiaries’. In the context of growing donor fatigue, it was a good way for the SDC to make the work of the KPA more empirically tangible back in Switzerland. I contacted the head of the SDC with a project proposal, and was soon the recipient of a ‘small project grant’. The Fates Behind the Numbers, the book that came out of this research consultancy, is a compilation of 22 interviews, 18 with claimants and six with respondents out of 35 interviews conducted between April and June 2013 in Kosovo and in Serbia.\(^{10}\) In each interview, I asked the interviewee to tell me their story of loss, their experience of the claiming process and what they hoped to achieve with a KPCC decision (see chapter two). Thanks to the SDC’s support, I was able to hire a photographer, a Serbian and an Albanian translator, as well as a car and a driver in Kosovo and in Serbia.

Interviewees were pre-selected randomly from a list of cases adjudicated during the October 2011 session of the KPCC, thanks to the help of the KPA IT unit. This ensured that I wouldn’t have to interview parties about on-going claims and that they would have had the time to think about what they will do with their decision. In close collaboration with the KPA call centre, potential interviewees were contacted by phone and informed about the purpose and aims of the project. If they agreed, a date and time was marked for the interview. Most often, we met them at the KPA/UNHCR office nearest their place of residence and conducted the interview there. Sometimes, we would proceed to accompany the interviewee(s) back to their home, or visit the claimed property for the photographer to document their stories in

\(^{10}\) A PDF version of the book can be downloaded for free from: https://www.eda.admin.ch/deza/en/home/publikationen_undservice/publikationen.html/content/publikationen/en/deza/diverse-publikationen/fates-behind-numbers
greater detail. I conducted the interviews with the help of a translator. The two translators then transcribed and translated the interviews, and I edited the English version. I tried to stay close to the interviewees’ own formulations in order for the text to preserve the feel of the spoken words.

Field notes

Throughout my fieldwork in Kosovo and Serbia, I was allowed to take notes most of the time, which I did in a mixture of English and French interspersed with Albanian and Serbian terms. I carried the series of notebooks everywhere. At the KPA, I used the institution’s pen, as I found that people were less suspicious about what I was writing when I used a pen they recognised as their own. While working on cases, I tried to reproduce writing practices that lawyers used. I therefore used Post-Its when working on specific cases, recording steps of legal reasoning, pasting them in my notebooks next to the day’s notes. Post-Its were a preferred means for staff members

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11 A thin, plain, black ball pen that was distributed to all KPA staff.
to record their analysis of a case, and as aide-mémoires in their discussions.\(^\text{12}\) I was given access to case files (in their paper form at the CPT and the SC), but was not allowed to take out copies. Because my Post-Its only contained summaries of legal reasoning in technical form, I had to rely on my memory and my notes to reconstruct the cases’ background. This seeming limitation proved advantageous when it came to formulating my analysis, as it helped me develop my argument about legal reasoning being a technical, black boxing-type of exercise (see chapter five).

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**Fig. 14:** Six Post-Its (uncontested claim), Author’s fieldnotes, NB3_7/09/2012

Beyond formal interviews, I had many informal discussions at work that I did not write down verbatim straightaway, but recreated from memory as soon as I could, either scribbling them down in my notebook or typing them up along with the transcription of my handwritten notes. I typed up in between meetings, during free lunch breaks, in evenings and on weekends. It was exhausting but there was so much going on, it was really the only way I could have done this without creating an immense backlog. Also, the type of data I dealt with was quite repetitive so unless I

\(^{12}\) Eitan Wilf suggests that the Post-It is a ‘key semiotic technology of idea generation’ in contemporary business-innovation contexts (2016: 732).

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typed it up quickly, I would miss details relating to the particular occasion. This meant that I sometimes worked ten, eleven hour days, which also had repercussions on my social life and perhaps also on the limited nature of my interactions with staff members outside working hours.

The daily work was so challenging and exhausting that I rarely found the energy to write down a reflexive analysis of interactions and other work-related situations. Writing about my emotions and sensibilities in the work environment during the day would have also run the risk of my informants reading them (although I don’t think they did). In the evening, I would come back home to my husband, and the day’s pent-up emotions would come spurting out; I regret not having recorded these conversations.

To save my typed notes, I first used Word, adding them consecutively in a single long document. I then discovered Evernote, a programme that allows you to tag keywords, make links between notes and search your documents, which was a great plus during writing up. I did not manage to type up all of the formal interviews that I conducted in the last couple of months in Kosovo, and had to do so when I came back to Edinburgh. I tried using a voice-recognition software called Dragon, but the result was mixed at best. Although I had trained the programme to recognise my voice, my English accent was not native enough for the software’s liking, and it kept rendering lawyers as gladiators, and formulating incongruous sentences such as ‘the lawyers entered the room naked’.

**Ethics**

The research internship contract I signed on my first day at the KPA stated that I should avoid any conflict of interest, and respect the confidential nature of the work assigned to me. To that end, I also signed a confidentiality agreement, the Oath of Office, signed by every KPA employee. With near religiously solemnity, it required of me to ‘solemnly swear (undertake, affirm, promise) to’:

> Exercise in all loyalty, discretion and conscience the functions entrusted to me as a staff member of the Kosovo Property Agency (KPA), to discharge these functions and regulate my conduct with the
interests of the KPA only in view, and not to seek or accept instructions in regard to the performance of my duties from any authority external to the KPA. I solemnly declare that I will perform my duties faithfully, impartially and conscientiously, and with full respect for the duty of confidentiality.

I also signed a very narrow and specific confidentiality statement to be able to attend KPCC commission sessions. It was made very clear to me that I could sit in and observe the KPCC deliberations but under no circumstance disclose any information about the decisions of cases directly, as this might open up the KPCC to public criticism. This was why commission sessions were held behind closed doors in the first place, but also why the KPA/KPCC process was so difficult to grasp for parties and the legal aid organisations helping parties to make sense of KPCC decisions and file appeals (such as Pravna Pomok in Belgrade). Adhering to this confidentiality request, I have not included any specific description of commission sessions, or of decision-making during the sessions.

Because I signed both contract and confidentiality agreements as a researcher, with the expressed intention of using my work experience, observations, interviews at the KPA, and all the documents I read and analysed as material for this research, things were not quite as clear-cut as the documents, originally drafted for ordinary KPA/KPCC staff, would have it.

The meaning of confidentiality as it applied to me, the research intern, was contractually unclear in the writing up phase. I understood my duty of confidentiality for the duration of my internship contract. But how was I to write about all the data collected in-house? There also seemed to be an implicit ‘scale of confidentiality’ applied to the same information in different contexts within the KPA and KPCC that remains difficult to disaggregate, especially in writing. In the end, I decided to simply use my own judgement.

Confidentiality is a context-specific and subjective notion that people understand and apply differently. Information that I was privy to as highly confidential in one setting was public knowledge in another. For example, adjudication procedures during KPCC sessions were treated as off-the-record, but the same information was considered open knowledge in the CPT offices. Another
example of the subjective and context-specific nature of confidentiality is the below picture EULEX published of the last KPCC session on its website, thus implicitly allowing me to share it here.

![Image of a meeting room with people sitting around a table with laptops]

Fig. 15: ‘The KPCC Road to Success: Over Forty Thousand Property Cases Adjudicated’, EULEX (http://www.eulex-kosovo.eu/?page=2,11,11), 17 December 2014.

Demands for confidentiality notwithstanding, my contract explicitly stated that, ‘the purpose of this internship contract is to support the intern for her PhD research. The KPA shall be provided with a copy of the final thesis once it has been defended’ (7.2). The contract also stipulated that the KPA had no veto rights regarding my analysis or conclusions — a major difference to commissioned audits where the commissioning entity or funder can always adapt the findings to their political agendas. This was also true for the KPCC and the SC. Marianne, one of the two international judges at the SC reasoned:

EULEX is not a legal body and it will eventually disappear. So EULEX will never be in a position to sue you or go to the university board or anything. To me, it’s good if we can read your drafts. I'm not sure they will read them, but I think this should be mentioned. But what will be our leverage? We can comment on them, but that should be all.
So the contractual meaning of confidentiality was vague, but the same written and unwritten research agreements were much clearer when it came to describing the limited capacity of the institutions to interfere in this research’s publication. Of course, it was important for me to respect the trust I had been given by my informants. To this effect, with the exception of the claimants portrayed in chapter two (and in the Fates behind the Numbers publication) who had specifically requested that their names be published, the people I discuss throughout the thesis have been anonymised. I use pseudonyms for everyone except public figures. I describe individuals through their rank and function, and general social background. Although some individuals with prominent positions might be recognisable to readers with inside knowledge of the institutions discussed, I blurred my informants’ identities as much as I could. A statement attributed to an individual from a specific team might have emanated from someone with a similar function in the same team, and different individuals’ characteristics might have been blended to construct a ‘thesis character’. Claims specifics have likewise been anonymised and blurred.

My portrayal of people and claims could thus remain indistinct; the larger point being that this thesis is less about individuals and individual claims, than about their active roles in the property restitution process. Although most of the opinions expressed are open secrets or uncontroversial statements, I am aware of the potential repercussion this work might have on the public portrayal of the KPA. Yet this must have been the intention of the Executive Director who provided me access, and thus also implicitly endorsed by the KPA Supervisory Board and EULEX management.

I shared early drafts of most chapters with two former KPA staff after they had left their posts, to ensure that I got legal technicalities right. Because both international judges of the SC left shortly after the end of my fieldwork, I was unable to trace their personal contacts. I also tried to contact the head commissioner of the KPCC while writing up, but he never replied to my messages. As I agreed to send him my chapter drafts before publication if they contained information about the KPCC, I intend to contact him again for comments when this work is transformed into a book.

There was a further matter to consider when I was interviewing KPA claimants and respondents. Although our interviews focused on already adjudicated
cases, parties often had other cases pending with the KPA. When parties enquired about the status of an on-going claim, they would usually receive a standard reply stating that their claim was being processed and that they had to be patient. Claimants and respondents’ questions about pending cases put me in the difficult position of having to perpetuate opacity in the name of confidentiality, when my own research ethics would have compelled me to ‘give knowledge back’ and answers to their questions. This is in keeping with the image of ethnographic fieldwork as a predominantly extractive kind of data collection. My rather unusual status as an embedded researcher, however, gave me access to otherwise inaccessible data on the inner workings of the institution and allowed other ways of ‘giving back’ and contributing to the larger discussion, such as the *Fates Behind the Numbers* project, and my subsequent involvement in the drafting of the National Strategy for Property Rights (see the conclusion).
Chapter outline

This thesis investigates how the processing of claims at the KPA reconfigured the ways in which property and property rights were legally, socially and materially conceived by the protagonists of property restitution as part of broader dynamics of transitional state building. To understand how restitution worked, I probe the practices of technical-legal knowledge production by examining key moments of mass claim adjudication: the translation, or reframing, of grievances in legal terms; the making of institutional, legal knowledge; the legal analysis of files; and the implementation of decisions. The six chapters that make up this thesis follow the KPA process from beginning to end through a series of ‘transubstantiations’ (Latour 2002): politics into law (chapter one and two); property-as-earth into property-as-paper (chapter two and three); documentary uncertainty into evidence making (chapter three and four); human rights into legal practice (chapter five); and paper back into politics (chapter six).

Chapter one traces the ideological foundations of Kosovo’s internationally supervised post-war transition and how they directly shaped the mandate of the KPA. I distinguish two phases in this genealogy: a first phase of humanitarian intervention and a second phase of transitional state building. Identifying the underlying logics of property restitution helps explain the institutional setup and its inherent structural limitations, which directly impinged on the implementation of the KPA mandate.

Chapter two shifts perspective to narratives of property loss and their transformation into legal claims. By exploring how the concept of property is deployed in claimants’ narratives, the chapter identifies their language of property as one of mourning that materialises loss in objects. The idiom of property as ‘melancholic objects’ stood in for the all-encompassing loss they suffered in 1999. But because the KPA process offered legal recourse for their claims and grievances, focusing exclusively on (immoveable) property rights, articulating the lost home as property became a way of sanctioning grief by voicing the recognised injury of war-related loss of property. The chapter then turns to the analysis of a document, the Claim Intake Form, which acted as a translation device between claimants’
worldviews and those of the agency. Claiming property through the KPA, I suggest, impinged on claimants’ subjectivities as much as it transformed their relationship to their reputed property by way of documents.

Chapter three traces the journey of files through the agency, and analyses the process of documentary transformation through its two most important steps before legal analysis: notification and verification. The chapter describes how facts were ascertained and how routinisation, computerisation and compartmentalisation contributed to building an in-house nomenclature of trust. The goal was to reach reasonable factual certainty, which was crucial for legal decisions to be made. Looking at how files are made and at their social life within the institution opens a window into how the institution knew what it knew, and what it chose to remember.

Chapter four describes everyday lawyering practices to shed light on the ways in which lawyers at the CPT navigated facts and law to construct evidence and arrive at convincing legal recommendations. The chapter shows how making evidence goes beyond rational facts and black letter law to reveal itself as a social construction. The gap between facts and law in legal reasoning is not made up of more facts and more law, but of the institutionalised social fabric in which the gap is bridged.

Chapter five probes deeper into the subjectivities of national, Kosovo Albanian CPT lawyers, to look at the enactment of impartiality in everyday legal practice. It probes the ways in which national lawyers reconciled competing notions of justice to work impartially on cases concerning mostly Kosovo Serbs. I question the limits of an anthropology of human rights that relies, for analysis, on vernacularisation and meaning making alone. In the present context, it is a sense of distance from the ‘local’ rather than vernacularisation, which gives human rights their legal and moral force.

Finally, in chapter six, I return to the question of what ‘transition’ does to ‘justice’, and to the notion of ‘rough justice’. I do so by looking at due process and at the divergent stances of my informants at the KPA/KPCC and the SC on what were ‘reasonable’ procedural standards. My ethnography suggests that the exceptionality of the procedural justice that my informants diagnosed was neither aberration nor imperfect application of the law; it is written into the law that was applicable during
transition. Questioning the value of analysing the law of transition as a state of exception, I establish the argument that law is always imperfect and ‘bricolaged’, also under ‘ordinary’ circumstances. Yet, emphasising the exceptionality of transition allows the key political patrons of the restitution process — the EU, the governments of Serbia and Kosovo — to be seen as doing something, while abdicating responsibility for the political non-consequences of ‘rendering technical’ (Murray Li 2007).
CHAPTER ONE

A genealogy of property restitution in post-war Kosovo

Writing on the protracted ‘end of human rights’, Douzinas (2000: 129) describes the Kosovo war as:

The first war officially conducted to protect human rights. According to Tony Blair, this was a just war, promoting the doctrine of intervention based on values, while [the then UK Foreign Secretary] Robin Cook declared that NATO was a ‘humanitarian alliance’.

The then internationally dominant humanitarian consensus was used to justify the NATO intervention in Kosovo and Serbia, which, NATO claimed, had been launched to prevent the mass extermination of Kosovo Albanian civilians at the hands of Serbian and Yugoslav forces of the Federal Republic of Yugoslavia (then comprising Serbia and Montenegro). It is estimated that by 9 June 1999 — the day before the end of NATO’s aerial bombardment — between 800,000 and 1.45 million Kosovo Albanians (amounting to 90 per cent of the population) (OSCE 1999: 13; United Nations Security Council 1999a) had been internally displaced by the conflict or had fled to neighbouring countries, mainly Albania, Macedonia and Montenegro, and to Western Europe.

In the first months after the ceasefire, Kosovo Serbs and other minorities (such as Roma, Ashkali and Egyptians\footnote{Albanian speaking minorities of Kosovo. The Ashkali and Egyptian denominations were first used by the groups in the 1990s to differentiate themselves from Roma.} believed to have collaborated with the Serbian regime) were targeted in retributive attacks, displacing between 70,000 and 200,000 Kosovo Serbs. While some had already seen the writing on the wall and bought property in Serbia, or made arrangements facilitating their move, most Kosovo Serbs I interviewed had not anticipated the sudden retreat of the Yugoslav army and Serbian police and paramilitary from Kosovo. The retreat led to an

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escalation of violence against Kosovo Serbs by the majority Kosovo Albanian population who had endured much hardship under the Serbian regime and suffered heavy losses during the conflict. Their security compromised without the protection of their army and police, Kosovo Serbs left en masse and *in extremis*. They had to leave most possessions behind.

About half of the total of available housing stock in Kosovo had been destroyed or made uninhabitable during the armed conflict, and even during the following months while UNMIK was being set up. As Kosovo Albanians started returning to Kosovo under the protection of the KFOR, Kosovo Serbian houses, shops, barns, etc. were looted, and many were set on fire. Many Kosovo Albanian returnees, made homeless by the conflict, took possession of abandoned Kosovo Serbian properties. The Kosovo Liberation Army also started allocating Kosovo Serbian houses and apartments to its members and affiliates, and forced transactions were widespread (Das 2004: 434). It was also common for Kosovo Albanian returnees to find their own property already occupied, forcing them to seek alternative shelter (von Carlowitz 2004: 309). The housing crisis, compounded by this rapid increase in ‘secondary occupations’ began to be seen as a threat to general security and safety.

Security Council Resolution 1244, signed on 10 June 1999, ‘determined to resolve the grave humanitarian situation in Kosovo’ (preamble), and tasked the international presence to ‘[assure] the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo’ (para 11.k, emphasis mine). In line with post-Cold War, international soft law (see, Bayefsky and Fitzpatrick 2000; Hathaway 2005), the Resolution defined the right to return as a right to return home — assumed to be a physical dwelling — thereby laying the normative groundwork for the establishment of a property restitution process. It did not, however, provide substantive rules for the implementation of such a mechanism (Cordial and Rosandhaug 2008: 23; Das 2004: 434).
The logics of liberal interventionism paved the way for growing UN involvement in the mounting humanitarian crisis and post-conflict transition — an involvement which has since been analysed as ‘the blueprint of new emergent forms of control and political techniques of the postbipolar [sic] world’ (Pandolfi 2010: 156). The deployment of KFOR and UNMIK effectively transformed Kosovo into a UN protectorate.

UNMIK, authorised to deploy in Kosovo under Security Council Res. 1244, simultaneously acted as an international peace keeping mission and a territorial administration (von Carlowitz 2004: 308). Not only did UNMIK act as the civil administration counterpart to the military peacekeeping of KFOR; due to the unresolved status of Kosovo, it was also endowed with wide ranging legislative and executive powers of a transitional administration, including the administration of the

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² Although this too may now be superseded in the post-Brexit ‘Trumpocene’.

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These powers were justified by the urgent need for combined military and humanitarian action to address the various emergencies the territory was facing. These conferred on UNMIK the authority to re-establish the rule of law, to build a democratic, multi-ethnic polity in line with transnational human rights ideals, and to generate economic development through ‘good governance’ measures (Pandolfi 2010: 156).

Rule of law included the re-establishment of property rights to address the housing crisis and kick-start economic development. UNMIK’s mandate thus also included the administration of movable and immovable public and socially owned property; a domain that is normally understood to fall under the exclusive prerogative of a fully-fledged sovereign state (von Carlowitz 2004: 308), and which no UN mission had previously tackled in such depth (Das 2004; Cordial and Rosandhaug 2008). UNMIK operated through four Pillars, each headed by a Deputy Representative of the Special Representative of the Secretary-General (SRSG). Pillar I, initially managed by the UN High Commissioner for Refugees (UNHCR), was responsible for refugee return and humanitarian aid. In 2001, Pillar I was transformed into a Police and Justice Pillar, led by the UN. Pillar II, managed by the UN as well, was responsible for setting up a civil administration. In collaboration with UN-HABITAT, Pillar II proposed the establishment of a Housing and Property Directorate (HPD) and Claims Commission (HPCC) in early 2000, a first property restitution mechanism. The Organisation for Security and Co-operation in Europe (OSCE) assumed the responsibility for democratisation and institution building under Pillar III. Pillar IV, under the EU, was responsible for overseeing the economic reconstruction and development efforts, including privatisation.

This chapter traces the conditions under which the property restitution mandates were drafted and institutionalised under UNMIK. By identifying the underlying logics, or ideological foundations of Kosovo’s post-war transition, we can begin to make sense of the institutional setup for property restitution and its inherent structural limitations. As I detail in my analysis of the genealogy and architecture of property restitution, the setup was based on adapting rather than transforming

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3 (UNMIK RES/1999/1)
4 (UNMIK RES/2000/54)
previous property regimes to the post-war situation. The adaptation within the post-war transition can be distinguished into two phases: a first phase of humanitarian intervention, which started directly after the war, and gave way to a phase of state and institution building that perpetuated a state of emergency as a state of permanent transition (see chapter six).

The shift between these two phases corresponds roughly with the transfer of the first HPD mandate to the second, KPA mandate. However, nowhere is this made explicit in the actual mandate documents or in any reports produced by or on these institutions. Rather, based on my conversations with former HPD and KPA staff and a close reading of the larger institutional set up of Kosovo’s transition, I trace a gradual yet profound paradigm shift from an approach that sees restitution as a tool of humanitarian intervention, to a more neoliberal understanding of property rights as an instrument of a particular (neoliberal) model of state building.

The former approach tried to find immediate remedies in an unclear legal environment and thus focused on possession and user rights; the latter, neoliberal approach, was premised on a direct link between the legalisation of property rights and economic development through the normalisation of a private property regime, i.e. ownership, privatisation and marketisation of titles.

This shift has to do with the way in which the main actors involved in the management of this transition understood their mandate; understandings that were reified as ideologies through time as a result of specific social and political histories (Fassin and Rechtman 2009: 7; see also, Foucault 1979). Central to both approaches — restitution as a tool of transitional justice and restitution as neoliberal state building — was the conviction that unresolved property claims constituted the main impediment to the return of DPs and refugees, and that technical-legal property restitution was the best solution for them. At the same time central to the human rights ideology of humanitarian intervention and state building, and at the periphery of the power constellation of international organisations in Kosovo, the property restitution mechanisms reveal the micro-level functioning of transitional state building.
Juridification and human rights: politics of emergency, phase I

In the Kosovo case, transitional state building processes purport to repair the impact of ethnic conflict and authoritarian rule, by anticipating and preventing the perceived risk of a return to past insecurity and violence. Establishing the rule of law and the protection of human rights are seen as the best tools for, and ultimate goals of, such a transition, both necessitating and legitimising the juridification of the politics of conflict resolution and of governance more generally. At the same time, the intervention and international stewardship recast Kosovo as a blank slate upon which both international and domestic actors could project their imaginings of a modern, efficient, liberal democracy and cast off the shackles of the previous socialist property regimes.

‘Juridification’, a term coined by Habermas as Verrechtlichung (1985: 357), is ‘a process where norms constitutive for a political order are established or changed to the effect of adding to the competencies of the legal system’ (Blichner and Molander 2005: 6). In what is known as an exponential juridification of politics in recent decades, ever-greater aspects of social and political life have thus become framed in legal terms (Eckert et al. 2012: 2). The legal sphere, ostensibly a-political, is increasingly used to regulate the market, create social order and promote the constitution of citizenship at national and international levels (Comaroff and Comaroff 2006: 22). States’ and parastates’ widespread use of the law as a technology of hegemonic governance and its legalistic forms of discourse and action, are mobilised as a ‘means to an end’, subsumed under a programmatic goal of fostering the ‘rule of law’ (Riles 2006a: 59; Mattei and Nader 2008). Scholars have argued that, ‘the more the rule of law becomes a battle cry in intra- and international politics, the greater the need to turn to law for legitimization’ (von Benda-Beckmann et al. 2009: 6). Such a celebrated ‘turn to law’ is accompanied by a process of ‘rendering technical’ the application of power, whereby the language of intervention is technicalised and depoliticised (Murray Li 2007: 7; Ferguson 1994).

UNMIK’s property-related intervention exemplifies this trend. UNMIK’s rule was based on technocratic decision-making in the form of legislative acts known as regulations, which had the force of law. The SRSG could ‘change, repeal or suspend existing [domestic] laws to the extent necessary for carrying out his functions, or
where existing laws [were] incompatible with the mandate, aims and purposes of the interim civil administration’ (United Nations Security Council 1999a: 9).

Characteristic of a ‘state of exception’, the UNMIK administration founded its legitimacy on a logic of emergency aiming at protecting life in a first phase, and at fostering a democratic, multi-ethnic society in a second phase (Fassin and Pandolfi 2010: 15-16). This goal justified the mobilisation of legal (and other) technologies and forms of technicality to ‘[neutralise] political choices by reducing them to simple operational measures’ (16). Other mechanisms through which property loss could have been managed could have included, for example, the re-conceptualisation of an ethics of care, or the reconfiguration of the national bureaucracy. But property regime changes and property restitution issues were framed solely as legal problems to be resolved through law making. This continued to be the case in the post-UNMIK transition, too, with the latest example to date being the adoption by the Kosovo Parliament, in October 2016, of a law setting up a new, follow-up mandate for the KPA, henceforth to be called the Kosovo Property Claims Verification Agency (KPCVA) under the requirements of the Stabilisation and Association Agreement (SAA) between the European Union and Kosovo.

Such juridification of property-related politics did not, however, prevent conflicting legal opinions within UNMIK and later between legal experts belonging to the different institutions involved in the second restitution mandate, i.e., the judges of the SC, the members of the KPCC, and the members of the KPA board. Often disguised as managerial concerns, conflicts revolved around paradigmatic questions of the legality and legitimacy of the international intervention itself (Uberti and Grasten 2015). In the restitution case, these issues were articulated around contentious, normative interpretations of what constituted appropriate or reasonable legal solutions. A key problem was that the institutions did not agree on the legitimate source of the law grounding their arguments. The SC believed the Kosovan Laws on Administrative Procedure (2005) and Contested Procedure (2006) to supersede KPA regulations. The KPA/KPCC, on the other hand, were of the opinion that the mandate was clearly delineated by KPA law, and that there was no need to abide by more general legislation, the KPA being a *sui generis*, independent institution.
In UNMIK’s early days, this ‘politics through law’ in the restitution process sometimes jeopardised lives rather than saving them, by delaying the adoption of housing-related regulations before the start of the first post-war winter (von Carlowitz 2004: 311). In October 1999, UNMIK passed regulation 1999/10, which repealed two housing and property-related discriminatory laws dating from 1991 on the basis of clear human rights violations. At the same time, it rejected a draft regulation on ‘Temporary Use of Vacant Residential Property’. This draft regulation aimed at providing a provisional legal basis under UNMIK rule for housing allocation and evictions of ‘illegal occupants’ in refugee return cases (ibid).

Two reasons were advanced to explain the rejection — reasons which strongly resonate with and help explain the legislative choices subsequently made by UNMIK in restitution-related matters. First, UNMIK was unsure that it had the capacity to ‘effectively and consistently administer and enforce the proposed scheme’ (ibid). Second, it was wary of the legal ramifications and potential liability concerns its staff would face when settling property disputes without appropriate court adjudication (ibid). In order to avert a ‘severe housing catastrophe’, UNMIK ordered its twenty-nine municipal administrators to allocate vacant housing to the homeless on humanitarian grounds, arguably adding to the ‘secondary occupation’ crisis rather than resolving it. An international shelter programme was also set up at the beginning of winter (ibid).

In 1999, the SRSG approached the United Nations Human Settlement Programme (UN-HABITAT) to assist in the coordination of the housing and restitution process (Cordial and Rosandhaug 2008: 26). The Interagency Housing and Property Task Force led by HABITAT and Pillar III prepared an action plan for ‘the promotion and protection of housing and property rights in Kosovo’ (27). Unsurprisingly, the action plan identified housing and property rights issues, along with cadastral issues and municipal governance issues, as major areas of concern (26).

Although other measures to alleviate the housing crisis were also taken, such as the building of prefab houses by the Norwegian Development Agency, clarifying property relations was seen as a decisive step towards addressing the escalating inter-ethnic unrest in the early 2000s and restoring the basic human right of housing.
However, Kosovo’s court system was judged weak and dysfunctional, and incapable of ensuring the ‘efficient and effective’ and ‘fair and impartial’ (UNMIK RES/1999/23: preambule; von Carlowitz 2004: 312) resolution of residential property claims in an increasingly volatile socio-political environment. Hence, the action plan foresaw the establishment of the HPD and Claims Commission (HPCC) as ad hoc, transitional and thus necessarily temporary mechanisms.5

Like the second restitution mandate (KPA), HPD/HPCC only had jurisdiction over certain categories of claim on the basis of the substantive procedural requirements of *ratione temporis*, or a limited timeframe for filing claims; *ratione personae*, i.e., the categories of persons who could be considered claimants under the HPD’s (or the KPA’s) jurisdiction depending on their kin or legal relationship to the alleged property right holder; *ratione materiae*, or the types of loss covered by the mandate, and *ratione loci*, the requirement that the properties claimed should be located within the territory of Kosovo (Cordial and Rosandhaug 2008: 49-50).

In addition to resolving residential property disputes, the HPD was mandated to ‘provide overall direction on property rights in Kosovo’ by doing several things: ‘conduct[ing] an inventory of abandoned private, state and socially owned housing’ (this goal was never achieved); ‘supervis[ing] the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes’ (the so-called ‘rental scheme’ approved by UNMIK in April 2006, which would continue to operate under the KPA); ‘providing guidance’ on ‘specific issues related to property rights’; and ‘conduct[ing] research leading to recommended policies and legislation concerning property rights’ (UNMIK RES/1999/23: section 1).

The need for jurisprudential guidance was motivated by the complexity of the applicable property legislation (see also the introduction). In fact, UNMIK was partly to blame for the ‘bottomless’ and ‘sludgy’ nature of ‘the ocean of property law’, as a judge from the SC described it to me. In a move that was aimed at repealing all discriminatory legislation (discrimination understood ethnically),6 UNMIK had in

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5 Enacted in Reg. 1999/23 and Reg. 2000/60 on the establishment of the HPD/HPCC and the rules of procedure and evidence of the HPD/HPCC respectively.

6 The Administrative Direction implementing Reg. 2006/50, the KPA regulation, defines discrimination as ‘any differentiation made on grounds such as language, religion, political or other opinion, national or ethnic origin, or association with a national community, which has the purpose or
fact declared applicable all laws in force on 22 March 1989 and any post-22 March 1989 laws that were deemed non-discriminatory. Those ‘primary’, pre-1989 laws, however, predated the legal reality of Kosovo’s property regime in 2000, leading to major uncertainties on how to legally analyse property relations that had been legalised based on post-1989 legislation, especially concerning socially owned property (von Carlowitz 2004: 319-320; see also the introduction, p.19). However, beyond creating a jurisprudence that tackled certain issues surrounding the restitution of socially owned property, including how to deal with cases of discrimination and helping draft the KPA regulation, advising UNMIK was never an important part of HPD’s work. This was so apparently because of ‘resource limitations’ but mostly because property restitution was never at the forefront of UNMIK’s agenda (Cordial and Rosandhaug 2008: 37).

For the most part, the HPD/HPCC was to tackle three major types of residential property-related ‘injustices’ that had taken place between 1989 and 1999, and which had provoked ‘discrimination and displacement’ (27). The HPD/HPCC thus differentiated between three types of claims (A, B and C) corresponding to the three respective types of injustice that I describe below.

How did these injustices come to pass? On 23 March 1989, surrounded by police and tanks, the Kosovo Provincial Assembly, at that time controlled by a majority of Kosovo Serbs, adopted constitutional changes that had profound consequences for the status of Kosovo and its Albanian population. Hitherto an autonomous province under the Yugoslav Constitution, Kosovo’s previous rights to self-governance were eradicated, and it was transformed back into a mere province of the Republic of Serbia. The Kosovo Albanian population responded to this loss of autonomy and cultural and political rights with protests and mass strikes. This, in turn, provoked the Socialist Republic of Serbia to introduce measures officially described as temporary, which led to the dismissal of more than 80,000 Kosovo Albanians from public service and state enterprises. Dismissed workers also had to

effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of a property right’ (UNMIK AD/2007/5: 2).

7 The assessment of discrimination in post-22 March 1989 laws is an interesting example of UNMIK law making in itself, as, instead of issuing a clear list of such laws, UNMIK let judges take ‘appropriate measures’ considering the circumstances of particular cases. See also the introduction.
leave the socially owned flats they had previously had rights to occupy as part of their professional appointments. Category A claims were designed to tackle such discriminatory loss of ownership, but crucially also of occupancy or possession rights, which had taken place between 23 March 1989 (the day of the revocation of autonomy) and 24 March 1999 (the start of the NATO bombing) on the basis of legislation which had been deemed discriminatory in its application or intent. The HPD received 1,212 category A claims (Cordial and Rosandhaug 2008: 50).

A Law on Changes and Supplements on the Limitations of Real-Estate Transactions introduced in 1991 further limited real-estate transactions by requiring that every contract for the sale, purchase, or lease of property in Kosovo be approved by the Directorate of Property Rights Affairs of the Serbian Ministry of Finance. Designed to limit the effect of property transactions on ‘the national structure of the population’, it gave the Ministry ample leeway to refuse any transactions that would reduce the numbers of Serbs living in the province, and in practice all but prohibited the transfer of properties from Serbs to Albanians (reportedly 98 per cent of such transactions were rejected by the Ministry) (Cordial and Rosandhaug 2008: 19). As a consequence, an informal property market developed in which residents of Kosovo sold and bought properties from each other without registering the sales in cadastral records, with informal transactions continuing until after the war. Category B claims aimed at legalising such informal property transactions — in fact, the international community in 1999 saw registration in public records as ‘one of the key preconditions to regularising the property sector’ (Cordial and Rosandhaug 2008: 51). The HPD received 767 B claims.

Category C claims were lodged by persons who had had to flee their homes due to circumstances related to the NATO bombing and could not return due to ‘secondary occupations’. Claimants had to be the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 (the start of the NATO campaign), who did not at the time of adjudication by the HPCC enjoy possession of the claimed property. 27,182 C Claims were filed with the HPD.10

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9 See Section 1.2, UNMIK Reg. 1999/23.
The objective of the HPD was to restore a status quo ante corresponding to a property rights reality that preceded the discriminatory laws passed under Milosević (categories A and B claims) and the dispossessions that had occurred during the war (category C claims). Cordial and Rosendhaug (2008: 52) write,

> It is noteworthy that section 2.6 [of Reg 1999/23] protected the right of all refugees and displaced persons to return to their homes regardless of the nature of their property rights. It protected those with ownership rights and possession rights alike, provided the possession was not manifestly unlawful. The object of this provision was to restore the status quo to what it had been before the conflict, such that persons who had been in lawful possession of property were afforded the right to return, and ongoing disputes relating to title or underlying legal rights could thereafter be resolved by the domestic institutions.

Property restitution, in this context, meant the restitution of previously legally acquired rights that would have remained valid had the Kosovo population not experienced Serbian discriminatory policies and war-related displacement. Lawyers at the KPA — but this is equally valid for the HPD — often repeated that the institution’s role was not to create new rights, but to restore already existing rights subject to two procedural constraints within the ambit of the institution’s substantive

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10 Beyond the categories of claims by region, the table shows that category C claims were by far the most prevalent. C claimants often re-claimed the same property with the KPA to transform their HPCC possession order into fully-fledged ownership rights under the KPCC jurisdiction.
legal framework: the constraint of ‘first in time, first in right’ (all rights being equal), coupled with the constraint of documentary evidence. A historical reading of available cadastre and other official documents was used to find out who had last legally held a right over the claimed property. To be legally valid, a right had to have neither been acquired under discriminatory circumstances nor through other illegal means such as duress, while also having remained valid at the time of adjudication.

The role of the two consecutive institutions of property restitution was not to implement a policy of regime change, but a policy of status quo; the overall goal was not to transform the socialist property regime, but to adapt it to Western standards. Such adaptation, the international community explicitly believed, was the best way to ensure the quick return of refugees and displaced persons to their homes and thus reverse the on-going ethnic homogenisation of the territory. A technical-legal adaptation of the socialist property regime to Western private property standards, on the other hand, would in the medium-term, pave the way for the implementation of a fully-fledged private property regime by future ‘local’, legitimate, sovereign institutions.

Restitution and liberalisation, however, do not easily fit together; how those two processes were combined, and in what spirit, is therefore crucial. Both the HPD and KPA mandates were drafted as purely bridging, technical-legal measures, delimiting the role of UNMIK to that of a custodian of sovereignty, or trustee, with restitution having no political consequence for Kosovo’s status. The issues tackled were conceived as purely legal issues, detached from politics, and, as I was often told, the success of the restitution process pivoted upon these rights remaining purely legal, discrete artefacts based on pre-existing property, hence power, relations, as opposed to a conception of rights as forward-looking instruments of empowerment through law. By technicalising and juridifying political issues of territory,

11 And thus avoid the fixation of territorial ethnic divisions that happened in post-war Bosnia. There was, in fact, a similar process of property restitution in Bosnia (the Commission for Real Property Claims, CRPC), intended to counteract ethnic homogenisation of the territories of the Federation (Buyse 2007). However, both in Bosnia and in Kosovo, that goal at least was barely ever achieved in practice.

12 Such as described by João Biehl in the context of Brazil, for example, where the turn to law to access healthcare is seen as ‘the expression of a distinct, equalizing legal system and of a novel rights-conscious society’ (2013: 429).
belonging and historical injustices under a programme of neoliberal market governance, the international community did not emancipate the population of Kosovo as citizens with political rights, but as economic self-governing rational agents with material rights (Ferguson 2010: 172).

In practice, this regime adaptation followed an ideological but legalistic line of reasoning. It interpreted the legal effects of the different property rights encountered as closely as possible to Yugoslav jurisprudence, and assessed their current validity and regulatory status by comparing them to private property canons. For the HPD/HPCC, the interpretation of the restitution regime as a temporary measure aimed at implementing an ideal *status quo ante* meant avoiding the determination of ‘underlying rights’ or titles as much as possible, preferring the ordering of repossession in most claims relating to the war. HPD circumvented taking decisions on ultimate ownership rights by referring the issue to ‘local’ courts. For reasons that I lay out below, KPA’s restitution model took a more neoliberal character.

In a similar pattern of juridification, research on the privatisation process has shown that UNMIK reforms in privatisation-related matters emerged less on the basis of interest-based power struggles between different political coalitions at the national level, than on the basis of conflicting normative argumentations between two rival factions of legal experts within the UN civilian administration (Uberti and Grasten 2015: 5; Knudsen 2010). In the privatisation case, contestations centred around two opposed conceptions of a rights-based approach to privatisation: one saw property rights determination as central to the endeavour; the other deemed property rights mere ‘side constraints’ (Uberti and Grasten 2015: 11). The Department for Trade and Industry (DTI), funded by USAID under UNMIK, pushed for the fast-track establishment of a private property system, even if that meant sidelining past ownership. UNMIK’s New York based Office of Legal Affairs (OLA), on the other hand, was wary of changing previous property relations, and thus saw the question of past ownership as central to determining current property rights, a task that had to be prioritised over political-economic goals (Uberti and Grasten 2015: 10).

Up until 2004, the view of the OLA prevailed, leading to a slow-paced privatisation process. This phase of privatisation, however, only superficially
touched upon the question of ultimate ownership of Yugoslav socially owned property. Having deemed the question too thorny and beyond UNMIK’s mandate, OLA left it to be resolved by a future sovereign state while converting user rights into 99-year leaseholds (in passing, a common law rather than civil law principle) (Uberti and Grasten 2015: 15; Kretsi 2007: 667). A change of management of Pillar IV after the riots of March 2004 (see below) led to a shift towards a more neoliberal understanding of property rights as advocated by the DTI. The new head claimed that the responsibility of UNMIK as an international trustee included economic development, taking the view that the creation of a private property system based on actual ownership would lead to greater and faster economic development (Rückert 2011: 15; Uberti and Grasten 2015: 19). As I elaborate in the next section, this was in line with a general turn towards more neoliberal understandings of the role of development actors.

Different legal solutions were thus designed for each HPD claim category and ensuing property rights. Although the institution aimed at providing ‘adequate remedies on an equitable basis for all claimants’ (Cordial and Rosandhaug 2008: 221), the inherently exclusive and violent nature of property rights (chapter six p. 120; Blomley 2003) rendered moot the application of such an inclusive principle. Attributing property rights to one party necessarily takes away these rights from the opposing party. In fact, the purported a-political, inclusive ethics of HPD/HPCC restitution forced the institution to ‘sacrifice’ certain types of rights ‘in the name of property restitution’ (Cordial and Rosandhaug 2008: 221), and thus in the name of technicised adaptation. A purely technical-legal reading of history also generated new forms of rights inequality.

The validity of property rights was analysed on the basis of a narrow (due to mandate limitations), hierarchical understanding of property entitlements, which saw previous private ownership as trumping any other forms of property rights. Rights emanating from very different political-historical moments and legal logics were juxtaposed and evaluated against one another in a temporal vacuum of legal technicality. The most straightforward remedy was designed for Category B claimants who could prove they had acquired bona fide ownership of a residential property through informal transactions. B claimants were entitled to an order for the
registration of the ownership right in the appropriate public records. Legal remedies for A and C claims were more complex, with many caveats.

Category A claimants (claiming discriminatory loss) who had succeeded in ‘perfecting’ their user right by making it permanent — a permanent user right being understood as the socialist equivalent to residential ownership — had a right to restitution in kind or to compensation when restitution in kind was no longer possible (UNMIK RES/2000/60: section 2.2). In the 1990s, most of the socially owned flats that had been vacated by dismissed Kosovo Albanian workers were given to Kosovo Serbs. As the new occupants, these Serbs were best placed to buy such flats under the Law of Housing, as part of a larger privatisation drive, which is what a great many of them did. In cases where the flat claimed by an A claimant with a permanent user right (some users rights were to be renewed and thus only considered temporary) had been privatised, or sold to a new owner, compensation was offered as remedy.

