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TOWARDS  
'REASONABLE  
CERTAINTY':  
DOCUMENTS, FILES  
AND THE LEGAL  
MAKING OF TRUST  
AT THE  
KOSOVO PROPERTY  
AGENCY (KPA)

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# Towards ‘Reasonable Certainty’: documents, files and the legal making of trust at the Kosovo Property Agency (KPA) <sup>1</sup>

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## **Abstract**

Due to the high uncertainty surrounding cases of property loss emanating from the 1998–1999 war in Kosovo, deciding restitution claims requires a certain level of trust in the reliability of the documents produced by parties, and the legality of documents has to be re-assessed by the Kosovo Property Agency (KPA) itself. By following the trajectory of files – the material repositories of the judicialisation process – through the institution, this paper looks at the institutional strategies put in place to manage documents in order to mitigate doubt, and to create a legal basis of ‘reasonable certainty’. Drawing on ethnographic material from the KPA, this paper argues that it is by looking at how files are made, at their trajectory, that we can begin to understand how the institution knows, and what it chooses to remember. It focuses on ‘moments of reification’ in the judicialisation process in order to highlight both the ways in which ‘reasonable certainty’ is constructed along the way, and the limits of the technocratic enterprise itself.

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## Introduction<sup>3</sup>

“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 it all to them; and still it seems they don’t believe me. I have been waiting for so many years, and still no decision. I need a decision to be able to sell. Why does it seem so complicated for them to give me a decision, when it is so obvious that I am the owner?”

[Interview with Mr. Stejanović, Belgrade, 22 May 2013]

My translator, Mr. Stejanović and I were sitting in a small cubicle of a room at the end of the hall of the Kosovo Property Agency (KPA) office in Belgrade,<sup>4</sup> the agency mandated by the United Nations “to resolve property and user rights claims, (...), for private immovable property involving circumstances related to the armed conflict that occurred between 27 February 1998 and 20 June 1999” (KPA 2014: 11). It was Tuesday morning, and Mr. Stejanović had come to hand in another copy of the uncertified sale contract dating from the 1980s by 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 meet with parties<sup>5</sup> that, on Tuesdays, a lot of people come to town for their medical check-ups and that, as she put it, “they come here to hang out”. And indeed, Mr. Stejanović, waving his cap at the other men sitting in front of Goranka’s office on our way to the small room we had been given to conduct interviews, seemed quite content to spend some time chatting with us.

What struck me in our interview was how Mr. Stejanović described his relationship with the KPA, as well as with his lost property in Kosovo, as mediated by documents. In his own words, “it’s all about documents”: the KPA needed documents to construct and process his file; and Mr. Stejanović needed a decision to be able to get a legal, written form of acknowledgment that he did not invent what happened to him in Kosovo in 1999, which would allow him to sell his house and get on with his life.

This paper is concerned with the first type of relationships I just described and probes Mr. Stejanović’s assertion that the KPA process is “always about documents”. It looks at the role of documents in the (re-)making of property through the KPA, and at the ways in which the KPA process itself is shaped by them, and around them. This enquiry into the role played by documents in the construction of ‘transitional property’ is especially relevant considering the vast amount of uncertainty surrounding their reliability. The handling of documents at the KPA requires special skills for recognising the difference between forgeries, fakes, inadmissible documents (issued by Serbian ‘parallel’ institutions for example), genuine documents that contain errors or for which no original can be found, and genuine documents. In fact, beyond documents, uncertainty is the word that best describes the socio-political environment that surrounds the work of the KPA and property-related issues in Kosovo more generally. Uncertainty is a quality of every aspect of the procedure. Starting with the reliability of the documents on which the procedure is based (the focus of this paper), to issues surrounding the validity of the legal process itself (for example, in what

<sup>3</sup> The legal terminology used in this paper mirrors the terminology usage of the Kosovo Property Agency (KPA) and its adjudicatory commission, the Kosovo Property Claims Commission (KPCC).

<sup>4</sup> For political reasons, the KPA operates under the banner of the UNHCR Property Office in Serbia.

<sup>5</sup> About 90 per cent of the claims received by the KPA emanated from its Serbian offices (KPA 2012: 9).

constitutes appropriate ‘reasonable means’), to the legality of the decisions, up to uncertainty about the ‘implementability’ of the latter.

In order to look at how documents’ reliability is probed and defined, I look at the KPA process through the perspective of the documents themselves and highlight how they become first repositories of grievances, then parts of files, and how some of them acquire the necessary quality of evidence: ‘reasonable certainty’. Retracing the journey files take through the agency, I stop at each step of the process of documentary transformation, or what I have come to see as a series of judicial reifications. In doing so, I highlight the institutional strategies put in place to manage documents in order to mitigate doubt, and to create a legal platform of ‘reasonable certainty’. 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 knows, and what it chooses to remember.

The data presented here was collected between 2012 and 2013, during fourteen months of ethnographic research at the KPA, the Supreme Court of Kosovo and with claimants and respondents<sup>6</sup> involved in the KPA process. The case of the KPA is especially interesting as the institution is situated in the interstices of international and national law, and participates in the transitional justice project of the European Union rule of law mission in Kosovo (EULEX), the largest of such EU-led projects outside its member states. I am, moreover, the only researcher who has had access to the inner workings of the Agency. While I strive to give the reader enough legal background to make sense of the ethnography, this paper is an anthropological enquiry, which, as such, does not purport to propose policy recommendations, or legal alternatives. As Fernanda Pirie rightly puts, the task of the anthropologist, along with analysing, is “to describe rather than prescribe” (Pirie 2013: 24). This is not to say, however, that I do not take the law seriously. My prime concern is to explain and describe legal actions and their consequences “as aspects of local [here, institutional] culture and practice, while maintaining a stance of pragmatic, if not necessarily ethical or epistemological, relativism” (Good 2007: 29).

As in most ‘modern’ bureaucratic institutions, the law at the KPA begins and ends with documents stamped, stapled, and ordered into files. In this paper, I take the reader through the inner workings of the institution – the ‘fact filtering’ machine – by following the trajectory of files, the most material, visible and traceable stuff that belongs to law (Latour 2010: 71; see also Riles 2004). Here, files are conceived as the material repositories of the legal process, and not simply 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). Files as “paper shrines” (Hull 2003: 295) are the central object of all activities. Moving through the institution by following their trajectory allows for a step-by-step familiarisation with the various units of the KPA and their distinctive responsibilities in the making of trust and ‘reasonable certainty’. Before launching my description of the different steps of the journey files undertake within the agency, I introduce the reader to the necessary legal and historical background behind the creation of the KPA. I then lay down the analytical framework used to look at and through documents, and spend a few paragraphs explaining the importance of the distinction between ‘facts’ and ‘law’ in the making of ‘reasonable certainty’. I subsequently launch my enquiry into the making of files, starting with the claim intake procedure, and the process through which files were created in the first place. Before describing the notification procedure, I open a necessary parenthesis to look at the mutually constitutive and dependent nature of paper and computer files.

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<sup>6</sup> A respondent is an individual ‘responding’ to, or countering, a case initiated by a claimant.

‘Notification’ is followed by ‘Verification’. While the trajectory of files continue beyond ‘Verification’ to enter more deeply into the domain of law and legal reasoning at the KPA, this paper focuses on the bureaucratic construction of ‘reasonable certainty’ before legal analysis takes place.

## 1. Background<sup>7</sup>

Since the end of the Kosovo war of 1998-99, the United Nations Interim Administration Mission in Kosovo (UNMIK)<sup>8</sup> set up two quasi-judicial mechanisms for the resolution of immovable property claims resulting from the 1998-99 conflict. The first, the Housing and Property Directorate (HPD) was solely focused on immovable residential properties,<sup>9</sup> while the second – the KPA,<sup>10</sup> the follow-up mission, so to say – added immovable commercial and agricultural properties to its quasi-judicial purview. Between 5 April 2006 and 3 December 2007, Displaced Persons (DPs)<sup>11</sup>, in majority based in Serbia, filed a total 42,749 claims with the KPA.

Of course, the number of property-related issues emanating from the Kosovo war in 2006 was well above the 42,749 claims received by the KPA. The KPA process was aimed at ‘harvesting’ certain types of grievances that international policy makers believed to be the most pressing. For these grievances to be legitimately transformed into claims they had thus to fulfil certain criteria. They had to pertain to the loss of immovable property rights, and this loss had to be ‘directly related’ to the conflict of 1998–1999.<sup>12</sup> Claimants were asked to prove that they had lost possession of their property between 27 February 1998 and 20 June 1999 and that they were, at the time of deciding their claims, still unable to exercise these rights.

Because of the historical circumstances of the war, the majority of such people who had lost their properties during the above-mentioned cut-off dates and who could not go back living there after the war, were Kosovo Serbs. The agency also received claims from Kosovo Albanians who had been displaced from their homes in the north of the country (on the border with Serbia, the area *de facto* in the hands of the Serbian government until recently), as well as Roma, Ashkali and other minorities who had had to flee the country and had nowhere to go back to either.

The KPA is an independent,<sup>13</sup> administrative, quasi-judicial agency. It has a judicial character as it enjoys the power to legally decide on cases involving property issues emanating from the war put before its commission (called the Kosovo Property Claims Commission, KPCC) and to issue legally binding decisions (at least in theory). However, it is constitutionally distinct and independent from the Kosovo judicial system. Its independence is made evident in some of its practices, including the discretionary use and ‘ranking’ of legislations,<sup>14</sup> and the fact that, by law, it does not necessarily have to follow the same procedural standards and requirements of Kosovo

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<sup>7</sup> This section, although not directly linked to the central argument of this paper, presents background information necessary to understand the context in which the KPA works.

<sup>8</sup> Following UN Security Council Resolution 1244.

<sup>9</sup> See UNMIK Regulation 1999/23 and UNMIK Regulation 2000/60.

<sup>10</sup> See UNMIK Regulation 2006/50.

<sup>11</sup> I use the term ‘Displaced Persons’ (DPs), as opposed to ‘Internally Displaced Persons’ (IDPs), in line with UNHCR terminology in order to avoid taking a stance with regard to the determination of Kosovo’s international status.

<sup>12</sup> See UNMIK Regulation 2006/50.

<sup>13</sup> Pursuant Article 142 of the Constitution of the Republic of Kosovo.

<sup>14</sup> For example, the KPA is of the opinion that its own law and administrative directions (a copy-paste of the former UNMIK regulation) supersede the law on Administrative Procedures. The KPA Appeals panel of the Supreme Court of Kosovo, however, contests this view.

civil courts, and creates its own rules, hence its ‘quasi-judicial’ appellation.<sup>15</sup> For example, as a general rule, no hearings are held, and the modalities of due process are unique to the KPA procedure. On top of that, it is considered to be a transitional, mass-claim mechanism, which means that it reviews and adjudicates cases in batches within a strict mandate and (again, in theory) a fixed timeframe. This said, property restitution at the KPA is a bureaucratic practice in essence not much different from the legal-administrative processing of any other administrative claim: small-level bureaucrats producing small, administrative, quasi-legal decisions. Although the KPA also processes contested claims (i.e. multi-party claims), most of the claims processed are single-party claims that re-confirm existing property rights.

Differing substantively from its Bosnian counterpart – most strikingly in its total independence from local courts, the KPA is a particularly interesting example of a transitional justice mechanism. It is distinct from the local and international judiciary, and is not a mere development project either. Rather it operates in the interstices of those different legal worlds. Indeed, the UNMIK text regulating the institution, incorporated in a Kosovo law in 2008,<sup>16</sup> stipulates the KPA’s independence from the ‘local’ judicial system but without granting it the status of an international judicial body, or putting it under the sole purview of EULEX. From an institutional perspective, the KPA’s operating budget is partially funded by the national budget of the republic of Kosovo, but its largest part comes from several country donors (Switzerland, Norway, Germany, etc.). For those donors, the KPA is a development project that inserts itself in larger frameworks of ‘DP reintegration’ and other post-conflict reconstruction programmes.

The KPA is divided in several units at headquarter (HQ – in Pristina) and regional levels (in Kosovo, but also in Serbia, and mobile teams in Montenegro and Macedonia). During my fieldwork, I had the opportunity to work with most of the units, each of which carries out a specific set of duties to prepare the cases for review by the national (i.e. Kosovo Albanian) and international lawyers (from countries ranging from Norway to Peru) of the Case Processing Teams (CPT). These in turn send them to the KPCC office, composed of a different team of national and international lawyers quality checking the CPT reports, and drafting the decisions after each adjudicatory sessions. The three commissioners of the KPCC are Kosovo Albanian, German and Finnish, respectively. After adjudication, the cases are transferred to the implementation teams, who deliver the decisions to the parties, organise evictions of illegal occupants, etc. Apart from the CPT, the KPCC office and the eviction unit, all other units are composed of national officers (in majority Kosovo Albanians, except for the office of Mitrovica North and the offices in Serbia), who are employed as Kosovo civil servants but who benefit from a salary top up from the different international funding agencies supporting the KPA.

## 2. On Documents

Choosing to deliberately analytically conflate the physical form and the information documents 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

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<sup>15</sup> Sometimes, KPA’s independence has detrimental effects on the KPA process itself as exemplified by the lack of genuine cooperation between the KPA and Kosovo civil courts.

<sup>16</sup> Assembly of Kosovo Law No. 03/L-079, partly amended by Law 04/L-115.

objects they refer to” (Hull 2012a: 253). I thus posit that documents play a central role in the making of ‘property’ at the KPA. In order to understand the dialectic relationship between property documents – the way they are handled and transformed by the KPA – and the object, i.e. ‘property’, which is constructed through these institutional documentary processes, I ask: What do documents do? And how do they act upon the making of ‘transitional property’ at the KPA?

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, 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 most often than not, documents are looked upon by asylum agencies with mistrust and 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 at all (to the risk of increasing their perceived untrustworthiness) (Kelly 2012; Whyte 2015). What this shows is that documents produced by asylum applicants create uncertainty and doubt, which is in direct contradiction with the general black letter law understanding of documents as the “prime movers in meeting evidentiary burdens” (Nemeth 2011: 137).