Category A claimants (claiming discrimination) or C claimants (claiming displacement and subsequent loss after the war) were granted repossession when there was either no contestation or when the contesting claimant had proved ‘less than perfected occupancy or possession rights’ (Cordial and Rosandhaug 2008: 184), as the decision always went in favour of the claimant whose right was closest to the private property conception of ownership. In those cases, the superseded claim would be dismissed and referred to ‘local’ courts for a possible judgement on compensation.

The combination of restitution in kind (for the A claimant) and compensation (for the C claimant) was ordered only when both parties had succeeded in ‘perfecting’ their rights into permanent user rights (A claimants), and private ownership (C claimants) (Cordial and Rosandhaug 2008: 89).13

In cases where the C claim prevailed over the A claim, the HPCC did not delve into the nature of the actual property right of the C claimant beyond the right of possession, judging a repossession order to be an appropriate remedy to restoring the status quo ante (Cordial and Rosandhaug 2008: 88, 159-160). Such a view was later

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13 Compensation was ordered in 143 occasions, but funds were never actually allocated by the Kosovo government, leaving the implementation of these cases in limbo until today (see the Epilogue).
contested by displaced persons’ organisations and property experts, who deemed repossession too weak a solution to provide an ‘effective final’ remedy to the great majority of HPD/HPCC claimants, who would most often lose out in subsequent title determination by ‘local’ courts. In fact, courts often overturned HPCC decisions in A&C competing claims, granting restitution in kind to A claimants, thereby forcing C claimants to relinquish their possession rights, and, with compensation out of the picture, leaving them with no remedy at all (OSCE 2011: 10).

In addition to the ‘sacrifice’ of certain rights over others and the questionable finality of the repossession remedy — with serial re-occupations of evicted properties compounding the issue (OSCE 2015) — human rights organisations criticised the HPD/HPCC for acting both as the first and second instance adjudicatory body, with appeals being processed by the same panel of commissioners. The issue of compensation was another major setback for the mechanism’s human rights record. UNMIK’s unwillingness to provide compensation funds from the Kosovo consolidated budget or to oversee the establishment of a trust fund on the basis of international donations is another consequence of the politics of status quo; the rationale being that neither NATO, nor EULEX, nor even the government of Kosovo for that matter, should be held responsible for conflict-related destruction of property, none of these entities having been deemed ‘responsible’ for the conflict in the first place (hence the reason why courts dismiss compensation claims altogether). The lack of interest in setting up a compensation fund (for A&C competing claims in particular) is also a good example of the restitution mechanism’s peripheral importance in the constellation of transitional institutions. In fact, funding shortages were the main reason for HPD’s low outreach capacities and the relatively small number of claims filed (Das 2004: 435).

KPA and the neoliberal turn: transition phase II

The sole focus on residential property restitution, rather than on both residential and non-residential, agricultural and commercial property, was the determinant factor that led to the creation of a second restitution mechanism, the KPA. HPD’s narrow housing focus, write Arraiza and Moratti, authors of an European Agency for
Reconstruction (EAR) feasibility study preceding the establishment of the KPA, was inexplicable (Arraiza and Moratti 2009: 434). It went against standards set in international soft law, which would culminate in the 2005 publication of the Pinheiro principles, as well as against the Bosnian precedent. In Bosnia, the restitution legislation was indeed amended to cover both residential and non-residential property rights, recognising the importance of ‘economic sustainability’ for successful returns (Arraiza and Moratti 2009: 434-435). The HPD’s former director and its legal advisor concurred:

The HPD/HPCC process in 1999 was mandated to deal with only a small portion of the numerous legitimate issues that needed to be resolved in the property sector, UNMIK’s policy proved to be glaringly inadequate. This resulted in agricultural and commercial property disputes remaining unresolved some six years later as the efficiency and capacity of the domestic courts was consistently wrongly projected (Cordial and Rosandhaug 2008: 218).

Moreover, the written sequence of claim categories in Reg. 1999/23 appears to indicate that UNMIK had expected a relatively equal number of A, B and C claims (Arraiza and Moratti 2009: 431). This did not pan out, with C claims amounting to more than ninety per cent of the overall caseload. Whether UNMIK had wittingly downgraded the scale of property-related violations that would surround the departure of about 70,000 Kosovo Serbs at the end of 1999 (Arraiza and Moratti 2009: 430) — the focus until June 1999 having been on Kosovo Albanians as the main victims of the conflict — or whether it had legislated without a good grasp of the situation on the ground is open to question. It was probably a bit of both. In any case, the number of Kosovo Serbs who were unable to return to Kosovo in the early 2000s far exceeded the number of Kosovo Albanian displaced persons. The result was that it was mainly Kosovo Serbs who filed claims for loss of possession with HPD.

In March 2004, Kosovo saw a resurgence of ethnic violence, which led in two days to the destruction of dozens of Serbian churches and homes, and to a second phase of displacement of 3,600 Kosovo Serbs. Following the 2004 riots, the emphasis was on preventing the creation of a precedent that would reward ethnic
minority cleansing. In this context, the return of Serbian DPs was seen as paramount to the creation of a multi-ethnic, democratic state. This is very clearly evidenced in the 2004 United Nations comprehensive review of the situation in Kosovo, known as the Kai Eide Report (2004: 3):

The Kosovo Albanians now seem to accept that they did ‘too little, too late’ to stem the violence that occurred in March. They understand that this violence damaged their reputation and support in the international community. Now, they must make a serious effort to reassure the international community and the Serbs that they will act to repair the damage caused by the violence as well as develop meaningful local government, giving the Serbs more authority in areas where they have a more concentrated population, and mechanisms enabling them to protect and promote their identity. If implemented, these commitments would facilitate the return of those who fled and the return of the Serb leaders to the political process.

Safeguarding the property rights of Kosovo Serbian DPs was now enough of a priority on the international stage to necessitate the creation of a second restitution mechanism. In the design of the follow-up mandate, several elements at the transnational ideological level and at the level of national politics came together in the context of the looming factual if not necessarily formally recognised independence of Kosovo.

Characteristic of a post-interventionist order, the construction of state institutions followed an ideology of ‘better governance’ that saw developmental and humanitarian canons necessarily at the service of a neoliberal logic (Pandolfi 2010: 159). This led to an ideological shift in the international community’s understanding of displaced persons’ property rights, from property rights as humanitarian imperatives to property rights as human rights in the framework of a neoliberal, economic growth agenda.

The language deployed to describe the mandate of the HPD/HPCC in HPD documents and the few reports and academic papers published on the mechanism, describes it as providing an ‘efficient and effective remedy’ to ‘victims’ of injustices, thus openly describing HPD as a transitional justice initiative aimed at righting
wrongs, at the intersection between a moral imperative and an instrumental tool of peace building (see, for example, Leckie 2000; Smit 2006). KPA documents, on the other hand, are more akin to quantitative development reports. They avoid any description of claimants, the institution having chosen not to make public any statistics on ethnicity, preferring to couch its legitimacy in a language of state building as necessarily multi-ethnic, thus requiring the resolution of all conflict-related claims (i.e. KPA 2012; KPA 2013).14

The publication, in 2005, of the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the ‘Pinheiro principles’, further established housing, land and property restitution as basic human rights (Leckie 2008; Paglione 2008). Along with formally advocating for restorative justice policy initiatives, the Pinheiro principles also complicated the concept of ‘restitution’ in international as well as national legal instruments to include not only the return of one’s property but also the ‘restoration of liberty, [the] enjoyment of human rights, identity, family life and citizenship; [the] return to one’s place of residence, [and the] restoration of employment’ (UNHCR 2007: 10). The rights-based, liberal approach to property restitution as advocated in the Pinheiro principles follows a rationale clearly influenced by development economics, of which Hernando de Soto’s The Mystery of Capital (2000) is a prime example. De Soto’s view is that legalising property rights and adopting a formal, homogenised system of property legislation would enable greater economic development as people would be able to use their property as collateral to borrow money for investments, as well as avoid unnecessary conflict through rights legalisation.

This view is nicely illustrated in a short documentary film on the importance of legalising property rights over informal dwellings in India, supported by the Swiss Federal Department of Foreign Affairs — perhaps not incidentally a major donor of the KPA. In it, de Soto explains: ‘property rights are identity; property rights are credibility; property rights are investment, finance and credit’. Later in the same

14 Note that the last KPA report (2016) does provide such statistics. This can be explained by the fact that by 2016, most of the international staff had left, including the international Executive Director who had drafted the reports until 2013/14.
documentary, the Swiss professor of political philosophy, Patrick Cheneval, summarises:

If you have a functioning property rights system, a lot of conflicts do not occur. And a lot of conflicts that we might think are ethnic conflicts or cultural conflicts; if we go to the bottom of these we might discover that at the bottom are conflicting property claims and if they were sorted out legally and in a dignified manner, a lot of conflicts could be prevented.\textsuperscript{15}

The quotes are examples of a dominant discourse that postulates a direct link between the rule of law — and the legalisation of property titles in particular — and successful statehood with all its attributes, including stable institutions and ‘a technological framework for an “efficient” market’ (Mattei and Nader 2008: 5; Barros 2010). In this logic, establishing property rights is viewed as the panacea to all sorts of ills that befall ‘developing’ countries or societies ‘in transition’. The assumption is that disputes can be solved, that there are no winners and losers, and that property regimes are egalitarian and consensual. A functioning rule of law is seen as the \textit{lingua franca} of a global capitalist economy that supports the hegemonic expansion of large corporate entities fluent in the globalised language of legality (Garth and Dezalay 2011: 1). Legalising land titles was thus perceived as an indispensable stepping-stone towards economic growth and a stable market economy.

Such an economically liberal move may seem paradoxical for a UN intervention whose goal was to ‘build’ state institutions, seeing as the effect of such reform (including privatisation) is a reduction in the role of the state through the transfer of economic power to private entities (Knudsen 2010: 24). But the paradox is in appearance alone. The concept of ‘governance’, so central to neoliberal policy, indicates ‘a turn from a normative substantive conception of government exclusively tied to the national state based on constitutional and international law towards a functional characterization of governing activities’ (von Benda-Beckmann et al. 2009: 1). Such activities are led by a plethora of international, national, public and

private actors in areas ranging from security to public infrastructure as ‘agents of government’ (von Benda-Beckmann et al. 2009: 3; Castells 1997).

Moreover, as Antina von Schnitzler argues, what makes neoliberalism new is a recognition that markets ‘do not simply emerge, but have to be actively enabled and carefully maintained, and that mechanisms of “order” and particular kinds of intervention would be central to the emergence and stability of the “free society”’ (von Schnitzler 2016: 42). In her case study of South Africa, this went hand in hand with a distrust of statist intervention and a recognition of existing cultural contexts that needed to be gradually recoded and transformed by micro-political, technical interventions ‘in order to redirect them toward a new trajectory’ (von Schnitzler 2016: 46). In Kosovo, by contrast, it would appear that the neoliberal intervention in the domain of property was based much more on a ‘blank slate’ approach (or tabula rasa as internationals liked to call it) that did not bother seeking the population’s approval or necessarily need to take into account power struggles between different interest groups at the national level (see also Knudsen 2010; Uberti and Grasten 2015).

The failure of UNMIK to act on the importance of non-residential property restitution for a ‘sustainable’ return process compounded with the general belief that private property was ‘the quintessence of human rights’ (Kretsi 2007: 665), shifted the emphasis from repossession to ownership as the preferred legal remedy. In fact, in the early KPA days, the KPCC commission granted ownership for all types of rights claimed, including user rights of socially owned property, realising only later that a user right could not be transformed into private ownership so effortlessly.

Such a shift in emphasis from possession to ownership is paradigmatic of the transformation of the transitional apparatus from humanitarian intervention to developmental state building. It has, of course, also to do with the nature of the rights being restituted. Private ownership of residential units was dependent on the units having been privatised. However, under the Yugoslav property regime, private ownership of residential units did not exist, although there was an equivalent to private ownership for agricultural lands, which was a major category of the rights claimed through the KPA (see the Law on Basic Property Relations, Official Gazette of the Socialist Federal Republic of Yugoslavia 1980/6).
The policy move from restitution as a humanitarian response to restitution as promoting a ‘sustainable’ return through economic liberalisation was a key moment of transition within the transition, as exemplified by the increasingly neoliberal approach to privatisation from 2004 onwards. A parallel shift from possession to ownership as a ‘unit of right’ took place at the level of the cadastre. Up until around 2005, when law 2002/5 establishing an immovable property rights register started to be implemented, Kosovo’s cadastre operated on the basis of a register of possessors for land parcels only. From 2005, municipalities started issuing Certificates for the Immovable Property Right (CIPR) for lands and buildings, adapting socialist possession rights to the requirements of a ‘modern’ cadastre system based on ownership. Other issues factored in, such as the exponential increase in construction of illegal, residential and commercial buildings and illegal property transfers, which had an impact on Pristina-Belgrade relations in anticipation of the Athisaari report.

Fig. 18: A Certificate for the Immoveable Property Right (CIPR). Photo by Leart Zogjani, 2013

A report mandated by the EAR in 2004 to analyse HPD’s shortcomings and come up with policy recommendations to improve the property restitution mechanism, diagnosed the return of DPs and refugees — at the time of the assessment in 2004
predominantly Kosovo Serbs — as dependent on economic development and on the regularisation of agricultural and commercial property rights:

Without the economic basis provided by commercial property and land, IDP and refugee return remains elusive, notwithstanding the increasing effectiveness of the HPD in resolving residential property claims. Minorities have been reluctant to resort to the courts that are, in any event, under-resourced and over-burdened. Given the economic interests at stake, there is significant resistance to the return of such property.

To regularize the situation, strengthen the rule of law, and secure property rights, something must be done. The system as it presently stands cannot resolve these disputes. Until they are resolved, neither IDPs and refugees nor the population at large can expect greater investment and economic development […] (Moratti et al. 2004: 4-5).

In the aftermath of the 2004 riots, Kosovo Albanians demanded a greater devolution of powers from UNMIK, advocating for a nationalisation of the property restitution mechanism. The exact details of the ‘lengthy series of discussions and debate about the manner in which the resolution of such claims should be achieved’, that Knut Rosandhaug, the first Director of KPA, mentions in the inaugural KPA annual report (KPA 2006: 10), have been hard to unearth. Conflicting opinions regarding the capacity of ‘local’ courts to handle the caseload were, however, evident from UNMIK’s legislative moves. Indeed, Reg. 2006/10, the first KPA legislation promulgated in March 2006, mandated the courts, which is indicative of a struggle between national and international actors about whether or not to nationalise the restitution process. In the end, Reg. 2006/10, which transferred HPD’s personnel, assets and organisational structure to the KPA, was amended by Reg. 2006/50, which set up the KPA as an independent mechanism under the SRSG. KPA also inherited HPD’s caseload of cases pending implementation (especially for properties situated in the Northern municipalities), as well as the unresolved issue of compensation for 143 HPCC A&C competing claims.

16 The EAR survey reported a court-processing backlog of five to ten years.
In 2008, the KPA became an independent body under Article 142 of the Kosovo Constitution. The last international Executive Director of the Executive Secretariat left in 2013 following the end of Kosovo’s supervised independence in 2012. The long-standing Deputy Executive Director resigned in 2014, leaving the KPA in the hands of the previous KPA registrar from 2014 to 2016.

The mandate of the KPA was to resolve ownership and user rights claims — subject to the right of appeal to the Supreme Court of Kosovo — for private immovable property involving circumstances related to the armed conflict that took place between 27 February 1998 and 20 June 1999 (UNMIK RES/2006/50: section 3). In contrast with HPD, which had cut-off dates in relation to landmark historical events (i.e., the revocation of autonomy, and the end of the NATO bombing), KPA’s cut-off dates were much more enigmatic. No one I asked at the KPA knew why those dates had been chosen. In fact, most told me they had never wondered about it themselves. The EULEX property coordinator’s theory was that 27 February had been chosen ‘because it was the day before the beginning of the end in the confrontation between the KLA and Serbian forces, and thus the beginning of the armed conflict that led to the displacement of people from their homes’. He further hypothesised that 20 June, the day of the agreement between NATO and KLA on demilitarisation, had been chosen because it marked a symbolic event ‘whereby hostilities could be deemed to have ceased’. Judging that ‘the loss of possession in connection with the March 2004 riots constituted a circumstance directly relating to or resulting from the 1998-1999 armed conflict in Kosovo’, the KPA also accepted claims for dispossession linked to the March 2004 events.

Private immovable property included three categories: residential, agricultural and commercial property. While the 2004 EAR study had projected the filing of around 11,000 claims (Moratti et al. 2004: 10), the KPA received a total of 42,749 claims (see figure 2) from 6304 claimants (meaning that each claimant submitted an average of six claims for six different parcels or units), for

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17 28 February being the date of a confrontation between KLA militants led by Adem Jashari, a prominent KLA leader and Serbian police in the small village of Likoshan. Along with all the members of his family, Adem Jashari was killed by Serbian forces on 5 March 1998, becoming a martyr of the KLA cause.

18 See, for example, KPCC Decision 8, paragraph 13 (not publically available).
predominantly agricultural property (88 per cent), of which approximately 90 per cent were received through KPA offices in Serbia.

![Table: Categories of KPA claims by region. Source: KPA Annual Report 2014](Image)

![Table: Categories of rights claimed by region. Source: KPA Annual Report 2016](Image)

Compared to the former HPD property legislation, all mention of compensation was left out of the KPA mandate. The regulation also saw the creation of an appeal mechanism at the level of the Supreme Court of Kosovo (the SC), and a supposed broadening of the scope of implementation remedies. Whereas HPD’s implementation focus was mainly on evictions (solely South of the Ibar river), legal remedies for the execution of KPCC decisions included evictions, placing properties under administration, overseeing the rental of successfully claimed properties, seizing and demolishing unlawful structures and auctioning properties (UNMIK RES/2006/50: section 15). A cooperation agreement signed with the Kosovo Police in 2011 gave greater public legitimacy to KPA evictions. The KPA only started evictions in the North in Autumn 2013, after the Municipal elections and thanks to the personal connections of the then Head of the North Mitrovica KPA office, a former Kosovo Serb judge.

More than a thousand evictions were undertaken every year between 2008 and 2016 (2,384 in 2014, KPA 2014: 7). As of March 2016, 1,759 claims had been
closed at the request of claimants, and 13,171 cases were closed on the basis of ‘non-cooperation’ (i.e. in cases where claimants did not reply to KPA’s decision notice). 14,441 properties had been placed under administration, and 1,170 had been leased out for a total of over half a million Euros per year.

The rental scheme, started at the end of the HPD mandate in 2006, is another example of the neoliberalisation of property restitution. It is also a clear attempt at not excluding the possibility of return altogether, the proclaimed aim of such scheme being to curb the number of property sales by proposing an alternative source of income. The scheme proved a very popular remedy (especially for residential property), although claimants complained that the rent allocation was too low, that occupants didn’t take good care of rented properties, and that KPA wasn’t overseeing the proper utilisation of properties in an appropriate fashion.

The numbers above show that a majority of claimants chose to place their property under administration or didn’t request any implementation remedy at all. The paucity of implementation requests is a consequence of the very small number of claimants who were actually considering returning to Kosovo at all. Beyond the possibility of selling their property, often at a very low price, to the illegal occupants, many claimants told me they preferred to have their property ‘sit’ to allowing this property to be used by ‘unknown’ people who would have no ‘respect’ for it. Arguably, KPA restitution had the unintended consequence of opening up the property market, although sales were rarely profitable. Some authors have argued that such sales seemed to have ‘set free the means for compensation payments that could not be raised otherwise’ (von Carlowitz 2008: 232).

My ethnography rather shows that property sales stemmed from economic necessity (most claimants living in abject poverty in Serbia) and in no way made up for a lack of compensation, which interviewed claimants saw as the unwillingness of ‘greater powers’ to recognise material and symbolic past injury (see chapter two). Reparation such as monetary compensation is usually about addressing the material harm rather than the cause of suffering (Kelly 2012; Wherry 2016). Selling one’s

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19 This can tentatively be explained by the fact that claimants had for example moved house without informing the agency, or that they had stopped being interested in the KPA process altogether.
20 The KPA would then inspect the property at least once a year to record any degradation, etc. and in order to avoid illegal occupation.
property, however, does not necessarily reconcile or heal the injury (even if only from a material perspective). On the contrary, claimants saw selling as a last resort, a negative outcome, which amplified rather than alleviated their loss.

Moreover, the demolition of illegal structures and the auctioning of assets were never actually implemented, partly because KPA had neither the money nor the equipment to conduct such operations, but mainly also because the government was never keen on politically backing such a scheme. Instead, KPA proposed to mediate, with very mixed results, between landowners and persons who had built illegal ‘structures’ on such lands. In 2014, the Constitutional Court issued a judgment on a case involving the illegal construction of a three-story house with a swimming pool on a land successfully claimed by a KPA claimant. The Court deemed the non-execution of the KPCC decision and the failure of competent authorities to ‘ensure efficient mechanisms for execution of final decisions […] in contradiction with the principle of the Rule of Law’ as a ‘violation of the fundamental human rights guaranteed by the Constitution’.21 To my knowledge, the case is still pending implementation.

The KPA as mass claims mechanism: economy and efficiency as justice imperatives

The KPA mandate limited claims to loss of property rights as a direct result of the war, and operating with a very clearly defined cut-off date of 27 February 1998 to 20 June 1999. This meant that prior injustices — discriminatory laws, fraudulent informal transactions etc. that were arguably among the provocations that led to the conflict in the first place — were superseded by ownership claims from the period covered by the mandate. As a lawyer at the KPA told me, ‘The KPA is only confirming an existing situation [by looking at the] very short period of 98-99. [The KPA] is not going deeply into the creation of property problems. It’s more a human rights issue’.

Because it was an issue of addressing ‘urgent human rights violations’, there was no scope to probe more deeply. The successive restitution mandates were drafted as purely bridging, technical-legal measures, in theory delimiting thereby the role of UNMIK as custodian of sovereignty, and later that of the EU as supervisor and guarantor of ‘independence’, with restitution having no impact on the question of Kosovo’s status. Restituting property rights was conceived of as a purely legal issue, detached from wider political concerns.

Because of the sheer number of cases — around 6,000 claimants filed a total of 42,749 claims — and the way the KPA mandate was limited in time, the institution faced huge pressures to adjudicate all filed cases quickly and efficiently before mandate and/or donor patience ran out. Indeed, as a direct result of UNMIK’s internal legal struggles, HPD/HPCC and KPA/KPCC were designed as internationally supervised — thereby purportedly ensuring fairness and impartiality (see chapter five) — but independent mechanisms. Such independence from UNMIK, along with the establishment of an adjudicatory commission, washed UNMIK’s hands of any liability concern. However, it also positioned the restitution mechanisms at the periphery of the constellation of international institutions under UNMIK, and later under the Kosovo Government with dire consequences for funding arrangements. Being nominally independent institutions, HPD and KPA were funded through voluntary contributions, which had to be secured from international donors by the institution’s directors and Directory Board.

The KPA was thus partly funded by the Government of the Republic of Kosovo, and partly by international donor agencies such as the Swiss Development Cooperation (SDC), the Norwegian Development Agency (Norad), and the United States Agency for International Development (USAID). For these donors, it was paramount that the KPA be a successful ‘development project’. The head of the SDC explained to me over lunch one day that the major issue they faced as donors was how to assess such a ‘quasi-judicial project’. Measuring the success of a legal body is a difficult task. At the KPA, the opinion was that the agency’s success was best reflected in the rate of implemented decisions, or the number of cases appealed to the Supreme Court. But for the head of the SDC as for other donors in the Kosovan development sector who were used to and in need of ‘actionable’ evaluations to
justify their investment, the only measurable indicator was the number of claims processed and adjudicated. According to the SDC director, ‘this is our only way to make sure that the caseload is steadily diminishing; the only way to make sure that this does not drag on for ever’. He continued: ‘on a scale ranging from red, to orange to green [the green projects being the most successful ones, with tangible, easily measurable achievements], the KPA is orange, hopefully not red’.

Not only did the KPA have to appeal to donors for its operating budget; it was also racing against the clock. To secure donations, comply with donor monitoring and evaluation criteria, and wrap up its mandate within the allocated time (which, in fact, it did not manage to do, dragging on until the end of 2014), ‘efficiency and economy were fundamental concerns’ (Cordial and Rosandhaug 2008: 30). Donor pressure required of the institution to strike a difficult balance between development-minded goals, i.e., producing measurable outputs such as the number of decisions processed, and the demands of due process. The KPA therefore adopted a number of managerial techniques under the umbrella of a mass claims processing system to streamline the process and ensure efficiency. A mass claims approach, it was argued, would provide ‘effective remedies to claimants within a reasonably prompt period of time and in a manner which was economical and consistent’ (29).

Mass claims mechanisms have become a ‘distinct field of dispute resolution’ of transitional justice claims processes since (at least) the 1980s, with the Iran-United States Claims Tribunal considered the first of this kind (Das 2006: 3). Other mass claims mechanisms include, among others, the Iraqi United Nations Compensation Commission, the Bosnian Commission for Real Property Claims of Displaced Persons and Refugees (the CRPC, mentioned above), the two consecutive Claims Resolution Tribunal for Dormant Accounts in Switzerland, the German Forced Labour Programme, and the International Commission on Holocaust Era Insurance Claims.

In its resolution of 11 April 2003, the HPCC described the basic characteristics of a mass claims programme as follows:

A mass claims process can be broadly understood as a process designed to deal with a high number of claims that arise out of the
same extraordinary situation or event and are filed with the decision-making body within a limited period of time; thus, claimants in a mass claims process are generally in the same situation, having suffered the same or similar losses within the same period of time […] In view of the high number of claims and their similarity, a mass claims process must be organised in a fair and efficient manner to ensure that claimants are treated equally and all the claims are resolved within a reasonable period of time (HPCC/RES/7/2003 in Heiskanen 2006: 29).

Interestingly, many of the mass claims processes mentioned above aimed at dispensing ‘fair and just’ compensations to claimants (Das and Van Houtte 2008; Holtzmann and Kristjánsdóttir 2006), whereas the two Kosovan mass claims processes dealt with the ‘simple form of relief [that is] property restitution’ (Heiskanen 2006: 30).

This increasing use of mass claims as ad hoc mechanisms is part and parcel of the institutionalisation, bureaucratisation and juridification of international transitional justice (Rubli 2012; Teitel 2014). In Kosovo, apparently taking their cue from the South African property restitution model — the slow pace of which was blamed on the overreliance of the judicial approach on oral hearings and adversarial proceedings (Das 2004: 436), the drafters of the two successive restitution mandates chose to make the institutions almost exclusively reliant on written submissions and evidence. The mass claims system put in place was ‘hybrid’ (ibid): cases were bundled into batches of similar types by KPA lawyers,\(^\text{22}\) and they were adjudicated according to Standard Operation Procedures, while contested claims and other ‘tricky’ uncontested claims were read and decided by one of the KPCC commissioners.\(^\text{23}\)

A further component in improving the ‘efficiency’ of the KPA was to design an in-house IT system and tailor-made computer applications for each unit at the HQ.

\(^{22}\) According to the nature of the property claimed (agricultural, residential or commercial); whether the claim was contested or not, and the number of respondents for contested claims; whether the claimant was the Property Right Holder, a Family Household Member or the holder of a Power of Attorney; and the most probable outcome, i.e. whether the claim should be granted, dismissed or refused. See Appendix 1.

\(^{23}\) This is the reason why the head commissioner of the KPCC preferred using the term ‘quasi-judicial’ rather than ‘mass claims’ in reference to the KPA/KPCC.
and regional levels (Heiskanen 2006), which in turn also brought about specific institutional logics and procedures to the case processing, the consequences of which I detail in the following chapters.

The proponents of such *ad hoc* instruments of arbitration argue that the requirements of a mass claims mechanism, such as relaxing procedural standards and standards of evidence make sense from a cost-benefit viewpoint without necessarily undermining the quality of judgments (van Haersolte-van Hof 2006; Das 2006; Das and Van Houtte 2008). In the following chapters, I will show that ‘efficiency’ and ‘economy’, the purported aims of applying a mass claims approach, worked as legitimating devices of procedural justice (e.g. fairness, impartiality), serving first and foremost the internal efficiency of the institution rather than its purported beneficiaries. The consequences of installing a mass claims mechanism as an instrument of transitional justice for the type and quality of ‘justice’ that is produced is a discussion I return to in chapter six.

**Conclusion**

In this chapter, I have retraced the ideological foundations of the establishment of the KPA. I argued that from an initial concern with possession to remedy a humanitarian emergency, the KPA’s objectives gradually shifted towards establishing clarity regarding property ownership (of land primarily) as a technocratic tool of state building on Kosovo’s way to independent/internationally supervised statehood. This technocratic, managerial approach to state-building combined with the sheer caseload of war-related property claims, as well as a self-imposed time limit during an externally defined period of ‘transition’, led to the creation of the KPA as a ‘hybrid’, quasi-judicial/mass claims mechanism. In the following chapters, I will show that the way in which the KPA’s mission and remit were conceived had direct implications on its internal functioning, and on the kind of ‘justice’ it made available. By looking at how the mandate was acted out in everyday practice, the following chapters will unpack the ‘anti-politics machine’ (Ferguson 1994) of post-war property restitution in Kosovo.
CHAPTER TWO

Property and the legal translation of loss

My family had two two-story houses in the village of Movljane in Kosovo and Metohija. My father had built our house from the ground up. The other house belonged to my uncle. We then had an additional seven hectares of land and a vineyard of 40 acres. The fruit that’s there, there is no such fruit in the whole world. I would drink our wine with my Albanian friends, I would only share it with them, it was so good.

This is how Slobodan Ristić talked about the home he and his family had to leave behind when they were forced to flee Kosovo for Serbia on the 10th June 1999. ‘The houses were solid rock. If it was this kind of brick like it is here, eh… This isn’t even brick, all of this is prefab cardboard. This is not our home; it is stuff we’ve accumulated for eleven years’.

I met Slobodan and Mila Ristić in their prefabricated house of 42 m², built by the Danish Refugee Council in the Serbian village of Mladenovač, close to the site of one of the most ignominious collective centres that used to shelter displaced Kosovo Serbs until 2010. Reconverted workers’ barracks from the communist period, the centre was known for its insalubrity, overcrowding and for corruption practices undermining refugees’ efforts to live a ‘decent life’.1 After eleven years of living in collective centres, including the one in Mladenovač, Mr Ristić, his octogenarian mother, his wife Mila and their two young adult sons had finally been given a house of their own.

Curious about how they had come to claim property with the KPA, I asked them about their story. Mr Ristić was born in the village of Movljane, about ten

1 Displaced Persons representatives would distribute food, money, soap and other supplies according to a system of privilege, putting a sizeable quantity of goods aside and reselling them outside the camp.
kilometres from Suva Reka, now in the district of Prizren, Southern Kosovo. ‘The village had fifteen Serbian homes, the rest were Albanians, about four to five thousand people’. He graduated from the School of Education in Uroševac and finally got a job in Movljane in 1984.

I went to work there straight after the army service. And ever since then I taught the Serbian language to the Albanian children up until the war broke out. And we lived um, normally, nice. I’m telling you, with these Albanian friends of mine who were also my co-workers, we were very close! We had a very good life. I even went to the School of Education with an Albanian from my village. We were roommates, we studied together, ate together, everything. God forbid what happened to us would happen even to your worst enemy! Because that life was something extraordinary. They [the Albanians] used to come to us, and I would come to them, we spent time together, we drank, we ate, moved freely, no one said anything! We used to go to each other’s weddings, used to observe all the religious holidays. I am telling you that we did not have a bad life at all. If we could have that life again, I would gladly go back today!

On the 24th of March 1999, NATO started its air campaign against the Federal Republic of Yugoslavia, which consisted at the time of Serbia and Montenegro. On the 31st of March, the Kosovo Liberation Army, which Mr Ristić referred to as terrorists, attacked the village of Movljane. ‘We left at around six am. I don’t believe the Albanians from Movljane did it. It must have been others who attacked us. The house was full, we left four cows behind. We left in our house slippers, and went through the woods, just like that. We then left in a Fića² and transported ourselves, all packed inside, slowly we went on’. They went to Suva Reka first, where they were sheltered in a basement until the 10th of June. After eleven weeks and following the signing of the Military Technical Agreement in Kumanovo on 9th June 1999, the bombing stopped. ‘On that day’, explained Mr Ristić’s wife, Mila, ‘we were told that we would retreat to Serbia. At eleven o’clock we left, it was a Friday’. Mr Ristić

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² A ‘Little Fiat’, the emblematic Zastava 750 of Yugoslav production, licenced from the Fiat 750 model.
continued: ‘when I went back to Kosovo, I went to see my village, my property, my home; but my house was gone. It got shelled, what do I know what they did… The well was filled with rocks to the brim’.

Like many other Kosovo Serbs fleeing Kosovo at the end of the war, the Ristić family had not foreseen that they would have to leave their home. ‘There was no animosity between Albanians and Serbs in the village. The conflict came out of nowhere. It is the higher powers that did this’, Mr Ristić explained. They were housed by Mr Ristić’s sister first, and after a year they were relocated to a refugee centre with the help of the Commissariat for Refugees of the Red Cross. Then, they went from centre to centre until 2010 when, owing to Mr Ristić’s heart condition, they speculate, they were given their current ‘miniature house’. ‘The bedroom is too small for my sons. They cannot stretch their legs properly when they lie down. But we are grateful. This is much better than any of the camps. Even animals wouldn’t want to live there’, said Mrs Ristić. ‘I have no strength to build more. This is not ours, it is municipal land leased out by the Red Cross for 99 years’, added Mr Ristić. The family lives on Mr and Mrs Ristić’s pension, a meagre 72 Euros per month, and they are still paying off the furniture they bought when they moved in.

Fig. 21: Slobodan and Mila Ristić. Photo by Leart Zogjani, 2013
The story of Slobodan Ristić’s life and his family’s peregrination from Kosovo to Serbia is one of many such stories by KPA claimants. In our interviews, I would ask my informants ‘to start at the beginning’. Invariably, ‘the beginning’ for them meant a mythical past in their former homes in Kosovo. By ‘mythical’ I refer to the idealisation of the past pervasive to such narratives (see Zetter 1999; Malkki 1995). Mythicised histories belong to a temporality of remembering bound to iterative life cycles that were broken by uprooting.

Home, for Mr Ristić as for many of my other informants, was the place ‘where I could put my head down and sleep; where no one would mess with me because it was truly mine. It protects me.’ Or as Maksut Uka, a Kosovo Roma originally from Dragaš, eloquently put it, ‘home is a holy place. That’s where a person exists. Without a home you cannot survive. How come? If you do not have a home, you are left wandering the streets, without safety.’ In this sense, ‘home’ is ‘cool ground’ (Bauman 1999: 17; Turton 1996); a place of safety, where certainty and security can be ensured in the long run (Jansen 2009: 59). This echoes ethnographic accounts of refugees’ relationship to their former homes, in contexts ranging from Cyprus (Zetter 1999; Bryant 2012; Navaro-Yashin 2012) to Croatia (Leutloff-Grandits 2002) and Bosnia Herzegovina (Jansen 2009).3

Home was also the locus of social relations articulated around the house and the land; sites where transgenerational and collective relationships took place, ‘as if the earth at that place were stamped and impregnated with the vital force of the activities carried out upon it’ (Jackson 1995: 148). For my informants, home was their ancestral roots, their dedovina; the place that made ‘living the good life’ possible. It had, in Lockean fashion, become their own, their ‘property’, as family members mixed their labour with previously unowned land (Rose 1994: 11; Tully 1980: 116). They had made their homes their own by transforming ‘the earthly provisions provided for use [by God] into manmade objects of use’ (Tully 1980: 117,

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3 Note that these are all European examples. This understanding of home may not apply in the case of Sub-Saharan refugees, for example.
Momcilo Kostić, another Kosovo Serbian claimant I interviewed, expressed this idea in the following terms:

The land that I claim... It’s my *dedovina*. Maybe it’s worthless now. But I’m more tied to it because it’s *dedovina*; everything my grandfather earned, through work, through sweat. Those were the old ways of farming. Digging by hand, sowing, it ties a man—he left his sweat on that property. I remember when I was 12, 13 years old I used to farm it, I worked it. That’s the main reason I feel tied to it. The money may be the least important. But it hurts. It pains every person—where he was born, that’s homeland. It’s a piece of soil he will never forget. This [pointing to his heart] is the only thing that knows how it is!

But home as a place-relationship nexus no longer exists for claimants. The only home they can refer to these days is a myth articulated through narratives of loss. To my question whether they had considered returning to Kosovo, Mr Ristić replied: ‘Eeeeh... If only the times of Tito returned; the freedom, the movement, the camaraderie, the friendships.’ For him, home was a thing of the past that could not be revived.

The recounting of a mythicised past was followed by a story of existential loss of everything that used to exist: social relations, a sense of belonging, workplace, kinship and ‘blood’ ties, and material objects such as the house, the well, the *rakija* maker, etc. They starkly compared their former lives, the ‘freedom’ they remember experiencing when working their land together, celebrating key events with their Kosovo Albanian friends, visiting their ancestors’ graves, ‘living the good life’, with their lives ‘after it all happened’, surviving sometimes in subhuman conditions in Serbia. Strikingly, the comparison often revolved around the difference

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4 This is, of course, a very agriculture-oriented view. Most properties claimed with the KPA were indeed agricultural. As well, those who had moved to cities usually saw their ‘home’ as their birthplace, their *dedovina*, which was usually in the countryside.

5 In her study of Muslim refugees in Sri Lanka, Thiranagama looked at the generational dimension of such temporal understanding of home. She found that whereas for the older generation, home ‘can remain in a static time left at the point of departure’, the younger generation sees home as intertwined with their everyday lives in the refugee camps (Thiranagama 2007: 136).

6 Homemade fruit brandy popular in the Balkans.
between ‘living at home’ — the social relations that homeliness created around the physical place of the house, its materials and things, the land, the cemetery, as ‘homeland’, the physical roots of a collective and idealised identity — and the unhomely, the unfamiliar, the uncanny: being housed somewhere that’s not ‘one’s own’, in prefabricated accommodations, surrounded by ‘accumulated stuff’, as strangers in their own country.

Miodrag Milić, a Kosovo Serb in his twenties living with his parents in welfare housing due to his physical handicap, talked about his family’s socio-economic situation following their uprooting:

Here [in Blace, Serbia], we are second class. They harass us and say, ‘here come the Shiptars’, there go the Shiptars’. It’d be better to call us ‘Kosovars’ than to call us out like that. Here we have nothing. This [flat] is also someone else’s. We have no chances of ever owning it. They just gave it to us temporarily. You never know when they can kick you out… Our property in Kosovo was destroyed, we are homeless.

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7 ‘Shiptar’ is a derogatory term for ‘Albanian’.
8 Often also (erroneously) used in English, ‘Kosovar’ is the Albanian translation of the English adjective ‘Kosovan’.
Homelessness was articulated in many such narratives in terms of property loss. Property loss, in Miodrag’s and other informants’ narratives, was expressed through stories of home, of destruction of objects and of unhomely survival following the ‘critical event’ of 1999 (Das 1995). Property loss stands for the all-encompassing experience of uprooting; it stands for the time of war (Bryant 2014: 691). Such narratives of loss are temporally inextricable from a sense of belonging (or rather, ‘no-belonging’, Butler 2003: 468) anchored in history. This history is thereby made familiar, homely, or conversely, foreign and uncanny to narrators (Bryant 2014: 691).

Using a language of property to articulate such all-encompassing experience of loss as exemplified in Miodrag’s statement: ‘property destroyed equals homelessness’ is neither a coincidence nor an accident of translation. Claimants ‘sleep and dream’ of their property; they make a distinction between ‘property’ and ‘accumulated stuff’; they say they ‘left their sweat on the property’ by working their lands; they feel homeless because their property was destroyed.

What does such deployment of the concept of property in claimants’ narratives of loss teach us about property’s signification for claimants? Anthropologists have long treated property less as a material object than as a relation of persons to things, or as a relation of people to each other mediated by things. They have usually emphasised the rights and obligations that such relationships involve within broader systems of social, cultural and political relations (Verdery 1998: 161; Gluckman 1965; Malinowski 1935). Anthropologists have also looked at property as a bundle of abstract rights (von Benda-Beckmann and von Benda-Beckmann 1994), as a political symbol, or as ‘a historically contingent Western “native category” that has strong effects in the world’ (Verdery and Humphrey 2004: 1, 20; Strathern 1988). That anthropological analysis has tended to ‘avoid conflating “property” with “thing” (as in “land is property”’) (Verdery and Humphrey 2004: 10) speaks on the one hand to anthropologists’ long mistrust of ‘material culture’ (Miller 2005: 5-7). On the other, it speaks to the dematerialisation of the thingness of property through the omnipresent language of rights (Hallowell 1955: 242), and to the fact that new objects of property have arguably become less material (Strathern 1996; Parry 2004).
Yet in decentring ‘the agency of human subjects by exploring the agency, affordances, and affective qualities of objects and landscapes’ (Fontein 2011: 706; Navaro-Yashin 2009; Stoler 2008), recent scholarship has showed how objects, blanketed under the label of property as ‘things’, can both materially encapsulate, and be assemblages of, social relations. The idea is thus not necessarily to conflate ‘property’ with ‘thing’ but to look at what things come to perform and materialise relations of property and why (Henare et al. 2006). Following this ‘material turn’, I am interested in understanding how the concept of property came to be the label under which loss was arrayed (Verdery and Humphrey 2004: 2).