Like in asylum claims, the standard of proof in the KPA process is very low, and the only written rules of evidence that pertain to the KPA procedure are that evidence should be ‘reliable’ and ‘relevant’ to be presented before the adjudicatory commission (Section 6.1 and 6.2 UNMIK 2007/5; see also Cordial and Rosandhaug 2008: 77). This means that, like in the asylum process, “virtually anything can be submitted as evidence” (Kelly 2012: 48). The consequence is that KPA legal officers always consider documents, and more generally any type of evidence (oral testimonies, etc.) with a pinch of salt, an *a priori* mistrust.<sup>17</sup> In our case, the mistrust is perhaps less attached to the applicants’ bodies as the claimants are physically invisible to the KPA procedure, than to the particular historical circumstances that fostered uncertainty around documents and property rights in the first place.

In his ethnography of the *Conseil d’Etat*, Bruno Latour explains the distinction *conseillers* make between ‘facts’ and ‘laws’:

“the ‘facts’ in a legal file constitute a closed set, which is soon made unquestionable by the sheer accumulation of items, and to which it soon becomes unnecessary to return. Facts are things that one tries to get rid of as quickly as possible, in order to move on to other things, namely the particular point of law that is of interest.” (Latour 2004: 89; 2010)

Although the *Conseil d’Etat* is probably quite a unique universe of law making, the argument Latour makes – that the law tries to move as quickly as possible from the facts, which are static and therefore reliable – is a useful one to grasp the pragmatic nature of legal processes: “legal facts are important not because they shed light on the cosmos but because they help judges come to a decision about a particular legal dispute” (Kelly 2012: 63; see also Good 2007: 261–265). And as the old adage goes, “what is not in the records is not in the world” (Kafka 2009: 345): “if a fact cannot be proved according to the rules of legal evidence, it is considered not to have happened” (Kelly 2012: 63).

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<sup>17</sup> 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.

How, then, does the KPA go about producing the Latourian distinction between ‘facts’ and ‘laws’? How can KPA commissioners take certain, practical legal decisions on ‘rules of law’ (Latour 2004: 89) given all the uncertainty surrounding the reliability and trustworthiness of facts and more generally of documents? Part of the answer is that they cannot, and that there is always a large amount of uncertainty and a lack of reliable knowledge enshrined in their decisions (especially for one-party claims). ‘What really happened’ can as seldom be 100 per cent asserted in KPA claims than it can in asylum claims (see Kelly 2012: 48). However, the UNMIK regulators who legislated the mandate of the KPA tried to mitigate uncertainty in providing the KPA with the necessary judicial power and practical means to create a system through which *reasonable* trust and certainty could be made, in-house. How the KPA goes about producing certainty that allows its commission to stop doubting *enough* to take binding legal decisions is the question this paper is concerned with.

### 3. The Birth of a File

Files at the KPA originated at the time of the ‘claim intake’, the period between 5 April 2006 and 3 December 2007 during which people could approach the KPA to ‘file claims’. The KPA advertised the start of 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. Interestingly, while the two ads in Serbian that targeted the Kosovo Serbian population now living in Serbia spoke a language of loss and the reclaiming of rights, the ads in Albanian deployed the language of legality: one was aimed at illegal occupants of properties and suggested the KPA might help them legalise their situation. The other featured then Prime Minister 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, the KPA’s work was thus mainly aimed at helping Serbian ‘victims’ of property loss recover their rights, while Albanians were largely framed as illegal occupants; apart from Kosovo Albanians formerly living in or owning property in the North, it was very clear that Albanians were not at all the target audience of the KPA. 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 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.

The language of claiming is usually quite distant from the free expression of sentiments such as anger, indignation, sadness or helplessness. Grievances usually take on some kind of ‘judicialising’ qualities that claimants believe are best suited for the legal forum they are addressing their claim to. Grievances are in that way ‘adapted’ as a function of the legal environment they find themselves in (Felstiner et al. 1981; Merry 1990; Conley and O’Barr 1990; Harris 1996; Kelly 2005). In this case, this is even further exacerbated for two main reasons. On the one hand, the ‘call for grievances’ that was the KPA media campaign very clearly defined the kind of grievances that were to be legitimated through the KPA process. On the other, the KPA was at the time for many Serbian DPs, the target audience of the KPA campaign, the only forum available to address their war-



related grievances, as the courts both in Kosovo and Serbia were (and still are) perceived as inaccessible, corrupt and unjust. The KPA was the only initiative of its kind and people claimed, as one claimant put it, so as to have ‘something’ in Kosovo, some ‘kind of property’. In that sense, property took on a very broad meaning for claimants because of the very fact that KPA was only interested *in* property. For them, the KPA was there to give them their property back but it was also there to restore a sense of justice and of legitimated social entitlements, and all this got articulated in terms of ‘property’.

Stories of property loss (in the broadest understanding of the term) had therefore to fit into the KPA ‘box’ in a calculated manner and this was enacted through the ‘claim intake form’ by both the claim intake officers and the claimants. Rather than the ‘mysterious mutation’ through which ‘groaning’ is transformed into grievances as described by Latour (2010: 72), what we had here were careful negotiations between officers keen on registering as many claims as possible but restricted by the language of the form and by their training, and claimants wishfully thinking the KPA could be the solution to all their problems. “Some people tried to lie to us, saying they had more square metres”, explained Goranka, one of the two officers of the mobile team from the Belgrade office. “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 my house was 30 square metres but you can write whatever you want””.

The KPA process being an administrative procedure of mass-claim nature that entailed a narrow time window for claims registration (nineteen months), the ‘claim intake form’ (CIF) was the only written statement directly dictated by the alleged property right holder or a family member themselves to KPA officers. Some people sent letters explaining their grievances to the KPA in a later stage of the process but this was not very common. For most claimants, the claim intake was the only physical contact they had with the KPA before the delivery of decision(s) and very often the only time claimants got to explain their stories in their own words. The CIF thus became the document of reference for each claim submitted; it is the first and most important document of each file.

The CIF contains nine different sections. ‘Part A’ focuses on the claimant’s personal information: name, current address, date of birth, gender, ethnicity (understood mainly 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 are purported as well as his/her gender, ‘legal basis’ of the claimant (whether the claimant is himself/herself a property right holder or not), the family relationship between claimant and ‘parent’ as well as the reason for the ‘indirect claim’ if the claimant is not himself/herself a property right holder. ‘Part B’ includes information about the property right holder if s/he is not the claimant. ‘Part C’ pertains 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’ focus on the ‘other party’ as natural (D) and/or legal (E) persons to the claim (if any). This had to be filled in cases where the alleged property right holder was being represented by a family member (i.e. a ‘natural’ person) or a legal representative through ‘power of attorney’ (PoA). ‘Part F’ is about 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 records the parcel number, number of rooms, number of floors and ‘building floor’ (i.e. if the property is an apartment, the floor number it is on) as well as the year of construction. ‘Part G’ is entitled ‘information on the property right

over the claimed property'. Here, the claimant was requested to answer questions regarding the legal nature of the claim, whether they were requesting repossession, compensation, or both.<sup>18</sup> 'Part H': 'Legal right claimed by the party' contains one sub-section, entitled 'party's claim'. This is where, in a box allowing 500 characters (6 lines) maximum, the claimants were asked to describe their case(s). However, instead of laying out the claimant's grievances in their own terms, most of the time, the box only contains 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 is being used by someone (i.e. NN) and the parcel number(s) for agricultural plots. These 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 number 10 and 11. He declares that the flat is in use by NN 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 [Power of Attorney] 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 Good Dub [google translation] 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."

In their seminal study of language use in American legal processes, Conley and O'Barr argue that there is a "striking divergence between the approaches of lay people and legal professionals to the resolution of everyday problems" (1990: ix). The rule oriented approach, they explain, is the approach whereby people "evaluate their problems in terms of neutral principles whose application transcends differences in personal and social status" (ibid.). It tends to be best understood by the courts as it is closest to the one adopted by legal professionals themselves. The relational orientation, on the other hand, is the complete opposite from the rule oriented approach on a spectrum of possibilities. It is the approach many lay people privilege. The relational orientation "predicate[s] rights and responsibilities on a broad notion of social interdependence rather than on the application of rules" (ibid.). As Conley and O'Barr demonstrate, it also often fails to be understood by the courts (ibid.).

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<sup>18</sup> For example, when the house was destroyed, people are in theory entitled to repossession of the land and compensation for the damages caused by the destruction.

The above statements provide examples of the outcome of a transformation that judicialised and rendered rule oriented claimants' statements that did not always fit requirements of legal legibility in the first place. As I was told by one of the officers who participated in the claim intake, she and her colleagues in charge of writing down the claimants' statements, often had to 'translate' the claimants' personal narratives 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' description of events that define a relational-oriented approach (Conley and O'Barr 1990: ix). In a similar fashion, Dembour and Zerilli observed, in the context of a case of post-socialist restitution of a house in Romania that was put before the European Court of Human Rights (ECHR), that "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).

Claimants' narratives are stripped of their complexity and nuances and transformed into legal constructs. This allows courts to turn issues in particular legal-technical ways that are often very far, or even removed, from the social reality of applicants (Dembour and Zerilli 2007: 190; Good 2007). However, translating narratives of suffering into rule-oriented arguments is sometimes not as easy and straightforward as it may seem. It requires of the officer writing down the claimant's statement a good grasp of the modalities and specifics of the rule oriented language of the legal system involved, and the ability to actually act as a translator between the law's and the claimant's reality. And again, in the mass-claim context of the KPA and considering the very little training provided to officers in charge of the claim intake, some statements escaped the suppression of emotion. As is made explicit in the use of the word 'Satan' in the following example, it is the claimant's point of view rather than the official's that prevailed:<sup>19</sup>

"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 Jovanević has a solution. Please consider the case again because of the same Satan. I own the purchase contract for the apartment."

Finally, 'Part J', the 'final statement of the claimant', includes two other boxes. The first one requests 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 two boxes is usually empty, the second sometimes mentions 'compensation' when the claimant mentioned monetary compensation as one of the remedies sought during the interview.

Perhaps unsurprisingly considering the mass-claim nature of the process, only very weak traces of the lived histories of claimants — that which made them decide to claim in the first place and act upon this decision by travelling sometimes very far to meet with a KPA officer — are to be found in the CIF. The CIF is thus the main vehicle for the 'judicialisation' of grievances, but also an important defining factor for the ways in which legal officers will subsequently understand and act upon claims. 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

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<sup>19</sup> Here again, I am simply reproducing the Google translation that was used by the CPT lawyer who processed the claim.

‘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 then photocopied, or subsequently send photocopies by post to the KPA.

At the end of the claim intake interview, the only thing the claimant received was an acknowledgement letter containing the number to be first found at the top of the claim intake form. Within minutes social beings and their grievances underwent a technocratic-type of transformation. Their plural identities and histories were essentialised and replaced by judicialised, static data. And all this got encapsulated into a 5-digit number. This ordering number literally took over, rendering the claimants’ worldview and personal understanding of their case almost insignificant. The number is the claim; the claim is the number. It is to be found 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 now on, it is this number and its accompanying documents that form the reality of the claim.

After a claim was submitted, the information contained in the CIF was dissected and entered in a complex database containing different levels of information all linked to applications, designed for units to perform their specific sets of tasks. The claim information would then be amended and refined along the way by the different units in accordance with their own 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 and finally end up in their assigned yellow carton folder, the latter thereby becoming a fully-fledged ‘file’. In parallel, scanned copies of the CIF and supporting documents would be added to the computerised version of the file.<sup>20</sup> 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.<sup>21</sup>

#### **4. The Aggregate Nature of a File**

Considering the vast geographical area covered by the KPA offices, the computerisation of files is essential to the procedure. A complex web of wires and IT magic across the country and into Serbia connects all KPA offices to one another through a private network of servers, rendering on the one hand, the computerisation of information easier, and on the other, the information collected accessible from anywhere within the KPA. Therefore, files undertake multidimensional and multi-sited paths, often simultaneously. A file can thus be worked on by more than one unit at once, both physically and electronically. While it lies physically on a shelf somewhere in the HQ building – and this ‘somewhere’ is easily traceable thanks to a barcode system whereby each physical file is ‘barcoded in’ and ‘out’ of units as it physically proceeds on its procedural journey – its information is electronically available to the other units working upstream adjudication (preparing the files for

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<sup>20</sup> I will come back to the distinction between paper and computerised files in the next section.

<sup>21</sup> The registration procedure, including quality check and publication, usually took four to six months.

the commission), and downstream (preparing the decisions for implementation) adjudication<sup>22</sup> both at HQ and regional levels.

The literature on documents and bureaucracy has for the past few decades speculated on the end of the paper era and of the paper file more specifically (Danet 1997: 7; Chartier 1995; Levy 2001; Hull 2012a: 260). In the words of Cornelia Vismann: “the appearance of files as stylised pictograms or icons on computer screens indicates the end of the epoch of files” (2008: xiv). An underlying assumption in Vismann’s statement is the disappearance of the material aspect that forms and gives meaning to the file. My opinion is that on the contrary, the advent of the electronic file generally could increase people’s perception of the materiality of files. From now on they are not only made of paper but of information weighting their amount of electronic kilobits as well. The file icon on the computer desktop is no less tangible than a paper, hardcopy file on a shelf. Also, in their study of the paper industry, Sellen and Harper debunked the “myth of the paperless office”. “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” (2002: 12), which is “greater than ever” (2002: 11).