To understand how property came to signify loss in claimants’ narratives, and how the lost home came to be framed as property, I first turn to anthropological debates on loss and its materiality. The shift to the discursive terrain of property has as much to do with material practices of the memorialisation of loss as it does with the specificity of post-war Kosovo’s political and legal environment.

In what follows, I argue that my informants talked about property in material terms because materials matter aesthetically, affectively, sensorily and mnemonically — and in that sense, talking about the materiality of things means talking about their ‘social lives’ (Appadurai 1986); their capacity to materially encapsulate and normalise loss. More importantly, property was objectified because in the present institutional-legal context, the language of property acted as the epistemological framework of choice. As I will show, this does not necessarily mean that different actors agreed upon, or let alone understood, one another’s reasoning of objectification. Looking at property this way demonstrates that claimants’ narratives were not simply stories of loss but primarily rights-based claims within the broader political context of transitional justice in post-war Kosovo.

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9 I am deliberately not calling this turn ‘ontological’ for I am not convinced it has indeed anything to do with ontology. In a recent talk at the university of Edinburgh (February 2016), Martin Holbraad himself downplayed the importance of the term ‘ontology’ in the phrasing ‘ontological turn’, rather emphasising the methodological consequences of taking emic signifiers for what they are within their ethnographic contexts as the ultimate way of producing valuable ethnographic theory.
How melancholic objects perform and materialise loss

Butler has written that loss ‘must be marked and cannot be represented; loss fractures representation itself and loss precipitates its own modes of expression’ (2003: 467). Butler’s statement points to the impossibility of objects of loss and signs of loss such as language to ‘mirror’ one another in a direct (even if only imperfect) signifier-signified fashion such as in a pure representation (Oksala 2005: 25; Foucault 1994 [1970]: 79). The subject-object as internal-external dichotomy is complicated, thereby also ‘overcoming the conventional understanding that “loss” belongs to a purely psychological or psychoanalytic discourse’ (Butler 2003: 467).

In this sense, loss fractures subjectivity itself (Berry 2016: 62). Fontein’s description (2011) of the ambiguous agency of bones in Zimbabwe is a case in point. His analysis of what he has called bones’ ‘emotive materiality’ shows how objects of the dead can be ‘extensions of the dead themselves, as restless and demanding spirit subjects/persons, but also as unconscious objects/things that retort to and provoke responses from the living’ (2011: 432). Similarly, Bear’s analysis of Anglo-Indian families’ difficulties in materialising kinship continuities points to how markers of loss such as ghosts — as ‘subjects’/‘objects’ — ‘offer the possibility of asserting connections between generations, to a place and with the past in general’ (2007: 37). Navaro-Yashin also proposes an understanding of loss as mediated by objects in her analysis of the affective impact of objects left behind by Greek-Cypriots (pieces of furniture, houses or the lands on which they are built), on the Turkish-Cypriot community who ‘inhabit the melancholy of the other community through their left-behind objects and spaces’ (2009: 16).

Markers of loss, in the form of remains of loss, or ‘melancholic objects’ (Eng and Kazanjian 2003) are ‘continually shifting both spatially and temporally, adopting new perspectives and meanings, new social and political consequences, along the way’ (5). The loss of exile ‘disconnect[s] the subject’s ability to narrate (and thus comprehend) the experience — to represent, recollect, or recover (from) it’ (Berry 2016: 62). Yet, ‘loss is apprehended and history is named’ (Eng and Kazanjian 2003: 10).

10 Anthropological interest in objects goes of course beyond those of the dead (e.g., Appadurai 1986; Ingold 1992; Gell 1998; Latour 1999; Miller 2005).
Practices in apprehension of loss are constituted through social, political, legal and aesthetic relations (Butler 2003: 467). As my ethnography will show, remains of loss materialised through such relations by precipitating the all-encompassing experience of loss on their materiality, if only temporarily.

The description of material remains, which was pervasive in claimants’ narratives of loss, points to claimants’ continuous engagement with the past and to their persistent struggle with loss through melancholic objects (Eng and Kazanjian 2003: 3). As recent scholarship in material culture has demonstrated, ‘memory making tends to require a material grounding when gestures of preservation and recovery are made’ (Hallam and Hockey 2001: 101). Miller and Parrot’s study (2009) of people’s relationships with objects of the dead in a street of London investigates how, through object accumulation or divestment as forms of memorialisation, the dead become idealised, replaced and/or replicated. Gibson’s discussion of ‘melancholy objects’ as ‘objects that memorialise mourning’ (2004: 286) such as photographs, similarly highlights how ‘objects function as metaphorical and metonymic traces of corporeal absence’ (285); they ‘come to stand in for [people], in their absence’ (ibid). Objects, therefore, ‘stand in memory of the process of mourning itself’ (Miller and Parrott 2009: 510).

Memorialising material objects is a vehicle through which the ‘traumatic experience becomes the […] main narrative device that stitches together an otherwise fragmented story’ (Oushakine 2006: 304). Using Oushakine’s description of two strategies of ‘normalisation’ of loss, namely ‘spatial localisation’, i.e. ‘breaking loss into multiple objects of attachment’, and ‘fragmentation’, grounding it in a multiplicity of things’ (ibid), I draw on a claimant’s visit to his wife’s former home to illustrate how claimants’ loss gained expression through memorialisation of material objects in terms of property.

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11 Parallels to such analysis of loss can be found in studies of suffering, whereby suffering and physical pain are sedimented in (Connerton 1989; Kesselring 2015), discursively somatised through (Oushakine 2006), or objectified on (Scarry 1985) the body, thereby ‘turning a suffering body into a sociosymbolic foundation for larger narratives of sacrifice, martyrdom, or victimhood’ (Oushakine 2006: 298; Feldman 1994; Asad 2003; Kelly 2012).

12 I understand ‘materiality’ as what makes the ‘thing-ness’ of objects ‘social’ (Miller 2005; see also Ingold 2007).
It was a sunny day in April 2013. On my way to the Serbian enclave of Gracaniška, the air reeked of dry dust, discarded garbage and flamboyant green trees. The KPA office in Gracaniška was on the lower ground floor of a house on the main street, just up towards Pristina from the Orthodox Monastery. The office was a small, bare, and rather humid room equipped with an old metallic desk and two or three rickety office chairs. To meet me, Mr Cirković travelled from the village of Gornja Gušterica, one of the few Kosovo Serbian villages that remained untouched by the war. Two kilometres away, across wheat and cornfields, lay the village of Slovinje, the birthplace of Mr Cirković’s wife.

After a brief interview in which, folders of documents in hand, he explained he represented the interest of his wife and her three sisters before the KPA, Mr Cirković suggested we accompany him back to his wife’s lost farm. He had not been back there for years, despite the short distance from his home and the fact that, for a couple of years now, he had been cultivating fields owned by his wife’s family that are furthest away from the village. In the car, Mr Cirković continued his narrative:

My wife’s family was a rural household, reputable, one of the strongest in the village. Their property was among the most respected… We claimed it was all burned down. We received papers confirming we are the owners and some [Kosovo] Albanians stopped cultivating our fields thanks to that. Our life in the village of Slovinje is over. But that which is destroyed, that which is stolen, we argued that some compensation is in order. We didn’t receive a cent, we ask for the money… If ever Prime Minister Thaçi wants to receive me and talk to me, I am even willing to give it all away if he pays for the damages! Let him construct a house there for a poor Albanian fellow. That would be fair. What else. No one will come back to live there when they [the Kosovo Albanians] got houses over there anyway.

After driving for twenty minutes, during which I tried not very successfully to put aside the uncomfortable feeling of being taken for someone who could actually do something about Mr Cirković’s compensation request, we arrived at the claimed plot in the village of Slovinje. The wasteland and rubble in front of us contrasted starkly with the neatness of successful reconstruction all around. Colourful houses had
recently been rebuilt by Kosovo Albanians, and freshly washed clothes hung on clotheslines in neighbours’ trimmed gardens. The prying eyes of neighbours were upon us as we walked around what used to be a group of buildings spanning five hundred square metres.

As soon as he stepped out of the car, Mr Cirković started crying. Mumbling incomprehensively, cursing, repeating ‘there is nothing at all; everything is gone; nothing to see’, he showed us where the house, the stables, the barn, and the well used to be. ‘This was the entrance to the house, but really, you cannot see anything. They cut down all the trees, buried the well’.

Fig. 23: The property claimed by Mr Cirković on behalf of his wife and her sisters. Photo by Leart Zogjani, 2013
We went up the hill to see the little cemetery where his mother-in-law was buried, but all the tombstones were gone.

I haven’t seen the tombstone in thirteen, fourteen years, but look, there’s nothing. Not a thing, not a mark! They planted these pine trees, the meadow doesn’t look the same at all. Where is the fence? It’s hard, you come here and you can’t even see the tombs. And my wife intends to light a candle if she comes, but how, where to light it? She would collapse if she saw this, she wouldn’t survive it…

At the cemetery, he pointed and said: ‘See that hill over there, those tombstones? Eh, those are all victims of the [Serbian] paramilitary forces during the war, whatever units they were, I know from stories... See where the Albanians are buried. It’s because of those massacres that the [local, Kosovo] Serbs suffered! See. If that hadn’t happened, we would have been allowed to stay’. As we were driving away,
Mr Cirković concluded: ‘Let them [the Kosovo Albanians] live there, we will sign off the property in their names, and that’s it!’

Fig. 25: At the cemetery. Photo by Leart Zogjani, 2013

Stories of other claimants’ visits to their lost homes revolved around similar experiences of symbolic violence, but sometimes also physical violence exercised by Kosovo Albanians, compelling visitors to seek shelter behind the UN insignia of their bus. These occurrences triggered heightened emotions, the retelling of past homely practices, and forms of somatisation sometimes even leading to hospitalisation.

While not all claimed houses were destroyed, I use Mr Cirković’s visit to his wife’s destroyed family farm to underscore claimants’ relationship to their former homes in terms of ‘ruination’ (Navaro-Yashin 2012: 162). I construe a house claimed by a Kosovo Serbian claimant but inhabited by a Kosovo Albanian family as a ruin: a fetishised, glamorised, idealised landscape of memory; a ‘site of mourning’ (Winter 1998; in Hallam and Hockey 2001: 98), which uncannily superposes and

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13 This quote evinces another aspect of the attitude of some displaced Kosovo Serbs, who seem to accept that the sites now belong to Kosovo Albanians.
interweaves mythicised past and present landscape (see also Gordillo 2014). In her account of the relationship between material remains and the ‘subjectivities and residual affects that linger, like a hangover, in the aftermath of violence’, Navaro-Yashin describes ruins as being made of contrasting, vertical roots and horizontal rhizomes (2012: 162). A ruin in Northern Cyprus, she explains, is both ‘rhizomatic in the sense that it grows in uncontrollable and unforeseen ways’, and also about roots, because it is sited as a trace of a historical event. It is remembered, kept, lamented, and cherished in the memory of those who left it behind, it is sited and noticed by those who uncannily live in it or in its vicinity’ (ibid).

Walking around the ruins of his wife’s family’s farm, Mr Cirković could not contain his emotions, and my translator had to help steady him, else he would have collapsed. Standing where the house’s threshold used to be, he said: ‘It’s fucking hard. No telling, it’s hard… [crying] To think that I used to come here! Many times, as a guest, for slava14… I would come here to work, to celebrate the good life… Fuck…Whoever fucking made this happen…’ He continued his guided tour of the wild and worryingly unfamiliar landscape (the rhizomatic character of ruins). Spatially-triggered props of memory propelled him back to the past while facing the devastated landscape of the present (thus ‘rooting’ Mr Cirković’s experience of the ruin): ‘this is where we had the cows… I would come and help the father-in-law put the grains in here’. Walking around the house’s foundations unearthed deep emotions by evoking personalised associations with certain social practices that used to take place in this particular space (Bachelard 1994 [1958]; Bourdieu 1977).

Building one’s new house in Serbia using the blueprints of the destroyed house is another salient example of memorialisation through spatial localisation. It is literally a ‘concrete’ attempt at resolving the affective void by constructing the new house as a lived-in memorial; a ruin in the future tense. I interviewed Milan Zuvić, his wife, and his brother in their living room in Kragujevač, Serbia. Milan Zuvić stated:

I built the house we are living in here in Kragujevac in exactly the same way that I had built my house in Kosovo, only a bit smaller. I chose to use the same model because it helps me feel at home. When I

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14 Slava, literally meaning ‘celebration’, is the name given to the Serbian Orthodox patron-saint day.
enter the house, our home in Kosovo does not seem so far away. It is as if I am at my birthplace. This is really important to us. However, as soon as you walk out the door and enter the yard, the feeling changes. What I miss most is the land. It was large, with plenty of space on each side and one could hear the river flowing. We continue to mourn our property.

This endeavour points to the importance of materials and to the aesthetic, architectural sensuality of belonging (see, especially for post-war Kosovo, Herscher 2010). Such ‘melancholic reconstruction’ powerfully demonstrates how melancholic forms of memorialisation impact future social, political and legal configurations.

These examples suggest that the objectification of home as property is in part at least the result of a process of mourning that memorialises by locating and fragmenting loss in objects. The well, the bricks of the house, the rubble of the disappeared cemetery, the rooms of the new house, etc., encapsulate the experience of loss; they mark loss spatially and temporally. The Lockean view of property being made one’s own by mixing it with labour, the recollection of kinship ties through memories of working the land together, etc., point to claimants’ rhizomatic and root-like attachment to and idealisation of their homes-in-ruin as relationships of property. Property serves as a flexible signifier for relationships of loss, themselves characterised by on-going bonds with the past through the appraisal of melancholic objects. This ‘engagement’, Eng and Kazanjian suggest, ‘generates sites for memory and history, for the rewriting of the past as well as the reimagining of the future’ (2003: 3); it generates new forms of agency, such as claiming (Feuchtwang 2003).

**Property as repertoire of injury**

Following Navaro-Yashin’s observations, I have analysed ruins as political and affective ‘memory traces’ (Feuchtwang 2003: 76) of home ‘that mark the fragility of power and the force of destruction’ (Stoler 2008: 194). At the same time, ruins as material markers of loss make visible current political and legal struggles over space. The sense of the uncanny that such ruins exude is more powerfully felt as ‘a sense of impropriety, haunting, or an act of violation’ (Navaro-Yashin 2009: 11) due to the
legal limbo in which the space is kept. It is because Mr Cirković and his wife’s family no longer have enforceable rights to the plot that it is so unkempt, and that neighbours use it as a rubbish heap.

Mr Cirković’s choice of words was possibly a consequence of the residual violence that such a site of mourning contains (Navaro-Yashin 2012). But those were also the words of someone grappling with grief, expressing deep resentments towards the ‘forces’ that ‘made this happen’. This emotive language alternated with a more legalistic narrative, for example the invocation of compensation rights and the suggestion of making a retributive gift of the plot to a poor Albanian as a form of closure. The language of property deployed by Mr Cirković and other claimants did not only talk of an all-encompassing loss, but used loss and its markers to articulate grievances and position claimants as victims of rights violations. Property, through the KPA, became a means for displaced Kosovo Serbs to seek legal redress. Many of them requested monetary compensation, or compensation in kind, and the confirmation of proprietorship (in terms of ownership or user rights) to the KPA at the time of the claim intake.  

Loss creates a category of belonging that is grounded in the experience of loss and ‘becomes condition and necessity for a certain sense of community’ of sufferers to emerge (Butler 2003: 468). Victimhood is similarly constructed through an understanding of such loss vis-à-vis a certain social, political and legal context. In this way, expressions of loss gain social, political, or in our case legal recognition, by invoking and discursively tapping into publically recognised or state-sponsored, repertoires of injury.

In some cases, social and political recognition (and thus also commemoration) of loss are better achieved by keeping loss private, by domesticating and locating it within the family sphere, as described by Oushakine in the case of an association of deceased soldiers’ mothers in Russia’s Altai region (2006: 304). In other instances, people may be forced to keep loss private because the political situation does not allow them to acknowledge it publicly, as in the example of bereaved mothers in Sri Lanka described by Rebecca Walker (2015). In

15 The period between 5 April 2006 and 3 December 2007 during which people could approach the KPA to submit claims.
other cases, it is the politicisation of loss, its articulation into a language of political responsibility, and/or its legal translation, its articulation into a language of rights, reparation, or legal compensation, which transform sufferers into acknowledged victims. Rights then become ‘sites of the production and regulation of identity as injury’ (Brown 1995: 134); and the law a space of recognition through the distribution of citizenship rights on the basis of ‘exceptional’, ‘differentiated’ suffering (Wherry 2016: 42; Petryna 2002; Ticktin 2011; Fassin 2012; Biehl 2013). Property, as a potent language of rights and entitlements, therefore situated claimants’ suffering within a broader discourse on property restitution promoted by the KPA and backed by major political figures in Kosovo and in the international community at the time.

Legal forms of recognition, Kelly notes, are first and foremost pragmatic: they do not purport to grasp or represent the experience of pain and suffering in its entirety (2012: 12). Rather, they are ‘concerned with the distribution of rights and the acceptance of obligations, and the meeting of the conditions necessary to make those decisions’ (13). For suffering ‘to be a legal violation, there must be a victim, a perpetrator, and a remedy’ (ibid). In post-war Kosovo, different strands of law have defined victims and perpetrators differently, based on the same human rights principles.16 As I will later explain (especially in chapter five), this was a major cause of the KPA’s unpopularity among the Kosovo Albanian community, who had a hard time seeing Kosovo Serbs treated as victims by an institution operating under Kosovan law.

The KPA in its media campaign clearly delineated its mandate in terms of the victim-perpetrator divide. The KPA advertised its claim registration period on billboards in Kosovo and Serbia as well as through four TV ads, two targeting the Kosovo Albanian population in Kosovo, and two in Serbian, broadcast in Kosovo and in Serbia.17 The two ads in Serbian, which targeted the Kosovo Serbian

16 The acquittal of ex-KLA commander Ramush Haradinaj in The Hague on the one hand, and, on the other, the various court cases pursued by EULEX prosecutors against ex-KLA soldiers is a case to point.
17 The KPA also organised a ‘bus campaign’ in Kosovo during which its information officers visited 200 villages identified as predominantly Serbian, distributing leaflets on how to submit a claim and explaining the claiming process to the villagers. Thereafter, people who wanted to file a claim could do so at the nearest KPA regional office. In Serbia, the KPA had a mobile team to help people
population now living in Serbia, spoke a language of loss and the reclaiming of rights. The ads in Albanian, in contrast, deployed the language of legality. Of those, one targeted illegal occupants of properties and suggested the KPA might help them legalise their situation. The other featured the then Prime Minister of Kosovo, Agim Çeku, in a lengthy monologue about the importance of the rule of law, and the respect of people’s property rights ‘regardless of their ethnicity, social status or faith’. From the outset, then, the KPA process was aimed at helping Serbian ‘victims’ of the war recover their property rights, while Albanians were largely framed as illegal occupants. Apart from Kosovo Albanians formerly possessing immovable assets in the North, it was clear that Albanians were not the target audience of the KPA.

Because the KPA process offered a legal avenue to make claims and voice grievances focusing exclusively on (immovable) property rights, property became a discursive terrain on which narratives of loss could be articulated. Articulating the lost home as property was thus a way of legally sanctioning grief through the voicing of a recognised injury, that of the war-related loss of property. I do not mean, however, to construe a simple before – after argument and imply that people did not talk about property, or value property documents, before becoming KPA claimants. Rather, claimants appropriated a pervasive, legalistic language of rights when talking about very personal experiences. Moreover, property can mean more than one thing and change signification over time as the modalities and forms of, and the values attributed to, relations entailed under the idiom of property as well as the things it consists of, are reconfigured (Verdery and Humphrey 2004). Property, for claimants, became an idiom of recognition, a repertoire of injury, a symbol of hope, which

register claims on top of the usual claim intake process taking place in the UNHCR/KPA property offices, in order to reach out to the elderly and unemployed Kosovo Serbian DPs living in refugee camps.

18 https://www.youtube.com/watch?v=7Gd9zADbeSA and https://www.youtube.com/watch?v=aqXjS7kZSE
19 https://www.youtube.com/watch?v=eCVUoSUq_4E
20 https://www.youtube.com/watch?v=oZBRYFfROPs, all accessed 3 December 2017.
rested on an ideology of property restitution, itself anchored in transnational human rights principles.\textsuperscript{21}

However legalistic and narrow the KPA concept of property and ensuing quasi-judicial remedy were (see chapter six), claimants saw in the KPA — the only initiative of its kind independent of Kosovan and Serbian courts mostly seen as corrupt and inaccessible — a means to claim reparations, as one claimant put it, so as to have ‘something’ in Kosovo, ‘some kind of property’. Because the KPA was only interested in property and due to the difficulties of accessing other possible legal mechanisms to resolve war-related grievances (see introduction), property became a repertoire of discourse and action for the arraying of a broad range of grievances relating to the war.

**Documents as boundary objects**

Due to the nature of the KPA process as a mass claims administrative mechanism, the determination of property rights by the KPA was based almost exclusively on documents.\textsuperscript{22} This, in turn, led to the centrality of documents for claimants when talking about and pursuing their claims (see chapter three; see also, Whyte 2015). Claimants would show me stacks after stacks of documents such as house plans, possession lists, KPCC and court decisions — sometimes not knowing exactly what they contained.

The documents lent rhythm, order, and legibility to their narratives in ways that gelled with their understanding of the KPA process and their role as claimants, that is, as ultimate providers and collectors of documents. In our interviews, narratives would revolve around personal circumstances of loss but quickly turned to explanations of the claim process in terms of documents received and exchanged.

If ruins were material markers of relations that saw the loss of property as homelessness, documents materialised relations of loss as property in terms of

\textsuperscript{21} At the same time, as the first part of my argument suggests, it is important to acknowledge the pre-existing symbolic centrality of ‘the house’ as metaphor and materialisation for family and corporate existence, intergenerational continuity, etc.

\textsuperscript{22} I say ‘almost’, because in some uncontested cases, claimants’ oral statements collected by phone (and thereafter transcribed and logged in the file) served as decisive evidence to grant claims.
legalistic claim making. Claiming property through the KPA, which involved the
translation of personal experience into a technical-legal language impinged on
claimants’ subjectivities as much as it transformed their relationship to their reputed
‘property’ by way of documents. Documents exchanged between the KPA and
claimants as well as those produced by the KPA became for claimants markers of
loss, at times mnemonic triggers, at times memorials in themselves, and possibly
written forms of closure. Pointing to the cover page of a KPCC decision, Milan
Zuvić stated:

We are grateful to the KPA for their help. They helped us register the
property in our name, to protect it. Approximately two years after we
submitted our claim to the KPA, the decisions for all the separate lots
started coming in. These documents confirm that we are the rightful
owners.

Yet claimants did not necessarily have the same understanding of property and
ownership, or of loss for that matter, as the KPA had, nor did they necessarily
understand or agree with the KPA’s treatment of their claims. Claimants’
understanding of property encompassed much more than a strictly legalistic
conception of ownership or possession; their understanding was based first and
foremost on extra-legal kinship and labour-oriented relations of homemaking. Many
claimants could not understand the distinction the institution made between
‘ownership’ and ‘possession’, or ‘temporary’ and ‘permanent’ user rights. Also,
recurrent complaints towards the KPA — for which regional officers, at the margins
of the institution, had no answer — were that decisions arrived bit by bit, without
any explanations as to why other decisions for claims lodged by the same claimant
were still pending, or why some claims were dismissed while others were granted in
the name of the same claimant.23 Likewise, claimants and KPA staff did not
necessarily consider property documents in the same ways or for the same reasons.
Two interviewees, for example, proudly showed me inherited title deeds from the
Ottoman period, locally known as Tapija (see picture p. 10), to assert ancestral rights

23 This shows how ‘efficiency’ and ‘economy’, the purported aims in applying a mass claims
approach, worked as legitimating devices, benefiting first and foremost the institution rather than its
beneficiaries.
to a property they subsequently sold. Any KPA lawyer would have dismissed such documents as useless.

Through legal translation, property worked as a shared language through which different epistememes, or worldviews, could be made commensurate (Rottenburg 2009; Latour 1987), and property documents acted as ‘boundary objects’ (Star and Griesemer 1989): ‘translation devices’ at the interface between claimants’ worldview and the agency’s. Boundary objects mediated communication and cooperation by ‘bridging perceptual and practical differences’ (Huvila 2011: 2528) without property and documents necessarily carrying the same meanings for all actors.

That claimants and KPA legal officers had distinct ways of approaching documents and claims may seem obvious: legal epistemology is clearly distinct from the way in which laypersons make sense of the world (Conley and O'Barr 1990; Merry 1990; Sarat and Felstiner 1995; Mertz 2007). In their seminal study of language use in American legal processes, Conley and O’Barr have famously shown that lay people tend to privilege a ‘relational orientation’, which ‘predicate[s] rights and responsibilities on a broad notion of social interdependence rather than on the application of rules’, and which often fails to be understood by the courts, leading to frustration for litigants (Conley and O'Barr 1990: ix). Legal professionals and businesspeople, in turn, prefer a ‘rule oriented’ approach, which tends to ‘evaluate [problems] in terms of neutral principles whose application transcends differences in personal and social status’ (ibid).

Yet, less obvious is how claimants’ relational-oriented statements came to be translated into a legal language that would be understood by the KPA. The claim intake form (CIF) as a ‘standardised form’ (Star and Griesemer 1989: 411) is a boundary object par excellence, mediating the transformation of stories of loss into legalistic categories while ‘deleting’ uncertainties along the way (ibid). The last section of this chapter analyses the transformation process operated through the CIF as the initial vehicle for the legal translation of grievances, which both determined the factual background upon which legal discussions were subsequently based, and transformed claimants into ‘document-subjects’.
Translating grievances in legal terms

As a feature of discourse and action, the process of legal translation transforms the way in which people understand themselves and their social bonds through the reframing of existing problems into the terms required for them to be dealt with legally. Povinelli (2004) describes how Aboriginal Australians had to emulate the state’s understanding of property as a specific legal category with its ensuing regulations and modes of implementation when making claims of property restitution (see also, Myers 1986). This forced them ‘to reconceptualise their social bonds in the particular forms specified in the legal discourse’ (Verdery and Humphrey 2004: 17). Likewise, Nadasdy shows how the Canadian land claim process has forced Kluane First Nation representatives to ‘learn a very different way of thinking about land and animals’ (2002: 258).24 In a similar fashion, the claim intake interview confronted prospective KPA claimants with questions about loss in terms of war-related dispossession of immoveable assets.

To prove their eligibility, claimants had to adopt the KPA’s understanding of property as a written and exclusive form of entitlement, and of loss as limited to a time-bound window of suffering. These understandings were enacted through the CIF by both KPA claim intake officers and claimants. During claim intake, claimants were asked whether they could prove they had lost possession of their ‘property’ between 27 February 1998 and 20 June 1999, and whether the loss was a direct consequence of the war.

My informants described these interviews as negotiations between officers keen on registering as many claims as possible while being restricted by the language of the form and by their training; and claimants trying their best to tell their stories in a way that would ‘look good’ to officers, without being entirely sure how. ‘Some

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24 Authors such as Baviskar (2012: 177), Zenker (2015) and Biehl (2013) discuss similar transformations of discourse and action, although they are more interested in the ‘why’, and thus in the politics of such process, rather than in the ‘how’, which is my focus here. Kesselring (2016) uses the term ‘legalization’ to refer to similar discursive shifts and transformation of litigants’ subjectivities. According to her, ‘legalization’ is ‘the discursive reduction of subjectivities that happens to those who turn to the courts with their social concerns’ (75). To me, however, ‘legalisation’, seems to rather refer to the process whereby something that was first identified as ‘illegal’ is now seen as ‘legal’, as in the ‘legalisation of settlements in the West Bank’, for example.
people tried to lie to us, saying they had more square metres’, explained Goranka, one of the two mobile team officers from the Belgrade office. She continued:

But then when we asked: how many rooms? The person said “3, for 300 square metres”. This is fishy, I thought. Then the claimant said: ‘the truth is that my house was 30 square metres but you can write whatever you want’.

Grievances often take on some judicial qualities that claimants believe are best suited for the legal forum to which they are addressing their claim (Felstiner, et al., 1981; Merry, 1990; Conley and O'Barr, 1990; Harris, 1996; Kelly, 2005). This is so even when they do not always know what 30 square metres amount to, as it seems quite unlikely that a house built before the war would have had such tiny dimensions.

Unlike the Rwandan Gacaca courts, where individual tales of suffering were supposed to form the basis of the justice process (Oomen 2005), narratives here were formatted and put into boxes from the very beginning to enable mass adjudication. The CIF contained the only written statement directly dictated by the alleged property right holder or family member to KPA officers. Some people later sent letters explaining their grievances to the KPA, but this was not common practice. For most claimants, the claim intake was the only personal contact they had with the KPA before the delivery of decision(s), and the only time they got to explain their stories in their own words. The CIF was the document of reference for each claim submitted; it was the first and most important document of each file. Perhaps unsurprisingly considering the mass claims nature of the process, only very weak traces of the lived histories — those that made claimants decide to file a claim in the first place and sometimes travel very far to meet with a KPA officer — were to be found in the CIF.

Translating grievances in legal terms by focusing solely on documents thus created a certain type of ‘document-subject’: not just ‘documented subject’ or ‘paper truth’ (Tarlo 2003) but the crystallisation of personhood in the form and content of documents, much more easily manageable in legalistic terms than individuals and their messy stories — especially in the case of a mass claims mechanism such as the KPA. Writing about a post-socialist restitution of a house in Romania put before the European Court of Human Rights (ECHR), Dembour and Zerilli observed:
individual lives, motivations and expectations are typically ignored [in ECHR’s legal commentaries]. […] The socially stripped “applicant” hardly matches the “real person” who lives behind the legally constructed figure’ (2007: 189). Such transformation of subjectivity was also ‘translated back’ to claimants through documents exchanged; documents intrinsically becoming expressions of citizenship, as both means and ends of the justice process in themselves.

The process of legal translation is an exercise in epistemic coercion that simplifies, categorises, generalises and ostensibly depoliticises. As Elisabeth Mertz noted, when ‘human conflict’ is translated into legal language, much of the sociocultural specificity as well as the moral and emotional dimensions of such conflict get drained (Mertz 2007: 132). ‘In doing so, [the legal language] subtly erase[s] a great deal of the context and detail on which most laypeople would rely in forming ethical judgments’ (ibid). As a social form, legalism generates social obligations, complex relationships (Pirie 2013: 14) that are embedded in hegemonic relations (Comaroff and Comaroff 2006). But it also creates spaces for subterfuge (Kelly 2012), contestation (Goodale and Merry 2007; Holston 2011), and rights-based expressions of citizenship (Eckert 2006; Biehl 2013).

Here, I look at the CIF as a platform for such legal translation. It illuminates which information seemed crucial for the KPA and which did not when assessing property rights. And it demonstrates that spaces for subterfuge, contestation and expressions of citizenship were central to the documentary transformation of stories into legal claims.

The CIF, written in the three official languages (Albanian, Serbian and English) was divided into nine sections. Part A focused on the claimant’s personal information: name, current address, date of birth, gender, ethnicity (understood as either Serbian, Albanian or Roma/Ashkali/Egyptian), name and date of birth of the ‘parent’ (i.e., direct family member) through whom property rights were claimed as well as their gender, ‘legal basis’ of the claimant (whether or not the claimant was himself/herself a property right holder), the family relationship between claimant and ‘parent’ as well as the reason for the ‘indirect claim’ if the claimant was not himself/herself a property right holder.
Part B included information about the property right holder if s/he was not the claimant. Part C pertained to the current occupant’s basic information if known by the claimant (including name, address, phone number and occupation), whereas Part D and Part E focused on the ‘other party’ as natural (D) and/or legal (E) persons to the claim (if any). This addressed cases in which the alleged property right holder was represented by a family member (i.e. a ‘natural’ person) or a legal representative through ‘power of attorney’ (PoA).

Part F pertained to the claimed property. Here, the claimant was asked about the ‘place’, description, current status (Occupied? Destroyed?), and classification of the property (residential or commercial, type of land, etc.). The form also recorded the parcel number, number of rooms, number of floors and ‘building floor’ (i.e., if the property was an apartment, the floor number it was on) as well as the year of construction. Part G was called ‘information on the property right over the claimed property’. It asked about the legal nature of the claim, whether the claimant was requesting repossession, compensation, or both.25

Part H: ‘Legal right claimed by the party’ contained one sub-section, titled ‘party’s claim’. In a box allowing a maximum of 500 characters (6 lines), claimants were asked to describe their claim. Finally, Part J, the ‘final statement of the claimant’, included two other boxes. The first requested the claimant to ‘specify, if it is important to the case, any lost [sic] of movable property except the lost [sic] of the property right over the immovable property’ and the second, any ‘additional voluntary information by the Claimant’. While the first of these boxes was usually empty, the second sometimes stated ‘compensation’ when the interviewed claimant mentioned monetary compensation as one of the remedies sought.

Part H of the form is probably the most interesting for understanding textual legal translation. The following are (slightly improved and anonymised) Google translations of the original Serbian texts of the ‘party’s claim’ for five different cases that were subsequently used in the claims’ legal analysis.

Applicant states that his late father Radovan Mirković owns apartments in Kosovo Polje in CMZ- Bresje on Object 2, Lane Flat

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25 For example, when a house was destroyed, people were in theory entitled to repossession of the land and compensation for the damages caused by the destruction.
number 10 and 11. He declares that the flat is in use by NN [i.e., an unknown person] and seeks repossession.

Claimant Mirko Petrović states that he is the user of prefabricated building, the object of the claim, built on municipal land in 1993. He lost possession in 1999. The property is used by NN.

Claimant Mirko Vaso bought the property of Mojsije Stamatović without contract. After death of Mojsije, his daughter gave Mirko a PoA that can provide declaration of sale. Seeking confirmation of property rights and restitution.

Applicant states that his father is the owner of the plot. Ranko Milić died in 1987 but probate proceeding is conducted. Property is occupied by NN. Applicant seeks compensation for the use and repossession of the same.

Dejan Milosević stated that Cedomir Jovanović has the right of use over the property located in Dobrodub village, Kosovo Polje. He submitted proof O.br 17/03 of 17/05/2003. After the death of Cedomir Jovanović, the property was inherited by his sons and Momir Dragoljub.

The above statements demonstrate the outcome of a transformation rendered rule-oriented claimants’ statements, which did not always fit requirements of legal legibility in the first place. Instead of laying out the claimants’ grievances in their own terms, the box mostly contained only very basic information such as ‘I/The claimant claim/s ownership rights/possession rights/user rights’, re-stating the address of the property claimed and its specific location, whether the property was being used by someone (i.e. NN) and the parcel number(s) for agricultural plots. One of the officers who participated in the claim intake told me that she and her colleagues in charge of writing down claimants’ statements often had to ‘translate’ claimants’ personal stories of suffering into a language that would be understood by the legal officers of the KPA; a legal-technical language that would allow officers to apply their processing guidelines to the claims without having to decipher or filter
the ‘useful’ information from the emotional and ‘fuzzy’ descriptions of events that define a relational approach (Conley and O’Barr 1990: ix).

Claimants’ narratives were stripped of their complexity and nuance and transformed into legal constructs. This allowed the KPA to turn issues in particular legal-technical ways that were often very far or even removed from the social reality of applicants (Dembour and Zerilli 2007: 190; Good 2007). Yet translating narratives of suffering into rule-oriented arguments was not as easy and straightforward as it may seem. It required that the officer writing down claimants’ statements have a good grasp of the modalities and specifics of the rule oriented language of the legal system, and an ability to translate the law’s and the claimant’s episteme. Considering the limited training received by claim intake officers, some statements escaped the suppression of affect. The word ‘Satan’ in the following example reveals the claimant’s point of view rather than the official’s. Here again, I am simply reproducing the Google translation that was used by the Case Processing Team’s (CPT) lawyer who processed the claim:

We entered the apartment after the war, we had precisely the right documentation and held it until 2007 when I received a decision from HPD for the same location. Jovan Jovanović has a solution. Please consider the case again because of the same Satan. I own the purchase contract for the apartment.

At the end of the claim intake interview, the claimant would receive an acknowledgement letter containing the number found at the top of the claim intake form. The claimants’ ID cards would be photocopied and those claimants who still possessed documents related to the property/ies claimed (for example, cadastral documents such as ‘possession lists’ and ‘certificates for the immovable property rights’, inheritance decisions, sale contracts, etc.) would either bring them to the KPA office at the time of the claim intake interview, where they were photocopied, or send photocopies by post to the KPA.

Within minutes, claimants and their grievances underwent a technical-legal transformation. Their plural social identities and histories were reified and replaced by judicial, static data. Their new identities were encapsulated in a five-digit number. This ordering number literally took over, rendering the claimants’ worldviews and
personal understandings of their cases almost insignificant. The number was listed in the units’ computer applications, in the electronic databases, on all the documents issued by the KPA pertaining to the claim, in the decision, and of course, on the claim file itself: a small rectangular piece of paper slipped into a transparent plastic case attached to the upper right side of each file. From then on, it was the number and its accompanying documents that formed the reality of the claim (Latour 2010).

After a claim was submitted, the information contained in the CIF was dissected and entered into a complex database containing different levels of information all linked to applications, designed for units to perform their specific tasks. The claim information would be amended and refined along the way by the different units in accordance with their respective field of expertise. The original CIF (signed both by the claim intake officer and the claimant) as well as the photocopies of documents provided by the claimant, would be sent through the KPA mail service to headquarters in Pristina. They would finally end up in an assigned yellow carton folder, a fully-fledged ‘file’. Scanned copies of the CIF and supporting documents would meanwhile be added to the computerised version of the file. Registration was completed by a ‘quality check’ of the CIF before the claim could be added to the list of newly registered claims that were ready for publication (per municipality, town/village, street, parcel number and KPA number) on the KPA website, as well as in one of the KPA gazettes available on the KPA website and distributed to municipalities, courts and DP organisations. The registration procedure, including quality check and publication, usually took four to six months.

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26 I come back to the distinction between paper and computerised files in chapter three.
Concluding remarks

The particularity of the KPA as a quasi-judicial, mass claims and administrative institution makes its workings far more remote than that of other post-conflict legal arenas. This is especially so regarding its handling of human drama, or better put, its effort to leave affect and emotions outside its files. In other post-conflict legal settings, human drama is part and parcel of the legal process. This applies to asylum court proceedings where parties’ ways of telling their story are crucial elements for granting asylum (Good 2008; Kelly 2012), or in international tribunals where victims’ stories and the accused’s defence are heard within the same space, often in dramatic fashion (see, for the ICTY, Hagan 2003).

However ethnographically satisfying, there were no such courtroom dramas going on here. As will become clearer in subsequent analysis of the KPA process, the institution would be better represented by the image of somewhat bored bureaucrats hidden behind stacks of dusty papers, chatting to one another behind closed doors, than by that of eloquent lawyers, flanked by a crying witness, pleading in front of a large audience. It is, however, such contrast that makes the KPA process so worthy of further investigation.

As we have seen, claimants’ understanding of their claims was only relevant to the process as one documentary element among others. The judicial logic of the institution as conveyed by the CIF excluded the emotionality and complexity of parties’ grievances in their own terms. Individual stories of loss and suffering were largely irrelevant for the work that the institution was set up to do. At the same time, documents exchanged and produced by the KPA impinged on claimants’ subjectivities by making them ‘document-subjects’, creating spaces for subterfuge, contestation and the expression of citizenship rights within the documents themselves.

This chapter examined claimants’ deployment of a language of property to talk about, and seek recognition for, experiences of loss. Through legal translation, claimants’ narratives of loss and suffering shifted onto a recognised repertoire of injury that was the war-related loss of property. Such articulations of loss were made legally legible through legal translation and the filling up of the Claim Intake Form, in a language of property rights and entitlements.
The following chapters will further investigate how stories of property loss as told by and through documents were classified according to an ‘evidentiary nomenclature’ specific to the KPA; its internal, classificatory system of naming and writing, which worked to construct institutionally vetted ‘truths’.
CHAPTER THREE

Towards ‘reasonable certainty’: documents, files and the making of trust at the Kosovo Property Agency

It’s always about documents. The KPA says: ‘please send us another copy of this document, we didn’t receive it’. Then they call back: ‘when was the contract on sale signed? Why is it not certified in court?’ And I explain everything again and again. What I don’t understand is that I have all the documents, all the evidence, and I sent them everything; I have been waiting for so many years, and still no decision. Why does it seem so complicated for them to give me a decision, when it is so obvious that I am the owner?

Mr Stejanović, a KPA claimant living on the outskirts of Belgrade who was explaining his claim, was sitting in a small cubicle of a room at the end of the hall of the KPA office in Belgrade, for political reasons operating under the banner of the UNHCR Property Office in Serbia. It was Tuesday morning, and Mr Stejanović had come to hand in another copy of the uncertified sale contract dating from the 1980s, according to which he had bought his house in the village of Osovlje in Istog/Istok, Kosovo. When I first came in that morning, I was told by Goranka, one of the two KPA/UNHCR officers who met with parties1 that, on Tuesday, a lot of people come to town for their medical check ups and, ‘come here to hang out’. Indeed, Mr Stejanović, waving his cap at the other men sitting in front of Goranka’s office on our way to the small room that my translator and I had been given to conduct interviews, seemed quite content to pass time chatting with us.