Moreover, ethnographies of bureaucratic practice have shown that rather than taking over and technologically revolutionising everyday bureaucratic work, computers and databases were merely added on to the technologies already used without replacing them, and even sometimes, they were never really integrated. One of the main question that has preoccupied scholars and bureaucrats alike is the legal weight of electronic documents compared to ‘proper’ paper letters, contracts, etc. (Riles 2006: 6). Ben Kafka gives the example of American bureaucrats who print out and file their email communications “the old fashioned way” (2009: 351). Matthew Hull has 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.” (Hull 2003: 311; 2012b)

The mutually constitutive and dependent nature of paper and computer files at the KPA is an example of how seemingly competing technologies can be used concomitantly. It is also an example of how specific forms of technology impact on the workings of the legal process. As I explained previously, the compartmentalisation of tasks through the different units that form the KPA was made possible by the creation of unit-specific computer applications that allow officers from different units to work on the same ‘file’ at once by accessing bits of information contained in the database. While it is impossible for a specific electronic document to be opened by two different persons on two different computers – the document being ‘in use’ already – it is possible to add or modify information pertaining to the purview of specific units on to the database simultaneously. Moreover, units often have their own electronic copies of documents on which

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<sup>22</sup> The KPCC is KPA’s adjudicatory body. It meets in closed sessions about four times per year. The KPCC is headed by two international commissioners and one national, Kosovo Albanian, commissioner.

they rely to make the necessary changes to the electronic ‘file’ made of scattered information gathered in the general database.

The KPA file, especially while its claim is being processed, is therefore more than a stack of paper with its yellow carton binder. It is a more or less messy conglomerate of electronic and paper-based information. The paper file, in fact, is the outcome of a complex process of data analysis and data classification that takes place digitally. While not always the most accurate, complete or final version of the file, the paper file is the basis for the legal analysis of its claim. Conversely, on some occasions – and for reasons no one was able to explain – I noticed that some documents were present in the paper file, but absent online. Whereas one could have assumed that the more or less privileged access to the database would determine the amount of institutional prestige and power officers enjoyed – and although it is true that IT officers did play on their database knowledge to inspire respect (see Bowker 2005) – it is actual access to the paper files that is considered a sign of prestige and of higher legal skills and knowledge. This access is reserved to the officers of HQ units, and as soon as the files have passed the first ancillary units, to the lawyers of the ‘case processing teams’ doing the ‘proper’ legal analysis of claims. When I asked why did the KPA still use paper files, the answer I received – noting the disdain in the voice of the young lawyer answering my question – was that some of the older legal officers and the three commissioners were not used to reading electronic documents for long hours and needed the ‘feel of paper’ to work on and make sense of cases. The digital apparatus therefore acts as helpful tool making the implementation of the mandate of the institution possible and rendering everyday work smoother and quicker. It has not, however, taken over. In fact, as will become clearer in the next sections, there is a strong similitude in the ways in which electronic and paper information are handled.

## **5. The Transformation of Earth into Paper**

Grievances are transformed into claims, which in the form of files (as aggregates of digital and paper-based information), move through the ‘processing chain’ of the different units that make up the KPA. While there are around 300 staff working for the KPA, its workers are distributed among five regional offices in Kosovo, four in Serbia, and the HQ in Pristina.<sup>23</sup> Each unit at HQ level has its equivalent at regional level, and it is the regional staff that carry out most of the legwork. Each unit’s tasks are defined according to the files’ journey through the institution. After registration, two processes started in parallel. The claimed properties were ‘notified’ and the claims’ documents were ‘verified’.

The notification unit is composed of regional and head quarter staff. The task of the regional notification teams is to identify geographically the properties claimed by collecting GRID references (i.e. GPS coordinates), drawing maps and by notifying people<sup>24</sup> who are found to be living in, or farming, the property claimed of the KPA procedure. Equipped with the claimants’ descriptions of the geographical situation of properties and the published cadastral information for each plot, the regional notification officers spend their days – no matter the weather – travelling by car and on foot from one claimed property to another, often getting shouted at by occupants and

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<sup>23</sup> At the time of study (June 2012 to July 2013). The Kragujevac office closed down at the end of my fieldwork.

<sup>24</sup> Some of whom then decide to ‘reply’ to the claim by taking part in the quasi-judicial procedure as respondents.

occasionally fearing for their lives when shouts are accompanied by the brandishing of a pistol, a Kalashnikov or even a hand grenade.

For agricultural property (which forms the majority of claims), 'physical notification' is performed by planting poles in the claimed fields. Stickers with the KPA logo and the claim number are pasted on these poles (one pole per parcel claimed). In the case of residential property these stickers are simply pasted on the door of the building claimed. Pictures are then taken of the poles and stickers, as well as of the property itself. Back in the office, the regional notification staff are tasked to write 'notification reports' (including GPS coordinates, descriptions of the state and type of the property, etc.) summarising the situation on the ground for each claim notified. All the documents produced (maps, pictures, etc.) are attached to the computerised reports electronically. The reports, including their attachments, are then printed out, stapled, put in white A3 envelopes and sent to HQ via the KPA internal mail service.

The role of the HQ notification officers (most of whom have previous experience working for the Kosovo Cadastre Agency, the national agency in charge of cadastral records) is to quality check the reports submitted by the regional officers. The 'quality checking' procedure involves the comparison of the geodesic information collected in the field and a 2009 orthophoto of the place (an aerial photograph that accurately represents distances and relief). In case the field pictures and the 2009 orthophoto differ, generally when an immovable structure appears on one but not on the other, the file is sent back to the RO for re-notification in order to try to find out what has happened. Also, when a report contains a textual error or does not match with the cadastral expert's analysis of the geodesic aspects of the property, the report is sent back through the same channel for correction at RO level. When the reports are finally approved at HQ and have been quality-checked one last time by the head of unit, the electronic 'history of the claim', the application recording all files' movements, will mention the status 'notification complete'; 'notification report received for quality control'; 'notification report approved by quality control'; 'notification report sent to File Data Management'.

In parallel, the electronic version of all documents produced at regional level is 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 travel across country to be appended, in their own time and after review, to the physical files by the same FDM unit, or by other HQ units' secretaries according to where the physical files have already been moved to.

Notification is the only step in the assembly chain of compiling evidence in which the physical reality of a property underlying a claim is taken into account and added to the body of evidence in the file. Considering this, it is crucial to note that notification is actually one of the weakest links in this chain of evidence making, as the following vignette shows.

I had only been with the KPA for a week when I was invited to join a notification team on their physical notification tour for the day. They picked me up at 9.30 am in front of HQ and as we drove to the village of Matiqan (about thirty minutes from Pristina), Luan, the regional notification officer – a very talkative and imposing guy – told us stories after stories of notifications that had gone bad and how each time he had managed to get out of there unharmed. Considering his rather self-aggrandising spiel I was surprised, when we reached the property to be notified, to see how he went about notifying this property as I had just the day before read the Standard Operation Procedures (SOP) manual for the notification unit. When back at HQ I shared my puzzlement with

the head of the unit, she was equally shocked and it resulted in a disciplinary hearing for Luan in which I was called upon to stand as a witness. Here is an excerpt of the report I was requested to write in preparation for the hearing. I have added in square brackets additional information for the reader not familiar with the SOP:

“This morning, (...) I went to the field to observe the process of notification of 4 claims in the Municipality of Prishtina. The notifications were conducted by Luan Berisha (...). The claims (...) notified were: KPA 41077; KPA 41078 in the village of Dragoc; KPA 61080; KPA 32031 (parcels numbers: 318/3 and 318/4) in the village of Matiqan. At around 10 am, we reached the village of Matiqan. Luan entered the claim coordinates in his GPS device and drove us to the claimed property, which is comprised of 2 parcels, the first being a grassy road, the second containing a house that seems inhabited (Luan confirmed he had asked neighbours whether the house was inhabited in a previous visit and they had said that no one had been seen there for the past 4 months). We didn’t meet anyone while proceeding to the notification. After having verified the printed cadastral information with the actual situation on site and collected the GRID reference for both parcels, Luan proceeded to drive a wooden pole into the ground of the first parcel (318/3). He then pasted a sticker [on the pole] on which he had written the KPA [claim number] for both parcels (318/3 and 318/4) (...) and took a couple of photographs of the pole.