Mr Stejanović’s complaint that the KPA was interested in nothing but documents stands to reason: the KPA was, after all, an institution operating under

1 About 90 per cent of the claims received by the KPA emanated from its Serbian offices (KPA 2012: 9).
administrative law that very seldom interviewed parties face-to-face. Yet documents’ power to make the institution arrive at a positive decision in favour of Mr Stejanović’s was contested, with claimants and the KPA holding different views as to what made documents truthful and cases successful. The KPA kept asking for more documents and more explanations of the historical circumstances that had made the court certification of the contract on sale impossible. Mr Stejanović felt that they were not taking him seriously enough. He could not understand how some of the truths he asserted, so deeply rooted in his understanding of his life-world and of the political history of his country, could be put into question. What he wanted was a re-confirmation of ownership: to have his uncertified contract duly recognised by this internationally backed institution. It was a back up option; he did not for a minute think his ownership claim could be questioned. He possessed, after all, ‘all of the documents’. For the KPA, on the other hand — and this was not necessarily explained to the claimants — processing documents meant vetting their truthfulness, their legal reliability, and thus also questioning their historicity and legality. So, yes, it was ‘all about documents’, but documents were understood as powerful agents by the KPA not because they could rely on them, but on the contrary, because they possessed secrets the KPA did everything to uncover.

This chapter looks at the role of documents in the processing of restitution claims at the KPA, and at the ways in which the KPA process was shaped by and around them. Choosing to conflate analytically their physical form and the information they contain, I look at documents for their property as mediators: things that ‘transform, translate, distort, and modify the meaning or the elements they are supposed to carry’ (Latour 2005: 39); things that ‘shape the significance of the signs inscribed on them and their relations with the objects they refer to’ (Hull 2012a: 253).

A point that has often been made in the context of the asylum system in the UK and elsewhere is that documents, in their absence or their presence, can have wide and unpredictable implications on the determination of claims. Sometimes, being in possession of an identity document, for example, can help determine the truthfulness of an applicant’s account. But more often than not, documents are looked upon by asylum agencies with mistrust. Unless they are deemed of high ‘truth
value’ (Griffiths 2013: 287), which is quite rare, people are often better off not showing them to the authorities and taking the risk of increasing their perceived untrustworthiness (Kelly 2012; Whyte 2015). In contrast to the black letter law assumption that documents are ‘prime movers in meeting evidentiary burdens’ (Nemeth 2011: 137), what the case of asylum documents shows is that documents produced by asylum applicants created greater uncertainty and doubt.

As in asylum claims, the KPA standard of proof was very low, and the only written rules of evidence that pertained to the KPA procedure were that evidence should be ‘reliable’ and ‘relevant’ to be presented before the adjudicatory commission, the KPCC (Section 6.1 and 6.2 UNMIK AD/2007/5; see also Cordial and Rosandhaug 2008: 77). This means that, as in the asylum process, ‘virtually anything [could] be submitted as evidence’ (Kelly 2012: 48). Consequently, KPA legal officers considered documents, like any other type of information (oral testimonies, etc.) with a pinch of salt, an a priori mistrust.\(^2\) Here, the mistrust was perhaps less attached to the applicants’ bodies than in the asylum process (see Whyte 2015) seeing as the claimants were physically invisible to the KPA procedure, than to the particular historical circumstances that fostered uncertainty regarding documents and property rights in the first place.

How could KPCC commissioners take certain, legal decisions given all of the uncertainty surrounding the reliability and trustworthiness of facts and more generally of documents? Part of the answer is that they could not, and that there was always great uncertainty and lack of reliable knowledge enshrined in their decisions (especially for one-party claims). ‘What really happened’ could as seldom be one hundred per cent asserted in KPA claims as it could in asylum claims (see Kelly 2012: 48). However, the UNMIK regulators who legislated the mandate of the KPA tried to mitigate uncertainty by providing the KPA with the necessary judicial power and practical means to create a system through which ‘reasonable certainty’ could be made in-house. This chapter explores how the KPA went about producing the certainty that would allow its commission to stop doubting enough to take binding legal decisions.

\(^2\) Mistrust that is arguably compounded by the fact that, at the time of fieldwork, all the legal officers at the KPA were Kosovo Albanians, working on Kosovo Serbian claims. See chapter five.
In order to look at how the legal reliability of documents was probed and ascertained, this chapter looks at the KPA process through the perspective of documents themselves and highlights how having become first repositories of grievances (chapter two), they then become parts of files, and sometimes acquire the necessary quality of evidence to reach the institutional standard of proof: reasonable certainty. Grievances were transformed into claims, which, in the form of files — as aggregates of digital and paper-based information — moved through the ‘processing chain’ of the different units that made up the KPA. While there were some three hundred staff members working for the KPA, they were distributed among five regional offices in Kosovo, four in Serbia, and the HQ in Pristina. Each unit at HQ level had its equivalent at the regional level, and it was the regional staff that carried out most of the legwork.

Each unit’s tasks were defined according to the files’ journey through the institution. As in most ‘modern’ bureaucratic institutions, the law at the KPA began and ended with documents stamped, stapled, and ordered into files. Files as ‘paper shrines’ (Hull 2003: 295) were the central object of all activities. This chapter follows the institutional trajectory of files — the most material, visible and traceable stuff of law (Latour 2010: 71; see also Riles 2006b) — as well as the ‘career’ of the documents they contain (Appadurai 1986; Harper 1998; Brenneis 2006). I thereby trace the transformation of documents’ social and material ‘facts’ into the stuff of bureaucratic, institutional case processing. Here, files are conceived as the material repositories of the legal process rather than as the manifestation of bureaucratic norms (compare Weber 1978: 988), or as ‘instrument[s] of organisation control through the storage and transmission of information’ (Hull 2012a: 257).

After registration, two processes started in parallel. The claimed properties were ‘notified’ and the claims’ documents were ‘verified’. This chapter analyses the process of documentary transformation through its two most important steps: notification and verification. The chapter describes how facts were ascertained and how an in-house nomenclature of trust was built in order to reach reasonable factual certainty — crucial for legal decisions to be made. By ‘nomenclature of trust’, I

3 At the time of study (June 2012 to July 2013). The Kragujevać office closed down at the end of my fieldwork.
mean the different technocratic strategies and technical procedures of naming and writing such as routinisation, computerisation and compartmentalisation, which were put in place by the institution in order to construct ‘reasonable certainty’ unit by unit. I make the case that it is by looking at how files are made, at their trajectory, that we can begin to understand how the institution knew what it knew, and what it chose to remember.

The transformation of earth into paper

The KPA’s headquarters were situated in the centre of Pristina on Rruga Perandori Justinian, in an area called Pejton. Perandori Justinian was a short walk from the NEWBORN monument and the EULEX Police headquarters on so-called Police Avenue, also known as Luan Haradinaj (see map of central Pristina, p. viii). In addition to a series of cafes and lunch places, the small street also hosted the Constitutional Court, a couple of offices of the US Agency for International Development (USAID) and the UN Women office. The KPA building was divided in two, its left wing rented out by a private college. With its tall greyish façade and aluminium glass frames, its automatic doors, marble-like flooring, metal detector and two guards in uniform, it looked rather grand and impressive. It was also narrow, with a broad staircase at the front leading to the first two floors, and another, much narrower and shabby-looking staircase at the back next to the elevator leading to all four floors.
Fig. 26: The KPA building. Photo by Leart Zogjani, 2016

Fig. 27: The KPA entrance. Photo by Leart Zogjani, 2016
Fig. 28: The KPA lobby and the broad staircase giving to the first two floors. The door on the right gives into the notification office. Photo by Leart Zogjani, 2016

Fig. 29: The KPA lobby, Photo by Leart Zogjani, 2016
Despite the imposing lobby and directors’ offices, the building was actually far too small for the needs of the institution. This made the politics of space allocation all the more transparent, with often overcrowded, windowless, easily overheating cubicles and storage rooms doubling as office spaces. At the time of fieldwork, I wondered if there was a hidden meaning to the structure of offices in the building. In hindsight it seemed obvious: the spatial positioning of offices in the building corresponded perfectly to the hierarchy within the different units of the institution. The higher one climbed, the closer one got to what was perceived to be the ‘important bits’ of file processing.

Up until the second floor, people seemed to always be following a web of tight-knit rules and procedures, stripped of their black-letter law rigidity, and translated into the easy-to-follow application of instructions to insert data into the file database: ‘Insert data X in box Z’. The third floor was occupied by the lawyers of the Case Processing Teams as well as the KPCC offices. IT offices, along with the server room and Finance, were on the fourth and highest floor. That IT was both spatially and symbolically on the top floor was due to the fact that the entire system rested on IT technologies. IT enabled the movements of files. The architecture of the database dictated the internal logic of the process by structuring the workflows and organising the storage of information.

I started my internship on the ground floor, where the notification office was, along with the ‘information team’ (mainly dealing with the press and external relations). This was appropriate given that it was here that bureaucrats transformed earth into paper. Sitting next to the cadastre specialist I had been working with for a few days, I read the text she was drafting on her computer. In the appropriate box at the bottom of the page, she typed: ‘Notification was performed according to standard procedure. No one was present at the property’. A team of KPA notification officers had gone to the property claimed by Mrs Mikolić, a widow now living in a tiny flat on the 20th floor of a building in a low-income suburb of Belgrade. Her property, once a house that had belonged to her husband’s family for generations with a courtyard, a well and a barn, has been reduced to wasteland, with a huge pile of rubbish where the well used to be. On the officer’s desktop, a picture of a pole was featured, with Mrs Mikolić’ KPA claim number written on it, planted next to the pile
of junk. Through the planting of the pole, the transformation of the property into a judicial object had been ‘publicly notified’. The pictures of the property notification were the institution’s closest approximation to property in the form of earth, bricks and the stench of garbage. From that moment on, the property claimed would be identified through the picture and the notification report as a document, a fact among others inserted in the file.

The notification unit was composed of regional and headquarter staff. The task of the regional notification teams was to geographically identify the properties claimed by collecting GRID references (i.e. GPS coordinates), drawing maps and notifying people\(^4\) who were found to be living in or farming on the property claimed. Equipped with claimants’ description of the geographical situation of properties and the published cadastral information for each plot, the regional notification officers travelled by car or on foot — rain or shine — from one claimed property to the next, often getting shouted at by occupants and occasionally fearing for their lives when the shouts were accompanied by the brandishing of a pistol, a Kalashnikov or even a hand grenade.

For agricultural properties, which formed the majority of claims, ‘physical notification’ was performed by planting poles in the claimed fields, one pole per parcel claimed. Stickers with the KPA logo and the claim number were pasted on these poles. In the case of residential properties, these stickers were pasted on the door of the building. Pictures were then taken of the poles and the stickers, as well as of the property itself.

\(^4\) Some of whom then decided to ‘reply’ to the claim by becoming ‘respondents’.
Back in the office, the regional notification staff was tasked with writing ‘notification reports’ summarising the situation on the ground for each claim notified (including GPS coordinates, descriptions of the state and type of the property, etc.). All of the documents produced (maps, pictures, etc.) were attached electronically to the computerised reports. The reports, including their attachments, were then printed out, stapled, put in white A3 envelopes and sent to HQ via the KPA internal mail service.

Most HQ notification officers such as the one I was sitting next to had previous experience working for the Kosovo Cadastre Agency, the national agency in charge of cadastral records. Their role was to quality control the reports submitted by their regional counterparts. The quality controlling procedure involved the comparison of the geodesic information collected in the field with a 2009 orthophoto of the place, an aerial photograph that represented distances and relief. In cases where the field pictures and the 2009 orthophoto differed, generally when an immovable structure appeared on one but not on the other, the file was sent back to the regional office for re-notification in order to try to find out what happened in the lapse of time separating the pictures.
Also, when a report contained a textual error or did not match the cadastral expert’s analysis of the geodesic aspects of the property, the report was sent back through the same channel for correction at the regional level. When the reports were finally approved at HQ and had been quality-checked one last time by the head of unit, the application recording all files’ movements called ‘history of the claim’, would carry the status ‘notification complete’; ‘notification report received for quality control’; ‘notification report approved by quality control’; ‘notification report sent to File Data Management’. At the same time, the electronic versions of all documents produced at the regional level were transferred from the notification database to the main files database in order to be pasted into the electronic files by the File and Data management (FDM) unit, the archivists of the KPA; while the physical reports travelled across country to be appended, in due course and after review, to the physical files by the same FDM unit or by other HQ units’ secretaries according to where the physical files had already been moved to.

Considering the fact that notification was the only step in the file’s processing chain where representatives of the KPA actually visited claimed properties, it is interesting that it should also be one of the weakest links in that chain. Indeed, ‘wrong notifications’ as they were called — notifications that did not follow ‘Standard Operation Procedure’ or were performed on the wrong property — were a recurring problem that at one point took on such amplitude that donors and the SC alike started doubting the credibility of the entire KPA process. About thirty per cent of the claims that had been notified between 2006 and 2009 were found to have been ‘wrongly notified’ (KPA 2009: 7). According to the KPA, there were three reasons for this. The KPA blamed the lack of cadastral data available in Kosovo and especially the lack of accurate maps, some having been burned during the war, and others having been moved to Serbia in 1999. Up until a few months after having realised the amplitude of the ‘wrong notification’ issue, collaboration with the Kosovo Cadastral Agency (KCA) had been fraught, and the KCA had been unwilling to share certain information with the KPA free of charge. Last but not least, the KPA maintained that there were technical deficiencies in the GPS devices donated by Norway and used by regional notification officers on a daily basis.
All cases that had been found to have been wrongly notified had to be notified again, while decisions for cases that had already been adjudicated were quashed and the cases reopened. The ‘wrong notification’ fiasco lead the KPA to implement alternative notification procedures, which although in compliance with the law, triggered SC judges to call the KPA an instrument of ‘rough justice’, thereby calling into question the validity, sustainability and trustworthiness of KPCC decisions (see chapter six). These measures included the notification ‘by publication’ in Kosovo and Serbia-wide newspapers\(^5\) and on notice boards in municipal offices of certain types of single-party claims, including a great number of agricultural cases. The assumption was that physical notification was fairer and more likely to reach potential respondents. It was thus argued that notification by publication measures went against due process notions of fairness and accountability by making it much harder for potential respondents to come forward in order to participate in the procedure. Wrong notifications continued to take place, although I could never find out on what scale.

**The aggregate nature of files**

Considering the vast geographic area covered by the KPA, the computerisation of files was essential to the procedure. A complex web of wires across the country and into Serbia connected all KPA offices to one another through a private network of servers, rendering the computerisation of information easier, and the information collected accessible from anywhere within the KPA. Files undertook multidimensional and multi-sited paths, often simultaneously. A file could be worked on by more than one unit at once, both physically and electronically. While it lay physically on a shelf somewhere in the HQ building — this ‘somewhere’ being easily traceable thanks to a barcode system whereby each physical file was ‘barcoded in’ and ‘out’ of units as it physically progressed on its procedural journey — its information was electronically available to other units working upstream.

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\(^5\) Some KPA officers and SC staff were quite critical of the notification by publication policy. They questioned whether the right newspapers had been chosen and covertly wondered how many respondents or interested parties had actually learned of the process through ‘publication’. See also chapter six.
adjudication (preparing files for the commission), and downstream adjudication (preparing decisions for implementation) both at HQ and regional levels.

Fig. 31: The servers’ room at KPA HQ with the head of the IT unit. Photo by Leart Zogjani, 2016

The literature on files and bureaucracy has for quite some time now speculated on the end of the paper era and of the paper file specifically (see Danet 1997: 7; Chartier 1995; Levy 2001; Hull 2012a: 260). Cornelia Vismann, for example, stated that ‘the appearance of files as stylised pictograms or icons on computer screens indicate[d] the end of the epoch of files’ (2008: xiv). Files as Vismann conceives of them, are bound to paper form as their intrinsic material quality. However, as the KPA made clear, a file icon on a computer desktop was no less tangible than a paper, hardcopy file on a shelf. Electronic files were not weak substitutes for their paper counterparts; they were as materially weighty as their paper versions, although their uses were different.

In their study of the paper industry, Abigail Sellen and Richard Harper debunked the ‘myth of the paperless office’ (2002). ‘The basic message from looking at the paper industry’, they write, ‘is that the new technologies […] from the personal computer to the Internet to portable pen-based computing, have so far failed to have
the predicted effect on paper consumption’ (12), which is ‘greater than ever’ (11). As ethnographies of bureaucratic practice have shown, rather than having taken over and technologically revolutionised everyday bureaucratic work, computers and databases were merely added on to the technologies already in use without replacing them, and in some cases they were never really integrated at all. One of the reasons for this is that bureaucrats keep believing a letter or paper contract has more legal weight than an email communication or an online form (see Riles 2006b: 6). Ben Kafka (2009: 351) gives the example of American bureaucrats who print out and file their email communications ‘the old fashioned way’ in order to make sure they are on the right side of the law. Matthew Hull (2003; 2012b) looked at how Pakistani bureaucrats invested in a political economy of paper, and strongly opposed the switch to computer-based files: ‘Since a database, like a published report, would be accessed by a wide range of […] officials and staff, this artefact would mediate organisation-wide social processes that transcend bureaucratic divisions and networks. It would therefore undermine relations of influence organised through files’ (2003: 311).

The difference between paper and electronic files, as Hull infers, is less at the level of more or less reductive definitions than at the level of institutional power relations and bureaucratic organisation. The mutually constitutive and dependent nature of paper and computer files at the KPA demonstrates how seemingly competing technologies can be used concomitantly. File management at the KPA also demonstrates how specific forms of technology have a different impact on the workings of an administrative institution. The KPA file, especially while the claim it represented was being processed, was more than a stack of paper documents bound in yellow carton. It was a messy compilation of electronic and paper-based information. The paper file was the outcome of a complex process of data analysis and data classification that took place electronically.

The compartmentalisation of tasks through the different units that formed the KPA was made possible by the creation of unit-specific computer applications (i.e. programmes) that allowed officers from different units to work on the same file at the same time by accessing bits of its information through the database without having access to the entire file at once. It was impossible for an electronic document

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6 Although events like the enquiry into Trump's Russian links may suggest that this is changing.
to be opened by two different persons on two different computers — the document refusing to open would have shown ‘in use’ — but it was possible to add or modify information pertaining to the purview of specific units on to the database simultaneously. This was aimed at accelerating file processing while making sure individual officers did not have access to more information than strictly necessary. Moreover, units often had their own electronic copies of documents on which they relied to make necessary changes to the database through their unit application. They could go back to look at the scanned documents as many times as they wanted without interfering with the work of other units on the same file.

Interestingly, however, while not always the most accurate, complete or final version of the file, the paper file was used as the basis for legal analysis. Moreover, the institutional prestige and power that KPA officers enjoyed was not, as one might have assumed, determined by access to the database. IT officers did play on their database knowledge to inspire respect (see Bowker 2005), but it was actual access to the paper files that indicated power and higher legal skills and knowledge. This access was reserved to the legal officers of HQ units, and as soon as the files passed the first ancillary units, exclusively to the lawyers of the CPT and to the KPCC. Everything could have been done electronically, I was told by a young lawyer of the CPT, had it not been for the older generation of lawyers and the three commissioners who relied heavily on paper files: unaccustomed to reading electronic documents for long hours, they needed paper to work on and make sense of cases. Although the entire system relied on the electronic database and could have been run entirely electronically, the digital apparatus was considered a mere technological tool that made the implementation of the mandate of the institution possible and, according to its users, rendered everyday work more efficient because it was well routinised and technically immune to corruption (see also chapter five).

Computerisation and routinisation were among the technocratic tools that shaped the administrative legal framework into mundane bureaucratic practice, and KPA bureaucrats into rule-abiding technicians of law (Weber 1968; Hargadon and Sutton 1997; Heimer 2006). Through the rational, technocratic assemblage of an institutional network of human and non-human objects, the amalgam of more or less definite rules that made up the legal framework guiding the institution’s mandate was
transformed into simple cause and effect functions on a computer screen. The next section looks at the ways in which information, turned into more or less reliable facts, was inserted into the system according to an in-house nomenclature of trust making. Documentary information was processed according to a routinised and computerised system of naming and writing that constructed reasonable certainty, one unit after the other.

The making of trust

The information retrieved and formatted by Notification was thus inserted into the system, and became ‘in-house vetted facts’ that could be used by the next processing units. I followed the officer carrying Mrs Mikolić’s file and a pile of others to the next unit: Verification. We climbed up the grand marble stairs to a small office with a window on the second floor.

In most countries, administrative quasi-judicial bodies are dependent on the production of documentary evidence by claimants. In other words, the ‘burden of proof’ is with the claimants and generally not with the administrative institution. To prove one’s rights, one has to produce documents that refer to the issue at stake from an external perspective. The production of evidence is therefore the claimant’s responsibility. In Kosovo, however, many documents were destroyed or left behind during the war, and requesting new certified copies from the Kosovan state is usually very challenging for Serbian DPs who would need a Kosovan ID and would be required to travel to Pristina to request the documents. KPA parties were therefore not always in a position to produce documentation of their property rights. Because of this situation, the mandate of the KPA prescribed that the burden of proof be reversed, and that it be up to the KPA to produce the missing facts.

Moreover, in a ‘regular’ administrative judicial institution, the documents produced by claimants in support of their case are emitted by other institutions working upstream from the judicial procedure that are already capable of ‘putting pieces of empirical evidence into a legal format’ (Latour 2010: 75). For legal scholars, therefore, these documents — or ‘official records’ — are a category of ‘judicially noticed evidence’ (Nemeth 2011: 137-170). They ‘transport quasi-legal
forms of trust’, allowing the administrative court to rely on them for judgement without having to ‘shape’ and ‘format’ evidence (Latour 2010: 75). At the KPA, however, there was a distinct lack of trust in the validity of documents issued by Kosovan and Serbian upstream institutions.

This was usually subsumed under the programmatic framing of a ‘weak rule of law’, which flattened into a two-dimensional, fixed picture of ‘legal’ versus ‘illegal’, a varied and very blurry terrain of legality. On the very level captured by the totalising gaze of international institutions such as EULEX that design policy programmes to remedy the ‘weak rule of law’ (Scott 1998; Grenfell 2013), forgeries and fakes were recurring problems. Examples include name or date of birth forgeries and fake documents such as made-up sale contracts made to look genuine.

Beyond practices subsumed under the facile notion of ‘corruption’ (see, among others, Sissener 2001; Gupta 2005; Nuijten and Anders 2007), there was also an implicit laissez-faire that was politically expedient and that aimed at boosting Kosovo Albanian post-war territorial hegemony. Illegal cadastre name changes are a good example. Kosovan courts as well as the Kosovo Cadastre Agency processed property registrations in the name of Kosovo Albanians without necessarily making completely sure the PoA used by intermediaries on behalf of displaced Kosovo Serbs had been made in good faith. Genuine property documents might attest to a history of transactions that was, in fact, legally questionable. Due to lack of institutional checks, it was also relatively easy for a single cadastral officer or administrative clerk to change a record or issue a ‘genuine fake’ without it immediately leading to massive inconsistencies across the system. Moreover, because there is so much materially and symbolically at stake when it comes to property, individuals leverage their wealth and influence to make these changes happen. A document’s formal authenticity does not, therefore, make its substance true. Material markers of authenticity such as the right kind of paper, letterhead, embossed seals, stamps, etc. do not necessarily render it genuine. Conversely, a document that is formally malformed or even fake might in fact hold a truth that is insufficiently conveyed by its material appearance.

Determining what is a genuine document and what is not is even more complicated because of parallel institutions. In the last phase of the war, Serbian
forces physically moved large sections of civil registries and cadastral archives from Kosovo to Serbia, where ‘dislocated’ institutions continued to function, issue legally valid documents, and take decisions considered legally binding by the Serbian state. In the absence of cadastre documents, the new Kosovan authorities had to re-create entire sections of their public records and take decisions based upon them. This has led to the coexistence of two distinct, autonomous and, in theory, equally legal corpora of civil and property records for the same territory, a similar situation to that of Cyprus (Navaro-Yashin 2007; 2012). With a few exceptions such as the admissibility of death certificates of Kosovo Serbs who had been living and had died in mainland Serbia, documents issued by Serbian parallel institutions were usually inadmissible.

The handling of documents at the KPA required, therefore, special skills for recognising the difference between genuine documents, forgeries, fakes, genuine documents that looked fake, inadmissible documents issued by Serbian parallel institutions whose content may or may not have been truthful, and genuine documents that contained errors or for which no original could be found. For these reasons, the KPA itself produced, shaped and formatted facts and evidence, applying both a general rule of scepticism towards any documents issued upstream — especially when issued by parallel institutions — and a specific set of rules to filter ‘valid’ from ‘invalid’ information, thereby creating reasonable certainty about documents’ value within the institution itself, *a posteriori* to the submission of documents.

Verifying the relative genuine-ness of externally produced documents was the function of the verification unit. In a very similar distribution of tasks to that in the notification unit, the verification unit consisted of regional verification officers, or *verificators* as they liked to call themselves — one for each regional office in Kosovo and two officers for the Serbian territory — and HQ ‘quality checking’ verification staff. The *verificators* ‘verified’ documents submitted by parties and undertook searches in public records for documentation in support of cases for which no documents had been submitted. They then wrote ‘verification reports’ that were sent to the HQ verification unit, who ‘quality controlled’ these reports and drafted ‘final consolidated verification reports’ that were signed by the head of unit. The
final consolidated verification report included a list of documents that were deemed ‘positively verified’, i.e. asserted as genuine, and ‘negatively verified’, i.e. not found in the archives or deemed fake.

Final consolidated verification reports contained the following information: the type of documents that had been verified (for example possession list, contract on sale, inheritance decision), detailed information for each document (date, reference number, court references, etc.), the archives where each document had been verified and their location, the method of verification (see below), and the name of the verificator.

When the consolidated verification reports had been approved and signed by the head of unit, they were sent to the ‘File and Data Management’ (FDM) unit, which scanned and attached them to the computerised and physical files when the latter were in their possession. At the start of my work at the KPA in June 2012, most files’ documents had already been verified a first time. Documents’ verification was mostly done at the request of the lawyers of the CPTs for documents that had either fallen off the verificators’ radar of ‘relevance’, were deemed untrustworthy, or had been submitted by respondents at a later stage. Physical consolidated verification reports would most often be appended to paper files by the secretaries of the CPTs, as the files were already on those shelves.

To ‘verify’ in the KPA jargon meant conducting two types of assessment: assessment of the relevance of documents, and evaluation of the validity and authenticity of the documents deemed relevant in the first instance. As described in the Standard Operation Procedures of the verification unit, a document was ‘relevant’ ‘when it [could] directly or indirectly establish proof of property right’. For example, a ‘possession list’ or a ‘certificate for the immovable property rights’ directly established proof of a property right because it stated the name of the present owner or user right holder. An inheritance decision, which described the shares of the property that had been inherited by each heir, could also establish direct proof of property right. The same went for a contract on a gift or a purchase contract. A taxation decision, witness statement, or copy of plan or cadastral decision alone, only established indirect proof of property right, which needed to be corroborated by another, more significant piece of evidence in the file. Documents such as ID cards,
birth, marriage and death certificates were relevant information too, because they could help confirm family relations between ‘property right holder’ (PRH) and ‘family household member’ (FHM).

A document, in turn, was considered valid only when it could positively be verified. Only documents that were deemed relevant by verificators were then verified, and only genuine documents were later considered in the decision-making process. But how was the validity of documents asserted? And what did ‘positive verification’ mean? Different verification methods had been put in place. The *prima facie* method was used for copies of identity cards for example, when the ID card was submitted for identification purposes or to prove a family connection — which were deemed relevant reasons. The verificator asserted the validity of the documents by comparing them with their original or with comparable documents. The second method was called ‘comparison with public records’ and was by far the most commonly used. Here, the verificator compared the submitted documents with their originals in the appropriate archives; mostly from courts, municipal cadastral offices, public housing enterprises, municipal housing enterprises and civil registration offices and sometimes from public utility companies when the aim was to prove possession rather than ownership.

UNMIK Administrative Direction 2007/5 (Annex II) section 4.2 stipulates that the Executive Secretariat of the KPA was entitled to unrestricted and free access to public records in Kosovo. In practice, the verificators often had to use their networking skills to get the information they required, on top of submitting requests in writing at least two days before visiting certain archives. Most verificators had been doing this job for years and knew the local archivists personally, which facilitated their job tremendously. For a member of the public to get hold of a certified copy from any kind of archive was an entirely different story. It was often costly and took a very long time. In fact, the task was not always without difficulty even for KPA verificators. Sometimes the archives were being renovated, the court archivist was on an official trip somewhere, or on leave for an undisclosed amount of time.

At other times, and this was especially the case for records held by Public Housing Enterprises, getting copies of documents was very cumbersome. As a
verificator working for the Pristina RO explained to me, to get the copies she needed, she had to request a formal meeting with the archivist through the director, as well as formally requesting that copies be made for each document she had to verify. She never did so. Instead, she would check the archived original the archivist showed her and the certified copy she got through the KPA from one of the parties. If the two sources of information corroborated, she assumed the certified copy was genuine. She sent positive verification reports that were accepted by the HQ verification unit at face value. Similarly fraught relations between the KPA and the KCA meant that the latter had been reluctant to issue certified copies of cadastral documents such as ‘Possession Lists’ (since 2005 known as ‘Certificates for the Immovable Property Rights (CIPR)) free of charge. Verificators were allowed to have a look at cadastre books, but not to take out copies. After the 2009 agreement, free certified copies of CIPRs were issued for KPA purposes, albeit crossed over with a ball pen to signify they had been acquired free of charge and were not to be used for other purposes.

Often, documents looked genuine but couldn’t be found in the archives. This was commonplace for birth, marriage and death certificates that had been issued before 1998. In these cases, verification was made through the ‘authorised person confirmed’ method. The verificator sought the opinion of an official representative of the institution where the document had been issued in order to report back on the authenticity of the documents: did the numbering system pertaining to such documents match the numbers on top of the document to be verified? Did the signature of the official representative at the bottom of the page match the signature of the then officer in charge? If the authorised representative thought the document was genuine and the verificator agreed with this verdict, it was reported to be so in the verification report.

In Serbia, the task of KPA verificators was even more tricky than in Kosovo despite a 2002 agreement with the Ministry of Justice under the HPD mandate concerning the disclosure of archival documents located in the Serbian Ministries, dislocated court and cadastre archives in Krusevač, the Republican Commissariat for Refugees, the Federal and Republican Directorates for Assets, and the cadastre offices (Cordial and Rosandhaug 2008: 65).
On one of my visits to the KPA/UNHCR property office in Belgrade, Dejan, the office’s verificator, took me to one of Belgrade municipal court archives where he needed to verify a couple of documents. During the journey, he talked about his work.

I have a lot of problems verifying documents from basic courts [previously municipal courts], especially in small towns, because people are busy or lazy. Sometimes I have to wait a long time for responses to letters from Ministry offices. Especially the cadastral office, some courts, and the department of finance. Their archives are a real mess. Same goes for the archives of the department of Kosovo and Metohija in Krusevac. A woman from the department of finance told me they had a flood in 2003 and now they told me the documents were destroyed. But this is just to get rid of me. I heard the same story from the public railway enterprise that gave some flats to employees in Kosovo. They asked me to write request letters. I received one answer. They said: ‘you wrote the number wrong’ and that's that. They’re lazy. They find trivial mistakes just so that they don’t have to answer me. I don’t know what these archives look like because I’ve never been allowed to see them, or the police department’s archives.

After twenty minutes of driving in endless traffic jams, we parked his small bumpy car in a busy street close to the court where cars were double-parked. We made our way through the throng of pedestrians and the queue of people waiting to be let into the court premises. Instead of entering the court through the front door, we took a side entrance leading to the back of the court. There, down a flight of stairs, we got to the basement. Across several doors and huge rooms full of eclectic and mostly obsolete equipment, occasionally meeting the frowning look of a worker in blue overalls smoking a pungent cigarette, we finally reached the archival room.

Despite some neon lights attached to the high ceilings, the room was gloomy and dim. Shelves and papers were stacked up so high that the walls were invisible. It smelled of old cardboard and dust, of which a thick layer covered everything including the chair and the little desk on the left of the sliding door. Two minutes in, I started sneezing. Dejan called the name of the archivist several times but the room was so big and full of papers that his voice didn’t carry.
Eventually, an octogenarian wearing a coat the colour of yellowed paper shuffled into view from behind two shelves, bending under the weight of the files he was carrying. He recognised Dejan and walked in our direction. The two men greeted each other, and without losing time, Dejan produced the copies of the documents he had come to verify. The old man, dropping the pile of files he was carrying on his tiny desk, pointed at them and said: ‘these ones are here [in this room], but this one, I don’t know’. He took the copies with him, bidding us to stay where we were. Dejan looked at me with a crooked smile: ‘the man is the only one working here. He’s been here for ages’. Without hesitating, the archivist turned towards a shelf a couple of meters from where we stood, climbed on a wooden ladder and retrieved a large A3 register from somewhere in the middle of a row. He opened the register and within seconds, found the relevant entry. He repeated this feat three times over the next couple of minutes. The old man then took some more minutes to inspect the last document, furrowing his brow, and left us again, this time for about five minutes. He came back empty handed and said that the inheritance decision in question must have been issued from somewhere else, because it was not in here.

Back in the fresh air, we stopped for a soda. Sitting outside, it was hard to imagine such a Kafkaesque underground even existed. Dejan told me: ‘and we were lucky, at least these archives are on shelves. Sometimes, documents are in boxes, or even on the floor’. I asked him what would happen to the archives the day the octogenarian archivist disappeared under stacks of papers. ‘Who knows?’ replied Dejan.

After having gone through notification and verification, as well as through the ancillary FDM unit, files would finally contain the necessary information to be reviewed by the lawyers of the Case Processing Teams (CPTs), the staff that legally analysed the claims and prepared them for adjudication. The files’ ‘history of status’, which was available on the intranet, would show ‘notification complete’ and ‘verification complete’. Divided into sub-folders by FDM, one folder for each step of the journey, files would then comprise at least the following:

- The claim intake form and the documents submitted by the claimant.
- The notification report drafted in the regional office.
– Copies of pictures of the claimed property and of the physical notification.
– Maps drawn by the regional notification officer.
– The cadastre documents used for notification.
– The final notification report.
– In case a respondent approached the KPA at the time of notification, the ‘respondent reply’ form.
– The verification report drafted by the verificator with other copies of the documents submitted by the claimant and copies of the original found in the archives.
– The ‘consolidated verification report’ and sometimes a third set of copies of verified documents already to be found earlier on in the file.

In all of their redundancy of copies, files now carried the ‘quasi-legal form of trust’ (Latour 2010: 75) constructed by the in-house production, shaping and formatting of facts that was indispensable for legal review. Every day, files, or parts of files such as consolidated reports and their attachments in transparent plastic folders, which were ready for legal review, were neatly stacked on a desk in each unit’s office. They were ‘barcoded out’ of the room by the respective unit’s secretary and carried by the same secretary or a junior case-processing assistant to the Case Processing Team (CPT) floor. There, they were ‘barcoded in’ and sorted according to their legal nature. This was where the documents accumulated in files were finally subject to legal analysis.

**Concluding remarks**

I started this chapter asking how the KPA compiled and sometimes created facts that could potentially be used as evidence, and how it went about making what I called ‘reasonable certainty’. In common law, the expression ‘reasonable certainty’ is usually used in relation to the assessment of the probability of future risk, for example, in the calculation of the amount of pesticides present in a certain food product and whether it is ‘reasonably certain’ not to harm the health of consumers (see for example Levine 2006: 18). In the present context, I used ‘reasonable
certainty’ to describe the desired outcome of the positivist fact-finding ‘mission’ run by the KPA, at the end of which the commissioners of its adjudicatory commission were given ‘reasonably reliable’ pieces of evidence on which to base their decisions.

Due to the high uncertainty attached to any empirical evidence produced by claimants and more generally to the socio-historical locale, the facts at hand in the form of documents could never be completely relied upon. ‘Reasonable certainty’ as I use it here relates also to risk calculations, but the temporality of the facts at stake differs. The assessments here are directed towards ensuring that empirical ‘products’ created in the past are trustworthy enough to be admissible, while the general notion of ‘reasonable certainty’ is directed towards the prevention of future facts. In terms of its temporal foundation, it is closer to the better-know legal expression of ‘beyond reasonable doubt’. However, ‘beyond reasonable doubt’ is used in criminal trials to ascertain that the required degree of certainty of culpability has been reached. It thereby denotes a positive thing about a person ‘when there is no clinching evidence either way’ (Berti et al. 2015: 120). ‘Reasonable certainty’ conveys the opposite: a negative assertion. Because of its lack of trust in what actually happened, the institution, applying scepticism to any externally made ‘truth’, considered everything produced outside its walls untrustworthy. It assumed an a priori mistrust — always first a negative thing — not only towards the claimants themselves, but also towards their claims.

By tracing the organisation of the workflow and of the files, the chapter has looked at the strategies that were put in place to mitigate doubt and create institutional certainty. A consequence of these strategies is that the trajectory of claims can be reduced, from the moment of their legal translation, to the trajectory of the paperwork, the documents’ ‘career’ (Appadurai 1986; Harper 1998) as involved in their processing by the KPA. Claimants’ narratives of suffering, their pleading for justice and more pragmatic requests for monetary compensation or repossession of lost properties, were recorded on paper in a specific format. As discussed in chapter two, an affidavit of the Claim Intake Form, signed both by the KPA officer and the claimant bound them to a judicial world of paper truths. By retracing important steps in legal translation, this and the previous chapter also traced abstractions, or reifications. The first abstraction happened when claimants’ narratives were
transformed, accommodated and replaced by a judicial reality; when oral individual narratives of suffering were written down in the bureaucratic language of a standardised form. The second reification took place largely within the institution, in the various transformations of information into facts: the files and the documents they contain were processed, ‘just like stones and other such matter’ (Vismann 2008: xi). Documents were assessed, legitimated or discarded; others were created in-house. Documentation of property loss were constructed from claim intake, to notification, to verification, and managed by the FDM unit and the IT system. While notification was the sole encounter with property as concrete walls, earth, woods, fields, etc., verification produced the necessary, reasonable indisputability of facts.

Parker Shipton (2007) has aptly shown for Western Kenya that trust always implies a form of mistrust: ‘to trust is to risk betrayal. What gives trust its value is the uncertainty about how someone or something will respond to an action or situation’ (Shipton 2007: 34). Here, I have described the process through which doubt and a priori mistrust were managed in-house. In Shipton’s words, I have shown how, in the KPA context, ‘trust bridges a synapse between evidence and conclusion’ (Shipton 2007: 34). In the next chapter, I will show how these facts, now made reasonably certain, were transformed into legally relevant evidence in preparation for adjudication.
CHAPTER FOUR

Everyday lawyering: into the ‘black box’ of legal reasoning

It was a hot September day in Kosovo’s capital, Pristina. When I arrived in the offices of the Case Processing Team’s (CPT) lawyers a few minutes after eight am, the two rooms were already buzzing with activity. Air-conditioners were working at full blast and piles of files were fluttering in the draft on crammed, metal-framed desks positioned one next to the other, leaving just enough space for people to move around. Lawyers were reading documents, answering emails, discussing cases, complaining about the heat, speculating about the next power outage and making Turkish coffee: the beginning of a normal day in the depths of the KPA.

The offices of the CPT were on the third floor of the KPA building in central Pristina. Until the end of 2014, the lawyers of the CPT were in charge of legally analysing the restitution claims that had been lodged with the KPA. This chapter focuses on the nitty-gritty of legal analysis conducted to regularise property rights in Kosovo at the KPA. Ethnographically probing the domain of law, I examine everyday lawyering practices to shed light on the ways in which lawyers navigated facts and law to construct evidence and arrive at convincing legal recommendations. Following Annelies Riles’ call to unwind the terms and practices of technical-legal knowledge production (2004: 394), I take legal technicalities seriously while problematising the language of evidence to illuminate its uses.

Contrary to adversarial and accusatorial legal apparatuses where lawyers represent parties in court and defend their interests against those of the other party, lawyers at the KPA represented neither people nor their interests. They rarely met with parties at all. Rather, they sat in their dusty and stuffy offices all day, reviewing files to ascertain that the files’ documents supported the claimants’ claims. In this sense, their work resembled that of legal officers in other street-level bureaucracies around the world, such as in immigration departments (Affolter 2017; Eule 2014; Fugelrud 2004), border control (Kalman 2015), or settling minor offences...
(Bierschenk and Olivier de Sardan 2014; Heyman 1995). In all its repetitiveness, their work was extraordinary, especially given the amount of uncertainty that surrounded the ‘facts’ of cases: the legal value and reliability of property documents was always in doubt (see chapter three). Uncertainty was also a fundamental characteristic of applicable property law as well as KPA jurisprudence and internal guidelines. The Kosovo legal framework regulating property rights is dispersed across numerous laws and based on three layers of legislation: the pre-1989 Yugoslavian laws, the UNMIK regulations and the laws adopted after Kosovo’s declaration of independence in 200.1 Prolific and unsystematic legislative production in the past nineteen years — sometimes explicitly repealing prior legislation, leaving it in force, or simply amending it — has led to legislative confusion and discordant interpretation of contradicting rules. This was especially salient at the KPA when it came to outlining the ambit of property regimes such as socially owned, public, state or municipal property (see also the introduction). KPA Internal Processing Guidelines and jurisprudence, on the other hand, were never updated after 2010. This complicated the lawyers’ work quite a bit, as they had to rely on each other’s memories to make sure they were following the three commissioners of the Kosovo Property Claims Commission (KPCC)’s latest views on certain topics. Given the amount of uncertainty surrounding questions of fact as well as questions of law, one wonders how CPT legal officers could persuasively analyse claims to arrive at a conclusion pertaining to claimants’ legal rights to property.