However, instead of following the instructions as given in SOP on Notification (October 2009), p. 3, article 4.3.3 [whereby a pole and sticker have to visibly remain on each parcel of a claimed property], Luan then removed the pole that he had just planted and photographed in 318/3, and re-planted it in 318/4 [where he photographed it again]. Noticing this error, I made a remark (...) in English (...) about how this could be seen as the production of falsified evidence (...). [After a bit of an argument] Luan then went back to the car and took another wooden pole out of the trunk [he had many], which he then proceeded to plant in 318/3 and photographed.”<sup>25</sup>

This was one example of a ‘wrong notification’ that by chance I was a witness of. However, as I later found out wrong notifications were a recurring problem that at one point took on an amplitude that cast doubts upon the credibility of the entire KPA procedure. Between 2006 and 2009 about thirty per cent of claims that had been notified until then were found to have been ‘wrongly notified’ (KPA 2009: 7). According to the KPA, there were three reasons for this: the lack of cadastral data available in Kosovo, collaboration issues with the Kosovo Cadastral Agency (KCA) whereby the KCA refused to share certain information with the KPA, and technical deficiencies of the GPS devices used by the regional notification officers. All cases that were found to have been wrongly notified had to be notified again; in cases that had already been adjudicated, the decision was quashed and the process reopened. This has ramifications that go beyond mere due process but call into question the validity, sustainability and trustworthiness of the decisions, as was pointed out by the KPA appeal panel of the Kosovo Supreme Court.

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<sup>25</sup> Why did Luan act in this way? Sheer incompetence as the then director of the KPA posited, or the more complex retaliation act for a felt injustice against the system which had given a juicy promotion to someone else, as Luan’s head of office explained? The jury is out.



## 6. The Making of Trust

“The role documents play in civil and criminal litigation can only be described as integral. Documents find a place in most courtroom dramas as well as pre- and post-trial phases. Whether a criminal or civil case is before the bar, documents are prime movers in meeting evidentiary burdens. Outside the litigation arena, documentary evidence is the centrepiece of the investigative process (...). Why documents receive such favourable status is obvious – due to their permanence, they memorialise and trap thoughts, ideas and proposed actions, and by their content – both directly and indirectly – they preserve the history and sequence of events. ‘Law and Evidence’.” (Nemeth 2011: 137)

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 itself. To prove one’s rights, one has to produce documents that refer to the issue at stake from an external perspective to the file; the production of evidence is therefore the claimant’s responsibility. In the context of Kosovo, many documents were destroyed or left behind during the war, and requesting new certified copies from the state in Kosovo is usually very challenging for Serbian DPs considering the current geopolitical situation and the fact that many have never even once gone back to Kosovo since the end of the war. People are therefore not always in a position to produce documentary evidence of their property rights. Because of this situation, the mandate of the KPA prescribed that the burden of proof be reversed, and that it is up to the KPA to produce the missing evidence required to establish the validity of a claim.

Moreover, in a ‘regular’ administrative court, the documents produced by claimants in support of their case emanate from 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). Therefore, as the quote above shows, for legal scholars, these documents – or ‘official records’ in the legal terminology – 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 to render its judgement without having to “shape” and “format” evidence themselves (Latour 2010: 75). In the context of post-war Kosovo, however, there is a distinct lack of ‘trust’ in the validity of documents issued by Kosovan and Serbian upstream state institutions, especially from the perspective of international organisations. This is usually subsumed under the programmatic framing of ‘weak rule of law’ that flattens into a two-dimensional, fixed picture a varied and ever-changing terrain of sedimented ‘legal ontologies’: multiple realities – or worlds – of legality (see Henare et al. 2006).

On the topsoil level, which is usually the only one captured by the totalising gaze of international institutions that design policy programmes to remedy the ‘weak rule of law’ (see Scott 1998; Grenfell 2013) such as EULEX, we do indeed find cases of false documents (for example, forgeries such as fake power of attorneys, or illegal name changes in the cadastral records). This is especially the case when it comes to property matters. On the one hand, due to the lack of institutional checks, it is relatively easy for a single cadastral officer or administrative clerk to change a record without it immediately leading to massive inconsistencies across the system. On the other hand, because at the material and symbolic level a lot is at stake when it comes to property, individuals will leverage their wealth and influence to make these changes happen. However, and this is already a

substratum less easily subsumed under the facile notion of ‘corruption’ (see, among others, Sissener 2001; Gupta 2005; Nuijten and Anders 2007). there is also an implicit *laissez-faire* that is politically justified: as I often heard as justification for the post-war occupation of properties registered under the names of Kosovo Serbs, after all, for many Kosovo Albanians, with all the injustice done to their ‘ethnic group’ during ‘decades of Serbian oppression’ or ‘illegal occupation’, it is only right to give back to them what historically was theirs anyway. Underneath this layer of historical legal redress, there is yet another complicating factor that is the existence of parallel institutions. In the last phase of the war, Serbian forces physically removed large sections of civil registries and cadastral archives from Kosovo, and moved them to Serbia, where ‘dislocated’ institutions continue to function and issue legally valid documents, and take decisions considered legally binding by the Serbian state pertaining to the autonomous province of Kosovo and Metohija.<sup>26</sup> In the absence of those documents the new Kosovan authorities had to re-create entire sections of their public records and started taking decisions based upon these. This has led to the coexistence of two often diverging but equally ‘legal’ corpora of civil and property records for the same territory (a similar situation to that of Cyprus, see Navaro-Yashin 2007; 2012).

For these reasons, the KPA itself produces, shapes and formats evidence, applying both a general rule of scepticism towards any documents issued upstream (especially when emitted by parallel institutions), and a specific set of rules to filter ‘valid’ from ‘invalid’ information, thereby creating legal documentary indisputability and ‘reasonable trust’ within the institution itself, *a posteriori* to the submission of documents by parties. The construction of indisputability is the function of the verification unit.