Anthropologists of law have long debated the difference between anthropological and legal reasoning (Geertz 1983: 167-234; Conley and O'Barr 1990: 48; Good 2007: 29). Drawing on Kandel (1992: 1-4) and Rigby and Sevareid (1992), Good argued that among six ways in which lawyers and anthropologists think differently, a major distinction is their understanding of ‘fact’ and ‘truth’. Cautious not to over-emphasise and therefore caricature such contrasts (as was

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1 Following the adoption of UNMIK Regulation 1999/24 ‘On the Law Applicable in Kosovo’, laws promulgated after 22 March 1989 — thus after the revocation of the Yugoslav province of Kosovo’s autonomy — were considered discriminatory towards the Kosovo Albanian population. Because UNMIK failed to provide a clear list of such discriminatory laws, however, it has been up to each judge to decide whether principles emanating from post-1989 laws should or shouldn’t apply on a case-by-case basis.
arguably the problem with the otherwise illuminating accounts proposed by Kandel and Rigby and Sevareid), Good makes an important distinction: ‘lawyers take matters which have been established to the appropriate standard of proof to be “facts”, and see their subsequent task as deciding how the law should properly be applied to those facts, whereas for anthropologists “facts” are always products of a particular theoretical approach, and “truth” is at best provisional and contested’ (2007: 34). In this chapter, I take a decidedly anthropological approach to facts, truth (or, in KPA parlance, ‘reasonable certainty’ as it is conferred to facts) and law, to probe the modalities of legal reasoning and of the social production of legally persuasive evidence, i.e. what lies between facts and laws.

In the legal literature, legal reasoning is described as a journey delineated by questions of fact and questions of law. However, as William Twining explains, discussions that focus on reasoning about questions of fact have been dealt with separately from those that focus on questions of law (Twining 2006; see also Jackson 1996). ‘This artificial segregation has been maintained by a kind of fiction: just as arguments about questions of law proceed as if the facts are given, so arguments about questions of fact proceed as if the law is settled’ (Twining 2006: 307). This leads to a description of legal reasoning as a ‘careful journey through various propositions’ where ‘movement [is] allowed by evidence leading to inference’ (Hanson 2003: 215). For a hybrid civil/common law quasi-judicial decision-making system such as the one under scrutiny, this ‘careful journey’ in a majority of cases should thus conclude with ‘an application of existing law to the facts’ (Hanson 2003: 215).

Building on this notion of a journey and on Twining’s critique, I complicate the assumption that legal reasoning could be reduced to the mere rational application of rules of evidence and substantive law to facts as they relate to law. My ethnography will show that in practice, the path of legal reasoning is treacherous, and that it is not so simple to determine facts or apply the law (is it ever?).

In the context of the KPA, both the degree of facticity (how one arrives at the ‘scientific’ conclusion that a fact is a fact) and the degree of certainty (the degree to which a fact may or may not reflect a reality) of facts were, at most, reasonably ascertained. The guidelines and jurisprudence were out-dated, and property law was
full of gaps. The convincing (rather than merely rational) making of evidence depended, therefore, on lawyers’ skills of fixing laws (or making do with the apparent gaps), and of verifying the degree of facticity and certainty of documents. Because the issue of uncertainty of facts and of black letter law was so dominant in my discussions with the legal practitioners involved in the restitution process in Kosovo, I find it important to look at what role facts and law came to play in the production of legal analysis, and understand how the process of property restitution was legally achieved at the higher echelons of the institution.

Next, I posit that making evidence goes beyond rational facts and black letter law: the gap between and within facts and law in the journey of legal reasoning is not made up of more facts and more law, but of the social context in which the gap isbridged (Latour and Woolgar 1986). To understand how legal reasoning was performed, and how lawyers at the KPA ‘constructed’ evidence, we must take into account the stuff of everyday lawyering. From an actor-network perspective, the network of evidence was not made of files and laws alone but also of the lawyers with their various backgrounds, and of institutional and material factors such as donor pressure, power cuts and malfunctioning air-conditioners. All these things conditioned the way lawyers saw the world and their role, and they arguably informed their reasoning as much as gaps in law and uncertainty about facts had. Evidence was made through legal *bricolage*, and made meaningful vis-à-vis particular institutional politics and contingencies as well as social relations. The particularities of legal reasoning emanated not only from the specificities of the legal regime under scrutiny, but also from the institutionalised social fabric.

My ethnographic material points to the institutional contingencies and the social embeddedness of legal reasoning and of law itself. The chapter follows Berat, a lawyer of the Case Processing Teams (CPT), through the different steps of analysing and processing a case file. At first, Berat’s reasoning appears to centre on the facts contained in the file and the law he is ‘applying’ to them, but as we continue exploring his reasoning, we discover that it is not so straightforward. I then look at the material constraints under which lawyers operated to unearth additional factors that informed legal reasoning. Turning to the drafting of the Annex, the file cover page which was key for adjudication, I show that Berat was wading, as it were,
through the eddies of fact and law, patching up and cobbling together: constructing a
story by re-inscribing context in-between the lines of the Annex, the document
summarising his legal analysis of the claim. While persuading the intended Annex
reader that he was following a rational and consistent line of interpretation, Berat
was also constructing a ‘black box’ in which everything other than abstract facts and
fragments of particular laws was wiped away from the surface of the written text
(Latour and Woolgar 1986; Valverde et al. 2005; Rottenburg 2009). The black box
conceals not only the normative elements of legal reasoning, but also the social and
material conditions of its production. Since this black box is full of stuff and social
relations, only ethnography can open it.

Tracing how evidence was produced means looking at the written rules and
regulations KPA lawyers used as only a portion of the ‘raw material’ (McBarnet
1983) that they used in legal reasoning, along with the other material such as
unwritten rules, experience and shared memories. Evidence-making thereby reveals
itself as ‘social construction’ (Frank 1932; 1973; Bryant et al. 2014). Such renewed
analytical focus on lawyering practices necessarily takes into account the
‘bricolaging’ (Lévi-Strauss 1962) nature of everyday work.

Fig. 32: A portion of the CPT uncontested office (in 2016). Photo by Leart Zogjani, 2016
Setting the scene

Yes, good morning, Ma’am. I am a lawyer from the KPA in Pristina. I am calling about your claim. I would like to ask if the house was sold and when it was sold. Was it before the war, or after? Do you remember? Yes, I will repeat. The house in Kosovo. Was it sold before you left or after, when you were already living in Serbia?… After the conflict? Yes? Ah thank you, Ma’am. You will receive a decision through the regional office when your claim has been decided.

Having used what little Serbian he can speak, a young CPT lawyer, Berat, hung up the phone, pleased with himself. He got the answer he needed to complete his legal analysis, the ‘Annex’, attached to the ‘Case Processing Report’ — a computer-generated summary of the relevant information pertaining to each file. The Annex was sent to the commissioners’ office (the KPCC) prior to adjudication, and served as a summary of the claim during commission sessions. Berat was talking to an elderly woman about a claim she had filed. While studying the file, he had come across the summary transcription of a phone conversation dating two years back between the woman’s son and someone from another unit of the agency, where the son stated that the house claimed had already been sold, and that they didn’t want their house back, but rather the rest of the purchase money that the buyer never gave them.² Berat needed to find this out for himself and so he called the claimant again. To illuminate the importance of the phone call in terms of evidence-making, Berat explained me:

We register everything in the [computerised system]. You get relieved from it, by putting it in the [system] with a date and time. The system takes some responsibility off you. You register, and the conversation becomes a fact. But you know these are not strong facts. You make your recommendation only based on written documents, but when these are missing, of course you have to investigate further. For instance, regarding conflict-related loss. You contact parties and ask the questions set by the commissioners in the guidelines to have a

² Issues relating to payment of the purchased property such as this one were common.
better picture of what happened before the conflict. In some cases, you don't have very strong evidence and these phone conversations strengthen your evidence if they match the findings. You have to make a distinction between the instance where the phone conversation can be used as a fact regarding the loss of ability to exercise property rights or confirmation regarding family relationship, or when there was a sale, in order to confirm if it was before or after the war.

For Berat, this had become an easy claim that could be dismissed on two jurisdictional grounds. First, although the lady and her family had lost possession during the war (a prerequisite for her claim being admissible), she had been able to sell the house after the conflict. In KPCC language, this meant that the lady had been able to exercise her property rights after all, and thus her claim fell outside the agency’s mandate. Indeed, article 3.1 of UNMIK regulation 2006/50 as amended and incorporated into Law No. 03/L-079 states that the claimant must be unable to exercise his or her property rights at the time of adjudication for the commission to be competent to resolve the claim. Second, following the same law, the KPCC deemed itself incompetent to deal with sales gone wrong, as it had ‘no jurisdiction over outstanding disputes over payment of purchase price’. The decision on her claim would include a sentence explaining that she could file a claim with a local court to resolve the payment issue, should she wish to.

Berat’s job was almost done. Sitting in the ‘CPT uncontested’ office’s far left corner, the air-conditioner working at full blast above his head and ruffling the pile of files that he had precariously stacked on his desk when he first came in that morning, he was now reviewing the text of the Annex. Staring at his old-fashioned computer screen, the claim file flashing in front of him, he read:

The claimant submitted the claim as PRH (Property Right Holder) of a house and associated land in Mitrovica municipality. To prove ownership, the claimant submitted a Possession List no. 152 dated 03.10.1983 listing her father Makarije Larovic as owner of the claimed property. PL no. 152 was subsequently positively verified ex officio. The cadastral officer moreover stated that the first name of the PRH

3 See for example, KPCC Decision 142, paragraph 49.
was mistakenly typed ‘Manarije’ instead of ‘Makarije’ in PL no. 152. The Claimant also submitted Inheritance Decision O.Br.182/83 dated 14.04.1984 issued by municipal court of Mitrovica by which she inherited 1/1 ideal part of the claimed property from her father, Makarije Larovic. However, the submitted Inheritance Decision was negatively verified by the ES [Executive Secretariat, alias KPA] in the Municipal Court of Mitrovica. Subsequently, the Secretariat called the Claimant’s son, as the Claimant was ill. The Secretariat requested that the Inheritance Decision be verified in Mitrovica Parallel Court of Novi Pazar. However, the son confirmed that the property had been sold in 2000 and that he could not deal with the inheritance issue at the moment. On 4/07/13, the sale was confirmed again on the phone with the Claimant. The claim therefore stands to be dismissed.

‘You see’, he told me, ‘it could have been a more complicated case. A verification officer would have had to go to the parallel court in Novi Pazar to check whether the inheritance decision could be found. If we had found it and the father died in Serbia, we would have accepted it. If we had not been able to locate it, we would have had to process the claim in the name of the claimant’s dead father, as KPCC is not competent to deal with inheritance issues. But now I can simply conclude a dismissal because of the confirmed sale. I don’t have to go further into the details of the purchase price because KPCC is not competent anyway, it’s a jurisdictional question’.

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4 Parallel institutions, including courts, were structures of the Province of Kosovo put in place by the Milosevic regime that had been ‘dislocated’ by Serbian forces at the end of the conflict in 1999. Until the Brussels Agreement in 2013, those institutions continued to function under Serbian law, issue documents, and take decisions considered legally binding by the Serbian state. Those institutions were, however, deemed illegal by UNMIK and the EU (see also chapter three).

5 I look at the consequences of such mandate restrictions in chapter six.

6 Had the issue been about the amount paid by the buyer, and had it been proven that the amount was below market value at the time of the sale, the KPCC would, in theory, have been competent to annul the purchase contract for duress (as far as I am aware, however, this never happened).
Institutional contingencies

The above example is, in KPA jargon, an uncontested claim. This means that, although there are certainly people currently living in the house and using the land (probably the buyers), they did not wish to participate in the KPA procedure, or were not properly informed. Had the respondent approached the KPA and signed a ‘notice of participation’, the claim would have been classified as ‘contested’ and processed by a lawyer from the ‘contested team’. The claimant originally filed her claim in the hopes that the KPA could help her recover the entire sum she charged for selling the house. She stated that she had sold the house, but because of the formalised nature of case processing and the general complexity of each case, this information had only been made legally relevant years later when Berat reviewed her file, becoming the grounds for the case’s dismissal. This shows that claimants were not clear on what the KPA could or could not do for them (see also chapter two); otherwise she might have filed a suit in a Kosovo civil court straightaway instead of wasting her time with the KPA. Still, at the moment of the claim intake in 2006-2007, the KPA lacked the jurisprudential experience to know how the KPCC would interpret each legal scenario, and so it accepted all kinds of claims that it later had to dismiss.

Uncontested claims formed the majority of cases (39,079 uncontested claims out of a total of 42,749 claims) and were generally seen as easier to process, as they were single-party cases requiring a shorter legal analysis. Their files contained fewer documents, which sometimes made it tougher for lawyers to make sense of the facts, but it also meant they could more quickly find a cause for dismissal or refusal due to limited factual and legal questions. The daily target of claims to be processed was thus much higher on the uncontested side of the wall: five claims per day per lawyer, while I was there. Although the lawyers of each team generally got along well, ‘contested’ lawyers were considered better off than their ‘uncontested’ colleagues: they were paid more and worked on more ‘interesting’ cases. Contested claims,

7 The issue of notification by ‘reasonable means’ (and the definition of what constituted ‘reasonable means’, an emic term used by KPA/KPCC staff) is discussed in more detail in the last chapter of the thesis.
being multi-party, were often much better documented as well, making it easier to find out what happened than in uncontested cases.

Of course, not all claims ended up being dismissed or refused. A majority of claims were actually granted. But finding easy cases, i.e. dismissals, or working with someone who ‘had a nose for finding easy cases’ was a daily preoccupation. Cases that could be dismissed were sought after because of the workload: the necessity for lawyers and coordinators to fulfil certain quotas as per donors’ requirements. This put a lot of pressure on the CPT staff, faced with increasingly complicated legal scenarios. The difficult cases were left for the end of the mandate. While the donors recognised these difficulties, they nonetheless required solid numbers — hence the fixation on procedure and on the dismissal of claims.

The CPT staff tried more or less openly to find batches of dismissals to process so as to reach their daily target with the least effort. Some lawyers would hide batches of dismissals in their drawers ‘for rainy days’ and pull them out whenever they needed to increase their target. Yet, commission discussions over dismissal claims usually took longer than those on granted claims. The KPCC would always ask the CPT to dig deeper and crosscheck their information in order to avoid dismissals and therefore limit the number of appeals. Pressure to process a maximal number of claims was thus countered by the pressure to process claims as thoroughly as possible. The relatively liberal interpretation of the fundamental rule according to which only those rights claimed by claimants could be adjudicated served the same purpose. Claims that were deemed incomplete in terms of the amount or the types of property claimed (i.e. the residential part of the parcel was claimed but not the adjacent agricultural land, or conversely) were generally sent back. The CPT lawyers would then have to contact the alleged property rights holders, confirm that the omission was due to a lack of information and amend the claims accordingly.

8 As a coordinator explained when I first joined the CPT, ‘It is symptomatic that KPCC would rather grant a claim - or dismiss it, rather than refuse it. There is a material difference between dismissing and refusing. Dismissals are for claims that do not fit within the mandate. Dismissals can be appealed, and parties are free to go to competent court if they wish to. In the case of refusals, it means that the claimant does not have a legal right [over the claimed property]. This can be used as res judicata by other legal bodies’.

9 Indeed, agricultural properties were not part of the former, HPD mandate, which created confusion in the mind of many claimants (see also chapter one).
In addition to donor pressures that called for quick and efficient processing of cases, other material pressures influenced the reasoning of CPT staff. At the time of fieldwork, the team processing uncontested claims had four international coordinators, nine national lawyers and a secretary, sitting in the same office of around twenty-five square metres on the third floor of the building. A partition door led to the office space of the team processing contested, multi-party claims. Although theirs was a bit larger with its three coordinators, two paralegals and nine lawyers, it was as packed as the other office. On both sides, office walls were occupied by filing cabinets or open filing shelves. Staff members adorned their desks with family and baby pictures, and some work mantras printed out from the Internet such as ‘Be the Change You Want to See in the World — Gandhi’; or ‘Do It Now: Sometimes “Later” Becomes “Never”’. One of the uncontested coordinators hung on the wall her special training in property law diploma. She explained laughingly that she hoped to confer some legal neatness on the otherwise messy surroundings, and perhaps semi-consciously also to signal her authority. Simple metal-frame desks were positioned one next to the other, leaving just enough room for people to move around. The two L-shaped offices were often unbearably hot during the summer months.

Lawyers and coordinators of both teams joked that a major difference between KPA and a ‘normal’ law office was the conjunction of heat, crammed space and power outages. People linked the hardships of their working environment to the transitional aspect of the justice system they were part of, as if they were mutually constitutive. A coordinator told me one day: ‘this is mission-type work’. Another added: ‘It’s such a mess here, I don’t think I’ll ever work in such conditions again after it’s over here’. A paralegal from the contested team who had worked for one of the private firms supplying the American troops in Afghanistan exclaimed: ‘Well, it’s normal that we suffer a little; this is also a mission, and at least I get to be with my family’. This paralleled other ‘humanitarian’ interventions, where the ‘mission’ setting strongly informed the professional ethos of the personnel (Coles 2007; Mosse 2011).

It took willpower to work eight hours a day in such a dusty and stuffy space (at least the CPT offices had windows, which wasn’t the case for some of the other
units’ working spaces elsewhere in the building). Power outages were the worst predicament because, even when lawyers and coordinators saved their work, they could never be quite sure that they would be able to retrieve it should the power go out. In the summer months, power outages made the rooms even hotter as the air-conditioners would be out of service (the generator did not have enough capacity to power all the ACs in the building; only those in the servers room and the directors’ offices kept running).

KPA staff saw the division of tasks and responsibilities within the KPA as something positive because it allowed for quality control of the information gathered and generated at the level of each unit. At the same time, each unit was highly dependent on the others’ input. This induced a need for high-quality lines of communication, mainly by email but also by phone, which themselves created a complex internal work culture and code of conduct that needed to be respected for the system to be effective and for the institutional targets to be met.

This communication system was often mentioned to me as both indispensable and cumbersome. You needed to know who to email, of course, but most importantly, you needed to develop strategies to maintain a good, professional but also personal relationship with co-workers you had never or seldom met. One needed to keep in mind the place of origin, age and the career trajectory of the recipient in order to know how to address and write him or her. The younger generation of officers thought the older staff members were no longer up to date with modern technologies and could not cope with adapting to the new communication strategies: ‘They don’t know how to be friendly and professional in writing, that’s why they don’t receive the data they need as quickly as I do. They will eventually receive it of course, but within the normal deadlines’. The older officers considered having worked under the old system an advantage in terms of coping with the current one: ‘We know how to cope, we’ve worked under a much more stringent system, which was very good because it was very clear’.

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10 The ‘nationality’ as my informants would call it. Of great importance was the regional provenance within the Albanian community but also beyond it – for many, and at least as far as KPA communication strategies were concerned, if you came from the same place, no matter if you were Albanian or Serb, you were brothers and sisters.
**Questions of law**

Beyond the material and institutional contingencies of daily work, lawyers like Berat would have to take into account a rather bewildering multiplicity of overlapping and often contradictory laws and regulations. As elsewhere in the Kosovo legal system, the KPA legislation combined principles of civil law and of common law systems. The legal system in Kosovo is, in theory, a civil law system. However, the involvement and influence of international legal practitioners trained in common law systems in the re-construction of the Kosovo legal system after the war (under UNMIK but also afterwards under EULEX) created a situation wherein common law principles were incorporated. This happened, for example, in the drafting of Standard Operation Procedures (SOPs) to implement KPA regulations, or in the fact that the commissioners deciding KPA cases were adjudicating cases but also making law. Law making at the KPA exemplified how different branches of the same legal system selected from and interpreted the available rules, principles, and precedents for different purposes in order to build, in the case of the KPA, an administrative *sui generis* system specialised in war-related property restitution.

CPT staff and KPCC commissioners had to cope with large gaps in the law on a daily basis. There was (and still is) no homogenised property legislation in Kosovo, only a bunch of texts that contradict each other. The property laws consulted by lawyers to make sense of cases ranged from Yugoslav-era laws — themselves carrying traces of other legal ideologies such as Ottoman or Austro-Hungarian law, and reflecting the political context of the time — to UNMIK regulations and now Republic of Kosovo laws (often sloppy copy-pastes of the incorporated UNMIK regulations). Some of the Yugoslav-era property laws lacked commentaries and had therefore lost their intrinsic meaning (for example when the legal commentaries of certain Serbian legal texts were nowhere to be found). Issues of interpretation also arose in relation to cadastre documents, some of which reflected municipal rules that were nowhere to be found in writing. To solve these problems, coordinators and commissioners appealed to the memory of the national commissioner and older national lawyers about how things used to work.

National lawyers and coordinators were to a great extent dependent on each other’s knowledge, constantly talking, sharing notes, reminiscing about ‘how things
used to be’. The Contested unit had formal teams of lawyers working with a certain coordinator. In Uncontested, the huge amount of claims processed meant that national lawyers worked with the coordinator sitting closest to their desk. The national lawyer would prepare the legal analysis and send the whole case for review to his or her assigned/closest coordinator. The coordinator would then review it, and often had to go sit next to the national lawyer to complete the work. National lawyers of both teams constantly conferred with each other. Some had specific expertise due to former work experience, for example having worked for the cadastre agency or the Privatisation Agency. Others had worked on certain types of claims in the past and were considered ‘the’ experts on certain topics. Others, still, were known to have an intimate knowledge of the northern part of the territory (the Serbian-majority municipalities), which was often very valuable.

One day, a coordinator came out of a commission session outraged. A case she had worked on had been dismissed because the national commissioner had questioned the facts presented. According to the commissioner, there had been no pump station where the claimant claims there had been one in the 1960s. A few days later, I was working on a case with a national lawyer from the uncontested team and the same coordinator. After a lengthy discussion, at the end of which the national lawyer had convinced the coordinator that her analysis was sound, the coordinator turned to me and said:

You saw, Agathe, how [the national lawyer working on the claim] used her personal knowledge in the case? She knows the person who gave the info to our Verificator at the SOE [Socially Owned Entreprise]... Same with [the national commissioner]. Sometimes he adjudicates a case solely by taking his personal knowledge into consideration. Here, you hear stuff like ‘I know this person, I know he is lying’, or ‘I know this, I was there’. How do you deal with this? In [my country], it’s never like this. Lawyers and judges don’t use their personal experience and connections.11

11 Interestingly, another coordinator called her out on that statement. This other coordinator, from a ‘Southern’ country thought the idea that legal practitioners could reason in complete
During one of our coffee breaks, a CPT contested lawyer with a law degree from Pristina University from the 1970s explained:

It’s difficult to understand something based on only a description. When you feel, live and work in the time, it’s different. It’s even more difficult because cadastral books were taken. We only have the info up to 1987. Before the war the law had commentaries by lawmakers. There was no space for lawyers to say another thing. That was very good. And you had jurisprudence for each republic. Now, old comments and jurisprudence are there but the legal practice is missing. The lawyer has to search and search to find the truth. The meaning of the interpretation of the article is lost. It is interpreted in another side. For example: the meaning of possession, it’s very sensitive. Did he pay bills, taxes? [You need to] ask neighbours to prove it.

Whenever a point of law needed to be explained in relation to the mandate of the agency, CPT coordinators, in close collaboration with a chosen group of ‘expert local’ lawyers, drafted legal memos, which were then discussed with the commissioners and subsequently used by lawyers faced with similar legal scenarios as the legal interpretation to be followed. For example, as no list of parallel courts and their new geographical situation existed, one such memo outlined ‘How documents issued or verified in the parallel courts can be recognised’ and ‘How to distinguish parallel courts documents from documents issued by regular courts in Serbia proper’. Another memo set out to describe the different rules found in various applicable laws as compared to a UNMIK directive dating from 2007. It specified which persons should be considered ‘members of the family household’, allowing such persons to file claims on behalf of another ‘direct’ family member without being authorised to do so through a Power of Attorney. Yet another memo, drafted while I was at the KPA, described and defined an obscure cadastre practice of ‘urban planning’ called ‘the P.Sh.Sh’. It had never been regularised in writing but it threatened to relegate a substantive number of claimants’ property claims to mere ‘user rights’, sometimes impermanent, thus greatly curtailing the type of legal

detachment from the social context was just another way Western lawyers had to criticise ‘less developed’ countries’ legal regimes.
remedies that would be available to them. Discussing the issue with Michael, the then director of the KPA, he said:

The P.Sh.Sh issue, it’s like swimming in the Atlantic against the tide. There is absolutely nothing written about it. In Twelve years of work here, I’ve never heard of it. Absolutely zero info. [The CPT] are under a lot of pressure [to find a solution]. It was probably just a practice, or even different practices under a same name.

The law was thus constantly re-made and re-interpreted, and gaps in interpretation were internally managed and overcome through discussion and the sharing of institutionalised, collective knowledge. Moreover, the commissioners created the KPCC jurisprudence from scratch, following the factual and legal issues they encountered, and changed their mind as time passed and as other legal scenarios appeared. For example, they had to decide when a case would be dismissed or refused. For some time, cases where properties had been sold before the war (and thus cases that fell outside the mandate of the agency) were simply dismissed. Later, they were refused.\textsuperscript{12} KPCC jurisprudence was translated into a set of ‘internal guidelines’ called ‘Consolidated Processing Guidelines’. A 56-page document issued by the KPCC based on their jurisprudence, the guidelines described how factual and jurisdictional questions were to be dealt with in the Annex. The guidelines explained, among other things, how to go about processing a claim when the claimant was not the alleged property right holder herself, but a family household member. They also described in what situations parties had to be contacted, and provided a list of documents that were acceptable as primary or secondary evidence. The influence of common law, with its emphasis on analogy and reliance on case law, is evident here. Particular cases led to judgments, which then served as precedents and eventually developed into a self-conscious, explicit, and more or less consistent set of legal principles. For the KPCC, rule making and decision-making went hand in hand, as is the case in common law legal settings.

Surprisingly, however, the last time the guidelines were updated was October 2010. The KPCC jurisprudence was updated sometime in 2011, and then again in

\textsuperscript{12} Therefore making the re-adjudication of such claims in a civil court \textit{res judicata}. 

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2013 (by me, when I was with the KPCC). Neither jurisprudence update resulted in an update of the Consolidated Processing Guidelines. While the latter were written in an easy-to-use format, the CPT staff never warmed to the jurisprudence’s format, nor did they usually use it when processing claims. The fact that the guidelines were never updated after 2010 complicated the lawyers’ work quite a bit, as they had to rely on each other’s memories of commission sessions to make sure they were following the commissioners’ latest views on certain topics.13

Uncertainty was inescapable. The journey of legal reasoning through which evidence was constructed at the KPA was murky and uncertain. According to Dorothy, one of the international coordinators from the uncontested team, the ‘messiness’ in questions of fact and questions of law led to ‘a higher degree of subjectivity [in legal reasoning] than in other legal settings’. As the following excerpt of a discussion among the uncontested team shows, different lawyers and coordinators working on cases with similar legal scenarios would sometimes arrive at differing legal recommendations that would then be taken up by the commission. During commission sessions, lawyers and coordinators would wait the calling of a specific ‘tricky’ claim with great anticipation, keen to know whether their interpretation would force commissioners to modify the jurisprudence — and the potential overturning of already adjudicated claims — or whether their claim would be sent back for re-analysis. ‘The relationship between CPT and the commission used to be not so good’, explained Dorothy. ‘It slowed things down. Now it’s much better, more open. We would lose time because we wouldn’t be able to ask jurisprudential guidance to the commission, so establishing good communication and good work relations with the commission is very important. A good relationship between CPT and the commissioners can mitigate subjectivity’.

On a sunny day at the end of October 2012, Maria, a coordinator for the uncontested team, called a meeting of her team. The issue discussed that day was

13 One should nonetheless note that, in an effort towards efficiency, contested coordinators made sure to update their internal contested guidelines after each session, and these were regularly used by the contested team. However, the types of legal issues tackled by the contested team were often very different from those faced by their uncontested colleagues. They also used another template to write their Annexes and had compiled specific guidelines accordingly. For these reasons, the internal contested guidelines were not of much use to the uncontested lawyers.
whether claims involving claimants who had not been able to enter into possession of newly privatised kiosks because of the war should be granted or dismissed. The issue of what constituted ‘possession’, so central to KPA/KPCC’s mandate, was one of the greyest areas of doctrine. There was no agreement on the matter between the SC and the KPCC. The following excerpt is indicative of how institutional and legal knowledge was shared among the staff in order to overcome gaps in laws and facts, as well as of the work dynamics at play between national lawyers (for whom I used fictionalised first names), and the four uncontested coordinators (including Maria and Dorothy, whom I quote later on in the text as well).

**Maria to the uncontested national lawyers:** I sent you the info by email. Maybe you don’t understand, maybe you discussed this among yourselves. But it’s never very clear to me if you’ve understood the issue of possession or not. The only person who came to me was Mailinda with questions related to my email. This meeting is a normal thing. We should all be on the same page. Please, focus more on why you’re dismissing. Be clearer. […]

**Mailinda:** In some of my cases, the date of loss on the CIF is not accurate. The claimant doesn’t know why the date is there in the CIF.

**Maria:** If he signed, he is an irresponsible person.

**Three national lawyers respond at the same time:** No, it’s not as simple as that. What if he is illiterate, it’s not so easy...

**Maria:** Then you need to explain in the Annex. […] Did they repossess the property? If the claimant never had pre-conflict possession, then dismiss.

**Mailinda:** OK, so we have to ask the claimant again.

**Argjira:** We had a case with [the third coordinator]. There had been an exchange of properties, in the Municipality of Gjakova. We decided to dismiss because the claimant never entered into possession. But because of the war, we have to grant.

**Lirak:** In some of my cases, claimants did not have possession because they had to leave because of the conflict. I automatically dismissed.

**Maria:** If there was no possession because of the conflict, then you should grant.
**Lirak**: Yes, but he never had possession. In last session, the commissioners dismissed!

**A second coordinator**: you should highlight it to the commissioners when you want to get clarifications.

**Lirak**: Based on the law, to transfer a property in someone’s name, you need legal basis — decision etc. — and cadastre registration. The claimant didn’t fulfill the second condition, and no possession. We know the cadastre [registration] was not done.

**Maria**: It is important to say that conflict did not prevent him from entering into possession.

**A third coordinator**: but this is not consistent.

**Lirak**: You update the cadastre, and then you become the owner. We deviated from this legal principle.

**Maria**: This is the most delicate thing in KPA. When we deviate from the law. I’m asking you to be more detailed regarding what happened during the conflict, especially regarding possession.

**Berat**: In this case, the claimant was a relative by marriage. He probably didn’t know the history of the family.

**Maria**: Yeah, because I found a death certificate from Kosovo. So they must have come back to Kosovo, contrary to what they stated, that they never came back from Germany.

**Dorothy, the fourth coordinator**: The claims are more and more complicated.

**Maria**: Show your efforts. The commissioners will decide. If you’re not sure what to so, submit your analysis with further explanation.

[Laughing]: Their salary is higher than yours, so they can decide.

**Argjira**: In our [Kosovo] law, you cannot transfer more rights than you have. This is a principle in civil law. So if the seller was not in possession, you cannot give possession to the buyer.

**Maria**: We have granted a lot of cases like this, without raising the issue. In contested, they apply the same only if the buyer and seller are FHM [family household members]. I don’t see why we should make this distinction.
Berat: To me it’s illogical. She bought the property knowing that the seller did not have possession, at her own risks. […] We should dismiss.

Lirak: Yes, I agree, but commissioners said no.

Maria: Again, it depends if the buyer could or could not get possession.

Berat: If claimant or PRH sold the property before claim intake, the claim should be dismissed. If sold after 2006, we should grant. […]

Lirak: Based on the Supreme Court judgement, I think we will dismiss. Also, it depends whether the property was movable or not.

Berat: for me, a kiosk may be concrete.

Maria: Ask about the material that was used to build. The commissioners are being technical.

The third coordinator: They want us to be very specific, precise and do all the research.

Maria: If you’re granting and you’ve got dismissed claims, be careful and explain the differences.

Mailinda: The international community is taking care of Human rights. Practicing them is something else.

According to Dorothy, her fellow coordinator Maria’s memory was one of the ‘un-written keys’: ‘Maria’s experience and memory are extraordinary. We rely on them as far as jurisprudence is concerned’. Lawyers would often come to Maria’s desk to ask her opinion about a claim they had difficulties with. She took extensive notes of the KPCC session discussions and deliberations and would often retrieve her notebook to look something up. Her motto was: ‘if the head commissioner said this [the way it was written in her notebook], you can rely on it’. Other lawyers were also known for their mnemonic skills: ‘Flora, she remembers the claim numbers, the names of claimants… It’s impressive’; ‘for questions related to privatisation, no one knows better than Rusha’, etc. Lawyers also shared annex templates with their colleagues to save time. Experience and specific ‘local’ legal expertise were major factors in the distribution of claims among lawyers.
Reviewing a file

In practice, each lawyer had their own way of drafting Annexes (much to the annoyance of some of the coordinators who kept asking lawyers to use their template only), but they all followed roughly the same steps in reviewing files. Files were reviewed cover to cover in search for evidence, starting with the Claim Intake Form (CIF). Documents were first read with an eye to technicalities (see the checklist below). After their procedural validity was established, lawyers went on to analyse their thicker content. They proceeded by elimination, searching for procedural and jurisdictional grounds for dismissal before launching deeper into factual analysis. In the process, they took notes of the data they required to write down the Annex, which, riddled with acronyms, was comprised both of information related to due process generated by the KPA system, and of information directly linked to the factual issues at hand. Taking into account donor pressure to review claims as quickly as possible, the uncontested Annexes were much shorter than the contested ones. Because these were single-party claims, explanations of how due process had been followed were also curtailed.

In both uncontested and contested claims, as soon as a cause for dismissal on procedural or jurisdictional grounds was found, or of refusal on ‘the merits’ for ‘lack of evidence’ for example, the lawyer stopped analysing the documentary evidence. Instead, he or she simply recorded the most important events of the file’s life, the basic evidentiary documents used, and stated the recommended legal decision for dismissing or refusing the claim.**14** If a claim was granted, factual analysis was carried out in greater detail, and the Annex included a short explanation of how the evidence at hand supported the claimant’s claim.

Because the KPCC is the decision-making branch of an administrative agency (the KPA), KPCC’s job was to render a decision on the property rights claimed by claimants only, and not on two (or more) conflicting accounts at once. The function of such an adjudicatory body is to ‘decide disputes about facts’, and

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**14** Along with disposals or sales after the conflict, other reasons for dismissing claims for lack of jurisdiction include: non-conflict related loss of possession; the claimed property being moveable as opposed to immoveable; the same matter being under review before a competent court, when the court case started before the filing of the KPA claim, etc.
not on the competing interests of litigants’ (Halliday and Scott 2009: 4). The KPA/KPCC is an institution in which administrative justice is made in terms of ‘bureaucratic legalism’ (Kagan 1978): ‘a product of hierarchy and legal formality’ (Halliday and Scott 2009: 5). Most of the claims (over 90 per cent) processed were single-party claims that reconfirmed existing property rights (see chapter one). But even in contested claims, facts were investigated and tested, but not contested per se: the institution saw itself as verifying and restituting existing property rights rather than making new rights. In other words, the KPCC only granted rights to claimants, their direct ‘family household members’ (FHM), or the person they represented through Power of Attorney (PoA). Although respondents had the right to see the claimant’s property documents and to provide documentation of their alleged property rights, no rights were conferred to them through KPCC adjudication.

As claimants were the ones who filed the claims, files were reviewed from the perspective of the rights they claimed. The view shared by many at the CPT was that, at the time of adjudication, the commission always tried ‘to accommodate claimants, sometimes to the detriment of respondents’. If a respondent appeared to be the legitimate owner of a property claimed by a claimant, the claim was dismissed. Claims were never granted in the name of respondents unless they filed a claim of their own, and were thus claimants in a competing case concerning the same property. As a coordinator explained, ‘the respondent’s allegations either strengthen or weaken the claim for the claimant. They are taken into consideration in the assessment of the claim. For respondents, the KPCC decision is evidence like any other that can then be used in court’.

Reviewing the CIF, the first document of the file, lawyers took note of the following information that they then cross-checked with the rest of the documents in the file; stopping multiple times to ask a question to a colleague, or share an information they thought would be valuable to a colleague working on a similar case. These data

15 A broader discussion on the topic of ‘bureaucratic legalism’ and ‘hierarchist administrative justice’ is proposed in chapter one.
16 What constitutes FHM for the KPA/KPCC is narrower than in Kosovo law.
formed the basis of the ‘jurisdictional checks’ that needed to be performed to draft the Annex. This is a reproduction of a checklist attached to Berat’s desk:

i.  *Is the date of loss between 27 February 1998 to 1 November 1999, or March 2004?*\(^{17}\)

A key jurisdictional issue was to ascertain when the loss of property took place. In practice, this was a mere technical crosschecking of the date of loss as mentioned in the CIF.

ii. *Was the case referred back [by the KPCC to the CPT]?*

Cases were referred back by the KPCC when they deemed crucial evidence to be missing. The lawyer needed to make sure the missing information was now available in the file. The Annex also needed to be amended accordingly.

iii. *Who files? Claimant – Name*

iv. *For whom? PRH [Property Right Holder] – Name*

Name discrepancies were a regular issue, as spelling mistakes, nicknames, and the widespread practice of naming a male child after his paternal grandfather, complicated the factual analysis.

v. *Date of claim intake between 5 April 2006 and 3 December 2007?*

Claims filed outside the claim intake period were automatically dismissed.

vi. *Signature of claimant on CIF?*

Again, a lack of signature on the CIF form was cause for dismissal.

vii. *Is there an alleged respondent/occupant? Do we have a name?*

This was important to assert whether cases were uncontested or contested. Contested claims involved multi-party due process formalities that had to be carried out before adjudication.

viii. *Parcel number? Cross-check with PL (Possession List) or CIPR (Certificate of Immoveable Property Rights)*

ix. *What is the ideal part claimed?*

x. *Surface areas of parcels? Cross-check with PL or CIPR*

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\(^{17}\) According to the KPCC jurisprudence, ‘the loss of possession in connection with March 2004 riots constitute a circumstance directly relating to or resulting from the 1998-1999 armed conflict in Kosovo’. See, for example, KPCC Decision 8, paragraph 13.
A major source of problems and causes for dismissals were the discrepancies concerning the denomination of parcels claimed in the different documents of the file in terms of cadastre registration (viii), division of property between property right holders (1/1 being the entire property, 1/2 meaning two persons are listed as PRH in the cadastre for this parcel, etc.) (ix), and surface areas (x).

Check: what property right is claimed? What is the claimant asking for in the CIF?

As I explained above, the commission followed a rather liberal interpretation of the rule that only rights claimed by claimants could be restituted to avoid dismissals. Their interpretation was much stricter when applied to compensation issues, which were not considered part of the legal remedies available to the commission. When compensation (nadoknadu, or stet in Serbian) was the only remedy sought, the claim was dismissed for lack of jurisdiction. If compensation was one of the remedies sought (generally along with restitution), the part of the claim that concerned the compensation request was dismissed. In both scenarios, these facts were written down in the Annex so as to bring them to the attention of the commissioners in terms such as the following:

The Claimant’s subsidiary claim for compensation in the amount of the market value of the claimed property is considered to fall outside of the KPA mandate as provided by Section 3.1, and as a result also the subsidiary claim is recommended to be dismissed pursuant to Section 11.4 (b) of UNMIKREG/2006/50 as adopted by Law No. 03IL-079.

After adjudication, a special mention was added to the claim’s ‘cover decision’ regarding the compensation request. For example, in decision KPCC/D/A/147/12, which covers 1300 uncontested claims, point ‘C’ entitled ‘Claims for compensation’ states:

In the claims identified in the relevant columns of parts A, B, C, D and E of the attached Schedule, the claimants also seek, in addition to ownership, compensation for physical damage to, or for loss of use of, the claimed property. Under UNMIKREG/2006/50 as adopted by Law No. 03IL-079 the Commission has no jurisdiction over such claims. Accordingly these claims must be dismissed.
National lawyers and international coordinators who didn’t speak Serbian well enough often used Google Translate to make sense of what the claimants stated in ‘Part H: Legal right claimed by the party’ of the CIF. These limited translations often made both lawyer and coordinator burst out in laughter. The CPT based their assessment of the rights claimed on the basis of these translated statements, as well as the information provided in ‘Part G: Information on the property right over the claimed property’. Sometimes the remedy sought by claimants as written in the CIF did not match the documentation provided or retrieved ex officio. In some cases, for example, claimants requested that their ownership rights be confirmed, while their documents only mentioned a user or occupancy right. In these cases, the lawyer considered the claimant’s statement to be mistaken, and continued the claim’s legal analysis according to the information provided in the documents. In other cases, the claimant’s statement mentioned the property claimed without specifying the type of remedy sought. Here again, the file’s documents spoke on behalf of the claimants.