The notification unit, as we have seen, basing itself on the content of the claim intake form and cadastral information, essentially *produces* evidence of the geographic and geodesic specifics of the claim – pieces of evidence that are vital to the legal analysis and adjudication of the case. The verification unit, in turn, verifies the file’s documents that do not emanate from the KPA procedure itself. In a very similar distribution of tasks as in the notification unit, the verification unit consists of regional verification officers, or *verificators* as they like 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* ‘verify’ the documents submitted by parties and undertake searches in public records for documentary evidence in support of cases for which no documents were submitted. They then write ‘verification reports’ that are sent to the HQ verification unit, who ‘quality check’ these reports and draft ‘final consolidated verification reports’ that are signed by the head of unit. The ‘final consolidated verification reports’ include documents that were ‘positively verified’, i.e. asserted as genuine, and ‘negatively verified’, documents that could not be found in the archives or that were deemed fake. ‘Final consolidated verification’ reports contain the following information: the type of documents that were 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 was verified and their location, the method of verification (see below), and the name of the *verificator*.

When the ‘consolidated verification reports’ are approved and signed by the head of unit, they are sent to the ‘File and Data Management’ (FDM) unit, who scan them and attach them both to the computerised and physical files when the latter are in their possession. In June 2012 when I started at the KPA, most files’ documents had already been verified a first time. The verification of

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<sup>26</sup> The Serbian official appellation for the territory that is otherwise referred to as Kosovo in the text.

documents was thus at the time of research mostly done at the request of the CPTs for documents that had either fallen off the *verificators*' radar of 'relevance' in the first place, were deemed untrustworthy, or had been submitted by respondents at a later stage in the procedure. Therefore, the physical 'consolidated verification reports' would not be attached to the files by the FDM but by the secretaries of the CPTs themselves, as the files would already be on their shelves.

Because 'to verify' in the KPA jargon includes the shaping and formatting of evidence as explained above, in the present context the verb carries a very specific meaning. 'To verify' comprises two types of assessment: the assessment of the relevance of documents, and the evaluation of the validity and authenticity of the documents deemed relevant in the first instance. As described in the Standard Operational Procedures (SOP) of the verification unit, a document is 'relevant' 'when it can directly or indirectly establish proof of property right'. For example, a 'possession list' or a 'certificate for the immovable property rights' directly establishes proof of property right because it states the name of the present owner or user right holder; an inheritance decision which describes the shares of the property that were inherited by each heir can also establish direct proof of property right. The same goes for a contract on gift or a purchase contract. A taxation decision, witness statement, copy of plan or cadastral decision, however, alone only establishes indirect proof of property right that needs to be corroborated by another, heavier piece of evidence in the file for direct proof to be established. Documents such as ID cards, birth, marriage and death certificates can also be relevant information because they help confirm family relations between the 'property right holder' (PRH) and 'family household members' (FHM).

A document, in turn, is considered 'valid' when it can be 'positively verified'. Only documents that are deemed 'relevant' by the *verificators* are then verified, and only 'genuine' documents are later considered in the decision-making process. But how is the validity of documents asserted? And what does 'positive verification' mean? The validity/authenticity of documents that are deemed 'relevant' is asserted by different verification methods. The *prima facie* method is used for copies of identity cards for example, when the ID card is submitted for identification purposes or to prove a family connection (which are deemed 'relevant' reasons). The *verificator* can assert the validity of the documents by comparing them with their original or with 'identical' documents. The second method is called 'comparison with public records' and is by far the most used. Here, the *verificator* compares 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 to prove possession of the claimed property).

UNMIK Administrative Direction 2007/5 (Annex II) section 4.2 stipulates that the Executive Secretariat of the KPA is entitled to unrestricted and free access to public records in Kosovo. In practice, the *verificators* often have to use their networking skills to get the information they require, on top of submitting requests in writing at least two days before visiting certain archives. Most *verificators* have been doing this job for years and know the local archivists personally, which makes their job much easier. For a member of the public to get hold of a certified copy from any kind of archive is an entirely different story. It is often costly and takes a very long time. But even for the KPA *verificators* the job is not always without difficulty. Sometimes, the archives are being renovated, the court archivist is on an official trip somewhere, or on leave for an undisclosed amount of time, which delays the whole process tremendously. Other times, and this is especially the case for the records held by the Public Housing Enterprises, getting copies of documents is very

cumbersome. As a *verificator* working for the Pristina RO explained to me, to get the copies she needs, she would have to request a formal meeting with the archivist through the director, as well as formally request the copies to be made for her, and all this for each document to be verified. So she never does it. Instead, she checks the archived original the archivist shows her and the certified copy she got through the KPA from one of the parties and if the two sources of information corroborate one another, she assumes the certified copy is genuine. She therefore sends a 'positive verification report' to the HQ verification office that is accepted by the HQ verification unit at face value. Similarly, due to fraught relations between the KPA and the KCA, the KCA was reluctant to issue free of charge certified copies of cadastral documents such as 'Possession Lists', since 2005 known as Certificates for the Immovable Property Rights (CIPR). The *verificators* were then allowed to have a look at the cadastre books, but not to take out copies. Since 2009 an agreement with the KCA has made things much easier. Certified copies of CIPRs are now issued for KPA purposes, albeit crossed over to show that they were issued for free.

Often, documents 'look genuine' but cannot be found in the archives. This is commonplace for birth, marriage and death certificates that were issued before 1998. In these cases, the verification method used is in the KPA jargon called the 'authorised person confirmed' method. In these situations, the *verificator* seeks the opinion of an official representative of the institution where the document was issued in the first place in order to report back on the authenticity of the documents: does the numbering system pertaining to such type of documents match with the numbers on top of the document to be verified? Does the signature of the official representative to be found at the bottom of the page coincide with the signature of the then officer in charge? If the authorised representative thinks the document is genuine and the *verificator* agrees with this verdict, it is then reported to be so in the verification report.

In Serbia, although an agreement concerning the disclosure of archival documents located in the Serbian Ministries, dislocated court and cadastre archives in Krusevać, the Republican Commissariat for Refugees, the Federal and Republican Directorates for Assets and the cadastre offices was already reached in 2002 with the Ministry of Justice under the HPD mandate (Cordial and Rosandhaug, 2008: 65), the task of the KPA *verificators* there is even more tricky than it is in Kosovo.

On one of my visits to the KPA/UNHCR property office in Belgrade, Dejan, the office's *verificator*, takes me with him to one of the Belgrade municipal courts' archives where he needs to verify some documents. During the journey, he talks 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 for the archives of the department of Kosovo and Metohija in Krusevać. 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. Similar story from the public railway enterprise that gave some flats to employees in Kosovo. They asked me to write request letters to them. I had one answer. They told me: 'you've wrongly written the number' and that's it. They're lazy. They find trivial mistakes just not to have to answer me. I don't know how these archives look like because I've never been allowed to see them, same for the police department's."

After twenty minutes of driving in what seems to be constant traffic jams, we park his small bumpy car in a busy street close to the court where cars are double-parked. We then make 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 take a side entrance leading us to the back of the court. There, down a series of stairs we get 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 reach the archival room.