Questions of fact

In the previous chapter, I looked at the ways in which information inscribed into documents was transformed into positively or negatively verified facts. The predominance of the written word over the spoken one impacts on the process of trust-making in ways that are worth highlighting and that differ from the procedure common in courts of law. As Berat mentioned above, oral statements were taken into account only in their written version, and it was the documents rather than the claimants that had to undergo the bureaucratic ‘ordeal of truth’. The documents in both their form and content were scrutinised by the verification officers. Following verification, documentary information only became reasonably ‘verified’ when it had been authenticated at its locus of origin, its manufacturing source.

Only positively verified documents could produce admissible evidence. When documents did not pass the ordeal of verification, their content remained suspect. They then served as background information during legal analysis.

18 See chapter two for examples of such translations. A coordinator made a point of keeping a list of the ‘juiciest’ ones.
something the lawyer needed to keep in mind and perhaps mention in his or her determination of the materiality of the claim. Verified documents represented only a portion of what was believed to have really happened, and it was commonly assumed that the content of negatively verified documents might also tell a genuine story, or at least a story that was partly true. Negatively verified documents were useful for drawing a larger picture, which could help determine which of the verified documents were potentially material facts in the normative sense.

Facts were deemed reliable when the artefacts serving as a medium of inscription (i.e. the documents) had successfully — or positively as they said at the KPA — undergone verification. The positive (and negative) verification was then recorded in a new document produced by the verification office: the ‘consolidated verification report’. The verification report presented a black-and-white picture of the claim’s documents according to their factual verifiability: positive on one side, negative on the other. The function of documents already in the files and of the consolidated verification report was one of ‘literary inscription’ (Latour and Woolgar 1986). For Bruno Latour and Steve Woolgar, literary inscription mediums persuasively transform statements into ahistorical facts. Their role is to make convincing that facts emanating from positively verified documents, as objects, and following a positivist conception of reality, pre-dated the chain of interpretation that led to their construction (70, 76). In other words, successive processes of literary inscription serve to release facts ‘from the circumstances of [their] production’ (76). The verification procedure, in this perspective, served as a fact-legitimating strategy that bracketed the process of legal translation. As I will elaborate, bracketing, or abstracting, away in order to construct a fiction of legal-bureaucratic efficacy does not reduce the complexity of the final formulation of facts (see Kafka 2012; compare Hibou 2012).

In the scientific texts studied by Latour and Woolgar (1986), the pivotal power of inscription devices is their ability to conceal their own existence from Materiality ‘concerns what has to be proved for the proponent to succeed (the facts in issue) and is governed by substantive law’ (Twining 1985: 153). In contrast with asylum claims decision making, where ‘broad credibility assessments’ of applicants are used to dispose of cases (Sweeney 2009: 724; Good 2015), the issue of credibility is here solely posed in relation to documents and facts’ reasonable certainty, and not in relation to parties’ accounts of events. See chapter three.
readers. As they write, ‘a text or statement can thus be read as “containing” or “being about a fact” when readers are sufficiently convinced that there is no debate about it and the processes of literary inscription are forgotten’ (76). The persuasion is complete when readers come to believe that ‘no mediations intercede[d] between what is said and the truth’ (70). This presupposes that a fact ‘be taken to refer to some objectively independent entity which, by reason of its “out there-ness” cannot be modified at will and is not susceptible to change under any circumstances’ (175).

However, in the transitional setting of Kosovo, documents and claimant statements could never completely be trusted as ‘facts’, and were never set in stone the way Latour and Woolgar describe in the above quote. In other legal settings, facts deemed reliable by the upstream executive apparatus of a legal or administrative institution are intrinsically trusted by the institution’s lawyers in charge of reviewing the file from a legal perspective (Latour 2010; Kelly 2012). In Kosovo, by contrast, because of the conditional nature of the trust conferred to facts even after verification, facts were never finally settled. They were doubted anew at each step of the procedure, sometimes even during adjudication itself. Therefore, for the lawyers and coordinators of the CPT in charge of writing Annexes, a major task in reviewing a file was to re-assess the reliability of facts in order to transform facts into evidence in the Annex. This always included a ‘due process note’ on notification and verification aimed at conferring reasonable legal respectability to both procedures and thus rebalance the facticity of the Annex with the chronicle of the production of these facts, i.e. that due process was followed.

This was done by critically assessing the documents describing the specific circumstances of the Notification and Verification processes for factual and due process inaccuracies and/or oversights; as well as comparing these descriptions with pictures, property plans, CIPR, PL and other documents in the file. Berat and his CPT colleagues constantly had to go back to the file’s sedimented content in order to verify the trustworthiness of the facts at hand. An open file in front of him, Berat looked for answers to questions such as: did this officer really visit the right plot?

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20 Latour and Woolgar also dealt with such cases with their typology of different degrees of facticity and the ‘modalities’ used to convey these. Due to a lack of space, I don’t describe those here.

21 I will come back to the question of the appropriateness of different notification procedures in more detail in chapter six.
The photo does not seem to correspond to the description given by the claimant. Was this document verified according to standard procedure? Why is this document not verified? When a lawyer could not convincingly write that both procedures (notification and verification) had been conducted ‘according to the rules and procedures’, they emailed the respective unit to ask for clarifications, and the file was put back on the CPT shelves or in the lawyer’s drawer, awaiting further information.

**Facts into evidence**

KPA files were true mediators: although their content was produced in a routinised fashion according to mass claims imperatives, and each of them participated in the production of a legal outcome, the decision could not be predicted by bureaucratic technology alone. As the limits of technocratic knowledge were recognised by the institution itself, a line was drawn, as a coordinator put it, between ‘mechanical’ case processing and ‘legal analysis’.

The passage between verification and the CPT, beyond its spatial and symbolic significance in the climbing of stairs (or the hopping into and out of the lift) to the penultimate floor of the building, is loaded with epistemological significance: the file ‘has now penetrated deeper into the domain of the law’ (Latour 2010: 81). In these offices, facts were transformed into evidence. Although the legal decision was in the process of being made from the moment of the claim’s translation in legal terms, ‘legal analysis’ only began at the CPT. No longer did a computer programme direct the thought process. There was, as a coordinator stated, ‘too much subjectivity’ involved in legal reasoning. A CPT national lawyer from the contested team who had previously worked for the Registry and Implementation Unit explained: ‘In Registry-Implementation, we didn’t do any legal analysis. The work was based on the application [programme] according to the parties’ requests; whether they wanted to repossess, put their property for rent under our rental scheme, close their case, etc. Here you have to work on your own based on the evidence provided’. As soon as a file was picked up by a CPT lawyer from one of the

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22 See chapter three for a discussion on files as mediators.
office shelves, its content was reviewed from a legal perspective according to legal considerations that differed from those used by upstream units (actually located downstairs), which determined the file’s value on the basis of pre-formatted, ‘mechanical’ case processing tools aimed at ordering and verifying facts. This is not to say that officers in other units did not apply legal rules and procedures — the length of each unit’s SOP attested that they did. Rather, the epistemological distinction lay in the way those rules related to claims.

Although most officers in units that worked upstream from the CPT had legal backgrounds (or were still law students), they were not seen as proper lawyers by the management. Their tasks consisted of following the transcripts generated by their computer programs rather than reasoning in the proper sense of the term. Using their knowledge of the rules as applied to specific tasks, they ticked boxes, completed forms and filled in the information needed by the CPT lawyers to reason legally. For non-CPT legal officers, for example, the acronym FHM (family household member) was a box to be ticked, a name to be added to a list. They did not know how the ticking of the FHM box would be used legally, nor was it their job to know. I witnessed on several occasions the ignorance of non-CPT legal officers towards the specifics of CPT analysis and more generally of adjudication. All kind of rumours circulated, including the unfounded belief that KPCC was not competent to restitute ownership or user rights, but simply dealt with occupancy rights. In my discussion with those legal officers, I was always impressed by the level of their knowledge concerning their own unit’s prerogatives, but also often by their ignorance of what happened to the files before and after they were worked on by their own unit. This is, of course, a consequence of the extreme compartmentalisation of information and expertise that was engrained in the institution’s setting (see chapter three).

For the lawyers of the CPT, an unchecked FHM box might have meant that the case had to be sent back to request a PoA, or that a specific law would not apply. While the work of the CPT lawyers might also have seemed immensely technical, the technicality they employed was used to perform legal reasoning and not simply to assemble the file. It was no longer a question of fulfilling criteria of judicial legibility but rather that these criteria, if met or unmet, directly influenced legal reasoning. This is the reason why cases could not be decided solely on the basis of
the black-and-white picture of the claim as transcribed in the consolidated verification report, which was based on the positive or negative verification of the claim’s documents and thus purely on questions of facts. For example, a case could not be granted in the claimant’s name simply because the claimant’s Possession List had been positively verified, and the Contract on Sale submitted by the respondent had been negatively verified. Ascertained facts did not directly lead to law.

What is evidence?

Facts and evidence (or pieces of evidence) differ as artefacts along the lines of the epistemological distinction I made between technocratic assemblage of data and disassembling through legal analysis. They differ in their raison d’être: building the file through legal translation versus dissecting its different parts according to jurisdictional and substantive considerations. The former constructed a black-and-white picture of the claim’s merits according to documents — looking at documents to construct facts. The latter looked through documents to infer matters of facts as they related to law.

While facts or data ‘have nothing to prove in themselves, […] evidence has to be evidence of or for something’ (Csordas 2004: 475). ‘Question and evidence are therefore “correlative” in the strong sense that facts can only become evidence in response to some particular question’ (Chandler et al. 1994: 1; Hastrup 2004: 459). This is especially true in legal proceedings, as the Oxford English Dictionary’s definition of evidence’s legal uses reminds us: evidence is defined as ‘information, whether in the form of testimony, the language of documents, or the production of material objects, that is given in a legal investigation to establish the fact or point in question’ (in Engelke 2008: S5).

One could surmise that it is only by questioning the file — looking through its documents — that KPA lawyers conducted their legal analysis of claims and that evidence was ‘found’. The example of Berat’s transcript of legal analysis at the outset of the chapter shows how, from a positivist perspective, evidence is the product of legal reasoning. Several lawyers used the metaphor of a funnel to describe legal reasoning; facts were fed into the funnel of legal reasoning leading to evidence
and coming out as decisions. But this would be ignoring the vast amount of unwritten discussions that informed the written formulation of legal analysis.

If, according to the CPT staff, evidence was ‘found’ in the funnel, it served to erase remaining traces of uncertainty, and objectified the messiness of law and of facts into easy-to-use, binary assertions of positivist ‘truth’. Evidence creates an appearance of certainty to facts and law through evidentiary protocols. It implements a logic of proof that is seen to be rational, consistent, and therefore reliable.

**Inside the black box of legal reasoning**

In the process of legal analysis, Berat and his colleagues were essentially constructing a ‘black box’ where anything that lay between facts and law was obliterated, hidden from view. I draw the concept of the ‘black box’, or of ‘black-boxing’, from the work of several authors influenced by Actor-Network-Theory (ANT) such as Mosse and Lewis (2006), Riles (2004; 2011) and Rottenburg (2009). A black box is a network hidden from public scrutiny, ‘in which [apparently] nothing occurs except the orderly and rational processing of inputs into outputs […]’ (Rottenburg 2009: 60). A black box is a carefully elaborated network, whose components had at some point to be explained and justified, but whose contingent history is allowed to be ignored and taken-for-granted (Valverde et al. 2005: 98). There is an obvious parallel here between the notion of literary inscription successfully concealing the constructed or contested histories of facts discussed above, and the concept of the ‘black box’. Both are concerned with the process whereby lawyers, no less than scientists, ‘disguise the uncertainty of their procedures with a language of determinacy, claiming that the facts [in the first case] or evidence [in the second] compel conclusions’ by themselves (Silbey 2008: xiv).

The only visible bits of what lay behind facts and law was what the Commissioners deemed absolutely necessary to convey in the decisions — a very strict minimum that was often not enough to reconstruct the underlying legal reasoning. This is already evinced in the Annex drafted by the CPT lawyers prior to

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23 Compare Blankenburg (1894) who uses the concept of ‘funnelling’ to refer to the process through which grievances are ‘funnelled’ into the legal system. See also Felstiner et al. (1981).
adjudication. Indeed, the Annex was the document that formed the basis upon which commissioners decided cases. KPCC officers referred to each Annex in drafting decisions. For example, the Annex drafted by Berat for Ms. Larovic’s uncontested claim concisely summarised the legally relevant facts of the case — the pieces of evidence — and ended by noting that according to these facts, the claim should be dismissed. Berat mentioned:

- The relationship between the claimant and the alleged Property Right Holder (daughter-father)
- The documents submitted (Possession List no. 152, and Inheritance Decision O.Br.182/83) and the information they contain (Makarije Larovic, as owner of the claimed property; the claimant inherited 1/1 ideal part of the claimed property from her father)
- The typo in the father’s name which was explained by the cadastral officer in the first document
- The verification status of the documents (positively verified for the PL, negatively verified for the inheritance decision)
- The KPA request that the inheritance decision be verified in the parallel court of Novi Pazar instead of in the Mitrovica court
- The telephone interview with the claimant’s son as recorded in writing, by which he confirms that the property was sold in 2000
- The telephone interview with the claimant whereby she also confirms the sale
- The lawyer’s recommendation: the claim stands to be dismissed

For a layperson with no knowledge of the rules that apparently dictate how one line leads to another, the above sequence of factual statements is probably quite enigmatic. Legal reasoning is left out, and the reader can only infer it. It is situated in the interstitial space between each sentence, each line. As a judge for the SC complained, this is even exacerbated by the mass claims specificity of the process. The time spent analysing each claim and, at the level of the KPCC, drafting each individual decision after adjudication, must be as short as possible to fulfil the quantitative requirements set by the donors. From a pragmatic standpoint, it is simply easier to jump from facts straight to law without further ado. But it also makes it much harder to understand how certain decisions were reached. This practice, albeit perhaps more roughly applied at the KPA, defines in more general terms how legal
analyses ‘seek to prune away “extraneous” details, so as to identify the abstract, general, de-contextualized legal principles assumed to lie within’ (Good 2008: s51; Kandel 1992; Rigby and Sevareid 1992). In the present context, however, legal analysis never seemed to get to questions of law in the text of the Annex before the last decisive sentence or ‘legal recommendation’. In the leap from facts to law, the particulars of legal reasoning by which relationships of evidence were built were hidden from the surface of the written text.

Latour (2002: 218) describes legal reasoning as a back and forth movement between facts and laws, ‘the very mediation of […] associations between the dossier and the library’ (Levi and Valverde 2008: 817; emphasis theirs). The Annex produced by CPT lawyers through which legal reasoning was performed and recorded could be considered in a Latourian sense as ‘the two points of anchorage of a footbridge’ (Latour 2010: 87). I would nuance this picture by saying that legal reasoning is rather like a boat ferrying between the two banks of facts and laws (if ‘bank’ is the right word; quicksand might be more appropriate), struggling through eddies and treacherous currents along the way. Still, the image of a journey risks misrepresenting ‘facts’ and ‘law’ as existing out there, to be found and read by legal practitioners. Conversely, legal reasoning is the knowledge practice through which facts and law are constructed and made meaningful as they relate to one another.

The different processes by which the CPT staff distilled the complex assemblage of facts and law into easy-to-apply legal recommendations such as endless discussions, patching up laws, drafting legal memos, or constantly re-questioning facts, were never mentioned outside the confines of the third floor. The KPCC decision was the only visible tip of the iceberg. However, CPT lawyers and the KPCC worked towards a common goal: making the decisions seem as straightforward and transparent as possible from their own perspective. Paradoxically, this entailed the curbing of explanations of legal reasoning in the decisions to an absolute minimum, especially for uncontested cases, by making the facts ‘speak for themselves’. Whether this was due to mass claims imperatives, a civil law orientation towards minimalist decisions as exercises of ratiocination, a lack of legal reasoning skills (as suggested by a EULEX judge, see chapter five), or to a
more or less conscious desire to make their decisions relatively immune to appeal, is open to question.

**Lawyering as ‘bricolaging’: concluding thoughts**

In her seminal study of the criminal justice system in the UK, Doreen McBarnet (1983) makes two points that highlight the limits of a Weberian analytic of bureaucratic rationality as well as of the legal classicist orientation towards the reification of legal rules in the study of legal indeterminacy (for a classical, Critical Legal Studies account of indeterminacy, see Gordon 1984; Yablon 1985; Unger 1986).

McBarnet’s first point is that the spirit of the law and the form of the law are two different things: prescription and legal ideology on the one hand, and rules and substance on the other (1983: 155). Legal reasoning differentiates ‘what happened’ from ‘what should happen’ in any particular claim or dispute (Tejani 2016: 100). Second, McBarnet criticises that the dichotomy often made between the ‘law in the books’ and the ‘law in action’ helps consolidate a false understanding of how law works:

> Focusing on the subversion of justice by its petty administrators, on the gap between the law in the books and the law in action, in effect whitewashes the law itself and those who make it. Front-men like the police become the “fall guys” of the legal system taking the blame for any injustices in the operation of the law, both in theory (in the assumption […] that they break the rules) and indeed, in the law (McBarnet 1983: 156).

Following McBarnet, it is not that the police or the administration are flawed and circumvent law. Rather, they work *with* it. Everyday lawyering practices, including discretionary work, happen within the processual boundaries of the law (see, for an exhaustive discussion of discretion, Affolter 2017). The police uses rules to achieve a higher number of convictions (McBarnet 1983), as much as lawyers construct cases by making certain facts fit legal templates (Aiken and Shalleck 2016: 59), and use ‘doctrinal materials, not as a coherent guide to permissible conduct, but as an arsenal
of weapons that can be used to justify virtually any position’ (Yablon 1985: 917-918).

The law is ‘one of the raw materials that lawyers work with’ (McBarnet 1983: 7), and evidence is ‘the end-product of a process which organises and selects the available “facts” and constructs cases for and in the courtroom’ (McBarnet 1983: 3). The Critical Legal Studies movement, especially prominent in the 1980s, similarly holds that ‘the law — or more specifically, the relationship between authoritative doctrinal materials (like statutes, cases, etc.) and the actions of legal decisionmakers [sic] — is loose or “indeterminate”’ (Yablon 1985: 917). As well in legal anthropology, law has long been understood as a process whose outcomes cannot be predicated by substantive law alone (Collier and Starr 1989; Moore 2001; Tamanaha 2001; Kelly 2005; Cederlöf 2008). Law has been analysed as being made up of ‘“codes”, discourses, and languages in which people pursue their varying and often antagonistic interests’ (Collier and Starr 1989: 9; see also Cederlöf 2008), within specific historical, political and cultural conditions (Kelly 2005: 869; Collier and Starr 1989) and unequal distributions of power (Lazarus-Black and Hirsch 1994; Moore 2001; Comaroff and Comaroff 2006). Likewise, rules have been analysed as ‘systemic resources’ (Collier and Starr 1989: 10; Bourdieu 1987). However, I find McBarnet’s concept of raw material — de-mystifying the law still further — to work well for the present argument. I also find her critique of a desire to fix the system by, inter alia, training policemen better or improving a piece of legislation as missing the fundamental, pathological issues with the whole legal regime, to be especially relevant in the context of transitional Kosovo (see also, chapter six).

Such an analysis of legal indeterminacy demands looking at the written rules and regulations KPA lawyers used as one of the raw materials with which they produced convincing legal arguments, along with the myriad of unwritten rules, experience and shared memories that played such an important part of legal reasoning at the KPA. At the same time, it pushes an understanding of evidence-making not just as a two-dimensional ‘finding’ process but as a process of social construction (Frank 1932; 1973; Bryant et al. 2014). Finally, it leads to a renewed analytical focus on lawyering practices, which necessarily takes into account the ‘bricolaging’ nature of everyday work. Because neither the jurisprudence nor the
guidelines were up-to-date, and because the standard of proof was so low and relative, lawyers had to rely on each other’s previous experience, notes and memory of previous deliberations to know how tricky scenarios should be analysed.

Lawyers, following Kant and Weber, are often depicted as ‘rule fetishising’ intermediaries, or as rule appliers (Rajkovic 2014: 336; Weber 1968). This view, based on a classic rule-oriented definition of knowledge (Rajkovic 2014: 341; Conley and O’Barr 1990), falls short of capturing the ‘institutional habitus’ (Bourdieu 1972; Affolter 2017) and professional agency of CPT lawyers. Evidence making depended on lawyers’ capacity to move through the eddies of facts and laws by tapping into the institutionalised, ‘collective memory’, and thus act upon both facts and laws in a way that goes beyond a Weberian understanding of rational legal interpretation and the mere application of rules.

Lawyers’ and coordinators’ legal background, their civil or common law education, and, for coordinators, their previous jobs (see chapter five), didn’t matter much. What mattered was the institutionalised legal habitus of CPT officers, their professional subjectivities forged by working at the KPA. This habitus was made up of an intimate knowledge of how the computer applications worked and on good working relations with colleagues within and beyond the CPT in order to get by in such a ‘mission’ environment and achieve the daily target.

Everyday lawyering at the CPT also went beyond a Bourdieusian understanding of professional hermeneutics ‘where, owing to the elasticity in interpreting legal texts, legal professionals become possessed with techniques of reading the law’ (Rajkovic 2014: 340). Bourdieu’s analysis, to me, reproduces a positivist understanding of the law as a set of rules to be applied by ‘learned interpreters’ (Bourdieu 1987: 823). It also falls short because ‘reading the law’ was only one of several ways in which doctrinal materials were invoked and worked on.

CPT lawyers saw themselves as rule abiding intermediaries. According to them, even when laws were incomplete, their role was to apply the relevant laws to the facts of cases, and legal recommendations and decisions transpired naturally from their expert reading of both sets of documents: ‘We’re professional lawyers, we know how to apply the law’. Bourdieu noted, anticipating my informants’ discourse, that lawyers like to see themselves as embodying the legal habitus of a ‘lector, or
interpreter, who takes refuge behind the appearance of a simple application of the law’ (Bourdieu 1987: 823). But as the quote above suggests and as Bourdieu also noted, these same lawyers also performed the work of ‘judicial creation’, a fact which they tended to dissimulate (ibid).

In that sense, the work of CPT lawyers resembled a kind of sophisticated legal bricolage embedded in the network of legal knowledge production, rather than a simple intermediation by a funnelling agent. In Savage Mind, Claude Lévi-Strauss (1962) saw bricolage as ‘a way of combining and recombining a closed set of materials to come up with new ideas’ (Turkle 2007: 4). The craftsman, or bricoleur’s universe of instruments, writes Lévi-Strauss, is closed and the rules of his game are always to make do with ‘whatever is at hand’, that is to say with a set of tools and materials which is always finite and is also heterogeneous because what it contains bears no relation to the current project, or indeed to any particular project, but is the contingent result of all the occasions there have been to renew or enrich the stock or to maintain it with the remains of previous constructions or destructions (Lévi-Strauss 1962: 11).

Following Mélice (2009) and Maniglier (2002), but translating their approach to the legal field, I posit that bricolage can be a useful analytic for overcoming the dichotomy between lawyers’ understanding of what they did (the systemic view), and what they actually had to do to reason legally (the historical view). Much as Lévi-Strauss’ bricoleur, CPT lawyers had to make do with the tools and raw materials that were available to them. Moreover, knowledge production, as bricolaging, was constrained and shaped by politico-historical and systemic regimes of truth. Bricolage underlines the dynamic aspect of social structures, or systemic regimes, and their capacity to evolve through heteroclite but internal, historical transformations (Mélice 2009: 86; Maniglier 2002: 8).

Because the movement between facts and law was so arduous and uncertain, evidence could not be reduced to an artefact to be found. Rather, it had to be

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24 In the French original, le bricolage en train de se faire (Bastide 1970).
produced by lawyers in the very act of lawyering. Although the evidentiary protocols placed in the black box suggest a linear transformation from facts to law and from file to Annex, I have argued that only by looking at the social practices of legal knowledge making through which knowledge of facts and law were shared and made meaningful — what I have coined *bricolage* — can we understand how evidence was constructed and legal reasoning acted out in the everyday.
CHAPTER FIVE

‘We don’t work for the Serbs, we work for human rights’: justice and impartiality in transitional Kosovo

In this chapter I look at competing notions of justice deployed by lawyers at the KPA to make sense of the seeming contradiction between Kosovo Albanian lawyers’ institutional, professional duty of impartiality and their profound nationalist convictions and sentiments of historical injustices to ‘their people’.

Impartiality is at the heart of the ideal of procedural justice as embodied in the allegory of the blind lady justice (see, for example, Storme 2014: 67 in Shetreet, 2014). By asking how impartiality can be guaranteed in a context as fraught and highly politicised as post-war Kosovo, I explore how it was produced in the everyday. I argue that impartiality was produced and made possible by different, seemingly contradictory repertoires of justice that were acted out in everyday practice by the national lawyers of the agency. Contrary to standard, black letter law arguments that frame international law and human rights as the ‘pure’ norms against which ‘local’ legal practice can only fall short,¹ I aim to demonstrate that it is rather the messiness of the ‘local’ context and the plurality of notions of justice at play that socially produced impartiality. In the political landscape of post-war Kosovo, the ‘nationalistic bias’ of Kosovo Albanian lawyers ensured due diligence and respect for rule of law principles.

Much anthropological scholarship on human rights postulates that abstract and universal human rights have to be translated or vernacularised to become locally meaningful legal and moral instruments. But it is precisely a distancing from messy local realities that gives human rights their social and political force in the daily work of lawyers at the KPA. By invoking human rights as a transnational doctrine rather

¹ See for example, the Preamble of the Basic Principles on the Independence of the Judiciary (1985).
than something applicable in a local social context, lawyers framed and made legible sensitive legal work.

My argument is developed in three steps. I open with a thick description of events that took place at the KPA around the 100th anniversary of Albania’s independence. Despite the apparent pro-Albanian bias that this vignette reveals, the KPA was widely seen as impartial and one of few efficient institutions, both in Kosovo and in Serbia. I explain this ethnographic puzzle through the institutional set-up of the KPA, which was deeply shaped by an international imaginary of justice as human rights, and which read the history of Kosovo and ex-Yugoslavia as a problem of ethnic minority rights. Due to the international oversight of Kosovo’s autonomy (and its subsequent de facto independence), Kosovo was envisioned as a multi-ethnic state with a premium on the rule of law and respect for minority rights. Accordingly, property rights were considered one of the most pressing issues to be resolved. This ideology of property rights as human rights fundamentally underpinned the establishment of the KPA (see chapter one).

In the second section, I look at how impartiality was implemented at the KPA at a procedural level. Here I describe the institutional mechanisms that were put in place to safeguard the impartiality of the lawyers’ work. However, this impartiality is limited to technical-procedural issues and does little to mitigate potential political and ideological biases. I posit that, even in an institutional set up under international rule, where standards of impartiality are enshrined in the procedures themselves, technocratic mechanisms and the ideal of ‘justice as human rights’ alone cannot ensure impartiality.

In order to make sense of how lawyers dealt with these contradictory and seemingly irreconcilable institutional and personal notions of (in)-justice, I end by probing the dialectic between ‘global’ ideals and ‘local’ practice, and ethnographically demonstrate the limits of an anthropology of human rights that sees vernacularisation and meaning-making as the only analytical tools available. In this last part, I argue that it is a sense of distance from the ‘local’ that gives human rights their social and political force. The discourse of human rights is invoked rather than applied, and deemed self-legitimating rather than being vernacularised in locally meaningful legal and moral instruments. Because the national lawyers were so
deeply rooted in the ‘local’, they were able to simultaneously uphold ideals of procedural justice enshrined in international law and their personal sense of distributive justice stemming from nationalistic sentiments, and therefore to act impartially. By looking at the two different, irreconcilable repertoires of justice that were deployed by the national lawyers in the everyday, we can begin to understand how impartiality was achieved at the KPA.

‘Gëzuar 100 vjetorin e Pavarësisë’ – ‘Happy 100 years of Albanian Independence’

On Wednesday, 28th November 2012, Albania marked the 100th anniversary of its independence. Although it was not an official holiday in Kosovo, most public institutions and private companies had given their employees the day off, and many had plans to take bridge Thursday and Friday as well, making it a long weekend. Rumour had it that the government had sponsored a thousand lambs to be slaughtered in public festivities. In the run-up to Independence Day, many shop windows had been decorated with the Albanian national colours, red and black. The main thoroughfares of Kosovo’s capital, Pristina, had been bedecked in flags with the Albanian eagle, and people were gearing up for four days of festivities and sporting Albanian colours to work on the preceding days.

Fig. 33: Celebrations on Mother Theresa boulevard. Photo by Jon Schubert, 2012
At the KPA, where I had been interning as an embedded researcher since June of that year, office spaces were decorated with Albanian flags and banners. The national Deputy Director led by example, having flags up on all his office walls. Some of the international staff participated in the merriment, donning the red-and-black shirts they had been given by their Kosovo Albanian colleagues during the coffee break on the 26th.

On Monday morning the 26th, the excitement was palpable in the corridors of the agency. KPA officers were discussing their holiday plans as they clocked in. Valmira, a Kosovo Albanian woman in her late twenties, was about to enter the building. I waited for her at the lift and we rode up to the third floor of the building together.

At the time, I was observing the work of the legal officers working directly with the three commissioners of the KPCC, the KPA’s adjudicatory commission. Valmira was one of the lawyers of the CPT, the unit that carried out the legal analysis of claims before they reached the KPCC office. She had started working for the HPD, the first property restitution mechanism set up by the UN, six years previously, and had continued with the KPA at the close of the first mandate. In the lift, I was feeling somewhat out of place as the only person not wearing red and black. She responded to my inquiring gaze, with the rest of the lift passengers nodding in approval:

We are Albanians. We fought together many times in history; we are one blood, one language. And we have the same flag. My flag is black and red, not blue and yellow [the flag of Independent Kosovo]. I cannot change that. This land is Kosovo, but it’s Albanian land. We’ve been here for centuries. We’re Illyrian. My nationality is Albanian because I belong to the Albanian nation.

With these words, the lift doors opened upon the small corridor full of metal cabinets containing archived files. Valmira continued straight to the CPT office while I followed the KPCC team to theirs, on the left hand side. Inside the crammed office, a national lawyer and one of the international staff were having a heated debate. Upon entering the office, the international legal officer had commented on the flag above her national colleague’s desk, questioning this bold display of nationalism at the
work place. Her language must have seemed offensive to her national colleagues, and the tone became increasingly glacial. The international officer was commenting on the need to remain impartial, while her national colleagues told her that she couldn’t understand as she was ‘not from here’: a foreigner. She later confessed that she hadn’t known it was Albanian Independence day on the 28th.

The coffee break gave me an excuse to get out. Every morning at 9.30, most staff members headed out for a delicious makiato in one of the nearby cafés. Sitting beside Valmira next to a warm open fire, an older colleague from the CPT unit continued the conversation from the lift:

As Albanian people, we suffered a lot. For years we suffered under Serbian occupation. From 1989, because of the repression by the Serbian authorities, everyone [the Kosovo Albanians] was fired. Some of us here were taught law, not at the university but in secret, in private houses, because the university was only in Serbian. During the war, my family and I, like many others, escaped to Macedonia for three months. I was afraid for my children. All six of us slept in the car […] for days. We heard horrible stories from Kosovo. Women, old people and children forced to walk for days across the country and used as human shields, men starving in Serbian camps. So you understand why it’s important for us to celebrate publicly today that we are Albanian. What Serbs say about the conflict and what happened before, it’s not the truth. I hope you read books written by Albanians about Kosovo history, and not by Serbs, because you must know the truth.

Checking my Facebook page a few days later, I found a post by a colleague from the eviction unit.² In his post, liked and commented on by other KPA staff, B. referred to the horrors of the war experienced by Kosovo Albanians with a picture of the forced marches that the older lawyer told me about.

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² As its name states, the eviction unit was in charge of evicting ‘illegal occupants’ after adjudication.
The international officer I mentioned above picked up on a visible contradiction between the KPA national staff’s personal, ‘nationalist’ convictions and their duty of impartiality.

Impartiality, in this context, is best understood in reference to article 14(1)\(^3\) of the International Covenant on Civil and Political Rights that stipulates, according to the Human Rights Committee, ‘that judges must not harbour preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties’ (OHCHR 2003: 120).\(^4\) The European Court of Human

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\(^3\) Its second sentence states: ‘In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’.

Rights, moreover, sees impartiality as containing both a ‘subjective’ and an ‘objective’ component (ibid):

Not only must the tribunal be impartial, in that ‘no member of the tribunal should hold any personal prejudice or bias’, but it must also ‘be impartial from an objective viewpoint’, in that ‘it must offer guarantees to exclude any legitimate doubt in this respect’.  

A complex social fact, impartiality is produced in relation to the parties and to the issues at stake (the ‘subjective’ element). It must also be rendered explicit through institutionalised, procedural rules in order for the institution to be in a position ‘to exclude any legitimate doubt’ (the ‘objective’ element). The international officer was troubled by the bold display of ethnic ‘nationalist’ sentiments at the work place in a supposedly impartial institution abiding by international law standards. She saw the national lawyers’ behaviour as counterproductive, jeopardising the integrity of the institution.

It is hardly surprising that lawyers – who are special kinds of bureaucrats – would have private interests and prejudices that are not necessarily congruent with the work they do (see Herzfeld 1993; Handler 1996). In his study of performance in everyday life, Erving Goffman (1959) famously showed that actors everywhere separate their private and professional selves and take on different personae according to the (private or public) spheres in which they find themselves. Yet the national staff did not keep their nationalist behaviour out of the workplace. They did not appear to believe that flaunting their Albanian allegiance at work contradicted their public personae as KPA lawyers, and that this could be detrimental to their professional duty of impartiality or to the independence of the institution from the perspective of international law.

This can be explained, partly by the political context of contemporary Kosovo, which is de facto in the hands of its Kosovo Albanian majority, and partly by the long history of the politicisation of ethnicity across national borders in the Balkans, which normalised everyday nationalism in both private and public spheres. But neither victor’s politics nor nationalist history can explain the lawyers’

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commitment to impartiality, and the general public’s perception of the KPA as an impartial institution. The ethnic composition of the KPA complicated matters further. The agency was predominantly staffed by Kosovo Albanians, and all the national lawyers of the CPT and KPCC — the two units that worked directly on the legal analysis of claims — were Kosovo Albanians. This, while 98 per cent of claimants were Kosovo Serbs, most of whom lived as DPs in Serbia. Nonetheless, the institution was generally considered in Kosovo and in Serbia as one of the only independent, uncorrupted and fair institutions in Kosovo. How, then, could Kosovo Albanian lawyers so secure in their Albanian nationalist convictions, work impartially for the benefit of predominantly Kosovo Serbian claimants?

A ‘clash of working cultures’?

At the time the KPA was created, UNMIK seems to have shared my initial assumption that national lawyers might experience conflicts of interest when working on war-related property disputes, the memory of which was still quite raw for many of them. UNMIK devised two strategies that succeeded, at least from a technical point of view, in creating the necessary conditions for the impartiality of national staff. On the one hand, they organised the institution’s workflow as a technocratic machine managed by computer applications especially designed by the KPA IT team for each discrete unit (see chapter three and four). On the other, they called in ‘internationals’ to supervise the work of the ‘local’ staff. As in other bureaucratic settings, the technocratic apparatus put in place was ‘designed to unify and control individuals conceived as either naturally independent and refractory or entangled in other collectivities’ (Hull 2003: 288).

When I started my research at the KPA, I was introduced by the director to the different heads of unit as an intern who needed to learn ‘how the process worked’. Very much like other staff members were trained when they first arrived at the agency, I was asked to sit next to a national officer or a coordinator (as the international legal officers were called at the KPA), take notes of the explanations of my colleagues, and read the SOPs for that specific Unit. I would then perform the tasks I had learned on my own KPA computer. Each time I moved from one unit to
the next, the applications for the previous unit would be deleted from the desktop computer that followed me everywhere (along with the desk and the chair). New applications would be installed, and a similar learning process would start anew. The explanations I received on ‘how the system worked’ were always about the workings of the computer applications. My colleagues understood their work through the applications, which framed and dictated the logic of the workflow. Complex kinship and property title issues were reduced to the ticking of boxes and the filling in of forms in a pre-set, technical-legal language made up of abbreviations, following simple, causal chains of actions. Information was made available only according to permissible options in the database applications, ensuring that no one had access to the full database entry for a specific claim. Information was strictly compartmentalised between the different units (see also, chapter three). Within the units themselves, every change to the database was logged with the name of the staff member that had entered the data and these changes were later controlled by the programme for completeness as well as by the head of unit for internal coherence. The strict compartmentalisation of information, along with the nominative track-change and quality control procedure instituted at each step of the process, succeeded in dividing the messy reality of claims into discrete parcels of technical information stripped of emotion.

The processing of claims at the KPA was conceived first and foremost as a technical procedure of data entry and data analysis. In de-politicising claims and rendering information purely technical, UNMIK created a legal decision-making machine detached from everyday life and governed by technocratic rule. The KPA staff, reduced to the role of technicians servicing this seemingly omniscient machine, considered the system so powerful that there was only very little room for manoeuvre. ‘It is impossible for lawyers not to be objective’, I was told, ‘because the system is so good’.

Yet, technical conditions for impartiality do not automatically equal impartial work. UNMIK set up the institution, therefore, such that the work of the national staff would be supervised by internationals. As the EULEX property coordinator explained: ‘the presence of internationals is intended to ensure that infection is kept to a minimum. Internationals are able to access the resources of people speaking the
local language[s], but ensure that they [the national staff] don’t have the last word’. On top of expressing prejudice about the presupposed impartiality or biases inherent in different categories of persons, the use of the term ‘infection’ also denotes the fostering of a ‘healthy’ (read: ‘modern’ and EU-compatible) body politic unpolluted by ‘local’ influence — reproducing age-old stereotypes about the Balkans such as corruption, inefficiency, and ethnic hatred (Todorova 2009 [1997]).

For the technical machine to run smoothly, it had to be administered by technocrats, who could only be internationals, conceived of as embodiments of neutrality. Internationals were appointed, in the view of EULEX, to safeguard and promote international rule of law standards such as judicial independence and impartiality. In brief, their role was to ensure impartiality where it was suspected to be absent. In this perspective, echoed by many rule of law mission observers (see for example, Cady 2012), the national staff were too emotionally involved in the issues at stake, leading to ‘biased’ justice. Under UNMIK, it was in fact common for Kosovo Albanian judges in both civil and criminal courts to show ethnic bias against Serbian defendants (ibid).

However, international oversight did not guarantee impartiality by the national lawyers. The consensus at the KPA was that, although the presence of internationals was necessary because it established guarantees for ‘objective’ impartiality through technical-legal input, political-legal oversight did not ensure the ‘subjective’ impartiality of the national staff.

Internationals acknowledged their general lack of knowledge of the ‘local’ socio-political and legal setting. When they first arrived at the KPA — they told me — they didn’t know much about the events covered by the mandate. More problematically from their point of view was that they also lacked knowledge of property law (their previous work experience having been in other areas of law), and of the applicable laws in Kosovo: ‘the only training we get is on the computer applications and the internal guidelines. We get no formal training on the legal system here’. This was also a source of irritation for the national lawyers, as one of them expressed: ‘sometimes I doubt if internationals even have a degree in law. The kind of questions they ask — how would a lawyer ask this?’
This is not to say that the KPA coordinators were incompetent, but their international-ness and their technical skills as jurists that were educated abroad were the essential requirements for the job, while knowledge of the historical and legal context was unnecessary. As Kimberley Coles (2007) argues, the cultivation of this sense of ignorance is what makes them neutral experts in the eyes of the international community and gets them their jobs. In post-war Bosnia, like in transitional Kosovo, internationals were hired for their ‘international bod[ies] and the skills [presumed to be] attached to th[ese] bod[ies]’ (97). ‘The international-as-tool held within his or her body the authority of the international community as well as an assumed set of particularly defined and produced skills or values: expertise […], democracy, and neutrality’ (100). Coles deploys the concept of ‘mere presence’ to define the role of the ‘international’s bodily tool kit’ (ibid). She describes how, however passive the role of some internationals was, their presence was seen as necessary because it evoked, among other things, ‘goodwill and post-war reconciliation’ and an implicit enforcement of ‘rules and proper conduct’ (ibid). One of the coordinators at the KPA echoed this idea almost verbatim when he told me: ‘It’s not us; we are not such amazing lawyers. It’s our presence that might help them be more neutral’. Their ‘mere presence’ was also seen as indispensable by Kosovo Serbian claimants who, I was repeatedly told by KPA staff, believed in the impartiality of the KPA because of the presence of internationals.

The national staff sometimes also used internationals as something like a ‘buffer’, preventing external politics from interfering with internal rules, such as in the recruitment process. A coordinator explained:

Internationals can be used as alibi. When the lawyers are put under pressure, they can blame the internationals. […] Whenever put under pressure they can say: ‘my coordinator will have the last word’. We are their excuse.