Despite some neon lights attached to the high ceilings, the room is gloomy and dim. It is full of shelves and papers, so much so that the walls themselves are invisible. It smells of old cardboard and dust, of which a thick layer covers everything including the chair and the little desk just left to the sliding door. Two minutes in, I start sneezing. Dejan calls the name of the archivist several times but the room is so big and so full of papers that his voice does not carry far. The man remains invisible. Gradually, an octogenarian-looking man in a coat of the colour of yellowed paper shuffles into view from behind two shelves, bending over from the weight of the files he is carrying. He recognises Dejan and comes towards us. The two men greet each other, and without losing time, Dejan produces the copies of documents he has come to verify. The old man, dropping the pile of files he was carrying on his tiny desk, looks at them and says: “these ones are here [in this room], but this one, I don’t know.” He takes the copies with him, bidding us to stay where we are. Dejan looks at me with a crooked smile on his face: “the man is the only one working here. He’s been here for ages.” Without hesitating, the archivist goes towards a shelf a couple of meters from where we stand, climbs on a wooden ladder, and retrieves a large A3 register from somewhere in the middle of a row. He opens the register and within seconds finds the relevant entry. He repeats this feat three times in the next few minutes. The old man then takes another couple of minutes to inspect the last document, furrowing his brow, and leaves us again, this time for something like five minutes. He comes back empty handed and says that the inheritance decision in question must have been issued from somewhere else, because it is not in here.

Back in the fresh air of this beautiful summer day, we stop for a soda. Sitting outside and surrounded by chatty young people, it is hard to imagine having been buried in such a Kafkaesque underground only minutes ago. Dejan tells me: “And we were lucky, at least these archives are on shelves. Sometimes, documents are in boxes, or even on the floor.” I ask him what will happen to the archives the day the octogenarian-looking archivist disappears under stacks of papers. “Who knows?” replies Dejan.

After its passage through the notification and verification units, as well as through the ancillary FDM unit, the file contains the necessary information to be reviewed by the ‘real’ lawyers of the CPTs, the staff who legally analyse the claims and prepare them for adjudication. Its ‘history of status’ available on the intranet now shows ‘notification complete’ and ‘verification complete’. Divided into sub-folders by the FDM, one folder for each step of the journey, the file comprises at least:

- i. The claim intake form and the documents submitted by the claimant
- ii. The notification report drafted in the regional office
- iii. Copies of pictures of the claimed property and of the physical notification
- iv. Maps drawn by the regional notification officer
- v. The cadastre documents used for notification

- vi. The final notification report
- vii. In case a respondent approached the KPA at the time of notification, the ‘respondent reply’ form
- viii. 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
- ix. 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 its redundancy of copies, the file now carries the ‘quasi-legal form of trust’ (Latour 2010: 75) constructed by in-house production, shaping and formatting of evidence that is indispensable for legal review. Each day, the files – or parts of files such as consolidated reports and their attachments in transparent plastic folders – that are ready for legal review are neatly stacked on a desk in each of the units’ offices. They are ‘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 CPT floor. There, they are ‘barcoded in’ and sorted according to their legal nature. This is where the documentary evidence accumulated in the file is, finally, legally analysed.

## Conclusion

I started this paper asking how the KPA creates legal facts that could potentially be used as evidence, and how it goes about making what I called ‘reasonable certainty’. In 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’ that the amount of pesticides would not affect the health of consumers (see for example Levine, 2006: 18). In the present context, I use ‘reasonable certainty’ to describe the desired outcome of the positivistic fact-finding ‘mission’ run by the KPA at the end of which the commissioners of its adjudicatory commission are given ‘reasonably reliable’ pieces of evidence on which to base their decisions. It is based on the premise that, 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 and their recipients, the documents, can never be totally trusted. ‘Reasonable certainty’ as I use it therefore also relates to risk calculations, but the temporality of the facts at stake differs. The assessments involved here are directed towards ensuring that empirical ‘products’ created in the *past* are trustworthy enough to be considered 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 well-known legal expression ‘reasonable doubt’. However, ‘reasonable doubt’ is used in criminal trials to ascertain that the required degree of certainty of culpability has been reached. It thereby denotes, in common parlance, a positive thing about a person “when there is no clinching evidence either way” (Berti et al. 2015: 120). ‘Reasonable certainty’ as I use it conveys the opposite, a negative assertion. Indeed, because of its lack of trust in what happens ‘out there’, the institution, applying scepticism to any externally made ‘truth’, deems it necessary to see everything produced outside its walls as potentially untrustworthy. Consequently, it assumes an *a priori* mistrust – which is always first a negative thing – towards not the claimants themselves, but the claimants’ claims, which, for the institution, represent this generalised mistrust.

Through the organisation of the workflow and of the files, the paper has looked at the strategies that were put in place to mitigate doubt and create an institutional certainty. My main argument is that the technical and technological codification of claims works as a series of reification whereby claims are transformed into files. The paper therefore focused on files as the material repository of the judicialisation process.

As I explained, the trajectory of a claim can be reduced, from the first moment of its judicialisation, to the trajectory of the paperwork, the documents' 'career' (Harper, 1998) that is involved in its legal processing. Claimants' narratives of suffering, their pleading for justice and more pragmatic request for monetary compensation or repossession of lost properties were put on paper in a specific format. An affidavit of the claim intake form, signed both by the KPA officer and the claimant bound them to a judicialised world of paper truths. From there, the files started their journey through spaces, times and realities. This paper has looked at the trajectory files undertook from the day of their inception, in a dusty office of the UNHCR property section, in the muddy courtyard of a refugees centre, or on the bonnet of a car parked opposite an informal refugee settlement in Serbia, to their transformation into legal evidence. In other words, it traced moments of abstractions, or reifications. The first abstraction happens when claimants' narratives are transformed, accommodated and replaced by a judicial reality; when oral individual narratives of suffering are written down in the bureaucratic language of a standardised form. The second reification takes place largely within the institution, in the different stages of transformation of paperwork into evidence: the files and the documents of various (internal and external) types they contain are 'processed', "just like stones and other such matter" (Vismann 2008: xi). Documents are assessed, legitimated or discarded, others are created in-house. Evidence of property losses as paper truths are constructed from 'claim intake', to 'notification', to 'verification', and managed by the 'file and data management unit' and the IT system. While notification is the sole encounter with property as concrete walls, earth, woods, fields, etc., verification produces the necessary, *reasonable* indisputability of evidence.

Anthropologist Parker Shipton has aptly shown in his research on forms of entrustments in 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 (...)" (2007: 34). In this paper, I have described the process through which doubt and *a priori* mistrust are managed by the in-house making of trust. In Shipton's words, I have shown how, in the KPA context, "trust bridges a synapse between evidence and conclusion" (2007: 34). Although doubt is a ubiquitous attribute of judicial proceedings across the globe, the modalities through which it is 'resolved' and thus through which trust is made, and the kind of trust that is made, differ (Berti et al. 2015). Moreover, the pragmatics involved in the making of trust also affect the socio-legal value attributed by outsiders (other state institutions, and the general population at large) to the agency's legal decisions. Although on paper, the decisions issued by KPA's commission (the KPCC) are legally binding and directly enforceable, the fragile nature of trust as it is produced through the KPA procedure – reflecting the fragile nature of the politics involved in the making of 'transitional property' – in turn, casts certain externally-made doubt, this time, on the truth value and validity of the institution's decisions.

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