Beyond their ‘mere presence’, however, KPA coordinators did not always seem very conscious of their assigned role as impartial overseers. As the earlier vignette shows, some of them were unaware of the potential political implications of their wearing Albanian colours on Independence day. When I expressed surprise, they told me they just wanted to please their Albanian colleagues who had offered them the t-shirts,
and did not think that their action could have a negative impact on their authority as coordinators.

This was probably because, in everyday practice, the coordinators’ role was mainly conducting formal and technical ‘quality control’ based on their ‘commitment to bureaucratic and technical rationality’ (Coles 2007: 106). At the CPT, for example, they made sure that reports drafted by national lawyers were formatted in accordance with the KPCC guidelines, and cleared up the ‘messiness’ of some of the legal analyses, rather than simply verifying whether or not the lawyer showed bias. As one CPT national lawyer told me:

> Coordinators interfere in your language. But they don’t have the credentials of translators or language specialists. Their duty is to look at the claims to make sure they are understandable, impartial and that the procedural steps are fulfilled. [...] They should work on impartiality, not language. They focus on language and forget to check all the steps. So lawyers feel frustrated. If [the legal reasoning] is understandable and clear, why the need for cosmetic changes? [...] They are obsessed with changing everything.

For the international staff, however, this thorough and technical ‘quality control’ was indispensable in making up for what they described as a skills gap. Indeed, a common complaint of the international staff (coordinators, KPCC commissioners and EULEX Supreme Court judges alike) was that the legal education of Kosovo Albanian lawyers did not train them to interpret the law and write clear, black-letter law analysis. A EULEX civil judge even told me: ‘for them, the reasoning is equal to the facts of the case. There is no legal reasoning in their analysis. Take somebody from the street and they would express themselves in the same way’. Both groups were thus accusing the other of not knowing enough law, the national lawyers focusing on content, the internationals on reasoning.

Beyond this ‘clash of working cultures’, as an international coordinator called it, both the coordinators and the national lawyers seemed to agree that the routine work of the coordinators was not fundamentally ensuring subjective impartiality. During my time at the KPA, I often observed disagreements between coordinators and lawyers about the legal outcome of some cases. The grounds for these
disagreements were mostly technical-legal, and not ideological or political. From an insider’s perspective, the institutional structure was designed to promote international standards of impartiality, and the international presence arguably improved the formal and technical quality of the legal work. However, both strategies created only the technical conditions for objective impartiality. If coordinators limited their input to technical-legal matters, it follows that the legal reasoning performed by the national lawyers before the cases reached the coordinators showed no apparent bias to the coordinators. What, then, ensured the subjective impartiality of the work of the Kosovo Albanian lawyers?

‘We don’t work for the Serbs, we work for human rights’

As I have detailed in chapter one, property rights were seen as essential human rights in the dominant consensus of liberal interventionism that guided Kosovo’s internationally supervised state-building process after the war. The KPA was defined and self-identified as ‘an institution providing human rights’. This had far reaching consequences. Legal practitioners at the institution invoked the human rights ideology to legitimise their legal work. Because of the narrowness of the KPA mandate, it did not encompass their personal understanding of the kind of justice they considered appropriate for a ‘real’ peace and reconciliation process. By looking at the lawyers’ different understandings of justice, we can begin to understand how they acted out their duty of impartiality.

A week after the celebration of the 100th anniversary of Albanian independence, I met up with Valmira again. Over lunch I asked her how she felt as an Albanian lawyer to be working for an institution mandated to restitute property rights to Kosovo Serbian claimants. Her answer was typical of the kinds of answers I received:

Justice is justice. For all. Personally, it’s not easy. But I keep my personal point of view to myself. [...] For me as a lawyer, it is important to know that people could claim their rights [...] The KPA mandate is difficult to accept for the [Kosovo] Albanians. But it is necessary to be in accordance with the Human Rights Convention.
Valmira’s statement shows that she differentiated between her personal views and the perspective she adopted in her work and in her understanding of property restitution as defined and acted out in the KPA mandate. By invoking and acting upon different registers of justice, my informants made sense of their work, navigated the political pitfalls of Kosovo’s transitional landscape and reconciled the tensions they experienced on a daily basis.

Justice is a vague and malleable concept which, through its ‘aspirational quality and substantive openness’, derives its power from the variety of ideals it evokes (Merry 2010: 28). Two ideals of justice are in tension in Valmira’s statement: procedural ideals enshrined in international law, and substantive, reparative justice that would encompass Albanians’ grievances. The success of the KPA came from its insistence on the first.

The normative and relatively narrow procedural understanding of justice sees it as the ideal outcome of legal proceedings — i.e. decisions reached through procedural correctness — through which seemingly universal conceptions of morality are deployed, as in the application of the human rights legal system. Distributive justice refers to ‘broad political and social aspirations related to [among other things] accountability, stability, fairness’ and the distribution of wealth (Dembour and Kelly 2007: 17). Aspirations for distributive (but also of retributive) justice often come to life not through rational or normative explanations, but through the realm of emotions and lived forms of injustice and suffering (see Nader 2010; Niezen 2013). Justice is made actionable through its opposite, injustice. Valmira’s and her colleagues thought it unfair that there was no legal mechanism for reparations for ‘her people’, who suffered at least as much as Kosovo Serbs during the war.\(^6\) Meanwhile, the Serbs, who in Valmira’s perspective are the perpetrators of war crimes, were rewarded with property restitution. As she explained: ‘the Albanians only have the [regular] courts’, which many view as useless in contrast to the KPA, seen as one of the only efficient and uncorrupted legal bodies in Kosovo.

The other element in Valmira’s statement is the emphasis on an ideology of justice that is ‘legitimated by its grounding in transnational space and is constrained by the texts and practices of the human rights legal system’ (Merry 2010: 28).

\(^6\) Actually much more, if we follow the OSCE (1999) report on the Kosovo war.
Lawyers repeatedly stressed the idea of justice for all and framed their work as ‘for human rights’ and ‘not for the Serbs’. They invoked an ideal of universal justice to provide some sort of reconciling framework to justify their work and the restitution process to themselves, their families and to the Kosovo Albanian public at large. As another colleague stated, ‘We give legal aid and human rights to parties’. Kosovo Serbian claimants were thereby categorised as victims of human rights violations and therefore legal beneficiaries of the restitution process, while bracketing any other sense of (in)-justice experienced by Kosovo Albanians. In this sense, human rights represent universal standards and abstract ideals that become self-legitimating, articulating powerful ideals of justice because they remain distant and abstract, ‘even if the possibility of enforcement is merely theoretical’ (Pirie 2013: 215).

Anthropological literature looking at the ‘translation’ of transnational human rights discourse into ‘local’ practice has identified a ‘need for contextualisation’ (Jensen 2014: 463), whereby the transplantation of rule of law or transitional justice toolkits into various local settings is problematised. This literature highlights how policy actors, despite recognising their failure, dogmatically believe in the positive and transformative effects of ‘best practice’ policies that aim at implementing universal standards of rights in local practice (Goodale and Merry 2007; Shaw et al. 2010; Garth and Dezalay 2011). Authors such as Mark Goodale (2007) and Shannon Speed (2007) ethnographically document moments of ‘translation’, or of local appropriation of transnational principles of human rights in ‘local’ practice. Both argue that informants adopt a globalised language of rights as a form of political contestation; a vernacularised appropriation of ‘legalism’, which is otherwise seen as a ‘regulatory’ instrument of ‘neoliberalising’ state domination (Speed 2007: 164, 178). In Goodale’s words, the human rights discourse ‘both transforms the terms of reference through which the legal mediates social, political, and economic relations, which is to be expected, but, even more, creates new conditions in which individuals or groups can organise social resistance’ (2007: 158). In a later publication, Mark Goodale and Kamari Clarke propose that the ‘transnational’ or ‘global’ notions of ‘justice’ and ‘human rights’ can only be understood, and become meaningful for

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7 As an extension to this point, Valmira also seemed to imply that acting in accord with the Human Rights Convention was ultimately, even if less directly, a guarantee for Kosovo Albanians too.
actors, through vernacularisation in the ‘local’ (2010: 9). The diversity of processes of vernacularisation (and its opposite process, ‘back translation’, see for example Englund 2012) comes to light in the encounters they describe. In this understanding, vernacularisation — or the process through which a transnational discourse like human rights is made meaningful as it is implemented locally — is essential for comprehending the refracted notions of justice that ‘local’ actors deploy in the everyday (Clarke and Goodale 2010: 9).

From a methodological point of view, it is useful to render visible the multifaceted encounters between the ‘global’ and the ‘local’ (Shaw et al. 2010: 5; see also Anders and Zenker 2014). Yet it is problematic to articulate universal ideals as necessarily ill-fitting, or as ‘doing violence to’ (Pirie 2013: 215) localised practices and priorities unless they are made meaningful through vernacularisation: sometimes vernacularisation falls short of explaining the ‘global’—‘local’ dialectic. On a continuum ranging from ‘replication’ to ‘hybridisation’, Sally Merry describes vernacularisation as a process by which ‘symbols, ideologies, and organisational forms generated in one locality [merge, to varying degrees] with those of other localities to produce new, hybrid institutions’ thanks to the intermediary work of translators (2006a: 46). This presupposes that the transnational discourse is at least partly applied in local terms.

A specificity of the legal system in Kosovo is that, according to Article 22 of its Constitution, all of the international standards are directly applicable. Yet the language of international law was not actually used by KPA legal officers in their daily casework. The human rights discourse was invoked for its moral weight rather than its technical-legal force of law. For example, one CPT coordinator called a special meeting to discuss KPA’s position on a Yugoslav-era property law that had never been dealt with before, and for which no jurisprudence or legal commentaries could be found (see also chapter four). Five national lawyers were chosen by the coordinator to elucidate the issue and draft an ‘Internal Memo’ determining the KPA position on the matter. The national lawyers felt that their role was to provide the lacking jurisprudence: by drawing on pragmatic examples of how things were done in the past, they hoped to show how the language of the law should be interpreted so that ‘justice’ could be done. One of them said:
'From my own experience, even under the Serbs, when the father died, the family was not expelled from the flat. If the user right is extinguished when the person dies, it would be against the Convention on Human Rights. You cannot deprive someone of one’s property, that would be unjust'.

As this example shows, lawyers mentioned human rights with reference to making justice, both as means and as ends, but not as a specific corpus of applicable legislation: ‘the human rights declaration is a guide, a star in the dark night’, stated the national judge of the SC. Human rights were ubiquitous at the KPA, as the mandate was entrenched in the ideology of universal rights to property. Yet, the discourse never engaged with the details. Therefore, the lawyers of the KPA could not be said to act as translators of the human rights legal system into context-specific meanings and legal actions. Human rights did not get ‘vernacularised’ through their work; there was no ‘re-appropriation’ of the core meaning of the transnational human rights discourse through the use of local vocabularies. Everyday legal practice and international law remained separate and distinct. The human rights discourse remained, therefore, non-specific and abstract, making it a powerful repertoire of justice for the national lawyers of the agency.

The dialectic between ‘global ideals’ and ‘local practice’ that was mediated by KPA lawyers is perhaps better explained in terms of ‘framing’ whereby sensitive legal work is made sensible through the invocation — not the application — of the doctrine of human rights in its transnational dimension. In her analysis of the use of expert knowledge at the European Commission, Christina Boswell (2008) makes a similar point: policy makers use research to legitimise their work, not to inform it. Contrary to the ‘instrumentalist’ standpoint according to which policy makers use research findings to improve their policy outputs, Boswell explains the exponential use of research in policy for its ‘legitimising’ quality: ‘the use of knowledge can endow government agencies with what has been described as “epistemic authority”’ (2008: 472).

Not unlike my analysis of the national lawyers’ legitimising invocation of human rights, Boswell describes how policy positions based on a commitment to international human rights law are especially appropriate to back ‘technocratic
modes of justification’ as they ‘ground policies in more rational and universalistic principles, which transcend populist or nationalistic perspectives’ (2008: 479). Rather than acting as a meaning-making medium, the human rights discourse is powerful here because it remains ‘a star in the dark night’: a legitimising device that articulates universal principles, which are seen to transcend nationalistic sentiments (see also Pirie 2013: 214-215).

The ‘global’ is often opposed to the ‘local’ following a ‘language and practice of scale’ that creates ‘hierarchical distinction between forms of action’ (Dembour and Kelly 2007: 16). However, in compartmentalising her personal point of view and her view as a lawyer, Valmira implied a distinctive combination of ‘global’ and ‘local’. Likewise, the lawyer’s explanation of a certain Yugoslav-era legal practice combines the invocation of human rights with a rights-based judgment of what would or would not have been ‘just’, ‘even under the Serbs’. While legal officers saw the human rights discourse as an abstract set of ideals rendering justice-for-all, they did not necessarily see the ‘global’ as superior to the ‘local’. The fact that KPA lawyers did not participate in the vernacularisation of the human rights discourse did not prevent Valmira and her colleagues from grounding this universalistic sense of justice in the locality of their everyday life as lawyers.

In the present context, human rights as the institutional, normative narrative of procedural justice acting as a framing and legitimising device, and the nationalistic repertoire of justice so boldly embodied by the national lawyers, reinforce one another. In fact, they are mutually constitutive in their contradictions. As biased as the Kosovo Albanian lawyers might be personally, they were perhaps even more diligent than Serbian lawyers would be in carrying out their professional duties, due to the importance given to the rule of law as precondition for Kosovo’s UN recognition as an independent state.

The national lawyers’ commitment to identifying fake documents is a telling example. In the complex legal environment of contemporary Kosovo, characterised by multiple, pluralistic sources of law and contested legal institutions, an important part of lawyers’ everyday work at the KPA was to distinguish ‘genuine’ from ‘fake’ documents that take the form of uncertified documents, ‘simple’ forgeries, and documents issued by unrecognised ‘parallel’ Serbian institutions (see chapter three).
As a coordinator expressed: ‘[National] lawyers are very good at not accepting parallel institutions’ documents because it is part of their battle for independence from Serbia as [Kosovo] Albanians in Kosovo’.

The situation experienced by the national lawyers of the KPA I have described here parallels what Kim Fortun, in her ethnography of Bhopal environmental activists, has called a ‘double-bind’. She refers to “‘double bind” situations in which individuals are confronted with dual or multiple obligations that are related and equally valued, but incongruent’ (2001: 13). Quoting John Weakland, she explains that understanding double bind situations is hindered by analytic simplification: ‘The multiplicity and complexity of messages, their interrelations and reciprocal qualification, must be attended to and taken into account simultaneously’ (Weakland 1976: 312).

Fortun suggests that only by analysing the ‘double-bind’ in its entirety can we begin to make sense of its parts as they relate to one another. And indeed, the diligence of national lawyers in spotting ‘fake’ documents can only be understood if we juxtapose and analytically intertwine lawyers’ personal sentiments of injustice with their professional sensibility towards procedural justice ideals enshrined in international law. In the same vein, Lauren Leve (2007) describes the ‘irreconcilable tension between what Buddhists do and the subjectivities they inhabit when they call on human rights, and the acts and identities those rights are supposed to guarantee’ (79). How, she asks, can Buddhists reconcile the fact ‘that there is no such thing as “me” or “mine” […] with political action that relies on a possessive individualist ontology’ (105)? The ‘logical contradictions’ deployed, she concludes, ‘are characteristic features of citizenship that is at once global and local in the age of universal human rights and the neoliberal identity machine’ (ibid).

Human rights in their ‘global’, non-vernacularised dimension, therefore, participated in advancing the nationalist goal of building a sovereign Kosovo. Through this, the lawyers saw no conflict of interest in embracing their nationalist identity while working in a human rights institution. Both repertoires of justice participated in the articulation of complex transitional politics of identity.
Concluding remarks

At the KPA, conditions for objective impartiality created by the two institutional strategies — compartmentalisation and international oversight — derived from a notion of procedural justice allegorised as the ‘blind Lady Justice’, and in this perspective, they worked. This echoes processes of rendering technical, described in the anthropology of development, which depoliticise processes that are, at heart, deeply political (Ferguson 1994; Scott 1998; Murray Li 2007). However, as I have shown, there is more to it than that. As the events around the celebration of Albanian Independence illustrate, a disconnect persisted between the personal sense of injustice that national lawyers experienced, and the procedural impartiality that the institution required of its staff. They were very conscious of the political and highly sensitive nature of their work. Nonetheless, they saw themselves as impartial, and were so perceived.

Encounters between ‘local’ practice and ‘global’ rule are generally analysed in anthropology of law in terms of vernacularisation, whereby the ‘global’ is incorporated into, and given meaning by the ‘local’. However, in this context, the language of transnational law was invoked, but not used as a corpus of applicable legislation. International law was the institutional dominant text, the mandate’s frame.

But beyond defining the technocratic tenets of the procedure, the frame does not necessarily dictate the way lawyers acted in the everyday. In other words, international law was enshrined in the institutional procedures, but remained a distant set of ideals for the national lawyers. They endorsed and mobilised the ideology of justice as human rights to legitimise their work. Framing Serbs under the universalising category of human rights victims allowed lawyers to work diligently ‘for human rights’, and to accept and manage the technical rule of law toolkit imposed upon them.

Yet doing so cannot simply be explained in terms of ‘local’ appropriation of ‘global’, transnational neoliberal ideals. Likewise, the bold display of nationalistic sentiments at the work place was not simply a manifestation of ‘local’ resistance to international, ‘neutral’ rule. ‘Local’ and ‘global’ repertoires of justice invoked
divergent but complementary moral values entrenched in the complex environment of transitional Kosovo. Because these irreconcilable moral and legal values were experienced together, impartiality was made possible in the everyday.

Impartiality, then, is not about stepping back, but about consciously embracing the inherent contradictions of ‘global’ and ‘local’ repertoires of justice. The national lawyers of the KPA acted them out as they related to what it meant to be a Kosovan citizen within Kosovo’s transitional regime. In contrast to the initial contradiction that the international legal officer had highlighted in the opening vignette, my ethnography illustrates not only how different senses of justice coexisted, but also how these irreconcilable senses of justice depended on one another to create the social conditions leading to the subjective enactment of impartiality.
CHAPTER SIX

Rough justice: quick-fix solutions, technical restitution and political disengagement

Why are legal processes in post-conflict situations analysed differently from ‘ordinary’, everyday, routine workings of a judiciary in an ‘established’, ‘stable’ polity? For Anders and Zenker, there is a ‘clear boundary between the transition and normality’, which illuminates how processes of transitional justice are legitimised or resisted (Anders and Zenker 2014: 395, 406). Pandolfi (2010) and Teitel (2003; 2014) have looked at the politics of ‘transition’, which they analyse as a state of exception that has become generalised and normalised (Pandolfi 2010: 163; Teitel 2014: 7). Similarly, Billaud and De Lauri suggest that the transitional ‘carnival’ of post-war Afghanistan hides the continuity of injustices and reinforces the status quo to sustain the dominant order (De Lauri and Billaud 2016: 13).

This ideological bracketing has consequences for the procedural justice of the transitional moment. In the name of ‘good governance and its alleged principles of transparency, responsibility and technical efficiency’, intervention has been cloaked ‘with a kind of protective screen whereby any specific procedure is justified in the pursuit of the final objective’ (Pandolfi 2010: 164). The ‘state of exception’ entails ‘the partial abrogation of strategic, economic, and moral standards’ (Pandolfi 2010: 155). Quick fixes and other procedurally questionable extraordinary measures are justified by the state of exception.

In this chapter, I build upon this analysis to question the shortcomings of procedural justice identified as some of the effects of transition as a state of exception. In doing so, I make a larger point about how the law works. I argue that the bracketing of transition as a state of exception risks reifying and idealising the workings of the law in ‘ordinary’ circumstances. The chapter provides ethnographic substance to this argument by exploring the modalities of the emic analytic of ‘rough justice’ deployed by the judges of the SC.
Rough justice, according to my informants, defined what was procedurally reasonable considering the circumstances of transition, while allowing diverging interpretations of ‘reasonable’ to meet halfway. Rough justice outlined and legitimated the procedural rationale of due process as implemented by the KPA/KPCC, even if this rationale and its effects remained contested. By looking at the divergent stances my informants had on what was accepted as ‘reasonable’ due process practice, I probe the exceptionality of procedural justice under conditions of transition. Rough justice was not a failure to abide to the law as an aberration of transition; it was contained in the law. The law itself dictated the framework of knowledge and the limits of action.

My argument unfolds in two steps. First, I explain that an analytical bracketing of ‘transition’ as necessarily extraordinary or exceptional misrepresents the ways in which the law works under any circumstances: as a process, bricolaged and crafted in the interstices between ideology and practice: even in settings considered ordinary, deviations from ideals of justice are internal to the law (McBarnet 1983). What we have here is not a dissonance between how the law should work and how it works under the constraints of transition. The premises of ‘rough justice’ are built directly into the law. If anything, it is the legal system itself that is questionable.

In a second step, I show how upholding the notion of transition as a state of exception allows a diverse cast of actors to advance their own political interests. A focus on the technical-legal under the banner of human rights and efficiency allows the key political patrons of the restitution process — the EU, the governments of Serbia and Kosovo — to be seen as doing something, while using the seeming failure of the legal-technical process to achieve its intended effects for political gain.

I develop these interlinked arguments over three sections. I open the chapter by looking at the restitution mechanism as an extraordinary measure of transition. I then analyse the practice of due process at the KPA through the eyes of the judges of the SC. ‘Rough justice’, in their perspective, was the inevitable outcome of the legal practice of mass claims processing in transition. It emanated from differing conceptions of reasonableness, not from illegal, or ‘less than legal’ shortcuts. The last section looks at the consequences of applying such a paradigm of the exceptional
for the implementation of KPCC decisions, using the example of KPA evictions. I contend that the nigh-impossibility of implementing KPA decisions stems from the very politics of juridification that led to the wilful effacement of the wider political environment in the legal set up (see the introduction and chapter one). This, in turn, led to stillborn judicial enforcement and to ‘technical restitution’.

**Transition: emergency, exception and the extraordinary**

Interventions under the umbrella of transitional justice have the objective of creating a democratic, secure society (Pandolfi 2010: 167, fn 2). They are markers of political change as a ‘new beginning’ or a clean slate, and promote what they consider a more just, moral justice agenda (Anders and Zenker 2014: 504, 520-521). They aim at breaking with authoritarian rule and past injustices to restore order and preserve peace (Pandolfi 2010: 167, fn 2; Fassin and Pandolfi 2010: 18; Anders and Zenker 2014: 504). They are all also subject to context-specific logics and pressures. They respond to such a unique set of circumstances that simple replication or ‘legal transplant’ is impossible. The need for transitional justice itself, however, is rarely questioned. Truth and Reconciliation Commissions, war crime tribunals, and mass claims mechanisms all serve the purpose of transiting toward a better future.

While undeniably an instrument of transitional justice, the technical-legal approach to post-conflict restitution in Kosovo departed from the general mould for two reasons. First, it did not strictly speaking aim at consolidating a ‘new law against an old state’ (Anders and Zenker 2014: 521). Rather, it aimed at restoring a *status quo ante* defined as the legal regime in place in 1989 before the Milosević era, while technically and legally adapting the 1989 socialist property regime to the demands of capitalism and the logics of private property (see chapter one). Second, it never used a political language of righting war-related wrongs as a tool of legitimation.

The International Criminal Tribunal for Rwanda, for example, was conceived by its promoters as an ‘exceptional, temporary, ad hoc response that would dismantle a long-standing “culture of impunity”’ (Eltringham 2014: 559). But for the KPA, no one, not even its international backers, described the restitution mechanism as a political process that would right past wrongs, participate in truth and reconciliation.
efforts or end a culture of impunity. Such language was deemed inappropriate in the delicate regional political context. Instead, the mechanism was legitimised through the invocation of human rights and the fostering of multi-ethnic governance. As Michael, the former Executive Director of the KPA said, ‘Our job was to return property rights and technically restitute property’. Based on the belief that technical-legal property restitution would solve issues of displacement and migration, the international community chose technical-legal restitution as a transitional measure of state building.

As a tool of post-1980 transitional justice committed to global ‘human security’ rather than to national questions of dealing with the past (Teitel 2014: 6), the property restitution structure reflected ‘the circumstances and parameters of the associated political conditions’ (Teitel 2014: 4). The political situation of transitional Kosovo, as an international protectorate, conditioned the restitution remedy as purely technical-legal. The underlying logic that governed the set up of the KPA was shaped by both the urgency of liberal humanitarian interventionism and by a fundamental belief in free-market liberal democracy and European integration. This logic of liberal intervention, along with the impossibility of political consensus regarding Kosovo’s status, led to the institutionalisation and juridification of the politics of property restitution (see chapter one).

Moreover, because of emergency and the future-orientation of intervention, there was no time to pause and contemplate ‘lessons learned’ or the impact of such schemes on their purported beneficiaries. As Meera Sabaratnam comments in the context of Mozambique, ‘intervention constantly positions itself in relation to its imagined future, but not its lived past or present. […] Reports and strategies for the next donor programme rarely refer to — let alone evaluate — the programme that preceded it or those running alongside it (Sabaratnam 2017: 68). According to an international coordinator at the CPT,

The negotiations leading to the set up of the institution were political discussions without going into details. No proper research was done. They did not bother trying to implement “best practices” because this environment is so special. They didn’t have the time. This is why the institution faced more and more challenges over the years, and had to
adapt and adapt. And it is still the same today. The next challenge will be when the new mandate, the Kosovo Property Comparison and Verification Agency, which was set up in the same way, realises that many KPCC decisions were based on wrong evidence. ‘Something has to be done’ was, and continues to be, the modus operandi.

Rendering property restitution purely legal-technical was also justified by transition as a state of exception. Indeed, humanitarian and post-conflict interventions create their own forms of dependence and violence through the normalisation of emergency, legitimised by the state of exception (Pandolfi 2010: 167, fn 2). Interventions edit out ‘significant aspects of violence and injustice embedded within the current reconstruction project’ and ‘make it impossible to imagine a different path towards peace, justice and stability’ (De Lauri and Billaud 2016: 71). In Kosovo, the succession of regimes of intervention from humanitarian aid to liberal state building has normalised the transition and made it long term ‘by confirming the impossibility of reestablishing normal order’ (Fassin and Pandolfi 2010: 16; Pandolfi 2010: 167, fn 2).

Transition has become ‘a political tool in its own right’, legitimating extraordinary forms of intervention by invoking a state of emergency that these interventions were supposed to tackle in the first place (Pandolfi 2010: 153). The transitional state, at once temporary and extraordinary, as well as permanent and ‘the new normal’, embodies the inherent contradictions between the application of exceptional techniques of governmentality in times of emergency and the normalisation of such techniques as ‘paradigmatic features of our times’ (Pandolfi 2010: 154). The ‘emergency’ and the ‘long term’ are thus not contradictory apparatuses. The emergency, the need to act now — punishing the bad guys and aiding the victims — produces a state of exception that entails the partial abrogation of strategic, economic, and moral standards. From communism to liberalism, from war to peace, from ethnic-religious conflict to cosmopolitanism, in an endless permutation of violence, where once emergency roamed, now post emergency and permanent transition dwell’ (Pandolfi 2010: 155).
Within these transitional politics of exception, the property restitution mechanism was characterised by a specific spatio-temporality of exception, or an exceptional state of exception at the margins of permanent transition. For the legal practitioners involved (both national and international), the KPA/KPCC was exceptional within the exceptional measures of transition, led first by UNMIK and then by EULEX and the government of Kosovo, because it operated according to a distinct spatio-temporal grid of legality and legitimation. As an independent institution and an administrative mass claims mechanism, it was constitutionally and constitutively separated from other transitional rule of law initiatives.

Spatially, it was distinct from the Kosovo courts. It rented its own premises thanks in great part to donor money. Symbolically, this helped foster the sense that, in comparison to the Kosovo courts, the KPA was efficient, transparent, and impartial. The courts, in contrast, were known to be backlogged and biased; their rulings were opaque, their jurisprudence disparate. The KPA-type of transitional exceptionality was exceptional in the positive sense while the courts were only exceptional in a negative sense, as a form of exceptional ordinary — the worst of both worlds. The KPA’s relative ostracism by other Kosovan institutions, and its minor importance within the constellation of international bodies that are present in Kosovo, however, also meant that collaboration with other national and international institutions within Kosovo, such as the Kosovo Cadastre Agency, the Kosovo Privatisation Agency, and the courts, was never the institution’s forte.

Moreover, the KPA was only dependent on EULEX as far as the KPCC office staff and furniture were concerned. Although located in the same building, the KPCC was symbolically and spatially separated from the main body of the institution, the Executive Secretariat, to ensure the technical impartiality of adjudication (see chapter five). The KPA’s geographical scope was unique too, as it was the only Kosovo-based institution with offices in Serbia (under the banner of UNHCR).

Temporally, the legal grounds that delimited and legitimised the ambit of the restitution mandate were conceived as temporary measures, which had very specific temporal applications. The KPA mandate defined war-related property loss within a strictly limited time window of 27 February 1998 to 20 June 1999. This time window
had the effect of excluding most Kosovo Albanian war-related property issues (except for claims to property situated north of the Ibar River) from the mandate of the agency. The focus on private property and ownership meant that ownership claims superseded other issues, including discrimination in property allocation and fraudulent property transactions, which had led to the conflict in the first place. It also made it impossible to redress underlying, older historical injustices that might have happened before the more recent claims of war-related loss of property. The KPA/KPCC was conceived as a ‘bridging’ solution, designed to tackle human right issues. Because property restitution was an issue of addressing ‘urgent human rights violations’, there was no scope and arguably no need to probe more deeply.

The KPA regulation (transformed into a Kosovo law in 2008) was not a restitution law aimed at legitimising a certain political reading of history over time. It was an extraordinary measure of international governance. This situated the KPA process outside the ‘ordinary’ temporality of the transitional legal system.

Donor pressure as well as the particularities of due process in a mass claims mechanism, which included the exceptional investigative powers vested in the institution due to its reversed burden of proof, the relying on written submission and the batching of cases, were all factors of ‘temporal compression’. The KPA, like the South African Truth and Reconciliation Commission, had to do everything quickly but efficiently, ‘with no time for following the “normal” schedules and procedures of the state’ (Buur 2001: 159).

From the point of view of UNMIK and EULEX, the independence of the KPA and other due process ‘safeguards’ integrated in the day-to-day operations of the agency were a means of ensuring compliance with international rule of law standards. The separation, or disconnect, from ordinary exceptional transition thus conferred a form of objective legitimacy to the institution (chapter five). However, as will become clear in the following section, this bracketing out of the KPA justified its own interpretation of its mandate with little regard for the consequences of its actions beyond internal efficiency and quantitative output requirements.

1 The quasi-judicial status of the SATRC had, however, opposite consequences for adjudication. While the KPA prided itself of its purely technical-legal involvement with the messy reality of claims, the quasi-judicial status of the SATR ‘helped prevent the interruption of storytelling sessions by lawyers drawing attention to legal technicalities’ (Wilson 1996: 16; Buur 2001: 151).
Due process and the quick fixes of transition

Before moving to the main EULEX building a few hundred metres along on the same road, the Supreme Court of Kosovo was situated on Luan Haradinaj (also known as Police Avenue, just a few minutes away from the KPA), in an old building for Pristina standards. Red brick walls, revolving doors with two sleepy guards standing sentinel on either side, 1980s public administration-style interiors furnished with a mix of EULEX-issued office equipment of questionable durability, and timeworn Yugoslav metal-frame pleather and Bakelite chairs and desks.

The SC was on the first floor. The EULEX head judge had an office down the corridor, as well as his deputy head, Marc, a German judge who also sat on the Kosovo Judicial Council and who had helped me get access. The Appeals Panel had a translator, a legal officer, a registrar and three judges: Judge Marianne, a civil judge from Germany, Judge Anja, a judge from Bulgaria with experience in property nationalisation matters, and a national, Kosovo Albanian judge, Judge Skenderaj.

Apart from Judge Skenderaj, who was paid directly by the Government of Kosovo, the others were EULEX personnel. The translator, Alma, in her late
twenties, was professionally fluent in Albanian, Serbo-Croatian, Bosnian and English. She had been allocated to the team from the EULEX pool of translators and had previous experience as a translator for the KPA. Driton, a Kosovo Albanian lawyer, helped draft factual backgrounds, especially for the national judge, Judge Skenderaj. Hans, the registrar on secondment from Switzerland, dealt mainly with EULEX-related administrative matters.

A small team compared to the huge KPA machine, they liked to have coffee together in the small common space between their offices at around 9 am every morning, and took pleasure in sharing their knowledge and information with me. Alma or Driton would call the nearest coffee place and order coffee for everyone, and a *kek*, the local version of a muffin, for me (I would always be rushing to work without taking time for breakfast. They noticed; I didn’t even have to ask for it, the *kek* would be waiting for me). There would also be Kosovan sweets or Swiss chocolate someone had brought.

They also liked asking questions about the KPA and my experience there. They knew surprisingly little about how the KPA/KPCC operated on a day-to-day basis. Marianne told me I was the first person to tell her what was happening at KPA — about donor pressure, internal deadlines, the way they remediated gaps in laws, etc. ‘No one talks’, she said, ‘I just infer things from the way people behave’.

Compared to the KPA and its secretive work culture, they liked to spend these informal meetings talking about cases they were working on. We were far from the army-like daily targets at the KPA. In fact, the work cultures of the two institutions could not have been more different. Judges were taking their time on cases, sometimes working on them for months at a time. The administrative burdens were also very different, this being a EULEX-run office.

The SC saw itself as part and parcel of the Supreme Court and of the ordinary transitional structure of the Kosovan judicial system, as dictated and operationalised by EULEX. The judges understood the KPA to be an exceptional project, but did not accept that the independence of the KPA positioned the mandate outside the hierarchy of Kosovan courts and laws. According to them, the Laws on Administrative Procedure (2005) and Contested Procedure (2006) necessarily superseded KPA regulations, whereas the KPA/KPCC understood the legal remit of
their mandate to be solely contained in UNMIK reg. 2006/50 and related Administrative Directions.

The justification for installing a mass claims mechanism was the need for efficiency and economy in adjudicating such a large number of cases, all emanating from a clearly defined event, here, war-related dispossession. According to van Houtte and Yi and other legal scholars and practitioners who studied mass claims processes (Heiskanen 2006; Holtzmann and Kristjánsdóttir 2006), ‘standards of due process applicable to individual justice cannot apply directly to mass claims handling’ (van Houtte and Yi 2008: 64).

Due process, in such an understanding, is based on article 6 of the ECvHR, that ensures certain rights to claimants, such as access to and exclusivity of claims proceedings, the impartiality of adjudication (chapter five), as well as the fairness, timeliness, finality, and implementation of decisions (van Houtte and Yi 2008: 83). However, the same article is also invoked to allow for ‘specific circumstances’ of emergency to ‘lead to some flexibility’ (van Houtte and Yi 2008: 70). Indeed, Article 6 is also an important doctrinal source in international human rights law for defining ‘reasonableness’ as ambiguous and context-dependent (Corten 1999: 613).²

Here, I use the perspectives of the members of the SC to probe the modalities of due process at the KPA/KPCC and the ways in which they were assessed by the members of the Panel. This external, legal outlook on the limits of the KPA process is helpful for understanding the relative and necessarily ambiguous nature of ‘reasonableness’ in law, and the role of the second instance body in trying to mediate, in the words of SC judges, the necessary shortcomings of a mass claims mechanism.

One morning in February 2013, I was sitting around the communal table with Alma, Driton and Hans, and the two international judges, Marianne and Anja. The discussion revolved around the KPA regulation and the way it was implemented. The crux of the discussion was that the KPA/KPCC and the three judges of the second instance body had divergent interpretations as to what constitutes ‘reasonable’ measures according to the KPA regulation.

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² See also the decision in I.C.J.Rep.1982, 18, para. 60
Marianne and Anja explained that even the three SC Judges differed on what is considered a reasonably acceptable appeal. Marianne and Anja thought that, after correct notification, no one should be entitled to appeal an uncontested decision. The national judge, Judge Skenderaj, disagreed. Judge Anja explained: ‘We say [the appellant] cannot appeal, but Skenderaj thinks it is against the rule of fair trial’. Marianne continued:

In my opinion, if there is no occupant, the KPA should not take a decision at all. I question the whole procedure because the law wanted people to come back, not to help them sell. But this is crazy now. It is only possible if there is an occupant.

The discussion moved on to the institutional differences between the KPA/KPCC and the SC, and their consequences on due process and on adjudication in general. Marianne said:

Our decisions on these issues are much longer. It’s not their fault, but their decisions are just as good as they can be. Here, we have three judges working on one claim [at a time]. There, you have one person making a decision for 300 cases. This comparison leads to obvious conclusions. If I as a judge have to deal with 300 cases, it would take me a year. You know how many people are engaged in the preparation of a session. That’s why it’s as good as it can be. The appeals procedure is a way to soften it a little bit.

Also, the due process configuration prescribed only a 30-day window for respondents to come forward from the date of notification and another 30 days for them to file their counter case. Likewise, parties had only 30 days to lodge an appeal. To the judges, ‘This [was] short; many appeals get dismissed because they were filed outside the allocated timeline’.

The judges at the SC recognised the pressures under which the KPA were operating and saw their role as a minor corrective to a most glaring bending of due process. Still, they were unhappy about the consequences. Marianne, for example, explained that according to the guidelines, the mass claims mechanism should only apply to uncontested cases. But because for contested cases ‘most of the time, there
is a small paragraph for each individual claim’, she said, ‘I didn’t make a fuss about it’.

Another issue for her was that it was unclear whether legal reasoning at the CPT was based on actual laws, jurisprudence, or internal Standard Operation Procedures (SOPs) designed to speed up the workflow:

They [SOPs] are not legal instruments, they are internal documents for better case administration. We don’t know what the commissioners are thinking. Most of the time, we only get a very short reasoning for each claim. The reasonings [sic] are very short — I would perhaps say poor. Whether the reasoning is based on the law or on the SOP is not always clear. But it’s a mass claim, it’s normal.

Judge Anja reinforced this point:

The quality is decreasing. They [the KPA] are more and more superficial. I see that there are a few good legal officers, but the decisions flatten the issues completely. They try to go too fast.

AM: They get a lot of pressure from the international donors.

Judge Anja: I know, but this shouldn’t happen. There is no real justice here anyway, but this is a judicial institution, it should adjudicate cases and that’s it. It should not have to bother about the donors. The objective is the decisions, not the numbers!

The key bone of contention according to judges at the SC was how to assess the reasonableness of the due process measures taken at the KPA. To process claims, the KPA had to find its own solutions to a series of issues including the unreliability of documents, the gaps in property law and relative lack of reliable cadastre information, and the difficulty of contacting and notifying parties. Following the language of the KPA mandate, the solutions had to be efficient yet ‘reasonable’ considering the mass claims limitations and exceptional circumstances of transition.

The SOP for the verification unit allowed for different verification techniques, including reliance on court officials’ testimonies regarding the legality of certain documents (see also chapter three). Issues relating to the implementation of decisions were also solved in-house: the KPA implemented its decisions mostly on its own (the police was only present during evictions but did not take part in
organising them). The KPA/KPCC thus created and assessed its own due process solutions. It could decide what constituted ‘reasonable efforts’ and when those efforts had been realised, without having to comply with general rules.

The most egregious example was the practice of ‘notification by publication’. In its Section 10.1 on ‘The Procedure for Processing Claims’, Regulation 2006/50 stipulates that:

> Upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and make reasonable efforts to notify any other person who may have a legal interest in the property. In appropriate cases, such reasonable efforts may take the form of an announcement in an official publication of the Executive Secretariat [italics added].

Initially, property notification — the geographical identification of properties and notification of the restitution process to potential respondents — was done by finding the property and sticking KPA posters with explanation of the claim process and the claim number on its doors or planting poles with the same posters in its fields. In 2009, it became evident that a large number of claims had been wrongly notified and had to be re-notified (see chapter three). The KPA, in agreement with the KPCC, decided that agricultural, uncontested claims did not have to be re-notified physically by the notification team going back to the claimed property to do so. Instead, the KPA advertised the property’s details in two newspapers and on prominently placed notice boards in villages and municipality offices. Village leaders were also contacted and given a list of claims for their area.

This was, according to both CPT staff and the SC, insufficient to ensure that potential respondents know about their property being claimed. ‘When the issue burst, a lot of people [at the KPA] seemed to know about it but didn’t dare to say anything. Mostly because of fear that the donors would not extend the mandate’, Maria from the CPT explained. The KPCC, however, decided that Notification by

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3 i.e. Claims for which no responding party had approached the KPA after the first notification.
publication was a ‘reasonable effort’ considering the circumstances. To Judge Marianne, this was unacceptable:

How are people to know that they have to check if their property is under scrutiny or not? It’s not normal for them to go to the municipality to check the notice board. The KPA are very insecure about what to do. Notification by publication is not good enough, but sometimes it is necessary.

Many lawyers within the KPA also expressed their misgivings about procedural shortcuts, such as notification by publication. In their view, this ran counter to the ideal of human rights that they worked for. Majlinda, a lawyer from the CPT uncontested team reasoned:

KPA is faster than the courts. But for me, there are serious violations of human rights when we notify by publication. […] KPA could have done better. Pressure is no excuse. The goal should be to do the job well, not just to get it over with. I don’t think the KPA claims reflect the real situation, especially in uncontested cases because of the notification by publication. I’ve never seen a claim where people actually responded to notification by publication. A lot of these claims are not properly adjudicated because of that. It doesn’t solve the situation.

The judges at the SC recognised the institutional contingencies that curtailed or redefined due process in the way the KPA worked. Yet they considered these shortcomings necessary under the circumstances: ‘It’s not a criticism, a mass claim mechanism leads to ‘rough justice’. You cannot afford to go into detail’. The procedural justice of such transitional justice initiatives was inevitably ‘rough’ because:

Ultimately, due process is only a way of delivering justice that will be considered fair, credible and legitimate. In this regard, mass claims programmes cannot afford to sacrifice basis [sic] procedural safeguards, but must adapt them so as to provide efficient and ‘rough’ justice for the victims, especially after war (van Houtte and Yi 2008: 85).
This, in turn, legitimised the use of quick fixes, half-baked technical-legal measures the shortcomings of which were recognised by legal practitioners at the KPA and by the judges at the SC alike. For my informants, rough justice was better than no justice at all. Although the KPA/KPCC had differing opinions as to what was ‘reasonable’ under transitional circumstances, the idea that transition was a state of exception that justified pragmatic adaptations of due process was not itself questioned.

These divergent interpretations of ‘reasonableness’ were not a questioning of the philosophical, let alone the political foundations of property restitution. The judges differed in their views on the reasonableness of KPA procedures in light of their interpretation of the spirit of the KPA mandate. Their divergences emanated from the language of the law as manifested in the term ‘reasonable’. As Corten states, ‘the use of “reasonable” [in law] rests on the possibility of maintaining divergent interpretations. It excludes fixed, static and definitive interpretations’ (Corten 1999: 620).

One good example of that was the reaction to the SC ruling that notification by publication was not good enough. For Dorothy, the problem was that the SC had taken ‘too general’ a stance that could apply to all 30,000 claims that had been notified by publication. She conceded that the SC court decision could not be challenged. It was solely a question of legal interpretation: ‘when two lawyers discuss a point of law, three opinions come out’. Still, she did not hide her anger at what she saw as a profound misunderstanding of the KPA’s exceptional mandate and of donor pressure:

[the SC] didn’t bother finding out about or reading our procedures. This is lazy lawyering by the judges. [...] They didn’t take what the UNMIK regulation call the ‘reasonable means’ for notification under consideration; they didn’t consider the present circumstances KPA faces, with 40,000 claims to adjudicate and financial difficulties. There was a huge debate regarding notification by publication. Is it enough? But we had no choice, we had to continue; otherwise the donors would have bailed out.
In transitional justice circles, deviations from the ‘ordinary’ ranging from curtailing due process to outright violations of laws are often seen as a necessary transitional stage. As a US Judge who spent time in Kosovo ‘rebuilding the judiciary’ in the early years after the war summarised, international rule of law consultants considered such curtailing to be an inevitable consequence in ‘regions that were once obscure through upheaval and civil strife [and that] have suddenly become independent states and face a long and treacherous road to healing and rehabilitation’ (Tunheim 2003: 17). ‘The necessary development of new criminal and civil laws and procedure codes takes time — too much time for a system in crisis. As in any crisis, the perfect is the enemy of the good’ (Tunheim 2003: 18).

In a subtler reproduction of the same opposition between the ordinary and the extraordinary transitional workings of the law, Teitel suggests that in hyper-politicised moments of transition ‘we learned that the law operates differently, and often is incapable of meeting all of the traditional values that are associated with the rule of law, such as general applicability, procedural due process, and more substantive values of fairness or analogous sources of legitimacy’ (Teitel 2014: 4). The extraordinary state of transition justifies the noncompliance with ‘ordinary’ rule of law standards. In this view, ‘what is fair and just in extraordinary political circumstances [is] to be determined from the transitional position itself’ (Teitel 2003: 54-55).

My informants also thought that the context of emergency demanded technical quick fixes, magic bullet solutions adapted to the particular ‘circumstances’ of transition. However, it was not a question of the law being suspended, abrogated, or subverted, but rather of how to interpret a law that was specific to transition. What was reasonable was to be decided, not from the extraordinary political circumstances, as Teitel seems to suggest, but by what the commissioners of the KPCC interpreted as legal in light of their mandate. For example, the regulation permitted notification by publication under certain circumstances. A maximalist interpretation of these circumstances led to 30,000 cases (out of 42,000) being notified this way, with little regard for how this would affect the people involved in the claiming process.
The divergence of opinions between the KPA/KPCC and the SC about the reasonableness of practices of due process was a matter of legal interpretation. The curtailment of due process was not a consequence of unfavourable circumstances or improper practice; it was delimited by law. The quick fixes were neither illegal nor outside the law. Rather, ‘the rhetoric of justice [was] subverted […] in the law’ (McBarnet 1983: 156). Following McBarnet’s argument made in the context of summary judgements in UK criminal lower courts, focusing on

The gap between the law in the books and the law in action, in effect whitewashes the law itself and those who make it […] Shifting the focus [of the analysis] to the substance of law places responsibility […] on the judicial and political elites who make it (McBarnet 1983: 156).

What McBarnet shows is that even in settings considered ordinary, deviations from ideals of justice are internal to the law. An analysis that blames the shortcomings of transition on transition as a state of exception assumes that ‘ordinary’, ‘traditional’ applications of due process equate with the ideal-type. This ends up reproducing a problematic justification of the extraordinary with the presumed ideal-type ordinary. The situation of transitional justice is bracketed out of what is seen as the ordinary workings of the law and society. I argue that this follows an idealised and ultimately reified understanding of how the law operates under normal, everyday circumstances. Acknowledging that principles of justice are daily subverted in the law in every context is thus a good way of transcending the dichotomy of the ‘law of the books’ and the ‘law in action’.

Still, ‘ordinary’ legal processes differed from the KPA in that there was little regard for the consequences of how the agency interpreted its mandate. The SC had very limited capacity to reverse KPCC opinions, or to carry out independent investigations and hearings. The SC could issue decisions quashing the verdicts of the KPCC. But it was unclear whether the SC could send cases back for retrial or claims back to the KPA/KPCC for reprocessing. The bubble of exceptionality that the KPA was confined to justified and even widened, the gap between the way KPA interpreted its due process solutions and the political and legal realities of transition.
Technical restitution and political disengagement

Property restitution is inescapably political, even under the banner of the technical-legal. Decisions about how to restitute and to whom are political because there is always an exclusionist, almost violent dimension to the notion of private property (see chapter one): after all, ‘Restitution for some […] means deprivation for others’ (Verdery 2003: 1074; Blomley 2003). This is especially true in the present context where the design of the mandate was heavily skewed in favour of Kosovo Serbian claimants regardless of broader questions of structural and historical injustices. Many of my informants at the KPA harboured few illusions about the political motivations and constraints behind the mandate, claiming that the international community was ‘forced to do something’ to placate both Belgrade and Pristina, without giving much thought to the impact of the restitution programme.

Accordingly, the process had consequences that were not the ones intended in the creation of the mandate. For political reasons, the mandate was written as a technical-legal instrument, which allowed all involved parties to participate in the process without committing politically to the actual enjoyment of restituted rights. The failure of the restitution process to ‘make a positive difference to people’s lives’, as one of the CPT coordinators put it, could cynically be read as a political success for its political patrons.

Faced with the pressure to ‘do something’, restitution had to be seen (and sold to donors) as successful in terms of the cases adjudicated. ‘Restoring’ property rights ticked the boxes of setting up a transitional justice mechanism, protecting human rights (to property) of DPs, and ensuring that Kosovo Serbs still had a place in independent Kosovo. It appears that, like for other ex-Yugoslav countries such as Croatia and Bosnia Herzegovina, the EU had a ‘very mechanical and bureaucratised measurement of human rights compliance’ (Subotić 2015: 413). This technical-legal approach allowed Kosovan and Serbian political leaders and the EU to engage in an exercise of box-ticking to measure compliance with a quantified understanding of human rights. They would thereby satisfy the requirements of state building on the

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4 The KPA process was but one example of the rule of law box ticking exercise EULEX was engaged in.
path to EU accession, while washing their hands of the insolvability of Kosovo’s definitive status — a process Hannah Appel has described for Equatorial Guinea as ‘mutual abdication of responsibility’ (Appel 2012). This box-ticking exercise directly influenced the nature of arbitration — a managerial, quantified and technical approach — leading, ultimately, to technical restitution in an environment of mutual political disengagement.

The Kosovo government led by Hashim Thaçi was seen as playing a double game of complying with international demands to implement the international transitional justice agenda in the form of state building and rule of law programmes, while also promoting a one-sided victimisation and memorialisation of the war through nationalist projects such as memorials and exhibits (like the KLA or UÇK in Albanian, as freedom fighters I mentioned in the introduction). This includes ostensibly refusing to take responsibility for processes of transitional justice and the Pristina-Belgrade dialogue in the arena of domestic politics, to mollify populist and nationalist political demands at home.  

Likewise, the Serbian government blamed the KPA for the very small number of returns. It relieved itself of responsibility over DPs by using the strictly technical nature of the mandate against the KPA for nationalistic political goals. The head of the KPA/UNHCR office in Belgrade, Mira, felt uneasy about the political implications of her work for the KPA:

It's not easy to work for KPA. You're always guilty of something in the eyes of either side. [In Serbia] KPA is not perceived as a successful organisation. When the properties are reoccupied and the police needs to evict people, our claimants complain that the police doesn’t do so. These issues need to be solved in order for KPA to look successful. Not many people understand that the mandate of KPA is limited and that's why they blame KPA for a lot of things […].

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5 A good example of this is Prime Minister Thaçi’s statement on the War Crimes tribunal in which he accused the International Community of ‘failing to keep promises on war crimes court’, RadioFreeEurope on 9 October 2017, https://www.rferl.org/a/kosovo-thaci-war-crimes-court-promises-not-kept/28783110.html, accessed 17 December 2017.
A lot of people are accusing KPA because [DPs] cannot return. We’re being manipulated by the Serbian government regarding the return of DPs. KPA is not returning their properties so they cannot go back: this is what the Serbian government claims. The official ministry for Kosovo and Metohija said I was spreading pro-Albanian propaganda. I’m very careful with the way I say things. I cannot just give facts. I have to explain each of my facts. For example: 30,000 decisions issued; they will think that 30,000 people returned. This is how they play. It's pathetic, dirty.

Eviction represented de facto restitution: it was almost the only visible impact of both the technical-legal restitution programme and the process of political disengagement. The other impact was the rental scheme run by the KPA, but that scheme was never very successful. Rented properties were not well maintained, and many claimants were loath to rent out their property to unknown occupants.

Evictions were performed for residential, commercial and agricultural properties, including agricultural properties that were unoccupied — a rare glitch in the system. A team of national officers led by an international enforcement coordinator carrying an Eviction Warrant and supported by the Kosovo Police would knock on the door. If someone opened, they would explain why they were there, showing the warrant and asking everyone to get out. If, as in most cases, there was no one there because the occupants had already been notified by the police or forewarned by a friend in the know, one of the national officers would break the lock. They would then proceed to remove all furniture and other movable items from premises with the police watching over. The door would then be sealed.

In the time that I spent at the KPA, there were about 200 evictions per month. The enforcement unit was also responsible for giving back the keys of evicted properties to their successful owner, which they called ‘repossession’. The virtually nonexistent cooperation between the KPA and the Kosovan municipalities meant that these evictions, perceived as a great injustice by many Kosovo Albanians and the national media, also led to more social inequality and even new waves of displacement when Albanian ‘illegal’ occupants had to move out, in most cases without being re-housed by the state.
Even if claimants obtained a favourable KPCC decision, they did not necessarily get their house or fields back, even after an eviction. Displaced Kosovo Serbian claimants were often afraid to move back into what were now Albanian majority villages (there has been no political reconciliation process). Kosovo Albanians would simply move back into the evicted property after the police was gone: evictions rarely proved durable. The removal of the seal and the re-occupation of the property constituted a criminal offense, punishable by a one to three year prison sentence. In practice, cases of re-occupation take an average of two years and three months to be decided by a Basic Court (OSCE 2015: 6). The highest penalty, when the cases finally receives the attention of a judge, is usually a fine of a few hundreds Euros, which is rarely paid (OSCE 2015: 12, 15). This created new uncertainties for KPA claimants caught in legal limbo.

Kosovo Serbian claimants thus often ended up selling their reconfirmed property below market value, usually to the very people who ‘illegally’ occupied it in the first place. This consolidated their state of permanent displacement, and created a situation whereby property rights were paperised. Mira explained:

At the end of the day people don't actually get their property back. The locals don’t understand that they have no right to enter the property even if it’s empty. KPCC decisions are fair, and people coming to our office think that KPA is the only agency that produces something. The decision is valuable to them. A decision from a Kosovo institution that the property is theirs is important in any case as a confirmation of ownership, even if it’s only paper.

KPA lawyers and SC judges also expressed doubts about the legal value and implementation of the KPCC decisions. They were confronted daily with the

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6 Article 332, paragraph 3 of the Criminal Code stipulates that: ‘[t]he perpetrator shall be punished by imprisonment of one (1) to three (3) years when he or she has been previously convicted for unlawful occupation of real property or has been evicted from such property by order of the court or order or decision of any public entity or institution established under the applicable laws[...’].

7 The OSCE report concludes: ‘Out of 326 cases of re-occupation reported by the KPA between 2008 and 2013, just 20 fines have been paid and one person has served a custodial sentence for failure to pay a fine. No custodial sentences have been handed down, and no restitution orders to compensate the property owners have been issued’ (OSCE 2015: 16).
limitations of the adjudication process. Despite the symbolic value that they and claimants attributed to the legal recognition of property rights, they knew that only very few claimants were in a position to enjoy these rights. Like others, the CPT lawyer Valmira believed that most KPCC decisions were not implemented by local institutions: ‘[Kosovan institutions] don’t believe in the executive power of our decisions’. In a similar vein, a CPT coordinator told me:

> The work quality of [National] lawyers is getting worse because they don’t really believe that their work is worth anything for Kosovo. What can one do with a KPCC decision? We hear that you cannot even get the cadastre information changed because people at the cadastre are not informed about the procedures. It's just a piece of paper, it doesn’t achieve much.

Even from a purely legalistic perspective, the limited mandate of the KPA did not address connected issues such as inheritance or family disputes. Following a KPCC decision, claimants would often still have to go through regular courts to come into possession. After years of waiting for a KPCC decision, claimants were often back to square one, having to file an entirely new case with regular courts, the outcome of which was far from guaranteed even with a KPCC decision in hand.

While the spirit of the mandate was political — to ensure the rights and return of DPs — the language of the mandate was technical-legal, resulting in a managerial approach to return. The box-ticking exercise that resulted in the technical restitution was successful in restoring \textit{paperised} rights. As a technocratic project of state-building, the process was successful precisely because it failed to tackle the underlying political issues. The international community could be seen as ‘doing something’. The Kosovan and Serbian governments could demonstrate compliance with international human rights norms and EU accession conditionalities, while showing little zeal for actual return and while using DPs as political pawns for nationalist purposes. In the case of development projects, the ‘success of failure’ means that unintended outcomes might be beneficial despite their failure to achieve their stated purposes (Ferguson 1994; Murray Li 2007; Cowan 2006). While I have shown that this is also true for the KPA process (see chapter two), from a political perspective, if the consequence of the bureaucratisation of human rights is cynicism
(Allen 2013), the mark of success of the restitution process in post-war Kosovo is its failure to make a difference in political terms.

**Concluding thoughts: the success of failure**

Why do we analyse legal processes in post-conflict situations differently from the ordinary, everyday workings of a judiciary in an established, stable polity? The most common answer is that conflict creates the need for reconstruction; such events are so remote from ‘normal’ circumstances that they call for extraordinary measures. Humanitarian intervention is seen as inevitable. Responding to the most pressing humanitarian needs — ending violence, making sure people have food, shelter and access to health — is the first priority. Immediately afterwards, the reconstruction begins. Preventing a return to conflict and creating stable institutions are the next priorities. The instability and volatility of the social environment justify extraordinary measures to achieve those goals.

Human rights have become the lingua franca of such intervention and state building efforts, given that they are seen as universal and fundamental to a dignified existence. In the name of human rights, a global logic of intervention installs a ‘temporality of emergency, which is used to justify a state of exception’ (Fassin and Pandolfi 2010: 10). Such so-called ‘moral’ forms of interventionism are guided not only by the needs of target populations but also by various political and economic pressures from a variety of state and non-state actors.

These states of exception are perpetuated as the presence of seemingly temporary exceptional measures confirms and reproduces the need for these extraordinary measures (Fassin and Pandolfi 2010: 16). Perennial instability and permanent intervention installs regimes of exception such as the unbundling of the state’s monopoly of power, the NGO-isation of social services, emergency medicine and transitional justice.

Transitional justice purports to break with past injustices and provide a clean slate, or a ‘new beginning’ (Anders and Zenker 2014) to a society recovering from past trauma. Truth and Reconciliation Commissions, war crimes tribunals and mass claims mechanisms all serve that purpose. They are all also subject to context-
specific logics and pressures. For my informants at the KPA and at the SC, this made sense.

The post-conflict transitional situation in Kosovo was fraught with micro-emergencies, which required extraordinary responses. Among these, the KPA was an exceptional institution somewhat at the margins of both national institutions and international organisations due to its independent and mass claims/quasi-judicial status. My informants explained that the KPA was exceptional within the exceptionality of transition because it was seen to be impartial, transparent and efficient. The courts, EULEX and other exceptional measures such as the Privatisation Agency, followed their own transition, tainted by corruption allegations, victors’ politics and inefficiency.

Still, in my informants’ view there was no real justice done, even at the KPA. The conditions under which the agency had to operate necessitated a ‘flexible’, if ‘reasonable’, approach to due process (van Houtte and Yi 2008). The problem, according to my informants, was how to interpret ‘reasonableness’ within the limits of the KPA regulation and Administrative Directions, with the SC disagreeing on how the spirit of the law should inform the practice.

Due to the uniqueness of such mechanisms of transitional justice, even critical approaches in the social sciences analyse the emergency through the emergency: ‘what is fair and just in extraordinary political circumstances [is] to be determined from the transitional position itself’ (Teitel 2003: 54-55). Such analysis ends up reproducing the justification of the extraordinary by the extraordinary. The situation of transitional justice is bracketed out from what is seen as the ordinary workings of law and society. I argue that this follows an idealised and ultimately reified understanding of how the law operates under ‘normal’ circumstances, in the ‘everyday’.

Having said that, there still is a difference between ordinary legal processes and the KPA in that that the possibilities of appeal are extremely limited. The conditions of transition at the SC are different from the KPA; its economic and bureaucratic modalities of work are governed by other factors. Nonetheless, the SC operated under the same logics of exceptionality, justifying its limitations by invoking the exceptional circumstances. The time window for appealing a KPCC
decision, for example, is limited to 30 days. More crucially, KPA claimants cannot appeal to a higher instance such as the European Court of Human Rights, which is again justified by the exceptionality of Kosovo’s situation. Therein lies the real abrogation of human rights, not in the ordinary curtailing of due process at the KPCC and the SC.

Focusing on the exceptionality of transition also serves a political purpose. Restoring property rights to DPs displays adherence to international human rights norms and to a transitional justice agenda. Creating the KPA mandate ticked a first, necessary box. A very bureaucratised and managerial approach to human rights led to the language of the mandate focusing on the technical, quantifiable aspects of restitution. From a donor perspective, the KPA was an ‘orange’ project: it fulfilled its mandate, producing quantifiable results and operating more or less within the budget limits and timeframe (see chapter one). At the same time, although it did reconfirm paperised rights and, arguably, open up the property market, this technical restitution in most cases failed to truly improve the situation of its intended beneficiaries. This inconsequentiality could then be blamed on the mandate rather than on a lack of political will.

Transitional justice projects such as the KPA that justify the exceptional by the exceptional create, justify and perpetuate quick fixes, leading to rough justice. A quantitative approach to human rights is ultimately a box-ticking exercise, which evacuates human rights of their substance (Douzinas 2000). Resulting in technical restitution, human rights constitute both the framework of the transition package and its limits.
CODA

The promises of the law

Another brick in the wall: the afterlife of the KPA

In February 2016, I came back to Pristina to gather stakeholder inputs for a Concept Note on ‘Guaranteeing and enforcing the property rights for displaced persons (DPs) and non-majority communities in Kosovo’ that USAID had hired me to co-write. The Concept Note was one of five. The other four focused on ‘Defining property rights in Kosovo’, ‘Putting land to use: promotion of a vibrant land market to fuel economic growth’, ‘Clarifying the role of the courts in recognizing, determining and protecting property rights and empowering other entities to substitute courts in certain matters or to complement their work’ and ‘Guaranteeing and enforcing the property rights of women’. The five Concept Notes aimed at informing the Kosovo Ministry of Justice’s National Strategy on Property Rights in Kosovo (USAID 2016).

I met with national and international stakeholders of the Thematic Working Group on Property Rights for DPs and Non-Majority Communities at a four-star hotel on the outskirts of Pristina to discuss the preliminary report findings. Government officials assumed an air of indifference throughout the proceedings, and responded to the OSCE’s and other international stakeholders’ comments with open disdain, perhaps because experience had taught them that the consultation process was only for show. USAID was represented in the discussions by a US-based consultancy company, which had hired the Kosovo-based consultancy firm that hired me. My only job was to write the Concept Note and I had no part in the drafting of the final report. Unsurprisingly, most of the comments I had collected during the stakeholder meetings did not make it to the final version of the Strategy. USAID’s stance prevailed — a case of policy-based evidence making rather than evidence-based policy making.
USAID wanted the report to state the limitations of the property restitution mechanism. The KPA, as they saw it, did not provide claimants with ‘fair, final and effective’, human rights-compatible remedies ‘that [would] enable them to re-assert control over their immovable properties’ (USAID 2016: 33). Most successful KPA claimants chose to place their property under KPA administration (a temporary scheme), or chose no remedy at all. This, according to USAID, proved that the KPA failed to find long-term solutions for KPA claimants and their newly restituted properties.

The National Strategy suggests that remedies ‘include providing successful claimants with an eviction so they may take possession of their property at any time in the future, placing their property in a rental or leasing scheme, and offering the property for sale through an auction’ (USAID 2016: 33). Interestingly, apart from the auctioning of properties, the National Strategy and thus USAID advocated for remedies that were already proposed by the KPA and were deemed insufficient a page above in the final report.

The Strategy takes the neoliberalisation of property restitution one step further. On top of auctioning properties, the National Strategy pushes for these ‘final remedies’ to be implemented by the Kosovo Police as well as private bailiffs and private real estate rental and leasing firms, rather than by the KPA or by the newly formed Kosovo Property Comparison and Verification Agency (KPCVA) (USAID 2016: 33). The OSCE and legal aid NGOs are concerned about the privatisation of enforcement because claimants will be forced to foot the bill, while private bailiffs and other enforcement services do not come cheap. It also represents a rhetorical development in the government’s attitude towards the inclusion of minorities. Displaced Persons, it implies, should do whatever they want with their property; return is no longer a central policy prerogative.

The National Strategy’s renewed emphasis on state building through the legalisation of property relations is also central to the mandate of the KPCVA, the institution that absorbed the staff, assets and mandate of the KPA. The KPCVA follows the same structure as the KPA and will implement the remaining KPCC and HPCC decisions. The KPCVA is an independent agency, with an Executive Secretariat and a Property Verification and Adjudication Commission (PVAC). Its
mandate is to receive scans of the estimated 4,037,264 pre-1999 cadastre documents that were taken from Kosovo by the Serbian authorities, to compare them with the actual cadastre of the Republic of Kosovo, and to resolve the gaps and discrepancies between the two sets. This applies to private residential, commercial and agricultural property as well as to ‘private property of religious communities’ (KPA 2016: 130). Decisions resolving discrepancies in the records will have the legal effect of determining rights to property (USAID 2016: 29). Contrary to the KPA, the KPCVA mandate is open-ended; it is a long-term state building project.

For an institution designed to overcome the shortcomings of the KPA process and take on the mammoth task of comparing and verifying more than four million cadastre records, the KPCVA has strikingly similar structural flaws. Some of my informants surmised that the new mandate, like the KPA’s, was the outcome of political negotiations rather than research on the cadastre documents (see chapter six): ‘There is no best practice here because this environment is so special. International stakeholders, the governments of Kosovo and Serbia don’t have the time, the institution will be facing more and more challenges and it will need to adapt and adapt’.

Central questions like funding remain open, making the KPCVA, like the KPA, dependent on donor contributions. Compensation for HPD claimants (see chapter one) is another unresolved issue that now falls under KPCVA’s jurisdiction. Out of the 3.2 million Euros required, only 300,000 Euros have been allocated by the government of Kosovo to this end (KPA 2016: 161), and international donors appear unwilling to step in. Similarly, the crucial question of authority remains unanswered: it is yet unclear how the KPCVA will deal with the challenges of implementing evictions, or ensure cooperation with cadastral offices or basic courts. The basic assumptions remain the same: the legalisation of property rights is necessary for state building and stabilising the economy, and the production of knowledge on ownership and entitlements will allow peace to prevail. The National Strategy summarises:

The KPCVA’s decision making powers create opportunities for implementing administrative procedures to systemically resolve a

1 One of my informants, however, told me the expected number of cadastre records might very well reach 12 million. He estimated the agency would take at least 15 years to process them all.
significant portion of informality in Kosovo that weakens security of tenure for members of both majority and non-majority communities and creates a climate of uncertainty that discourages investment (USAID 2016: 29).

Even if the structural shortcomings of the mandate were overcome, the outcome might not be as clear-cut. As Kregg Hetherington (2011) analysed for Paraguay, making transparency can lead to greater opacity: more cadastre information means that more people will emerge as having a stake in the same property. And as Matthew Hull wrote in his analysis of bureaucracy in Islamabad, creating a regime of ‘presumptive written truth’ that claims transparency and bureaucratic rationality ‘motivates [documents’] use to generate opacity or false clarity: […] the paper basis of regulation is widely recognized as central to activities characterized as corruption’ (2012b: 246).

Also, more legal knowledge, the creation of more documents and the making of more decisions will not resolve the status of DPs or of their property. But again, the production of documents is likely to prevail over concerns for the fate of citizens. As I identified for the restitution of property rights in chapter six, the consolidation of cadastral records will probably amount to no more than a box-ticking exercise with which all parties have to comply under the conditions of the Stabilisation and Association Agreement (SAA). That does not necessarily mean they will commit to its substance, and they may well deploy its unintended consequences for nationalist claims in regional and domestic power struggles.
Conclusion: working the interstices

My father-in-law had a huge estate up above Kosovska Kamenica, in Gradenik… Property is all we have now…

Just before my father-in-law passed away, he registered everything in my name, since my kids were not in Kosovo. The KPA came to see me in the collective centre. They did an interview and I started the claims. They really did work by the book. Their court decided for everything to be mine. Really, when you go, they take care of business. Very nice! They are so polite. I don’t know if that’s how they picked them. They all talk to you in Serbian—they see I’m a Serb. And they take you in and get everything done straightaway. I haven’t even noticed who was Albanian or Serb, that’s how nice they were!

Before the war, we would go up to the village over the weekend. It was paradise, gorgeous, gorgeous! In 2002, the house was set on fire. It burned for two days straight. The KFOR was right across the street. So close, but no one reacted. It’s in ruins now. No one paid for it, nor did the KFOR ask for my consent to build the road that passes through our lands.

The whole village was Serb, but they all sold and left. Only one man, Hakif Mustafa [the respondent in the KPA process], bought the whole thing, one family bought it for a ridiculously low price. Well there, it just fell into his hands. That’s how things were [laughs]. I would have done the same. People try to see if they can make money… It’s not his fault. It’s all politics. Our people did evil things, so did theirs.

But I won’t sell. There’s no need. Why? So I can give it away for two to three thousand Euros or less. Let it sit. Let it sit. Someday my grandchildren may have some use for it. Five years ago I went to the village with the Agency [KPA]. Other than that, I do not have the guts to go alone. When I went, I did not feel safe. It’s all abandoned.

In Kosovska Kamenica, you can buy everything in Serbian, everything. The sellers talk to me, I know them. It’s all mixed. Everyone says ‘hi’ to you, asks how you’re doing… When you walk into the grocery, they are polite. They are not aggressive, as they used
to be. Now it is perfectly fine... if only some of the people who left came back [laughs].

The kids love Kosovo. The youngest one, Marina, she says ‘Grandma, you and I will go in the summer’, she goes ‘we will go and we will renovate the house’ [laughs]. If they hear a song about Kosovo, they all cry. The eldest grandson just went down there for Easter, to Kosovska Kamenica. We were all worried. They could do anything to him. He spent the whole night at a bar and he was so happy. When he came back, he said: ‘I spent a hundred Euros. So be it! I don’t feel bad, not one bit!’ That’s how much fun he had. Now he comes and says: ‘For future reference, Grandma, I am going back there every year!’... What can you do?

Fig. 36: D.J.’s house in Gradenik, Kosovska Kamenica. Photo by Leart Zogjani, 2013

My goal in this thesis was to determine how the KPA learned what it claimed to know, what it chose to remember, and the effects of such legal knowledge production on the idioms of property and property rights, the protagonists of property restitution, the larger socio-political terrain, and the law itself. I sought to do this by looking at how the restitution mechanism operated on a day-to-day basis, at how the
people engaged in the process worked and experienced the bureaucratic and legal practices and procedures. Instead of focusing on the gap between ideology and practice, I set out to make that gap analytically productive. Rather than trying to explain the gap away, I analysed some of the interstitial processes that the tensions between the normative, the processual and the political produced within the law. This analysis was not confined by institutional boundaries. Rather, it traced these interstitial processes both within and outside the institution.

By exploring the social and political underpinnings of the ideological framings of ‘transition’ and human rights, I sought to pry open the black box of legal knowledge making, to disclose ‘the vital activity that lies behind the fixed and seemingly final form of things’ (Jackson 1995: 148), and to trace the unintended social, ethical and political effects of these framings. In this context of ‘transition’, I looked at the implementation of the technical-legal as a tool of good governance based on a reading of human rights as global and neutral. This was enacted through three inter-related processes:

(1) At the level of state building politics, property issues were juridified under the banner of property rights as human rights. In chapter one, I showed that because the international intervention was conducted to protect human rights, restoring and safeguarding human rights became both the means and the end goal of state and institution building. In this logic, establishing the rule of law was seen as the best tools for the transition from war to peace, and from a supposed legal vacuum to the implementation of human rights. This circular logic and the belief in a universal, rational best practice of transition legitimised a turn to technical-legal tools of state building, intended to seal off the bureaucracy and the judiciary from the pressures of national and regional politics (a point I returned to in chapter six).

Chapter one charted this turn to law by retracing the genealogy of the shifting ideological underpinnings of the property restitution mandates. These shifts conditioned the way the mandate was framed and interpreted. As I argued, the transition from a focus on possession to remedy a humanitarian emergency to an emphasis on ownership rights marked the neoliberalisation of state building through technical-legal means. It also marked a shift in the rhetoric on the status of DPs, from their political inclusion as citizen-subjects through their physical return home, to
their economic inclusion by reconfirming property rights as means of individual market mobility (Ferguson 2010: 172).

(2) At the level of the institution, technocratic strategies and technical procedures of naming and writing such as compartmentalisation, computerisation and routinisation constructed a ‘nomenclature of trust’ as a way of making ‘reasonable certainty’, a form of bureaucratic transparency. The institution had to find its own solutions to remedy the uncertainties surrounding property documents. Chapter three traced the in-house construction of ‘reasonable certainty’ through the enactment of these procedures in everyday bureaucratic practice. It looked at documents as doubtful, suspicious artefacts that had to be processed ‘as stones or other materials’ (Vismann 2008), and had to undergo the ordeal of verification in order to ascertain their legal trustworthiness. The chapter also suggested that documents acted as mediators between claimants and the KPA, and came to embody legal translation through the transformation of their social and material ‘facts’ into the stuff of bureaucratic, institutional case processing. The ‘transparent opacity’ of documents in mediating such a chain of translation cast doubt or certainty onto facts, while leaving claimants and some KPA staff at the margins of the institution in the dark about its inner reasoning. Documents produced a fiction of shared understanding as to what was at stake, an epistemic ‘smoke screen’.

(3) At the individual level, the invocation of human rights as a universal abstract was used as a legitimating device by Kosovo Albanian lawyers of the CPT. In chapter five, I argued that human rights derived their moral power from their distance from ‘local’ understandings of justice rather than through vernacularisation. How could Kosovo Albanian CPT lawyers reconcile their seemingly fierce nationalist sentiments of historical injustice with their professional ethics as impartial KPA lawyers working ‘for’ Kosovo Serbs? I provided an answer to this ethnographic puzzle by probing the modalities of impartiality making as a form of procedural justice.

As in other bureaucratic settings, the technocratic apparatus put in place was ‘designed to unify and control individuals conceived as either naturally independent and refractory or entangled in other collectivities’ (Hull 2003: 288). International oversight was imagined as a technique of objective impartiality, itself another
technocratic strategy of good governance. Impartiality was thought to be achieved through the ‘mere presence’ (Coles 2007: 100) of international coordinators. The chapter revealed the tensions between national and international staff, who accused each other of not knowing enough law: the national lawyers focusing on content, the internationals on reasoning. Although the presence of internationals did act as a form of formal and technical ‘quality control’, national lawyers achieved subjective impartiality by adhering to a normative and narrow understanding of procedural justice based on an abstract and universal conception of human rights.

Through these three interlinked processes, the institution created a quasi-judicial system of evidence making centred on documents within which it could arrive at legal decisions. Chapter four zoomed in on legal reasoning and its social enactment through everyday lawyering practices. It described the ways in which lawyers at the CPT moved between and beyond facts and law to construct evidence and arrive at convincing legal recommendations. Cooperation among lawyers and an institutional collective memory helped lawyers compensate for the various gaps in laws and facts they encountered. The uncertainty of facts and law was also bridged through literary inscription devices that transformed facts into ahistorical legal evidence (Latour and Woolgar 1986). The language of determinacy thus contributed to the construction of a ‘black box’ of legal reasoning which disguised the uncertainty of lawyers’ procedures, including to themselves (Silbey 2008: xiv).

This regime of ‘reasonable certainty’ was based on procedures that were deemed reasonable within the remit of the agency and in the context in which the KPA operated — political considerations and pressures, funding constraints, time limitations and legal and factual uncertainties. This included the standard of proof to establish the facticity and reliability of documents (chapters three and four), but also standards of due process, including the notification of parties and the possibilities of appeal. Chapter six looked at due process and at the divergent positions my informants at the KPA/KPCC and the SC had on what constituted ‘reasonable’ procedural standards. The chapter suggested that the exceptionality of the procedural justice that my informants diagnosed was neither aberration nor imperfect application of the law; it was written into the law applicable during transition. Questioning the value of analysing the law of transition as a state of exception, I
argued that law is always imperfect and *bricolaged*, also under ‘ordinary’ circumstances. Yet, emphasising the exceptionality of transition allows the key political patrons of the restitution process — the EU and the governments of Serbia and Kosovo — to be seen as doing something, while shirking responsibility for the political non-consequences of technical-legal property restitution.

Throughout the thesis, I probed the making and enactment of legal texts and legal documents and the work that these paper artefacts performed as ‘raw materials’ (McBarnet 1983), as technology and as a frame of social relations, for both the lawyers who worked them (chapter four), and, in chapter two, for the parties who sought to advance their claims through them. In chapter two, I analysed the Claim Intake Form as a ‘boundary object’ (Star and Griesemer 1989) which acted as a translation device between claimants’ worldviews and those of the agency. The chapter showed the contrast between the emotional response of the dispossessed illustrated in the first half of the chapter, and the stark legalism that appear in the CIF. Through the process of claiming, claimants’ language of property as one of mourning that materialised loss in objects was transformed into a way of sanctioning grief by voicing the recognised injury of war-related loss of property. Claiming property through the KPA impinged on claimants’ subjectivities as much as it transformed their relationship to their reputed property by way of documents.

Fig. 37: A stack of D.J.’s KPA/KPCC documents. Photo by Leart Zogjani, 2013
The restitution of property rights by the KPA was first and foremost a process of legal knowledge production. It was primarily a bureaucratic system that produced documents. Ultimately, property restitution had little to do with the return process, reconciliation, the fate of restituted properties, or how Kosovo Albanians, Kosovo Serbs, and the Kosovan and Serbian states understood their relationship to the properties claimed. In the name of human rights and in the language of the technical-legal, the property restitution process (re-)confirmed property rights in the abstract. It did so as a means of creating certainty in an uncertain, transitional environment.

The KPA is a good example of the paradox inherent to the bureaucratisation of human rights whereby relatively powerless and underfunded organisations are tasked with resolving some of the most pressing contemporary issues (Müller 2013: 1-2). Such institutions seldom have the coercive powers to enforce compliance with their decisions and rules (3). This relative powerlessness leads to bureaucratic inflation whereby the intrinsic limitations of the programme justify its perpetuation.

However, as the story of D.J. above illustrates, the question of success or failure misses the point. Although many of my informants were disillusioned with the outcomes of the process, the production of decisions as paper did have effects. The paperisation of property and property rights did not necessarily lead to their de-materialisation, but reconfigured social relations and belonging.

I interviewed D.J. in her rental house in Bujanovac in early June 2013. Although her story deserves more than a couple of paragraphs, it is a fitting coda to this thesis, as it contains key elements I discussed: property loss and its legal translation; claimants’ relation to the legal process and decisions; the gap between the legalisation of property rights and the actual enjoyment of these rights; and finally, the question of return. As she told me her story, she showed me the documents she received from the KPA, confirming her family’s ownership of the claimed property. The documents were both temporal and spatial markers of her family’s ruptured relation to their former home. They encapsulated the intractability of a system of transitional governance as a form of permanent impermanence.

She also proudly showed me her Kosovan ID card, for which she had applied in order to be able to act upon her KPCC decisions and register the claimed property in her children’s names. The KPA process, in all of its independence from Kosovo’s
institutional landscape, nevertheless participated in the reconfiguration of the Kosovan state’s relationship to its displaced citizens, by way of documents. The documents contractually delimited a form of partial inclusion as ‘precarious citizenship’ (Bear and Mathur 2015: 28) that offers avenues for subterfuge, contestation and the (partial) expression of citizenship rights. Documents represent the intractability of the situation of DPs. At the same time, as D.J.’s grandson’s yearly ‘party pilgrimage’ to Kosovo suggests, documents, including KPCC decisions, also encapsulate hope for the future.

Fig. 38: D.J showing us her Kosovan ID card. Photo by Leart Zogjani, 2013
## Appendix

### BATCHES

<table>
<thead>
<tr>
<th>Batch</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>A1</td>
<td>Agricultural Property Claims; Claimant was the PRH on date of loss and is still the PRH.</td>
</tr>
<tr>
<td>A2</td>
<td>Agricultural Property Claims; Claim is filed by FHM and the PRH is still alive or where his/her death is not proven; PRH was also the PRH on date of loss.</td>
</tr>
</tbody>
</table>
| A3    | Agricultural Property Claims; Claim is filed by POA holder and PRH is still alive.  
   - A3 – Specific POA from PRH (even if Claimant/POA holder is FHM to PRH) and PRH was PRH at date of loss & current if general then treat as FHM or PRH issues POA to 3rd party not a FHM irrespective of general or specific POA |
| A4    | Agricultural Property Claims; Claims where the claimant was not the PRH on date of loss but is the current PRH. |
| A5    | Agricultural Property; Claimant is FHM of a deceased PRH but not the current owner of the property, and the claim is to be granted in the name of the deceased. |
| A6    | Agricultural Property; Claims to be dismissed. |
| A7    | Agricultural Property; Contested – Simple. |
| A8    | Agricultural Property; Contested – Other. |
| A9    | Agricultural Property; User Right. |
| A10   | Agricultural Property; Contested - Dismissal. |
| B1    | Residential Property not Destroyed: Claimant was PRH on date of loss and is still PRH. |
| B2    | Residential Property not Destroyed; Claim filed by FHM/POA holder and PRH is still alive or where his/her death is not proven; PRH was also the PRH on the date of loss. |
| B3    | Residential Property not Destroyed; Claims where the claimant was not the PRH at the date of loss but is the current owner. |
| B4    | Residential Property not Destroyed; Claimant is FHM of a deceased PRH but is not the current owner of the property, and the claim is to be granted in the name of deceased. |
| B5    | Residential Property Destroyed; Claimant was the PRH on date of loss and is still the PRH. |
| B6    | Residential Property Destroyed; Claim filed by FHM/POA holder and PRH is still alive or where his/her death is not proven; PRH was also the PRH on the date of loss. |
| B7    | Residential Property Destroyed; Claimant was not the PRH on the date of loss but is the current owner. |
| B8    | Residential Property Destroyed; Claimant is FHM of a deceased PRH but is not the current owner of the property, and the claim is to be granted in the name of the deceased. |
| B9    | Residential Property Destroyed; Claims to be dismissed. |
| B10   | Residential Property Destroyed; Claims to be dismissed. |
| B11   | Residential Property; Contested – Simple. |
| B12   | Residential Property; Contested – Other. |
| B13   | Residential Property - User Right. |
| B14   | Residential Property; Contested - Dismissal. |
| C1    | Commercial Property; Not destroyed. |
| C2    | Commercial Property; Destroyed. |
| C3    | Commercial Property; Claims to be dismissed. |
| C4    | Commercial Property; Contested. |
| C5    | Commercial Property; User Right. |
| C6    | Commercial Property; Contested - Dismissal. |

Appendix 1: Batches of claims [Agricultural, Residential, Commercial]. Author’s archive.
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